

LEGISLATIVE COMMITTEE MINUTES

SB76

Bill as
Introduced

SB 76-FN - AS INTRODUCED

2021 SESSION

21-1034

10/04

SENATE BILL

76-FN

AN ACT

relative to modified risk tobacco products.

SPONSORS:

Sen. French, Dist 7; Sen. Gannon, Dist 23; Sen. Avard, Dist 12

COMMITTEE:

Ways and Means

ANALYSIS

This bill reduces the tobacco tax applicable to modified risk tobacco products as they are defined and regulated by the United State Department of Health and Human Services.

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Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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 One

AN ACT relative to modified risk tobacco products.

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

1 1 New Paragraph; Tobacco Tax; Definition; Modified Risk Tobacco Product. Amend RSA 78:1 by
2 inserting after paragraph VI the following new paragraph:

3 VI-a. "Modified risk tobacco product" means a modified risk tobacco product as defined and
4 regulated under 21 U.S.C. section 378k.

5 2 New Paragraph; Tobacco Tax; Modified Risk Tobacco Product; Reduction of Tax Imposed.
6 Amend RSA 78:2 by inserting after paragraph III the following new paragraph:

7 IV.(a) For a modified risk tobacco product commercially marketed pursuant to an order of
8 the Secretary of the United States Department of Health and Human Services under 21 U.S.C.
9 section 387k(g)(1), any tax imposed under paragraphs I or II shall be reduced by 50 percent.

10 (b) For a modified risk tobacco product for which an order is issued by the Secretary of
11 the United States Department of Health and Human Services under 21 U.S.C. section 387k(g)(2)
12 that the tobacco product may be introduced or delivered for introduction into interstate commerce,
13 any tax imposed under paragraphs I or II shall be reduced by 25 percent.

14 3 Effective Date. This act shall take effect July 1, 2021.

**SB 76-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to modified risk tobacco products.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2021	FY 2022	FY 2023	FY 2024
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	Indeterminable Decrease	Indeterminable Decrease	Indeterminable Decrease
Expenditures	\$0	Indeterminable Increase	Indeterminable Increase	Indeterminable Increase
Funding Source:	<input checked="" type="checkbox"/> General	<input checked="" type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

METHODOLOGY:

This bill will reduce the rate of the NH Tobacco Tax for "modified risk tobacco products", defined as products that are sold and distributed to reduce the harm or the risk of tobacco-related disease by means such as labeling and advertising that warns of the risk (21 U.S.C. section 387k). The bill reduces the rate in the following manner:

- For modified risk tobacco products commercially marketed pursuant to and order of the U.S. Dept. of HHS under 21 U.S.C. section 387k(g)(1), the Tobacco Tax rate as applied to cigarettes, other tobacco products, and electronic cigarettes is reduced by 50%.
- For modified risk tobacco products for which an order issued by the Secretary of the U.S. Dept. of HHS under 21 U.S.C. section 387k(g)(2) that the tobacco product may be introduced or delivered for introduction into interstate commerce, the Tobacco Tax rate as applied to cigarettes, other tobacco products, and electronic cigarettes is reduced by 25%.

The Department of Revenue Administration states it does not have data relative to the current proportion of tobacco products currently subject to the NH Tobacco Tax that would qualify as a "modified risk tobacco products" and therefore cannot estimate the fiscal impact of reducing the NH Tobacco Tax rate for those products. The Department assumes some amount of tobacco products subject to the Tobacco Tax would qualify as "modified risk tobacco products" resulting in a reduction in General Fund and Education Trust Fund revenue.

The Department states for other tobacco products and e-cigarettes the NH Tobacco Tax is assessed

and collected by the filing of monthly returns by tobacco wholesalers. The Department will need to update all necessary tax return forms and electronic management systems utilized to administer the tax collected on other tobacco products and e-cigarettes. The Department anticipates it will be able to administer this portion of the change with no additions to their operating budget.

