

Committee Report

REGULAR CALENDAR

February 13, 2020

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Majority of the Committee on Commerce and Consumer Affairs to which was referred HB 1662-FN,

AN ACT relative to the purchase, use, and possession of tobacco products and e-cigarettes. Having considered the same, report the same with the following amendment, and the recommendation that the bill OUGHT TO PASS WITH AMENDMENT.

Rep. Kristina Fargo

FOR THE MAJORITY OF THE COMMITTEE

**MAJORITY
COMMITTEE REPORT**

Committee:	Commerce and Consumer Affairs
Bill Number:	HB 1662-FN
Title:	relative to the purchase, use, and possession of tobacco products and e-cigarettes.
Date:	February 13, 2020
Consent Calendar:	REGULAR
Recommendation:	OUGHT TO PASS WITH AMENDMENT 2020-0322h

STATEMENT OF INTENT

As amended, this bill will increase the age for purchase, use and possession of tobacco products and e-cigarettes to 21. It will allow that change to occur over 2 years so that those who are currently using those products and who are at the age of 19, the current legal age, will be able to continue to use until the legal age becomes 21 for all. This is consistent with the change in federal law which raises the legal age to 21 and which the committee understands will take effect in 2022.

Vote 12-8.

Rep. Kristina Fargo
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Commerce and Consumer Affairs

HB 1662-FN, relative to the purchase, use, and possession of tobacco products and e-cigarettes. **MAJORITY: OUGHT TO PASS WITH AMENDMENT. MINORITY: INEXPEDIENT TO LEGISLATE.**

Rep. Kristina Fargo for the **Majority** of Commerce and Consumer Affairs. As amended, this bill will increase the age for purchase, use and possession of tobacco products and e-cigarettes to 21. It will allow that change to occur over 2 years so that those who are currently using those products and who are at the age of 19, the current legal age, will be able to continue to use until the legal age becomes 21 for all. This is consistent with the change in federal law which raises the legal age to 21 and which the committee understands will take effect in 2022. **Vote 12-8.**

Original: House Clerk
Cc: Committee Bill File

HB 1662 - OTPA

As amended, this bill will increase the age for purchase, use and possession of tobacco products and e-cigarettes to 21. It will allow that change to occur over 2 years so that those who are currently using those products and who are at the age of 19, the current legal age, will be able to continue to use until the legal age becomes 21 for all. This is consistent with the change in federal law which raises the legal age to 21 & which the committee understands will take effect in 2022.

Amendment to HB 1662-FN

1 Amend the bill by replacing all after the enacting clause with the following:

2

3 1 Access to and Use of Tobacco Products; Purpose. Amend RSA 126-k:1 to read as follows:

4 126-K:1 Purpose. The purpose of this chapter is to protect the citizens of New Hampshire from
5 the possibility of addiction, disability, and death resulting from the use of tobacco products by
6 ensuring that tobacco products will not be supplied to persons under the age of [19] 20.

7 2 Access to and Use of Tobacco Products; Proof of Age of Purchaser. Amend the introductory
8 paragraph of RSA 126-K:3, I to read as follows:

9 I. For the purposes of this chapter, any person responsible for monitoring sales from a
10 tobacco vending machine or any person making the sale of tobacco products, e-cigarettes, or e-liquid
11 which vending machine or other sale is to be made to any person who does not appear to be at least
12 [19] 20 years of age, shall require the purchaser to furnish any of the following documentation that
13 such person is [19] 20 years of age or over:

14 3 Access to and Use of Tobacco Products; Proof of Age of Purchaser. Amend RSA 126-K:3, III to
15 read as follows:

16 III. The establishment of all of the following facts by a person responsible for monitoring
17 sales from a vending machine or a person or sampler making a sale or distribution of tobacco
18 products, e-cigarettes, or e-liquid to a person under [19] 20 years of age shall constitute prima facie
19 evidence of innocence and a defense to any prosecution for such sale:

20 (a) That the person falsely represented in writing and supported by some official
21 documents that the person was [19] 20 years of age or older;

22 (b) That the appearance of the person was such that an ordinary and prudent person
23 would believe such person to be at least [19] 20 years of age or older; and

24 (c) That the sale was made in good faith relying on such written representation and
25 appearance in the reasonable belief that the person was actually [19] 20 years of age or over.

26 4 Access to and Use of Tobacco Products; Sale and Distribution. Amend the section heading and
27 paragraph I of RSA 126-K:4 to read as follows:

28 126-K:4 Sale and Distribution of Tobacco Products, E-cigarettes, or E-Liquid to Persons Who
29 Have Not Attained [19] 20 Years of Age Prohibited.

30 I. No person shall sell, give, or furnish or cause or allow or procure to be sold, given, or
31 furnished tobacco products, e-cigarettes, or e-liquid to a person who has not attained [19] 20 years of
32 age. The prohibition established by this paragraph shall not be deemed to prohibit persons who

1 have not attained ~~[19]~~ 20 years of age employed by any manufacturer, wholesaler, sub-jobber,
2 vending machine operator, sampler, or retailer from performing the necessary handling of tobacco
3 products, e-cigarettes, or ~~[liquid nicotine]~~ *e-liquid* during the duration of their employment.

4 5 Access to and Use of Tobacco Products; Rolling Papers. Amend RSA 126-K:4-a to read as
5 follows:

6 126-K:4-a Rolling Papers.

7 I. No person shall sell, give, or furnish rolling papers to a minor. Violations of this
8 paragraph shall be civil infractions punishable by administrative action of the commission against
9 the licensee. The fines for violations of this paragraph shall not exceed \$250 for the first offense,
10 \$500 for the second offense, and \$750 for the third and subsequent offenses.

11 II. No person under ~~[19]~~ 20 years of age shall purchase, possess, or use any rolling paper.
12 Any person who violates this section shall be guilty of a violation and shall be punished by a fine not
13 to exceed \$100 for each offense.

14 6 Access and Use of Tobacco Products; Distribution of Free Samples. Amend RSA 126-K:5, I and
15 II to read as follows:

16 I. No person may distribute or offer to distribute samples of tobacco products, e-cigarettes,
17 or ~~[liquid nicotine]~~ *e-liquid* in a public place or to a person who has not attained ~~[19]~~ 20 years of
18 age. This prohibition shall not apply to sampling:

19 (a) In an area to which minors are denied access.

20 (b) In a store to which a retailer's license has been issued.

21 (c) At factory sites, construction sites, conventions, trade shows, fairs, or motorsport
22 facilities in areas to which minors are denied access.

23 II. The commission shall adopt rules, pursuant to RSA 541-A, concerning the distribution of
24 free samples of tobacco products, e-cigarettes, or ~~[liquid nicotine]~~ *e-liquid* to prevent their
25 distribution to persons who have not attained ~~[19]~~ 20 years of age.

26 7 Access to and Use of Tobacco Products; Possession and Use of Tobacco Products, E-Cigarettes,
27 or Liquid Nicotine. Amend RSA 126-K:6 to read as follows:

28 126-K:6 Possession and Use of Tobacco Products, E-cigarettes, or E-Liquid [Nicotine] by Persons
29 Who Have Not Attained ~~[19]~~ 20 Years of Age.

30 I. No person under ~~[19]~~ 20 years of age shall purchase, attempt to purchase, possess, or use
31 any tobacco product, e-cigarette, device, or e-liquid except that a minor who has been issued a
32 registry identification card under RSA 126-X:4 may possess e-liquids containing cannabis and
33 applicable devices.

34 II. The prohibition on possession of tobacco products, devices, e-cigarettes, or e-liquid shall
35 not be deemed to prohibit minors employed by any manufacturer, wholesaler, sub-jobber, vending
36 machine operator, sampler, or retailer from performing the necessary handling of tobacco products,
37 devices, e-cigarettes, or e-liquids during the duration of their employment.

1 III. A person who has not attained [49] 20 years of age shall not misrepresent his or her age
2 for the purpose of purchasing tobacco products.

3 IV. Notwithstanding RSA 169-B and RSA 169-D, a person 12 years of age and older who
4 violates this section shall not be considered a delinquent or a child in need of services.

5 V. Any person who has not attained [49] 20 years of age who violates this section may be
6 guilty of a violation and shall be punished by a fine not to exceed \$100 for each offense or shall be
7 required to complete up to 20 hours of community service for each offense, or both. Where available,
8 punishment may also include participation in an education program.

9 8 Access to and Use of Tobacco Products; Special Provisions. Amend RSA 126-K:8, I(a) to read
10 as follows:

11 I.(a) No person shall sell, give, or furnish tobacco products, e-cigarettes, or e-liquid to a
12 person who has not attained [49] 20 years of age who has a note from an adult requesting such sale,
13 gift, or delivery. Tobacco products, e-cigarettes, or e-liquid shall only be delivered to a person who
14 provides an identification as enumerated in RSA 126-K:3 establishing that the person has attained
15 [49] 20 years of age.

16 9 Delinquent Children; Limitations of Authority Conferred. Amend RSA 169-B:32 to read as
17 follows:

18 169-B:32 Limitations of Authority Conferred. This chapter shall not be construed as applying to
19 persons 16 years of age or over who are charged with the violation of a motor vehicle law, an
20 aeronautics law, a law relating to navigation or boats, a fish and game law, a law relating to title
21 XIII, a law relating to fireworks under RSA 160-B or RSA 160-C, any town or municipal ordinance
22 which provides for a penalty not exceeding \$100 plus the penalty assessment, and shall not be
23 construed as applying to any minor charged with the violation of any law relating to the possession,
24 sale, or distribution of tobacco products to or by a person under [19] 20 years of age. However, if
25 incarceration takes place at any stage in proceedings on such violations, incarceration shall be only
26 in a juvenile facility certified by the commissioner of the department of health and human services.

27 10 Children in Need of Services; Limitations of Authority Conferred. Amend RSA 169-D:22 to
28 read as follows:

29 169-D:22 Limitations of Authority Conferred. This chapter shall not be construed as applying to
30 persons 16 years of age or over who are charged with the violation of a motor vehicle law, an
31 aeronautics law, a law relating to navigation of boats, a fish and game law, a law relating to title
32 XIII, or a law relating to fireworks under RSA 160-B or RSA 160-C, and shall not be construed as
33 applying to any minor charged with the violation of any law relating to the possession, sale, or
34 distribution of tobacco products to or by a person under [19] 20 years of age.

35 11 Retail Tobacco License. Amend RSA 178:19-a, III to read as follows:

36 III. The commission, when issuing or renewing a retail tobacco license, shall furnish a sign
37 which shall read or be substantially similar to the following: "State Law prohibits the sale of tobacco

1 products or e-cigarettes to persons under age [49] 20. Warning: violators of these provisions may be
2 subject to a fine."

3 12 Cigar Bars. Amend RSA 178:20-a, II(c) to read as follows:

4 (c) Does not allow any person under the age of [19] 20 on the premises unless
5 accompanied by a parent, legal guardian, or adult spouse.

6 13 Access to and Use of Tobacco Products; Purpose. Amend RSA 126-k:1 to read as follows:

7 126-K:1 Purpose. The purpose of this chapter is to protect the citizens of New Hampshire from
8 the possibility of addiction, disability, and death resulting from the use of tobacco products by
9 ensuring that tobacco products will not be supplied to persons under the age of [20] 21.

10 14 Access to and Use of Tobacco Products; Proof of Age of Purchaser. Amend the introductory
11 paragraph of RSA 126-K:3, I to read as follows:

12 I. For the purposes of this chapter, any person responsible for monitoring sales from a
13 tobacco vending machine or any person making the sale of tobacco products, e-cigarettes, or e-liquid
14 which vending machine or other sale is to be made to any person who does not appear to be at least
15 [20] 21 years of age, shall require the purchaser to furnish any of the following documentation that
16 such person is [20] 21 years of age or over:

17 15 Access to and Use of Tobacco Products; Proof of Age of Purchaser. Amend RSA 126-K:3, III
18 to read as follows:

19 III. The establishment of all of the following facts by a person responsible for monitoring
20 sales from a vending machine or a person or sampler making a sale or distribution of tobacco
21 products, e-cigarettes, or e-liquid to a person under [20] 21 years of age shall constitute prima facie
22 evidence of innocence and a defense to any prosecution for such sale:

23 (a) That the person falsely represented in writing and supported by some official
24 documents that the person was [20] 21 years of age or older;

25 (b) That the appearance of the person was such that an ordinary and prudent person
26 would believe such person to be at least [20] 21 years of age or older; and

27 (c) That the sale was made in good faith relying on such written representation and
28 appearance in the reasonable belief that the person was actually [20] 21 years of age or over.

29 16 Access to and Use of Tobacco Products; Sale and Distribution. Amend the section heading
30 and paragraph I of RSA 126-K:4 to read as follows:

31 126-K:4 Sale and Distribution of Tobacco Products, E-cigarettes, or E-Liquid to Persons Who
32 Have Not Attained [20] 21 Years of Age Prohibited.

33 I. No person shall sell, give, or furnish or cause or allow or procure to be sold, given, or
34 furnished tobacco products, e-cigarettes, or e-liquid to a person who has not attained [20] 21 years of
35 age. The prohibition established by this paragraph shall not be deemed to prohibit persons who
36 have not attained [20] 21 years of age employed by any manufacturer, wholesaler, sub jobber,
37 vending machine operator, sampler, or retailer from performing the necessary handling of tobacco

1 products, e-cigarettes, or e-liquid during the duration of their employment.

