



**Testimony in Opposition to LD 1174, “An Act to Prohibit the Sale of Flavored Tobacco Products,” and LD 1215, “An Act to End the Sale of Flavored Tobacco Products”**

Senator Baldacci, Representative Meyer, and the distinguished members of the Committee on Health and Human Services, my name is Nick Murray and I serve as director of policy for Maine Policy Institute. We are a free market think tank, a nonpartisan, non-profit organization that advocates for individual liberty and economic freedom in Maine. Thank you for the opportunity to testify on LD 1174 and LD 1215.

While sponsors’ intentions are noble, a ban on flavored tobacco products will do very little to affect overall demand for these products or use rates in Maine. It will simply redirect sales outside the state, strip freedom of choice from consenting adults, and result in a flourishing black market for these products. It is likely to have little-to-no effect on smoking rates, but some research suggests that it could lead to higher rates of smoking among adults and kids.

The Massachusetts Department of Revenue’s (DOR) Illegal Tobacco Task Force (ITTF) has published several illuminating reports since the state’s ban on flavored tobacco products went into effect in June 2020.<sup>1</sup>

A year after the ban went into effect, regional tobacco usage had not changed; sales just moved across the border, primarily to low-tax New Hampshire.<sup>2</sup> Seemingly, the only effects were substantially lower earnings for Massachusetts store owners and employees, and \$114 million less in tax revenue in the first 12 months after the ban.<sup>3</sup>

The trend of lost tobacco tax revenue has also continued, though the largest drop was in the first year of the ban. Today, the state is bringing in 27% less from all tobacco-related products, nearly 30% less cigarette tax revenue, and 47% less revenue from smokeless tobacco compared to Fiscal Year 2019, the year before the ban went into effect.

Clearly, the ban and heightened tax did not deter Massachusetts tobacco users; they simply switched to a different, unflavored product, or they drove over the border to find their preferred flavored product. The proof is in the data.

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<sup>1</sup> <https://www.mass.gov/info-details/dor-illegal-tobacco-task-force>

<sup>2</sup> <https://taxfoundation.org/massachusetts-flavored-tobacco-ban-sales-jama-study/>

<sup>3</sup> <https://www.mass.gov/doc/task-force-fy22-annual-report/download>

The New England Convenience Store and Energy Marketers Association (NECSEMA) tracked the effect of this policy on the regional market between June and December 2020, compared to the same period in 2019. They found that total cigarette sales in New Hampshire jumped 46%. Menthol cigarette sales grew by 90%, and sales of mint/wintergreen smokeless tobacco more than doubled in the Granite State, all while cigarette sales fell nearly 24% and overall sales at convenience stores fell 10% in Massachusetts.<sup>4</sup>

This proposal is useless at best and fiscally irresponsible at worst. In fact, the last two iterations of the ITTF reports note that Massachusetts law enforcement has had to expend far more resources going after tobacco product smugglers and tax evaders.

The 2022 ITTF annual report notes that “the Commonwealth’s high tax rates on OTP [tobacco products excluding cigarettes] relative to other states provide smugglers an incentive to import such products from low-tax states and sell them to in-state buyers willing to illegally evade payment of the applicable Massachusetts tobacco.”<sup>5</sup> This too contributes to societal degradation, as law enforcement resources have been redirected from serious crime to policing failing prohibitions.

Perhaps an obvious bit of foreshadowing, it is difficult to see how regulators could have missed the extent of the massive recent spike in tobacco smuggling which took place in the last year. Menthol cigarettes and cigars made up the largest category of illicit tobacco seizures. Massachusetts State Police reported contraband cigarette seizures soared from just 40 packs in 2021 to more than 1,900 last year. In addition, seizures of illicit smokeless tobacco were up 800% year-over-year in 2022.

In fact, the Massachusetts Department of Revenue (DOR) has greatly increased its enforcement of state tobacco tax evasion, showing inspections jumping by more than 42% from Fiscal Year 2020 to Fiscal Year 2022. This has resulted in a considerable jump in seizures, showing that cross-border smuggling continues as well.<sup>6</sup>

When will proponents finally realize that this policy has been a massive failure where it has been tried?

The urge to lump in electronic nicotine delivery systems (ENDS), known as e-cigarettes or nicotine vaporizers, is also misguided. These products are clearly reducing harm for adults who are addicted to nicotine and trying to avoid more destructive combustible cigarettes. Why would lawmakers remove this option for adults

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<sup>4</sup> [http://www.necsema.net/uploads/1/2/2/9/122970598/menthol\\_press\\_release\\_january\\_2021\\_fnl.pdf](http://www.necsema.net/uploads/1/2/2/9/122970598/menthol_press_release_january_2021_fnl.pdf)

<sup>5</sup> [Annual Report of Multi-Agency Illegal Tobacco Task Force. March 2022. Mass.gov](https://www.mass.gov/info-details/annual-report-of-multi-agency-illegal-tobacco-task-force-march-2022)

<sup>6</sup> <https://mainepolicy.org/massachusetts-tobacco-black-market-flourishes-under-flavor-ban/>

who are struggling to reduce their nicotine and tar consumption when real-world evidence shows that banning ENDS pushes adults—and kids—to smoke more?<sup>7</sup>

In an interview with Forbes, Michael Pesko, economist at Georgia State University and an author of an NIH-funded study published in January 2020, estimated that “for every e-cigarette pod no longer purchased as a result of an e-cigarette tax, 6.2 extra packs of cigarettes are purchased instead,” noting strong product substitution. Pesko and colleagues found that for a 10% hike in ENDS prices, sales dropped 26%, but 11% more combustible cigarettes were sold.<sup>8</sup>

Imagine the level of substitution when a less harmful product is banned. People using them to quit more harmful cigarettes will simply go back to the option that is worse for their health.

The math is simple: the more nicotine users who switch from combustible cigarettes to vaporizers, the more lives saved. Lawmakers shouldn’t undermine this success with outright bans on the flavored vaping products they prefer to quit combustible cigarettes.

Adults in a free society, participating in constitutional government, deserve a presumption of liberty. Economic policy may help limit what economists call “negative externalities,” or costs to the public resulting from individual behavior which do not infringe on constitutional rights, but policy must be carefully crafted to avoid unintended consequences like those seen in Massachusetts.

When politicians restrict products like ENDS, they take society multiple steps backward in the mission for better overall health. Entrepreneurial innovation of smoking-cessation products will contribute much more to public health than the blunt instruments of the state.

Please deem LD 1174 and LD 1215 “Ought Not To Pass” and spare state coffers, public health, and Mainers’ personal freedom from the injury which would surely result from passage, as Massachusetts has shown us. Thank you for your time and consideration.

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<sup>7</sup> <https://mainepolicy.org/tobacco-harm-reduction-not-prohibition-is-the-right-path-forward-for-maine/>

<sup>8</sup> [https://www.nber.org/system/files/working\\_papers/w26724/w26724.pdf](https://www.nber.org/system/files/working_papers/w26724/w26724.pdf)