

# **ILLEGAL TOBACCO TASK FORCE**

## **Public Meeting #51 Minutes**

**Meeting Date:** Wednesday, September 28, 2022

**Meeting Time:** 1:00 pm

**Meeting Location:** Via WebEx conferencing, dial (408) 418-9388, Meeting ID# 2331 154 3014

**Board Attendance:** John Hayes (DOR), Major Brian Connors (MSP), Patricia Henley (DPH), Susan Terrey (EOPSS), Nicholas Ogden (AGO), Dan O'Neil (TRE), and Nicole Nixon (AGO)

**Public Attendance:** 34 attendees

### **Call to Order:**

- Mr. Hayes called the meeting to order at 1:04PM .
- Mr. Hayes informed all participants that this meeting will not be recorded by WebEx and that Cole Doherty-Crestin will take notes to complete the minutes. He reminded everyone to mute their phones and/or computers to limit background noise.

### **Opening Remarks:**

- Mr. Hayes thanked everyone for attending. Mr. Hayes welcomed Dan O'Neil, new board member designee from the Treasurer's Office. Mr. Hayes asked the board to introduce themselves.
- Mr. Hayes indicated today's meeting will primarily focus on a presentation provided by DPH/MA Tobacco Cessation & Prevention Program.

### **Approval of Minutes from Meeting #50 on August 9, 2022:**

- Mr. Hayes emailed a copy of the minutes for Meeting #50 to Task Force members prior to this meeting. Mr. Hayes asked members if there were any recommended edits to be made and hearing none, he asked for a motion to approve. Patricia Henley approved. Major Brian Connors seconded the motion. Mr. Hayes stated that with no objection, the minutes were approved.

### **Presentation on Monitoring the Impacts of Massachusetts Statewide Flavored Tobacco Law by DPH/MA Tobacco Cessation & Prevention Program:**

- Mr. Hayes introduced Ms. Henley from DPH to make introduction for presentation. Ms. Henley welcomed Melody Kingsley and Hannah McGinnes from the DPH who provided a presentation on an "Evaluation of an Act Modernizing Tobacco Control: Overview and Preliminary Results". Please see the attached presentation. No questions from the board following the presentation.

### **Update on ENDS Disposal Procedures:**

- Mr. Hayes provided an update on DOR ENDS disposal procedures to the Task Force. DOR has been working towards completing the necessary steps to lawfully dispose of confiscated ENDS products. Mr. Hayes stated the ENDS Disposal Contract had to be re-posted. Before proceeding with ENDS disposal, bids are to be resubmitted.
- Mr. Hayes mentioned efforts are being made for DOR to lease a storage facility to house confiscated tobacco products.
- Mr. Hayes stated that DOR is finalizing its review of legislative recommendations and is aiming to provide a concrete proposal within the next two months. Please note tentative legislative recommendations can be found on the public meetings section of the Task Force's website under "Illegal Tobacco Task Force Public Meeting Forty-nine Exhibit A".

### **Member Agency Updates & Other Business**

- Mr. Hayes inquired whether any board members had agency updates. Member agencies did not have any updates to report.

**Closing Remarks**

- Mr. Hayes kindly thanked board members for their attendance.
- Mr. Hayes asked whether there was a motion to end the meeting. Patricia Henley approved the motion. Major Brian Connors seconded. Mr. Hayes thanked everyone for attending and concluded the meeting at 1:43 PM.



# Massachusetts Department of Public Health

## EVALUATION OF AN ACT MODERNIZING TOBACCO CONTROL: OVERVIEW AND PRELIMINARY RESULTS

Illegal Tobacco Task Force

September 28, 2022

# Outline

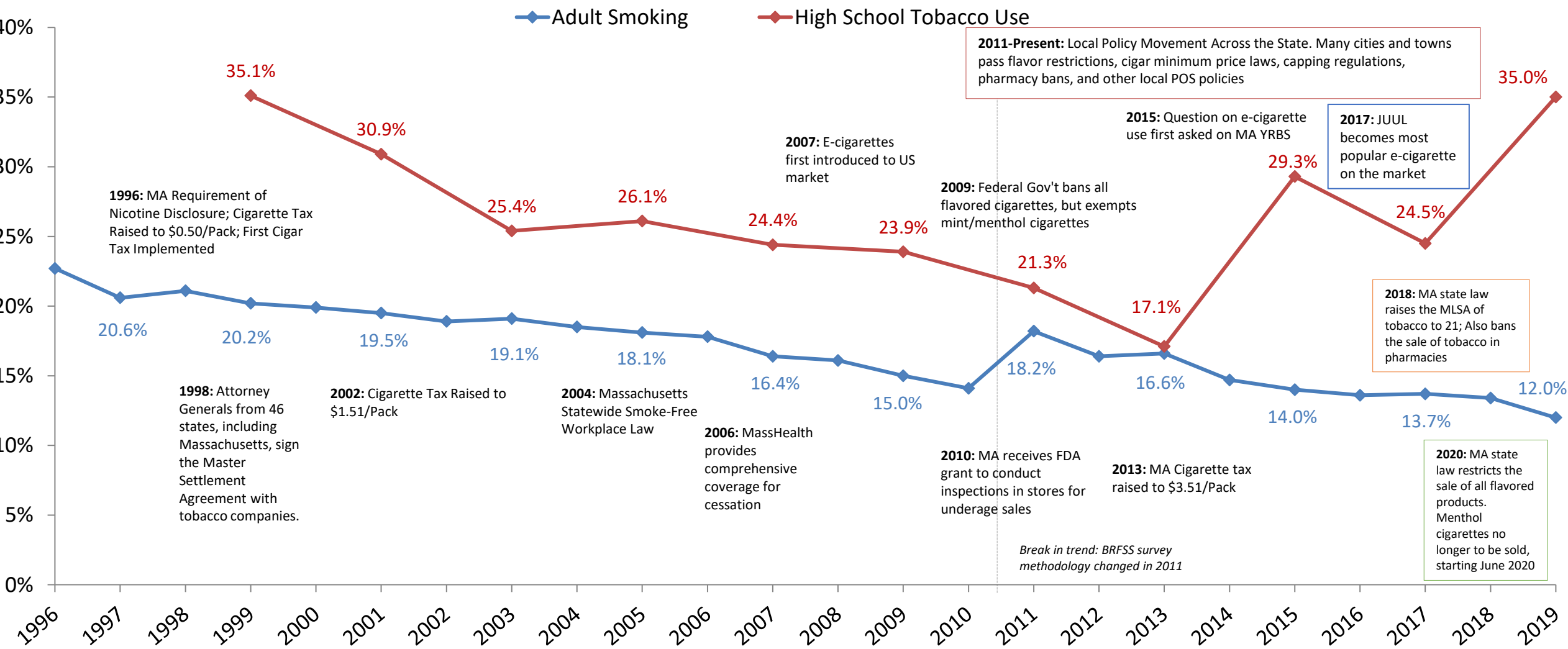
Background: Precedence to Massachusetts Statewide Flavored Tobacco Restriction & Provisions of the Law

Framework for Evaluating the Law

Data Sources and Results

# Precedence to Massachusetts Statewide Flavored Tobacco Restriction

# Despite major progress in reducing youth and adult tobacco use over the past 25 years, youth tobacco use is now at a historic high (due to the vaping epidemic)



**Note:** From 1999-2015 high school tobacco use includes current (past-30-day) use of any cigarettes, cigars, smokeless. From 2015-2019, the definition was expanded to include e-cigarettes.

**Data Sources:** Adult smoking: Behavioral Risk Factor Surveillance System; Youth Tobacco Use 1997-2017: MYRBS; 2019: HS MYHS

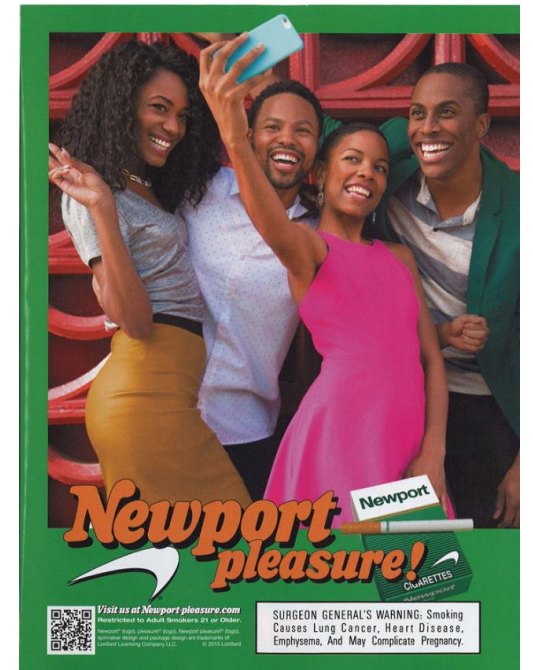
# Menthol is a Racial Justice Issue



Tobacco industry has targeted menthol cigarettes to black people and communities.

The tobacco industry worked to expand their market by targeting menthol products in urban, *segregated*, black communities.