2 17 Access to and Use of Tobacco Products; Rolling Papers. Amend RSA 126-K:4-a to read as
3 follows:

4 126-K:4-a Rolling Papers.

5 I. No person shall sell, give, or furnish rolling papers to a minor. Violations of this
6 paragraph shall be civil infractions punishable by administrative action of the commission against
7 the licensee. The fines for violations of this paragraph shall not exceed \$250 for the first offense,
8 \$500 for the second offense, and \$750 for the third and subsequent offenses.

9 II. No person under [20] 21 years of age shall purchase, possess, or use any rolling paper.
10 Any person who violates this section shall be guilty of a violation and shall be punished by a fine not
11 to exceed \$100 for each offense.

12 18 Access and Use of Tobacco Products; Distribution of Free Samples. Amend RSA 126 K:5. I
13 and II to read as follows:

14 I. No person may distribute or offer to distribute samples of tobacco products, e-cigarettes,
15 or e-liquid in a public place or to a person who has not attained [20] 21 years of age. This prohibition
16 shall not apply to sampling:

17 (a) In an area to which minors are denied access.

18 (b) In a store to which a retailer's license has been issued.

19 (c) At factory sites, construction sites, conventions, trade shows, fairs, or motorsport
20 facilities in areas to which minors are denied access.

21 II. The commission shall adopt rules, pursuant to RSA 5:41-A, concerning the distribution of
22 free samples of tobacco products, e-cigarettes, or e-liquid to prevent their distribution to persons who
23 have not attained [20] 21 years of age.

24 19 Access to and Use of Tobacco Products; Possession and Use of Tobacco Products. E
25 Cigarettes, or Liquid Nicotine. Amend RSA 126-K:6 to read as follows:

26 126-K:6 Possession and Use of Tobacco Products, E-cigarettes, or E-Liquid by Persons Who
27 Have Not Attained [20] 21 Years of Age.

28 I. No person under [20] 21 years of age shall purchase, attempt to purchase, possess, or use
29 any tobacco product, e-cigarette, device, or e-liquid except that a minor who has been issued a
30 registry identification card under RSA 126-X:4 may possess e-liquids containing cannabis and
31 applicable devices.

32 II. The prohibition on possession of tobacco products, devices, e-cigarettes, or e-liquid shall
33 not be deemed to prohibit minors employed by any manufacturer, wholesaler, sub-jobber, vending
34 machine operator, sampler, or retailer from performing the necessary handling of tobacco products,
35 devices, e-cigarettes, or e-liquids during the duration of their employment.

36 III. A person who has not attained [20] 21 years of age shall not misrepresent his or her age
37 for the purpose of purchasing tobacco products.

Amendment to HB 1662-FN

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1 IV. Notwithstanding RSA 169-B and RSA 169-D, a person 12 years of age and older who
2 violates this section shall not be considered a delinquent or a child in need of services.

3 V. Any person who has not attained [20] 21 years of age who violates this section may be
4 guilty of a violation and shall be punished by a fine not to exceed \$100 for each offense or shall be
5 required to complete up to 20 hours of community service for each offense, or both. Where available,
6 punishment may also include participation in an education program.

7 20 Access to and Use of Tobacco Products; Special Provisions. Amend RSA 126-K:8, I(a) to read
8 as follows:

9 I.(a) No person shall sell, give, or furnish tobacco products, e-cigarettes, or e-liquid to a
10 person who has not attained [20] 21 years of age who has a note from an adult requesting such sale,
11 gift, or delivery. Tobacco products, e-cigarettes, or e-liquid shall only be delivered to a person who
12 provides an identification as enumerated in RSA 126-K:3 establishing that the person has attained
13 [20] 21 years of age.

14 21 Delinquent Children; Limitations of Authority Conferred. Amend RSA 169-B:32 to read as
15 follows:

16 169-B:32 Limitations of Authority Conferred. This chapter shall not be construed as applying to
17 persons 16 years of age or over who are charged with the violation of a motor vehicle law, an
18 aeronautics law, a law relating to navigation or boats, a fish and game law, a law relating to title
19 XIII, a law relating to fireworks under RSA 160-B or RSA 160-C, any town or municipal ordinance
20 which provides for a penalty not exceeding \$100 plus the penalty assessment, and shall not be
21 construed as applying to any minor charged with the violation of any law relating to the possession,
22 sale, or distribution of tobacco products to or by a person under [20] 21 years of age. However, if
23 incarceration takes place at any stage in proceedings on such violations, incarceration shall be only
24 in a juvenile facility certified by the commissioner of the department of health and human services.

25 22 Children in Need of Services; Limitations of Authority Conferred. Amend RSA 169-D:22 to
26 read as follows:

27 169-D:22 Limitations of Authority Conferred. This chapter shall not be construed as applying to
28 persons 16 years of age or over who are charged with the violation of a motor vehicle law, an
29 aeronautics law, a law relating to navigation of boats, a fish and game law, a law relating to title
30 XIII, or a law relating to fireworks under RSA 160-B or RSA 160-C, and shall not be construed as
31 applying to any minor charged with the violation of any law relating to the possession, sale, or
32 distribution of tobacco products to or by a person under [20] 21 years of age.

33 23 Retail Tobacco License. Amend RSA 178:19-a, III to read as follows:

34 III. The commission, when issuing or renewing a retail tobacco license, shall furnish a sign
35 which shall read or be substantially similar to the following: "State Law prohibits the sale of tobacco
36 products or e-cigarettes to persons under age [20] 21. Warning: violators of these provisions may be
37 subject to a fine."

Amendment to HB 1662-FN

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1 24 Cigar Bars. Amend RSA 178:20-a, II(c) to read as follows:

2 (c) Does not allow any person under the age of [20] 21 on the premises unless
3 accompanied by a parent, legal guardian, or adult spouse.

4 25 Effective Date.

5 I. Sections 13-24 of this act shall take effect January 1, 2022.

6 II. The remainder of this act shall take effect January 1, 2021.

2020-0322h

AMENDED ANALYSIS

This bill increases the age for sales and possession of tobacco products and e-cigarettes to 20 in the year 2021 and to 21 in the year 2022.

REGULAR CALENDAR

February 12, 2020

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Minority of the Committee on Commerce and Consumer Affairs to which was referred HB 1662-FN,

AN ACT relative to the purchase, use, and possession of tobacco products and e-cigarettes. Having considered the same, and being unable to agree with the Majority, report with the following resolution: RESOLVED, that it is INEXPEDIENT TO LEGISLATE.

Rep. Jason Osborne

FOR THE MINORITY OF THE COMMITTEE

**MINORITY
COMMITTEE REPORT**

Committee:	Commerce and Consumer Affairs
Bill Number:	HB 1662-FN
Title:	relative to the purchase, use, and possession of tobacco products and e-cigarettes.
Date:	February 12, 2020
Consent Calendar:	REGULAR
Recommendation:	INEXPEDIENT TO LEGISLATE 2020-0322h

STATEMENT OF INTENT

Adults under the age of twenty-one are able to enter life changing contracts such as marriage and military service. They are able to vote and pilot motor vehicles on public roadways. Why should they be prohibited from purchasing consumer products available to other adults?

Rep. Jason Osborne
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Commerce and Consumer Affairs

HB 1662-FN, relative to the purchase, use, and possession of tobacco products and e-cigarettes.
INEXPEDIENT TO LEGISLATE.

Rep. Jason Osborne for the **Minority** of Commerce and Consumer Affairs. Adults under the age of twenty-one are able to enter life changing contracts such as marriage and military service. They are able to vote and vote and pilot motor vehicles on public roadways. Why should they be prohibited from purchasing consumer products available to other adults?

Original: House Clerk

Cc: Committee Bill File

Voting Sheets

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

EXECUTIVE SESSION on HB 1662-FN

BILL TITLE: relative to the purchase, use, and possession of tobacco products and e-cigarettes.

DATE: February 4, 2020

LOB ROOM: 302

MOTIONS: OUGHT TO PASS WITH AMENDMENT

Moved by Rep. Hunt

Seconded by Rep. Butler

AM Vote: 17-3

Amendment # 0322h

Moved by Rep. Fargo

Seconded by Rep. Van Houten

Vote: 12-8

CONSENT CALENDAR: NO

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep Joyce Weston, Acting Clerk

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

EXECUTIVE SESSION on HB 1662-FN

BILL TITLE: relative to the purchase, use, and possession of tobacco products and e-cigarettes.

DATE: 2/4/2020

LOB ROOM: 302

MOTION: (Please check one box)

- OTP ITL Retain (1st year) Adoption of Amendment # 0322 h.
 Interim Study (2nd year) (if offered)

Moved by Rep. HUNT Seconded by Rep. Butler Vote: 17-3

MOTION: (Please check one box)

- OTP OTP/A ITL Retain (1st year) Adoption of Amendment # _____
 Interim Study (2nd year) (if offered)

Moved by Rep. Fargo Seconded by Rep. VanHouten Vote: 12-8

MOTION: (Please check one box)

- OTP OTP/A ITL Retain (1st year) Adoption of Amendment # _____
 Interim Study (2nd year) (if offered)

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

MOTION: (Please check one box)

- OTP OTP/A ITL Retain (1st year) Adoption of Amendment # _____
 Interim Study (2nd year) (if offered)

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

CONSENT CALENDAR: ___ YES NO

Minority Report? Yes ___ No If yes, author, Rep: Osborn Motion ITL

Respectfully submitted: Rebecca West
Rep Rebecca McBeath, Clerk



2020 SESSION

Commerce and Consumer Affairs

 Bill #: 1162-F1 Motion: CCTP AM #: 03224 Exec Session Date: 2/4/2020

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Butler, Edward A. Chairman	✓		
Williams, Kermit R. Vice Chairman	✓		
Gidge, Kenneth N.	✓		
Abel, Richard M.	✓		
McBeath, Rebecca Susan Clerk		✓	
Bartlett, Christy D.	✓		
Herbert, Christopher J.	✓		
Van Houten, Constance		✓	
Fargo, Kristina M.	✓		
Indruk, Greg L.	✓		
Muscatel, Garrett D.	✓		
Weston, Joyce	✓		
Hunt, John B.	✓		
Sanborn, Laurie J.	✓		
Osborne, Jason M.	✓		
Costable, Michael	✓		
Plumer, John R.	✓		
Barnes, Arthur E.	✓		
Potucek, John M.	✓		
Warden, Mark		✓	
TOTAL VOTE:	17	3	



2020 SESSION

Commerce and Consumer Affairs

Bill #: 1662-FN Motion: OTPA AM #: _____ Exec Session Date: 2/4/2020

<u>Members</u>	<u>YEAS</u>	<u>Nays</u>	<u>NV</u>
Butler, Edward A. Chairman	✓		
Williams, Kermit R. Vice Chairman	✓		
Gidge, Kenneth N.	✓		
Abel, Richard M.	✓		
Bartlett, Christy D.	✓		
Herbert, Christopher J.	✓		
McBeath, Rebecca Susan		✓	
van Houten, Constance	✓		
Fargo, Kristina M.	✓		
Indruk, Greg L.	✓		
Muscatel, Garrett D.	✓		
Neston, Joyce	✓		
Hunt, John B.	✓		
Sanborn, Laurie J.		✓	
Osborne, Jason M.		✓	
Costable, Michael		✓	
Plumer, John R.		✓	
Barnes, Arthur E.		✓	
Potucek, John M.		✓	
Marden, Mark		✓	
TOTAL VOTE:	12	8	

SUBCOMMITTEE
WORK
SESSION

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

SUBCOMMITTEE WORK SESSION on HB 1662-FN

BILL TITLE: relative to the purchase, use, and possession of tobacco products and e-cigarettes.

DATE: January 30, 2020

Subcommittee Members: Reps. Van Houten, Hunt, J. Osborne, Potucek and Fargo

Comments and Recommendations: Very similar bill "Tobacco 21" No action on the bill today

Respectfully submitted.

Rep. Kristina Fargo
Subcommittee Clerk

Fargo

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

SUBCOMMITTEE WORK SESSION on HB 1662-FN

BILL TITLE: relative to the purchase, use, and possession of tobacco products and e-cigarettes.

DATE: 1/30/20

Subcommittee Members: Reps. Van Houten, Hunt, J. Osborne, Gidge, Williams, Potucek and Butler. MacBeath, Fargo

Comments and Recommendations:

Rep. Hunt presented amendment 2020-0322h as phased in approach. SB 248 - Very similar bill "Tobacco 21" No action on the bill today.

MOTIONS: OTP, OTP/A, ITL, Retained (1st Yr), Interim Study (2nd Yr) (Please circle one)

Moved by Rep. Seconded by Rep. AM Vote:

Adoption of Amendment #

Moved by Rep. Seconded by Rep. Vote:

Amendment Adopted Amendment Failed

MOTIONS: OTP, OTP/A, ITL, Retained (1st Yr), Interim Study (2nd Yr) (Please circle one)

Moved by Rep. Seconded by Rep. AM Vote:

Adoption of Amendment #

Moved by Rep. Seconded by Rep. Vote:

Amendment Adopted Amendment Failed

Respectfully submitted,

Rep. Subcommittee Chairman/Clerk

Amendment to HB 1662-FN

1 Amend the bill by replacing all after the enacting clause with the following:

2

3 1 Access to and Use of Tobacco Products; Purpose. Amend RSA 126-k:1 to read as follows:

4 126-K:1 Purpose. The purpose of this chapter is to protect the citizens of New Hampshire from
5 the possibility of addiction, disability, and death resulting from the use of tobacco products by
6 ensuring that tobacco products will not be supplied to persons under the age of ~~[19]~~ 20.

