

ILLEGAL TOBACCO TASK FORCE

Public Meeting #60 Minutes

Meeting Date: Wednesday, May 22, 2024

Meeting Time: 1:00 pm

Meeting Location: Via Zoom conferencing, dial (646) 558-8656, Meeting ID# 848 8972 2552, Passcode 945091

Board Attendance: John Hayes (DOR), Lieutenant Colonel Brian Connors (MSP), Molly Butler (DPH), John Melander (EOPSS), Nicole Nixon (AGO), and Dan O'Neil (TRE).

Public Attendance: 23 attendees

Call to Order:

- Mr. Hayes called the meeting to order at 1:03 PM. Mr. Hayes informed all participants that this meeting will not be recorded by Zoom and that Cole Doherty-Crestin will take notes to complete the minutes, which will be posted to the Task Force website.

Opening Remarks:

- Mr. Hayes thanked everyone for attending and Task Force members introduced themselves. Mr. Hayes indicated the purpose of today's meeting is to discuss possible legislative recommendation related to Electronic Nicotine Delivery Systems (ENDS).

Approval of Minutes from Meeting #59 on February 28, 2024:

- Cole Doherty-Crestin emailed a copy of the minutes for Meeting #59 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. Lt Col Brian Connors and Dan O'Neil approved the motion. Mr. Hayes stated that with no objection, the minutes were approved and will be posted to the Task Force website.

Possible Legislative Recommendations RE ENDS

- Mr. Hayes provided a summary of the procedure for the disposal of seized ENDS products. Liquid nicotine is classified as an acutely hazardous substance and therefore regulated by the EPA and MA DEP. The regulation does not apply to consumers but does apply to government agencies and businesses. DOR contracts with a HAZMAT company to safely dispose of seized ENDS products once they are no longer needed for civil or criminal proceedings. DOR has conducted three (3) ENDS disposals where the Agency disposed of the products in 55-gallon barrels. The average cost thus far is about \$1,000 per barrel. DOR generally disposes of between eighteen (18) and twenty-five (25) barrels per disposal. The cost of the disposal was not originally included in the budget. During some recent conferences, Mr. Hayes learned that a few states have proposed new bills to fund ENDS disposal, including Nevada and Nebraska. Mr. Hayes shared the language of the Nevada bill with members. The proposed bills require the offenders who violated the law to pay for the cost of disposal. Nicholas Ogden commented that it may be administratively difficult to issue the reimbursement bills and collect the funds and perhaps an earmark to specifically fund the ENDS disposal would make more sense.

Mr. Hayes indicated that this would be added to the next discussion. Copies of excerpts of the the bills are attached at the end of this document.

Member Agency Updates

- DOR Tobacco Storage Facilities: Mr. Hayes reported that DOR's storage facilities, located in eastern and western MA, are expected to be up-and-running by the end of the calendar year. Mr. Hayes inquired whether members had any agency updates.
- Dan O'Neil, State Treasurer and Receiver General designee, reported that there is a new system in place to suspend lottery licenses held by violators of tobacco excise laws. O'Neil said the system had been working efficiently. No other updates were reported by members.

Other Business

- Illegal Tobacco Task Force & Press Releases: Mr. Hayes provided a brief overview of the history of ITTF and press releases. Press releases related to ITTF are commonly seen following the publication of the annual report. ITTF does not have a press office and will not respond to press inquiries itself as it is not a part of the Task Force's legislative requirements. Agencies are directed to utilize their own media outlets and resources when addressing such inquiries. Lt Col Brian Connors noted that member agencies occasionally collaborate on responses and highlighted the importance of connecting all the member agency's press groups. Collaboration would help ensure consistency.
- Increase in Flavored Synthetic Nicotine Pouches: Mr. Hayes provided an overview of Flavored Synthetic Nicotine Pouches. These products do not contain tobacco; therefore, they are not taxable and cannot be seized by ITTF. An example of these pouches is Zyn. Mr. Hayes reported that DOR has seen an increase in these products during investigations. Lt Col Brian Connors reported that MSP has also seen an increase in these products. Dan O'Neil inquired whether these products were used by smokers for cessation. Molly Butler, Department of Public Health, responded that "the FDA has not approved any oral nicotine products for cessation purposes." Mr. Hayes added that the Local Board of Health (LBOH) does not have the authority to seize products and asked DPH for clarification. Molly Butler indicated that it is up to each LBOH, but most don't seize products and the DPH recommends not to seize the products. Ms. Butler will be sending out some additional information from the DPH on nicotine pouches, which is attached to the minutes.
- No other business was reported by members.

