

Members of the House Ways and Means Committee,

I am the Executive Director of The National Association of Tobacco Outlets (NATO), a national trade association that represents several tobacco retail stores members across Vermont. I wanted to share testimony and follow-up information I submitted to the House Human Services Committee in January on S.18 (tobacco flavor ban) because it has come to my attention that there is a false narrative that the cross-border tobacco sales activity into New Hampshire, Vermont and Rhode Island from Massachusetts following the Commonwealth's 2020 flavor ban only lasted 1-year. Cross-border activity remains as evidenced by the information I provided below.

Thank you for your consideration.

David Spross
NATO Executive Director
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Members of the Vermont House Human Services Committee,

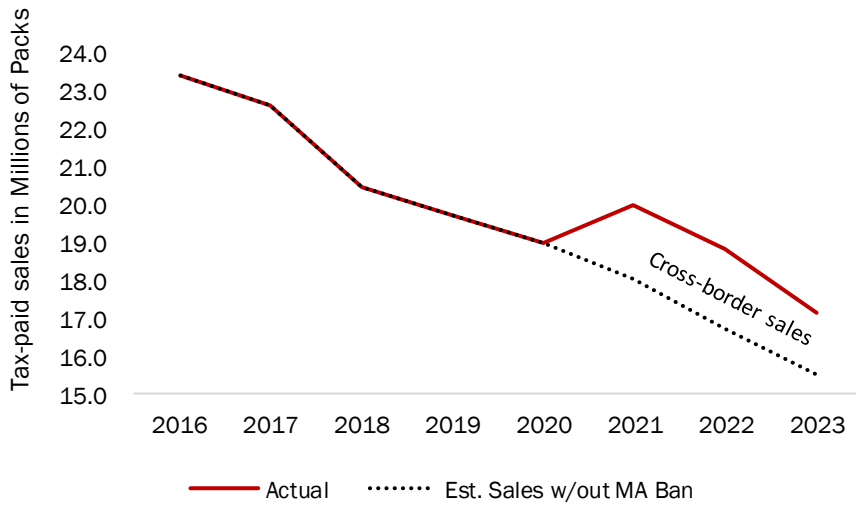
The National Association of Tobacco Outlets (NATO) appreciated the opportunity to testify last Thursday, 1/8/24 on S.18 a bill that would ban the sale of flavored tobacco products. During my testimony, I outlined that the legislation is too broad, misdirected and has unintended consequences including, youth usage of tobacco is declining; will shift sales from licensed, regulated retailers to the illicit market; and how the flavor bans in Massachusetts and California are not working.

During the testimony, the Committee asked questions. Below is follow up information to those questions. Thank you.

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- Question regarding sales data in Massachusetts if after the flavor ban was implemented (June 2020) if there was only a temporary spike in sales in the surrounding states and whether Vermont experienced an increase in sales.
 - According to an evaluation of publicly available cigarette excise tax stamp sales in MA, NH, RI and VT, in the 12 months following the implementation of the ban on flavored tobacco in Massachusetts, **the region experienced a dramatic spike in excise tax stamp sales including Vermont** (Source: Orzechowski & Walker, The Tax Burden on Tobacco, vol. 57 and monthly data provided by Orzechowski & Walker; Industry sales data, week ending 5/29/22).

State Cigarette Excise Tax Stamp Sales (June 2020 - May 2021 vs. same period one year before)			
State	Tax Paid Sales Change (in packs)	Revenue Change	Percent Change
Massachusetts	-33,076,000	(\$116,096,760)	-23.9%
New Hampshire	+23,380,000	+\$41,616,400	+22.1%
Rhode Island	+5,355,000	+\$22,758,750	+18.0%
Vermont	+1,143,000	+\$3,520,440	+6.0%

**Vermont Tax-paid Cigarette Sales:
Actual vrs. Scenario Without MA Menthol Ban**



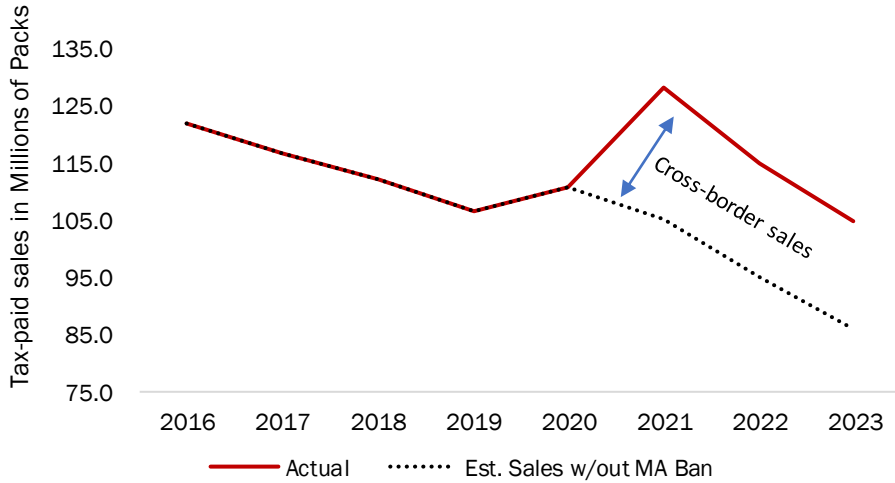
Regional sales are still much higher than they would have been without the Massachusetts flavor ban policy. The graphs below show that tax stamp volume in VT and NH is much higher than it would have been without a ban, evidence regional sales continue to make up for sales no longer occurring in Massachusetts. The

dotted trend line shows what sales would have been without the ban, while the red line shows where sales are now. The delta is identified with the arrow and marked “cross border sales”. The continued downward trend is representative of the national migration away from cigarettes, not a reflection of any success of a ban in MA. U.S. Smoking rates have dropped from 42.6% in 1966 to a low of 11.5% in 2023 due to education, access to reduced-risk alternative and cessation programs.