7 2 Access to and Use of Tobacco Products; Proof of Age of Purchaser. Amend the introductory
8 paragraph of RSA 126-K:3, I to read as follows:

9 I. For the purposes of this chapter, any person responsible for monitoring sales from a
10 tobacco vending machine or any person making the sale of tobacco products, e-cigarettes, or e-liquid
11 which vending machine or other sale is to be made to any person who does not appear to be at least
12 ~~[19]~~ 20 years of age, shall require the purchaser to furnish any of the following documentation that
13 such person is ~~[19]~~ 20 years of age or over:

14 3 Access to and Use of Tobacco Products; Proof of Age of Purchaser. Amend RSA 126-K:3, III to
15 read as follows:

16 III. The establishment of all of the following facts by a person responsible for monitoring
17 sales from a vending machine or a person or sampler making a sale or distribution of tobacco
18 products, e-cigarettes, or e-liquid to a person under ~~[19]~~ 20 years of age shall constitute prima facie
19 evidence of innocence and a defense to any prosecution for such sale:

20 (a) That the person falsely represented in writing and supported by some official
21 documents that the person was ~~[19]~~ 20 years of age or older;

22 (b) That the appearance of the person was such that an ordinary and prudent person
23 would believe such person to be at least ~~[19]~~ 20 years of age or older; and

24 (c) That the sale was made in good faith relying on such written representation and
25 appearance in the reasonable belief that the person was actually ~~[19]~~ 20 years of age or over.

26 4 Access to and Use of Tobacco Products; Sale and Distribution. Amend the section heading and
27 paragraph I of RSA 126-K:4 to read as follows:

28 126-K:4 Sale and Distribution of Tobacco Products, E-cigarettes, or E-Liquid to Persons Who
29 Have Not Attained ~~[19]~~ 20 Years of Age Prohibited.

30 I. No person shall sell, give, or furnish or cause or allow, or procure to be sold, given, or
31 furnished tobacco products, e-cigarettes, or e-liquid to a person who has not attained ~~[19]~~ 20 years of
32 age. The prohibition established by this paragraph shall not be deemed to prohibit persons who

1 have not attained ~~[19]~~ **20** years of age employed by any manufacturer, wholesaler, sub-jobber,
2 vending machine operator, sampler, or retailer from performing the necessary handling of tobacco
3 products, e-cigarettes, or ~~[liquid nicotine]~~ *e-liquid* during the duration of their employment.

4 5 Access to and Use of Tobacco Products; Rolling Papers. Amend RSA 126-K:4-a to read as
5 follows:

6 126-K:4-a Rolling Papers.

7 I. No person shall sell, give, or furnish rolling papers to a minor. Violations of this
8 paragraph shall be civil infractions punishable by administrative action of the commission against
9 the licensee. The fines for violations of this paragraph shall not exceed \$250 for the first offense,
10 \$500 for the second offense, and \$750 for the third and subsequent offenses.

11 II. No person under ~~[19]~~ **20** years of age shall purchase, possess, or use any rolling paper.
12 Any person who violates this section shall be guilty of a violation and shall be punished by a fine not
13 to exceed \$100 for each offense.

14 6 Access and Use of Tobacco Products; Distribution of Free Samples. Amend RSA 126-K:5, I and
15 II to read as follows:

16 I. No person may distribute or offer to distribute samples of tobacco products, e-cigarettes,
17 or ~~[liquid nicotine]~~ *e-liquid* in a public place or to a person who has not attained ~~[19]~~ **20** years of
18 age. This prohibition shall not apply to sampling:

19 (a) In an area to which minors are denied access.

20 (b) In a store to which a retailer's license has been issued.

21 (c) At factory sites, construction sites, conventions, trade shows, fairs, or motorsport
22 facilities in areas to which minors are denied access.

23 II. The commission shall adopt rules, pursuant to RSA 541-A, concerning the distribution of
24 free samples of tobacco products, e-cigarettes, or ~~[liquid nicotine]~~ *e-liquid* to prevent their
25 distribution to persons who have not attained ~~[19]~~ **20** years of age.

26 7 Access to and Use of Tobacco Products; Possession and Use of Tobacco Products, E-Cigarettes,
27 or Liquid Nicotine. Amend RSA 126-K:6 to read as follows:

28 126-K:6 Possession and Use of Tobacco Products, E-cigarettes, or E-Liquid ~~[Nicotine]~~ by Persons
29 Who Have Not Attained ~~[19]~~ **20** Years of Age.

30 I. No person under ~~[19]~~ **20** years of age shall purchase, attempt to purchase, possess, or use
31 any tobacco product, e-cigarette, device, or e-liquid except that a minor who has been issued a
32 registry identification card under RSA 126-X:4 may possess e-liquids containing cannabis and
33 applicable devices.

34 II. The prohibition on possession of tobacco products, devices, e-cigarettes, or e-liquid shall
35 not be deemed to prohibit minors employed by any manufacturer, wholesaler, sub-jobber, vending
36 machine operator, sampler, or retailer from performing the necessary handling of tobacco products,
37 devices, e-cigarettes, or e-liquids during the duration of their employment.

1 III. A person who has not attained [19] 20 years of age shall not misrepresent his or her age
2 for the purpose of purchasing tobacco products.

3 IV. Notwithstanding RSA 169-B and RSA 169-D, a person 12 years of age and older who
4 violates this section shall not be considered a delinquent or a child in need of services.

5 V. Any person who has not attained [19] 20 years of age who violates this section may be
6 guilty of a violation and shall be punished by a fine not to exceed \$100 for each offense or shall be
7 required to complete up to 20 hours of community service for each offense, or both. Where available,
8 punishment may also include participation in an education program.

9 8 Access to and Use of Tobacco Products; Special Provisions. Amend RSA 126-K:8, I(a) to read
10 as follows:

11 I.(a) No person shall sell, give, or furnish tobacco products, e-cigarettes, or e-liquid to a
12 person who has not attained [19] 20 years of age who has a note from an adult requesting such sale,
13 gift, or delivery. Tobacco products, e-cigarettes, or e-liquid shall only be delivered to a person who
14 provides an identification as enumerated in RSA 126-K:3 establishing that the person has attained
15 [19] 20 years of age.

16 9 Delinquent Children; Limitations of Authority Conferred. Amend RSA 169-B:32 to read as
17 follows:

18 169-B:32 Limitations of Authority Conferred. This chapter shall not be construed as applying to
19 persons 16 years of age or over who are charged with the violation of a motor vehicle law, an
20 aeronautics law, a law relating to navigation or boats, a fish and game law, a law relating to title
21 XIII, a law relating to fireworks under RSA 160-B or RSA 160-C, any town or municipal ordinance
22 which provides for a penalty not exceeding \$100 plus the penalty assessment, and shall not be
23 construed as applying to any minor charged with the violation of any law relating to the possession,
24 sale, or distribution of tobacco products to or by a person under [19] 20 years of age. However, if
25 incarceration takes place at any stage in proceedings on such violations, incarceration shall be only
26 in a juvenile facility certified by the commissioner of the department of health and human services.

27 10 Children in Need of Services; Limitations of Authority Conferred. Amend RSA 169-D:22 to
28 read as follows:

29 169-D:22 Limitations of Authority Conferred. This chapter shall not be construed as applying to
30 persons 16 years of age or over who are charged with the violation of a motor vehicle law, an
31 aeronautics law, a law relating to navigation of boats, a fish and game law, a law relating to title
32 XIII, or a law relating to fireworks under RSA 160-B or RSA 160-C, and shall not be construed as
33 applying to any minor charged with the violation of any law relating to the possession, sale, or
34 distribution of tobacco products to or by a person under [19] 20 years of age.

35 11 Retail Tobacco License. Amend RSA 178:19-a, III to read as follows:

36 III. The commission, when issuing or renewing a retail tobacco license, shall furnish a sign
37 which shall read or be substantially similar to the following: "State Law prohibits the sale of tobacco

1 products or e-cigarettes to persons under age [19] 20. Warning: violators of these provisions may be
2 subject to a fine."

3 12 Cigar Bars. Amend RSA 178:20-a, II(c) to read as follows:

4 (c) Does not allow any person under the age of [19] 20 on the premises unless
5 accompanied by a parent, legal guardian, or adult spouse.

6 13 Access to and Use of Tobacco Products; Purpose. Amend RSA 126-k:1 to read as follows:

7 126-K:1 Purpose. The purpose of this chapter is to protect the citizens of New Hampshire from
8 the possibility of addiction, disability, and death resulting from the use of tobacco products by
9 ensuring that tobacco products will not be supplied to persons under the age of [20] 21.

10 14 Access to and Use of Tobacco Products; Proof of Age of Purchaser. Amend the introductory
11 paragraph of RSA 126-K:3, I to read as follows:

12 I. For the purposes of this chapter, any person responsible for monitoring sales from a
13 tobacco vending machine or any person making the sale of tobacco products, e-cigarettes, or e-liquid
14 which vending machine or other sale is to be made to any person who does not appear to be at least
15 [20] 21 years of age, shall require the purchaser to furnish any of the following documentation that
16 such person is [20] 21 years of age or over:

17 15 Access to and Use of Tobacco Products; Proof of Age of Purchaser. Amend RSA 126-K:3, III
18 to read as follows:

19 III. The establishment of all of the following facts by a person responsible for monitoring
20 sales from a vending machine or a person or sampler making a sale or distribution of tobacco
21 products, e-cigarettes, or e-liquid to a person under [20] 21 years of age shall constitute prima facie
22 evidence of innocence and a defense to any prosecution for such sale:

23 (a) That the person falsely represented in writing and supported by some official
24 documents that the person was [20] 21 years of age or older;

25 (b) That the appearance of the person was such that an ordinary and prudent person
26 would believe such person to be at least [20] 21 years of age or older; and

27 (c) That the sale was made in good faith relying on such written representation and
28 appearance in the reasonable belief that the person was actually [20] 21 years of age or over.

29 16 Access to and Use of Tobacco Products; Sale and Distribution. Amend the section heading
30 and paragraph I of RSA 126-K:4 to read as follows:

31 126-K:4 Sale and Distribution of Tobacco Products, E-cigarettes, or E-Liquid to Persons Who
32 Have Not Attained [20] 21 Years of Age Prohibited.

33 I. No person shall sell, give, or furnish or cause or allow or procure to be sold, given, or
34 furnished tobacco products, e-cigarettes, or e-liquid to a person who has not attained [20] 21 years of
35 age. The prohibition established by this paragraph shall not be deemed to prohibit persons who
36 have not attained [20] 21 years of age employed by any manufacturer, wholesaler, sub-jobber,
37 vending machine operator, sampler, or retailer from performing the necessary handling of tobacco

1 products, e-cigarettes, or e-liquid during the duration of their employment.

2 17 Access to and Use of Tobacco Products; Rolling Papers. Amend RSA 126-K:4-a to read as
3 follows:

4 126-K:4-a Rolling Papers.

5 I. No person shall sell, give, or furnish rolling papers to a minor. Violations of this
6 paragraph shall be civil infractions punishable by administrative action of the commission against
7 the licensee. The fines for violations of this paragraph shall not exceed \$250 for the first offense,
8 \$500 for the second offense, and \$750 for the third and subsequent offenses.

9 II. No person under ~~[20]~~ 21 years of age shall purchase, possess, or use any rolling paper.
10 Any person who violates this section shall be guilty of a violation and shall be punished by a fine not
11 to exceed \$100 for each offense.

12 18 Access and Use of Tobacco Products; Distribution of Free Samples. Amend RSA 126-K:5, I
13 and II to read as follows:

14 I. No person may distribute or offer to distribute samples of tobacco products, e-cigarettes,
15 or e-liquid in a public place or to a person who has not attained ~~[20]~~ 21 years of age. This prohibition
16 shall not apply to sampling:

17 (a) In an area to which minors are denied access.

18 (b) In a store to which a retailer's license has been issued.

19 (c) At factory sites, construction sites, conventions, trade shows, fairs, or motorsport
20 facilities in areas to which minors are denied access.

21 II. The commission shall adopt rules, pursuant to RSA 541-A, concerning the distribution of
22 free samples of tobacco products, e-cigarettes, or e-liquid to prevent their distribution to persons who
23 have not attained ~~[20]~~ 21 years of age.

24 19 Access to and Use of Tobacco Products; Possession and Use of Tobacco Products, E-
25 Cigarettes, or Liquid Nicotine. Amend RSA 126-K:6 to read as follows:

26 126-K:6 Possession and Use of Tobacco Products, E-cigarettes, or E-Liquid by Persons Who
27 Have Not Attained ~~[20]~~ 21 Years of Age.

28 I. No person under ~~[20]~~ 21 years of age shall purchase, attempt to purchase, possess, or use
29 any tobacco product, e-cigarette, device, or e-liquid except that a minor who has been issued a
30 registry identification card under RSA 126-X:4 may possess e-liquids containing cannabis and
31 applicable devices.

32 II. The prohibition on possession of tobacco products, devices, e-cigarettes, or e-liquid shall
33 not be deemed to prohibit minors employed by any manufacturer, wholesaler, sub-jobber, vending
34 machine operator, sampler, or retailer from performing the necessary handling of tobacco products,
35 devices, e-cigarettes, or e-liquids during the duration of their employment.

