



# Maryland Vapor Alliance

## SB 273 – Electronic Smoking Device Regulation Act of 2021

January 27, 2021

Honorable Delores Kelley  
Chair  
Finance Committee  
3 East Miller Senate Office Building  
11 Bladen Street  
Annapolis, MD 21401

Chair Kelley, Vice-Chair Feldman, and Committee Members,

The Maryland Vapor Alliance represents approximately 200 brick-and-mortar vapor shops across Maryland. We are small businesses and defined in statute as vape shop vendors meaning 70% or more of our retail sales are derived from vapor products and accessories such as hardware and liquids.

We have helped thousands of Maryland tobacco users transition to vapor products through the use of “open systems” that allow the user to control the amount of nicotine intake. This allows the adult user to decrease their nicotine intake over time. Compared to other venues, we have a strong track record of **NOT** selling such products to individuals under 21. In fact, we stand so strongly by our track record of **NOT** selling such products to underage individuals that we are supporting an amendment that would require revocation of a vape shop vendor license – under a 3-strikes, you are out provision – which we have provided with our amendment requests.

We are proud of our work with the Maryland General Assembly to craft legislation over the years to responsibly regulate the sale of vaping products in the State. Over the past five years, the MVA proactively supported legislation establishing a regulatory structure for the vaping industry, supported “tobacco-21” legislation, supported numerous bills increasing the penalties and fines for the sale of vaping products to minors, and supported an increased tax on vape products.

We support Senate Bill 273 with amendments. First, we want to thank Senator Kramer for his interest in this policy area and preparing legislation that will curtail the abuse of vaping by underage individuals. Senate Bill 273 would permit only vape shop vendors to sell electronic smoking devices in Maryland. This would take high-nicotine, closed systems out of thousands of retailers across Maryland and permit them only to be sold in age-gated, licensed vape shop vendors that will be required to scan identification. This act alone will significantly reduce access to underage vaping. We have previously shared extensive enforcement data that has demonstrated nearly every sale of a vape product to an underage individual was a high-nicotine, closed system sold at a gas station or convenience store.

However, we recognize that should this legislation be passed, the General Assembly is placing an unmatched trust in the vape shop community to be responsible retailers. To that end, we are seeking an amendment to require the revocation of a vape shop vendor license should a retailer sell vape products to

a minor three times in two years. Our members are proud of our track record and we do not tolerate the sale of vape products to minors. The regulations must match that belief and we want bad actors that mar our industry to pay the steepest penalty possible. We do not believe there is a comparable standard across any other licensed purveyor of adult products.

We have offered additional amendments that are included in this letter. We respectfully ask for your consideration of our amendments as you evaluate this legislation. As always, please consider the Maryland Vapor Alliance as a resource. We share the State's mission and have consistently shown a willingness to work the Maryland General Assembly to pass legislation that allows our industry to continue to offer adult products to adults while working toward a statewide goal of eliminating underage smoking and vaping.

Sincerely,

Matt Milby  
Vice President, Maryland Vapor Alliance  
443-421-8669

*Amendments offered by the Maryland Vapor Alliance*

**Amendment No. 1**

On page 2, after line 36, insert:

16.7-209

(b) **(1)** Subject to the notice requirement under subsection (c) of this section, the Executive Director may revoke a license if a licensee willfully and persistently engages in an act or omission that is grounds for discipline under Section 16.7-207(a) of this subtitle.

**(2) THE EXECUTIVE DIRECTOR SHALL REVOKE A VAPE SHOP VENDOR LICENSE IF THE LICENSEE IS CITED FOR THE SALE OF AN ELECTRONIC SMOKING DEVICE TO AN INDIVIDUAL UNDER THE AGE OF 21 THAT DOES NOT HOLD A VALID MILITARY IDENTIFICATION THREE TIMES IN A TWO-YEAR PERIOD.**

**(3) IF A LICENSE IS REVOKED PURSUANT TO PARAGRAPH (2) OF THIS SUBSECTION, THE LICENSEE IS NOT ELIGIBLE FOR A COMPROMISE BY PAYMENT IN LIEU OF REVOCATION IN SUBSECTION (E) OF THIS SECTION.**

Explanation: The members of the Maryland Vapor Alliance (MVA) recognize the trust the Maryland General Assembly is placing with licensed vape shop vendors. To that end, the MVA is asking for the General Assembly to adopt an amendment that requires the executive director to revoke the license of a licensee if they are cited for selling to individuals under the age of 21 (that do not hold a valid military ID) three times in a two-year period. Additionally, we want to make it clear that revoked licensees for these specific citations are not eligible for recourse under subsection (e) of this section that allows for a compromise. Their license must be revoked. It should be noted that we have not found any other license category that would be held to such a high standard whether it is the sale of alcohol, cigarettes, or other tobacco products.

