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May 7, 2021

Senator Claxton
Representative Meyer
Committee on Health and Human Services

Re: **Testimony in Opposition to LD 1550, “An Act To End the Sale of Flavored Tobacco Products”**

Thank you Senator Claxton, Representative Meyer and members of the committee. My name is Dan Riley. I am an attorney with the firm of Norman, Hanson & DeTroy in Portland and I appear today representing Reynolds American in opposition to LD 1550. I have three arguments to make in opposition to this bill, as drafted, and have provided you with an alternative approach to address this problem.

RAI shares the goals of keeping tobacco out of the hands of young people. However, the established facts indicate that a statewide tobacco flavor ban will not accomplish the desired goals of this committee. In fact, it will only hurt Maine’s businesses, sharply reduce state tax revenue, and put additional strain on our state’s law enforcement.

This is not anecdotal rhetoric. We have a timely case study here in New England illustrating how a flavored tobacco ban is ineffective, misguided policy. One need only look to what’s now known as “the Massachusetts Mistake” to understand what will happen in Maine should our state follow the example of the commonwealth. I have attached to my written testimony an article from *Forbes Magazine* marked **Exhibit #1**.

The “Massachusetts Mistake”

Massachusetts is the only state in the country with a flavored tobacco ban in effect. Evidence has shown that adult consumers did not stop using flavored tobacco products as a result of this ban. They simply shifted purchasing patterns and behaviors to surrounding states. (Please note **Exhibit #2** from the *Boston Herald* showing the migration of sales from Massachusetts to New Hampshire and Rhode Island).

In the first phase following the Massachusetts flavor ban, 70% of flavored tobacco consumers in Massachusetts purchased their product from other states, while nearly the remaining 30% switched to other tobacco products.

From June 2020 to February 2021, the 10 months after a ban passed, Massachusetts tobacco tax revenue collapsed nearly 25% – a loss of \$110 million to the state. Over the same time period, tobacco tax revenue in New Hampshire increased by over 26%. Revenue immediately flowed across the border.

Additionally, this situation also lined the pockets of smugglers who hauled cigarettes into Massachusetts for illicit sale and profit.

The direct impact is clearly established and undeniable. Businesses and taxpayers in Massachusetts suffered, while businesses and taxpayers in New Hampshire benefited greatly. There was no noticeable positive public health outcome.

Massachusetts took the first move to become the guinea pig in this dangerous flavor ban experiment. Maine should learn from this example to ensure the state doesn't follow this failed tobacco policy. Just this week, a legislative committee in Connecticut voted to support an amended version of a flavor ban bill, exempting products in the FDA's PMTA process. Last week, in Maryland, the legislature voted against a proposed flavor ban bill.

Federal Action

Last week, the U.S. Food and Drug Administration (FDA) announced it will grant a citizen petition to ban menthol cigarettes and it has commenced a process to pursue a nationwide ban. I have attached the press release from the FDA marked **Exhibit #3**.

Based upon sales, menthol cigarettes and smokeless tobacco moist snuff would be the biggest component of a flavored tobacco ban in Maine, putting tens of millions of state revenue at risk. I have attached a document which specifies this impact on the state's General Fund, labeled **Exhibit #4**.

Rather than take the risk of pursuing a policy that's widely regarded as a failure, Maine should allow the federal initiative to proceed to protect business and reduce the likelihood of criminal interstate smuggling.

LD 1550, as drafted, would ban all flavored tobacco products. A more surgical approach to solving the very real and dangerous issue threatening the young people of Maine should focus on disposable vapor products.

Close the Disposable Loophole

In February 2020, the Trump Administration ordered all flavored vapor cartridge products to be removed from the market with limited exemptions, including those pending a review process governed by the FDA. However, despite this aggressive

move, a loophole allowed the ongoing sale of disposable vapor products to remain on the market (with flavors such as Mango Ice, Strawberry Banana and Watermelon).