36 III. A person who has not attained ~~[20]~~ 21 years of age shall not misrepresent his or her age
37 for the purpose of purchasing tobacco products.

1 IV. Notwithstanding RSA 169-B and RSA 169-D, a person 12 years of age and older who
2 violates this section shall not be considered a delinquent or a child in need of services.

3 V. Any person who has not attained [20] 21 years of age who violates this section may be
4 guilty of a violation and shall be punished by a fine not to exceed \$100 for each offense or shall be
5 required to complete up to 20 hours of community service for each offense, or both. Where available,
6 punishment may also include participation in an education program.

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8 as follows:

9 I.(a) No person shall sell, give, or furnish tobacco products, e-cigarettes, or e-liquid to a
10 person who has not attained [20] 21 years of age who has a note from an adult requesting such sale,
11 gift, or delivery. Tobacco products, e-cigarettes, or e-liquid shall only be delivered to a person who
12 provides an identification as enumerated in RSA 126-K:3 establishing that the person has attained
13 [20] 21 years of age.

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17 persons 16 years of age or over who are charged with the violation of a motor vehicle law, an
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20 which provides for a penalty not exceeding \$100 plus the penalty assessment, and shall not be
21 construed as applying to any minor charged with the violation of any law relating to the possession,
22 sale, or distribution of tobacco products to or by a person under [20] 21 years of age. However, if
23 incarceration takes place at any stage in proceedings on such violations, incarceration shall be only
24 in a juvenile facility certified by the commissioner of the department of health and human services.

25 22 Children in Need of Services; Limitations of Authority Conferred. Amend RSA 169-D:22 to
26 read as follows:

27 169-D:22 Limitations of Authority Conferred. This chapter shall not be construed as applying to
28 persons 16 years of age or over who are charged with the violation of a motor vehicle law, an
29 aeronautics law, a law relating to navigation of boats, a fish and game law, a law relating to title
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32 distribution of tobacco products to or by a person under [20] 21 years of age.

33 23 Retail Tobacco License. Amend RSA 178:19-a, III to read as follows:

34 III. The commission, when issuing or renewing a retail tobacco license, shall furnish a sign
35 which shall read or be substantially similar to the following: "State Law prohibits the sale of tobacco
36 products or e-cigarettes to persons under age [20] 21. Warning: violators of these provisions may be
37 subject to a fine."

1 24 Cigar Bars. Amend RSA 178:20-a, II(c) to read as follows:

2 (c) Does not allow any person under the age of [20] 21 on the premises unless
3 accompanied by a parent, legal guardian, or adult spouse.

4 25 Effective Date.

5 I. Sections 13-24 of this act shall take effect January 1, 2022.

6 II. The remainder of this act shall take effect January 1, 2021.

UNAPPROVED

2020-0322h

AMENDED ANALYSIS

This bill increases the age for sales and possession of tobacco products and e-cigarettes to 20 in the year 2021 and to 21 in the year 2022.

UNAPPROVED

Hearing Minutes

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

PUBLIC HEARING ON HB 1662-FN

BILL TITLE: relative to the purchase, use, and possession of tobacco products and e-cigarettes.

DATE: January 14, 2020

LOB ROOM: 302 **Time Public Hearing Called to Order:** 11:33 AM

Time Adjourned: 12:08 PM

Committee Members: Reps. Butler, Williams, Abel, Bartlett, Herbert, Van Houten, Fargo, Indruk, Muscatel, Weston, Costable and Potucek

Bill Sponsors:

Rep. Klee

Rep. J. Schmidt

Rep. Vail

Rep. Radhakrishnan

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

1. Rep Patricia Klee - Prime Sponsor

Chief Armageddion consulted.

Will bring written testimony.

Voted against Tobacco 21 in Nashua to avoid silo.

Mentioned Mom's cancer death, Father, and Brother

SB248 - Similar, passed Senate, may have more and better

Question: Rep. Butler - Feds passed 21?

Answer: Yes, believes as of January

2. Rep Notter - Opposed

Concerned about 18-19 year olds in the Military. They are old enough to make up their own minds.

E-cigs - 95% better than combustible.

Will email from Heartland Inst. 3.9% of high school students reported e-cig use.

Question: Rep. Bartlett - Raise Military Age?

Answer: Keep until 26?

3. Rep Jan Schmidt - Supports

Smoking damages frontal lobe of the brain causing forever damage to decision making.

Habits build habits

Senate bill is superior

4. Rep. Joe Hannon - Opposed

Not opposed to preventing young adults from smoking.

Have different ages for different things.

Need to work on education but having prohibition doesn't work.

Better ways than trying to control behavior.

21 is arbitrary, but they are adults at 18 and should have adult rights.

5. Mark Armaganian - NH Liquor Commission - Chief Law Enforcement - Neutral

When the budget passed, they had to license vaping. Now the federal age is 21 and they have a FDA grant & are deputized as FDA inspectors. When there is a violation, it goes to FDA.

Enforcement is on the establishment and they can enforce at 21. The Circuit Court only has jurisdiction at age 19 right now which causes a gap.

There are 1248 licensed establishments.

The signage cost is about \$8,000.00

This can avoid confusion.

SB248 - Same testimony

Question: Rep. Butler - Does Federal Law go into effect immediately?

Answer: Yes, but 180 days for rule writing.

Question: Rep. Constable - Not enforcing 21 during the 180 days?

Answer: Playing by the 18 rule right now.

Question: Rep. Butler - Once the rules at the federal level does anything change?

Answer: No, could bring violations to Federal Court.

6. Kate Frey - New Futures

Supports efforts to increase the age.

Wants to look at 2 bills in support of Tobacco 21

Need a state enforcement mechanism

511 definitely fixed - wants consistent. Maybe SB 248 will do

248 will be effective upon passage

25% of youth are regularly vaping, 40% have tried vaping.

Not a prohibition law

Age change effective with alcohol

Have highest rates of teen vaping.

7. Mike Rollo - American Cancer Society - Supports

Similar to New Futures

SB - Definitions are more consistent

Question: Rep Costable - Frontal Lobe damage at 21?

Answer: Up to 26

8. Nancy Vaughn - American Heart Association

Interested in reducing youth tobacco use.

Respectfully submitted,
Constance Van Houten
Constance Van Houten

HOUSE COMMITTEE ON COMMERCE AND CONSUMER AFFAIRS

PUBLIC HEARING ON HB 1662-FN

BILL TITLE: relative to the purchase, use, and possession of tobacco products and e-cigarettes.

DATE: 1/14/20

ROOM: 302

Time Public Hearing Called to Order: ~~11:00~~ 11:33

Time Adjourned: ~~11:33~~ 12:08

(please circle if present)

Committee Members: Reps. Butler, Williams, McBeath, Gidge, Abel, Bartlett, Herbert, Van Houten, Fargo, Indruk, Muscatele, Weston, Hunt, Sanborn, J. Osborne, Costable, Plumer, Barnes, Potucek and Warden

Bill Sponsors:

Rep. Klee
Rep. Radhakrishnan

Rep. J. Schmidt

Rep. Vail

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Patricia Klee - prime sponsor
Chief Amageddion consulted
will bring written testimony
voted against Tobacco 21 in N. Dakota to avoid
mentioned mom's cancer death, father + brother ^{silo}
SB 248 - similar, passed senate, may
have more + better

Q - Butler - feels passed 21?

A - yes, believes as of Jan.

Rep. Watter - opposed

concerned about 18-19 yr. olds in military,
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will email from Heartland Inst.
2.9% of high school stud resist e-cig use

Amag., cont.

1248 licensed establishments
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This can avoid confusion.

SB 248 same testimony

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A - yes, but 180 days for rule writing

Q - Costable - not enforcing 21 during 180 days

A - playing by 18 rule right now

Q - Butler - once rules @ Fed level does change anything?

A - no, could bring that violations to fed court

12

*1) Kate Frey, New Futures

2) frequently asked questions
support efforts to increase age
wants to look at 2 bills

in support of Tobacco 21

need state enforcement mechanism

511 def. fixed - wants consistent

maybe SB 248 will do

248 - effective upon passage

25% of reg youth - regular vaping

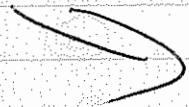
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have highest rates of teen vaping

not prohibition bill

age change effective w/ alcohol

—
—



rotter, conf.

Q - Bartlett - raise military age
H - keep until 36?

Rep. Tom Schmidt

smoking causes frontal lobe of brain
causing & forever damage to
decision-making
habits build habits
Senate bill superior

Dr. Joe Hansen - opposed

not opposed to preventing young
adults from smoking things
have dif. ages for dif things
need to work on ed. but having
prohibition doesn't work
better ways than trying to
control behavior
all-arbitrary, but adults of 18 +
should have adult rights

Mark Horganian - DH liquor com.
Chief law enforcement Medford
when budget passed, had to license
aging, now fed age - 21, have
FDH grant & deputized as FDH
inspectors

when violation, goes to FDH
another grant - enforcement is on
establishment & can enforce it
@ age 19 night news - causes a
gap

Mike Lollo, Am. Cancer Society pro
similar to New Futures
SB-definitions more consistent

Q - Costable - frontal lobe damage at 21?

A - up to 26

Nancy Vaughn - Am. Heart Assoc.
interested in reduce youth tobacco
use

Testimony

January 14th, 2020

The Honorable Edward Butler, Chair
House Commerce Committee
Legislative Office Building Room 302
Concord NH 03301

RE: House Bill 1662, relative to the purchase, use, and possession of tobacco products and e-cigarettes.

Dear Representative Butler and Honorable Members of the Committee:

New Futures is a nonprofit, nonpartisan organization that advocates, educates and collaborates to improve the health and wellness of all New Hampshire residents through policy change. In this role, we work extensively with policy makers, stakeholders, and prevention partners to prevent and reduce alcohol and drug problems in our state. New Futures strongly supports all efforts to increase the age to purchase, use and possess tobacco and e-cigarette products to 21 to protect the health and wellness of our children and communities.

With vaping illnesses surging and recent data showing dramatic increases in youth tobacco use, it is paramount that New Hampshire raise the tobacco sales age to 21. Tobacco 21 laws, now enacted at the federal level and 19 other states, are part of a comprehensive tobacco control strategy to save thousands of lives each year by preventing youth from accessing tobacco products. **Our legislature recently increased the age to 19 but 21 is the scientific, evidence-based age proven to support prevention, healthy development, and long-term health and safety.**

National and New Hampshire Data on Tobacco Use:

- National data shows that 95 percent of adult smokers started before turning 21, when adolescent brains are especially susceptible to lifetime nicotine addiction, subjecting our youth to negative brain development impacts, addiction and a wide range of adverse health effects, including cancer, lung disease, heart disease and stroke.
- According to Center for Disease Control Campaign for Tobacco Free Kids report, smoke-related diseases kill 1,900 Granite Staters each year. The same report found that smoking directly costs our state \$729 million in annual health care expenditures and \$506.9 million in smoking-caused productivity losses, among other charges.
- New Hampshire's rate of youth tobacco use remains one of the country's highest and is continuing to rise. 40 percent of Granite State youth have tried vaping and nearly 25 percent report regular use.

Tobacco products are highly addictive, especially for adolescent brains, and delaying the age when youth can purchase will reduce the risk of addiction. Despite claims by the industry, we know that youth vaping is not a safer alternative to traditional cigarettes. Vape products are just as addictive and similarly harmful to youth brain development. Increasing the age to 21 will help also protect our youth from vape industry tactics.

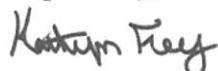
We are already seeing the public health benefits in the five New Hampshire towns – Durham, Dover, Keene, Franklin and Newmarket –that have enacted Tobacco 21 ordinances. Our

neighboring states, Maine, Vermont, Massachusetts and Connecticut are among the 19 other states that have already raised the tobacco purchasing age to 21. Many of these communities have seen significant drops in youth smoking rates, including Needham, Massachusetts where the youth tobacco use rate decreased 48 percent, and Chicago where youth use decreased 36 percent.

Lastly, as mentioned the federal government recently raised the age to purchase tobacco products to 21. While this is a very positive step it does complicate enforcement issues in the state. The NH Liquor Commission Division of Enforcement has stated that it will be enforcing the laws set by the State of New Hampshire which is 19. The federal law does not require that states pass laws to raise their sales age to 21, but it does require states to demonstrate that their retailers are complying with the law. If not, the state eventually risks losing some portion of their federal substance abuse grant funding.

For these reasons, New Futures supports Tobacco 21.

Respectfully,



Kathryn (Kate) Frey
Vice President of Advocacy
New Futures



FEDERAL TOBACCO 21: THE LAW OF LAND

In December 2019, Congress passed a \$1.37 trillion spending bill that included a provision to raise the minimum legal sales age for all tobacco products from 18 to 21 nationwide. Upon the President's signature on December 20, 2019, the age change became effective immediately.