The NH Tobacco Tax assessed on cigarettes is done via the application of a tobacco tax stamp to each package of cigarettes. Each stamp has a designated value based on the number of cigarettes in the package as well as whether the manufacturer is a participant or non-participant in the Master Settlement Agreement (MSA). The DRA currently purchases 4 stamps in order to administer the Tobacco Tax applicable to cigarettes, designated "A stamps" (packages of 25 for participating manufacturers), "B stamps" (packages of 20 for participating manufacturers), "C stamps" (packages of 20 cigarettes for non-participating manufacturers,) and "D stamps" (packages of 25 cigarettes for non-participating manufacturers). The Department believes it would need to purchase an additional 8 types of stamps pursuant to the proposed legislation, 4 additional stamps for each category A-D for products that are entitled to a 50% reduction in the Tobacco Tax rate, and 4 additional stamps for each category A-D for products that are entitled to a 25% reduction in the Tobacco Tax rate. The cost to design and purchase these 8 additional types of stamps will result in an indeterminable increase in expenses to the Department.

The Department of Health and Human Services states this bill will have no fiscal impact on the Department.

AGENCIES CONTACTED:

Department of Revenue Administration and Department of Health and Human Services

Committee Minutes

SENATE CALENDAR NOTICE

Ways and Means

Sen Bob Giuda, Chair
Sen Lou D'Allesandro, Vice Chair
Sen Gary Daniels, Member
Sen Erin Hennessey, Member
Sen Cindy Rosenwald, Member

Date: January 21, 2021

HEARINGS

Wednesday

01/27/2021

(Day)

(Date)

Ways and Means

REMOTE 000

1:00 p.m.

(Name of Committee)

(Place)

(Time)

1:00 p.m.	SB 76-FN	relative to modified risk tobacco products.
1:15 p.m.	SB 49	relative to the New Hampshire trust code.
1:30 p.m.	SB 48	relative to the formula used to determine current use tax rates.

Committee members will receive secure Zoom invitations via email.

Members of the public may attend using the following links:

1. Link to Zoom Webinar: <https://www.zoom.us/j/92074214520>
2. To listen via telephone: Dial (for higher quality, dial a number based on your current location): 1-301-715-8592, or 1-312-626-6799 or 1-929-205-6099, or 1-253-215-8782, or 1-346-248-7799, or 1-669-900-6833
3. Or iPhone one-tap: US: 13017158592,,92074214520# or 13126266799,,92074214520#
4. Webinar ID: [920.7421.4520](https://www.zoom.us/j/92074214520)
5. To view/listen to this hearing on YouTube, use this link: <https://www.youtube.com/channel/UCjBZdtrjRnQdmg-2MPMiWrA>
6. To sign in to speak, register your position on a bill and/or submit testimony, use this link: <http://gencourt.state.nh.us/remotecommittee/senate.aspx>

The following email will be monitored throughout the meeting by someone who can assist with and alert the committee to any technical issues: remotesenate@leg.state.nh.us or call (603-271-6931).

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

SB 76-FN

Sen. French

SB 49

Sen. D'Allesandro

SB 48

Sen. Giuda

Sen. Daniels

Sen. Reagan

Rep. Edwards

Sen. Gannon

Sen. Bradley

Sen. Birdsell

Sen. Avard

Rep. Major

Rep. Lang

Sen. Avard

Rep. Hunt

Sen. Gannon

Sen. Hennessey

Rep. L. Ober

Sen. Ricciardi

Sen. Ward

Rep. Weyler

Sonja Caldwell 271-2117

Bob J. Giuda
Chairman

Senate Ways and Means Committee

Sonja Caldwell 271-2117

SB 76-FN, relative to modified risk tobacco products.

Hearing Date: January 27, 2021

Members of the Committee Present: Senators Giuda, D'Allesandro, Daniels, Hennessey and Rosenwald

Members of the Committee Absent : None

Bill Analysis: This bill reduces the tobacco tax applicable to modified risk tobacco products as they are defined and regulated by the United State Department of Health and Human Services.

