



New England Convenience Store & Energy Marketers Association

Peter A. Brennan
Executive Director

April 24, 2023

Senator Joe Baldacci – Chair
Representative Michele Meyer – Chair
Committee on Health and Human Services
c/o Legislative Information Office
100 State House Station
Augusta, ME 04333

RE: LD 1215, An Act to End the Sale of Flavored Tobacco Products

Dear Senator Baldacci, Representative Meyer, and members of the Committee on Health and Human Services,

On behalf of the New England Convenience Store & Energy Marketers Association (NECSEMA), thank you for the opportunity to provide written comments regarding LD 1215, which would ban the sale of flavored tobacco products in the state of Maine. NECSEMA represents 7,000 convenience stores located throughout New England, including approximately 1,000 stores in Maine, where our convenience stores employ 15,000 people, and remit \$1 Billion in sales and excise taxes to the state’s coffers.

In Massachusetts, we have seen firsthand the catastrophic effect of flavored tobacco bans at the state and local level. The facts, as illustrated through tax stamps monitored and compiled by state governments in New England, show how ineffective local bans are. In Massachusetts, the ban on the sale of menthol cigarettes and all other flavored tobacco products resulted in a total excise tax revenue loss of nearly \$127 million to the Commonwealth in the twelve months following enactment of the ban and, at the same time, provided a revenue boon to surrounding states. That excise tax loss to Massachusetts has only been exacerbated since that time, while the illicit market had thrived. (See MA Illegal Tobacco Task Force 2023 Annual Report).

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

Table with 4 columns: State, Tax Paid Sales in Number of Packs of Cigarettes, Cigarette Excise Tax Revenue Change, and Percent Change in Cigarette Excise Tax Revenue. Rows include Massachusetts, New Hampshire, Rhode Island, and Vermont.

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.

Since that time, the black market has continued to thrive, while contraband cigarette seizures in Massachusetts soared in 2022 (with little impact on smoking trends), while sales revenue dropped by an additional \$7 million. Moving tobacco products out of the heavily regulated retail sales environment has been counterproductive. The ITTF report, cited above, found that contraband cigarette seizures by a joint task force made up of state police and the Department of Revenue's Criminal Investigations Bureau and Miscellaneous Excise Bureau skyrocketed from just 5,377 in 2021 to 18,483 in 2022. State police reported seizures soaring from just 40 packs in 2021 to more than 1,900 last year. In addition, seizures of illicit smokeless tobacco, which was also banned along with menthol, were up 800 percent in 2022. Menthol cigarettes and cigars made up the largest category of illicit tobacco seizures, the report states.

It is already illegal in Maine for a person to purchase any tobacco product unless they are at least 21 years of age. This law is upheld by our retailers who ensure that underage buyers cannot legally purchase tobacco products at their stores. Retailers who violate this law, even unknowingly, are subject to hefty fines of "not less than \$300 for the first offense, not less than \$600 for the 2nd offense and not less than \$1,000 for each offense thereafter, plus court costs". Maine Revised Statutes Title 22, Chapter 262-A § 1555-B: *Sales of Tobacco Products*. As illustrated in Massachusetts, banning flavored tobacco products does not eliminate these products – it simply moves the products outside of the regulated marketplace.

Should LD 1215 be enacted, I am confident that Maine will see the same disastrous results as Massachusetts. Consequently, I urge you to vote no on LD 1215. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Peter A. Brennan, Esq.