Before the FDA made this move, 2% of underage vapers reported using disposable vapor products, according to the Center for Disease Control and Prevention's (CDC) Youth Risk Behavior Surveillance System. The most recent data shows that underage use of disposable vapor products has skyrocketed to 27%.

While traditional combustible cigarette use among Maine youth is at historic lows (1.8%), use of disposable e-cigarettes is the leading cause of growth among underage consumers of vapor according to the CDC. I have included with my written testimony a document which provides more detailed information marked **Exhibit #5**.

Recognizing the dangerous impact of this trend, and the threat it poses to young people in Maine, we are offering an amendment to close this loophole, for your consideration (**Exhibit #6**).

A ban on flavored tobacco would hurt the state of Maine without creating a public benefit. Amending this bill to ban disposable vapor products and closing the loophole left by the federal action would be an innovative move that protects the youth of the state while learning from the "Massachusetts Mistake."

Thank you for your attention and I stand ready to address any of your questions.

Sincerely,



Daniel P. Riley, Jr.

One State's Flavored Tobacco & Vape Ban Is A Cautionary Tale For The Nation

By Patrick Gleason | January 31, 2021

Just because a policy has already been documented to be a proven failure doesn't mean politicians will cease proposing it. Maryland, Washington, Connecticut and a handful of other states are considering bills to ban flavored tobacco and vaping products, even though this same prohibition has backfired elsewhere.

Early results from the flavored tobacco & vaping products prohibition enacted in Massachusetts show such bans deprive adults of less harmful alternatives to cigarettes, crush small businesses, depress tax collections as commerce shifts across state lines, and fail to curb smoking.

Massachusetts Governor Charlie Baker (R) and his Democratic-run state legislature enacted a ban on flavored e-liquids and tobacco products, including menthol cigarettes, that has been in place since June 1, 2020. There is no indication that smoking has been mitigated, but there is evidence that Massachusetts has lost millions in tax revenue to neighboring states, as consumers have taken their business to stores in New Hampshire and Rhode Island, where the flavored tobacco products demanded by many law-abiding adults are still available for sale.

The numbers are in and tax collection data since the time the Bay State's flavor ban took effect show that while Massachusetts experienced an expected decline in the sale of taxable tobacco products, often referred to as "stamps," those sales appear to merely have been pushed across state lines, particularly to New Hampshire and Rhode Island. Though tobacco sales were down in Massachusetts for the second half of 2020 compared to the second half of 2019, that drop is more than accounted for by the marked jump in tobacco sales in states bordering Massachusetts.

"From June 1, 2020 to September 30, 2020, 230,797,000 stamps were sold in the region," writes Ulrik Boesen, an economist at the non-partisan Tax Foundation. "For the same period in 2019, that number was 225,897,000...In other words, Massachusetts sales plummeted, but not because people quit smoking—only because those sales went elsewhere."

"If we look at individual states, we can see that increases are skewed," Boesen adds. "The increase in sales in the Northeast region is most notable in Rhode Island and New Hampshire, but all have seen increased sales immediately following the ban."

"With every month that passes, the state's ban on flavored tobacco becomes increasingly absurd," Jonathan Shaer, executive director of the New England Convenience Stores & Energy Marketers Association, said of the Massachusetts flavor ban. "All anyone needs to do is look at the excise tax stamp numbers from June through November to understand how ineffective and ridiculous this ban is. Rhode Island and New Hampshire have combined to sell 18.9 million more stamps than they did over the same period in 2019 while Massachusetts has sold 17.7 million fewer."

The Tax Foundation's Boesen estimates that for Massachusetts state coffers, "the cost of the flavor ban could end up being approximately \$120 million for FY 2021 (not including sales tax losses)." That is a real self-inflicted wound to state coffers, but the reduction in sales the flavor ban precipitates for mom and pop retailers, particularly those located near the state border, causes tremendous hardship for individual small businesses.

"10 years of hard work gone in like five minutes since the ban started," Bahrem Agha, owner VaporZone in Saugus, Massachusetts, said after the initial vape ban was imposed by Governor Baker through emergency order in 2019.