Sponsors:

Sen. French

Sen. Gannon

Sen. Avard

Who supports the bill: Sen. French, Eric Barker (Altria), Bruce Berke (Altria), Rick Newman (Altria), Sen. Gannon, Sen. Avard, Ann Boudreau, Derek Crawford (Altria)

Who opposes the bill: Michael Rollo (American Cancer Society Cancer Action Network), Nancy Vaughan (American Heart Assoc.), Kathryn Frey, Dr. Albee Budnitz (NH Medical Society), Nicole Fordey, Michael Padmore (NH Medical Society), Jason Weisbrot

Who is neutral on the bill: Carolynn Lear (NHDRA)

Summary of testimony presented in support:

Sen. French

- In 2009, the federal government authorized the FDA to develop a process to determine if some tobacco products could be manufactured to be less harmful. It is a detailed and arduous process.
- Only one of these modified risk tobacco products is sold in NH. This bill would have NH law recognize the FDA process and allow for a reduction in the tobacco tax rate for this product because it is less harmful.
- In 2017 CT enacted a reduced tax on these products. Since then, five other states have done so as well.
- MRTP stands for a modified risk tobacco product that has a reduced risk of harm or tobacco related disease.
- Manufacturers must apply to the FDA for each product they would like to claim as an MRTP. They have to meet rigorous standards to get this classification. It has to benefit the population as a whole to get the designation.

- The FDA has authorized MRTP status on nonburn and snuff products.
- Sen. French would like to change the effective to date July 1, 2023 so there will be no negative revenue impact on the budget. Cigarettes would remain taxed at \$1.78.

Sen. Rosenwald said she assumes the reason for lowering the tax would be to incentivize consumer to use these modified risk products, however the last time the rate was lowered, the tobacco companies did not lower prices, they kept the money. She asked what would be different this time that one would expect that lower price to be passed on to the consumer.

Sen. French said he wondered the same thing and suggested she ask the tobacco companies that question.

Sen. D'Allesandro said he received a letter from Lisa Morris, the Director of the Division of Public Health, that talked about the cost associated with smoking on a national and state level. He asked if he had seen the letter and Sen. French said he had not. Sen. D'Allesandro asked why we would reduce a tax on a tobacco product.

Sen. French said that reducing the cost of nicotine that is not as harmful to the body would promote those who are going to seek nicotine to go with something less harmful.

Sen. D'Allesandro said the letter says that research is clear that increases in tobacco taxes decrease tobacco use. He asked if by association you reduce the risk of serious illness, why wouldn't you be increasing tobacco taxes rather than decreasing them.

Sen. French responded that any large increase in tobacco taxes would be unwarranted as they are taxed enough. Decreasing the tax on this product would be a good thing for the state. He thinks it would increase the use of this type of product versus regular cigarettes. It would entice those who are going to smoke to smoke something less harmful to them.

Eric Barker of Altria said he was available to answer any questions about the modified risk tobacco application process.

Sen. Rosenwald asked what the guarantee is that unlike the last tobacco tax decrease in 2011, the cigarette companies and other tobacco companies would pass on the savings to the consumer.

Mr. Barker said he was unable to talk about their pricing strategy, but decisions are made on a nationwide basis.

Sen. Giuda asked him to talk about the process by which the MRTP designation is given.

Mr. Barker

- The MRTP application is set up under statute under the family smoking tobacco prevention control act in 2009. Any tobacco product manufacturer needs prior FDA authorization prior to making any health risk or exposure claims. There are two types of MRTP authorization. There is a modified risk order, focuses on reducing risk of tobacco related disease. There is also a modified exposure claim focused on— reducing or eliminating exposure to harmful substances.
- In assessing these claims, it is a thorough process. The FDA asks four questions: Is there adequate scientific substantiation of the proposed modified risk information? What are the health risks of the MRTP to individuals? How do consumers perceive and understand the modified risk information? What are the potential benefits and harms to the health of the population as a whole?
- The process is public and open for comment by stakeholders.

- The statute also requires the claim to be forwarded to the Tobacco Products Scientific Advisory Committee, comprised of researchers and academics.
- If a manufacturer achieves authorization, that authorization is for no longer than five years. It can be for a shorter period of time than that, at which point it is then up for renewal and review again by the FDA.
- FDA has authority to withdraw an authorization at any time if it no longer meets the standards for MRTP classification.

