



**Testimony of Hilary Schneider, Regional Director of Government Relations
American Cancer Society Cancer Action Network
In Support of LD 1550 “An Act To End the Sale of All Flavored Tobacco Products”
May 7, 2021**

Good morning, Senator Claxton, Representative Meyer, and members of the Health and Human Services Committee. My name is Hilary Schneider and I am the Regional Director of Government Relations for Atlantic/Northeast States for the American Cancer Society Cancer Action Network (ACS CAN). ACS CAN, the nonprofit, nonpartisan advocacy affiliate of the American Cancer Society, 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.

Thank you for this opportunity to testify in support of LD 1550. This bill would end the sale of all flavored tobacco products in Maine, including menthol cigarettes. Maine law currently prohibits the sale of flavored cigars, however, the way the law is written allows for some exemptions and has created some enforcement challenges. This bill builds on existing law, accounting for lessons learned from Maine’s law, as well as laws and ordinances across the nation, a more substantial body of evidence, increased awareness of such evidence, and new products introduced since the time when Maine’s existing law was passed and last amended.

Tobacco use remains the largest preventable cause of disease and premature death in the United States and Maine. According to the U.S. Surgeon General, smoking is a known cause of cancer of the oropharynx, larynx, lung/trachea/bronchus, stomach, liver, pancreas, kidney, cervix, bladder, colon, and acute myeloid leukemia.ⁱ In fact, smoking is responsible for an estimated 30 percent of cancer deaths in Maine – that was 1,016 cancer deaths in 2017.ⁱⁱ Maine has the 6th highest rate of tobacco-related cancer cases in the nation and the 11th highest rate of tobacco-related cancer deaths.ⁱⁱⁱ

In Maine, nearly 1 in 5 adults smoke cigarettes, the highest rate in the Northeast.^{iv} In recent years, overall youth tobacco use in Maine has skyrocketed with nearly 1 in 3 high school students using some form of tobacco product in the last 30 days.^v More than one in 15 Maine high school students smoke cigarettes, with a high of 1 in 8 in Washington County.^{vi} One in 13 male high school students, including more than 1 in 10 high school male seniors, smoke cigars in Maine.^{vii} One in 2 Maine high school students and 1 in 6 middle school students have used e-cigarettes.^{viii} Nearly 30 percent of high school students are current users of e-cigarettes, nearly doubling from 15% in 2017.^{ix} In Piscataquis County, high school e-cigarette use quadrupled and it nearly tripled in Oxford County during that same two-year period. Furthermore, studies have found that e-cigarette use increases the risk of youth and young adults using cigarettes.^x The former head of the FDA during the Trump Administration, Scott Gottlieb, M.D. labeled the use of e-cigarettes by teenagers as an epidemic.^{xi} What is driving the massive surge in tobacco use among youth? Flavored tobacco. Fruit and candy flavored products like cotton candy, fruit punch, menthol and mint are driving Big Tobacco’s comeback attempt.

Flavors are a marketing weapon used by tobacco manufacturers to target youth and young people to a lifetime of addiction. Altering tobacco product ingredients and design, like adding flavors, can improve the ease of use of a product by masking harsh effects, facilitating nicotine uptake, and increasing a product’s overall appeal.^{xii}

Candy, fruit, mint and menthol flavorings in tobacco products are a promotional tool to lure new, young users, and are aggressively marketed with creative campaigns by tobacco companies.^{xiii} Products with flavors like cherry, grape, cotton candy, and gummy bear are clearly not aimed at established, adult tobacco users and years of tobacco industry documents confirm the intended use of flavors to target youth.^{xiv} Furthermore, youth report flavors a leading reason they use tobacco products and perceive flavored products as less harmful.^{xv,xvi} Flavors in tobacco products are frequently listed as one of the top three reasons youth use e-cigarettes.^{xvii,xviii} Data from the 2016-2017 PATH study, the largest national longitudinal study looking at tobacco use and its effects, found that among teens who use e-cigarettes, 97 percent regularly used a flavored product.^{xix} Also, among those teens who had ever tried an e-cigarette, 96 percent used a flavor product for the first time. Among all students who currently use e-cigarettes, 83% used flavored e-cigarettes, including 85% of high school users and 74% of middle school users.^{xx} Kids whose first tobacco product was flavored are more likely to become current tobacco users than those whose first product was tobacco flavored.^{xxi} Youth perceive fruit-flavored and menthol-flavored e-cigarettes as less harmful than tobacco-flavored e-cigarettes.^{xxii} Among exclusive users of e-cigarettes, use of mint or menthol flavored e-cigarettes went up from 16 percent in 2016 to 57 percent in 2019, while candy-, dessert- and other sweet-flavors decreased.^{xxiii} Among young adults who reported using e-cigarettes every or some days in 2013-2014, 92 percent used a flavored product.^{xxiv}

Smokeless tobacco companies have a long history of using flavorings, such as mint, cherry, apple, and honey, and other product manipulation to gradually get new, young users addicted to “starter” products, keep them using, and shift them on to more potent smokeless tobacco products. In 2019, 48 percent of middle and high school students who used smokeless tobacco had used a flavored product in the last month.^{xxv} According to another study, more than 70 percent of teens who had ever used smokeless tobacco used a flavored product the first time.^{xxvi}

