

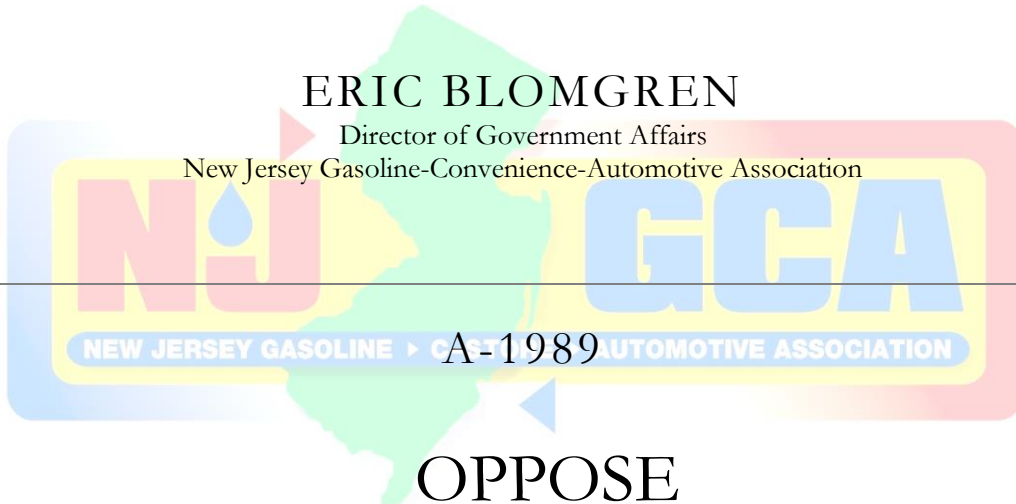
220TH NEW JERSEY LEGISLATURE
ASSEMBLY HEALTH COMMITTEE
HON. HERB CONAWAY—CHAIR

TESTIMONY

ERIC BLOMGREN

Director of Government Affairs

New Jersey Gasoline-Convenience-Automotive Association



OPPOSE

June 2, 2022

COMMITTEE ROOM 11
TRENTON, NJ 08625

Testimony of Eric Blomgren
A-1989: Oppose

Chairman Conaway, members of the Committee, my name is Eric Blomgren, Director of Government Affairs for the New Jersey Gasoline, Convenience Store, Automotive Association (NJGCA), here representing nearly a thousand independent small businesses in this state, many of whom are convenience stores who will be harmed by this legislation—and with little benefit to the public health.

The federal Food and Drug Administration (FDA) has already formally proposed a nationwide ban on the sale of menthol cigarettes. The FDA has been delegated the power to do this by Congress in the past, and the ban is expected to go into effect nationwide in the next eighteen months to two years. A nationwide ban would in fact cut down on access to these products in New Jersey.

But the fact that New Jersey would be only second state in the nation (after Massachusetts) to have a menthol ban means there would be little effect on actual smoking rates. New Jersey's small geography makes us uniquely unqualified to be at the forefront of banning products legal in other states. Most of our residents live within about an hour's drive of another state, making it easy for them to head to border area c-stores and purchase a few cartons of their preferred brand of menthol cigarettes.

Others will not have to travel at all as there will no doubt be a huge spike in black market availability, as professional criminals haul up loads of menthol cigarettes to sell on the street, likely at a discount given the fact that the tax on cigarettes in Virginia is about \$2 a pack less than New Jersey. Black marketers also do not care about checking their customers for age. Black market cigarettes do not just come from other states, but also counterfeit cigarettes are shipped in from overseas, particularly China, and may be even more dangerous than the traditional cigarette. Cigarette smuggling has also been used over the years as a source of revenue for serious criminal elements including organized crime and terrorist organizations.

We no longer have to imagine what it would look like for a small state to implement a menthol ban, Massachusetts has enacted one and it has been a complete failure. An analysis of publicly available tax stamp information done by the New England Convenience Store Association found that in the first year after the implementation of the MA ban, New Hampshire saw a 79% increase in sales of menthol cigarettes and Rhode Island saw a 43% increase statewide, while in the counties in those states that border Massachusetts there was an average increase of 126%—six counties cumulatively sold 23 million more packs of menthol cigarettes. Total cigarette tax stamp sales fell in MA by about 24% in the first year, which also implies that a huge portion of menthol smokers just switched to regular cigarettes.

There is another example we can point to here in New Jersey—the 2020 ban on flavored vaping. Anecdotally, many of our members have complained to us that some of their competitors have

been simply ignoring the law that bans all non-tobacco flavored vaping products, and no one has been enforcing the law. An unenforced prohibition is one of the worst possible policy choices, since the banned products will continue to be sold to the public, but now only sold by the most unscrupulous of operators, while honest businesses will suffer from the reduced sales at their business for no greater societal benefit.

To be clear, we are not talking about a small portion of the market—menthol cigarettes represent 44% of all cigarettes sold in New Jersey.

Current menthol smokers switching to packs which were purchased out-of-state represents the worst possible outcome for both the State and business owners. For c-store owners, there is virtually no profit to be made from the sale of the pack of cigarettes itself due to the slim margins they are forced to work on because of competition from big chains, the profit comes from the ancillary purchases often made by tobacco customers. If those consumers instead purchase their cigarettes from illegal or out-of-state sellers, then that employer loses all of that business. A study conducted by Management Science Associates in 2018 estimated that NJ retailers would collectively lose between \$850 and \$950 million in sales, including ancillary sales, equating to an average of \$12,000-\$15,000 in gross margins per year.

The State is also looking at substantial financial losses as well. If all menthol cigarette purchasers either stopped smoking or started purchasing out-of-state packs, then the State would lose about \$200-\$250 million per year in cigarette taxes, as well as about \$50-\$60 million in sales tax collections. Cigarette Tax revenues have regularly been a contributor to the state's General Fund, but this bill will not only eliminate that General Fund revenue it will require money from the General Fund to start flowing into the state's hospital fund to make up the shortfall it will face with such a significant and immediate decline in revenue. If people are going to purchase menthols either way, then we should have them make their purchase in the state, collect the tax revenue from it, and use it to fund our priorities, including anti-smoking initiatives.

Specific to this bill, we also oppose the fact that the ban would take effect immediately upon signature by the Governor. There should be a window of time for retailers to learn the proposal is in fact a law and for them to dispose of their existing stock.

All these tradeoffs may be worth it to the State as a whole if the smoking rate actually fell 44%, but clearly this will not be the case. While there may be value in passing a bill to "send a message", this particular proposal will come at a big cost to New Jersey small business owners and the state budget. If the goal is to send a message about the Legislature's support for a menthol ban, then a better option would be a resolution supporting the FDA's proposal.

I ask that you oppose this bill. Thank you.