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EXPLAINER

Over-regulation Creates More Problems Than It Solves: Flavor Bans in Massachusetts

February 2025



Over the past two decades, Massachusetts has reported a [decrease in smoking rates](#), dropping the prevalence from 21.5 percent in 2000 to 12.8 percent in 2020—a reduction of 8.7 percent. The Massachusetts Tobacco Control Program has played a crucial role in this decline, focusing on education, prevention, and cessation support. The introduction of smoke-free laws and the promotion of cessation resources have been particularly effective in reducing smoking rates among vulnerable populations, including low-income individuals and [pregnant women](#). Instead of celebrating this decline, Massachusetts lawmakers have continued to introduce additional legislation that approach the challenges associated with tobacco use in a much more aggressive manner. Several prohibitory laws have been recently passed to try and force smokers to quit by making it illegal to purchase menthol cigarettes and flavored reduced-risk products in their state.

The implementation of [flavor bans](#) in Massachusetts, particularly the comprehensive ban on flavored tobacco products, took effect in June 2020. As with [other jurisdictions](#) that have instituted broad-reaching flavor bans, the primary intent of the law was to reduce underage use—even though the federal [Tobacco 21](#) law made it illegal to sell tobacco products to anyone under the age of 21. Massachusetts' attempts to reduce youth use of tobacco and nicotine products have been primarily focused on banning all flavored products and levying a [75 percent excise tax](#) on electronic cigarettes (ECs). These actions have put adults who smoke at a disadvantage, reducing the likelihood of their migration to a less harmful product.

Unsurprisingly, Massachusetts experienced the same [unintended outcomes](#) as reported in other states that have implemented similar bans. Adults who switched to flavored ECs either migrated back to cigarettes or found other methods to access flavored products via cross-border purchasing. The additional prohibition on menthol cigarettes has also resulted in a significant increase in sales across



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the border or through other illicit means. Thirty-nine percent of all cigarettes are [smuggled into the state](#) (fourth highest percentage in the United States), leading to over 67 million illegally imported packs of cigarettes and resulting in nearly \$238 million in lost revenue for the state.

The state's prohibitionist tactics have inadvertently increased illicit tobacco, as documented in the Multi-Agency Illegal Tobacco Task Force's [2023 Annual Report](#). Research has shown that when flavored products are banned, there is a risk that consumers may turn to illegal sources to obtain their preferred products. A study highlighted that while the Massachusetts policy effectively reduced access to flavors, there were [initial concerns](#) about the potential for increased sales in neighboring states where flavored products remained available—concerns that came to fruition.

Though sales (and the taxes that would have been generated from those sales) declined, [sales increased](#) in neighboring states where menthol products remained available, suggesting that consumers traveled to nearby states to purchase banned products of choice. The data is supported by [recent analysis](#) from the Behavioral Risk Factor Surveillance System survey, which shows that post-ban, the prevalence of cigarette use in adults has not declined. The proportion of menthol cigarette use has increased since the ban was instituted in 2020. This underscores the importance of robust enforcement measures to prevent the proliferation of illegal tobacco sales in the wake of the ban.

However, the prohibition of menthol and flavored cigarettes also led to [increased burdens](#) on law enforcement officials. Since the bans went into place, the state has seized over 200,000 illegal e-cigarettes and has prosecuted many for smuggling tobacco in from neighboring states. This additional burden on law enforcement removes resources from combating other crimes in the state—a loss that no one benefits from.

Aggressive legislative actions to prohibit classes of tobacco products in Massachusetts have failed to improve public health, cost the state and retailers income, and added unnecessary pressure to those responsible for public safety. As the state continues to explore [additional restrictive laws](#), it would be in the best interest of the citizens of Massachusetts to explore legislative options (such as [tobacco harm reduction](#)) that support behavioral changes and help those who smoke to find a pathway to better health instead of punishing them for the choices they make.