- Source: Orzechowski & Walker, The Tax Burden on Tobacco, vol. 55. Estimated trend dotted line 2021-2023 is based on in-state change from 2016-2020).



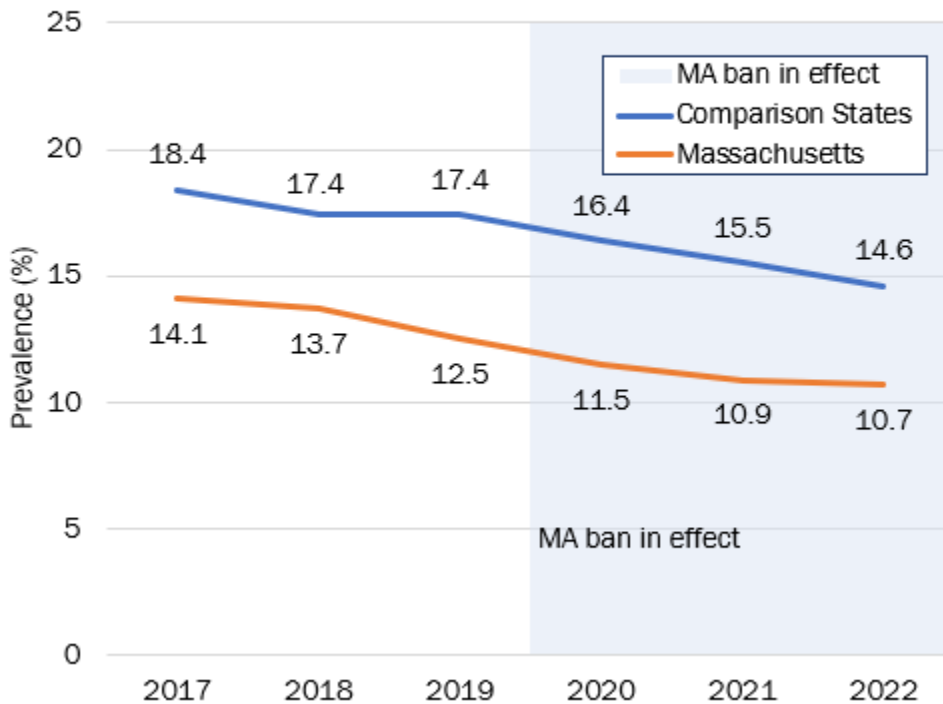
**New Hampshire Tax-paid Cigarette Sales:
Actual vrs. Scenario Without MA Menthol Ban**



Question: There was discussion that Massachusetts' (enacted flavor ban) population prevalence of adult smoking has declined faster compared to other states without a flavor ban are unfounded. The graph below shows MA decline mirrors that of other states without a ban.

- Source: Data from CDC's Behavioral Risk Factor Surveillance System 2017 to 2022. MN, IL, CO, CA, NY, NJ, and FL were omitted from comparison states due to existing local level menthol flavor ban or gap in survey years.

**Current Cigarette Smoking Prevalence Among Adults 21+ in
Massachusetts and Comparison States,
Behavioral Risk Factor Survey, 2017-2022**



- Question: Do I share concern over some flavors in the market
 - As mentioned, there are some egregious flavors in the marketplace. As I shared, these flavors are primarily in the disposable format, which were the most used e-cigarette device type among youth.” Many of these products are likely unauthorized/illegal because timely PMTA applications with the FDA have not been filed or they have been denied. Nationally, many of these products have some of the highest underage use rates including “Elf Bar” or “Esco Bar.”
 - Source: CDC, U.S. E-cigarette Sales Climbed during 2020-2022
<https://www.cdc.gov/media/releases/2023/p0622-ecigarettes-sales.html>.
- Question regarding the level of research companies put into the products they manufacture.
 - Important to note that companies that follow the law, like large publicly traded tobacco companies that work within the structure of the FDA, put tremendous resources into R&D. However, companies, particularly those based in China and the like, do not submit serious applications to the FDA and market their products illegally and flagrant violation of FDA guidance and federal law.
- Question: What actions you would recommend the committee take.
 - Vermont doesn’t have a “flavored tobacco” problem. Rather, Vermont has an illicit flavored disposable e-vapor problem. These products are likely already illegal and flout FDA regulation. By narrowing the focus to these products, you mitigate the dangerous consequences of prohibition discussed in my, and others, testimony while addressing the products that demonstrate the greatest degree of youth appeal. Further, Vermont should also consider properly funding the Dept. of Liquor and Lottery so it can fight irresponsible online sellers of illegal e-vapor products. This can be done by allocating a higher share of the tobacco revenue the state collects. Banning all flavored tobacco, including those products youth do not prefer, eliminates tens of millions of dollars in revenue and creates enforcement challenges the state will not be able to manage. In short, it causes more harm than good.

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