NATIONAL ASSOCIATION OF TOBACCO OUTLETS, INC.

January 26, 2021

To: Chairperson Delores Kelly and the Senate Finance 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 Maryland. NATO and its Maryland member stores urge you to not support SB177, which would ban the sale of all flavored tobacco products, nor SB273, which would ban the sale of most flavored nicotine vapor products and remove them from convenience and other stores, allowing them to only be sold in vape-only stores. Our concerns are explained below:

- **Maryland Could Lose Hundreds of Millions in Cigarette/Tobacco Tax Revenue.** With the Maryland economy so negatively impacted from the COVID-19 pandemic, banning flavored tobacco and nicotine vapor products would substantially increase the shortfall in state excise tax and sales tax revenues by encouraging adult consumers to obtain products outside of Maryland to avoid the ban. According to the accompanying press release from the New England Convenience Store and Energy Marketers Association, the statewide flavored tobacco product ban enacted in Massachusetts has cost the state $62 million in cigarette excise tax revenue alone during June-November of 2020. This $62 million loss is far greater because it does not include lost excise tax revenue on other flavored tobacco products nor sales tax revenue losses on any products.

- **Economic Impact on Retailers Would Force Many Out of Business.** Several kinds of retailers sell tobacco, such as tobacco-only stores with virtually all their revenue from tobacco sales and convenience stores with approximately 36% of their revenue from tobacco sales. Flavored products are a significant part of this revenue. The loss of hundreds of flavored tobacco products would drive tobacco-only stores out of business and make the convenience store business model untenable likely causing many to close or lay off employees.

- **The State of Maryland Considers Convenience Stores "Essential."** During the COVID-19 pandemic, convenience stores and gas stations are among those businesses deemed "essential" by all levels of government. Policies that would deprive them of the ability to sell hundreds of flavored tobacco and nicotine vapor products will put further financial pressure on these retailers. If these stores are forced to close, the state will lose these "essential" businesses that will not be there the next time an emergency arises.

- **Expansion of Cross Border and Internet Purchases and Illicit Market for Flavored Products:** With flavored products readily available on the Internet or in adjacent states, legal age adults will order products online or drive across the border to patronize retailers in a neighboring state. Flavor bans will exacerbate the illicit market in smuggled products where sellers are not licensed nor concerned with the law and will sell products to anyone of any age who has cash.

- **Allow FDA Electronic Nicotine Product Restrictions to Work.** In February of 2020, the FDA banned most flavored cartridge-based and pod-based electronic cigarettes. The agency took this action because these particular kinds of electronic cigarettes were appealing to underage youth. However, in the same action, the FDA permitted tobacco flavored and menthol flavored cartridge-based and pod-based electronic cigarettes to remain on the market because youth usage of these two flavors was the lowest versus all other flavors. In addition, the agency explained that menthol is unique since it is the only flavor available in cigarettes and menthol flavored electronic cigarettes may assist adults in transitioning away from smoking.

FOR IMMEDIATE RELEASE
January 5, 2021

Media contact:
Dave Wedge
617-799-0537
davidmwedge@gmail.com

MASSACHUSETTS HAS LOST NEARLY $62 MILLION IN MENTHOL CIGARETTE TAX REVENUE THROUGH FIRST 6 MONTHS OF FLAVOR BAN

New Hampshire and Rhode Island continue to reap millions from failed Massachusetts ban

STOUGHTON, Mass. (January 5, 2021) – Excise tax losses from menthol cigarettes continued to mount at a rate of over $10 million per month during the first 6 months of the state's ban on flavored tobacco while New Hampshire and Rhode Island businesses and state coffers reaped the benefits of the Commonwealth's ill-conceived and now failed policy.

"With every month that passes, the state's ban on flavored tobacco becomes increasingly absurd," said Jonathan Shaer, Executive Director of the New England Convenience Store & Energy Marketers Association. "All anyone needs to do is look at the excise tax stamp numbers from June through November to understand how ineffective and ridiculous this ban is. Rhode Island and New Hampshire have combined to sell 18.9 million more stamps than they did over the same period in 2019 while Massachusetts has sold 17.7 million fewer. Indisputably, menthol cigarettes are purchased in neighboring states and then brought back into Massachusetts for personal consumption or illicit market sales."

Updated data for June – November 2020 vs. same period prior year. These figures are for cigarettes only and do not include other forms of flavored tobacco including smokeless, pipe or cigar.

- Massachusetts
  - Cigarettes excise tax stamp sales down 17,656,000 or 23.9%
  - Cigarette excise tax loss: $61,972,560
  - Estimated loss including sales tax: $73,008,000

- Rhode Island
  - Cigarettes excise tax stamp sales up 2,847,000 or 18.2%
  - Cigarette excise tax gain: $12,100,000
  - Estimated gain including sales tax: $14,066,740

- New Hampshire
  - Cigarettes excise tax stamp sales up 16,053,000 or 29.7%
  - Cigarette excise tax gain: $28,574,340

Actual retail sales information from NECSEMA members during these 6 months reveal further distressing results:

- Non-flavored cigarette sales in Massachusetts have increased 15%, and non-flavored smokeless sales have increased 350% vs. the same period in 2019.
- Total cigarette sales in New Hampshire have increased 46%, menthol cigarette sales are up 90% and mint/wintergreen smokeless sales are up 105% vs. the same period in 2019
- Total cigarette sales in Rhode Island have increased 20%, menthol cigarette sales are up 29% and mint/wintergreen smokeless sales are up 59% vs. the same period in 2019.
- Total in-store sales in Massachusetts are down 10% while they are up 93% in New Hampshire and 15% in Rhode Island.

"I challenge anyone to demonstrate how this ban has been effective," Shaer said. "New Hampshire and Rhode Island imports have replaced sales once made in Massachusetts by licensed retailers. In fact, the latest data shows an uptick in cigarette sales when you combine the increases for non-flavored cigarettes in Massachusetts with total cigarette sales gains in New Hampshire and Rhode Island. Massachusetts small businesses have lost, the Massachusetts budget has lost, public health has lost, and youth who this law was allegedly intended to protect have lost since prevention revenue has greatly diminished."

NECSEMA opposed the flavored tobacco ban in 2019 when it was first presented, and continues to monitor sales data to demonstrate the failure of the law and the wrongful impact to its members. The association represents both chain and independent convenience store owners, including many in urban communities that are being disproportionately affected by this ban. According to the National Association of Convenience Stores (NACS), there are 3,360 convenience stores in Massachusetts with 54,000-plus employees accounting for $17 billion in sales annually. With over 89% of legal cigarette sales occurring at convenience stores, this policy hits its industry particularly hard.

"The focus should have solely been to address youth access and use of flavored vape. Instead Massachusetts overstepped to include adult products and now stands alone as the only state with a comprehensive flavored tobacco ban," Shaer said. "While any underage use of tobacco is concerning, a ban on what are clearly adult-preferred products isn't appropriate."

To speak with Jonathan Shaer, please contact Dave Wedge at davidmwedge@gmail.com or 617-799-0537.