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Maine Legislature
Committee On Health and Human Services
c/o Legislative Information Office
100 State House Station
Augusta, ME 04333

April 25, 2023

Dear Chair Baldacci, Chair Meyer, and Members of the Committee on Health and Human Services,

I am writing today to provide testimony in opposition to LD 1215, An Act to End the Sale of Flavored Tobacco Products. My testimony will focus on three key reasons this legislation will not work as intended. First, prohibition at the state and local level are ineffective at yielding the desired results. Second, the budget implications of this legislation will be detrimental to the state of Maine. Third, this legislature is attempting to restrict a product based on inaccurate information. As Executive Vice President of Government Affairs for National Convenience Distributors, a grocery, sundries, and tobacco supplier, for more than 18,000 retail stores in the northeast, I am very familiar with each of the reasons listed above.

1.) Prohibition at the state and local level are ineffective at yielding the desired results.

On June 1, 2020, the state of Massachusetts implemented the first categorical flavor ban on the sale of flavored tobacco products. The results are disastrous. According to tax stamp records Massachusetts lost 23.9% of cigarette sales statewide. At the same time, sales of cigarettes grew in New Hampshire by 22.1%, Rhode Island by 18.0%, and Vermont by 6%. Also, at the same time sales nationwide declined by 1.6%. This is as clear of a picture of cross-border sales and smuggling as you will ever see.

In total, Massachusetts lost 33 million packs simultaneously the surrounding states mentioned above grew sales by 30 million packs. Nearly all of Massachusetts's losses were picked up by bordering states. Even more astounding is the fact that the counties closest to Massachusetts – Cheshire, Hillsborough, and Rockingham saw cigarette sales jump 133%, 82%, and 123%, respectively. Those in favor of the bill will simply point to the 24% loss of cigarette sales in Massachusetts while ignoring sales in all other states.

In fact, this is such a problem the Massachusetts Multi-Agency Illegal Tobacco Task Force stated the following, “the Task Force identifies the cross-border smuggling of untaxed flavored ENDS products, cigars, and menthol cigarettes as the primary challenge for tobacco enforcement in the commonwealth.”

Most importantly, the bill did nothing to benefit public health. CDC data shows smoking rates in Massachusetts declined by 4.5% compared to 7.1% nationwide after Massachusetts implemented this bill. New Hampshire, despite selling 22.1% more products than in previous years saw an 11.5% reduction in smoking prevalence over the same period. This law simply forced consumers across borders without yielding any public health benefit.

2.) The budget implications of this legislation will be detrimental to the state of Maine

The Maine Department of Administrative and Financial Services budgeted cigarette and tobacco taxes in the state of Maine to be \$151,740,000.00 for FY 2023 representing 3.19% of the undedicated revenues of the general fund. Passing LD 1215 puts a large amount of these funds at risk. Following Massachusetts's implementation of its flavor ban, the state lost \$137 million in cigarette excise tax and sales tax revenue in the twelve months after the ban. This is compared to tax

revenue of \$557 million in the previous year before implementation or a 24.5% decline in revenue. Applying the same logic to Maine the state is looking at losses of \$37,176,300 annually, just from the excise tax. This number does not factor in the loss of sales tax, motor fuels tax, income tax, property tax, etc. which will also be impacted due to an increase in cross-border sales. When consumers stop in New Hampshire to purchase their tobacco products they will also purchase other items like gas, food, lottery, and snacks.

This behavior was so obvious that in May 2020, the state of Rhode Island accounted for cross-border sales and raised its tobacco revenue estimates from \$130.6 million to \$155 million despite declining industry sales. Additionally, LD 1215 will increase expenditures for the state of Maine. When a similar ban was proposed in Maryland the Maryland Alcohol and Tobacco Commission said the following, "The agency would likely see increased expenditures in four areas: (1) Enforcement Agents; and (2) Equipment and Vehicles; (3) Secure Storage; and (4) Contractual Services."

Outside of government revenue, Massachusetts's ban also resulted in lost retail sales of cigarettes of \$338 million. This results in gross profit losses of nearly \$70 million. These dollars are used to pay employees, property taxes, overhead expenditures, philanthropic efforts, and more. The facts are simple. Passing LD 1215 will not stop adults from using their preferred products while at the same time requiring a drastic cut to Maine tax revenue and a massive loss for local small businesses.

3.) This legislature is attempting to restrict a product based on inaccurate information.

The only reason this legislature is considering this bill is due to the exponential rise in teen vaping that occurred from 2019-2020. According to the Maine Integrated Youth Health Survey (MIYHS), vaping rates among students were at an all-time high in 2019 when 28.7% of high school students indicated they had used an electronic vapor product at least once in the last 30 days. The 2021 number dropped by nearly 40% in two years to 17.4%. Concurrently, the 2019 CDC Youth Risk Behavior Study found the following: only 1.8% of Maine high school students smoked cigarettes frequently.

The broad strokes LD 1215 paints are inaccurate and unfair. If this legislature was serious about fixing the "problem" at hand they would dedicate all their effort to stopping the illegal use of vapor products by high school students. Menthol cigarettes, wintergreen/mint dip, and flavored pipe tobacco do not appeal to youth and are innocent bystanders in the war on youth vaping. Most importantly, as demonstrated above, the biggest losers in this legislation are the local businesses that legally sell these products to adults. The same CDC study above found that only 4.7% of Maine high school students obtained vapor products by buying them at a store. When asked the same question, the 2021 MIYHS showed that of illegal youth vapor users, 93% of them received the product from a friend or family member, took them from a store, purchased them online, or got them in another way. You're penalizing an entire retail sector despite at least 93% of illegal users saying we are not the problem.

In conclusion, the facts I have provided show a clear picture. If you enact this legislation tobacco users will cross state lines or go to the black market to buy their preferred products. Doing so will cost the state millions in lost revenue without any reduction in the healthcare costs affiliated with tobacco use. You will restrict the freedom of Mainers to choose what products they use under the guise of protecting youth. They won't be fooled.

I implore you to reject LD 1215. Rather, focus your efforts on teen use of vaping products, marijuana, and alcohol. For once, stand with the businesses that directly pay 3.19% of the undedicated general fund. Reject the lies and inaccurate information being fed to you by D.C. lobbyists. These businesses are in your backyards. Instead of shutting them down, get to know them and you'll see that they are just as concerned about keeping tobacco products out of the hands of youth as you are. The solution to this problem lies not in prohibition, but in hearing the voices of local business owners who are on the front lines of age verification every day.

Sincerely,

Kyle Feldman