For waterpipe or hookah use, more than 31.2 percent of current middle and high school users used a flavored product in 2019.^{xxvii} What’s troubling, is that the flavorings used in waterpipe tobacco, the sweet aromas and use of water make users misperceive this practice as safer than cigarette smoking.^{xxviii} In fact, hookah tobacco and smoke are as dangerous as cigarettes, and contain carcinogens and other substances that can cause cancer and other diseases.^{xxix} An hour-long waterpipe or hookah session typically involves 200 puffs of smoke, whereas smoking a single cigarette typically involves 20 puffs of smoke.^{xxx, xxxi}

Long before cigarette companies started adding fruit, candy, and alcohol flavorings to cigarettes, they were manipulating levels of menthol to addict new, young smokers. Menthol acts to mask the harsh taste of tobacco with a minty flavor and by reducing irritation at the back of the throat with a cooling sensation. Additionally, menthol may enhance the delivery of nicotine. Knowing that youth who experience less negative physiological effects of smoking are more likely to continue smoking regularly, the tobacco industry has spent decades manipulating its menthol brand-specific product line to appeal to youth and African Americans. The tobacco companies have a long and sordid history of predatory marketing of menthol cigarettes especially to Black Americans. While menthol cigarettes were introduced to the market in the 1930s, their use greatly expanded in the 1950s when aggressive marketing to African Americans began.^{xxxii} A recent study estimated that, from 1980 to 2018, menthol cigarettes were responsible for 10.1 million extra people who smoke, 378,000 premature deaths and 3 million life years lost in the U.S. This amounts to nearly 10,000 premature deaths and over 265,000 new people who smoke each year over the 38-year period.^{xxxiii}

Recognizing the danger that flavors in cigarettes have in attracting and addicting new people who smoke, especially youth, the Family Smoking Prevention and Tobacco Control Act (TCA) of 2009 prohibited the use of characterizing flavors, except for menthol and tobacco, in cigarettes. To understand a consequence to limiting the flavor prohibition to only cigarettes and exempting menthol flavoring, an analysis evaluated youth tobacco

use before and after the prohibition.^{xxxiv} The analysis found a decrease in the likelihood of being a person who smokes (17.1 percent) and fewer cigarettes smoked (59 percent) associated with the flavor prohibition, but also a 45 percent increase in the probability that the youth who smokes used menthol cigarettes. Furthermore, the flavor prohibition was associated with increases in both cigar use (34.4 percent) and pipe use (54.6 percent). This suggests that youth who smoke, in the absence of comprehensive sales restrictions on all flavors and all products, are substituting with menthol cigarettes or cigars and pipe tobacco, for which the federal flavor prohibition does not apply.

The aggressive use of flavors and marketing tactics by the tobacco industry, rapid increased use of flavored products by youth and young adults, and under regulation of these products requires the Maine Legislature to take action to protect youth and young adults, and the public health at-large. While the FDA's announcement last week to prohibit menthol cigarettes and all flavors in cigars is an important step forward, it will take quite some time to be implemented as the process of finalizing the rules takes place. Moreover, the FDA's announcement falls short of what is needed by not covering all tobacco products. We know from past experience that when products are excluded, the tobacco industry will do everything in its power to capitalize on loopholes and some people who are addicted to tobacco will switch to excluded products. If we do not ensure the policy solutions include all tobacco products, all flavors, and all tobacco retailers then the policy will directly fail to protect those who the tobacco industry has most aggressively targeted – our youth and young adults, communities of color, the LGBTQ community, low-income communities and people with mental and behavioral health conditions.

For the above reasons, ACS CAN urges you to support LD 1550. By passing this bill we can reduce the use of tobacco products, reduce the death and disease associated with their use and make progress toward achieving health equity. Thank you for the opportunity to provide this testimony. I would be happy to answer any questions you may have about this testimony.

ⁱ U.S. Department of Health and Human Services. The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General. Atlanta: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2014.

ⁱⁱ American Cancer Society Cancer Action Network. State-Specific Smoking-Related Cancer Cases and Deaths, 2017, updated 12/3/2020. <https://www.fightcancer.org/sites/default/files/State-Specific%20Smoking-Attributable%20Cancer%20Cases%20and%20Deaths%20Factsheet%20FINAL%2012.11.20.pdf>

ⁱⁱⁱ Ibid.

^{iv} Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Division of Population Health. BRFSS Prevalence & Trends Data [online]. 2019. [accessed Feb 09, 2021]. URL: <https://www.cdc.gov/brfss/brfssprevalence/>.

^v Ibid.

^{vi} Maine CDC, 2019 Maine Integrated Youth Health Survey (MIYHS), <https://data.mainepublichealth.gov/miyhs/>.

^{vii} Ibid.

^{viii} Ibid.

^{ix} Maine CDC, 2017 and 2019 Maine Integrated Youth Health Survey (MIYHS), <https://data.mainepublichealth.gov/miyhs/>

^x U.S. Department of Health and Human Services. E-Cigarette Use Among Youth and Young Adults. A Report of the Surgeon General. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2016. National Academies of Sciences, Engineering, and Medicine. 2018. Public health consequences of e-cigarettes. Washington, DC: The National Academies Press. Berry KM, Fetterman JL, Benjamin EJ, et al. Association of Electronic Cigarette Use With Subsequent Initiation of Tobacco Cigarettes in US Youths. *JAMA Netw Open*. 2019;2(2):e187794

^{xi} <https://www.fda.gov/NewsEvents/Newsroom/PressAnnouncements/ucm620185.htm>

^{xii} FDA Guidance for Industry and FDA Staff, "General Questions and Answers on the Ban of Cigarettes that Contain Certain Characterizing Flavors (Edition 2) ("FDA Guidance on Characterizing Flavors").

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