The Preventing Tobacco Addiction Foundation/Tobacco 21 is gratified that this common-sense prevention policy is in place at the federal level; however, there is continued opportunity to help strengthen enforcement on a local, state, and national level. Highlights and FAQs are below:

- It is now a violation of federal law for any retailer to sell any nicotine or tobacco products to anyone under the age of 21.
- FDA will oversee enforcement of the minimum legal sales age at 21. (Due to the dramatic increase in e-cigarette use by middle and high school age youth since 2016, there is an opportunity to strengthen local and state level enforcement measures around all tobacco and nicotine products to supplement the FDA's national efforts.)
- There are no exemptions for sales to members of the military who are under 21.
- The law does not phase-in age restrictions (i.e., there is no "grandfathering") of those who are currently 18, 19 or 20.
- The law does not preempt cities, counties or states from passing and enforcing their own age restriction laws and does not preempt Tobacco 21 laws already in place in cities, counties and states, except that no military or grandfathering exemptions are granted.
- The law penalizes retailers for selling tobacco products to youth, not those attempting to purchase, although many states and cities retain purchase, use and possession (PUP) laws.
- The law does not require that states pass laws to raise their sales age to 21, but it does require states to demonstrate that their retailers are complying with the law. If not, the state eventually risks losing some portion of their federal substance abuse grant funding.
- This law does not address flavored tobacco or nicotine products in any way, although on January 2, 2020, the FDA issued an enforcement policy on unauthorized flavored cartridge based e-cigarettes: <https://www.fda.gov/media/133880/download>

Federal Tobacco 21 Law FAQ

1. What was the Tobacco 21 landscape prior to the Federal Legislation?

Over 540 local jurisdictions and 19 states had passed a Tobacco 21 law.

2. Where can I find the Federal Tobacco 21 Legislation?

The bill is available at the link provided below and the Tobacco 21 provisions begin on page 1492:

<https://docs.house.gov/billsthisweek/20191216/BILLS-116HR1865SA-RCP116-44.PDF>

3. What does the Federal Tobacco 21 bill do?

- Amends the Federal, Drug, and Cosmetic Act 906(d) to include a new subsection, 906(d)(5), which states: “Minimum Age of Sale -- It shall be unlawful for any retailer to sell a tobacco product to any person younger than 21 years of age.”

Note: This amendment makes it clear that the retailer is responsible, rather than the sales clerk or youth purchaser.

- Amends Federal, Drug and Cosmetic Act 906(d)(3)(ii) to restrict the FDA from establishing a minimum legal sales age above age 21.
- FDA will continue to enforce the minimum legal sales age. The law does not increase fines/penalties for violations.
- Amends the Public Health Services Act Sec. 1926 (42 U.S.C. 300x-26) (the Synar Amendment) with respect to grant monies, enforcement, implementation, and compliance rates (discussed more in depth in Question 5).
- Enables the Secretary of Health and Human Services to promulgate regulations for tobacco product sales to increase the minimum age of sale from 18 to 21 and update the ID verification age from 27 to 30.
- The law provides grant funding to the states to assist in obtaining retailer compliance, but federal funds are meant to “supplement” state-funded tobacco control efforts not “supplant” state funding to that effect.
- Health and Human Services will provide technical assistance to the states.
- No exemptions or phase in were included, including no military exemption or grandfathering of age groups.
- The law does not preempt states or localities from passing their own age restriction laws.
- Congress appropriated \$18.5 million in grant money available to support states in their transition, with a sunset period until September, 2024.

NOTE: This summary does not include every change to current law based on the Tobacco 21 provisions of the spending bill but rather serves as an overview. The bill language in full can be found in the link in Answer 2 (above).

4. When is Federal Tobacco 21 effective?

The age change became effective immediately, according to the Food and Drug Administration: *“On December 20, 2019, the President signed legislation to amend the Federal Food, Drug, and Cosmetic Act, and raise the federal minimum age of sale of tobacco products from 18 to 21 years. It is now illegal for a retailer to sell any tobacco product – including cigarettes, cigars and e-cigarettes – to anyone under 21. FDA will provide additional details on this issue as they become available.”*

Retailers can visit the FDA website for guidance:

<https://www.fda.gov/tobacco-products/compliance-enforcement-training/retail-sales-tobacco-products>

NOTE: The legislation enables the Secretary of Health and Human Services to promulgate rules to carry out the new law no later than 180 days after the date of enactment of the Act. The Secretary is required to publish the final rule to update the regulations under Chapter 9 of the Federal Food, Drug, and Cosmetic Act to carry out the amendments, to update all references to persons under 18, and to update the relevant age verification requirements to require age verification for individuals under the age of 30. This final rule will take effect no later than 90 days after the date on which the final rule is published.

5. What is ‘Synar’ and how does the Federal bill amend Synar?

The original Synar Amendment, named for the Oklahoma Senator who introduced the amendment, required, among other things, states to adopt state laws setting the tobacco sale age at 18 in order to receive their Substance Abuse Prevention and Treatment Block (SAPTB) grant money. However, that part of the Synar amendment was repealed in the new legislation, and states are not required to pass their own laws to update their tobacco sales age to 21. States will still need to demonstrate compliance with the federal age of 21 as a condition of the grant. Specifically, under 42 U.S.C. 300x-26, a funding agreement for the SAPTB under Section 1921 requires the states involved to (1) annually conduct random, unannounced inspections to ensure that retailers do not sell tobacco products to individuals under the age of 21, and (2) report such findings to the federal government annually. If states do not demonstrate a compliance rate determined by the Secretary, they risk losing up to 10% of their SAPTB monies.

The new law grants a 3-year grace period following enactment to come into compliance with the reporting and enforcement requirements before the Secretary may withhold any funds, with a further 2-year period for Secretary to exercise discretion in enforcement.

6. Does the Federal Tobacco 21 law include a Military Exemption?

No. The Federal Tobacco 21 law does not exempt anyone from the age requirement. It is now illegal for retailers to sell tobacco product to anyone under the age of 21.

7. What does this mean for states and localities that have a military exemption in their Tobacco 21 laws? Does this Federal law overturn all military exemptions that are currently in effect?

The Federal Tobacco 21 law does not exempt anyone or group from the age restriction requirements. States and cities that exempt members of the military from their Tobacco 21 laws are in violation of federal law. In other words, because the federal law does not have a military exemption, all such sales to persons under 21, regardless of military status, are illegal.

8. Can a law exempting the military from the new age of sale of 21 be enacted before the federal law starts to be enforced?

No. The federal law became effective when it was signed by President Trump. The law does not have a military exemption. Therefore, sales to any persons under the age of 21, including military personnel, are illegal. ***States cannot authorize something that is illegal under federal law.***

9. Does the Federal Tobacco 21 law include a phase-in period?

No. Per the FDA website, the law is effective immediately and it is illegal for a retailer to sell tobacco products to persons under the age of 21.

10. Is there more to be done? Should my state/city continue to pass Tobacco 21 laws independently?

Yes, absolutely! In many states and cities, outdated and uninformed youth access laws remain on the books. Many of these laws were written and lobbied for by the tobacco industry. These antiquated laws consistently place penalties on youth rather than the retailer who profits from sales, and many lack real enforcement mechanisms or penalties that deter bad behaviors. Even with a federal Tobacco 21 law, there is much work that needs to be done around age restriction laws at a state and local level.

The federal Tobacco 21 law does not preempt states and localities from adopting their own Tobacco 21 laws. In fact, changes to the Synar Amendment require states, as a condition of their grant funding, to demonstrate compliance with the federal age of 21. Specifically, under 42 U.S.C. 300x-26, a funding agreement for the SAPTB under Section 1921 requires the states involved to (1) annually conduct random, unannounced inspections to ensure that retailers do not sell tobacco products to individuals under the age of 21, and (2) report such findings to the federal government annually. If states do not demonstrate a compliance rate determined by the Secretary, they risk losing up to 10% of their SAPTB monies. ***Therefore, the federal law inherently encourages state and local action.*** Moreover, state and local enforcement will help improve the effectiveness of a Tobacco 21 law.

States and localities should continue passing policies at the local and state level to make their age restriction laws align with federal law. Effective sales regulations also include requiring a tobacco retail license, mandating a minimum number of compliance checks, and updating their penalty structure to incentivize compliance.

Again, states and cities are not preempted from passing or enforcing their own Tobacco 21 laws. Therefore, in locations that already have Tobacco 21, we recommend continued enforcement. In locations that do not have a Tobacco 21 law, we recommend updating laws and enforcing the new age.

11. What are the penalties for youth who are caught trying to purchase or those who are using tobacco products?

The federal law does not place any penalties for youth who are caught attempting to purchase, purchasing, or using tobacco products. However, state and local laws often place a penalty on youth for such activity. We recommend you monitor your local and state laws for these provisions.

If your jurisdiction does place a penalty on the youth for purchase, use, or possession of tobacco products, we recommend that the jurisdiction update its laws to align with federal standards that place the penalties on the retailers, not the youth purchaser.

12. What are the penalties for selling to those under 21?

The FDA enforces the minimum legal sales age contracting with the states or a third party to conduct compliance checks at retail locations. Maximum penalties for violating regulations issued under Section 906(d) of the Food, Drug, and Cosmetic Act, including the restrictions on the sale and distribution of covered tobacco products in 21 CFR part 1140, are set forth at Section 103(q)(2) of the Tobacco Control Act and have since been adjusted for inflation. The penalty structure is available at:

<https://www.fda.gov/tobacco-products/compliance-enforcement-training/ctp-compliance-enforcement>

The first time a retailer with an approved training program violates the regulations issued under Section 906(d) of the FD&C Act, FDA will send the retailer a Warning Letter. The maximum civil money penalty amounts for such retailers range from \$292 (for a second violation within a 12-month period) to \$11,698 (for a sixth or each subsequent violation at the same retail location within a 48-month period).ⁱ

The FDA may also pursue a *No-Tobacco-Sale Order* (NTSO) against retailers that have a total of five or more repeated violations of certain restrictions within 36 months. Retailers are prohibited from selling regulated tobacco products at the specified location during the period of the NTSO.ⁱⁱ Per guidance from the FDA, “Repeated violations” is defined to mean “at least 5 violations of particular requirements over a 36-month period at a particular retail outlet that constitute a repeated violation.”ⁱⁱⁱ In addition, states and localities may have their own age restriction enforcement mechanism. These programs vary by state and we recommend you research your own jurisdiction to learn about your state or locality’s age restriction enforcement program.

13. Did flavored e-cigarettes become illegal with this new law?

No. This legislation does not prohibit or restrict the sale of flavored products. **On January 2, 2020, the FDA issued an enforcement policy on unauthorized flavored cartridge based e-cigarettes:** <https://www.fda.gov/media/133880/download>

Note: Prior to this legislation and under the authority granted by the Family Smoking Prevention and Tobacco Control Act, the FDA prohibited cigarettes from containing any “characterizing flavor,” including candy, fruit, and alcohol flavors. This regulation was not impacted by the new legislation. Please consult your state and local laws as some jurisdictions have prohibited the sale of (or further restricted) flavored tobacco products.

Disclaimer: *The information presented is not legal representation or advice, is not to be acted on as such, may not be current and is subject to change. This information is for educational purposes only. If you require legal advice or a legal opinion, we encourage you to consult with legal counsel.*

ⁱ The Civil Money Penalty amounts listed in this guidance reflect the amounts listed in the statute. FDA is required to update these amounts annually to reflect inflation by the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. No. 101-410, 104 Stat. 890 (1990) (codified as amended at 28 U.S.C. 2461 note 2(a)), as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of the Bipartisan Budget Act of 2015, Pub. L. No. 114-74, November 2, 2015). For the most up-to-date amounts, please see 45 CFR §102.3 or the CTP website at: <http://www.fda.gov/TobaccoProducts/GuidanceComplianceRegulatoryInformation/ucm232109.htm>

ⁱⁱ Products, Center for Tobacco. “Tobacco Compliance & Enforcement.” *U.S. Food and Drug Administration*, FDA, <https://www.fda.gov/tobacco-products/compliance-enforcement-training/ctp-compliance-enforcement>.

ⁱⁱⁱ Department of Health and Human Services, Food and Drug Administration Center For Tobacco Products, “Civil Money Penalties and No-Tobacco-Sale Orders for Tobacco Retailers (Revised), Guidance for Industry.” Published Dec. 2016, available at <https://www.fda.gov/media/80888/download>, FDA understands this to mean that there is a “repeated violation” if: There are at least five violations of requirements issued under Section 906(d) of the FD&C Act at a particular outlet; Each of the five violations represents the second or subsequent violation of a particular requirement; and Each of the five violations occurs within 36 months.

Bill as
Introduced

HB 1662-FN - AS INTRODUCED

2020 SESSION

20-2126

01/10

HOUSE BILL ***1662-FN***

AN ACT relative to the purchase, use, and possession of tobacco products and e-cigarettes.

SPONSORS: Rep. Klee, Hills. 30; Rep. J. Schmidt, Hills. 28; Rep. Vail, Hills. 30; Rep.
 Radhakrishnan, Hills. 22

COMMITTEE: Commerce and Consumer Affairs

ANALYSIS

This bill increases the age for sales and possession of tobacco products and e-cigarettes.

Explanation: Matter added to current law appears in ***bold italics***.
 Matter removed from current law appears [~~in brackets and struck through~~].
 Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty

AN ACT relative to the purchase, use, and possession of tobacco products and e-cigarettes.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Access to and Use of Tobacco Products; Purpose. Amend RSA 126-K:1 to read as follows:

2 126-K:1 Purpose. The purpose of this chapter is to protect the citizens of New Hampshire from
3 the possibility of addiction, disability, and death resulting from the use of tobacco products by
4 ensuring that tobacco products will not be supplied to persons under the age of ~~19~~ 21.