- Tobacco-sponsored events (i.e. jazz concerts)
- Use of Black models and positive images in ads
- Tobacco industry giving money to black organizations to gain trust
- Provision of free products directly in black communities

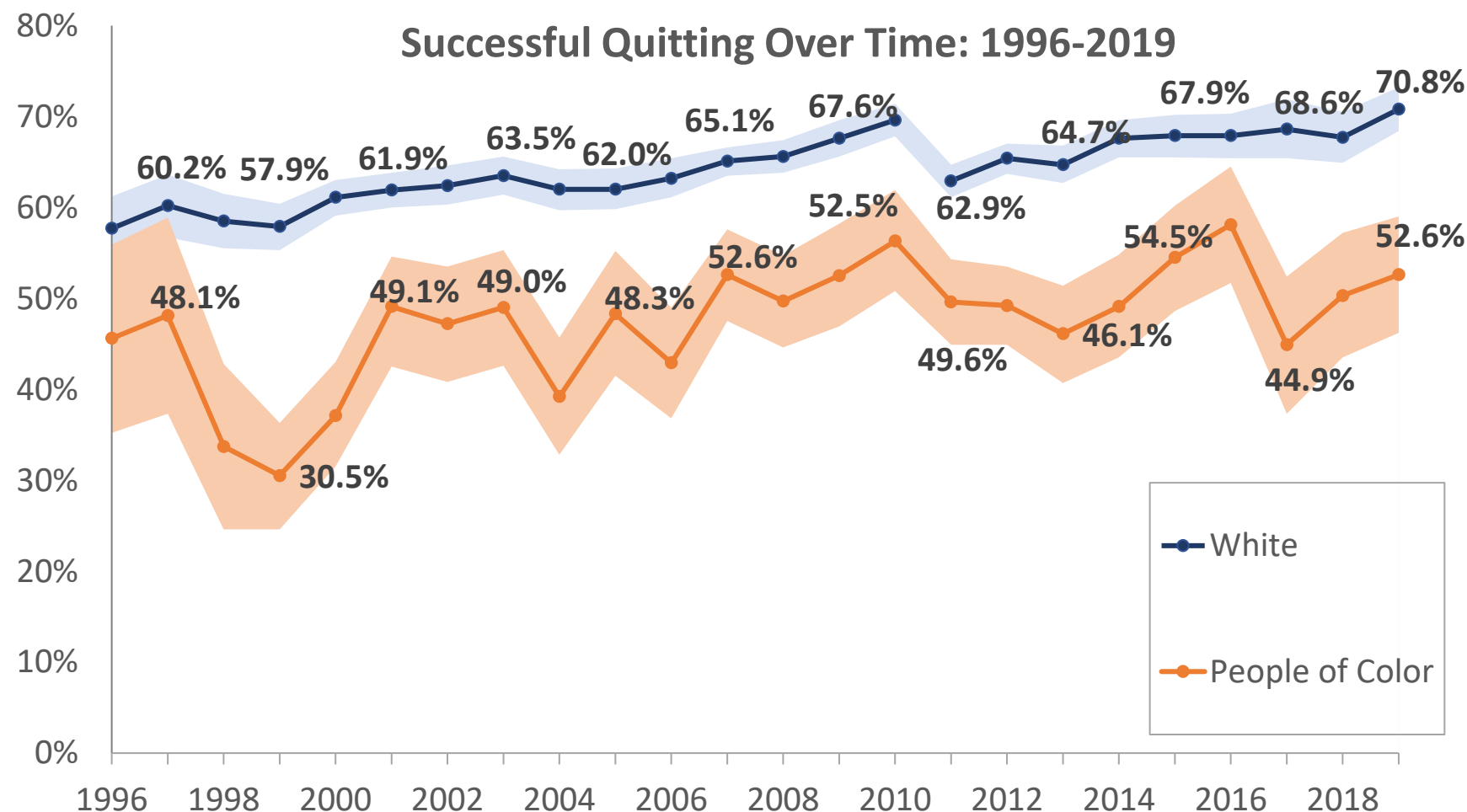


# Menthol is a Racial Justice Issue: Cessation

Mint and menthol cigarettes are **biologically more addictive and harder to quit.**

Despite having similar rates of smoking and quit attempts compared to White people, **Black people and Hispanic/Latinx people in Massachusetts** consistently have **lower rates of successful quitting**, even after adjusting for income.

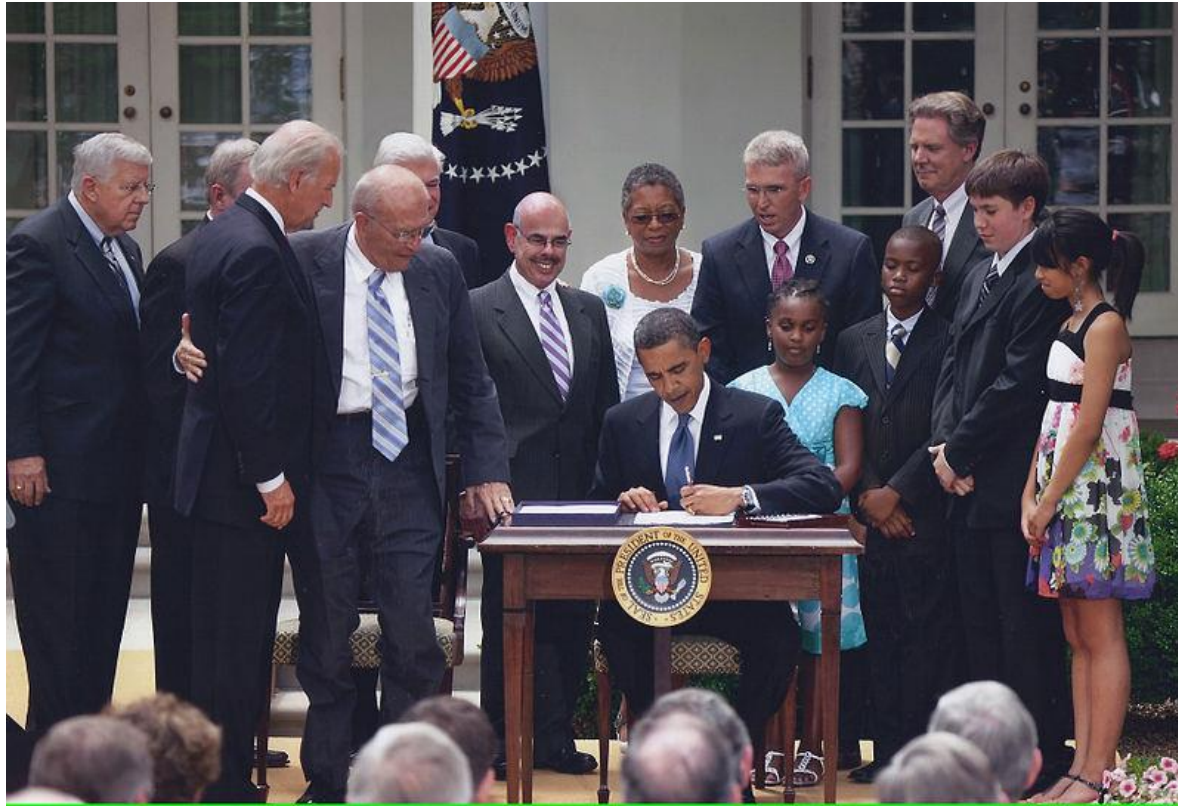
Beyond menthol use, racial inequities in cessation have resulted from **racism and marginalization in housing, education, employment, built and social environments, and healthcare**



Note: Shaded areas represented 95% confidence intervals. Break in trend due to a change in survey weighting methodology in 2011  
Source: Massachusetts BRFSS



# Menthol is a Racial Justice Issue: Policy



President Obama signing the "Family Smoking Prevention and Tobacco Control Act" (2009)

Banned the sale of any flavored cigarettes **except mint and menthol** as flavored cigarettes are appealing to youth



Massachusetts Governor Charlie Baker signing "An Act Modernizing Tobacco Control" (2019)

Effectively closes loophole in the FSPTCA by restricting the sale of menthol tobacco products, including menthol cigarettes, to smoking bars for on-site consumption, only.

# Local Enforcement

**The Massachusetts Tobacco Cessation and Prevention Program (MTCP) provides funding for enforcement activities in 16 Collaboratives (100% of retailers in these collaboratives)**

## **To ensure equitable enforcement of the law:**

- The Department of Public Health regulations name local boards of health as the primary enforcement agent for the point-of-sale components of this law
- The law does not include purchase, use, or possession (PUP) penalties
- The law requires that penalties are enforced against businesses (not individuals)
- The law requires that all penalties are non-criminal

# Key Evaluation Questions



**Retail Environment:** Has the new law decreased sales and availability of menthol and other flavored tobacco?  
How has it impacted overall tobacco sales?

## **Awareness/**

**Perceptions:** Are adults aware of the law? Do they support it?



## **Tobacco Use:**

Has the new law decreased menthol and other flavored tobacco use among youth and adults? Has it decreased tobacco use overall?



**Cessation:** Has the new law increased rates of tobacco treatment and use of evidence-based resources?



**Racial Equity:** Has the new law decreased sales/availability of menthol and other flavored tobacco, decreased tobacco use, and increased rates of tobacco treatment in communities of color?

# MTCP Data Sources: Existing Data

## Retail Environment

### Retailer information

- Address, type of store (convenience, vape shop, tobacconist, gas station, grocery store, etc), contact information
- Used to monitor retail density and for any place-based analysis

### Compliance Checks

- Tracks underage youth tobacco sales
- 100% of all MA retailers receive at least one visit per year; retailers in funded communities get more
- Demographic of youth, whether illegal sale was made

### Inspection Visits

- Tracks violations to point-of-sale policies (other than underage sales), as well as topics discussed with retailers and materials distributed (e.g. signs, copy of regulations, etc.)
- Conducted in **100% retailers in MTCP-funded communities** every year

### Pricing Survey

- Tracks availability and price of select flavored and non-flavored tobacco products, including cigarettes, cigars, smokeless, and vape products
- Conducted in **100% retailers** every year

# MTCP Data Sources: Existing Data

## Tobacco Use

### Youth Health Survey (YHS)/Youth Risk Behavior Survey (YRBS)

- Conducted on odd years to a sample of middle schools (YHS only) and high schools (both) in Massachusetts
- Used to monitor statewide youth prevalence on tobacco use, access, perception of risks, etc.

### Behavioral Risk Factor Surveillance System (BRFSS)

- Telephone survey conducted annually to Massachusetts adults
- Used to monitor statewide adult prevalence on tobacco use, quitting behavior, SHS exposure, etc.

