

RE: SB177 Testimony of Charles E. Giblin before Maryland State Senate Finance Committee

Madam Chair, members of the Senate Finance Committee, thank you for your time. My name is Charles E. Giblin. I am testifying at the request of Altria Client Services' registered lobbyist. The views I am sharing are entirely my own. Those views are based on a 45-year law enforcement career, 36 of which were directly involved in revenue law enforcement.

In 2019 I retired as the Special Agent in Charge of the NJ Treasury Department's Office of Criminal Investigation. I have not only made hundreds of arrests for tobacco and financial related crimes, but I have developed and promulgated programs, policies, and procedures, some of which have been adopted by other jurisdictions. I was awarded the Federation of Tax Administrators (FTA) lifetime achievement award as well as a national award from US Bureau of Alcohol Tobacco & Firearms for tobacco enforcement and have been called as an expert witness in federal and state courts across the country. I have also testified before various legislative bodies and government agencies; most recently the Massachusetts Illegal Tobacco Task Force.

As I provide testimony to you today, I am reminded of a very similar testimony I submitted to the Maryland State Senate Finance Committee in February of 2020. The only stark difference is we now have the experience from the Massachusetts Commonwealth's ban on flavored tobacco products to reference. If you have not previously seen the results from Massachusetts' flavor ban, I encourage you to consider the following information because they are not promising. In fact, they are outright disturbing from any reasonable point of view. In short, the Massachusetts law has created a new prohibition for an otherwise legal product. The evidence does not point to a great public health victory but rather illustrates that tobacco users, be it cigarettes or vaper, merely obtain their products in another jurisdiction. I have attached charts and tables to better illustrate these findings. Instead, it will just shift the market from legal and regulated businesses to illegal, unregulated smuggling networks. Lastly, February 2020 the nation was in a much different place, the current pandemic has placed extraordinary stress on our existing law enforcement ecosystem, they are indeed in a precarious situation, and unfortunately some within our society may indeed take this moment in time to accelerate unlawful activities that very well could benefit violent extremists, organized crime groups and criminals.

According to a recent study by the New England Convenience Store and Energy Marketers Association (NECSEMA), Massachusetts has lost \$62 million in the first six months of the ban in excise tax income from fewer menthol cigarettes sales alone. The estimated loss to Massachusetts including the sales tax is \$73,008,000. Massachusetts' loss became its neighboring states' gain. Cigarettes excise tax stamp sales dropped 23.9 percent in Massachusetts while New Hampshire gained \$28,574,340 or 29.7 percent. Rhode Island gained \$12,100,000 or 18.2 percent in excise taxes.

www.convenience.org/cmspages/getfile.aspx?guid=7ebc4fa9-f500-4127-b48d-4d88e3263e20

If this bill were to pass, cross border smuggling, both casual and organized, from neighboring states will dramatically increase. For Maryland, this migration from legal to illicit market will be amazingly easy and exacerbate the existing contraband situation in your State. Maryland is situated at the epicenter of cigarette smuggling activity in the United States - with the interstate i-95 corridor as the primary conduit. Currently millions of cigarette cartons and other tobacco products are smuggled annually from low tax states such as Virginia, through Maryland, to higher tax states including New York, New Jersey and points north. In addition, Maryland is ringed with hundreds of Virginia, Delaware, D.C., and Pennsylvania retailers who will become ready sources for smugglers bringing in illicit products without regard to tax, licensing, or age verification laws. Street sales will skyrocket and police will be saddled

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with enforcing scenarios such as the sales of loose cigarettes on street corners At a time when current calls to reform policing, enforcing pandemic rules and related behaviors have already spread law enforcement thin, you are placing law enforcement into another unwelcome set of circumstances, tasking them with policing black, Asian Indian, and Middle Eastern minority communities who represent the largest demographic of flavored tobacco users.