5 2 Access to and Use of Tobacco Products; Proof of Age of Purchaser. Amend the introductory
6 paragraph of RSA 126-K:3, I to read as follows:

7 I. For the purposes of this chapter, any person responsible for monitoring sales from a
8 tobacco vending machine or any person making the sale of tobacco products, e-cigarettes, or liquid
9 nicotine which vending machine or other sale is to be made to any person who does not appear to be
10 at least ~~19~~ 21 years of age, shall require the purchaser to furnish any of the following
11 documentation that such person is ~~19~~ 21 years of age or over:

12 3 Access to and Use of Tobacco Products; Proof of Age of Purchaser. Amend RSA 126-K:3, III to
13 read as follows:

14 III. The establishment of all of the following facts by a person responsible for monitoring
15 sales from a vending machine or a person or sampler making a sale or distribution of tobacco
16 products, e-cigarettes, or liquid nicotine to a person under ~~19~~ 21 years of age shall constitute prima
17 facie evidence of innocence and a defense to any prosecution for such sale:

18 (a) That the person falsely represented in writing and supported by some official
19 documents that the person was ~~19~~ 21 years of age or older;

20 (b) That the appearance of the person was such that an ordinary and prudent person
21 would believe such person to be at least ~~19~~ 21 years of age or older; and

22 (c) That the sale was made in good faith relying on such written representation and
23 appearance in the reasonable belief that the person was actually ~~19~~ 21 years of age or over.

24 4 Access to and Use of Tobacco Products; Sale and Distribution. Amend the section heading and
25 paragraph I of RSA 126-K:4 to read as follows:

26 126-K:4 Sale and Distribution of Tobacco Products, E-cigarettes, or Liquid Nicotine to Persons
27 Who Have Not Attained ~~19~~ 21 Years of Age Prohibited.

28 I. No person shall sell, give, or furnish or cause or allow or procure to be sold, given, or
29 furnished tobacco products, e-cigarettes, or liquid nicotine to a person who has not attained ~~19~~ 21
30 years of age. The prohibition established by this paragraph shall not be deemed to prohibit persons
31 who have not attained ~~19~~ 21 years of age employed by any manufacturer, wholesaler, sub-jobber,

1 vending machine operator, sampler, or retailer from performing the necessary handling of tobacco
2 products, e-cigarettes, or liquid nicotine during the duration of their employment.

3 5 Access to and Use of Tobacco Products; Rolling Papers. Amend RSA 126-K:4-a to read as
4 follows:

5 126-K:4-a Rolling Papers.

6 I. No person shall sell, give, or furnish rolling papers to a minor. Violations of this
7 paragraph shall be civil infractions punishable by administrative action of the commission against
8 the licensee. The fines for violations of this paragraph shall not exceed \$250 for the first offense,
9 \$500 for the second offense, and \$750 for the third and subsequent offenses.

10 II. No person under [~~19~~] 21 years of age shall purchase, possess, or use any rolling paper.
11 Any person who violates this section shall be guilty of a violation and shall be punished by a fine not
12 to exceed \$100 for each offense.

13 6 Access and Use of Tobacco Products; Distribution of Free Samples. Amend RSA 126-K:5, I and
14 II to read as follows:

15 I. No person may distribute or offer to distribute samples of tobacco products, e-cigarettes,
16 or liquid nicotine in a public place or to a person who has not attained [~~19~~] 21 years of age. This
17 prohibition shall not apply to sampling:

18 (a) In an area to which minors are denied access.

19 (b) In a store to which a retailer's license has been issued.

20 (c) At factory sites, construction sites, conventions, trade shows, fairs, or motorsport
21 facilities in areas to which minors are denied access.

22 II. The commission shall adopt rules, pursuant to RSA 541-A, concerning the distribution of
23 free samples of tobacco products, e-cigarettes, or liquid nicotine to prevent their distribution to
24 persons who have not attained [~~19~~] 21 years of age.

25 7 Access to and Use of Tobacco Products; Possession and Use of Tobacco Products, E-Cigarettes,
26 or Liquid Nicotine. Amend RSA 126-K:6 to read as follows:

27 126-K:6 Possession and Use of Tobacco Products, E-cigarettes, or Liquid Nicotine by Persons
28 Who Have Not Attained [~~19~~] 21 Years of Age.

29 I. No person under [~~19~~] 21 years of age shall purchase, attempt to purchase, possess, or use
30 any tobacco product, e-cigarette, or liquid nicotine.

31 II. The prohibition on possession of tobacco products, e-cigarettes, or liquid nicotine shall not
32 be deemed to prohibit minors employed by any manufacturer, wholesaler, sub-jobber, vending
33 machine operator, sampler, or retailer from performing the necessary handling of tobacco products,
34 e-cigarettes, or liquid nicotine during the duration of their employment.

35 III. A person who has not attained [~~19~~] 21 years of age shall not misrepresent his or her age
36 for the purpose of purchasing tobacco products.

1 IV. Notwithstanding RSA 169-B and RSA 169-D, a person 12 years of age and older who
2 violates this section shall not be considered a delinquent or a child in need of services.

3 V. Any person who has not attained [~~19~~] 21 years of age who violates this section may be
4 guilty of a violation and shall be punished by a fine not to exceed \$100 for each offense or shall be
5 required to complete up to 20 hours of community service for each offense, or both. Where available,
6 punishment may also include participation in an education program.

7 8 Access to and Use of Tobacco Products; Special Provisions. Amend RSA 126-K:8, I(a) to read
8 as follows:

9 I.(a) No person shall sell, give, or furnish tobacco products, e-cigarettes, or liquid nicotine to
10 a person who has not attained [~~19~~] 21 years of age who has a note from an adult requesting such
11 sale, gift, or delivery. Tobacco products, e-cigarettes, or liquid nicotine shall only be delivered to a
12 person who provides an identification as enumerated in RSA 126-K:3 establishing that the person
13 has attained [~~19~~] 21 years of age.

14 9 Delinquent Children; Limitations of Authority Conferred. Amend RSA 169-B:32 to read as
15 follows:

16 169-B:32 Limitations of Authority Conferred. This chapter shall not be construed as applying to
17 persons 16 years of age or over who are charged with the violation of a motor vehicle law, an
18 aeronautics law, a law relating to navigation or boats, a fish and game law, a law relating to title
19 XIII, a law relating to fireworks under RSA 160-B or RSA 160-C, any town or municipal ordinance
20 which provides for a penalty not exceeding \$100 plus the penalty assessment, and shall not be
21 construed as applying to any minor charged with the violation of any law relating to the possession,
22 sale, or distribution of tobacco products to or by a person under [~~19~~] 21 years of age. However, if
23 incarceration takes place at any stage in proceedings on such violations, incarceration shall be only
24 in a juvenile facility certified by the commissioner of the department of health and human services.

25 10 Children in Need of Services; Limitations of Authority Conferred. Amend RSA 169-D:22 to
26 read as follows:

27 169-D:22 Limitations of Authority Conferred. This chapter shall not be construed as applying to
28 persons 16 years of age or over who are charged with the violation of a motor vehicle law, an
29 aeronautics law, a law relating to navigation of boats, a fish and game law, a law relating to title
30 XIII, or a law relating to fireworks under RSA 160-B or RSA 160-C, and shall not be construed as
31 applying to any minor charged with the violation of any law relating to the possession, sale, or
32 distribution of tobacco products to or by a person under [~~19~~] 21 years of age.

33 11 Retail Tobacco License. Amend RSA 178:19-a, III to read as follows:

34 III. The commission, when issuing or renewing a retail tobacco license, shall furnish a sign
35 which shall read or be substantially similar to the following: "State Law prohibits the sale of tobacco
36 products or e-cigarettes to persons under age [~~19~~] 21. Warning: violators of these provisions may be
37 subject to a fine."

HB 1662-FN - AS INTRODUCED

- Page 4 -

1 12 Cigar Bars. Amend RSA 178:20-a, II(c) to read as follows:

2 (c) Does not allow any person under the age of [~~19~~] 21 on the premises unless
3 accompanied by a parent, legal guardian, or adult spouse.

4 13 Effective Date. This act shall take effect January 1, 2021.

HB 1662-FN- FISCAL NOTE
AS INTRODUCED

AN ACT relative to the purchase, use, and possession of tobacco products and e-cigarettes.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2020	FY 2021	FY 2022	FY 2023
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
Expenditures	\$0	\$10,000+	\$2,500+	\$2,500+
<i>Funding Source:</i>	<input checked="" type="checkbox"/> General Fund	<input checked="" type="checkbox"/> Education	<input type="checkbox"/> Highway	<input checked="" type="checkbox"/> Other - Liquor

METHODOLOGY:

This bill increases the age for sales and possession of tobacco products and e-cigarettes from 19 to 21 years of age.

The Liquor Commission assumes increasing the age for purchase and possession will slightly increase law enforcement actions to detect unlawful sales of tobacco products to individuals under the age of 21 years. The Commission indicates the signs required by RSA 178:19-a, which prohibit sales to those under the legal age will need to be replaced by January 1, 2021. The Commission provided the following information on the fiscal impact of the bill:

- There are an estimated 1,283 licensed tobacco retailers.
- There is an additional number of "vape shops" subject to licensure by the Liquor Commission. The Commission is in the process of implementing the 2019 laws concerning vaping products.
- The Commission estimates it will cost approximately \$10,000 to redesign and print signs for existing tobacco retailers. The cost to distribute the signs to the 1,283 existing licensees is not known.
- The cost to print and distribute the new signs to new licensees is estimated at \$2,500.

The Department of Revenue Administration indicates the fiscal impact of this bill is indeterminable, but increasing the legal age for purchase and possession of tobacco and e-cigarettes from 19 to 21 years would reduce tobacco sales, tobacco tax, and possibly business tax

revenues. The Department cannot estimate with any degree of certainty the percentage of New Hampshire sales attributable to individuals aged 19 to 20.

AGENCIES CONTACTED:

Liquor Commission and Department of Revenue Administration

Committee Report

REGULAR CALENDAR

May 21, 2020

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Majority of the Committee on Criminal Justice and Public Safety to which was referred HB 1662-FN,

AN ACT relative to the purchase, use, and possession of tobacco products and e-cigarettes. Having considered the same, report the same with the recommendation that the bill be REFERRED FOR INTERIM STUDY.

Rep. Beth Rodd

FOR THE MAJORITY OF THE COMMITTEE

**MAJORITY
COMMITTEE REPORT**

Committee:	Criminal Justice and Public Safety
Bill Number:	HB 1662-FN
Title:	relative to the purchase, use, and possession of tobacco products and e-cigarettes.
Date:	May 21, 2020
Consent Calendar:	REGULAR
Recommendation:	REFER FOR INTERIM STUDY

STATEMENT OF INTENT

While a majority of the committee voted to adopt a proposed amendment to this bill to bring the language of the bill into compliance with current federal standards, there were remaining concerns about other aspects of the bill. Discussion within the committee included what some members believe to be an inconsistency between the age someone is eligible to purchase, use and possess tobacco products and other activities that are legal for 19-21 year olds such as voting, driving and military service, and therefor were uncomfortable with the penalties included in the bill. While efforts to discourage tobacco and e-cigarette use, especially among young people, have merit, the majority felt the bill merited further study would be needed to clarify constitutional questions posed as well as passing a state law that does not comply with federal standards.

Vote 11-9.

Rep. Beth Rodd
FOR THE MAJORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Criminal Justice and Public Safety

HB 1662-FN, relative to the purchase, use, and possession of tobacco products and e-cigarettes.
MAJORITY: REFER FOR INTERIM STUDY. MINORITY: INEXPEDIENT TO LEGISLATE.

Rep. Beth Rodd for the **Majority** of Criminal Justice and Public Safety. While a majority of the committee voted to adopt a proposed amendment to this bill to bring the language of the bill into compliance with current federal standards, there were remaining concerns about other aspects of the bill. Discussion within the committee included what some members believe to be an inconsistency between the age someone is eligible to purchase, use and possess tobacco products and other activities that are legal for 19-21 year olds such as voting, driving and military service, and therefore were uncomfortable with the penalties included in the bill. While efforts to discourage tobacco and e-cigarette use, especially among young people, have merit, the majority felt the bill merited further study would be needed to clarify constitutional questions posed as well as passing a state law that does not comply with federal standards. **Vote 11-9.**

Original: House Clerk
Cc: Committee Bill File

edited by House

REGULAR CALENDAR

May 21, 2020

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Minority of the Committee on Criminal Justice and Public Safety to which was referred HB 1662-FN,

AN ACT relative to the purchase, use, and possession of tobacco products and e-cigarettes. Having considered the same, and being unable to agree with the Majority, report with the following resolution: RESOLVED, that it is INEXPEDIENT TO LEGISLATE.

Rep. Daryl Abbas

FOR THE MINORITY OF THE COMMITTEE

**MINORITY
COMMITTEE REPORT**

Committee:	Criminal Justice and Public Safety
Bill Number:	HB 1662-FN
Title:	relative to the purchase, use, and possession of tobacco products and e-cigarettes.
Date:	May 21, 2020
Consent Calendar:	REGULAR
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

The rationale behind HB1662 was to make our state law consistent with federal law in respect to selling and possessing tobacco products by increasing the age from 19 to 21. However, the amendment added language addressing cannabis which remains illegal under federal law. Such inconsistent and flawed logic should not be the basis for passing any bill. That issue aside, as written, HB1662 is unconstitutional because it can amount to an unconstitutional taking. It is unconstitutional for the government to deprive any person of their property without just compensation. Article 23 of the New Hampshire Constitution states that "Any retrospective law is highly injurious, oppressive and unjust." What a 19-20 year old is lawfully possessing today will be criminalized by HB1662 where the individual possessed and owned their property before it was criminalized. Had the precedents HB1662 is attempting to create apply to any other type of property, presumably it would be overwhelmingly rejected by people. Regardless of the debate relating to public health, morality and emotion, this bill is unconstitutional and based on that alone, inexpedient to legislate is more appropriate. Considering the restrictions and backlog both legislative bodies are dealing with because of Covid-19, the people are better served if the state government does not allocate our limited resources associated with creating an interim study.

