

April 25, 2023

Senator Baldacci, Representative Meyer and Health and Human Services Committees

Support of LD 1215, “An Act to End the Sale of Flavored Tobacco Products.”

Dear Senator Baldacci, Representatives Meyer, and members of the Committee

The American Heart 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. As part of the mission, we are working towards the tobacco endgame – ending tobacco use and nicotine addiction in the U.S., which we believe is within site; that is why we are supportive of **LD1215 “An Act to End the Sale of Flavored Tobacco Products.”**

The use of tobacco products remains the nation’s number one cause of preventable death. Tobacco use is responsible for nearly 1 in 5 deaths nationwide and in Maine, nearly 1 in 5 adults smoke cigarettes, the highest rate in the Northeast.ⁱ More than one in 15 Maine high school students smoke cigarettes, with a high of 1 in 8 in Washington County.ⁱⁱ In recent years, overall youth tobacco use in Maine has skyrocketed, largely driven by the youth e-cigarette use epidemic. One in 2 Maine high school students and 1 in 6 middle school students have used e-cigarettes.ⁱⁱⁱ Nearly 30 percent of high school students are current users of e-cigarettes, nearly doubling from 15% in 2017.^{iv}

Tobacco companies are targeting youth with flavored tobacco products. Last year they spent an estimated \$40.8 million in Maine marketing their addictive and deadly products.^v Products that come in array of kid friendly candy and fruit flavors such as mint, wintergreen, cherry, grape jelly, cotton candy, piña colada, cinnamon roll, popcorn, and appletini, all sold in colorful packaging that is designed to attract tweens and teens. In fact, there are nearly 15,000 different flavors of e-cigarettes on the market.^{vi} Nationwide, nearly 81% of youth ages 12 to 17 who had ever used a tobacco product reported that the first product they used was flavored.^{vi}

In 2009, then President Obama signed into law the Family Smoking Prevention and Tobacco Control Act (FSPTCA), which provided the FDA greater authority to regulate tobacco products. This act banned the sale of flavored cigarettes because they were marketed to and used by youth. However, menthol cigarettes were exempt from this policy as were all other combustible products such as little cigars. Several black organizations and public health advocacy groups fought against the menthol exemption but lost. After the Act passed, there was a quick and effective tobacco industry response and detrimental health outcomes followed. Evidence shows that flavored cigars are particularly appealing to young adults, and many perceive these products to be less risky.^{vii}

With a rise in flavored tobacco products in the retail environment and concerns over rates of youth tobacco use municipalities in Massachusetts began to restrict the sale of flavored tobacco products. The tobacco industry attempted to use concept flavors, such as Jazz, Jamaican blaze, and blue magic, as a tactic to evade policies restricting the sale of flavored products. Jazz was at the center of a lawsuit from a national retailer to a small MA municipality (Cumberland Farms, Inc. v. Bd. of Health of Yarmouth, 97 Mass. App. Ct. 1111, 144 N.E.3d 319 (Mass. App. Ct. 2020), available at <https://casetext.com/case/cumberland-farms-inc-v-bd-of-health-of-yarmouth>). The court ruled in favor of public health. The Massachusetts Department of Public Health learned the importance of not letting any exemptions be made from regulatory action around characterizing flavors in tobacco. Concept

flavors must be incorporated into policies that address flavored tobacco. Given the industry response to flavor restriction policies in Massachusetts you should consider how the industry could once again circumvent and undermine policies that do not encompass all flavored tobacco products and thus perpetuate health inequities, lifelong addictions, and disease and death.

You are going to hear a lot from the opposition that Massachusetts made a mistake and that you should not make the same one. From the start in Massachusetts with bipartisan support, everyone agreed there would be revenue loss, but as a state it was decided that to put the health of the residents over profits from deadly products because the biggest beneficiaries of the law would be future generations who do not start smoking because they are not bombarded with menthol ads and other flavored products in stores. Maine will see the benefits of protecting the health of all residents and survive the loss of revenue because the health benefits will far outweigh any loss. It should be noted that in Massachusetts the law is not a full prohibition, but it helps close the loophole that left menthol cigarettes in stores and perpetuated inequities in menthol and other flavored tobacco access and use, including lower prices of menthol cigarettes in neighborhoods of color, and higher rates of menthol and other flavored tobacco use among people of color and youth. We wanted to make sure you had the strong data that supports that Massachusetts has been a success and so can Maine if you pass a comprehensive policy that eliminates all flavors in all tobacco products.

