



American Heart Association.
You're the Cure



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Kevin O'Flaherty, Director of Advocacy - Northeast Region, Campaign for Tobacco-Free Kids**

**In Opposition to Part E of LD 1808 "An Act to Amend the State Tax Laws"
May 18, 2023**

Senator Grohoski, Representative Perry, and members of the Taxation Committee, thank you for allowing us to provide this testimony on behalf of our organizations. The American Cancer Society Cancer Action Network (ACS CAN) is the nonprofit, nonpartisan advocacy affiliate of the American Cancer Society, and supports evidence-based policy and legislative solutions designed to eliminate cancer as a major health problem. As the nation's leading advocate for public policies that are helping to defeat cancer, ACS CAN ensures that cancer patients, survivors, and their families have a voice in public policy matters at all levels of government. The American Heart Association (the Association) is the nation's oldest and largest voluntary organization dedicated to fighting heart disease and stroke, whose mission is to be a relentless force for a world of longer, healthier lives. The American Lung Association (ALA) is the leading organization working to save lives by improving lung health and preventing lung disease, through research, education and advocacy. The Campaign for Tobacco-Free Kids (CTFK) is the leading advocacy organization working to reduce tobacco use and its deadly consequences in the United States and around the world. Through strategic communications and policy advocacy campaigns, Tobacco-Free Kids works to change public attitudes about tobacco and promote evidence-based policies that are most effective at reducing tobacco use and save the most lives.

I would like to thank you for this opportunity to submit the following testimony on behalf of ACS CAN, the Association, ALA, and CTFK in opposition to Part E of LD 1808. More specifically, we are strongly opposed to the provisions in the bill that relate to remote sales of pipe tobacco and ask that your committee remove all references to pipe tobacco in the bill.

Our organizations do not support remote, or Internet, sales of any tobacco product as allowing for remote sales makes enforcement of tobacco retail licensing and sales laws, including underage sales laws, more challenging. It also makes tax collection more challenging. Our organizations oppose tobacco products being shipped directly to consumers. All tobacco products and all tobacco retailers should be regulated in the same manner, shipments directly to consumers should be prohibited and only allowed to in-state brick & mortar licensed retailers. As such, our organizations oppose any expansion of tobacco products being delivered directly to consumers.

Tobacco use is a significant problem in Maine and remains the leading preventable risk factor for cancer, heart disease, stroke, and lung disease. Maine has the 16th highest rate of adult smoking in the nation and the 9th highest rate of smoking-related cancer deaths.ⁱ You may be surprised to learn that Maine's adult smoking rate is higher than that of Georgia, Florida, North Carolina, and Texas. An estimated 2,400 deaths are caused by smoking each year in Maine including nearly 34% of cancer deaths.ⁱⁱ Smoking is estimated to cost Maine \$942 million in direct health care costs, including \$281 million in Medicaid costs annually.ⁱⁱⁱ

Laws preventing the sale of tobacco products to youth and young adults play an essential role in averting a lifetime of addiction and tobacco-related disease. Internet retailers have often failed to implement necessary controls to avoid illegally selling tobacco products to underage individuals. Illegal sales of tobacco products to underage individuals can significantly undermine efforts to protect public health and play a role in increasing youth tobacco use. Federal law prohibits the shipment and transport of many types of tobacco products including cigarettes, e-cigarettes and their parts and accessories, and smokeless tobacco through the U.S. mail, with limited exceptions.^{iv} In Maine, a retail tobacco license is required to sell tobacco products.^v Tobacco products must be sold in retail settings only in a direct face-to-face exchange with requirements for age verification, with few exceptions.^{vi} One exception is the sales of premium cigars, which are allowed for sale through delivery sales.^{vii}

Our understanding is that the intent of this bill is to address issues that have arisen with such delivery sales and collection of taxes on those sales. It is also our understanding that this bill may have inadvertently included pipe tobacco. As mentioned above, our organizations strongly oppose allowing for the sale of tobacco products, including pipe tobacco, through delivery, remote, or internet sale. If there are current issues with online sales of premium cigars, our organization recommends removing the current exemption for premium cigars and include them in the prohibition of all other tobacco products from being sold through delivery sales.

