



February 5, 2020

Chair Dereck E. Davis  
House Economic Matters Committee  
Maryland House of Delegates

**RE: House Bill 3/Senate Bill 233 (Flavored Tobacco Product Sales Ban)**

Dear Chair Davis and Members of the House Economic Matters Committee:

As the Executive Director of the National Association of Tobacco Outlets (NATO), a national retail trade association, and on behalf of the numerous Maryland retail stores that are members of NATO, I am writing to submit our comments and concerns regarding House Bill 3 and Senate Bill 233, which would ban the sale of all flavored tobacco products. These remarks also would apply in large part to Senate Bills 54 and 410, which ban the sale of flavored vapor products only.

**Scope of Tobacco Product Sales Prohibition is Broad**

The prohibitory scope of House Bill 3 and Senate Bill 233 is so broad that the legislation would ban the sale of a significant number of the tobacco products on the market including menthol cigarettes, mint and wintergreen smokeless tobacco, all other flavored chewing tobacco products, all flavored cigars, all pipe tobacco, and all flavored electronic nicotine products.

This is government overreach when legislation takes on the form of virtual prohibition. A complete ban on the sale of all flavored tobacco products is a solution in search of a problem when underage youth usage of electronic cigarettes is the real issue and ushering in prohibition will only fuel an illegal market in these products.

**The Fiscal Impact of These Bills on Maryland Retailers**

If enacted into law, these bills would have a direct negative fiscal impact on Maryland retailers, who are the first line of defense in preventing sales of tobacco products to underage persons. A key component of the business model for many kinds of retail stores, including tobacco-only stores and convenience stores, is the sale of tobacco products with tobacco stores relying on tobacco sales for up to 100% of their revenue and convenience stores relying on tobacco products for 36% of in-store sales. A ban on all flavored tobacco products will be financially devastating to retailers and the impact will be exacerbated by the loss of food, beverage and gasoline purchases when customers drive to neighboring states or go on-line to buy their preferred tobacco products. This significant loss of sales will lead to employee layoffs and store closures due to prohibition.

## **The Legislation is Not Necessary**

This legislation appears to be a reaction to underage youth using electronic vaping devices and simply makes no sense and goes way too far. Use of most tobacco products, by both young people and adults, are now at historic lows. There is no logical reason to ban all flavored tobacco products when according to the 2018 National Youth Tobacco Survey, “youth cigarette smoking is at an all-time low [only 5.8%] among high school students” and the youth usage rates for smokeless tobacco and other forms of tobacco are very low and declining.

Moreover, as of December 20, 2019, federal law prohibits the sale of tobacco products to anyone under the age of 21. This new nationwide legal age standard should be allowed to work to keep anyone under 21 from buying tobacco products before banning all flavored tobacco products.

Most importantly with respect to flavored electronic nicotine products, the U.S. Food and Drug Administration is requiring that most cartridge-based and pod-based flavored electronic cigarette products (except tobacco and menthol flavors) be removed from the U.S. market as of tomorrow, February 6, 2020. This ban eliminates from the market those flavored electronic cigarettes that underage youth gravitate to the most. A total ban on all other flavored tobacco products would deprive legal-age adults of a choice to purchase otherwise legal tobacco products.

## **Illicit Markets and Lost State Excise and Sales Tax Revenue**

The legislation would also promote an illicit market in all flavored tobacco products. Criminal elements are not concerned about paying taxes or who buys their illegal products, opening the door to more ready access to smuggled tobacco products by underage individuals.

These bills would usher in a new era of prohibition, which has proven to be a losing proposition in this country, and would place more restrictions on an adult’s freedom to choose. How do we explain to our customers, who range in age from their 20s to their 90s, plus our military veterans, that the state banned the sale of the menthol cigarettes, cigars, smokeless tobacco, and pipe tobacco that they want to buy?

The legislation will also result in a significant reduction in cigarette and tobacco excise tax and sales tax collections due to the prohibition of literally hundreds of brands of menthol cigarettes, flavored smokeless tobacco, flavored cigars, and pipe tobacco. This reduction would occur as the demand for flavored tobacco products shifts to illicit markets where no state taxes are collected and remitted.

For these reasons, and on behalf of all NATO member retailers in Maryland, I urge you to oppose House Bill 3 and Senate Bills 233, 54 and 410.

Thank you for your time and consideration.

Sincerely,

***Thomas A. Briant***

NATO Executive Director