



March 22, 2023

Testimony in **OPPOSITION to HB3090**

The Cigar Association of America (CAA) is the premier voice of the cigar industry in the United States. CAA is the leading national trade organization representing the interests of cigar manufacturers, importers, distributors, and major suppliers of the industry. CAA was founded in 1937 as a non-profit trade organization. Today, its member companies come from all sectors of the industry, from major manufacturers of handmade premium cigars to the largest producers of machine-made cigars. CAA members manufacture a significant share of the large, premium, little, and filtered cigars sold in the United States. Its members also include internet retailers of cigars, as well as leaf, and other suppliers to the cigar industry. CAA is a key stakeholder in any discussion of regulation of cigars, as changes in laws and/or regulations significantly affect its members' ability to conduct business.

CAA submits this testimony in opposition to HB3090 (the "Proposed Flavor Ban").<sup>1</sup> Put simply, there is no legal, factual, or scientific basis to prohibit the sale of flavored cigars and pipe tobacco in Oregon. Doing so would be detrimental to Oregon businesses and deprive adult cigar and pipe tobacco consumers of their right to a legal product.

The Proposed Flavor Ban seeks the same sweeping action -- banning flavors and removing adult consumers' ability to choose -- across nearly all categories of tobacco products. Such draconian measures, however, are simply not justified for cigars or pipe tobacco, as there is no youth epidemic of use of these products. CAA estimates that flavored cigars represent up to 47% of the cigar market, and nearly all pipe tobacco can be considered flavored based simply on the process used to manufacture the product. Passage of the Proposed Flavor Ban would be a deeply flawed decision, causing great financial harm to Oregon businesses selling these products.

Critically, extending the Proposed Flavor Ban to cigars and pipe tobacco is not supported by scientific data. Surveys conducted or funded by government agencies all show that youth usage of cigars, *including flavored cigars*, is at historic lows, and youth usage of pipe tobacco is nearly unmeasurable. In fact, youth usage of cigars, including flavored cigars, is at an all-time low both in Oregon and nationwide.

In Oregon, the Oregon Youth Tobacco Survey for 2020 showed that current 11<sup>th</sup> grade usage of little cigars or cigarillos was 1.4%, and current 11<sup>th</sup> grade usage of large cigars was 0.5%.<sup>2</sup> In contrast, the 2020 Oregon Youth Tobacco Survey showed that 17% of 11<sup>th</sup> graders currently use alcohol, and 13.5% currently use marijuana.<sup>3</sup>

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<sup>1</sup> CAA submits these comments solely to address the impropriety of the Proposed Flavor Ban as applied to cigar and pipe tobacco products. CAA does not address herein the propriety of the Proposed Flavor Ban as it would apply to other categories of tobacco products.

<sup>2</sup> Oregon Student Health Survey Data Portal <https://www.bach-harrison.com/SHSDataPortal/Categories.aspx>

<sup>3</sup> *Id.* at Table 38; Table 40.





Evidence from other localities demonstrates that if a flavor ban is enacted, consumers will purchase products from out of state or through illicit markets. More importantly, studies have shown that flavor bans can increase youth and minority *cigarette* smoking rates. A study done after a flavor ban was instituted in San Francisco, CA found that:

[d]ifference-in-differences analyses found that San Francisco’s flavor ban was associated with more than doubled odds of recent smoking among underage high school students relative to concurrent changes in other districts (adjusted odds ratio, 2.24 [95% CI, 1.42-3.53];  $P = .001$ ).<sup>4</sup>

Additionally, new data analyzing the impact of the Massachusetts state wide flavor<sup>5</sup> restriction found that it *increased* cigarette smoking rates among the adult black female population (“Smoking increased among Black females (58.6%;  $P < .001$ ), remained unchanged among White females (-2.0%;  $P = .32$ ) and other racial groups (25.8%;  $P = .17$ ).”).<sup>6</sup>

The Proposed Flavor Ban does nothing but restrict the choices of adult tobacco consumers, damage Oregon businesses, and encourage unregulated illicit market sales. Flavored cigars and pipe tobacco are sold through licensed businesses that are vigilant at age verifying purchases of such products. Imposing a prohibition on the legal sale of these products will do nothing but drive adult consumers to purchase these products (i) through an untaxed illicit market; or (ii) in neighboring states.