If this committee is going to make changes to current Maine law regarding tobacco product sales, it is important to ensure that none of the changes will promote increased tobacco sales and that any change ensures that there are strong protections against underage sales. It's also important to note that the HHS committee is considering a similar bill (LD 1923), which they have voted to carry over. LD 1923 explicitly allows for the remote sale of pipe tobacco. While LD 1808 does not make changes to the section in Title 22 that requires all tobacco sales (except premium cigars) to be sold in a face-to-face transaction, the references to pipe tobacco in sections of the bill pertaining to remote sales may cause confusion and create conflict in law. As stated above, we recommend removing all references to pipe tobacco in the bill, at a minimum.

LD 1808 changes how remote sales of premium cigars are taxed, with the potential of lowering the tax burden. This bill moves from a tax rate of 43% of wholesale sales price to a tax rate of 43% of "cost price." Wholesale price excludes discounts and other reductions, but cost price does not. According to numerous sources, the tobacco industry spends millions of dollars each year for price discounts that effectively lower the price of products.^{viii} If the "actual price paid," or "cost price," includes the price with those discounts, then the price on which the tax is calculated, and therefore the tax payment, would be lower. Our organizations oppose any reductions in tobacco tax rates.

To qualify as a "remote seller" in Section E of LD 1808, a person must make over \$100k of remote sales of premium cigars in a year to consumers and make over 200 separate remote sale transactions of premium cigars in a year to consumers (p. 9 of the bill). We assume these thresholds are included as a result of a Supreme Court decision in the Wayfair v. South Dakota case, a case that upheld a state's ability to impose taxes on out-of-state sellers. We recommend changing the thresholds in LD 1808 to \$100k in sales and 200 separate transactions of any goods or services in the state and not just thresholds for remote sales of premium cigars. We also recommend the committee seeking an opinion from the Attorney General's Office if lower thresholds could be included.

We appreciate your time and consideration of our comments. If you have questions about this testimony, please contact Hilary Schneider at hilary.schneider@cancer.org.

ⁱ State adult smoking rates from the CDC 2021 Behavioral Risk Factor Surveillance System (BRFSS) data available online. Smoking-related cancer deaths data from the American Cancer Society.

ⁱⁱ Campaign for Tobacco-Free Kids. The Toll of Tobacco in Maine. Updated Feb. 17, 2023, https://www.tobaccofreekids.org/facts_issues/toll_us/maine

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^{iv} For more details on the federal law, see the pp. 12-14 of the Public Health Law Center’s May 2022 publication on Online Sales of E-cigarettes and Other Tobacco Products, <https://www.publichealthlawcenter.org/sites/default/files/resources/Online-Sales-E-Cigarettes-Other-Tobacco-Products.pdf#:~:text=Internet%20sales%20of%20commercial%20tobacco%20products%20to%20underaged,because%20adolescent%20brains%20are%20more%20sensitive%20to%20nicotine.2>

^v Title 22, §1551-A.

^{vi} Title 22, §1555-B.

^{vii} Title 22, §1555-C.

^{viii} Wang TW, Falvey K, Gammon DG, et al. Sales trends in Price-Discounted cigarettes, large Cigars, little Cigars, and Cigarillos-United states, 2011-2016. *Nicotine Tob Res* 2018;20:1401–6. doi:10.1093/ntr/ntx249pmid:http://www.ncbi.nlm.nih.gov/pubmed/29253226; Reimold AE, Lee JGL, Ribisl KM Tobacco company agreements with tobacco retailers for price discounts and prime placement of products and advertising: a scoping review *Tobacco Control* Published Online First: 24 January 2022. doi: 10.1136/tobaccocontrol-2021-057026