Sen. Giuda asked if there is any data to support the premise that using these MRTP products is reducing the rate of smoking by people getting ready to start or assist smokers into cessation.

Mr. Barker said the applicant is required to contemplate a number of transitions. The term population as a whole includes both initiation and quit attempts as part of the process. The applicant bears the burden of research to measure those transitions and defend the proposition that those are limited if at all and that the net benefit to the population as a whole is still present.

Sen. Giuda asked if they are required to gather evidence to show the purported benefit is evident. Mr. Barker said yes. Post-market studies are designed to capture that data and it is provided to the FDA on an annual basis. There is limited real word data at the moment because there are only two authorizations.

Summary of testimony presented in opposition:

Mike Rollo

- The American Cancer Society is opposed to the bill.
- ACS opposes the existing and proposed modified risk marketing orders currently in place.
- The applications have been insufficient in proving the products lead to a reduction in risk. The applications lack evidence on the impact on youth.
- Only two manufacturers have been granted modified risk designation.
- Less harmful does not mean safe. There is a risk to using these products. There is exposure to carcinogens that will lead to various cancers.
- These are not a guaranteed safe product and should not be taxed at a lower rate.
- There is nothing to guarantee they will be more affordable to entice people to use them.
- The tobacco industry typically raises prices twice a year. When NH lowered the rate in 2011, the tobacco industry raised their prices by the same amount.
- To make the claim that these products will save us from the scourge of tobacco is false.

Nancy Vaughan

- The American Heart Assoc. is opposed to the bill.
- They support increases in tax rates. They want to deter use, not switch over to reduced harm products.
- The tax rate is low in NH. They would encourage an increase to the tax rate.
- In 2019, the Heart Association put out an advisory on new tobacco products, including the products being talked about today; because there is no safe threshold to exposure, their recommendation remains that they should be surveyed and researched.
- The Heart Assoc. focuses on youth access to tobacco products. They want all users to quit using tobacco, not shift to other products. Youth are sensitive to price and marketing. E-cigarettes are an example; youth perceive them to have a lower risk to their health.

Sen. Giuda asked if the Heart Assoc. had any data to indicate any of the societal trends that were forecast as benefits for the use of these MRTP products.

Ms. Vaughan is not aware of any data that shows these products are changing the trend for health impacts.

Kate Frey

- New Futures is opposed to the bill.
- Increases in tobacco taxes decrease tobacco use.
- We should be thinking about increasing the tax not reducing it. Increasing the price is one of the most effective way to reduce tobacco use, especially for youth. NH's rate of youth use is one of highest in country, especially with the introduction of products like E-cigarettes.
- Our tobacco tax rate is the lowest compared to neighboring states. According to the Tax Foundation, NH has the highest level of outbound smuggling likely due to the low tax and proximity to high tax states.

Dr. Albee Budnitz.

- He is a retired doctor from Nashua. Has been involved in the so-called tobacco wars since the 1970's.
- He is the Chair in the Tobacco Free Network, which is opposed to the bill.
- MRTP does not mean safe and not harmful; they are harmful, all tobacco products are.
- They are opposed to reducing the price of any tobacco product as price is a known deterrent to youth tobacco initiation.
- 90% of tobacco initiation and nicotine addiction is still during teenage years. Nicotine has been called a teenage brain poison.
- MRTP does not reduce your exposure to nicotine.
- Nicotine addiction is a gateway to other substances.
- Tobacco related disease still kills more than 400,000 US citizens yearly, including 1,900 people in NH.

sc

Date Hearing Report completed: January 28, 2021

Speakers

<u>Name</u>	<u>Representing</u>	<u>Position</u>	<u>Testifying</u>
Rollo, Michael	American Cancer Society Cancer Action Network	Oppose	Yes
Vaughan, Nancy	American Heart Association	Oppose	Yes
Frey, Kathryn	Myself	Oppose	Yes
French, Senator Harold	Myself	Support	Yes
Barker, Eric	Altria Client Services LLC	Support	Yes
Budnitz, Dr. Albee	Myself & NH Medical Society	Oppose	Yes
Berke, Bruce	Altria	Support	No
Newman, Rick	Altria	Support	No
Fordey, Nicole	Myself	Oppose	No
Gannon, Senator Bill	Senate District 23	Support	No
Padmore, Michael	NH Medical Society	Oppose	No
Avard, Senator Kevin	Senate District 12	Support	No
Weisbrot, Jason	Myself	Oppose	No
Boudreau, Ann	Myself	Support	No
Lear, Carollynn	NH Dept. of Revenue	Neutral	No
Crawford, Derek	Altria	Support	No