With the opportunity for high profit and low risk being present, contraband activities bring other and profoundly serious crimes with them. There are numerous criminal cases that have made the link between contraband tobacco smuggling and terrorism. Additionally, cigarette smugglers often engage in other, more heinous crimes, such as: racketeering, extortion, attempted murder, narcotics, gun smuggling, and ID theft. And, without a doubt, with every contraband case comes general tax evasion from Maryland's treasury. <https://www.insidernj.com/press-release/21-people-indicted-15-million-tax-fraud-scheme-forged-millions-tax-stamps-cigarettes-north-carolina/>

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This increased criminal activity will bring increased demands on law enforcement personnel. But at the same time, because it moves these products out of the tax-paying distribution channel, Maryland will see an incredibly significant reduction in tax revenues, and thus less funding to pay for increased policing and other programs. This outcome is no longer a theory as we just need to look to New England to see the impact of the Massachusetts flavored tobacco ban. <https://amp.milforddailynews.com/amp/42433831>

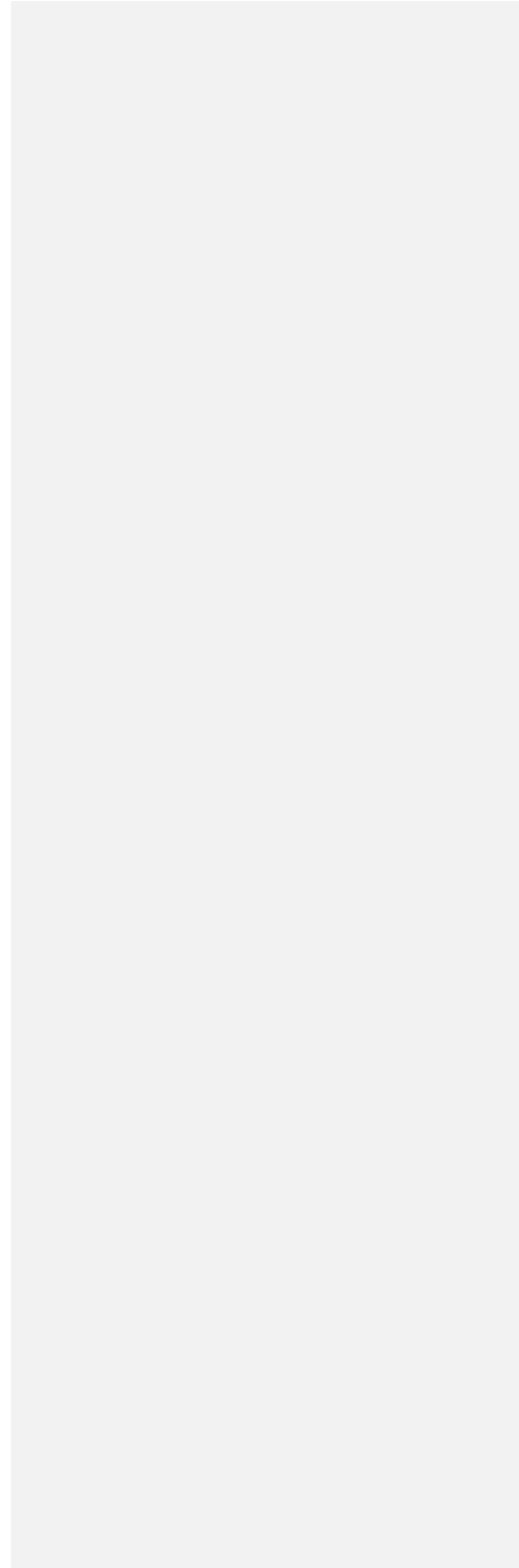
Establishing the additional capabilities necessary to enforce the newly banned tobacco products will bring a host of hidden costs to enforcement agencies. These costs will include: 1) the exponentially increasing number of criminal investigations for Comptrollers Agents; 2) The need for field examination protocols to establish probable cause allowing this new contraband to be seized as evidence and be admissible in court; 3)The development and implementation of required, additional policies and procedures for forensic laboratory examination to determine if a product is admissible as evidence will undoubtedly burden labs tasked with that responsibility; and also 4) Just like Massachusetts, the need for additional evidence storage and the personnel to administer the increase of evidence will be needed. https://www.newburyportnews.com/news/regional_news/lack-of-storage-curtails-illegal-tobacco-seizures/article_f4c20d36-8059-54b4-b37c-5c3551f9b6a7.html