Rep. Daryl Abbas
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Criminal Justice and Public Safety

HB 1662-FN, relative to the purchase, use, and possession of tobacco products and e-cigarettes.
INEXPEDIENT TO LEGISLATE.

Rep. Daryl Abbas for the **Minority** of Criminal Justice and Public Safety. The rationale behind HB1662 was to make our state law consistent with federal law in respect to selling and possessing tobacco products by increasing the age from 19 to 21. However, the amendment added language addressing cannabis which remains illegal under federal law. Such inconsistent and flawed logic should not be the basis for passing any bill. That issue aside, as written, HB1662 is unconstitutional because it can amount to an unconstitutional taking. It is unconstitutional for the government to deprive any person of their property without just compensation. Article 23 of the New Hampshire Constitution states that "Any retrospective law is highly injurious, oppressive and unjust." What a 19-20 year old is lawfully possessing today will be criminalized by HB1662 where the individual possessed and owned their property before it was criminalized. Had the precedents HB1662 is attempting to create apply to any other type of property, presumably it would be overwhelmingly rejected by people. Regardless of the debate relating to public health, morality and emotion, this bill is unconstitutional and based on that alone, inexpedient to legislate is more appropriate. Considering the restrictions and backlog both legislative bodies are dealing with because of Covid-19, the people are better served if the state government does not allocate our limited resources associated with creating an interim study.

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

May 21, 2020

HOUSE OF REPRESENTATIVES

REPORT OF COMMITTEE

The Minority of the Committee on Criminal Justice and Public Safety to which was referred HB 1662-FN,

AN ACT relative to the purchase, use, and possession of tobacco products and e-cigarettes. Having considered the same, and being unable to agree with the Majority, report with the following resolution: RESOLVED, that it is INEXPEDIENT TO LEGISLATE.

Rep. Daryl Abbas

FOR THE MINORITY OF THE COMMITTEE

**MINORITY
COMMITTEE REPORT**

Committee:	Criminal Justice and Public Safety
Bill Number:	HB 1662-FN
Title:	relative to the purchase, use, and possession of tobacco products and e-cigarettes.
Date:	May 21, 2020
Consent Calendar:	REGULAR
Recommendation:	INEXPEDIENT TO LEGISLATE

STATEMENT OF INTENT

The rationale behind this bill was to make our state law consistent with federal law in respect to selling and possessing tobacco products by increasing the age from 19 to 21. However, the amendment added language addressing cannabis which remains illegal under federal law. Such inconsistent and flawed logic should not be the basis for passing any bill. That issue aside, as written, HB 1662 is unconstitutional because it can amount to an unconstitutional taking. It is unconstitutional for the government to deprive any person of their property without just compensation. Article 23 of the New Hampshire Constitution states that "Any retrospective law is highly injurious, oppressive and unjust." What a 19-20 year old is lawfully possessing today will be criminalized by HB 1662 where the individual possessed and owned their property before it was criminalized. Had the precedents HB 1662 is attempting to create apply to any other type of property, presumably it would be overwhelmingly rejected by people. Regardless of the debate relating to public health, morality and emotion, this bill is unconstitutional and based on that alone, inexpedient to legislate is more appropriate. Considering the restrictions and backlog both legislative bodies are dealing with because of COVID-19, the people are better served if the state government does not allocate our limited resources associated with creating an interim study.

Rep. Daryl Abbas
FOR THE MINORITY

Original: House Clerk
Cc: Committee Bill File

REGULAR CALENDAR

Criminal Justice and Public Safety

HB 1662-FN, relative to the purchase, use, and possession of tobacco products and e-cigarettes.
INEXPEDIENT TO LEGISLATE.

Rep. Daryl Abbas for the **Minority** of Criminal Justice and Public Safety. The rationale behind this bill was to make our state law consistent with federal law in respect to selling and possessing tobacco products by increasing the age from 19 to 21. However, the amendment added language addressing cannabis which remains illegal under federal law. Such inconsistent and flawed logic should not be the basis for passing any bill. That issue aside, as written, HB 1662 is unconstitutional because it can amount to an unconstitutional taking. It is unconstitutional for the government to deprive any person of their property without just compensation. Article 23 of the New Hampshire Constitution states that "Any retrospective law is highly injurious, oppressive and unjust." What a 19-20 year old is lawfully possessing today will be criminalized by HB 1662 where the individual possessed and owned their property before it was criminalized. Had the precedents HB 1662 is attempting to create apply to any other type of property, presumably it would be overwhelmingly rejected by people. Regardless of the debate relating to public health, morality and emotion, this bill is unconstitutional and based on that alone, inexpedient to legislate is more appropriate. Considering the restrictions and backlog both legislative bodies are dealing with because of COVID-19, the people are better served if the state government does not allocate our limited resources associated with creating an interim study.

Original: House Clerk

Cc: Committee Bill File

Voting Sheets

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

EXECUTIVE SESSION on HB 1662-FN

BILL TITLE: relative to the purchase, use, and possession of tobacco products and e-cigarettes.

DATE: May 21, 2020

LOB ROOM: 204

MOTIONS: REFER FOR INTERIM STUDY

Moved by Rep. Rodd

Seconded by Rep. Pantelakos

Vote: 11-9

Respectfully submitted,

Rep Linda Harriott-Gathright, Clerk

HOUSE COMMITTEE ON CSP

EXECUTIVE SESSION ON HB 1662

BILL TITLE:

DATE: 5/21/20
LOB ROOM: Virtual

MOTION: (Please check one box)

- OTP ITL Retain (1st year) Adoption of Amendment # 1246
 Interim Study (2nd year) (if offered)

Moved by Rep. Cushing Seconded by Rep. Rodd Vote: 12/8

MOTION: (Please check one box)

- OTP OTP/A ITL Retain (1st year) Adoption of Amendment # _____
 Interim Study (2nd year) (if offered)

Moved by Rep. Rodd Seconded by Rep. Pantelakas Vote: 9/11

MOTION: (Please check one box)

- OTP OTP/A ITL Retain (1st year) Adoption of Amendment # _____
 Interim Study (2nd year) (if offered)

Moved by Rep. Rodd Seconded by Rep. Pantelakas Vote: 11/9

MOTION: (Please check one box)

- OTP OTP/A ITL Retain (1st year) Adoption of Amendment # _____
 Interim Study (2nd year) (if offered)

Moved by Rep. _____ Seconded by Rep. _____ Vote: _____

CONSENT CALENDAR? _____ Yes _____ No

Minority Report? _____ Yes _____ No If yes, author, Rep.: _____ Motion: _____

Respectfully submitted, Rep. _____, Clerk



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

5/15/2020 1:19:36 PM
Roll Call Committee Registers
Report

2020 SESSION

Criminal Justice and Public Safety

124h

Bill #:

HB 1662

Motion:

Amen

AM #:

12:03 P

Exec Session Date:

5/21/20

Members	YEAS	Nays	NV
Cushing, Robert Renny Chairman	✓		
Rodd, Beth Vice Chairman	✓		
Pantelakos, Laura C.	✓		
O'Hearne, Andrew S.	✓		
Harriott-Gathright, Linda C. Clerk		✓	
Opderbecke, Linn	✓		
Bordenet, John	✓		
Meuse, David	✓		
Murphy, Nancy A.	✓		
Newman, Ray E.	✓		
Radhakrishnan, Julie	✓		
Swinburne, Sandy L.	✓		
Welch, David A.		✓	
Fields, Dennis H. <i>Rice</i>		✓	
Green, Dennis E. <i>Bald</i>		✓	
Testerman, Dave	✓		
Wallace, Scott		✓	
Abbas, Daryl A.		✓	
Roy, Terry		✓	
TOTAL VOTE:			

OBEN

12

8



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

5/15/2020 1:19:36 PM
Roll Call Committee Registers
Report

2020 SESSION

Criminal Justice and Public Safety

Bill #: HB1662 Motion: OTPA AM #: 11:42 Exec Session Date: 5/21/20

Members	YEAS	Nays	NV
Cushing, Robert Renny Chairman	✓		
Rodd, Beth Vice Chairman	✓		
Pantelakos, Laura C.	✓		
O'Hearne, Andrew S.	✓		
Harriott-Gathright, Linda C. Clerk	✓	✓	
Opderbecke, Linn	✓		
Bordenet, John		✓	
Meuse, David	✓		
Murphy, Nancy A.	✓		
Newman, Ray E.	✓		
Radhakrishnan, Julie	✓		
Swinburne, Sandy L.		✓	
Welch, David A.		✓	
Fields, Dennis H. <i>Rice</i>		✓	
Green, Dennis E. <i>Baldasara</i>		✓	
Testerman, Dave		✓	
Wallace, Scott		✓	
Abbas, Daryl A.		✓	
Roy, Terry		✓	
TOTAL VOTE:			

OBER

(9)

(11)



STATE OF NEW HAMPSHIRE
OFFICE OF THE HOUSE CLERK

5/15/2020 1:19:36 PM
Roll Call Committee Registers
Report

2020 SESSION

Criminal Justice and Public Safety

Bill #: HB 11062 Motion: Int Study AM #: 12:23 Exec Session Date: 5/21/20

Members	YEAS	Nays	NV
Cushing, Robert Renny Chairman	✓		
Rodd, Beth Vice Chairman	✓		
Pantelakos, Laura C.	✓		
O'Hearne, Andrew S.	✓		
Harriott-Gathright, Linda C. Clerk	✓		
Opderbecke, Linn	✓		
Bordenet, John		✓	
Meuse, David	✓		
Murphy, Nancy A.	✓		
Newman, Ray E.	✓		
Radhakrishnan, Julie	✓		
Swinburne, Sandy L.	✓		
Welch, David A.		✓	
Fields, Dennis H.		✓	
Green, Dennis E.		✓	
Testerman, Dave		✓	
Wallace, Scott		✓	
Abbas, Daryl A.		✓	
Roy, Terry		✓	
TOTAL VOTE:			

JBK

11

9

Hearing Minutes

HOUSE COMMITTEE ON CRIMINAL JUSTICE AND PUBLIC SAFETY

PUBLIC HEARING ON HB 1662-FN

BILL TITLE: relative to the purchase, use, and possession of tobacco products and e-cigarettes.

DATE: March 5, 2020

LOB ROOM: 204 **Time Public Hearing Called to Order:** 10:30 a.m.

Time Adjourned: 11:00 a.m.

Committee Members: Reps. Cushing, Rodd, Harriott-Gathright, Pantelakos, Opderbecke, Bordenet, Murphy, R. Newman, Radhakrishnan, Swinburne, Welch, Fields, Green, Testerman and Abbas, L. Ober

Bill Sponsors:

Rep. Klee **Rep. J. Schmidt** **Rep. Vail**
Rep. Radhakrishnan

TESTIMONY

* Use asterisk if written testimony and/or amendments are submitted.

Rep. Patricia Klee - supports

- law of the land prohibits the sale of tobacco under age of 21
- 3 year grant
- confusion

Mark Armaganian - NHLHC - supports

- Age 19 circuit court can enforce
- FDS can enforce
- cc has no federal jurisdiction
- no grandfathering - would lose grants

Dr. Sai Cherala, DHHS, Bureau of Population health

- align with HB 511
- patient registry may have rolling paper

Mike Rollo, American Cancer Society, Action network - supports

Respectfully submitted,

Rep. Linda Harriott-Gathright, Clerk

(1)

3/5/20

HB 1662

Patricia Klee

DA
Support

- Law of the land prohibits the sale of tobacco under age of 21
- 3 yr grant
- confusion

②

Minor Mark Armaganian NHIC-

Support

age 19 circuit court can enforce

- FDA can only can enforce
- CC has no federal jurisdiction
- No grandfathering - would lose grants

A ③

Dr Sai Cherala - DHHS (Bureau of Population & Health)

Support

• align w/ HB 511

• patient registry may have rolling paper

④ Mike Lollo

American Cancer Society
Action Network

Support

PRO 7

CON ④

Testimony

(1)

Good Morning Mister Chair and Members of the Criminal Justice Committee. Thank you for taking the time today to hear this bill. I am here to introduce HB 1662.

When I originally put in this bill back in September/October of 2019 the US smoking age was 18 and the State of NH was 19. Things changed and while I would love to sit here and discuss the merits of why smoking should be outlawed or why we need to keep Tobacco Products, E-Cigarettes, and E-Liquid away from young developing brains is not what this Committee would ever want to hear from me.