**Amendment No. 2**

On page 5, in line 23, strike “**EXCLUSIVELY**”

On page 5, in line 24, after “BUSINESS”, insert “**AND MAY NOT SELL PACKAGED FOOD OR DRINK, CIGARETTES, OR ANY OTHER TOBACCO PRODUCT**”

Explanation: Many vape shop vendors offer holistic products such as “food-grade” CBD containing less than .03% THC. These products are commonly sold in coffee shops, juice shops, chiropractors offices, etc. Additionally, this amendment would allow the vape shop vendors to sell branded merchandise such as logoed tee shirts and strictly prohibits them from selling cigarettes, other tobacco products, and packaged food.

### **Amendment No. 3**

On page 7, in line 22, after “IN”, strike the remainder of the line in its entirety and replace with “**AN AMOUNT NOT TO EXCEED \$100 ANNUALLY.**”

Explanation: Currently, OTP retailers pay no additional licensing fee. In addition to other licenses, cigarette retailers pay a one-time \$200 fee and a recurring annual fee of \$30. The annual payment of \$100 by vape shops is a greater fee than cigarette retailers pay for a far more harmful product.

### **Amendment No. 4**

On page 10, after “(D)”, strike lines 14 through 17 in their entirety and substitute:

**“A LICENSEE MAY ONLY SELL AN ELECTRONIC SMOKING DEVICE LIQUID IN THE STATE, IF THE ELECTRONIC SMOKING DEVICE LIQUID HAS BEEN SUBMITTED TO THE FOOD AND DRUG ADMINISTRATION FOR THE PRE-MARKET TOBACCO AUTHORIZATION.**

Explanation: The FDA and E-liquid Manufacturers are currently conducting extensive PMTA testing to determine if there are any harmful and potentially harmful constituents (HPHC) in E-Liquids. These tests are done in HPHC approved labs with standard scientific/medical standards. This amendment would permit the sale of electronic liquids as long as the liquid has been submitted to the FDA for PMTA approval.

### **Amendment No. 5**

On page 13, after line 25, insert:

**16.7–217.**

**(A) THIS SECTION APPLIES ONLY TO A PERSON WHO IS ENGAGED IN THE BUSINESS OF SELLING OR DISTRIBUTING ELECTRONIC SMOKING DEVICES.**

**(B) (1) EXCEPT AS PROVIDED IN PARAGRAPH (2) OF THIS SUBSECTION, A PERSON COVERED UNDER THIS SECTION MAY NOT:**

**(1) SELL OR SHIP ELECTRONIC SMOKING DEVICES, ORDERED OR PURCHASED BY MAIL OR THROUGH A COMPUTER NETWORK, TELEPHONIC NETWORK, OR OTHER ELECTRONIC NETWORK, BY A CONSUMER OR OTHER**

**UNLICENSED RECIPIENT, DIRECTLY TO A CONSUMER OR OTHER UNLICENSED RECIPIENT IN THE STATE; OR**

**(II) CAUSE ELECTRONIC SMOKING DEVICES, ORDERED OR PURCHASED BY MAIL OR THROUGH A COMPUTER NETWORK, TELEPHONIC NETWORK, OR OTHER ELECTRONIC NETWORK BY A CONSUMER OR OTHER UNLICENSED RECIPIENT, TO BE SHIPPED DIRECTLY TO A CONSUMER OR OTHER UNLICENSED RECIPIENT IN THE STATE.**

**(2) A LICENSED ELECTRONIC SMOKING DEVICES RETAILER MAY DELIVER NOT MORE THAN TWO ELECTRONIC SMOKING DEVICES DIRECTLY TO A CONSUMER IF THE DELIVERY IS MADE BY THE LICENSED ELECTRONIC SMOKING DEVICES RETAILER OR AN EMPLOYEE OF THE LICENSED ELECTRONIC SMOKING DEVICES RETAILER.**

