

March 25, 2021

House Committee on Municipal Government and Housing
Rhode Island House of Representatives
82 Smith Street
Providence, RI 02903

Subject: Opposition to H.5633 – Relating to Towns and Cities – Ordinances

Dear Chair Hull and Members of the House Committee on Municipal Government and Housing:

Thank you for the opportunity to submit comments on H.5633. RAI Services Company (Reynolds) and the manufacturers it represents are opposed to the measure, which would authorize individual cities and towns to regulate the use and sale of cigarettes, electronic nicotine delivery systems, and other tobacco products in ways that are different than prescribed by state law.¹ However, tobacco regulation in Rhode Island has long fallen under the unique purview of the State precisely because regulations respecting tobacco product use and sales in the name of public health should benefit *all* of the State's residents.

In fact, just recently, in holding that this regulation is "a matter of statewide concern," the Rhode Island Supreme Court recognized that "uniform regulation of tobacco throughout the state is desirable, if not necessary."² The Court reasoned that if each municipality were to impose its own tobacco regulations, the state's ability to enforce its own statutes and regulations relating to both tobacco and the conduct of business would be adversely affected.

However, if passed, H.5633 would harm the State's interest by leading to a patchwork of local laws that would:

- Hamstring the State's ability to administer and enforce its own tobacco regulation policies that are based on an intent to improve statewide public health.
- Expand into individual cities and towns an illicit tobacco market driven by inconsistent regulation.
- Confound enforcement of current statewide tobacco retail licensing by adding additional piecemeal licensing requirements over which State officials will have no enforcement authority.
- Abdicate the Legislature's exclusive power to regulate business in Rhode Island.
- Pit licensed tobacco retailers and local governments in various cities and towns against each other by permitting retailers in one locality to profit off the losses of retailers in neighboring localities with more restrictive regulation on tobacco product sales.
- Increase confusion and thereby decrease compliance with current state and federal regulations respecting the sale of tobacco products.

Furthermore, permitting disparate regulatory standards to propagate across the State will undermine the U.S. Food & Drug Administration's Modified Risk Tobacco Product ("MRTP") and Pre-Market Tobacco Application ("PMTA") regulatory mechanisms which were established specifically to assess, evaluate, and control the sale of all tobacco products and electronic nicotine delivery systems across the country. The MRTP process permits manufacturers to market authorized tobacco products as modified risk products, if they can establish through rigorous scientific study that the product will or is expected to benefit public health as whole.³ Similarly, the FDA's PMTA process, which specifically applies to "new tobacco products" (including all electronic nicotine delivery systems) is also driven by an

¹ H.5633, page 1, lines 6-7.

² *K&W Automotive, LLC, et al. v. Town of Barrington*, 224 A.3d 833, 837 (R.I. 2020)

³ <https://www.fda.gov/tobacco-products/advertising-and-promotion/modified-risk-tobacco-products>

intent to permit the sale of only those new tobacco products that are “appropriate for the protection of public health.”⁴ Conceding regulation of the sale of these products to individual cities and towns may result in significant numbers of Rhode Islanders not having access to them and undermine the federal regulatory mechanisms in place for tobacco products and electronic nicotine delivery systems.

The State, and, by extension, the General Assembly is uniquely positioned to oversee all aspects of tobacco regulation in Rhode Island. This ensures that all Rhode Islanders reap the public health benefits of State and federal policies driven by public health priorities applicable to all state residents. Ceding this decision-making power to individual cities and towns obviates the State and FDA’s general public health focus entirely and is contrary to the public health interest of the State and its citizens.



Testimony by RAI Services Company

⁴ <https://www.fda.gov/tobacco-products/market-and-distribute-tobacco-product/premarket-tobacco-product-applications>