The Massachusetts experience with a flavored tobacco and vaping products ban will be instructive for millions of Californians who will vote in 2022 on whether or not they would like to proceed with imposition of the flavored tobacco and vaping products prohibition that has already been approved by the California Legislature and was signed into law by Governor Gavin Newsom (D) in August of 2020, nearly three months after the Massachusetts flavored tobacco and e-liquids ban took effect. It was confirmed by the California Secretary of State on January 22 that more than 623,000 valid signatures were submitted for a petition to hold a veto referendum on Senate Bill 793, the flavored products ban bill, which qualifies it for the November 2022 ballot.

"This measure is the 50th veto referendum in California since that process was adopted in 1911," according to Ballotpedia. "Of the previous 49 veto referendums, voters upheld 20 (41%) of the laws and repealed 29 (59%)."

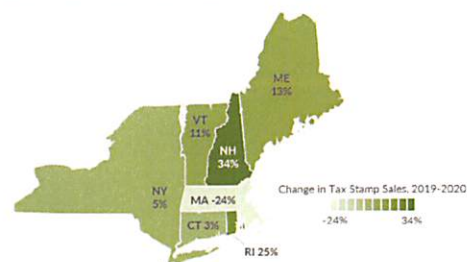
Before Californians weigh in on whether or not to proceed with flavored tobacco and e-liquids prohibition enacted by Governor Newsom, lawmakers in a number of other states will decide whether or not to install their own flavored tobacco and e-liquids ban. Right now Maryland lawmakers are considering Senate Bill 177, legislation that would impose such a ban. Flavored tobacco or e-liquids ban bills have been introduced in other state capitals this year, including Connecticut, Kansas, and Washington State. Don't be surprised if more are introduced before legislative filing deadlines close.

If Maryland lawmakers and legislators elsewhere learn lessons from Massachusetts and heed the advice of non-partisan public finance experts, they'll reject the pending prohibitions. As Massachusetts' experience with a flavored tobacco and e-liquids ban has illustrated, such prohibitions have proven to be, as the Tax Foundation's Boesen described it, "a public health measure that merely sends tax revenue to its neighboring states without improving public health."

Massachusetts sales plummeted, but not because people quit smoking—only because those sales went elsewhere.

Massachusetts Ban Causes Cigarette Sales to Increase in Neighboring States

Tax Stamps Sales in June-September 2019 versus June-September 2020



Source: Orosowski & Walker Survey of State Departments of Revenue. Author's calculations.

