

News Release

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Comptroller Franchot's e-facts Task Force Issues Final Report

Panel recommends 12 policy and regulatory changes to curb youth access, protect public health

ANNAPOLIS, Md. (February 17, 2020) -Maryland Comptroller Peter Franchot and members of the e-Facts Task Force on Electronic Smoking Devices (ESD) today issued its final report that recommends 12 policy and regulatory changes aimed at evidence-based approaches to curbing youth exposure to nicotine and preventing adulterated or contaminated products from causing injury to adult consumers. *[A full copy of the report is available at www.marylandtaxes.gov]*

"I am deeply grateful to each of the task force members for sharing their time, their passion and their expertise as we heard powerful evidence about the public health dangers associated with electronic smoking devices and what the industry is doing to mitigate those risks," said Comptroller Franchot. "There is no doubt that youth access to ESDs and the way in which they're marketed to kids demands we take action. The following recommendations establishes a framework for ensuring ESD's are as closely regulated as other products that pose safety hazards."

The Task Force report does not opine on legislation currently under consideration by the Maryland General Assembly related to the appropriate taxation rates for ESDs or the outright banning of all e-liquid flavors.

Accordingly, the Comptroller's e-facts Task Force makes the following recommendations to safeguard overall public health and protect young people from lifelong addiction to nicotine:

1.BAN ALL DIRECT-TO-CONSUMER INTERNET AND MAIL ORDER SALES OF ESDS.

The General Assembly should pass legislation to prohibit all sales of ESDs that do not occur face-to-face. Today, many children receive their first ESD in a package

delivered to their mailbox without their parents' knowledge or any attempt at age verification by internet-based sellers. This needs to stop, and the Comptroller's Field Enforcement Division is committing to working with the Maryland Attorney General's Office and the federal government to enforce a total ban on internet, mail order, and direct-to-consumer sales of ESDs into Maryland.

2.RESTRICT SALES OF FLAVORED E-LIQUIDS AND REFILLABLE “TANK” SYSTEMS EXCLUSIVELY TO “VAPE SHOP VENDORS,” PROHIBIT ENTRY TO THESE RETAILERS BY ANYONE UNDER THE AGE OF 21 AND PROHIBIT THESE RETAILERS FROM SELLING ALL OTHER TOBACCO/NICOTINE PRODUCTS.

The General Assembly should pass legislation to prohibit sales of flavored e-liquids and refillable “tank” systems by grocery stores, convenience stores, and gas stations, and restrict sales of those products exclusively by those businesses licensed as “Vape Shop Vendors” [VSVs]. As part of this legislation, VSVs should be made to register with the local health department (in addition to getting their state license), prohibit the entry of anyone under age 21 into a vape shop at any time, and prohibit vape shops from selling any other tobacco products.

3.REQUIRE ESD MANUFACTURERS TO PROVIDE COMPONENT AND INGREDIENT LISTINGS TO THE STATE OF MARYLAND BEFORE PRODUCTS CAN BE SOLD AND REQUIRE LABORATORY TESTING TO VERIFY THESE CLAIMS BEFORE PRODUCTS CAN BE SOLD AT RETAIL.

In order to pinpoint the cause of an outbreak of illnesses like EVALI, the State of Maryland should know precisely what e-liquids and ESD devices contain before these products ever reach consumers. The General Assembly should establish authority for the Field Enforcement Division's Laboratory in Jessup to conduct testing of ingredients, ESD component parts, and vapor contents prior to marketing of any device or e-liquid in Maryland.

4.REQUIRE SEPARATE MANUFACTURING, WHOLESALE, AND RETAIL LICENSES FOR EACH CATEGORY OF PRODUCT (CIG/OTHER TOBACCO PRODUCT/ESD) AND INCREASE LICENSURE FEES FOR EACH CATEGORY.

Legislation passed by the General Assembly in 2017 created a licensing ambiguity that allows any cigarette or ‘other tobacco product’ wholesaler/distributor/retailer to sell ESDs without acquiring a separate license to do so. The Maryland General Assembly should correct this ambiguity, and require every wholesaler, manufacturer, distributor, or retailer of ESDs to acquire a separate and specific license to do so – and enforce parity across the spectrum of fees for each of these license types, so that the cost to become an ESD manufacturer or OTP

manufacturer or cigarette manufacturer is the same.

5.PASS CORRECTIVE LEGISLATION TO BRING MARYLAND IN COMPLIANCE WITH THE NEW FEDERALLY-MANDATED MINIMUM AGE OF 21 TO PURCHASE TOBACCO AND ESDS – WITHOUT EXCEPTIONS.

The General Assembly should bring Maryland law into compliance with the new federal standard age for tobacco/ESD sales. Maryland law currently exempts “active duty member[s] of the military; [who] present valid military identification” from 2019 legislation that increased the minimum age to purchase tobacco and ESD products to 21. As noted, the federal government recently changed the law – effective nationwide – to 21 without exceptions.

6.AMEND THE MARYLAND CLEAN INDOOR AIR QUALITY ACT TO INCLUDE EMISSIONS FROM ESDS.

The General Assembly should amend the text of the Maryland Clean Indoor Air Quality Act to include emissions from ESDs in order to protect children and adults from secondhand exposure to nicotine and other constituent elements of ESDs.