Testimony



American Heart Association

You're the Cure

American Heart Association
2 Wall Street | Manchester, NH 03101

January 27, 2021

Re: SB 76, An act relative to modified risk tobacco products

Dear Senator Giuda and members of the Senate Ways and Means Committee;

As Government Relations Director for the American Heart Association, I come before you today in opposition to passage of SB 76, which would decrease the rate of the state excise tax on tobacco products that are marketed as modified risk tobacco products.

Tobacco use remains the leading cause of preventable death in the United States, killing nearly ½ million people each year. Tobacco use causes heart disease, stroke, cancer, respiratory disease, and other health consequences. These tobacco-caused illnesses in New Hampshire result in \$729 million per year in healthcare costs!

The American Heart Association supports substantial tax rates on all tobacco products, to increase prices to deter youth from starting tobacco use and to incentivize cessation among adults. New tobacco products like those categorized as heat-not-burn, should be taxed at rates that achieve parity with the state excise tax on cigarettes. In New Hampshire cigarettes are taxed at \$1.78 per pack. Other tobacco products are taxed at a rate of 65.03% of wholesale price to achieve parity with the price of traditional cigarettes. I urge you to resist adding more variability to how new tobacco products are taxed.

In 2019, a Presidential Advisory from the American Heart Association, provided scientific information on New and Emerging Tobacco Products, such as the heat-not-burn tobacco products, as well as the role of robust regulation and comprehensive tobacco control and prevention. Even if authorized as modified risk, heat-not-burn devices generate detectable levels of harmful and potentially harmful constituents, though at levels lower than cigarette smoke. Because there is no safe threshold of exposure to the detectable levels of harmful and potentially harmful constituents put out by heat-not-burn products, our recommendation remains that public health practitioners should include heat-not-burn tobacco products in surveillance, incorporating them in tobacco control strategies, including taxation, and continue to research not only their health risks but also their advertising and marketing and impact on dual use or switching vs cessation.

New Hampshire tobacco excise tax is already lower than our neighboring states. If any change is made to the tobacco tax rate this session, it should be to increase our tobacco tax to raise important revenues which can be used to encourage more people quit tobacco and keep kids from starting. The revenues from the NH excise tax on tobacco products has been shown to be one of the few stable revenue sources for the state, especially this past year during the COVID-19 pandemic and its economic impacts.

Thank you and please consider me as a resource to you on this and other tobacco related legislation.

Sincerely,

Nancy S. Vaughan

Nancy Vaughan
Director of Government Relations, New Hampshire
American Heart Association

Nancy.vaughan@heart.org; 603-566-5658



STATE OF NEW HAMPSHIRE
DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF PUBLIC HEALTH SERVICES

Lori A. Shibinette
Commissioner

Lisa M. Morris
Director

29 HAZEN DRIVE, CONCORD, NH 03301
603-271-4501 1-800-852-3345 Ext. 4501
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January 26, 2021

Senator Bob Guida, Chair
Senate Ways and Means Committee
State House, Senate Chamber
Concord, New Hampshire 03301

Re: Public health information in response to SB 76; reduces the tobacco tax applicable to modified risk tobacco products as they are defined and regulated by the United State Department of Health and Human Services.