## Cessation

### MassHealth Claims

- Claims database which includes claims for NRT, cessation medication, and counseling





### Massachusetts Quitline

- National Jewish Health, the Quitline vendor for Massachusetts, maintains a database of Quitline service information from referral to counseling completion to outcomes evaluation. NJH provides monthly summary reports, as well as raw data files, to MTCP

### MDPHnet

- EHR data which includes tobacco use status. Can create a cohort and assess changes in tobacco use status over time

# MTCP Data Collection: New Data Sources

Topic		Data Source
	Retail Environment	<ul style="list-style-type: none"><li>Nielsen and IRI data (UPC scanner data)</li></ul>
	Awareness/Perceptions	
	Tobacco Use	
	Cessation	



Did the State Law Result in  
Reductions in Flavored and  
Menthol Sales in  
Massachusetts?

# Nielsen and IRI Data: Overview

## Methods

- MTCP obtained **quarterly Nielsen data** for retail sales of tobacco products in **Massachusetts** and **neighboring states (New Hampshire, New York, Rhode Island, Vermont)** from **June 2017 (3 years pre-law implementation)** to date
- MTCP obtained **quarterly IRI data** from **Massachusetts and New Hampshire** from **June 2019 (1 year pre-law implementation)** to date

## Population

Nielsen: Sales data from **large retailers** (~25% of all tobacco retailers in Massachusetts)

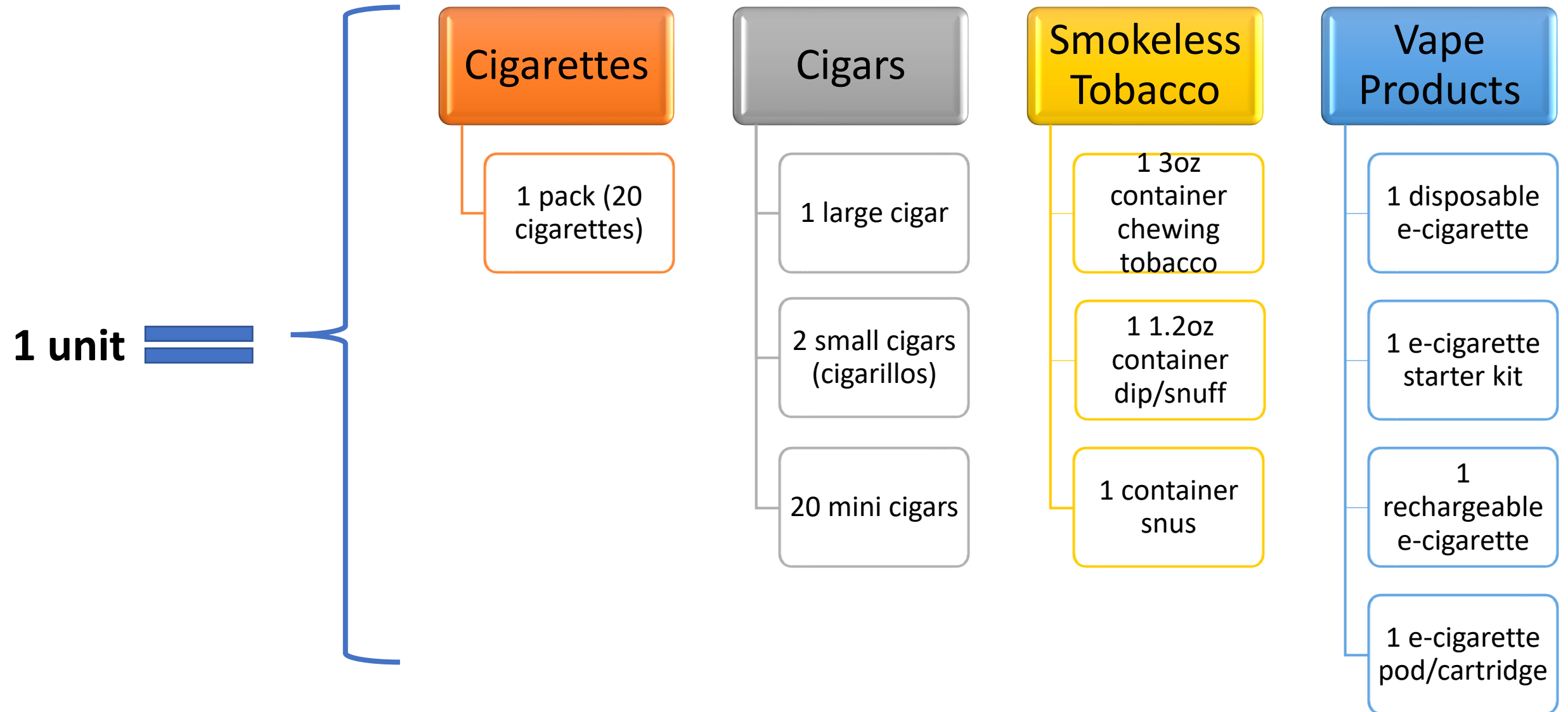
IRI: Sales data from 90% of large retailers and 25% of convenience stores in Massachusetts

## Outcomes

Unit sales of menthol, other flavored, and non-flavored tobacco products (includes sales of cigarettes, cigars/cigarillos, smokeless tobacco, and vape products)