7. INCREASED CRIMINAL/CIVIL PENALTIES FOR ‘STRAW BUYERS’ PURCHASING ON BEHALF OF OR TRANSFERRING TOBACCO OR ESDS TO INDIVIDUALS UNDER THE AGE OF 21.

The General Assembly should amend the statute relating to illegal purchases or transfers on behalf of individuals under 21 be expanded to include ESDs and any other product containing nicotine. As it stands, Criminal Law § 10-107 only refers exclusively to sale of “a tobacco product” without specific mention of ESDs or other products containing nicotine. Because so-called ‘straw purchases’ constitute a primary means (approximately 20%) for young people to access ESDs, the penalties for this practice should include the potential for incarceration and increased fines.

8.REQUIRE RETAILERS TO PURCHASE AND USE ID-SCANNING TECHNOLOGY FOR EACH SALE – WITHOUT THE POSSIBILITY OF A MACHINE “OVERRIDE” – AND REQUIRE AN ID SCAN TO “UNLOCK” PURCHASE OF TOBACCO/ESDS AND OTHER AGE-RESTRICTED PRODUCTS.

The Comptroller’s Office will promulgate a regulation to require retailers of tobacco and ESD products to acquire point-of-sale systems that incorporate a fully “locked down” process for all tobacco/ESD product codes wherein the scanning of government-issued identification proving legal age is required to complete a sale. This regulation will remove “human error” out of the equation for retailers and

prevent unlawful point-of-sale purchases by individuals under the age of 21.

9. REQUIRE EDUCATION FOR RETAILERS UPON RENEWAL OR ISSUANCE OF LICENSE BY COMPTROLLER.

The Comptroller's Office will promulgate a regulation to require retailers of tobacco and ESD products to complete (prior to the forthcoming license year, 2021) an educational program created by the Department of Health advising them on the dangers of tobacco/ESD use to all consumers – generally – and, specifically, how tobacco/ESDs are harmful to underage users.

10. ESTABLISH DISCIPLINARY PROTOCOL FOR RETAILERS WHO SELL ESDS, E-LIQUIDS, OR TOBACCO PRODUCTS TO INDIVIDUALS UNDER 21 – INCLUDING SUSPENSION/REVOCATION OF THEIR LICENSE.

The Comptroller's Office will promulgate regulations to codify progressive discipline for retailers that are cited by local health departments for violations of local/state laws relating to tobacco and ESDs, establish clear policies and procedures for submission of referrals with standard criteria, create predictable consequences for violators, and communicate enforcement outcomes immediately to local Tobacco Coordinators.

11. PUBLISH QUARTERLY LIST OF TOBACCO/ESD VIOLATORS ON THE COMPTROLLER'S WEBSITE.

The Comptroller's Office will utilize its website and social media platforms to publicize "bad actors" in Maryland who sell to minors, offer unauthorized products for sale, or otherwise violate local, state, or federal laws.

12. ESTABLISH A STATEWIDE, CONSISTENT, NON-DISCIPLINARY POLICY FOR TOBACCO/ESD PREVENTION AND DIVERSION WITH UPDATED AND AGE-RELEVANT INFORMATION TO BE USED BY EDUCATORS AND ADMINISTRATORS.

The Maryland State Department of Education and the Department of Health should produce a statewide policy that directs the actions that educators and administrators should take when confronted by a student found using or possessing tobacco/ESDs. From both inside and outside the Task Force, reports describe a disjointed, misdirected, and excessively-punitive process for young people caught with tobacco/ESDs. MSDE and MDH should work collaboratively on a policy that treats tobacco/ESD use as a symptom of nicotine addiction, rather than a disciplinary challenge.

These recommendations – and the conclusion of the e-facts Task Force’s work – follow Comptroller Franchot’s announcement one week ago directing the agency’s Field Enforcement Division (FED) to enforce a first-in-the-nation prohibition of the sale of disposable flavored ESDs. This action goes beyond the Food and Drug Administration’s (FDA) prohibition of flavored e-cigarette cartridge, except tobacco or menthol flavors, which took effect earlier this month.

Flavored disposable e-cigarettes, which are growing in popularity among youngsters, are not covered under the FDA prohibition – a loophole that precipitated the Comptroller’s announcement last week. The FED will prioritize its enforcement actions towards unauthorized disposable products most widely used by children – those bearing names such as Strawberry Hard Candy, Pineapple Lemonade, Mango Bomb, Berry Gelato, Lush Ice and O.M.G.

Last October, the Comptroller created the [e-facts Task Force on Electronic Smoking Devices](#) to learn more about the industry and to consider what regulatory and legislative action should be taken.

As the state’s tobacco regulator, the Comptroller issues licenses to wholesalers and retailers of tobacco products and ESDs. If those licenses are deceptively, fraudulently or unlawfully used, the Comptroller can suspend or revoke those licenses or assess additional penalties.

Agents from the Comptroller’s Field Enforcement Division have begun license checks and product inspections to ensure compliance.

“I will continue to assertively protect our youth from products that endanger their health and well-being,” Comptroller Franchot said. “For young people, these ESDs are a gateway to a lifetime of nicotine addiction. To sit idly by and do nothing is not an option.”

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