



March 17, 2020

The Honorable Delores G. Kelley, Chair
Senate Finance Committee
3 East, Miller Senate Office Building
Annapolis, MD 21401-1991

RE: HB 3 (3rd) - Business Regulation – Tobacco Products – Electronic Smoking Devices, Prohibition on Flavoring, and Sales to Military Members – Letter of Information

Dear Chair Kelley and Committee Members:

The Maryland State Council on Cancer Control (Council) submits this letter of information for House Bill 3 (HB 3) (3rd) entitled “Business Regulation – Tobacco Products – Electronic Smoking Devices, Prohibition on Flavoring, and Sales to Military Members.” The council believes that several of the proposed amendments unfavorably alter the intent of the legislation.

One of the proposed House amendments creates a definition for a “Smoking Bar” (a retail establishment that primarily occupies an indoor space and is primarily engaged in the sale of premium cigars, pipe tobacco, or other products consumed on-premises, and in which the sale of other products is incidental). It is unclear from the amended language whether the intent of defining such an establishment is meant to expand the scope of the existing tobacco retail exemption of the Clean Indoor Air Act (CIAA). Whereas an exception currently exists for tobacco retail businesses, the CIAA specifically and intentionally prohibits smoking in all indoor establishments open to the public, including restaurants and bars. In creating the term “Smoking Bar,” the proposed amendments to HB 3 create confusion regarding the provision of the CIAA. The Council would ask that the “smoking bar” definition be considered with regard to maintaining consistency with Maryland’s CIAA.

HB 3 also would exempt open electronic smoking device (ESD) products from the flavor ban, allowing such products to be sold at any licensed location without restrictions. Open ESD products are devices with chambers that may be refilled with a variety of flavored e-liquids or juices, whereas closed ESDs have one-time use flavor cartridges. Different standards for ESD products sold in the same location would complicate enforcement and create confusion for retailers. In addition, consumers who prefer flavored products could simply switch from closed to open ESDs, effectively undermining the intent behind banning flavored products.

In 2018, the U.S. Surgeon General declared youth vaping an epidemic, evidenced by a 78 percent increase in current ESD use among high school aged youth between 2017 and



2018.¹ Research indicates that youth are more likely to try flavored ESDs and that youth are unaware that nearly all ESDs contain nicotine.^{2,3} Following a partial ban of fruit flavored ESDs, use of mint and menthol flavors surged between 2018 and 2019.^{4,5} Menthol flavoring has been evidenced as intensifying nicotine dependence and the urge to smoke, making it harder for smokers using menthol to quit.⁶ ESDs are not an FDA-approved cessation device, and use of ESDs may lead to dual use of ESDs and cigarettes with associated health risks.⁷

For the reasons noted herein, the Council respectfully offers the attached amendments to rectify HB 3 in accordance with State goals to reduce tobacco use.

Sincerely,

A handwritten signature in black ink that reads "Kevin J. Cullen, MD". The signature is written in a cursive style.

Kevin Cullen, MD
Chair,
Maryland State Council on Cancer Control

¹ <https://e-cigarettes.surgeongeneral.gov/documents/surgeon-generals-advisory-on-e-cigarette-use-among-youth-2018.pdf>

² Willett JG, Bennett M, Hair EC, et al Recognition, use and perceptions of JUUL among youth and young adults Tobacco Control 2019;28:115-116. <https://tobaccocontrol.bmj.com/content/28/1/115.info>.

³ Kristy L. Marynak, Doris G. Gammon, Todd Rogers, Ellen M. Coats, Tushar Singh, and Brian A. King, 2017: Sales of Nicotine-Containing Electronic Cigarette Products: United States, 2015 Am J Public Health 107, 702-705, <https://doi.org/10.2105/AJPH.2017.303660>.

⁴ Schneller LM, Bansal-Travers M, Goniewicz ML, McIntosh S, Ossip D, O'Connor RJ. Use of Flavored E-Cigarettes and the Type of E-Cigarette Devices Used among Adults and Youth in the US-Results from Wave 3 of the Population Assessment of Tobacco and Health Study (2015-2016). Int J Environ Res Public Health. 2019;16(16):2991. Published 2019 Aug 20. doi:10.3390/ijerph16162991 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6720922/>.

⁵ <https://www.fda.gov/news-events/press-announcements/trump-administration-combating-epidemic-youth-e-cigarette-use-plan-clear-market-unauthorized-non>, retrieved 3 January 2019.

⁶ Ahijevych, K and BE Garrett, The role of menthol in cigarettes as a reinforcer of smoking behavior. Nicotine Tob Res, 2010 12 Suppl 2:p S110-6. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3636955/>.

⁷ Dharma N. Bhatta, PhD, MPH; Stanton A. Glantz, PhD Electronic Cigarette Use and Myocardial Infarction Among Adults in the US Population Assessment of Tobacco and Health J Am Heart Assoc. 2019;8:e012317. DOI: 10.1161/JAHA.119.012317.



AMENDMENTS TO HOUSE BILL 3, AS AMENDED
(Third Reading Bill File)

AMENDMENT NO. 1:

On Page 14, strike lines 6 through 12 inclusive.

On Page 16, strike lines 13 through 21 inclusive.

Purpose: This amendment removes the “Smoking Bar” definition and eliminates the exception for those establishments contrary to the purpose of the Clean Indoor Air Act.

AMENDMENT NO. 2:

On Page 19, strike lines 1 through 11 inclusive, and renumber accordingly.

On Page 21, strike lines 13 through 15 inclusive.

On page 25, in line 10, strike “A” and substitute “AN ELECTRONIC SMOKING DEVICE.”.

On Page 25, strike line 11 in its entirety

Purpose: This amendment removes the distinction between open and closed Electronic Smoking Devices.