Dear Senator Guida and Members of the Senate Ways and Means Committee:

The Department of Health and Human Services (DHHS), Division of Public Health Services (DPHS) is providing information on Senate Bill 76, reduces the tobacco tax applicable to modified risk tobacco products as they are defined and regulated by the United State Department of Health and Human Services. Smoking-related illnesses remain the leading cause of preventable death in the United States, with more than 540,000 deaths annually, and cost the country more than \$300 billion each year, including \$170 billion for direct medical care for adults and more than \$156 billion in lost productivity. In New Hampshire, annually, the average number of smoking attributable deaths is 1900. The annual associated economic costs of tobacco **addiction and related disease is approximately \$2.2 billion.**

It is well documented that adolescents begin trying tobacco products at about the age of thirteen. Many teens become addicted which often leads to years of smoking and/or vaping and increased risk for chronic diseases. According to the 2019 New Hampshire (NH) Youth Risk Behavior Survey (YRBS), high school age youth report current use of electronic cigarettes at 33.8%.

The research is clear: increases in tobacco taxes decrease tobacco use. Many studies found that raising cigarette prices through increased taxes is a highly effective public health measure for reducing smoking and tobacco use among youth, young adults, and persons of low socioeconomic status. The general consensus from these studies is that every ten percent increase in the price of cigarettes will reduce the prevalence of adult smoking by approximately three to five percent and reduce teen smoking by about seven percent¹. Evidence shows that cigarette tax increases are prompting many smokers to quit – directly translating into lower future smoking rates².

¹ Tauras, J, et al., "Effects of Price and Access Laws on Teenage Smoking Initiation: A National Longitudinal Analysis," Bridging the Gap Research, ImpacTeen, April 24, 2001; Chaloupka, F, "Macro-Social Influences: The Effects of Prices and Tobacco Control Policies on the Demand for Tobacco Products," Nicotine and Tobacco Research, 1999; Chaloupka, F & Pacula, R, An Examination of Gender and Race Differences in Youth Smoking Responsiveness to Price and Tobacco Control Policies, National Bureau of Economic Research, Working Paper 6541, April 1998; and other price studies at <http://tigger.uic.edu/~fjc> and www.uic.edu/orgs/impacteen

² Raising Cigarette Taxes Reduces Smoking, Especially Among Kids (and the Cigarette Companies Know It),

The 2012 Surgeon General's report, Preventing Tobacco Use Among Youth and Young Adults, concluded that "Most of the research over the past decade has concluded that increases in cigarette prices lead to reductions in the prevalence of smoking and its intensity among youth and young adults. The report further stated, "Tobacco control policies, including higher taxes on smokeless tobacco...are effective in reducing the use of smokeless tobacco among adolescent".³

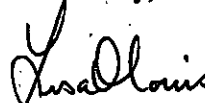
Modified Risk Tobacco Product (MRTP) are defined as products 'sold or distributed for use to reduce harm or the risk of tobacco-related disease associated with commercially marketed tobacco products. To date submitted there have been approximately 12 MRTP applications submitted to the United State Department of Health and Human Services, Food and Drug Administration (FDA). According to FDA, all tobacco products are potentially harmful and addictive, and those who do not use tobacco products should continue to refrain from their use. Further these products are not FDA approved as tobacco cessation aids⁴. An order permitting the sale of an MRTP refers to a single specific product, not an entire class of tobacco products (e.g., all smokeless products). An MRTP application must demonstrate that the product will or is expected to benefit the health of the population as a whole. The FDA has also not defined electronic cigarettes as MRTP.

The NH Department of Health and Human Services, supports tobacco cessation and prevention activities through its Tobacco Prevention and Cessation Program. The Tobacco Prevention and Cessation Program is funded by federal and state resources and provides services across the state to support the following goals.

- Prevent initiation among youth and young adults
- Promote quitting among adults and youth
- Eliminate exposure to secondhand smoke
- Identify and eliminate tobacco-related disparities among populations groups

Thank you for taking the time to review this information. If you have any questions, feel free to reach me at 603-271-4110 or via email at sai.cherala@dhhs.nh.gov.

Sincerely,



Lisa Morris, MSW

Director, Division of Public Health Services

<http://www.tobaccofreekids.org/research/factsheets/pdf/0146.pdf>, Raising State Cigarette Taxes Always Increases State Revenues and Always Reduces Smoking, <http://www.tobaccofreekids.org/research/factsheets/pdf/0098.pdf>, and Quitlines Help Smokers Quit, <http://www.tobaccofreekids.org/research/factsheets/pdf/0326.pdf>.

