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February 6, 2020

TO: The Honorable Dereck E. Davis  
Chair, Economic Matters Committee

FROM: Brian E. Frosh, Attorney General

RE: HB 3 – Business Regulation – Flavored Tobacco Products – Prohibition  
(SUPPORT)

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The Office of the Attorney General urges a favorable report on House Bill 3. This bill effectively bans the sale of flavored tobacco products by providing that tobacco product manufacturer, wholesaler, and retailer licenses do not authorize the sale or delivery of these products in Maryland. Bus. Reg. § 16-206(A-G). Specifically, the bill: (1) defines “flavored tobacco product” as “any tobacco product that contains a taste or smell other than tobacco” including “fruit, menthol, mint, wintergreen, chocolate, cocoa, vanilla, honey, a candy, a dessert, an alcoholic beverage, or a spice,” Bus. Reg. § 16-501(D)(1-2), and (2) applies to all cigarettes, electronic smoking devices, and other tobacco products like chewing tobacco, little cigars, and snuff. Bus. Reg. § 16-501(G)(2).

This legislation will also help deter the explosive growth of e-cigarette use among Maryland youth in recent years. Large corporations like JUUL Labs, Inc. created that growth by mixing their highest nicotine products with candy and fruit flavorings and marketing them in media that they knew would appeal to our kids. As we speak, newer vaping companies like Suorin and Stig are growing in revenues and market share using identical tactics.

The devastating results of this misconduct are all too predictable. An increasingly robust body of medical literature shows that e-cigarette use among teens increases the risk of smoking combustible cigarettes by as much as four times. These findings are reflected in the most current data from the Maryland Department of Health, which show that recent e-cigarette use among Maryland’s high-school population nearly doubled between 2016 and 2018, jumping from 13.3



percent of that population to 23 percent.<sup>1</sup> National trends are comparable—“[f]rom 2018 to 2019 alone, the number of U.S. middle and high school students reporting current use of e-cigarettes increased from 3.6 million to over five million young people—10.5 percent of middle school students and 27.5 percent of high school students.”<sup>2</sup>

House Bill 3 will help reverse these dangerous trends. The U.S. Food and Drug Administration’s (“FDA”) 2009 decision to ban flavors in cigarettes led to steep declines in youth smoking even though a loophole has allowed menthol to stay on the market with tragically predictable consequences in the African American community long targeted by menthol cigarettes.<sup>3</sup> And although the FDA’s recently released guidance<sup>4</sup> was a step in the right direction, it only applies to a limited number of manufacturers and cartridge-based products.<sup>5</sup> Unfortunately, the guidance continues to allow disposable and some refillable tank systems with candy, mint, and fruit flavors that will hook a new generation of nicotine addicts, and puts no restrictions on menthol in any tobacco product.<sup>6</sup> As we speak, the e-cigarette industry is marketing new products manufactured in China with even higher nicotine levels than JUUL that are designed specifically to evade the FDA’s limited ban, and sales of these products has grown exponentially.<sup>7</sup> House Bill 3 will help us stop this new epidemic from spreading even more widely in our state.

For these reasons, we ask that this Committee return a favorable report on this emergency bill.

cc: Members of the Economic Matters Committee

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<sup>1</sup> Berkowitz, D., *Maryland Department of Health, Local Health Department Tobacco Control Program Coordinator Meeting, November 21, 2019*. Maryland Department of Health, *Monitoring Changing Tobacco Use Behaviors: Maryland 2000-2016* at 49, available online at <https://phpa.health.maryland.gov/ohpetup/Documents/2000%20-%202016%20Legislative%20Report%20Monitoring%20Changing%20Tobacco%20Use%20Behaviors.pdf> (last visited February 5, 2020) (The Department of Health also found in 2017 that 52.3 percent of youth e-cigarette users in Maryland also use traditional tobacco products).

<sup>2</sup> See *Committee on Energy and Commerce Staff Memorandum to Subcommittee on Oversight and Investigations Members and Staff*, “Hearing on ‘Vaping in America: E-Cigarette Companies’ Impact on Public Health,” at 4 (Jan. 31, 2020), available online at <https://docs.house.gov/meetings/IF/IF02/20200205/110462/HHRG-116-IF02-20200205-SD002.pdf> (citing Cullen, K.A., et al, *e-Cigarette Use Among Youth in the United States, 2019*. JAMA (Nov. 5, 2019). Note reported use of an e-cigarette within the past 30 days.)

<sup>3</sup> “State of the Evidence: Flavored Tobacco Product Bans or Restrictions” at 4, January 2020, INSTITUTE FOR GLOBAL TOBACCO CONTROL, available online at [https://www.globaltobaccocontrol.org/sites/default/files/state\\_of\\_the\\_evidence\\_-\\_flavor\\_ban\\_or\\_restriction\\_0.pdf](https://www.globaltobaccocontrol.org/sites/default/files/state_of_the_evidence_-_flavor_ban_or_restriction_0.pdf) (last visited February 5, 2020).

<sup>4</sup> U.S. FOOD AND DRUG ADMIN, *FDA Finalized Enforcement Policy on Unauthorized Flavored Cartridge-Based E-Cigarettes that Appeal to Children, Including Fruit and Mint* (Jan. 2, 2020).

<sup>5</sup> *Id.* at 5.

<sup>6</sup> *Id.*

<sup>7</sup> See Sheila Kaplan, *Teens Find a Big Loophole in the New Flavored Vaping Ban*, N.Y. TIMES (Jan. 31, 2020), available online at <https://www.nytimes.com/2020/01/31/health/vaping-flavors-disposable.html> (last visited February 5, 2020).