TAX FOUNDATION

@TaxFoundation

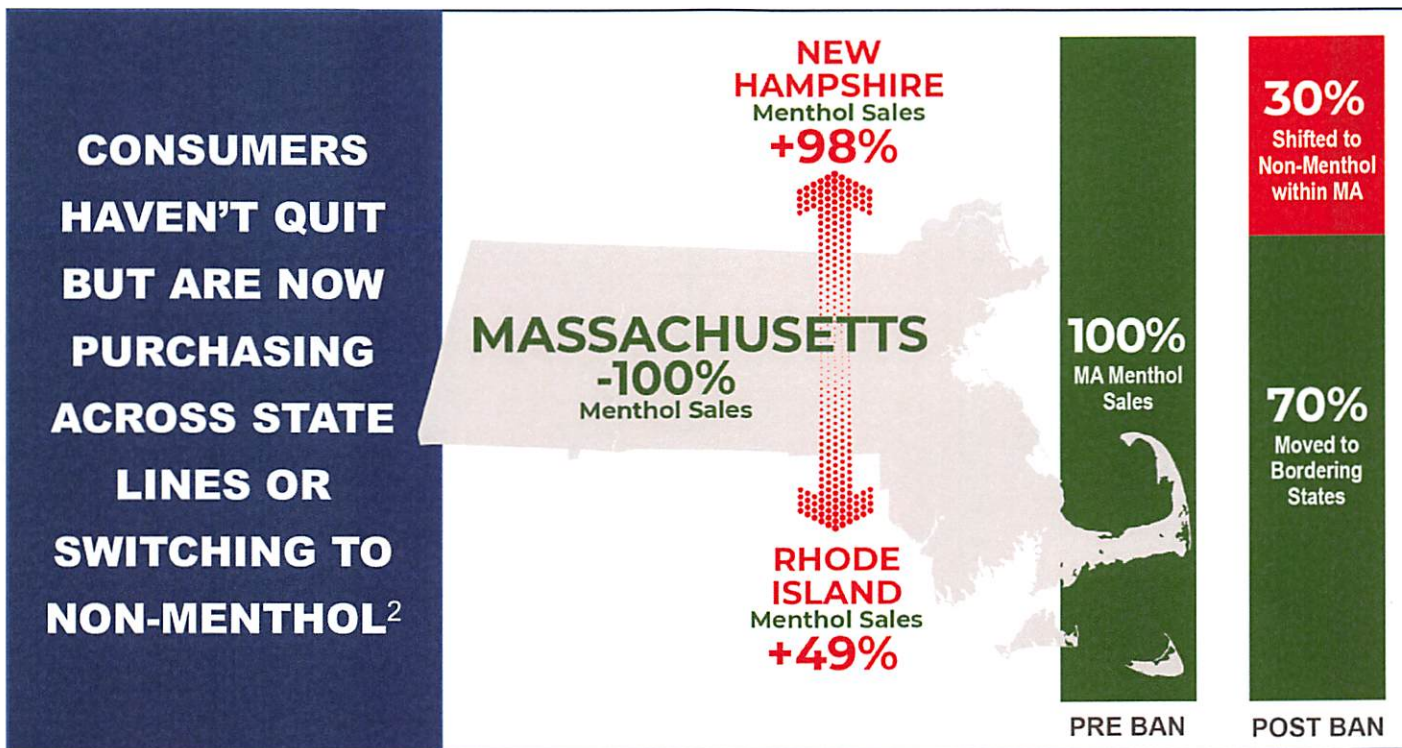
Massachusetts Menthol Ban = Significant Lost Revenue and Increased Cross-Border Sales

BAN HAS NOT REDUCED SMOKING RATES NOR BENEFITED PUBLIC HEALTH

BOSTON
Herald.COM

Massachusetts expected to exceed projected revenue loss

According to the New England Convenience Store & Energy Marketers Association, MA has lost \$32 million in taxes in 3 months and is **on pace to exceed the \$93 million projected revenue loss due to the ban.**¹



BOSTON
Herald.COM

Ban on menthol cigarettes sends sales to black market, convenience store owners say³

BCSOAA secretary Humayan Marshad speaking for convenience store owners at the State House on October 9, 2020 in Boston, MA, shows screen grabs of undercover videos that show illicit street sales of menthol cigarettes.



¹<https://www.bostonherald.com/2020/10/06/ticker-ban-on-flavored-tobacco-hitting-state-revenues-stores-say-taxpayers-foundation-conference-upcoming-boeing-pandemic-will-cut-demand-for-a-decade/>

²RAISC – shipments to retail, 6/20-9/20 vs. 6/19-9/19

³<https://www.msn.com/en-us/money/smallbusiness/ban-on-menthol-cigarettes-sends-sales-to-black-market-convenience-store-owners-say/ar-BB19QeaB>

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FDA NEWS RELEASE

FDA Commits to Evidence-Based Actions Aimed at Saving Lives and Preventing Future Generations of Smokers

Efforts to ban menthol cigarettes, ban flavored cigars build on previous flavor ban and mark significant steps to reduce addiction and youth experimentation, improve quitting, and address health disparities

For Immediate Release:

April 29, 2021

Español (</news-events/press-announcements/la-fda-se-compromete-tomar-medidas-basadas-en-la-evidencia-dirigidas-salvar-vidas-y-prevenir-futuras>)

Today, the U.S. Food and Drug Administration announced it is committing to advancing two tobacco product standards to significantly reduce disease and death from using combusted tobacco products, the leading cause of preventable death in the U.S. The FDA is working toward issuing proposed product standards within the next year to ban menthol as a characterizing flavor in cigarettes and ban all characterizing flavors (including menthol) in cigars; the authority to adopt product standards is one of the most powerful tobacco regulatory tools Congress gave the agency. This decision is based on clear science and evidence establishing the addictiveness and harm of these products and builds on important, previous actions that banned other flavored cigarettes in 2009.