Closing Remarks

- Mr. Hayes noted that the next meeting is expected to be held in late-June to early-July at which time the Task Force will be looking for public input to improve tobacco laws & efforts of the Task Force.
- Mr. Hayes kindly thanked participants for their attendance and asked whether there was a motion to end the meeting. Dan O'Neil and Lt Col Brian Connors approved the motion. Mr. Hayes adjourned the meeting at 1:25 PM.

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 1296

Introduced by Hughes, 24; Albrecht, 17; Ballard, 21; Bosn, 25; Brandt, 32; Brewer, 43; DeKay, 40; Hardin, 48; Holdcroft, 36; Ibach, 44; Kauth, 31; Lippincott, 34; Lowe, 37; Meyer, 41; Murman, 38; von Gillern, 4.

Read first time January 16, 2024

Committee: General Affairs

1 A BILL FOR AN ACT relating to tobacco; to amend sections 28-1422,
2 28-1429, and 59-1523, Reissue Revised Statutes of Nebraska, sections
3 28-1418.01 and 28-1425, Revised Statutes Cumulative Supplement,
4 2022, and section 77-4001, Revised Statutes Supplement, 2023; to
5 define and redefine terms; to prohibit certain conduct relating to
6 controlled substances and counterfeit substances; to prohibit
7 delivery sales of electronic nicotine delivery systems; to change
8 provisions relating to licensure for sales of tobacco products; to
9 provide for revocation of licenses for certain violations; to
10 provide requirements for manufacturers and licensees under the
11 Tobacco Products Tax Act; to create a directory of electronic
12 nicotine delivery systems and manufacturers; to provide powers and
13 duties for the Tax Commissioner and Attorney General; to provide
14 penalties; to harmonize provisions; and to repeal the original
15 sections.
16 Be it enacted by the people of the State of Nebraska,

(FYI: Pages 2 - 9 and 11 of the Nebraska bill were redacted as they were not relevant to ITTF meeting topic. The full copy of the bill can be researched on the Nebraska legislative webpage.)

1 removed from the directory.

2 (3) If the Tax Commissioner determines that an electronic nicotine
3 delivery system manufacturer or system of such manufacturer shall not be
4 included in the directory, such manufacturer may request a contested case
5 before the commissioner under the Administrative Procedure Act. The
6 commissioner shall notify the manufacturer in writing of the
7 determination not to include it in the directory. A request for hearing
8 shall be made within thirty calendar days after the date of such
9 determination and shall contain the evidence supporting the
10 manufacturer's compliance with sections 9 and 10 of this act. The hearing
11 shall be held within sixty days after the request. At the hearing, the
12 commissioner shall determine whether the manufacturer is in compliance
13 with such sections and whether the manufacturer or system should be
14 listed in the directory. A final decision shall be rendered within thirty
15 days after the hearing. Any decision of the commissioner may be appealed.
16 The appeal shall be in accordance with the Administrative Procedure Act.

17 (4) No later than twenty-one calendar days following removal of an
18 electronic nicotine delivery system manufacturer or system from the
19 directory, each retailer, distributor, and wholesaler shall remove all
20 affected systems from inventory and return the systems to the
21 manufacturer for disposal. After such twenty-one-day period has elapsed,
22 any such system is subject to seizure, forfeiture, and destruction and
23 shall not be purchased or sold in the state. The cost of such seizure,
24 forfeiture, and destruction shall be borne by the person from whom the
25 products are seized.

