



**OPPOSE:** Executive Budget, Revenue Part S - Increase the State Excise Tax on Cigarettes

**OPPOSE:** Executive Budget, Health and Mental Hygiene Part O – Ban flavored tobacco products including menthol cigarettes

Our organizations are opposed to the proposal to ban flavored tobacco products in New York State and to raise taxes on cigarettes an additional \$1.00. Any ban on specific tobacco items while the state is legalizing and expanding retail cannabis sales is contradictory and punitive. Additionally, prohibitionist policies and regressive taxes such as this will only hurt small businesses, strengthen the illicit underground market, eliminate jobs, and have no meaningful health impact on adults or children.

In New York State, over 13,000 licensed retailers sell flavored tobacco products, employ hundreds of thousands of people, and generate over \$1.1 billion in tax revenue annually. In addition to retailers, wholesalers and distributors depend on these sales and the employment associated with them. Banning the sale of flavored tobacco products, including menthol cigarettes, would impact thousands of jobs. In addition to the economic impact on the workforce, this proposed prohibition would eliminate \$432.4 million in state tax revenue.

Prohibiting the sale of menthol cigarettes, flavored cigars and other products will remove these products from regulated, taxed retail stores but will not prevent them from being accessed by consumers. These products will remain readily available to consumers in nearby states, on the flourishing criminal underground market for cigarettes, and on tribal land. In the 12 months following Massachusetts’ ban of flavored tobacco products, menthol cigarette sales skyrocketed by over 126% in the Rhode Island and New Hampshire border counties. In addition to cross-border sales, the state also saw an increase in illegal smuggling, a problem New York is all too familiar with. In fact, the Mackinac Center for Public Policy found that nearly 54% of all cigarettes consumed in

New York were smuggled in 2020, the highest in the Nation. A flavor ban is a sure guarantee that this criminal activity will become more prevalent in New York.

Before considering this ban, the state should consider the social and economic harm it would cause and analyze whether such a ban would achieve the desired results. Instead of a prohibition of these products, the government should instead focus on equitable harm reduction solutions that work, like education, cessation support, underage prevention, and authorizing less harmful alternatives for all adult smokers.

Youth cigarette smoking is the lowest in a generation (1.3%) and youth menthol cigarette and cigar use are each at 0.8% respectively. Just last year your Administration announced a new all-time low adult smoking rate (12%) achieved with appropriate cessation targeting and no menthol or flavored cigar ban. None of this progress could be made without responsible retailers checking for ID and stopping kids' access to tobacco products. Prohibition not only does not work but it is not needed in order to lower smoking rates.

It should also be noted that the Federal Drug Administration (FDA) is authorized by law to regulate tobacco products in the United States. The agency's authority encompasses approving or denying applications for new tobacco products, restricting the sale of tobacco products at retail, regulating the marketing of tobacco products, ensuring compliance with federal law prohibiting the sale of tobacco products to underage individuals, requiring the removal of ingredients in tobacco products, and other regulatory powers. The FDA is currently reviewing a proposed rule to ban menthol cigarettes and flavored cigars. New York should refrain from taking action and let the FDA continue its on-going regulatory actions.

Lastly, the state is proudly opening retail spaces for recreational cannabis. In fact, within the last month, multiple retail spaces opened that are selling cannabis vape pens with flavors such as grapefruit, pineapple, cereal milk, and tropical. To attack tobacco retailers as vehicles for underage smoking while promoting flavored cannabis is hypocritical and unfair.

We encourage you to not advance this harmful proposal and instead continue to support educational and cessation programs that have been proven to work for New Yorkers.