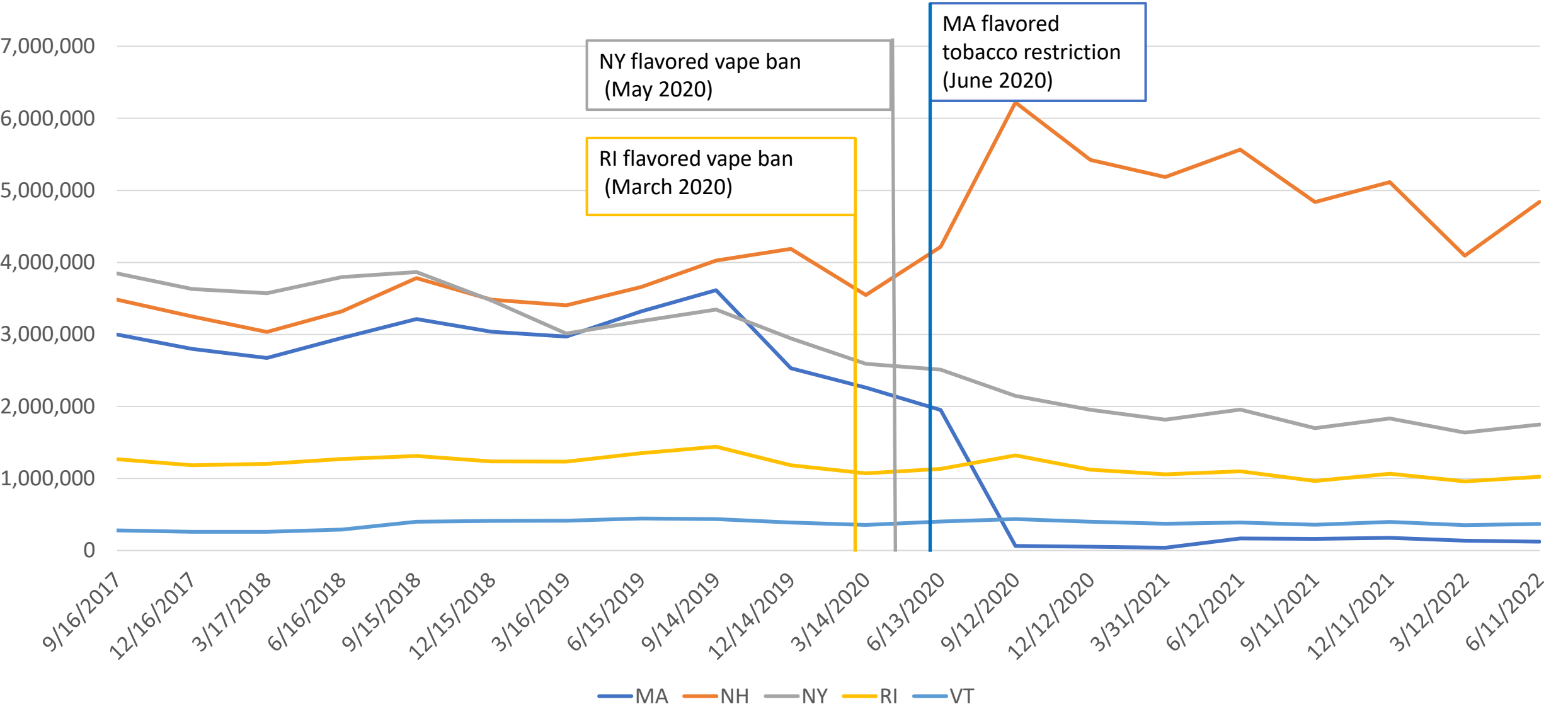


# Tobacco Retail Sales Data Analysis: Standardization



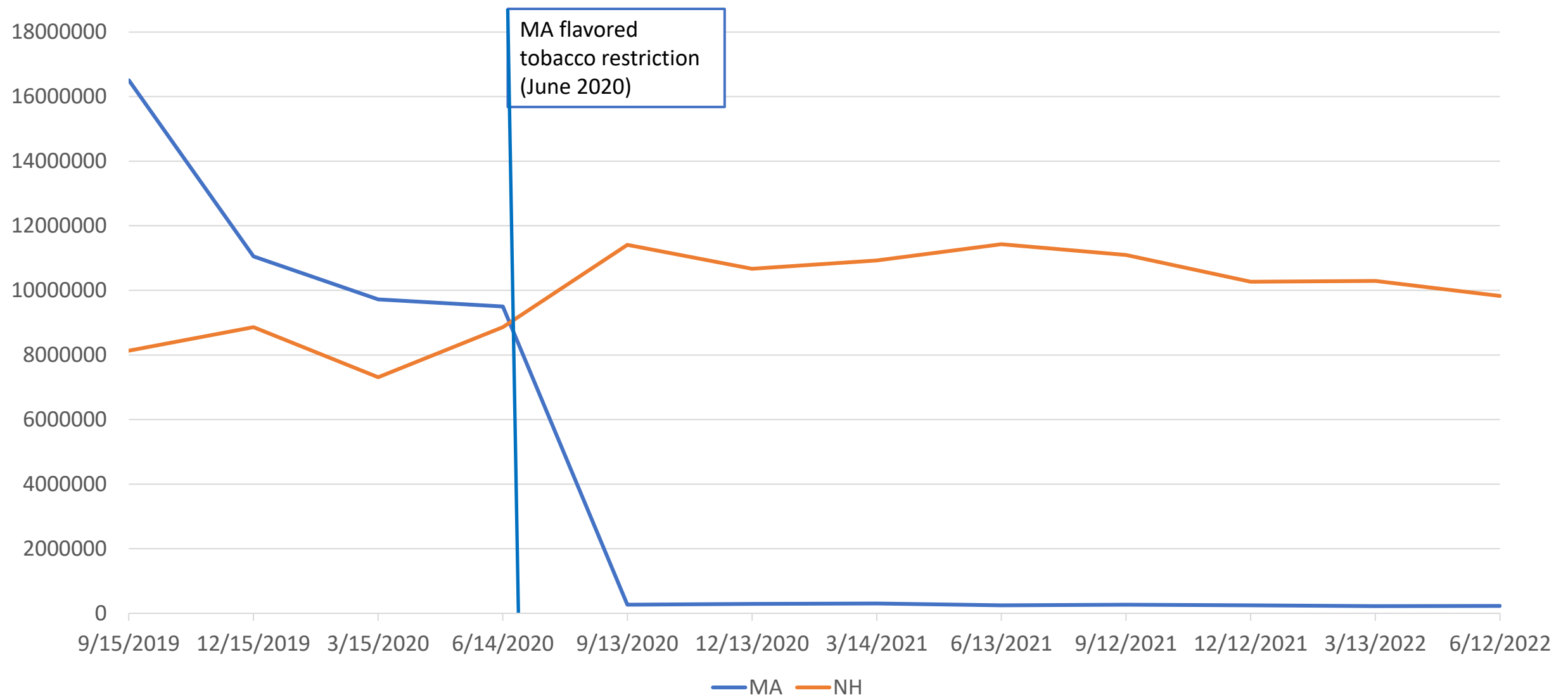
# Units of Menthol Tobacco Sold-*Nielsen Data*

Following MA flavored tobacco restriction, sales of menthol products decreased in MA and temporarily increased in NH



# Units of Menthol Tobacco Sold- *IRI Data*

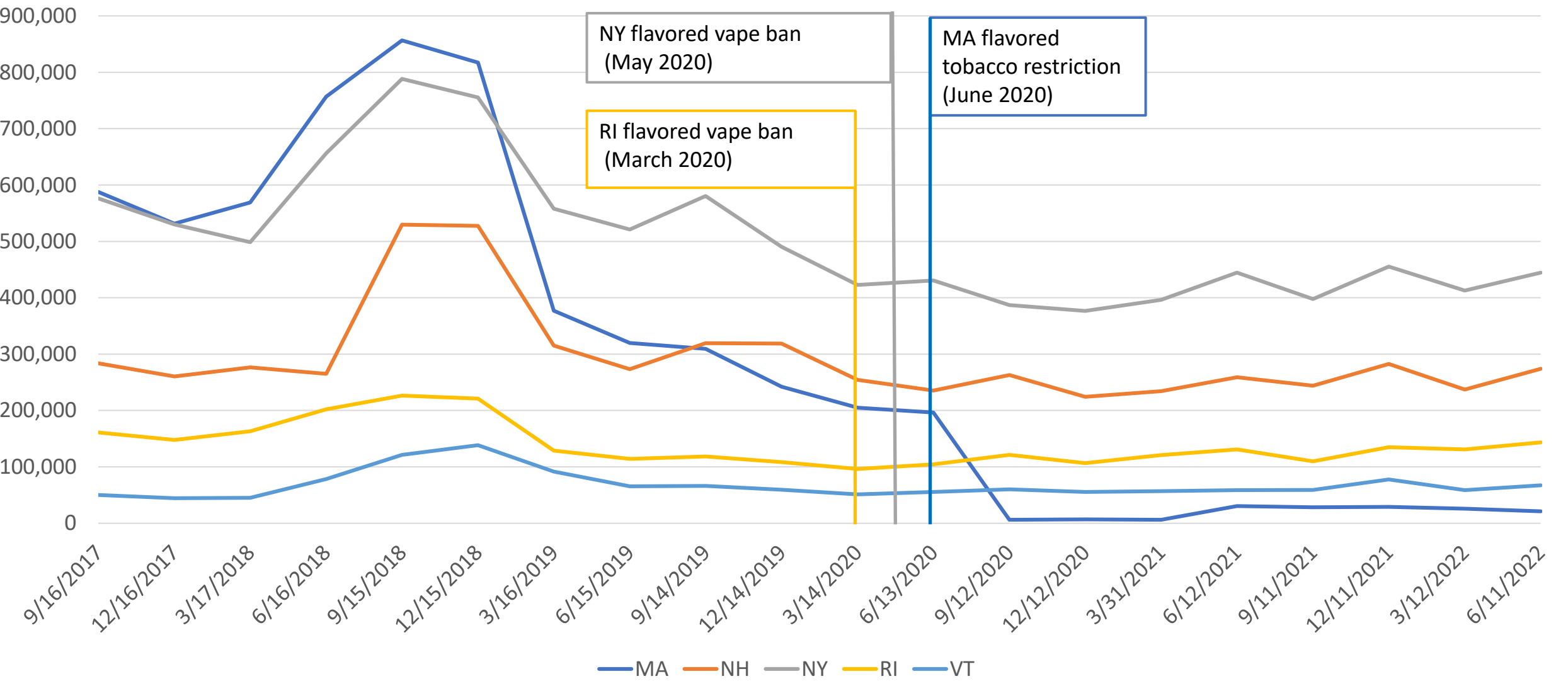
Following MA flavored tobacco restriction, sales of menthol products decreased in MA and temporarily increased in NH



**Source:** IRI Market Advantage, Massachusetts Multi-Outlet and Convenience

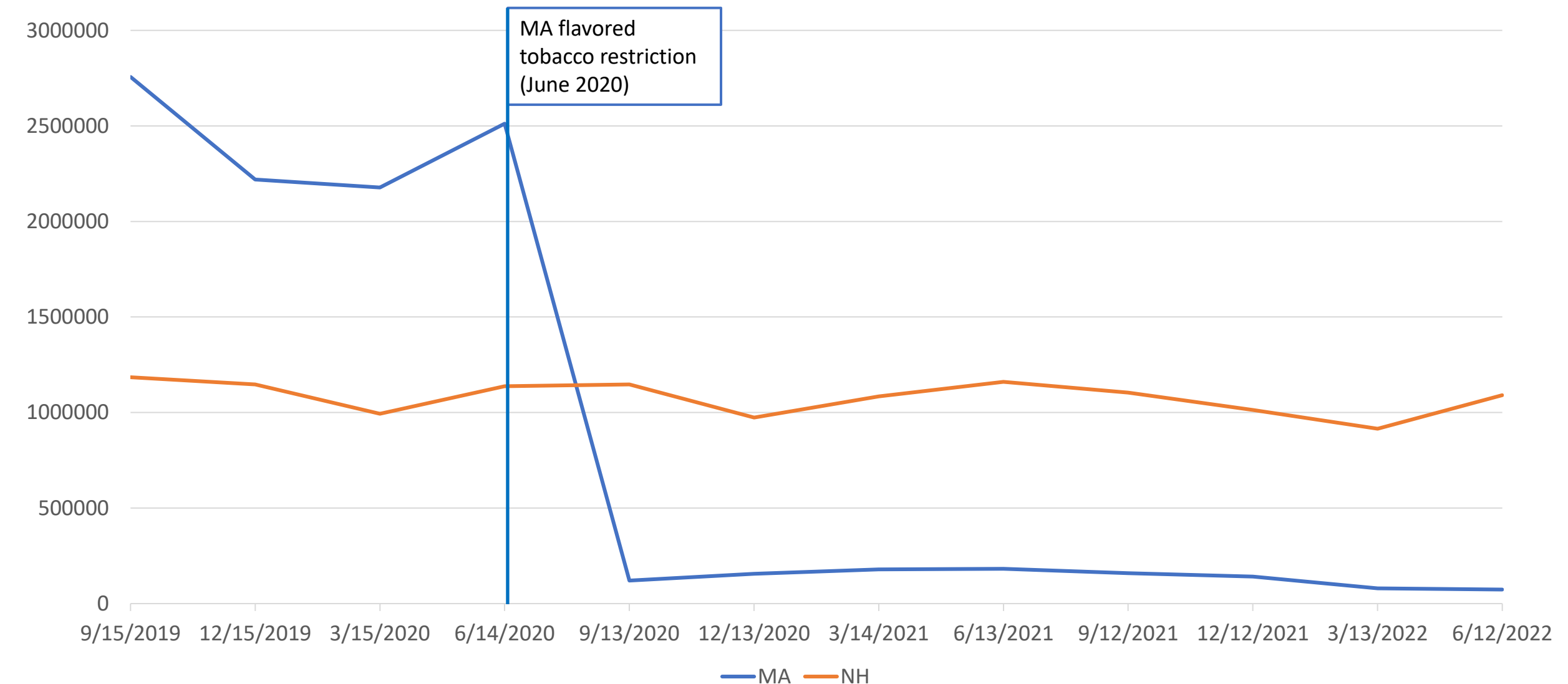
# Units of Flavored Tobacco Sold- *Nielsen Data*

Following MA flavored tobacco restriction, sales of flavored tobacco decreased in MA without large increases in neighboring states



# Units of Flavored Tobacco Sold (Excluding Menthol): *IRI Data*

Following MA flavored tobacco restriction, sales of flavored tobacco decreased sharply in MA and did not increase in NH