The Massachusetts Department of Public Health studied a Massachusetts community with a flavored tobacco restriction policy (FTRP) and matched it to a similar Massachusetts community without a FTRP on demographics, tobacco retailer characteristics, and presence of other point-of-sale tobacco control policies. High school students in both communities were surveyed around the time the policy took effect in the community with the FTRP, and 6 months later. The study found that with high retailer compliance with the policy, ever and current use of both flavored and non-flavored tobacco products among high school students decreased in the community with the FTRP but increased in the community without the FTRP within 6 months of policy implementation. Furthermore, in the community with the FTRP, decreases in ever and current use of almost every type of nonflavored tobacco product occurred during this timeframe, suggesting that FTRPs do not necessarily lead to youth switching from flavored to non-flavored tobacco products.^{viii} From 2019-2021, rates of current (past 30-day) use of all types of tobacco products captured in the Massachusetts Youth Health Survey (cigarettes, cigars, smokeless tobacco, and vape products) decreased. While most of these decreases were not statistically significant decreases, use of vape products did significantly decrease from 2017 to 2021. Rates of flavored tobacco use (other than mint/menthol flavors) among high school students who report current (past-30 day) tobacco use declined from 80% in 2017 to 62.1% in 2021 (Massachusetts Youth Health Survey data). In 2021, 35.6% of high school students who report current tobacco use report using mint/menthol or wintergreen flavors.

Retailer data from two sources (Nielsen and IRI Market Advantage) were examined to assess compliance with the law in MA and to examine trends in bordering states. Data was from large “big box” retailers (Nielsen) and multi-outlet and convenience stores (IRI Market Advantage). Sales data suggest that retailers in MA show high compliance with the law, with sales of both menthol and other flavored tobacco products decreasing sharply following the June 2020 implementation date. Sales of other flavored products in bordering states remained constant, however, sales of menthol products in New Hampshire increased following law implementation, highlighting the need for surrounding states to pass a policy to reduce cross border sales. Following the implementation of the state law in June 2020 there was a decline in menthol sales in Massachusetts, but an increase in sales in New Hampshire. Sales in Massachusetts have remained low, and sales in New Hampshire are declining toward their pre-law

levels. Sales in other states do not appear to be drastically impacted (Nielsen data). Following the law implementation in June 2020 there was a sharp decrease in sales of other flavored tobacco products in Massachusetts with no corresponding increase in sales in New Hampshire (IRI Market Advantage, Massachusetts Multi-Outlet + Convenience).

Massachusetts continues to monitor cessation rates, particularly among people of color, to ensure the law is having its intended positive impact on quitting. Compared to white smokers in Massachusetts, people of color who smoke have consistently experienced lower rates of successfully quitting over time. In MA's online panel survey, almost 1 in 3 respondents who used flavored or menthol products in the past year believed the law would make it easier to quit.^{ix} 30.2% of all respondents who use flavored or menthol products believe the law has made it easier or will make it easier to quit using tobacco products.^{ix} 29.0% of Black and White non-Hispanic respondents who use flavored or menthol products believe the law has made it easier or will make it easier to quit using tobacco products.^{ix} In MA's online panel survey, many respondents reported not using tobacco products for a day or longer because they are trying to quit. 42.3% of all respondents who used flavored or menthol products in the past year reported a quit attempt^{ix}. 39% of White non-Hispanic respondents reported a quit attempt and 46% of Black non-Hispanic respondents reported a quit attempt.^{ix}

The tobacco industry has long been active in local and state tobacco policy processes. Tobacco industry representatives and trade groups criticize tobacco health laws in MA as being ineffective merely based on lowered tax revenues and illicit trade concerns. In MA, annual tobacco taxes are extremely small when compared to the \$5.34 billion dollars in healthcare and Medicaid expenditures directly caused by smoking each year.^x Additionally, the 2019 state law imposed new taxes on vaping products and cigars, bringing more parity to taxes on all tobacco products in the state. With continuously decreasing prevalence/use rates of adult tobacco consumers, Massachusetts has inevitably experienced reduced tax revenue. The National Association of Convenience Stores has also acknowledged the same reductions in tobacco purchases nationwide, the shifting landscape of retail tobacco stores, and need to shift their business strategy from cigarette sales.^{xi} Stores going out of business was another cited concern. This has been unfounded in MA despite flavored tobacco regulations. Numbers from our state tobacco retail database show these retailer counts pre and post state law, in Feb 2020 (pre-implementation) there were 6,258 retailers that were in business and sold tobacco and of these retailers, 3,767 were convenience stores. In April 2022 (post-implementation) there were 6,491 retailers that are in business and sold tobacco and of these retailers, 3,994 are convenience stores.

