



March 20, 2023

Senator Ann Cummings, Chair  
Members of the Vermont Senate Finance Committee  
Vermont State House  
115 State Street  
Montpelier, VT 05633-5301

**RE: S.18 (Flavored Tobacco Product Sales Ban)**

Dear Chair Cummings and Members of the Vermont Senate Finance Committee:

The National Association of Tobacco Outlets (NATO) is a national trade association that represents hundreds of retail store members across Vermont. On behalf of its Vermont retail member stores, NATO is writing about S.18, which would ban the sale of all flavored tobacco products, including menthol cigarettes, mint and wintergreen smokeless tobacco, flavored cigars, pipe tobacco, flavored oral nicotine products, and flavored electronic cigarettes. From a retail perspective, there are important issues that the legislature needs to understand about the current non-use of tobacco by underage individuals, the public's lack of support for a menthol cigarette ban, the Food and Drug Administration's regulatory action on flavored tobacco products, and the unintended consequences to Vermont, its residents, and retailers if the sale of flavored tobacco products is prohibited.

**Historically Low Underage Tobacco Use Does Not Justify Banning Flavored Tobacco**

According to the most recent Vermont Youth Risk Behavior Survey of state 11<sup>th</sup> graders issued in 2019, 92% had not smoked even one cigarette in the past 30 days; 94% did not use any cigars, cigarillos or little cigars, and 97% did not use smokeless tobacco. This same survey found that 36% of 11<sup>th</sup> graders use alcohol, 18% binge drink and 32% use marijuana. With this historically low youth use of tobacco products, there is no justification for an across-the-board prohibition on the sale of every kind of flavored tobacco that adults who are 21 and older choose to purchase.

**A Majority of the Public Does Not Support a Menthol Cigarette Ban**

A Gallup poll published in August of 2022 found that cigarette smoking was at an historic low of 11% of the adult population and that only 42% of respondents, Democrats and Republicans alike, support banning menthol cigarettes. Banning cigarettes is simply not a priority of the public, while the poll found that Americans are more concerned with the impact of marijuana use than cigarettes.

## FDA is Pursuing Menthol Cigarette and Flavored Cigar Bans

On April 28, 2022, the U.S. Food and Drug Administration issued proposed regulations that would ban the sale of menthol cigarettes and all flavored cigars. If enacted, these regulations would apply nationwide and remove hundreds of brands of menthol cigarettes and even more brands of flavored cigars from the marketplace. On January 4, 2023, the FDA announced that it plans to finalize these proposed menthol cigarette and flavored cigar ban regulations by August of 2023.

## Massachusetts Experience Demonstrates that Vermont Revenue Losses Will Be Significant

On June 1, 2020, a menthol cigarette and flavored tobacco ban law went into effect across the Commonwealth of Massachusetts. According to the New England Convenience Store and Energy Marketers Association, the ban resulted in a total excise tax revenue loss of nearly **\$127 million** in the twelve months following enactment of the ban and, at the same time, provided a revenue boon to surrounding states.

Specifically, focusing on *state cigarette excise tax revenue* changes during this first twelve-month period, the results were reported as follows:

State	Tax Paid Sales in Number of Packs of Cigarettes	Cigarette Excise Tax Revenue Change	Percent Change in Cigarette Excise Tax Revenue
Massachusetts	-33,076,000 Packs	(\$116,096,760)	- 23.9%
New Hampshire	+ 23,380,000 Packs	+ \$41,616,400	+ 22.1%
Rhode Island	+ 5,355,000 Packs	+ \$22,758,750	+ 18.0%
Vermont	+ 1,143,000 Packs	+ 3,520,440	+ 6.0%

Then, when changing the focus to *the sale of menthol cigarettes* during the first twelve months after the ban went into effect, **menthol cigarette sales in Massachusetts went to zero, but menthol cigarette sales increased in New Hampshire by 78.5%, in Rhode Island by 42.5%, in Vermont by 10.5%, and in Connecticut by 4.1%**. Moreover, sales increases continued in the 13-24 months after the Massachusetts ban went into effect with New Hampshire menthol cigarette sales remaining **52.3% higher** than the year before the ban, Rhode Island **27.3% higher**, and Vermont **3.4% higher**.

This empirical data from Massachusetts should give lawmakers pause because Vermont will see a shift from the current situation to significant menthol cigarette and flavored tobacco sales reductions due to Vermont residents crossing the state's borders to purchase their preferred flavored tobacco products in neighboring states.

## An Illicit Market Will Increase Exponentially in Vermont

Illicit markets for tobacco products already exist across the country, especially in those cities and counties that assess high tobacco taxes or have banned the sale of flavored tobacco products. Banning the sale of menthol cigarettes and flavored tobacco products by legitimate retailers will create even more incentive for criminals to supply these products in Vermont to anyone of any age

who has cash. This increase in illegal tobacco smuggling will necessitate a higher level of law enforcement intervention, putting further pressure on strained police resources.

Massachusetts has experienced first-hand an expansive illicit market in flavored tobacco sales. According to the accompanying Annual Report of the Massachusetts Multi-Agency Illegal Tobacco Task Force issued on February 28, 2023, contraband cigarette seizures by the task force made up of state police and the Department of Revenue's Criminal Investigations Bureau skyrocketed from just 5,377 in 2021 to 18,483 in 2022. In addition, the report goes on to quantify that seizures of illicit flavored smokeless tobacco products were up 800% in 2022. This same kind of illegal cigarette and tobacco smuggling can be expected to occur in Vermont if a statewide flavored tobacco product ban is enacted into law.

**Economic Impact on Retailers Would Force Layoffs and Stores to Close.** Vermont retailers selling tobacco and vapor products include tobacco-only stores, with virtually all revenue from tobacco sales, and convenience stores, with approximately 36% of in-store revenue from tobacco. Losing the ability to sell literally hundreds of flavored products may force tobacco-only stores to close and make the convenience store business model untenable, causing layoffs or closures, and causing non-tobacco product prices to rise to compensate for lost revenue in those stores that do not close.

## **Conclusion**

Retailers in Vermont share everyone's interest in keeping tobacco and electronic cigarettes out of the hands of persons under 21 years old. Why would Vermont lawmakers want to harm the state's responsible, licensed, legitimate retailers and force their adult customers to drive to other states or to buy flavored tobacco products from illicit sellers?

We trust that you will give serious consideration to all the facts and information contained in this letter to make an informed decision on whether to proceed with S.18. Thank you for your time and willingness to hear from us on behalf of our Vermont retail members.

Sincerely,

***Thomas A. Briant***

NATO Executive Director