“Banning menthol—the last allowable flavor—in cigarettes and banning all flavors in cigars will help save lives, particularly among those disproportionately affected by these deadly products. With these actions, the FDA will help significantly reduce youth initiation, increase the chances of smoking cessation among current smokers, and address health disparities experienced by communities of color, low-income populations, and LGBTQ+ individuals, all of whom are far more likely to use these tobacco products,” said Acting FDA Commissioner Janet Woodcock, M.D. **“Together, these actions represent powerful, science-based approaches that will have an extraordinary public health impact. Armed with strong scientific evidence, and with full support from the Administration (<https://www.hhs.gov/about/news/2021/04/29/statement-hhs-secretary-xavier-becerra-fda-tobacco-actions-menthol-cigarettes-flavored-cigars.html>), we believe these actions will launch us on a trajectory toward ending tobacco-related disease and death in the U.S.”**

The agency is taking urgent action to reduce tobacco addiction and curb deaths. There is strong evidence that a menthol ban will help people quit. Studies show that menthol increases the appeal of tobacco and facilitates progression to regular smoking, particularly among youth and young adults. Menthol masks unpleasant flavors and harshness of tobacco products, making them easier to start using. Tobacco products with menthol can also be more addictive and harder to quit by enhancing the effects of nicotine. One study (<https://tobaccocontrol.bmj.com/content/early/2021/03/31/tobaccocontrol-2020-056259>) [↗](http://www.fda.gov/about-fda/website-policies/website-disclaimer) (<http://www.fda.gov/about-fda/website-policies/website-disclaimer>) suggests that banning menthol cigarettes in the U.S. would lead an additional 923,000 smokers to quit, including 230,000 African Americans in the first 13 to 17 months after a ban goes into effect. An earlier study (<https://ajph.aphapublications.org/doi/full/10.2105/AJPH.2011.300179>) [↗](http://www.fda.gov/about-fda/website-policies/website-disclaimer) (<http://www.fda.gov/about-fda/website-policies/website-disclaimer>) projected that about 633,000 deaths would be averted, including about 237,000 deaths averted for African Americans.

“For far too long, certain populations, including African Americans, have been targeted, and disproportionately impacted by tobacco use. Despite the tremendous progress we’ve made in getting people to stop smoking over the past 55 years, that progress hasn’t been experienced by everyone equally,” said Mitch Zeller, J.D., director of the FDA’s Center for Tobacco Products. **“These flavor standards would reduce cigarette and cigar initiation and use, reduce health disparities, and promote health equity by addressing a significant and disparate source of harm. Taken together, these policies will help save lives and improve the public health of our country as we confront the leading cause of preventable disease and death.”**

If implemented, the FDA’s enforcement of any ban on menthol cigarettes and all flavored cigars will only address manufacturers, distributors, wholesalers, importers and retailers. The FDA cannot and will not enforce against individual consumer possession or use of menthol cigarettes or any tobacco product. The FDA will work to make sure that any unlawful tobacco products do not make their way onto the market.

These actions are an important opportunity to achieve significant, meaningful public health gains and advance health equity. The FDA is working expeditiously on the two issues, and the next step will be for the agency to publish proposed rules in the Federal Register allowing an opportunity for public comment.

The agency also recognizes the importance of ensuring broad and equitable access to all the tools and resources that can help currently addicted smokers seeking to quit, including those who smoke menthol cigarettes and would be impacted by these public health measures. The FDA will work with partners in other federal agencies to make sure the support is there for those who are trying to quit. Smokers interested in quitting today should visit smokefree.gov (<https://smokefree.gov/>) or call 1-800-QUIT-NOW to learn about cessation services available in their state.