**Source:** IRI Market Advantage, Massachusetts Multi-Outlet and Convenience

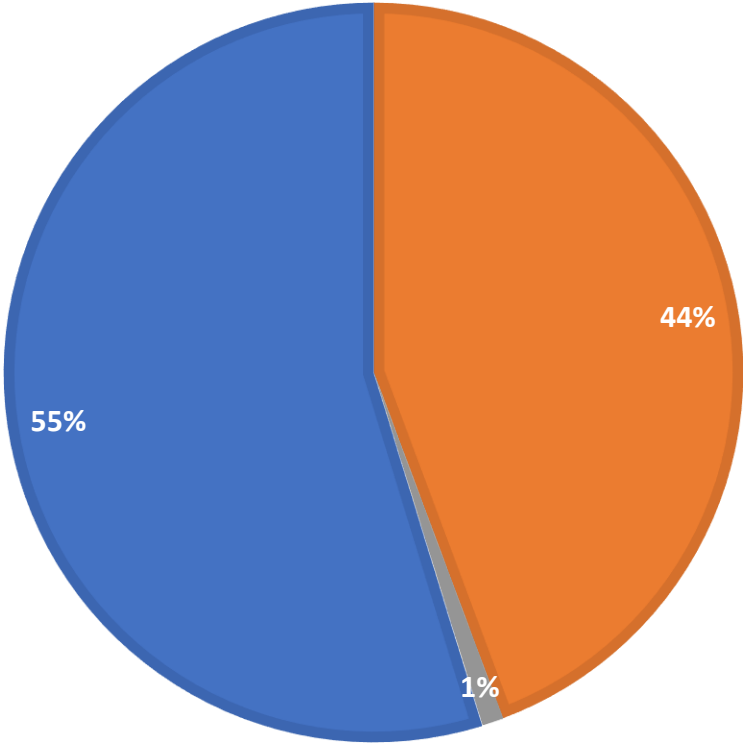
**What is Driving Menthol  
Sales in New Hampshire?**

# Cigarette Sales by Pack Size- *Nielsen Data*

Percent of carton sales are much higher in NH than in Massachusetts

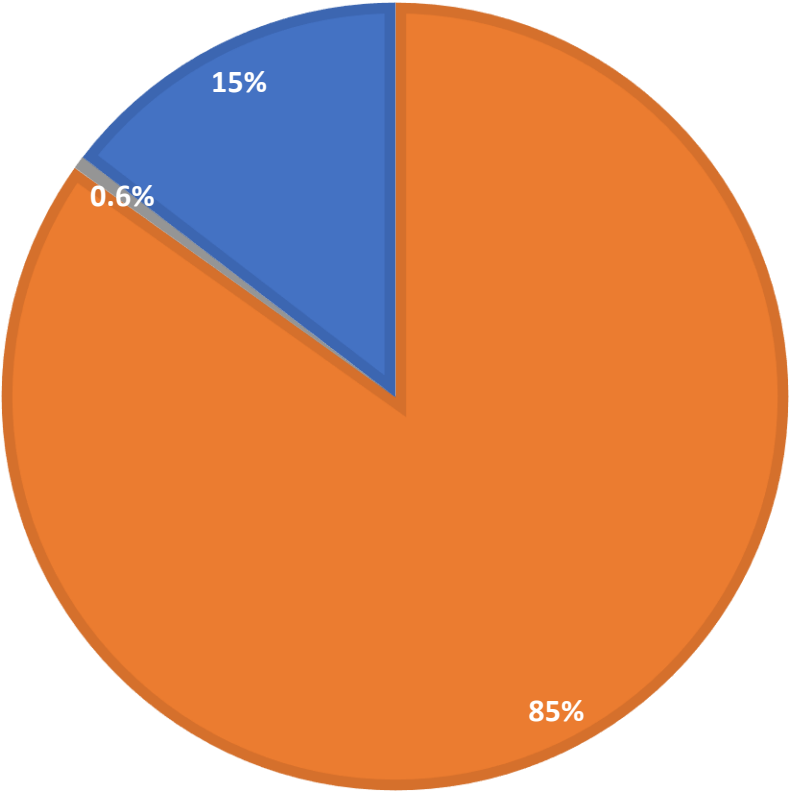
NH SALES BY PACK SIZE

single pack   multi pack   carton

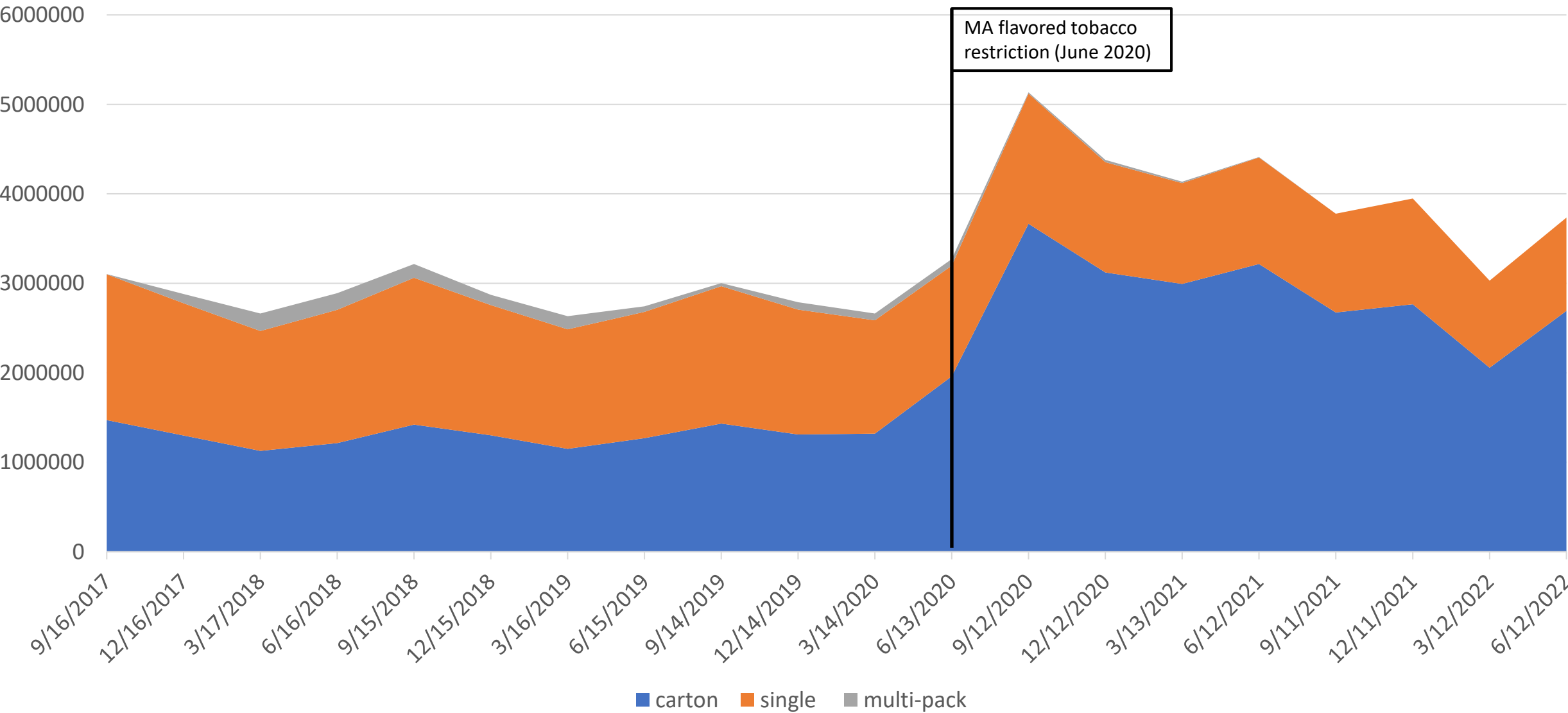


MA SALES BY PACK SIZE

single pack   multi pack   carton



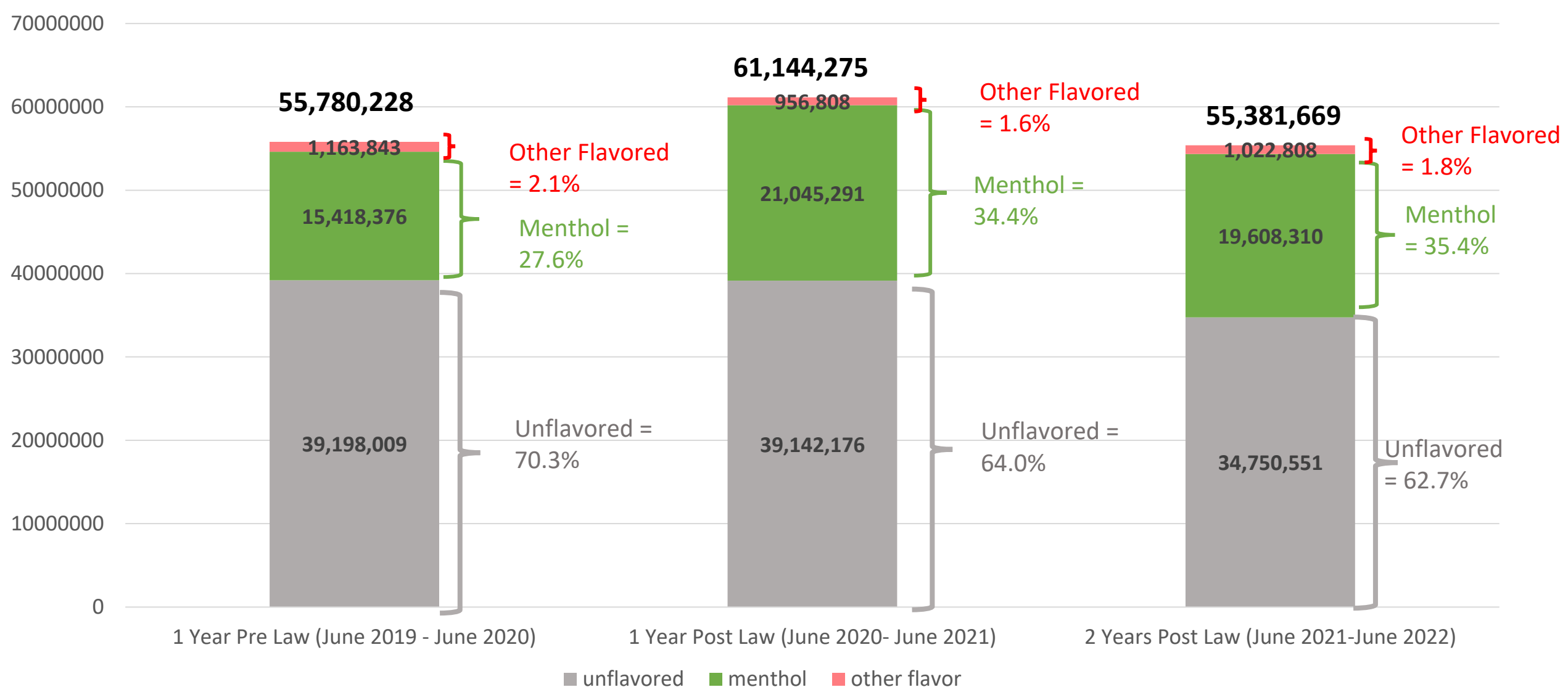
# Menthol Cigarettes Sold in NH by Pack Size- *Nielsen Data*