**(C) (1) A LICENSEE WHO SELLS OR SHIPS ELECTRONIC SMOKING DEVICES IN VIOLATION OF THIS SECTION OR CAUSES ELECTRONIC SMOKING DEVICES TO BE SHIPPED IN VIOLATION OF THIS SECTION IS:**

**(I) SUBJECT TO DISCIPLINE BY THE EXECUTIVE DIRECTOR UNDER § 16.7-207 OF THIS ARTICLE; AND**

**(II) GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$1,000 OR IMPRISONMENT NOT EXCEEDING 30 DAYS OR BOTH.**

**(2) A PERSON OTHER THAN A LICENSEE WHO SELLS OR SHIPS ELECTRONIC SMOKING DEVICES IN VIOLATION OF THIS SECTION OR CAUSES ELECTRONIC SMOKING DEVICES TO BE SHIPPED IN VIOLATION OF THIS SECTION IS GUILTY OF A FELONY AND ON CONVICTION, IS SUBJECT TO A FINE NOT EXCEEDING \$50 FOR EACH ELECTRONIC SMOKING DEVICE TRANSPORTED OR IMPRISONMENT NOT EXCEEDING 2 YEARS OR BOTH.**

Explanation: This amendment bans telephonic and computer network direct-to-consumer sales of vape products but allows a vape shop employee to deliver not more than two ESDs. This is consistent with the treatment of cigarette retailers (delivery of up two *cartons* of cigarettes) and other tobacco product licensees (up to two products). This language passed out of the House of Delegates in 2020.

#### **Amendment No. 6**

On page 13, in line 16, after “TEST”, insert “**IN A LAB CERTIFIED TO TEST FOR HARMFUL AND POTENTIALLY HARMFUL CONSTITUENTS**”

On page 13, in line 17 and 18, strike “STATEMENT FILED UNDER S. 16.7-204 OF THIS SUBTITLE” and replace with “**PRE-MARKET TOBACCO AUTHORIZATION.**”

On page 13, in line 19, after “(B)” insert **(1)**

On page 13, in line 20, strike, “PERMISSIBLE”, and replace with “**AND PUBLISH A LIST OF HARMFUL AND POTENTIALLY HARMFUL CHEMICALS.**”

On page 13, in line 21, after “**DEVICES**”, insert “**IF TESTING OCCURRED SUBJECT TO SUBSECTION A OF THIS SECTION AND PEER REVIEWED**”

On page 13, after line 21, insert:

**(2) THE LIST SHALL CLASSIFY HARMFUL AND POTENTIALLY HARMFUL CHEMICALS, INGREDIENTS AND COMPONENTS OF ELECTRONIC SMOKING DEVICES AS:**

- (I) CARCINOGEN,**
- (II) RESPIRATORY TOXICANT,**
- (III) CARDIOVASCULAR TOXICANT,**
- (IV) REPRODUCTIVE OR DEVELOPMENTAL TOXICANT; OR,**
- (V) ADDICTIVE**

Explanation: Currently, the Federal Food and Drug Administration publishes a list of harmful and potentially harmful constituents (HPHCs) in tobacco products and tobacco smoke as required by the Federal Food, Drug and Cosmetic Act. Vaping products have been proven to be less harmful than cigarettes, yet the healthier product would be held to a stricter standard. The Maryland Vapor Alliance proposes that the Department of Health and the Executive Director have the authority to test vaping products and generally classify the chemicals found as a carcinogen, respiratory toxicant, cardiovascular toxicant, reproductive or developmental toxicant, and addictive.

A link to the current list can be found: <https://www.fda.gov/tobacco-products/rules-regulations-and-guidance/harmful-and-potentially-harmful-constituents-tobacco-products-and-tobacco-smoke-established-list>

#### **Amendment No. 7**

On page 17, after line 17, insert:

**(6) A licensed vape shop vendor.**

Explanation: Vape shops operate in a similar manner to cigar shops. This amendment would exempt vape shop vendors from Clean Indoor Air Act consistent with the treatment of cigar shops.