The FDA also remains focused on its regulatory oversight of e-cigarettes and other electronic nicotine delivery systems (ENDS). The Center for Tobacco Products recently provided an update ([/tobacco-products/ctp-newsroom/perspective-fdas-progress-review-tobacco-product-applications-submitted-sept-9-2020-deadline](#)) on its ongoing work of conducting the premarket review of ENDS and other tobacco product applications, and has issued warning letters to ENDS product manufacturers and retailers who continue to sell products that are illegally on the market. The FDA has also made a significant investment in a multimedia e-cigarette public education campaign. The campaign targets nearly 10.7 million youth aged 12-17 who have ever used e-cigarettes or are open to trying them, and highlights information about the potential risks of e-cigarette use.

Background on Today's Actions

Menthol Product Standard

Today, the FDA granted a citizen petition requesting that the agency pursue rulemaking to prohibit menthol in cigarettes, affirming its commitment to proposing such a product standard.

The 2009 Tobacco Control Act (TCA) did not include menthol in its ban on characterizing flavors in cigarettes, leaving menthol cigarettes as the only flavored combusted cigarettes still marketed in the U.S. The law instructed the FDA to further consider the issue of menthol in cigarettes.

Since then, the FDA sought input from an independent advisory committee as required by the TCA (<https://wayback.archive-it.org/7993/20170404143901/https://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/TobaccoProductsScientificAdvisoryCommittee/>[u](http://www.fda.gov/about-fda/website-policies/website-disclaimer) (<http://www.fda.gov/about-fda/website-policies/website-disclaimer>), and further demonstrated its interest by issuing an Advance Notice of Proposed Rulemaking (<https://www.federalregister.gov/documents/2013/07/24/2013-17805/menthol-in-cigarettes-tobacco-products-request-for-comments>), undertaking an independent evaluation (<https://www.fda.gov/media/86497/download>) and supporting broader research efforts—all to better understand the differences between menthol and non-menthol cigarettes and the impact of menthol on population health.

In the U.S., it is estimated that there are nearly 18.6 million current smokers of menthol cigarettes. But use of menthol cigarettes among smokers is not uniform: out of all Black smokers, nearly 85% smoke menthol cigarettes, compared to 30% of White smokers who smoke menthols. In addition, among youth, from 2011 to 2018, declines in menthol cigarette use were observed among non-Hispanic White youth but not among non-Hispanic Black or Hispanic youth.

Cigar Flavor Product Standard

After the 2009 statutory ban on flavors in cigarettes other than menthol, use of flavored cigars increased dramatically, suggesting that the public health goals of the flavored cigarette ban may have been undermined by continued availability of these flavored cigars.

Flavored mass-produced cigars and cigarillos are combusted tobacco products that can closely resemble cigarettes, pose many of the same public health problems, and are disproportionately popular among youth and other populations. In 2020, non-Hispanic Black high school students reported past 30-day cigar smoking at levels twice as high as their White counterparts.

Nearly 74% of youth aged 12-17 who use cigars say they smoke cigars because they come in flavors they enjoy. Among youth who have ever tried a cigar, 68% of cigarillo users and 56% of filtered cigar users report that their first cigar was a flavored product. Moreover, in 2020, more young people tried a cigar every day than tried a cigarette.

Related Information

- Statement by HHS Secretary Xavier Becerra on FDA Tobacco Actions on Menthol Cigarettes and Flavored Cigars (<https://www.hhs.gov/about/news/2021/04/29/statement-hhs-secretary-xavier-becerra-fda-tobacco-actions-menthol-cigarettes-flavored-cigars.html>)

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The FDA, an agency within the U.S. Department of Health and Human Services, protects the public health by assuring the safety, effectiveness, and security of human and veterinary drugs, vaccines and other biological products for human use, and medical devices. The agency also is responsible for the safety and security of our nation's food supply, cosmetics, dietary supplements, products that give off electronic radiation, and for regulating tobacco products.

