



1325 G Street, NW, Suite 950 • Washington, D.C. 20005 • 202.464.6200 • [taxfoundation.org](https://taxfoundation.org)

## Memorandum

**Date:** February 1, 2024

**To:** Members of the House Committee on Ways and Means

**From:** Adam Hoffer, PhD, Director of Excise Taxation, Tax Foundation

**Subject:** Comments on S. 18 Regarding a Ban on the Sale of Flavored Tobacco and an Increase in the Tax on Cigarette Alternatives

Senate Bill 18 would ban the sale of menthol cigarettes, prohibit the sale of flavored tobacco substitutes, and implement a 92 percent wholesale tax on tobacco substitutes. The Fiscal Note accompanying the bill estimates a revenue loss of \$7.3 million to \$14.7 million in the first full year following the ban.<sup>1</sup>

Our calculations suggest a larger revenue loss of \$15.6 million to \$19.8 million from the flavored tobacco prohibition. These estimates are based on the decline in sales following the Massachusetts flavor ban, similar to the “Massachusetts Scaled to Vermont” calculations presented in the Fiscal Note accompanying the bill (\$14.7 million annual revenue loss).<sup>2</sup>

We also have empirical evidence that flavor bans lead to sizable increases in smuggling and illicit activity. Vermont shares a border with two states—New York and New Hampshire—that currently permit the sale of menthol cigarettes. New Hampshire saw more than a 20 percent increase in cigarette sales following the flavor ban in Massachusetts. Lawmakers must weigh the potential benefits of cessation for some smokers against increased smuggling (and related criminal activity), and a loss of tax revenue incommensurate with a decline in smoking.

The ban on flavored tobacco substitutes, combined with the massive tax increase on tobacco substitutes, will also substantially impair smokers who wish to quit and switch to less harmful products. To quantify those effects, an academic study published in 2020 explored the 95 percent wholesale vaping tax in Minnesota and found that the tax caused

---

<sup>1</sup> “Flavored Tobacco Ban Estimate Range and Considerations.” VT LEG #373796. Accessed January 18, 2024.

<sup>2</sup> Full details of our calculations and methods are available on our website. Adam Hoffer, “Vermont Tobacco Flavor Ban Would Cost Nearly \$16 Million Per Year,” Tax Foundation, Mar. 22, 2023, <https://taxfoundation.org/blog/vermont-tobacco-flavor-ban/>.

more than 30,000 fewer people to switch from smoking combustible cigarettes to e-cigarettes because of the higher post-tax price on e-cigarettes.<sup>3</sup> This switching effect tends to be much more significant than the effect on take-up by nonsmokers, and vaping and e-cigarette use remain one of the most powerful tools to help smokers quit smoking.

Banning the sale of flavored tobacco and vaping products doesn't mean those products disappear. A recent data collection of 15,000 discarded cigarette packs across California following their flavor ban found that 21.1 percent of the discarded packs were menthol-style cigarettes—a mere 3-percentage-point drop in menthol market share prior to the ban.<sup>4</sup>

The same data collection effort collected more than 4,500 disposed vaping products. The data show that 97.9 percent of discarded vapor products were flavored, despite the Food and Drug Administration's lack of authorization for the sale of flavored vaping products in the U.S. These products persist on shelves of vape shops and convenience stores across the country.

The rapidly evolving world of alternative tobacco products has resulted in many new products available for consumers. These products are overwhelmingly less harmful than combustible cigarettes and actions that successfully transition smokers to alternative products save lives. The tax landscape is evolving, but maintaining lower prices for alternative tobacco products through lower tax rates is fundamental to the best practices for taxing alternative tobacco products.<sup>5</sup>

Striking the right balance is the difficult task with which legislatures are charged, with lawmakers often simultaneously seeking to reduce the harm caused by smoking, raise enough revenue to fund smoking cessation and other public health programs, and maintain a legal, well-regulated marketplace where participants can safely transact. As you consider these matters, we are happy to be a resource and would be delighted to provide you with more research on this topic.

---

<sup>3</sup> Henry Saffer et al., "E-cigarettes and adult smoking: Evidence from Minnesota," *Journal of Risk and Uncertainty* 60 (2020): 207-228.

<sup>4</sup> Adam Hoffer, "Californians Still Smoking Menthol after Ban: Evidence from a Discarded Pack Audit." Tax Foundation. October 26, 2023. <https://taxfoundation.org/blog/california-menthol-ban-cigarettes/>.

<sup>5</sup> Adam Hoffer, "How Should Alternative Tobacco Products Be Taxed?," Tax Foundation, Aug. 24, 2023, <https://taxfoundation.org/research/all/federal/taxing-alternative-tobacco-products/>.