



### **Testimony in Opposition to LD 2134:**

**“An Act to Create an Exception to the Prohibition of Tobacco Sales in Retail Establishments Containing Pharmacies for Certain Small Grocery Stores”**

Senator Ingwersen, Representative Meyer, and the distinguished members of the Committee on Health and Human Services, my name is Harris Van Pate, and I serve as policy analyst for Maine Policy Institute. Maine Policy is a free market think tank, a nonpartisan, non-profit organization that advocates for individual liberty and economic freedom in Maine. Thank you for the opportunity to testify in opposition to LD 2134, “An Act to Create an Exception to the Prohibition of Tobacco Sales in Retail Establishments Containing Pharmacies for Certain Small Grocery Stores.”

At the outset, we want to be clear about an important point of nuance: MPI opposes the underlying prohibition on tobacco sales in pharmacies and pharmacy-containing retail establishments. We do not believe that the presence of a licensed pharmacy justifies banning otherwise lawful retail activity elsewhere in a store. That policy was misguided when enacted, and it remains misguided today.

However, LD 2134 is not the correct remedy. While the bill partially retreats from the prohibition, it does so in a way that entrenches the underlying regulatory framework, introduces new distortions, and protects incumbents rather than restoring neutral rules. For those reasons, MPI cannot support this legislation.

### **Narrow carve-outs entrench bad policy rather than correcting it**

LD 2134 accepts the premise that tobacco sales should generally be prohibited in retail establishments containing pharmacies and merely creates a narrow exception for certain grocery stores based on size, lease structure, and timing.

This approach does not resolve the core policy error. Instead, it legitimizes the ban and shifts legislative debate from whether the prohibition makes sense to which businesses deserve relief. That is not sound regulatory reform. If the prohibition is unjustified—as MPI believes—then the appropriate response is repeal or broad reform, not selective exemptions.

### **The bill introduces arbitrary and distortionary criteria**

The exception created by LD 2134 depends on several highly specific conditions, including square-footage thresholds, pre-existing lease arrangements, and a fixed historical cutoff date. As a result, businesses engaging in identical conduct may be



treated differently under the law based solely on store layout or the timing of a lease agreement.

This kind of micromanagement is a hallmark of distortionary regulation. It encourages compliance strategies focused on regulatory avoidance rather than consumer service, and it undermines the principle that businesses should be treated alike.

### **The bill protects incumbents and disadvantages new entrants**

Because the exemption is limited to pharmacies established before a specific date, LD 2134 functions as a form of incumbency protection. Existing businesses are shielded from the prohibition, while new or expanding retailers are categorically excluded from operating under the same rules—even if they pose no greater public health risk.

MPI consistently opposes regulatory frameworks that lock in current market structures and disadvantage new competitors. This bill does exactly that.

### **The Legislature should address the underlying prohibition directly**

MPI urges the Legislature to reconsider the broader policy choice to prohibit tobacco sales in pharmacy-containing retail establishments. That prohibition represents an expansion of behavioral regulation through licensing law, rather than a targeted public health intervention.

If the Legislature concludes that the ban was overly broad or poorly justified, the solution is full repeal or substantial reform, not a patchwork of exceptions that complicates enforcement and weakens regulatory coherence.

### **Conclusion**

While MPI opposes the prohibition on tobacco sales in pharmacy-containing retail establishments, we also oppose LD 2134 as an inadequate and distortionary response to that prohibition. The bill narrows the harm without correcting the error, entrenches arbitrary distinctions, and privileges existing businesses over future competitors.

For these reasons, MPI respectfully urges the Committee to oppose LD 2134 and instead pursue a more principled reconsideration of the underlying statute. Thank you for your time and consideration.