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Consumer:

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MAINE

\$42.6MM at risk

Category	Flavored Volume (FY 2020)**	Flavored % of Category	SET At Risk for Flavor Ban	Sales Tax At Risk for Flavor Ban	Total Revenue at Risk
Cigarettes (Packs)	10,985,825	18%	(\$21,971,650)	(\$4,386,640)	(\$26,358,290)
Moist (Cans)	3,961,182	88%	(\$8,883,435)	(\$1,666,667)	(\$10,550,102)
Vapor (Pods)	3,989,157	72%	(\$4,467,856)	(\$1,296,676)	(\$5,764,532)
Total Flavored Revenue At Risk			(\$35,272,941)	(\$7,349,983)	(\$42,622,924)

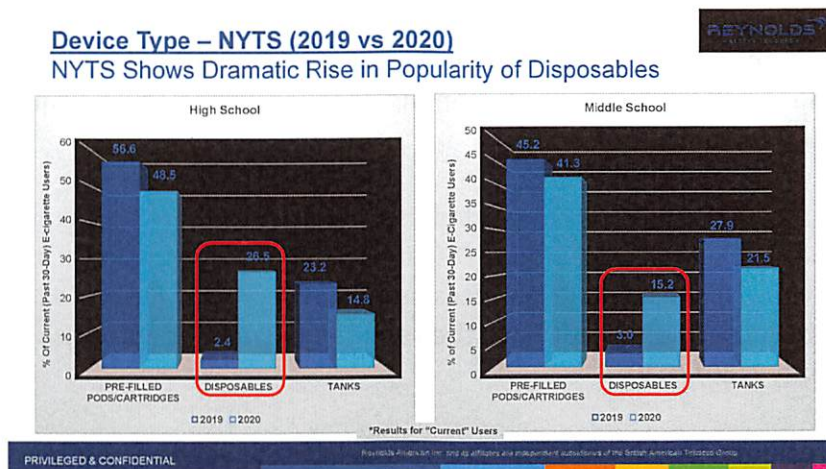


Tax Burden On Tobacco, Volume 55 2020, Page 27 (Gross State Cigarette Taxes)
 **Shipments to Retail Data (FY2020)

Disposable Vapes Are the Exception Swallowing the Rule in Restricting Youth Use

A sharp decline in youth use of vapor products, driven by national and state age-21 laws and restrictions on cartridge flavors, has been partly offset by a dramatic rise in youth use of flavored disposable products

- The 2020 annual National Youth Tobacco Survey (NYTS) showed a decline in youth vaping rates but showed teens moving to disposable, single-use devices such as Puff Bar and Smok.¹
 - “After two years of disturbing increases in youth e-cigarette use, we are encouraged by the overall significant decline reported in 2020.” -FDA Commissioner Stephen Hahn, Sept. 9, 2020
 - “These [additional enforcement] actions come as the 2020 NYTS data shows an alarming uptick in use of disposable e-cigarettes by youth.” FDA Commissioner Stephen Hahn, Sept. 9, 2020



- These disposable devices were exempted from the federal ban on cartridge-based vapor flavors other than tobacco and menthol that went into effect in early 2020.²
- Overall, disposable products nearly doubled from 10.3% of total vapor sales in August 2019 to 19.8% in May 2020. Among youth, use of Puff Bar grew to 8% of regular youth vapor consumers, the number three brand, with Smok (which comes in cartridge and disposable varieties) at 13%.³

¹ Food and Drug Administration, National Survey Shows Encouraging Decline in Overall Youth E-Cigarette Use, Concerning Uptick in Use of Disposable Products, 9/8/2020, <https://www.fda.gov/news-events/press-announcements/national-survey-shows-encouraging-decline-overall-youth-e-cigarette-use-concerning-uptick-use>

