

NATIONAL ASSOCIATION OF TOBACCO OUTLETS, INC.

May 5, 2021

To: Chairs Ned Claxton and Michele Meyer; and Joint Health and Human Services Committee Members

From: Thomas Briant, NATO Executive Director

The National Association of Tobacco Outlets (NATO) is a national trade association that represents hundreds of retail store members across Maine. NATO and its Maine member stores urge you to oppose LD1550, which bans all flavored tobacco products. The many reasons to oppose this bill are as follows:

- **Economic Impact on Retailers Would Force Layoffs and Stores to Close.** Different kinds of retailers sell tobacco products including tobacco-specialty stores, convenience stores, service stations, grocery stores and liquor stores. An across the board ban on the sale of hundreds of flavored tobacco products will substantially reduce retail sales at many of these kinds of stores. Lost tobacco sales are not made up by the sale of other products. Moreover, the revenue loss will be magnified by customers who cross the state border into New Hampshire to purchase flavored products and at the same time buy gasoline, beverages and snacks. The overall impact of such a ban will lead to employee lays and store closures in Maine.
- **The FDA Announced a Rule to Ban the Sale of Menthol Cigarettes and Flavored Cigars:** Just one week ago, the U.S. Food and Drug Administration (FDA) announced that the agency would be issuing a new federal rule that would ban the sale of menthol cigarettes and flavored cigars. This rule does not need the approval of Congress nor the President as the FDA was given the power to adopt such federal regulations under the Federal Family Smoking Prevention and Tobacco Control Act, which went into effect in 2009. With such a wide sweeping regulation being proposed, the Maine Legislature should pause and allow the FDA to proceed with its proposed rule which focuses on some of the same flavored tobacco products that would be prohibited under the terms of LD 1550.
- **Allow the Sale of Products Authorized by the Food & Drug Administration.** The Maine Legislature should also consider allowing the sale of a tobacco product if the U.S. Food and Drug Administration has authorized a manufacturer's Pre-Market Tobacco Application, or PMTA. A PMTA needed to be filed by a manufacturer with the FDA by September 9, 2020 for any "new tobacco product" that was on the market as of August 8, 2016, which includes every electronic cigarette product. The purpose in filing a PMTA is to seek a marketing authorization order from the FDA so that a tobacco product can be sold on the market. For the FDA to authorize a PMTA and issue a marketing order, the manufacturer must provide scientific data that demonstrates a product is "appropriate for the protection of public health."

Since the manufacturers of many new tobacco products did not file by the September 9, 2020 deadline, thousands of brands of tobacco products were no longer allowed to be marketed, and the FDA has enforced that order against many manufacturers and removed such products from the market. These actions have further limited the products on the market making an across the board ban as proposed in LD 1550 less necessary.

- **Allow the Sale of Flavored Modified Risk Tobacco Products:** FDA regulations also allow a manufacturer to file what is known as a “modified risk tobacco product” application to seek a determination that a tobacco product has a reduced risk or reduced level of exposure when an individual uses the product. To designate a product as a “modified risk tobacco product,” the FDA reviews applications under rigorous scientific standards. Manufacturers are required to provide the FDA with a great deal of detailed information regarding each product including the relative health risks to individuals who use the product, the likelihood that existing users of other tobacco products will switch to the product rather than quit altogether, and the risks and benefits to persons from the use of the product compared to approved smoking cessation products.

The FDA will only authorize a product as “modified risk” if, at the end of its detailed review of the application information, the agency determines that the product will or is expected to benefit the health of the entire population. Thus far, the FDA has designated only twelve products as modified risk: Swedish Match General Snus (a moist, powdered tobacco in a pouch) and Philip Morris IQOS (a heat, not burn, tobacco product). Both of these authorized MRTP products come in flavored versions. Their modified risk designation is very important to those individuals who use these products since products pose a lesser health risk. However, a flavor ban would prohibit the sale of all flavored versions of these modified risk products to the detriment of the public health.

- **Allow FDA Electronic Nicotine Product Restrictions to Work.** In February of 2020, the FDA banned most flavored cartridge-based and pod-based electronic cigarettes. These specific kinds of electronic cigarettes were removed from the market because underage individuals had become attracted to such products. Also, effective last month, Congress expanded the Prevent All Cigarette Trafficking Act which now places new restrictions on the sale of electronic cigarettes and nicotine vapor products over the Internet. These restrictions include age verification at the time of purchase, a signature of an adult 21 or older when the products are delivered, and collection and remittance of state excise and sales taxes on the products. This new federal law will further restrict underage access to electronic nicotine vapor products.
- **Adult Prohibition Would Be Detrimental to Public Health:** A total flavored tobacco product ban would remove all flavored traditional tobacco products, including menthol cigarettes, menthol, mint and wintergreen smokeless tobacco, flavored cigars, pipe tobacco, and flavored electronic nicotine vapor products, from the state’s current regulated retail environment and into an illicit market that would grow exponentially. Prohibiting the sale of adult-only products has been enacted in this country before and it has proven to be a failed policy. It will encourage legal age adults who currently buy these products from legitimate retailers to find other sources, including the unregulated, illicit market, which will expand to respond to the increased demand for flavored tobacco products.

For all of these reasons, we urge you not to support LD 1550.