# Tobacco Units Sold in New Hampshire- *Nielsen Data*

Proportion of tobacco sales that are menthol Increased in NH after the law, but total units sold has now returned to pre-law levels



# Sales Data Summary

Drastic reductions in unit sales of menthol and other flavored tobacco products have been seen in Massachusetts post-law implementation; substantial increases have not been seen in most neighboring states

An increase in menthol sales was seen in NH immediately post-law implementation. This increase was not sustained, and total tobacco sales in NH have changed minimally. Menthol sales in NH are primarily driven by cigarette cartons

High retailer compliance can be attributed in part to MTCP's long history of supporting local tobacco policy movement and rigorous enforcement infrastructure:

- Letters and guidance tools created for retailers (translated into multiple languages)
- Educational trainings provided to all retailers

# Publications: MTCP Study

Impact of Massachusetts' Statewide Sales Restriction on Tobacco Sales in Massachusetts and Surrounding States, June 2020.

<https://ajph.aphapublications.org/doi/10.2105/AJPH.2022.306879>

- **Major findings:**
  - Nielsen sales data from 3 years pre-law implementation (June 2017-June 2020) 1 year post-law implementation (June 2020-June 2021) indicate high retailer compliance in Massachusetts, with drastic decreases seen in sales of both menthol and other flavored tobacco.
  - Most neighboring states assessed (Vermont, Rhode Island, New York) did not see increases in overall tobacco sales, although New Hampshire saw an initial increase in menthol sales in the 3 months following implementation, which was not sustained. Furthermore, when comparing changes in menthol sales in NH and MA in the year following implementation, a net decrease in menthol sales was seen.

# Publications: External Studies

**American Cancer Society:** Association of Cigarette Sales With Comprehensive Menthol Flavor Ban in Massachusetts.

<https://jamanetwork.com/journals/jamainternalmedicine/article-abstract/2787781>

- **Major findings:** Nielsen sales data from 3.5 years pre-law implementation (January 2017-May 2020) to 1 year post-law implementation (June 2020-July 2021) indicate significantly greater decreases in overall cigarette sales and menthol cigarette sales per 1000 people in Massachusetts compared to 27 other states without state or local flavor bans

**American Cancer Society:** Spatial Analysis of Changes in Cigarette Sales in Massachusetts and Bordering States Following the Massachusetts Menthol Flavor Ban. <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2796282>

- **Major findings:** Sales data from the US Department of Treasury from 3.5 years pre-law implementation (January 2017-May 2020) to 1 year post-law implementation (June 2020-July 2021) indicate that monthly cigarette sales per 1000 people decreased in Massachusetts by 350.02 packs and increased by 9.51 packs in bordering states for a net decrease of 340.51 packs per 1000 people

**CDC Foundation:** Impact of Massachusetts law prohibiting flavored tobacco products sales on crossborder cigarette sales.

<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0274022#:~:text=disparities%20%5B17%5D.->

[,Laws%20prohibiting%20the%20sale%20of%20flavored%20tobacco%20products%2C%20including%20menthol,where%20menthol%20cigarettes%20are%20sold](https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0274022#:~:text=disparities%20%5B17%5D.-,Laws%20prohibiting%20the%20sale%20of%20flavored%20tobacco%20products%2C%20including%20menthol,where%20menthol%20cigarettes%20are%20sold)

- **Major Findings:** IRI sales data from 6 months before (January 2020-May 2020) and after (June 2020-December 2020) law implementation indicate that there were no statistically significant changes in menthol cigarette sale in bordering states(New Hampshire, Connecticut, Vermont, Rhode Island) compared to 28 non-bordering states after the law was implemented. These findings did not change after adjusting for product prices, tobacco control policies, COVID, sociodemographic factors, and fixed effects

Is the law decreasing access  
to and use of flavored  
tobacco among adults?

# Adult Panel Survey Data: Overview

## Methods

MTCP conducted an online survey that was disseminated in 11 Massachusetts communities with higher-than-state average Black, Indigenous, or People of Color (BIPOC) populations. Surveys were administered through both an online panel and direct household mailings in four languages: English, Spanish, Portuguese, and Haitian Creole.

## Population

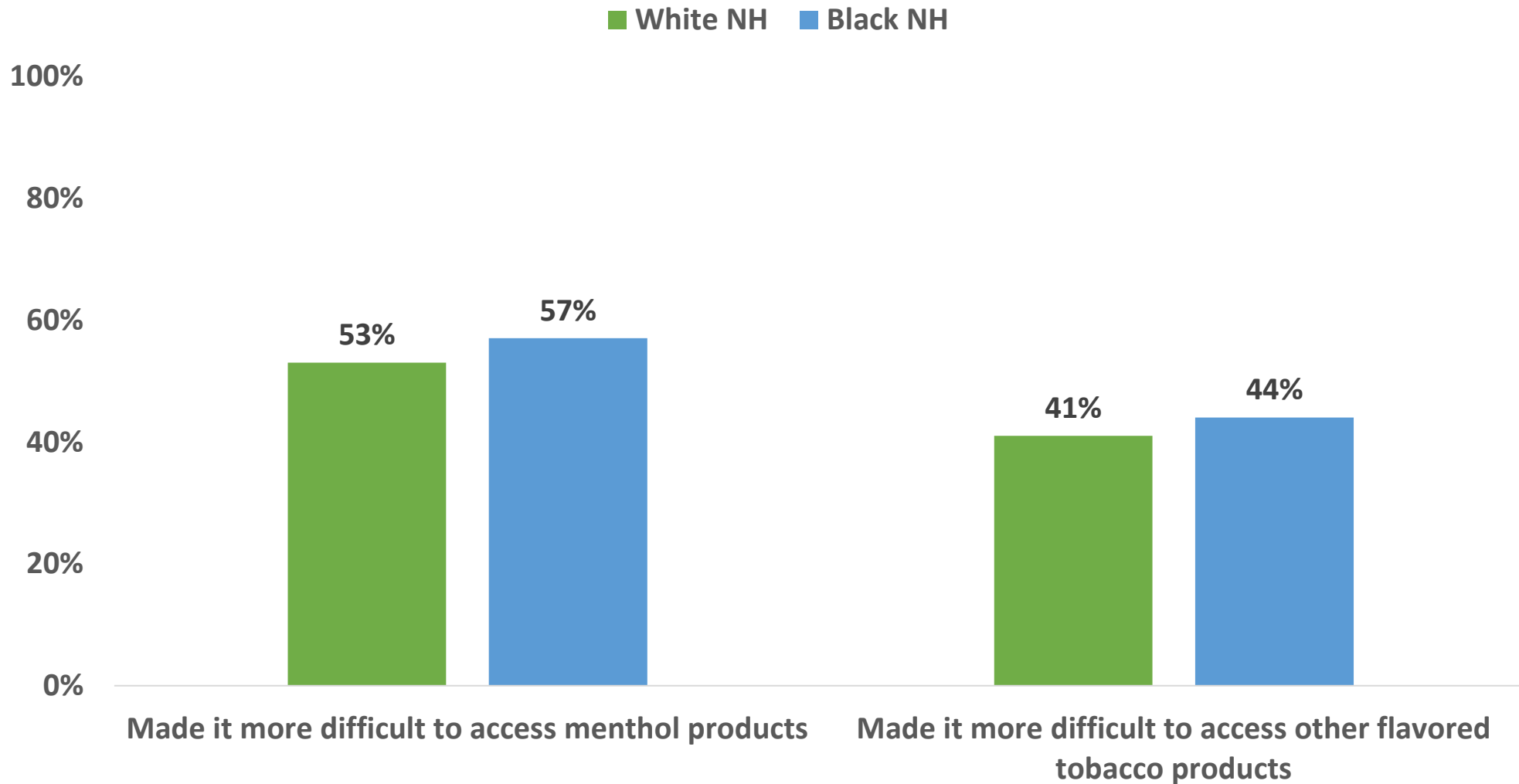
Adults (21+) that used tobacco products in the past year. The analytic sample included residents who reported using flavored or menthol tobacco products who identified as Black (n=63) or White non-Hispanic (n=231)

## Outcomes

- Awareness and perceptions of the law
- Perceptions of community impact
- Sources of tobacco access (in and out of state)
- Impact of the law on quitting
- Barriers to quitting

# Sources of Access to Restricted Tobacco Products

Almost half of both White and Black respondents reported that the law made it more difficult to access menthol and other flavored tobacco products\*