26 (5) Beginning October 1, 2025, or on the date that the Tax
27 Commissioner first makes the directory available for public inspection on
28 the website of the Department of Revenue, whichever is later:

29 (a) A person shall not sell or offer for sale an electronic nicotine
30 delivery system in this state that is not included in the directory; and

31 (b) An electronic nicotine delivery system manufacturer shall not

1 Sec. 14. All fees and penalties collected by the Tax Commissioner
2 pursuant to sections 12 and 13 of this act shall be remitted to the State
3 Treasurer for credit to the Tobacco Products Administration Cash Fund and
4 used for administration and enforcement of sections 9 to 19 of this act.

5 Sec. 15. A violation of sections 9 to 19 of this act shall
6 constitute a deceptive trade practice under the Uniform Deceptive Trade
7 Practices Act and, in addition to any remedies or penalties set forth in
8 sections 12 and 13 of this act, shall be subject to any remedies or
9 penalties available for a violation under the Uniform Deceptive Trade
10 Practices Act.

11 Sec. 16. (1) In order to enforce sections 9 to 19 of this act, the
12 Tax Commissioner and Attorney General may examine the books, papers,
13 invoices, and other records of any person in possession, control, or
14 occupancy of any premises where electronic nicotine delivery systems are
15 placed, stored, sold, or offered for sale, as well as the stock of
16 electronic nicotine delivery systems on the premises.

17 (2) Every person in possession, control, or occupancy of any
18 premises where electronic nicotine delivery systems are placed, sold, or
19 offered for sale shall give the Tax Commissioner and Attorney General the
20 means, facilities, and opportunity for the examinations authorized by
21 this section.

22 (3) Each retailer and wholesaler that sells or distributes
23 electronic nicotine delivery systems in this state shall be subject to at
24 least two unannounced compliance checks annually for purposes of
25 enforcing sections 9 to 19 of this act. Unannounced followup compliance
26 checks of all noncompliant retailers and wholesalers shall be conducted
27 within thirty days after any violation of sections 9 to 19 of this act.

28 (4) The Tax Commissioner shall publish the results of all compliance
29 checks at least annually and shall make the results available to the
30 public on request.

31 Sec. 17. (1) Any nonresident manufacturer of electronic nicotine

Assembly Bill No. 455–Committee on Revenue

CHAPTER.....

AN ACT relating to tobacco; authorizing the Department of Taxation to impose a civil penalty for certain violations relating to contraband tobacco products; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law: (1) prohibits a person from knowingly selling or possessing for the purpose of selling any contraband tobacco products; and (2) provides that any person who exports, imports, possesses or constructively possesses contraband tobacco products, with certain exceptions, is guilty of a gross misdemeanor. (NRS 370.405, 370.410) Existing law also requires the Department of Taxation and its agents, sheriffs and all other peace officers of this State to seize any counterfeit stamps, contraband tobacco products, machinery used to manufacture contraband tobacco products and cigarette rolling machines used in violation of existing law that are found in this State. (NRS 370.415) This bill authorizes the Department to impose a civil penalty on any person who violates such provisions of existing law resulting in the seizure of counterfeit stamps, contraband tobacco products, machinery or cigarette rolling machines. This bill further requires any civil penalty to be credited to a separate account in the State General Fund to be used to enforce the provisions governing contraband tobacco products.

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. NRS 370.415 is hereby amended to read as follows:

370.415 1. The Department, its agents, sheriffs within their respective counties and all other peace officers of the State of Nevada shall seize any counterfeit stamps, contraband tobacco products, machinery used to manufacture contraband tobacco products and cigarette rolling machines being used in violation of any provision of this chapter that are found or located in the State of Nevada.

2. A sheriff or other peace officer who seizes stamps, contraband tobacco products, machinery or cigarette rolling machines pursuant to this section shall provide written notification of the seizure to the Department not later than 5 working days after the seizure. The notification must include the reason for the seizure.