Maryland can also expect counterfeiting of ever type and brand of tobacco related products to occur leading up to and in the wake of legislation of this kind. Counterfeit vape devices and liquids have been seized in large volumes by US Customs and Border Protection Officials at US ports with increasing frequency. Some identified as destined to Maryland! <https://www.cbp.gov/newsroom/local-media-release/philadelphia-pittsburgh-cbp-officers-seize-nearly-half-million-dollars> These purchases are simply accomplished via the internet, and other investigations have shown bad actors place orders in container-size quantities! Major joint State and Federal cases have identified the deep involvement of organized crime groups and networks. <https://www.fbi.gov/news/stories/operation-smoking-dragon>

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Additionally, our research has identified providers of flavoring and flavored tobacco available on the internet which can be used to create vape and cigarette products nearly identical to what is being banned. These providers, like the Canadian First Native cigarette manufacturers, readily advertise the sale of menthol and flavored tobacco on their websites. <https://reason.org/commentary/study-finds-menthol-ban-failed-to-reduce-youth-smoking-in-canada/> <https://www.eliquidstop.com/a/s/products/puff-plus-pre-filled-disposable-device>

In closing, I applaud your efforts to help reduce the level of youth tobacco and vaping product usage. However, criminalizing these products in an attempt to regulate them for adults has enormous implications requiring a much deeper discussion, particularly with law enforcement at the table. Thank you for your time and I am happy to answer any questions you may have.

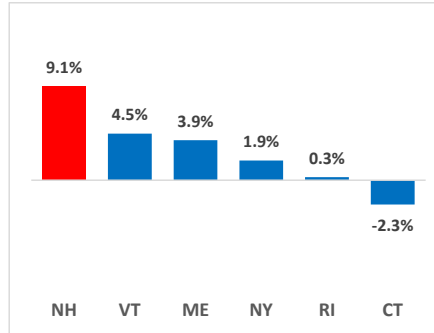


SMUGGLING OF NON-MENTHOL CIGARETTES

If criminals are now smuggling menthol cigarettes, why not make a profit on **all** cigarettes due to the tax differential?

- New Hampshire **Non-Menthol** cigarette volume increased by **9.1%** in the six months following the Massachusetts state flavor ban – well above the national trend.¹
- The New Hampshire state cigarette excise tax is \$1.73 per-pack less than in Massachusetts, equating to at least a \$17.30 profit for every carton illegally re-sold in Massachusetts.
- Assuming all of the 3.7 million packs of cigarettes were smuggled into Massachusetts and then resold, this represents nearly **\$13 million** in illegal profits.

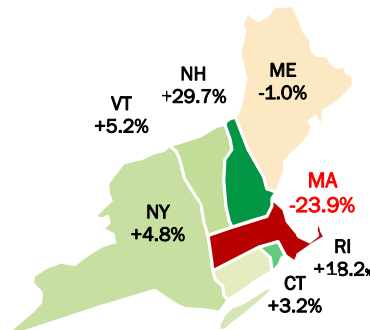
Non-Menthol Cigarette Sales Volume Change
(Six months after MA state flavor ban vs. same period one-year ago)



The question for law enforcement executives is where did the nearly \$13 million in illegal profits go?

| State Cigarette Excise Tax Revenue | | |
|------------------------------------|----------------|----------------|
| State | Revenue Change | Percent Change |
| Massachusetts (Jun – Nov) | (\$61,972,560) | -23.9% |
| New Hampshire (Jun – Nov) | +\$28,574,340 | +29.7% |
| Rhode Island (Jun – Nov) | +\$12,100,000 | +18.2% |
| Vermont (Jun – Oct) | +\$1,367,520 | +5.2% |
| New York (Jun – Sep) | +\$16,234,200 | +4.8% |
| Connecticut (Jun – Aug) | +\$2,801,400 | +3.2% |

Total Tax Paid Sales Change
(June-to-Date Tax Paid Sales Change Versus Same Months Last Year)



¹ ALCS Internal Store Tracking Analytical Reporting System (STARS), week ending 12/27/19.