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IN OPPOSITION - LD 1215 'An Act to End the Sale of Flavored Tobacco Products'

April 25, 2023

Dear Senator Baldacci - Chair, Representative Meyer - Chair, and the Committee on Health and Human Services,

The Maine Grocers & Food Producers Association and the Retail Association of Maine are jointly opposed to LD 1215 that seeks to ban flavored tobacco products statewide. Unfortunately, we're unable to be here in person today as we're hosting our association's annual meeting and professional development conference. Our business trade associations represent Main Street businesses including independently owned and operated grocery stores and supermarkets, general merchandise retailers, and convenience stores, distributors and supporting partners — together representing more than 450 members statewide. Maine's retail sector employs more than 85,000 Mainers.

We urge the Committee to oppose the proposed flavored tobacco ban. While it is a laudable effort, it is a regressive approach and ineffective. Banning flavored tobacco will shift sales away from licensed, trained professional retailers and springboard smuggling and counterfeit activities. It will multiply the existing illegal market in Maine, reward criminal smugglers, and cost Maine businesses, workers, and taxpayers' money.

*"A new report by the nonpartisan Tax Foundation ranks Massachusetts as the ninth highest state for inbound illegal tobacco smuggling, with an estimated loss of more than \$172 million in revenue in 2020. The report estimates more than 26% of the cigarettes consumed in the state are from the black market. New Hampshire had the highest rate of outbound smuggling in the nation, or 52.4%, which the report's authors attributed to the Granite State's low tax rates and proximity to high-tax states like Massachusetts."*¹

*"Additionally, New Hampshire saw their tobacco revenues increase after Massachusetts passed their ban. **The state collects millions in tobacco taxes, much of it from out-of-staters.** Taxes on cigarettes, loose tobacco and other products such as e-cigarettes brought in approximately \$232 million in fiscal year 2022. People living outside the state paid 52.4 percent of it, Stepp said. Massachusetts' decision in 2020 to ban flavored tobacco seems to be driving some of those outside sales; tobacco sales have gone up 22 percent since then, particularly in border towns."*²

¹ https://www.eagletribune.com/news/mass-flavored-smoke-ban-fuels-cross-border-smuggling/article_201b8cfe-7d45-11ed-8e72-8f8865892067.html

² <https://www.nhbr.com/lawmakers-hear-breakdown-of-new-hampshires-major-revenue-sources/>

Maine wholesalers and retailers promote and take very seriously the responsible sales of licensed tobacco products. Retail strategies to prevent tobacco use by underage youth involve due diligence including staff training, in store tools and ongoing management. Maine retailers embrace the National We Card Program, Maine's No Buts! Program, FDA Tobacco Training Materials and other training programs provided by wholesale and industry partners to combat underage tobacco purchase attempts. From all accounts, these safeguards are working. The most recent data, for FY22 (October 21 – September 22) specific to Maine the FDA 'Compliance Check Inspections of Tobacco Product Retailers' 1,152 inspections were performed, 46 incidents involved a minor, a 96% compliance rate (compared to New Hampshire's 78% compliance rate).

MGFPA and RAM oppose a Flavored Tobacco Ban:

- Bans do not stop the purchases - they simply switch the point of purchase. In learning from Massachusetts, whose flavored tobacco ban went into effect in June 2020, "In fact, the flavor ban has been far from successful, as sales in both New Hampshire and Rhode Island experienced double-digit growth—almost making up for the entire decrease in Massachusetts. As it happens, looking at the New England region as a whole confirms that the flavor ban did not work as intended. Sales moved around rather than disappeared, and the ban evidently did not impact consumption."³
- New Hampshire retailers have made a strong effort to entice consumers from outside its borders to shop. They actively campaign to target out of state consumers to purchase tobacco, spirits, wine, beer, milk and lottery tickets. As adult smokers shift their purchases across state lines, Maine will take the brunt and loose out. Lost sales hurt the bottom lines of our grocers and mom-and-pop markets as cigarettes are often purchased with other items. "The report notes that sales of cigarettes in New Hampshire increased by 22% in the year following Massachusetts' 2020 menthol ban. Sales in New Hampshire and Rhode Island are 10% higher in 2021 than in 2019 because of cross-border Massachusetts shoppers and smugglers, according to the report."
- A tunnel-vision approach to banning a product will result in lost sales both of tobacco products and other commonly purchased goods including food, beverages, and gas typically purchased alongside tobacco items. This policy will cause compounded financial harm to Maine's 1,440 licensed, responsible tax-paying businesses.

The Committee and Maine's legislature must strike a balance between protecting Maine's youth and economic viability for Maine's tobacco retailers. MGFPA and RAM support efforts that increase access barriers and improved education without hindering the market.

These Maine stores continue to experience labor and supply shortages, they're continuing to cope with escalating labor and energy costs, and have been tirelessly working to ensure Mainers have safe access to food. We ask the Committee to vote Ought Not to Pass on the proposed product ban.

Thank you for the opportunity to provide testimony.



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³ <https://taxfoundation.org/massachusetts-flavored-tobacco-ban-sales-jama-study/>