3. After consultation with the Department, the sheriff or other peace officer shall transmit the contraband tobacco products to the Department if:

(a) The contraband tobacco products consist of cigarettes and:



(1) Except for revenue stamps being properly affixed as required by this chapter, the cigarettes comply with all state and federal statutes and regulations; and

(2) The Department approves the transmission of the cigarettes; or

(b) The contraband tobacco products consist of any other tobacco products and the Department approves the transmission of the other tobacco products.

4. Upon the receipt of any:

(a) Cigarettes pursuant to subsection 3, the Department shall dispose of the cigarettes as provided in subsection 4 of NRS 370.270; or

(b) Other tobacco products pursuant to subsection 3, the Department shall:

(1) Sell the other tobacco products to the highest bidder among the licensed wholesale dealers in this State after due notice to all licensed Nevada wholesale dealers has been given by mail to the addresses contained in the Department's records; or

(2) If there is no bidder, or in the opinion of the Department the quantity of the other tobacco products is insufficient, or for any other reason such disposition would be impractical, destroy or dispose of the other tobacco products as the Department may see fit.

↳ The proceeds of all sales pursuant to this paragraph must be classed as revenues derived under the provisions of NRS 370.440 to 370.503, inclusive.

5. The sheriff or other peace officer who seizes any stamps, contraband tobacco products, machinery or cigarette rolling machines pursuant to this section shall:

(a) Destroy the stamps, machinery and cigarette rolling machines; and

(b) If he or she does not transmit the contraband tobacco products to the Department, destroy the contraband tobacco products.

6. In addition to any other penalty provided by law, the Department may impose a civil penalty upon a person who violates NRS 370.405 or 370.410 resulting in the seizure of counterfeit stamps, contraband tobacco products, machinery or cigarette rolling machines pursuant to this section in the amount of \$10,000 or the total costs incurred by the Department for the transportation, storage and disposal of the counterfeit stamps, contraband tobacco products, machinery or cigarette rolling machines, whichever is greater.



7. All penalties imposed pursuant to subsection 6 must be paid to the Department in the form of remittances payable to the Department and deposited in a separate account in the State General Fund to be used for the enforcement of the provisions of this section.

Sec. 2. This act becomes effective on July 1, 2023.



Emerging Products – Spotlight on Smokeless Tobacco (including Nicotine Pouches)

The tobacco and vaping industries continue to adapt to and undermine tobacco health laws; they introduce new products and brands that appeal to young people, addicting another generation to nicotine. Product packaging and design often disguises the fact that these are addictive and dangerous. Although Massachusetts has taken action to reduce the influence of the tobacco and vaping industries, this doesn't mean that young people will stop seeing products or advertisements in our local communities, across state lines, or online.

Smokeless Tobacco

Smokeless tobacco is tobacco that isn't burned or inhaled by the user. It's also known as chewing tobacco, chew, dipping tobacco, dip, oral tobacco, spit, spitting tobacco, and snuff. New products are emerging in this category.

Emerging Product – Oral Nicotine Pouches

A nicotine pouch is an oral pouch containing nicotine powder instead of tobacco leaf. Nicotine in any form is harmful to young people.

Due to the absence of tobacco leaf, the Food and Drug Administration does not regulate oral nicotine pouches in the same way as smokeless tobacco products. In addition, Massachusetts excise tax laws do not cover oral nicotine pouches and they are available for as low as \$1 in some communities.

