



NJ Gasoline, C-Store, Automotive Association
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June 15, 2023

To: Senate Health, Human Services and Senior Citizens Committee
From: Eric Blomgren, Chief Administrator & Director of Government Affairs
New Jersey Gasoline, Convenience Store, Automotive Association

Re: Opposed, S-299/S-2667, “Prohibits sale of menthol cigarettes.”

On behalf of the nearly one thousand independent small businesses the New Jersey Gasoline, Convenience Store, Automotive Association represents across this state, I ask that you oppose the proposed legislation to ban the sale of menthol cigarettes in the state of New Jersey.

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 release their final ruling in a few months. 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 the third state in the nation (after Massachusetts and California) 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. New York state recently considered a full ban on menthol but decided against it, the Westchester County Executive (NY) vetoed a ban in his county, and it’s not even been on the agenda in Pennsylvania.

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’ 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. This is the reason why in 2013 the Legislature enacted bipartisan legislation to increase the penalties for cigarette smuggling. In terms of impact on youth, the CDC regularly finds that only 2% or less of high school students currently use any kind of combustible cigarette.

An analysis of publicly available tax stamp information found that in the first year after the implementation of the Massachusetts 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. A few months ago, the Massachusetts Illegal Tobacco Task Force announced they were seizing so much extra smuggled cigarettes they needed to acquire new space to store it all.

There is another example we can point to here in New Jersey—the 2020 ban on flavored vaping (which banned all flavors in all types of vaping devices except tobacco flavor). I can tell you that virtually every one of our members with a convenience store that I have spoken with about these issues over the last two years has told me that **most if not all their competitors are openly selling all kinds of flavored vaping products, even though they are illegal under state and sometimes federal law**. It started with the dedicated smoke and vape shops selling these products despite the ban, and then some of the less reputable stores followed, and eventually even honest business operators are left feeling like fools because their customers are explicitly asking them why they are not carrying the products they are looking to buy when most other stores are. Many of these products are low quality disposables from China, which reputable distributors will not carry.

The situation with enforcement has gotten so bad that one of the large manufacturers, which will only sell products legal in NJ, has hired one of the state's larger law firms and is literally going store-to-store, and if a location is selling flavored vapes they are sending them a letter threatening to sue them directly for unfair competition, because they cannot get either the state or local governments to enforce this prohibition on a consistent basis.

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.

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.

To be clear, we are not talking about a small portion of the market—menthol cigarettes represent about 40% of all cigarettes sold in New Jersey. At some small c-stores, cigarettes can make up between a third and half of their gross sales.

The State is also looking at substantial financial losses as well. If all menthol cigarette purchasers started purchasing out-of-state packs, then according to the Fiscal Note prepared by OLS for the Assembly companion bill, the State would lose about \$205 million per year in cigarette taxes, as well as about \$38 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.

The ultimate response of the State, and 67% of the voting public, to the prohibition of marijuana was to legalize it, sell it at regulated businesses, collect tax revenue from it, and use that revenue to fund our priorities, including treatment.

Since people are going to purchase menthol cigarettes either way, we should have them make their purchase in the state, at small businesses, collect the tax revenue from it, and use it to fund our state's priorities, including anti-smoking initiatives.

NEW JERSEY GASOLINE > C-STORE > AUTOMOTIVE ASSOCIATION

All these tradeoffs may be worth it to the State as a whole if the smoking rate actually fell 40%, but 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 proposed ban.

I ask that you oppose this bill. Thank you.