

Coalition of Neighborhood Retailers



February 16, 2021

Chairman Mike Freiberg
Members of the House Preventative Health Policy Division
Minnesota House of Representatives
St. Paul, MN 55155

RE: House File 904 (Ban on Flavored Tobacco Products)

Dear Chairman Freiberg and Members of the House Preventative Health Policy Division:

The undersigned retail trade associations represent thousands of retail stores across the State of Minnesota that sell tobacco products. Our associations and member stores urge you to not support House File 904, which would ban the sale of all flavored tobacco products, including menthol cigarettes, flavored smokeless tobacco, flavored cigars, pipe tobacco, flavored alternative nicotine products, and flavored electronic cigarettes and nicotine vapor products. Our concerns are explained below.

Problematic Public Health Policy: Current Minnesota laws regulate the sale and taxation of all tobacco products and electronic cigarette/nicotine vapor products. That is, these products currently exist in a regulated environment to ensure that only legal age adults are allowed to purchase, possess, and use the products and applicable taxes are collected. The statutory scheme under which this regulatory environment was created also provides for enforcement mechanisms and penalties for failure to comply with the law.

House Bill 904 would move these products out of the state's statutory regulated environment and into an illicit market that would grow exponentially. This would not be beneficial to the public health. Why? Because prohibition has been enacted in this country before and it has proven to be a failed policy. Legal age adults who currently buy these products will simply find other sources for tobacco products. One of those sources will be the existing unregulated, illicit market for tobacco products in the state which will expand to respond to the demand for these products.

In addition, Minnesota residents will either order products on-line or purchase products in a neighboring state. While all of the state's retailers would be negatively impacted by a ban on all flavored tobacco products, those retailers located near Minnesota's borders will be severely impacted because adult customers will be more likely to drive to a neighboring state to purchase their preferred tobacco products and, at the same time, buy other products such as gasoline, snacks, and beverages.

This Minnesota illicit market and cross-border purchasing of cigarettes has been quantified by the Mackinac Center for Public Policy which has studied the issue of cigarette smuggling in all fifty states. Due to the differences in cigarette tax rates with Minnesota's current cigarette tax of \$3.04 per pack and much lower tax rates in the Dakotas, Iowa and Wisconsin, the Mackinac Center for Public Policy study ranks Minnesota as having the 11th highest cigarette smuggling rate in the country. A ban on all menthol cigarettes plus every other kind of flavored tobacco product will have the unintended consequence of moving Minnesota up to an even higher ranking for cigarette smuggling.

The end result is that the health-related purposes of the bill will be undermined because adults will continue to use these products, an extensive illicit market will proliferate, and cross border purchases will escalate. In other words, the adoption of a statewide flavor ban would be problematic from a public health policy standpoint because the outcome would be directly contrary to the underlying goals of House File 904.

Low and Declining Use Rates of Traditional Tobacco Products Require Analysis of Product Appeal:

According to the 2020 National Youth Tobacco Survey published by the Centers for Disease Control (CDC), current tobacco product use rates among high school students nationwide are:

Cigarettes:	4.6%
Cigars:	5.0%
Smokeless Tobacco:	3.1%
Pipe Tobacco:	0.7%
Electronic Cigarettes:	19.6%

A discussion about banning all flavored tobacco products needs to differentiate between the appeal of flavored electronic cigarettes versus traditional tobacco products (i.e., cigarettes, cigars, smokeless tobacco and pipe tobacco). As the CDC data demonstrates, youth appeal to and use of these traditional tobacco products is at historic lows and decreasing. This empirical data showing very low underage use rates among underage youth does not support the wholesale banning of all traditional flavored tobacco products.

FDA Actions on Electronic Cigarettes and Nicotine Vaping Products: If one of the primary issues that House File 904 seeks to address is the underage use of electronic cigarettes and nicotine vaping products, the committee needs to be aware that, according to the CDC, youth usage of e-cigarettes has also decreased by 33% from 2019 to 2020. Moreover, the U.S. Food and Drug Administration and Congress have taken significant actions to remove a substantial number of flavored electronic nicotine products from the market and curb youth accessibility to these products on the Internet. These strong measures should be allowed to work to further reduce youth access to and use of electronic cigarettes and nicotine vapor products.

Specifically, in February 2020, the FDA adopted a ban on the sale of all cartridge-based and pod-based flavored electronic cigarettes, except for tobacco and menthol flavored products. This action removed hundreds of electronic nicotine products from the market. The agency took this action because these kinds of electronic cigarettes were appealing to underage youth.

In addition, the FDA required that manufacturers of all electronic cigarette products file what is known as a pre-market tobacco product application with the agency by September 9, 2020 in order to keep their products on the market while the FDA reviews the applications. Since some manufacturers did not file these applications, even more electronic nicotine products were removed from the market. Also, the FDA must determine that a product which is the subject of an application must be “appropriate for the protection of the public health” in order to authorize the continued marketing of the product.

Prohibition of Flavored Modified Risk Tobacco Products: The 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 exposure from using the product. Two sets of products have received this modified risk designation by the FDA, including Swedish Match General Snus (a moist, powered tobacco in a pouch) and Philip Morris IQOS (a heat, not burn, tobacco product). Both of these products come in flavored versions and their modified risk designation is very important from a health perspective to those individuals who use these products. House File 904 would ban the sale of all flavored versions of these products to the detriment of the public health.

Thank you for considering our concerns.

Sincerely,

Lance Klatt

Executive Director
Minnesota Service Station Association

Tim Gross

Executive Director
Minnesota Petroleum Marketers Association

Jamie Pfuhl

President
Minnesota Grocers Association

Bruce Nustad

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