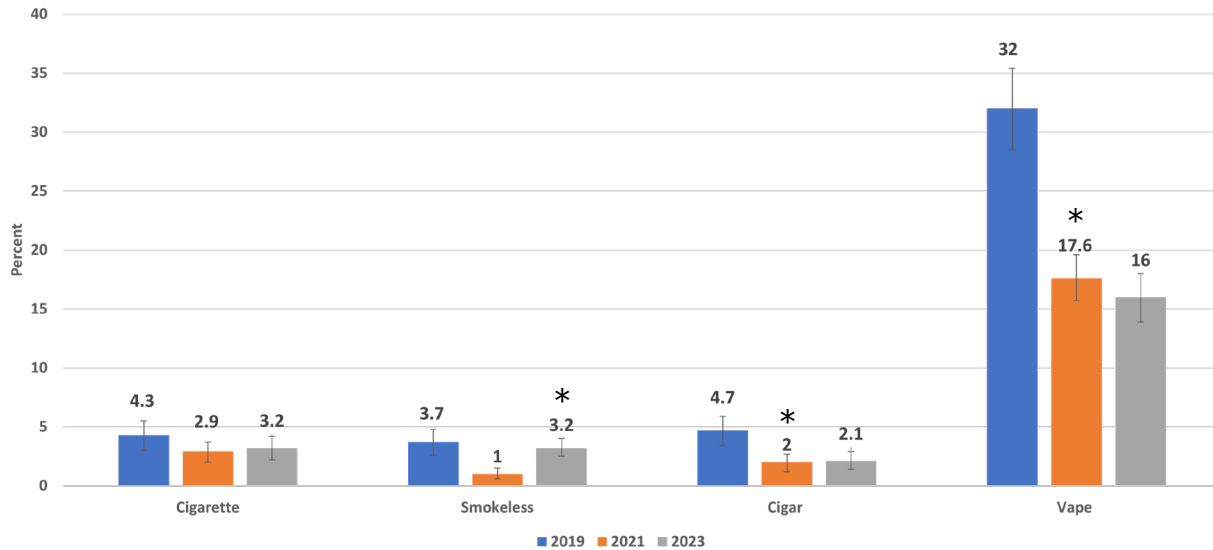


- Oral nicotine pouches contain a nicotine powder that dissolves in the user's mouth.
- Common brands include Zyn, On!, Rogue, Velo.
- Pouches are available in flavors (although flavors are restricted to licensed smoking bars in Massachusetts).
- Nicotine concentrations differ across brands and generally range from 2 mg to 8 mg per pouch.
- Oral nicotine pouches are in the news and on social media platforms. (See "Can Nicotine Pouches Like Zyn Harm Your Health?" Published by *The New York Times* on January 25, 2024.)

Youth Use of Smokeless Tobacco (including Nicotine Pouches) is Increasing

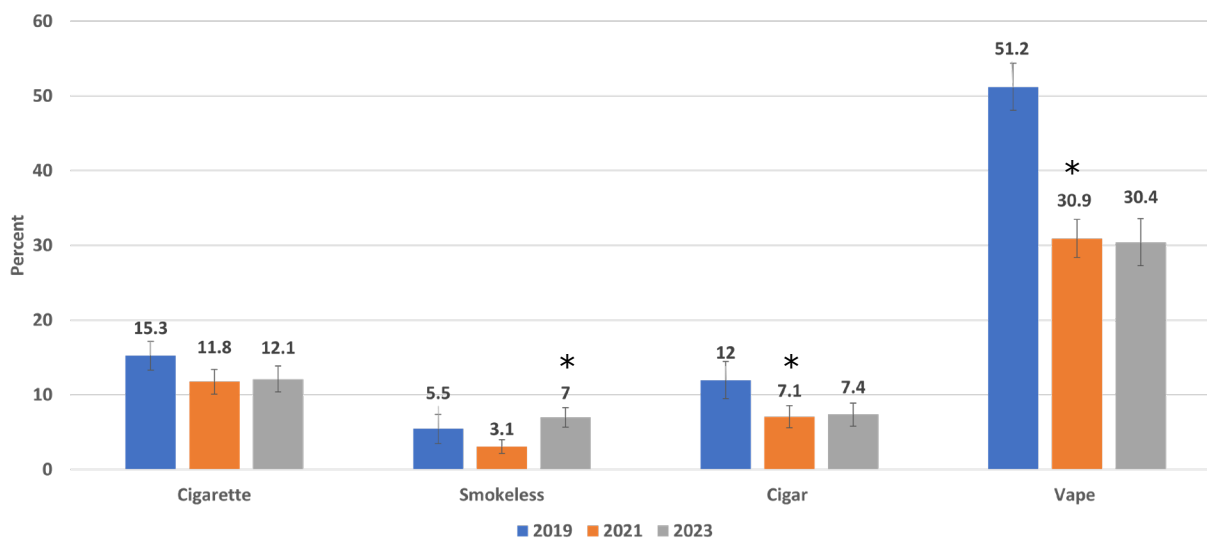
Data Note: While some national and local tobacco surveys have begun to separate Nicotine Pouches from Smokeless Tobacco Products, the 2023 Massachusetts Youth Health Survey did not separate these two categories. Therefore, smokeless tobacco products are inclusive of nicotine pouches.

