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COMMENTARY

The failure of Massachusetts' tobacco flavor ban

Data shows a surge in illegal vape seizures from 71,746 in 2022 to 308,100 in 2024.



Guy Bentley
Director of Consumer Freedom

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It's been just under five years since Massachusetts became the first state in the nation to ban the sale of flavored tobacco products, and an illicit market there is booming, according to a new [report](#).

Data from Massachusetts' Multi-Agency Illegal Tobacco Task Force shows a surge in illegal vape seizures from 71,746 in 2022 to 308,100 in 2024. The number of cigarette packs seized during that time declined significantly from 18,483 to 5,029, and cigar seizures stood at 152,075, more than in 2023 but less than in 2022. The task force says it is seizing so many illegal products that it's having difficulty storing and destroying them, with smugglers becoming ever more sophisticated in avoiding their investigations.

When Massachusetts banned flavored tobacco in June 2020, the move was paired with a 75 percent wholesale tax on e-cigarettes and hailed as a triumph for public health.

"The Massachusetts law sets a tremendous example that other states and the entire nation should follow in order to stop the tobacco industry's predatory targeting of kids and communities of color once and for all," [said](#) the then-head of the Campaign for Tobacco-Free Kids, Matthew Myers, in a press release.

Following the latest task force report, some of the ban's most vigorous opponents highlighted that the predictions they made when the ban passed are coming to fruition.

“These numbers are absolutely staggering and prove what NECSEMA [the New England Convenience Store & Energy Marketers Association] has warned from the start—Massachusetts has created the perfect environment for illegal smuggling,” [said](#) Peter Brennan, executive director of NECSEMA.

So far, only California has followed Massachusetts’s example, and it’s easy to see why.

Compare tobacco use in Massachusetts to a state without a flavor ban like Michigan. Since 2020, smoking in Massachusetts has [fallen](#) by just 1.3 percentage points, whereas in Michigan, it [fell](#) by 4.8 percentage points. Youth vaping, a significant motivation for the Massachusetts ban, has [fallen](#) substantially. However, the decline of youth vaping since 2019 was a [nationwide](#) trend not unique to Massachusetts, with some non-flavor ban states like neighboring New Hampshire experiencing [equally](#) impressive declines.

Whatever the intentions of the flavor ban, it’s clear that the alleged benefits were overstated, and Massachusetts is bearing a significant cost in lost revenue and increased criminality. Tobacco excise taxes in the Bay State [fell](#) from \$526.6 million in 2020 to \$354.3 million in 2024.

The report catalogs a series of investigations, searches, and prosecutions to clamp down on the illicit market but points out that the Commonwealth’s high tax rates on tobacco products remain a strong incentive for smugglers to import products from low-tax states. In 2019, Massachusetts was ranked [12th](#) in the nation for inbound cigarette smuggling, but by 2022, it jumped to [fourth](#). According to the [Tax Foundation](#), around 40 percent of cigarettes sold in Massachusetts are smuggled in from out of state.

To help crack down on the illicit trade, the task force recommends, among other changes, the creation of new criminal provisions to punish people who sell tobacco products without a license. Because enforcement funding is unlikely to be increased significantly, and Massachusetts borders states with lower tobacco taxes or no flavor bans, it’s doubtful these new measures would significantly impact the illicit market.

Though legislators have little appetite to repeal the flavor ban, some of its worst effects could be ameliorated by exempting safer alternatives to cigarettes that have received authorization for sale from the Food and Drug Administration. These products [include](#) e-cigarettes, nicotine pouches, and heated tobacco in flavors other than tobacco that the agency has deemed to be “appropriate for the protection of public health,” meaning the benefits they present to adult smokers trying to switch to a safer product outweigh the risks of youth using them.

Giving smokers legal options for safer nicotine alternatives could make some dent in the illicit market and would be a win for health. Other states considering flavored tobacco prohibitions should closely examine Massachusetts and see if it's a situation they're sure they want to replicate.

GUY BENTLEY is the director of consumer freedom at Reason Foundation.

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