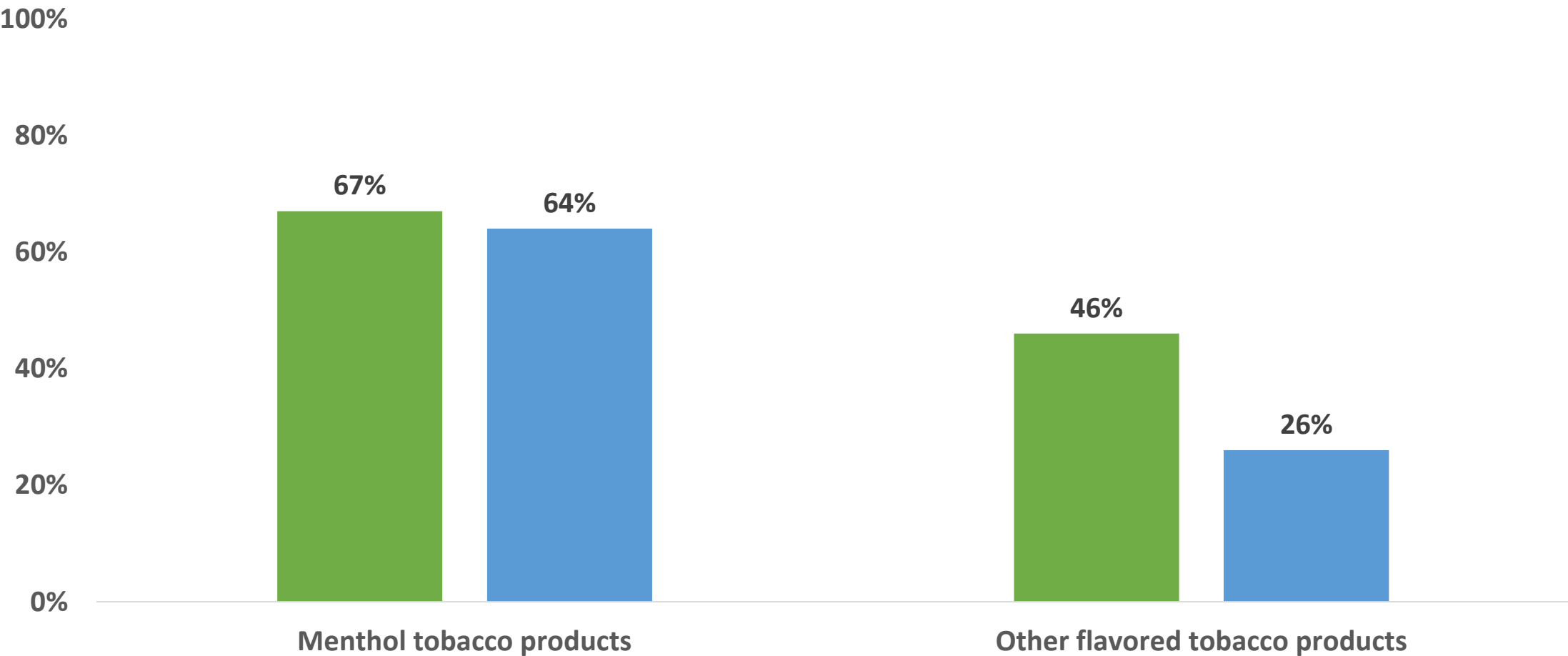
\*No statistically significant differences

Source: MA Online Panel Survey, 2021

# Out of State Access to Restricted Tobacco Products

Many respondents reported purchasing menthol and other flavored tobacco products out of state\*

■ White NH ■ Black NH



\*No statistically significant differences

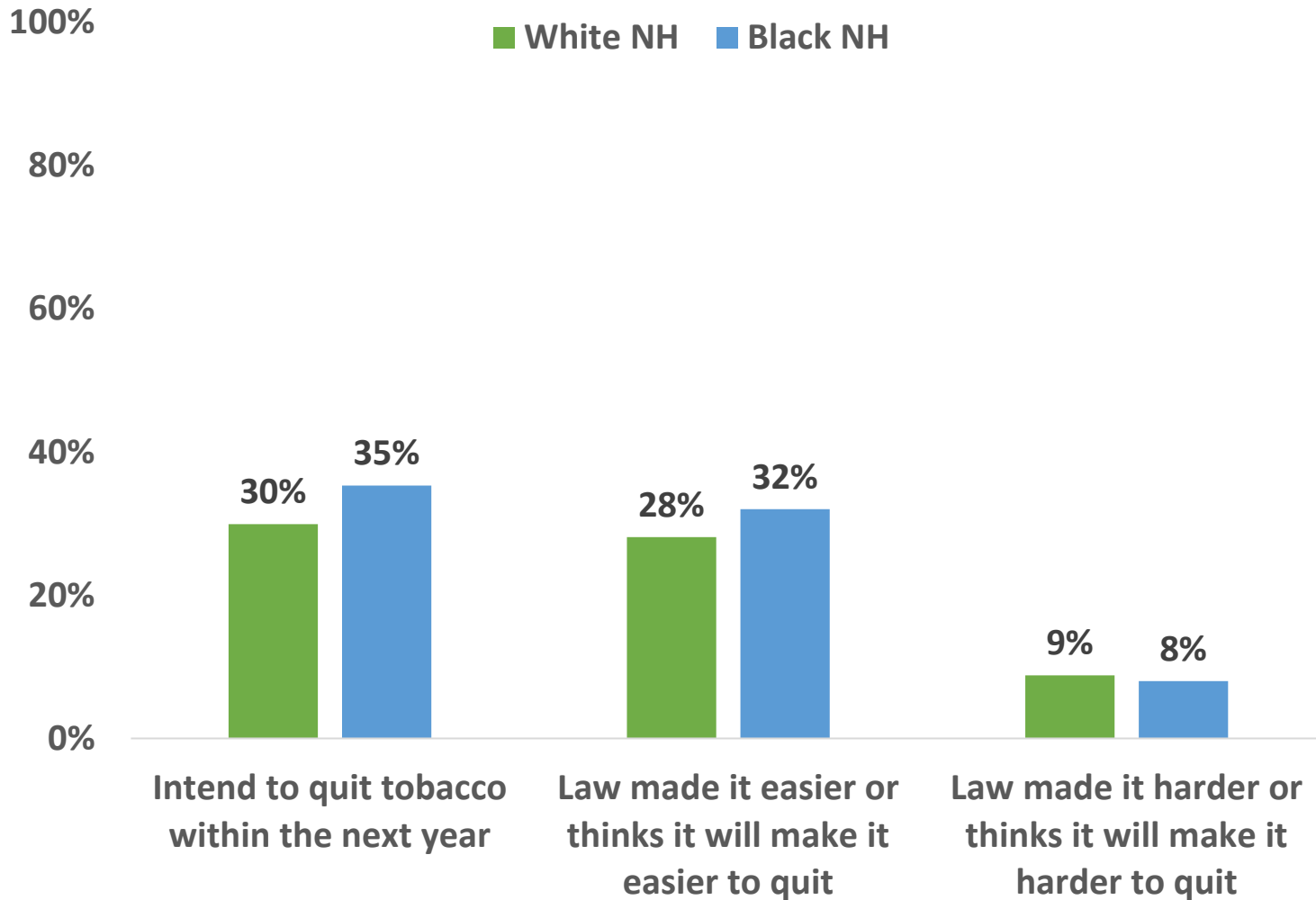
Source: MA Online Panel Survey, 2021



Is the law increasing rates  
of successful quitting  
among adults?

# Impact of the Law on Quitting

Around a third of respondents believe the law will make it easier to quit smoking



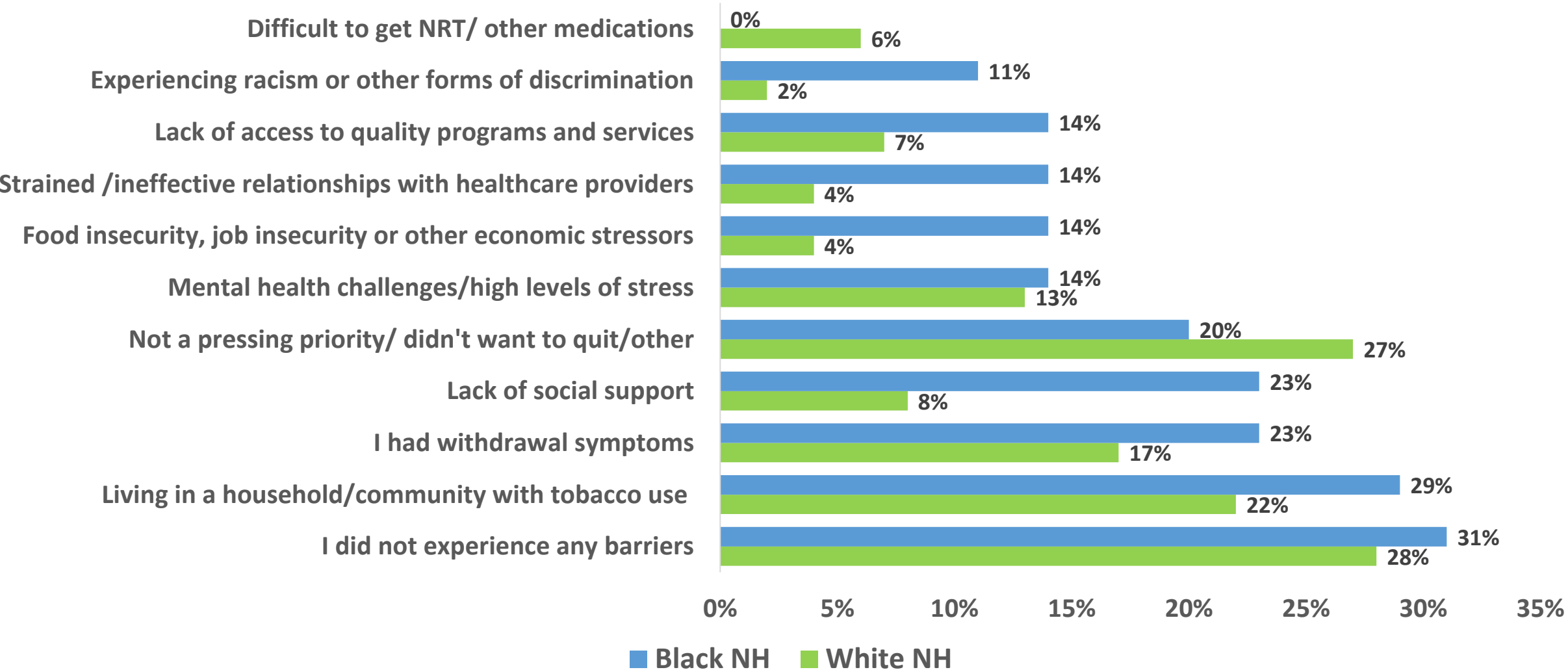
***Law will make it easier:*** “more of a pain to get them so less likely to go get them ”

***Law will make it harder:*** “these products aren’t hard to find. If they were completely wiped out then yes I would try to quit. But its very easy to get all of these products.”

