

MINNESOTA WHOLESALE MARKETERS ASSOCIATION

February 16, 2021

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

Subject: House File 904 (Flavored Tobacco Product Sales Ban)

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

The Minnesota Wholesale Marketers Association (MWMA) is a state trade organization that represents wholesale distribution businesses, which sell groceries, snacks, beverages, paper products, and tobacco products to retail stores across the state. The wholesale members of the MWMA urge you to oppose House File 904, which would ban flavored tobacco products.

The Scope of Ban: House File 904 will literally ban hundreds of flavored tobacco products including menthol cigarettes, flavored smokeless tobacco, flavored cigars, pipe tobacco, flavored alternative nicotine products, and flavored electronic cigarettes. The unintended consequences to the public health of an across the board ban on all flavored tobacco products raises serious questions about the efficacy of the legislation.

The Negative Impact on Public Health: House File 904 will have serious unintended consequences for the state and for the public health including the following:

- Regulated flavored tobacco products will become unregulated. Criminal elements will supply the same banned flavored tobacco products to Minnesotans, including underage individuals, who have the cash to purchase the products.
- A lack of any criminal or civil penalties in the legislation for possessing and using flavored tobacco products if they are banned will not provide any deterrent to those Minnesotans who currently buy and use flavored tobacco product from continuing to do so.
- Legal age adults will simply find other sources for flavored tobacco products including the illicit market, the Internet, or driving to a neighboring state.
- The public health benefits of the Governor's budgetary plans to earmark a substantial portion of his proposed cigarette and tobacco tax increase revenue for tobacco cessation and educational health programs will be severely undermined when tax collections fall far short of projections if a total ban on all favored tobacco products is enacted.
- The illicit market, lack of deterrent effect, purchases over the Internet, cross border trips to buy tobacco products, and reduced funding for cessation and education programs will undermine the health-related goals of House File 904 because the products the bill seeks to ban will still be available and will continue to be purchased and used.

The Public Health is Being Protected: Recent federal and state laws have been enacted to protect the public health. These actions include the following:

- 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.
- The FDA also required that manufacturers of all electronic cigarette products and any new tobacco products file what is known as a pre-market tobacco product application with the agency by September 9, 2020. Since some manufacturers did not file these applications, those products for which an application was required 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.
- The FDA is occupying the field of scientific review of newer tobacco products and the agency should be the determiner of which flavored products remain on the market.
- Federal law and Minnesota state law have both set age 21 as the legal age to purchase tobacco. These laws help prevent anyone under 21 from buying tobacco products and the new legal age should be allowed to work to further reduce underage access.
- The bill would ban the sale of specific flavored tobacco products that have received a special designation from the FDA as being a “modified risk tobacco product.” These products come in flavored versions and their modified risk designation means that they have a lower level or risk to the user which is very important from a health perspective to those individuals who use these products.

The Declining Use Rates of Traditional Tobacco Products Require Analysis of 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 is not to suggest that flavored electronic vapor products be banned as these products may help smokers transition to non-combustible tobacco products. Rather, the empirical data showing very low and declining underage use rates does not support the wholesale banning of all traditional flavored products.

For all of the reasons explained above, we urge you to not support House File 904.

Sincerely,

Thomas A. Briant

Executive Director and Legal Counsel

Cc: Representative Cedrick Frazier; Minnesota House Leadership and Members of the House