2023 Youth Current Use



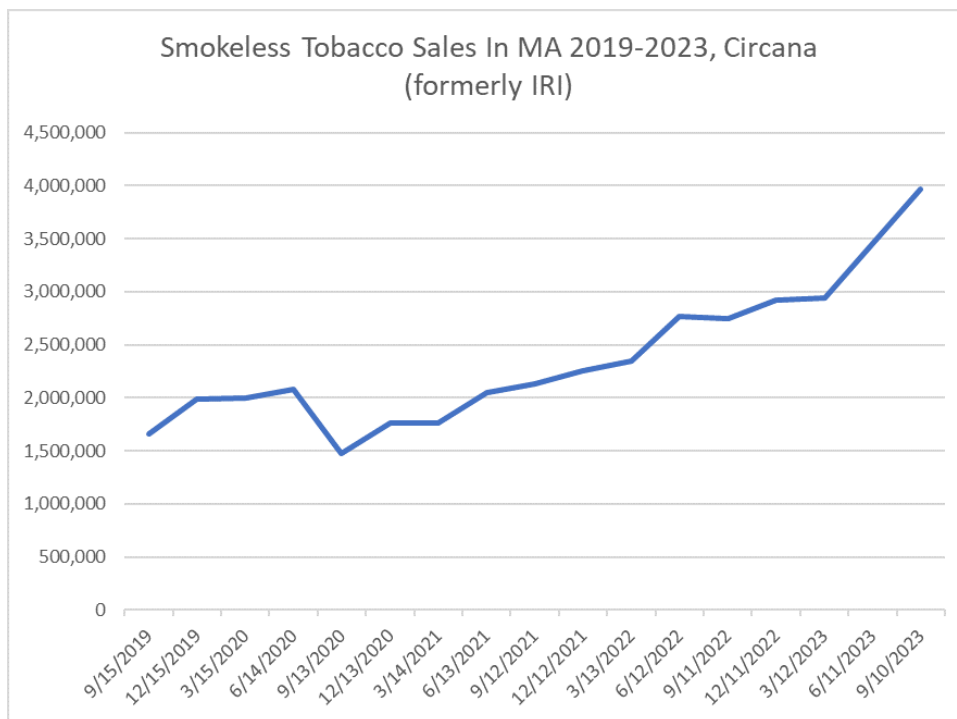
The 2023 MA Youth Health Survey (YHS) data are provisional and subject to revision until they have been thoroughly reviewed and received final approval. *Indicates data point is statistically significantly different from the prior year of data (p < 0.05)

2023 Youth Ever Use



The 2023 MA Youth Health Survey (YHS) data are provisional and subject to revision until they have been thoroughly reviewed and received final approval. *Indicates data point is statistically significantly different from the prior year of data (p < 0.05)

Sales of Smokeless Tobacco are Increasing



Data shown are custom analyses by Massachusetts Department of Public Health staff based on data from Circana.

What is the Massachusetts Tobacco Cessation and Prevention Program (MTCP) Doing?

- Educating adults and youth about these new products and their dangers for young people.
- Assisting schools and other youth-serving organizations with information and resources by updating the GetOutraged Tool Kit and web pages (in process).
- Educating municipalities how policies that address **retail density*** can protect youth from exposure to these products.
- Supporting existing policies, such as the flavored product restriction, to ensure retailers are complying with the law.

*What does Retail Density have to do with this?

Communities of color and low-income neighborhoods often have more retailers that sell tobacco and nicotine products. The more youth see these products, the more likely they are to use them and the harder it is to quit. By reducing exposure and access, we can reduce the impact of tobacco-related health inequities.



Make smoking history.