We have seen this exact situation in Massachusetts after a flavor ban was enacted there in 2020. The data shows that the flavor ban has done little to alter consumer consumption behavior – other than to force Massachusetts consumers to purchase flavored tobacco products in other states.<sup>7</sup> The Tax Foundation stated this upon analyzing the impact of the Massachusetts flavor ban:

The end result of the ban, in fact, is that Massachusetts is stuck with the societal costs associated with consumption, while the revenue from taxing flavored tobacco products is being raised in neighboring states. In fact, the flavor ban has been far from successful, as sales in both New Hampshire and Rhode Island experienced double-digit growth—almost making up for the entire decrease in Massachusetts.<sup>8</sup>

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<sup>4</sup> Abigail Friedman, *A Difference-in-Differences Analysis of Youth Smoking and a Ban on Sales of Flavored Tobacco Products in San Francisco, California*, *JAMA Pediatrics* 175:8; 863-865 (2021).

<sup>5</sup> Contrary to a statement made by the Sponsor at the March 21 hearing, only two states -- Massachusetts and California -- have enacted flavor restrictions across all categories of tobacco products. The Massachusetts restrictions went into effect in May 2020 and California in December 2022. Three other states, New Jersey, New York, and Rhode Island, after reviewing scientific and factual data, chose to enact flavor restrictions only as to vapor products.

<sup>6</sup> Asare S, et al. *Association of Comprehensive Menthol Flavor Ban With Current Cigarette Smoking in Massachusetts From 2017 to 2021*, *JAMA Internal Medicine* February 27, 2023. doi:10.1001/jamainternmed.2022.6743

<sup>7</sup> Bosen, U. *Massachusetts Flavored Tobacco Ban: No Impact on New England Sales*. Tax Foundation (Feb. 3, 2022) <https://taxfoundation.org/massachusetts-flavored-tobacco-ban-sales-jama-study/>

<sup>8</sup> *Id.*



Additionally, the most recent report from the Massachusetts Multi-Agency Illegal Tobacco Task Force stated the following about the increasingly illicit market in Massachusetts since the imposition of the flavor ban:

Based upon the decrease in tobacco excise revenues, the increase in seizures of certain untaxed tobacco products, and discussions with the inspectors and investigators conducting the enforcement actions, the Task Force identifies the cross-border smuggling of untaxed flavored ENDS products, cigars, and menthol cigarettes as the primary challenge for tobacco enforcement in the Commonwealth.<sup>9</sup>

Right now, Oregon ranks 26<sup>th</sup> in nation for cigarette smuggling.<sup>10</sup> Were the Proposed Flavor Ban put into place it would only serve to move Oregon higher up on that list – when in reality states should want to be moving down that list.

Further, enacting the Proposed Flavor Ban would substantially decrease Oregon tax revenues. As was demonstrated in Massachusetts, if flavored tobacco products are prohibited, consumers will not stop using them, they will simply stop purchasing them locally or legally. Industry has estimated it could potentially cost Oregon approximately \$250 million in excise tax revenue. This figure does not also account for the corresponding sales tax revenue collected from the sales of these products. The Proposed Flavor Ban would eliminate a large amount of this revenue, and in the case of cigars potentially up to 47% of the market. In short, HB3090 is a solution in search of a problem.

Thank you for the opportunity to present this testimony. For the foregoing reasons, the Cigar Association of America is OPPOSED to HB3090.

Respectfully Submitted,

A handwritten signature in blue ink that reads "David M. Ozgo".

David M. Ozgo  
President  
Cigar Association of America, Inc.

<sup>9</sup> Commonwealth of Massachusetts, Report of Multi-Agency Illegal Tobacco Task Force, February 2023 at 8.

<sup>10</sup> Hoffer A., *Cigarette Taxes and Cigarette Smuggling by State, 2020*. Tax Foundation, (Dec. 6, 2022) <https://taxfoundation.org/cigarette-taxes-cigarette-smuggling-2022/>