We anticipate that you will receive comments from the tobacco industry regarding illicit trade concerns. According to the National Research Council and the Institute of Medicine, industry-sponsored estimates of the size of the illicit market tend to be inflated.^{xii} Studies show that tobacco industry data on illicit tobacco trade are not reliable and cannot be trusted.^{xiii} Years before the Act Modernizing Tobacco Control, in 2015, the Massachusetts state Legislature created an Illegal Tobacco Task Force to address the problem of illicit tobacco distribution in the Commonwealth and loss of tax revenues to the state. Through this task force, the State's Department of Public Health Tobacco Cessation and Prevention Program and its funded local boards of health have been able to share enforcement activities and better coordinate state efforts in enforcing the state law. Massachusetts has made the investment to ensure that compliance and implementation of the law is successful. We believe as more states pass this law, including Maine, as well as the FDA action would eliminate the manufacture and distribution of these products. Massachusetts has prioritized the health of residents and advanced health equity by enacting tobacco policies, we encourage Maine to also prioritize public health when considering lifesaving policies.

You will hear that e-cigarettes are 95% safer than traditional cigarettes. That 95% number is often pushed by pro-vaping advocates, but it simply isn't true. An article published in the American Journal of Public Health comprehensively assesses why the 95% figure is not grounded in scientific evidence. E-cigarettes can harm a user's heart, lungs, and brain; increase the risk of e-cigarette users moving to traditional cigarettes; and pose harm to others from the aerosol emitted from these devices. In addition, we do not know the long-term health consequences of e-cigarette use. They may be less harmful than traditional cigarettes, but they are not safe. They are especially not safe for young people. The high levels of nicotine in e-cigarettes pose serious risks to kids, such as harming brain development and affecting memory and learning. There is also growing evidence that they pose more immediate dangers, such as damage to their lungs. Tobacco companies have for years and continue to target and hook kids. They intentionally make products that contain high levels of addictive nicotine with enticing flavors. There is no evidence that e-cigarettes prevent youth from using traditional cigarettes—in fact, kids who use e-cigarettes are more likely to use traditional cigarettes as well. That is why all flavored tobacco products, including flavored e-cigarettes, must be taken off the market.

You will hear that adults have used e-cigarettes to quit smoking. No e-cigarette product has been approved by the FDA as a smoking cessation device. The claim that vaping is a better way to quit cigarettes compared to FDA-approved nicotine replacement products simply is not backed up by science. Most research done on this topic to date shows no advantage for e-cigarettes over the use of FDA-approved cessation products such as gum, lozenges, and patches. FDA-approved products have demonstrated success as part of an overall program for quitting that should include medications and counseling to reduce cravings.

Tobacco companies use flavor to hook a new generation of kids on its deadly products. Flavors hide the bad taste of tobacco and make it easier for kids to try. Menthol has the additional quality of soothing the irritation of combustible cigarettes, which is why so many young people start smoking using menthol cigarettes. The American Heart Association supports a comprehensive approach to tobacco control aimed at protecting our kids from all tobacco products. There is strong evidence showing that tobacco manufacturers' advertising, marketing, and promotions recruit new users and continue to reinforce use among young adults.^{xvi} According to the Surgeon General Report, flavors have been used for decades to attract youth to tobacco products because they mask the taste of tobacco. Furthermore, people of color, LGBTQ, and young people have consistently been targeted, leading to inequities still seen in health data today. In addition to youth and Black smokers, preference for menthol is also disproportionately high among Hispanic and Asian smokers, lesbian, gay, and bisexual smokers, smokers with mental health problems, socioeconomically disadvantaged populations, and pregnant women. The elimination of all flavors in all tobacco products could have monumental implications for both the short- and long-term physical and mental health of our communities. We applaud the proposed elimination of all flavors in all tobacco products. Actions to prevent the manufacture, sale, and distribution of all flavored tobacco products would greatly benefit public health. Thank you for your partnership in protecting and promoting the health of residents and advancing equity. We look forward to working with you on this bill and I would be happy to answer any questions you may have.

Sincerely,
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- v Campaign for Tobacco Free Kids <https://www.tobaccofreekids.org/problem/toll-us/maine>
- vi Truth initiative <https://truthinitiative.org/sites/default/files/Truth-Flavors-Fact-Sheet.pdf>
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