



CICAR ASSOCIATION OF AMERICA, INC

**TESTIMONY OF THE CIGAR ASSOCIATION OF AMERICA
IN SUPPORT OF LD 1923
“AN ACT TO PROVIDE FOR LICENSING OF AND TAX COLLECTION FROM
REMOTE RETAIL SELLERS OF PIPE TOBACCO AND PREMIUM CIGARS”**

May 17, 2023

Senator Baldacci, Representative Meyer, and honorable members of the Health and Human Services Committee, I am Chris Jackson from Mitchell Tardy Jackson Government Affairs. I am a resident of Bowdoinham, and I am here today on behalf of the Cigar Association of America, Inc. in support of LD1923.

This bill has two portions. It amends Title 36 in the Tax Code to provide a path to compliance for online retailers of premium cigars to collect and remit excise taxes on sales to Maine consumers, and, it amends Title 22 to be consistent with those changes.

This bill is necessary due to the fact that after the *Wayfair* decision in 2018, and subsequent implementation, states started looking to other taxes that could be imposed on out of state retailers. A few early states passed mandates for the collection of tobacco excise taxes from online retailers of premium cigars and pipe tobacco, but did not provide their Departments of Revenue with the tools to implement the tax. In addition, there were statutory barriers preventing the companies from complying.

Specifically, the mandates often sought to impose a tax, normally between a wholesaler and a retailer, on the transaction between the online retailer and consumer, without changes to the tax statute. This proved unworkable for both the Departments of Revenue and the online retailers. CAA and the Premium Cigar Coalition undertook an effort to examine all state tobacco excise tax statutes and worked with the Federation of Tax Administrators Uniformity Committee to craft a model legislation outline to address these issues.

The model legislation, which has been adopted by the FTA Uniformity Committee, addresses four barriers that existed in nearly every state excise tax code in order to impose this obligation on online sellers of premium cigars and pipe tobacco

The four barriers were (i) establishing the tax base, (ii) the constitutionality of imposing the tax (adding *Wayfair* thresholds), (iii) ensuring the tax is only imposed once and on the retail transaction, and (iv) a path to licensure. The model legislation has been enacted in six states so far. Maryland, Michigan, Indiana, Virginia, North Carolina and Colorado, and other states in addition to Maine are actively considering legislation. The amendments to Title 36 remove these barriers so remote retail sellers of premium cigars (and pipe tobacco should Maine be willing to reconsider this prohibition to be in line with other states) can be licensed and collect and remit this tax.

Maine, however, has some provisions in Title 22 that need to be amended so as not to conflict with the newly added sections in Title 36. While there are some overall edits needed for consistency between the Titles, the main amendment is to remove section 22 MRSA 1555-C relating to “delivery sales of premium cigars.” As currently written this provision with its accompanying regulations, does not provide the Department of Revenue with the proper tools to license and collect excise tax on remote retail sales of premium cigars.

Instead, this provision causes great confusion as “delivery seller” is a term of art under the federal Prevent All Cigarette Trafficking Act (PACT ACT) – but premium cigars and pipe tobacco (due to their very different usage patterns and almost unmeasurable use by youth) are specifically excluded from the requirements and prohibitions present in the PACT ACT. This bill would remove this provision so as to not have conflict between the titles and make other conforming changes so the two statutes would work together.

Importantly LD1808, sponsored by the Department of Revenue, seeks to make nearly identical changes to Title 36 as are present in this bill. We have been in discussions with the Department and are working with them on that bill. It is for that reason we join in Sen. Pouliot’s request to carry this bill over so we can work on the amendments to Title 22 once Title 36 has been implemented.

Thank you for your consideration

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