² *Ibid.*

³ Centers for Disease Control and Prevention, Morbidity and Mortality Weekly Report, *E-cigarette Unit Sales, by Product and Flavor Type (U.S.), 2014–2020*, 9/18/20, www.cdc.gov/mmwr/volumes/69/wr/mm6937e2.htm?s_cid=mm6937e2_w

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Researchers, advocates and others have concluded that use of disposables by youth was driven by the availability of a wide range of flavors specifically targeted to that age group

- Searches of websites marketing PuffBars and disposable Smoks found availability of flavors clearly aimed at the youth demographic such as Blue Raz, Pineapple Lemonade, Pink Lemonade, Sour Apple and Strawberry.⁴
- In 2020 FDA issued a warning letter to Puff Bar notifying them to remove their disposable, flavored vapor products from the market.
- The FDA, in announcing an enforcement action, cited flavors marketed by other companies including Cinnamon Toast Crunch, Twinkies, Cherry Coke, popcorn, and others featuring cartoon characters.⁶

The rise in youth disposable use has occurred despite FDA and Congressional action aimed at stemming the trend, and researchers and advocates have concluded that further action is warranted.

- The FDA last summer sent Puff and two other firms warning letters for distributing unauthorized products introduced after the agency's deeming deadline and to seven firms for distributing products targeted to youth.⁵
 - "Today, the U.S. Food and Drug Administration issued warning letters notifying ten companies, including Cool Clouds Distribution Inc. (doing business as Puff Bar), to remove their flavored disposable e-cigarettes and youth-appealing e-liquid products from the market because they do not have the required premarket authorization." – FDA statement, 7/20/2020
- Congress also recently established new limits on delivery of vapor and other tobacco products through the Postal Service and other carriers.⁶

⁴ <https://puffecig.com/smok-fyre-disposable-pod-device/#description>, <https://puffecig.com/puff-bar-disposable-device/#description>

⁵ Food and Drug Administration, FDA Notifies Companies, Including Puff Bar, to Remove Flavored Disposable E-Cigarettes and Youth-Appealing E-Liquids from Market for Not Having Required Authorization, 7/20/2020, <https://www.fda.gov/news-events/press-announcements/fda-notifies-companies-including-puff-bar-remove-flavored-disposable-e-cigarettes-and-youth>

⁶FDA Release, *op. cit.*

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Proposed Committee Amendment to H.P. 1155, LD 1550, “An Act To End the Sale of Flavored Tobacco Products”

Amend the bill by striking out everything after the enacting clause and before the summary inserting in its place the following:

Subchapter 6. Flavored Vaping Liquid

Sec. 1. Definitions.

1. "Characterizing flavor" means a distinguishable flavor, taste, or aroma, other than the flavor, taste, or aroma of tobacco or menthol, including, but not limited to, any fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverage, herb, or spice flavoring, that is imparted, prior to or during consumption of a vaping liquid. A vaping liquid shall be deemed to have a characterizing flavor if the vaping liquid, or any device, cartridge, component, or related product sold in combination with the vaping liquid, is advertised or marketed as having or producing any such distinguishable flavor, taste, or aroma.
2. "Electronic smoking device" shall have the same meaning as in §1541.
3. "Flavored vaping liquid" means any vaping liquid that imparts a characterizing flavor. "Flavored vaping liquid" does not include any vaping liquid by itself, or in combination with an electronic smoking device, that has obtained a tobacco product clearance order from the United States Food and Drug Administration pursuant to Section 387j of Title 21 of the United States Code.
4. "Vaping liquid" means any solution, including a liquid, wax, gel, or other substance containing nicotine, which is designed or sold for use with an electronic smoking device.

Sec. 2. Prohibition. No person, either directly or indirectly by an agent, employee or a vending machine, shall sell, offer for sale, distribute for commercial purposes, give or furnish to any person any flavored vaping liquid.

Sec. 3. Penalty. A person who violates this subchapter commits a civil infraction for which a fine of \$100 may be adjudged, except that a fine of up to \$1,500 may be adjudged for each violation of this chapter in cases when a person engages in a pattern of conduct that demonstrates a lack of good faith in complying with this subchapter.