The bottom line is that since I entered in my bill the United States Government passed a law that changed the minimum age of the legal use and the sales of Tobacco Products, E-Cigarettes, or E-Liquid from 18 to 21. I have to admit I was secretly relieved because the idea of sitting here today scares the bajeebies out of me...and I thought "woohoo, I dodged a bullet and I can just pull this bill." SO, Why am I here? Literally, the day that I was going to call OLS to ask them to pull my bill (if it even could be done) I received a phone call from Chief Mark C. Armaganian, Director of the Division of Enforcement and Licensing (for the Liquor Commission). When we spoke he explained to me that while the Federal Government did in fact up the age to 21 they did not put in the tools for state and local law enforcement to actual enforce. They don't have the authority give out "federal" citations as they do not have Federal jurisdiction. Well I say that but in some ways they do in that they are all or most are given FDA authority. So in some respects when they wear their FDA hats they can cite anyone who sells to someone under the age of 21 but this is not always the role they play. They are also enforcement agents of the state and as such cannot enforce 21 while calling themselves state enforcement agents. Is your brain spinning out of control yet? Yes it is confusing and it becomes even more confusing when we put into play the local municipal law enforcement agents...the local police can only enforce sales to and use by those under the age of 19. To add to this confusion is that of the poor business owner who asks which do sign do I put up 19? Or 21? Quite the quandary.

It is my understanding that the Chief and the Liquor commission are not taking a stand on the merits of a minimum age requirement other than to note that we are currently at a crossroads of a little or a lot of confusion. My bill does nothing to the current law in respect to penalty or fines. It simply crosses out the number 19 and replaces it with the number 21 bringing us in line with the Federal Governments minimum age of use and sales. The previous Committee had done an amendment to "grandfather" in those that were under the age of 21 however, the Federal Government's enactment of a minimum age of 21 went into effect January of this year 2020. Therefore the previous Committee amended their amendment to revert back to the original version.

So while I know that your role is to review the bill as it relates to penalties and fines I wanted you to know that at this point in time this bill is not changing any current penalties to the use or sales of Tobacco Products, E-Cigarettes, and E-Liquid to minors or those below the minimum age. It is actually just changing the minimum age from 19 to 21 to stay in line with the Federal Governments law. Again thank you for taking the time to hear me and if you have any questions I will happily answer them.

REPRESENTATIVE PATRICIA KLEE
HILLSBOROUGH DISTRICT #30.

Bill as
Introduced

HB 1662-FN - AS AMENDED BY THE HOUSE

19Feb2020... 0701h

2020 SESSION

20-2126

01/10

HOUSE BILL ***1662-FN***

AN ACT relative to the purchase, use, and possession of tobacco products and e-cigarettes.

SPONSORS: Rep. Klee, Hills. 30; Rep. J. Schmidt, Hills. 28; Rep. Vail, Hills. 30; Rep. Radhakrishnan, Hills. 22

COMMITTEE: Commerce and Consumer Affairs

AMENDED ANALYSIS

This bill increases the age for sales and possession of tobacco products and e-cigarettes to 21.

.....

Explanation: Matter added to current law appears in *bold italics*.
Matter removed from current law appears [~~in brackets and struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty

AN ACT relative to the purchase, use, and possession of tobacco products and e-cigarettes.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 Access to and Use of Tobacco Products; Purpose. Amend RSA 126-k:1 to read as follows:

2 126-K:1 Purpose. The purpose of this chapter is to protect the citizens of New Hampshire from
3 the possibility of addiction, disability, and death resulting from the use of tobacco products by
4 ensuring that tobacco products will not be supplied to persons under the age of ~~[19]~~ 21.

5 2 Access to and Use of Tobacco Products; Proof of Age of Purchaser. Amend the introductory
6 paragraph of RSA 126-K:3, I to read as follows:

7 I. For the purposes of this chapter, any person responsible for monitoring sales from a
8 tobacco vending machine or any person making the sale of tobacco products, e-cigarettes, or e-liquid
9 which vending machine or other sale is to be made to any person who does not appear to be at least
10 ~~[19]~~ 21 years of age, shall require the purchaser to furnish any of the following documentation that
11 such person is ~~[19]~~ 21 years of age or over:

12 3 Access to and Use of Tobacco Products; Proof of Age of Purchaser. Amend RSA 126-K:3, III to
13 read as follows:

14 III. The establishment of all of the following facts by a person responsible for monitoring
15 sales from a vending machine or a person or sampler making a sale or distribution of tobacco
16 products, e-cigarettes, or e-liquid to a person under ~~[19]~~ 21 years of age shall constitute prima facie
17 evidence of innocence and a defense to any prosecution for such sale:

18 (a) That the person falsely represented in writing and supported by some official
19 documents that the person was ~~[19]~~ 21 years of age or older;

20 (b) That the appearance of the person was such that an ordinary and prudent person
21 would believe such person to be at least ~~[19]~~ 21 years of age or older; and

22 (c) That the sale was made in good faith relying on such written representation and
23 appearance in the reasonable belief that the person was actually ~~[19]~~ 21 years of age or over.

24 4 Access to and Use of Tobacco Products; Sale and Distribution. Amend the section heading and
25 paragraph I of RSA 126-K:4 to read as follows:

26 126-K:4 Sale and Distribution of Tobacco Products, E-cigarettes, or E-Liquid to Persons Who
27 Have Not Attained ~~[19]~~ 21 Years of Age Prohibited.

28 I. No person shall sell, give, or furnish or cause or allow or procure to be sold, given, or
29 furnished tobacco products, e-cigarettes, or e-liquid to a person who has not attained ~~[19]~~ 21 years of
30 age. The prohibition established by this paragraph shall not be deemed to prohibit persons who

1 have not attained [19] 21 years of age employed by any manufacturer, wholesaler, sub-jobber,
 2 vending machine operator, sampler, or retailer from performing the necessary handling of tobacco
 3 products, e-cigarettes, or [~~liquid nicotine~~] *e-liquid* during the duration of their employment.

4 5 Access to and Use of Tobacco Products; Rolling Papers. Amend RSA 126-K:4-a to read as
 5 follows:

6 126-K:4-a Rolling Papers.

7 I. No person shall sell, give, or furnish rolling papers to a minor. Violations of this
 8 paragraph shall be civil infractions punishable by administrative action of the commission against
 9 the licensee. The fines for violations of this paragraph shall not exceed \$250 for the first offense,
 10 \$500 for the second offense, and \$750 for the third and subsequent offenses.

11 II. No person under [19] 21 years of age shall purchase, possess, or use any rolling paper.
 12 Any person who violates this section shall be guilty of a violation and shall be punished by a fine not
 13 to exceed \$100 for each offense.

14 6 Access and Use of Tobacco Products; Distribution of Free Samples. Amend RSA 126-K:5, I and
 15 II to read as follows:

16 I. No person may distribute or offer to distribute samples of tobacco products, e-cigarettes,
 17 or [~~liquid nicotine~~] *e-liquid* in a public place or to a person who has not attained [19] 21 years of
 18 age. This prohibition shall not apply to sampling:

19 (a) In an area to which minors are denied access.

20 (b) In a store to which a retailer's license has been issued.

21 (c) At factory sites, construction sites, conventions, trade shows, fairs, or motorsport
 22 facilities in areas to which minors are denied access.

23 II. The commission shall adopt rules, pursuant to RSA 541-A, concerning the distribution of
 24 free samples of tobacco products, e-cigarettes, or [~~liquid nicotine~~] *e-liquid* to prevent their
 25 distribution to persons who have not attained [19] 21 years of age.

26 7 Access to and Use of Tobacco Products; Possession and Use of Tobacco Products, E-Cigarettes,
 27 or E-Liquid. Amend RSA 126-K:6 to read as follows:

28 126-K:6 Possession and Use of Tobacco Products, E-cigarettes, or E-Liquid [Nicotine] by Persons
 29 Who Have Not Attained [19] 21 Years of Age.

30 I. No person under [19] 21 years of age shall purchase, attempt to purchase, possess, or use
 31 any tobacco product, e-cigarette, device, or e-liquid except that a minor who has been issued a
 32 registry identification card under RSA 126-X:4 may possess e-liquids containing cannabis and
 33 applicable devices.

34 II. The prohibition on possession of tobacco products, devices, e-cigarettes, or e-liquid shall
 35 not be deemed to prohibit minors employed by any manufacturer, wholesaler, sub-jobber, vending
 36 machine operator, sampler, or retailer from performing the necessary handling of tobacco products,
 37 devices, e-cigarettes, or e-liquids during the duration of their employment.

1 III. A person who has not attained [~~19~~] 21 years of age shall not misrepresent his or her age
2 for the purpose of purchasing tobacco products.

3 IV. Notwithstanding RSA 169-B and RSA 169-D, a person 12 years of age and older who
4 violates this section shall not be considered a delinquent or a child in need of services.

5 V. Any person who has not attained [~~19~~] 21 years of age who violates this section may be
6 guilty of a violation and shall be punished by a fine not to exceed \$100 for each offense or shall be
7 required to complete up to 20 hours of community service for each offense, or both. Where available,
8 punishment may also include participation in an education program.

9 8 Access to and Use of Tobacco Products; Special Provisions. Amend RSA 126-K:8, I(a) to read
10 as follows:

11 I.(a) No person shall sell, give, or furnish tobacco products, e-cigarettes, or e-liquid to a
12 person who has not attained [~~19~~] 21 years of age who has a note from an adult requesting such sale,
13 gift, or delivery. Tobacco products, e-cigarettes, or e-liquid shall only be delivered to a person who
14 provides an identification as enumerated in RSA 126-K:3 establishing that the person has attained
15 [~~19~~] 21 years of age.

16 9 Delinquent Children; Limitations of Authority Conferred. Amend RSA 169-B:32 to read as
17 follows:

18 169-B:32 Limitations of Authority Conferred. This chapter shall not be construed as applying to
19 persons 16 years of age or over who are charged with the violation of a motor vehicle law, an
20 aeronautics law, a law relating to navigation or boats, a fish and game law, a law relating to title
21 XIII, a law relating to fireworks under RSA 160-B or RSA 160-C, any town or municipal ordinance
22 which provides for a penalty not exceeding \$100 plus the penalty assessment, and shall not be
23 construed as applying to any minor charged with the violation of any law relating to the possession,
24 sale, or distribution of tobacco products to or by a person under [~~19~~] 21 years of age. However, if
25 incarceration takes place at any stage in proceedings on such violations, incarceration shall be only
26 in a juvenile facility certified by the commissioner of the department of health and human services.

27 10 Children in Need of Services; Limitations of Authority Conferred. Amend RSA 169-D:22 to
28 read as follows:

29 169-D:22 Limitations of Authority Conferred. This chapter shall not be construed as applying to
30 persons 16 years of age or over who are charged with the violation of a motor vehicle law, an
31 aeronautics law, a law relating to navigation of boats, a fish and game law, a law relating to title
32 XIII, or a law relating to fireworks under RSA 160-B or RSA 160-C, and shall not be construed as
33 applying to any minor charged with the violation of any law relating to the possession, sale, or
34 distribution of tobacco products to or by a person under [~~19~~] 21 years of age.

35 11 Retail Tobacco License. Amend RSA 178:19-a, III to read as follows:

36 III. The commission, when issuing or renewing a retail tobacco license, shall furnish a sign
37 which shall read or be substantially similar to the following: "State Law prohibits the sale of tobacco

1 products or e-cigarettes to persons under age [~~19~~] **21**. Warning: violators of these provisions may be
2 subject to a fine."

3 12 Cigar Bars. Amend RSA 178:20-a, II(c) to read as follows:

4 (c) Does not allow any person under the age of [~~19~~] **21** on the premises unless
5 accompanied by a parent, legal guardian, or adult spouse.

6 13 Effective Date. This act shall take effect upon its passage.

HB 1662-FN- FISCAL NOTE
AS INTRODUCED

AN ACT relative to the purchase, use, and possession of tobacco products and e-cigarettes.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2020	FY 2021	FY 2022	FY 2023
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
Expenditures	\$0	\$10,000+	\$2,500+	\$2,500+
<i>Funding Source:</i>	<input checked="" type="checkbox"/> General Fund	<input checked="" type="checkbox"/> Education	<input type="checkbox"/> Highway	<input checked="" type="checkbox"/> Other - Liquor

METHODOLOGY:

This bill increases the age for sales and possession of tobacco products and e-cigarettes from 19 to 21 years of age.

The Liquor Commission assumes increasing the age for purchase and possession will slightly increase law enforcement actions to detect unlawful sales of tobacco products to individuals under the age of 21 years. The Commission indicates the signs required by RSA 178:19-a, which prohibit sales to those under the legal age will need to be replaced by January 1, 2021. The Commission provided the following information on the fiscal impact of the bill:

- There are an estimated 1,283 licensed tobacco retailers.
- There is an additional number of "vape shops" subject to licensure by the Liquor Commission. The Commission is in the process of implementing the 2019 laws concerning vaping products.
- The Commission estimates it will cost approximately \$10,000 to redesign and print signs for existing tobacco retailers. The cost to distribute the signs to the 1,283 existing licensees is not known.
- The cost to print and distribute the new signs to new licensees is estimated at \$2,500.

The Department of Revenue Administration indicates the fiscal impact of this bill is indeterminable, but increasing the legal age for purchase and possession of tobacco and e-cigarettes from 19 to 21 years would reduce tobacco sales, tobacco tax, and possibly business tax

revenues. The Department cannot estimate with any degree of certainty the percentage of New Hampshire sales attributable to individuals aged 19 to 20.

AGENCIES CONTACTED:

Liquor Commission and Department of Revenue Administration

Fiscal Note

HB 1662-FN- FISCAL NOTE
AS INTRODUCED

AN ACT relative to the purchase, use, and possession of tobacco products and e-cigarettes.

FISCAL IMPACT: State County Local None

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	FY 2020	FY 2021	FY 2022	FY 2023
Appropriation	\$0	\$0	\$0	\$0
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Liquor Commission and Department of Revenue Administration