Source: MA Online Panel Survey, 2021

# Barriers to Quitting

Overall Black respondents reported higher rates of barriers to quitting



Source: MA Online Panel Survey, 2021

# Flavored Tobacco Restrictions Are Not Sufficient on Their Own to Support Cessation

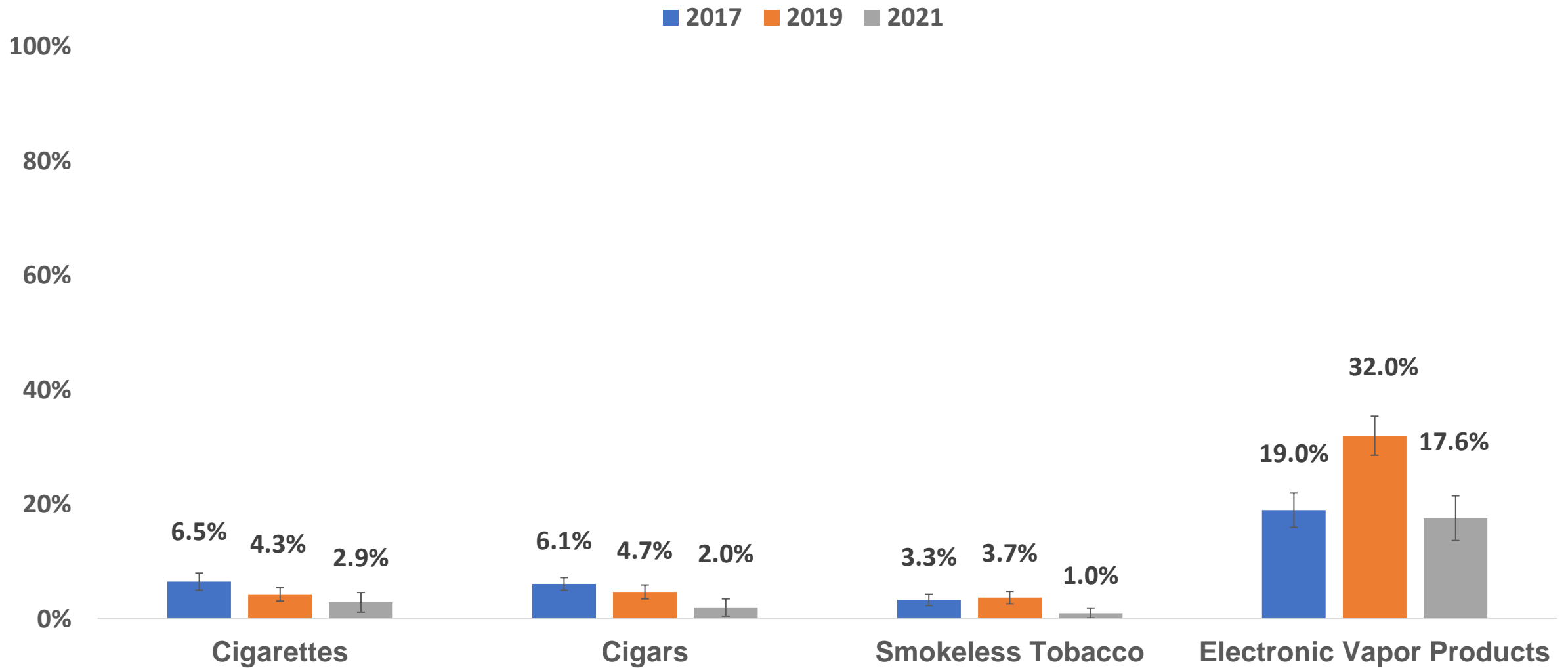
Panel survey data suggest about 1 in 3 menthol and other flavored tobacco users are interested in quitting tobacco and believe the law will make it easier to quit

However, barriers to quitting still exist, especially among BIPOC populations. Tobacco product restriction policies should be paired with initiatives to support treatment among tobacco users

- Massachusetts flavored tobacco restriction law requires insurers to cover tobacco counseling and at least one FDA-approved tobacco cessation product
- Massachusetts Quitline menthol incentive program

Is the law decreasing  
tobacco access and use  
among youth?

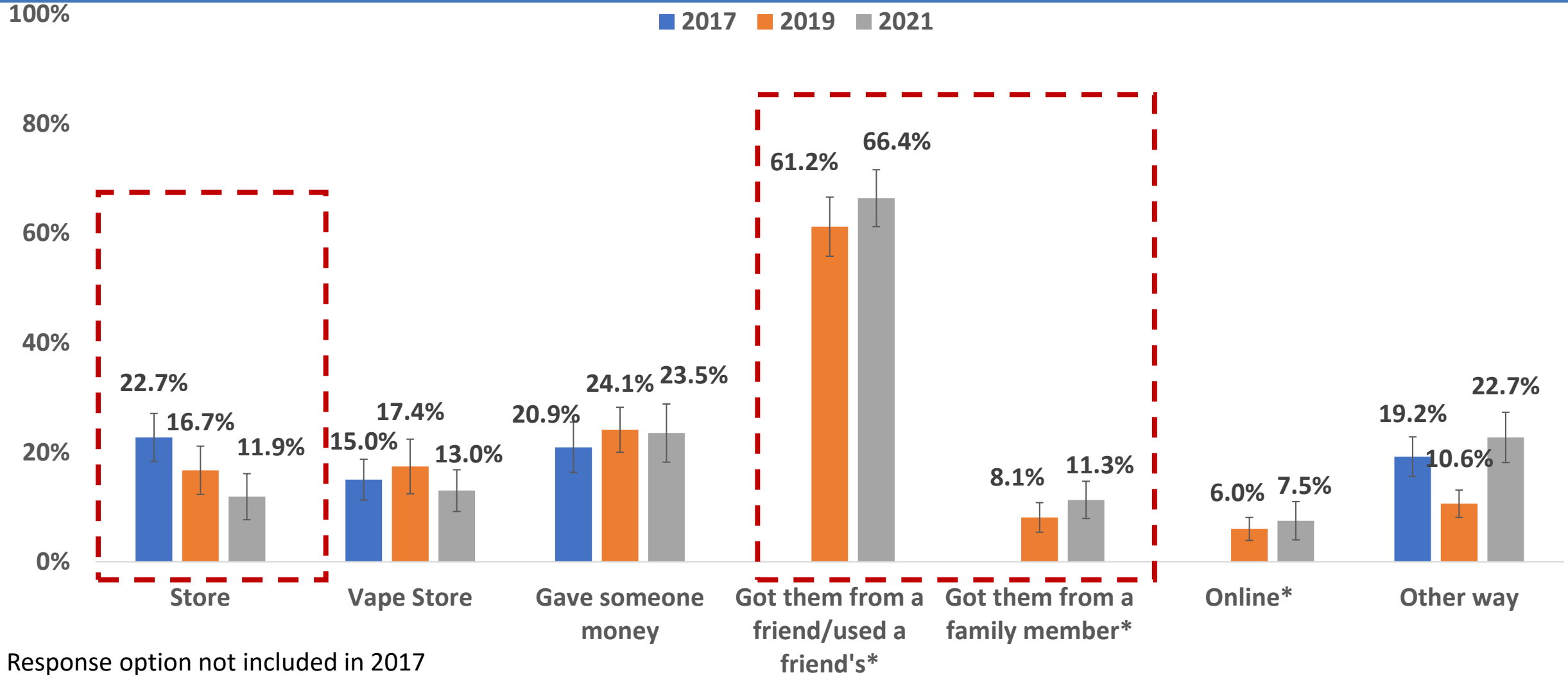
# YHS: Current tobacco use rates are decreasing among high school students



**Source:** Massachusetts YHS, 2017-2021

**Note:** 2021 YHS data is preliminary and subject to change

# YHS: High school students who are current (past 30-day) tobacco users are less likely to access tobacco products from stores



\* Response option not included in 2017

**Source:** Massachusetts YHS, 2017-2021

**Note:** 2021 YHS data is preliminary and subject to change



# Massachusetts Department of Public Health

## **Thank You!**

### **MTCP Evaluation Team Members:**

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FAX: (617) 248-0372

Geoffrey E. Snyder  
Department of Revenue, Commissioner  
100 Cambridge Street  
Boston, MA 02114

September 23, 2022

**Re: Treasurer Goldberg Designee to the Illegal Tobacco Task Force**

Dear Commissioner Snyder,

Pursuant to the provisions of Mass. Gen. Laws ch. 64C, sec. 40, I, Deborah B. Goldberg, Treasurer and Receiver General of the Commonwealth of Massachusetts, hereby designate Dan O'Neil to serve as a designee to the Illegal Tobacco Task Force. Emily Kowtoniuk will continue to serve as alternate.

This designation takes effect immediately.

Sincerely,

A handwritten signature in blue ink, appearing to read "Deborah B. Goldberg".

Deborah B. Goldberg  
Treasurer and Receiver General