

# NATIONAL ASSOCIATION OF TOBACCO OUTLETS, INC.

January 31, 2021

**To:** Co-Chairs Senator Mary Abrams, Rep. Jonathan Steinberg and the Joint Public Health Committee

**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 the State of Connecticut. NATO and its Connecticut member stores urge you to not support Senate Bill 326, 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 Policy:** Current Connecticut laws regulate the sale and taxation of all tobacco products and electronic cigarette/nicotine vapor products. That is, these products exist in a regulated environment to ensure that applicable taxes are collected and that only legal age adults are allowed to purchase, possess, and use the products. The statutory scheme under which this regulatory environment was created also provides for enforcement mechanisms and penalties for failure to comply with the law.

Senate Bill 326 would move these products out of the state's statutory regulated environment and into an illicit market that would grow exponentially. 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 which will expand to respond to the increased demand for these products. In addition, Connecticut residents will either order products on-line or purchase products in a neighboring state.

The end result is that the health-related purposes of the bill will be undermined because adults will continue to use these products. Moreover, the State of Connecticut will lose a significant portion of the approximate \$340 million the state collects annually in cigarette excise taxes from the sale of menthol cigarettes plus additional excise taxes on other tobacco products. This loss of revenue is borne out by the experience of Massachusetts which lost \$69 million in menthol cigarette and flavored tobacco excise tax revenue during the first six months its flavor ban law was in effect from June to November of 2020 while all neighboring states, including Connecticut, collected more excise tax and sales tax revenues due to cross border buying.

In short, the adoption of a statewide flavor ban would be problematic from a public policy standpoint because the outcome would be directly contrary to the underlying goals of Senate Bill 326.

**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. That is, the empirical data showing very low underage use rates does not support the wholesale banning of all traditional flavored tobacco products that legal age adults prefer to purchase and use.

**FDA Actions on Electronic Cigarettes and Nicotine Vaping Products:** If the genesis of Senate Bill 326 was the underage use of electronic cigarettes and nicotine vaping products, the Joint Public Health Committee members need 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. However, the FDA permitted tobacco and menthol flavored e-cigarettes to remain on the market because youth usage of these two flavors was very low and because menthol electronic cigarettes may assist adults in transitioning away from smoking.

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.

Then, as a part of the economic stimulus bill passed by Congress and signed into law this past December, a federal law known as the Prevent All Cigarette Trafficking Act was expanded to place new restrictions on the sale of electronic cigarettes over the Internet. These restrictions include age verification of a customer 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 law will further restrict underage access to electronic nicotine products.

**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. Senate Bill 326 would ban the sale of all flavored versions of this product to the detriment of the public health.

**Contradictory Public Policies:** While Senate Bill 326 would make the sale of legal tobacco products illegal, Connecticut Governor Lamont reiterated his support during his recent State of the State address to legalize both marijuana and sports betting. The Governor stated that he did not want to “surrender these opportunities to out-of-state markets or, even worse, underground markets.” Connecticut House Speaker Matt Ritter has also publicly stated that there should be a vote on these legalization measures or he will work to place a constitutional question on the 2022 ballot so voters can decide.

The legalization of marijuana and sports betting are contradictory policies to the prohibition of tobacco products. Marijuana is a Schedule I illegal drug under federal law and sports betting is not permissible in the state, while tobacco products and electronic nicotine products are legal to sell on both the state and federal levels. Banning the sale of legal tobacco and electronic nicotine products will move these products to an illicit market (which the Governor wants to avoid for marijuana and sports betting), while allowing marijuana and sports betting to become regulated by the state. These conflicting regulatory policies and outcomes cannot be reconciled and the Joint Public Health Committee needs to give serious thought to a policy that would usher in a new era of prohibition and the consequences of such an action.

**Consider a Legislative Study:** An option for the Joint Public Health Committee to consider is a legislative study to research the youth appeal issue, understand FDA and federal actions to curb underage electronic cigarette use, and reconcile contradictory policy responses to statewide regulatory issues.