³ 11 U.S. Department of Health and Human Services (HHS), Preventing Tobacco Use Among Youth and Young Adults: A Report of the Surgeon General, Atlanta, Georgia: HHS, CDC, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2012, http://www.cdc.gov/tobacco/data_statistics/sgt/2012/index.htm.

⁴ <https://www.fda.gov/news-events/press-announcements/fda-authorizes-marketing-iqos-tobacco-heating-system-reduced-exposure-information>

Thank you for hearing me.

My name is Albee Budnitz, a retired internal and pulmonary medicine doc from Nashua, where I had practiced for 40 years until 6/2018. Full disclosure is that because of this experience, I've been in the "tobacco wars" since the 1970's and one of "Koop's troops", the late C. Everett Koop, for more than 20 years.

As chair of the Tobacco Free NH network, representing various public health agencies, including but not limited to ALA, AHA, ACS-CAN, BNH, NHMS, AAP, NF, Koop Institute in Norris Cotton Cancer Center, I give testimony against passing this bill. The reasons are:

1. "MRTP" does NOT mean safe or not harmful; all tobacco products are harmful, if for no other reason than their addictive potential, especially for youth.
2. We'd be opposed to reducing the price of any tobacco product, as price is a known and vetted deterrent to youth tobacco initiation.
3. Despite our and federal T-21 laws, the large majority, > 90%, of tobacco initiation and nicotine addiction is still during teenage. Nicotine has been called a teenage brain poison.
4. Data from e-cigs/vapes' use shows that dual tobacco product use and switching totally to combustible cigarettes is 3-4 X more likely in e-cig users than non-tobacco users. This is because of *need* for nicotine.
5. Price is one component of a comprehensive program to keep the next generation tobacco/nicotine free.
6. Also, well vetted is that nicotine addiction is the gateway substance to other substance – opioids, alcohol, THC – use
7. Finally, tobacco related disease still kills > 400,000 USA citizens yearly for the last 20 + years, and that's 1900 NH folks yearly – data through 2019.

This is not a harmless product.

Thank you for your attention. I'd be happy to take any questions.

FDA Regulation of Tobacco Products: Modified Risk Tobacco Products



The Family Smoking Prevention and Tobacco Control Act (TCA) of 2009 granted the U.S. Food and Drug Administration (FDA) the authority to regulate tobacco products for the first time. The agency now has authority to regulate the manufacture, marketing, sale, and distribution of tobacco products. One of the most critical provisions requires tobacco product manufacturers to receive a marketing order in order to make any modified risk claim about the product. The tobacco industry has a long history of defrauding and misleading the public on the harms of its products. This provision aims to put an end to that practice by requiring manufacturers to prove the truthfulness of any claim.

What are Modified Risk Tobacco Products

The term 'modified risk tobacco product' means any product that is sold or distributed for use to reduce the harm or the risk of tobacco-related disease associated with commercially marketed tobacco products. A product manufacturer can apply to make any of the following claims:

- Disease claim: The tobacco product presents a lower risk of tobacco-related disease or is less harmful than one or more other tobacco products.
- Exposure claim: The tobacco product or its smoke contain a reduced level of a substance or present a reduced exposure to a substance.
- Exposure claim: The tobacco product or its smoke doesn't contain or is free of a substance.

Cessation claims, including that a product can help a person quit using tobacco, are medical claims that must be approved by FDA as a medical drug or device. Tobacco products cannot make cessation claims.

FDA Regulation of Modified Risk Products

A manufacturer can submit an application to FDA for a marketing order to make a modified risk claim. That application must include at a minimum:

- A description of the proposed product and any proposed advertising
- The conditions for using the product
- Sample product labels and labeling
- All documents (including underlying scientific information) relating to the research findings conducted, supported, or possessed by the tobacco product manufacturer relating to the effect of the product on tobacco-related disease and health-related conditions, including information both favorable and unfavorable to the ability of the product to reduce risk or exposure and relating to human health
- Data and information on how consumers actually use the tobacco product

FDA must make the application available to the public for comment. In addition, the application is referred to the Tobacco Products Scientific Advisory Committee for its review and recommendation.

So-called "Light," "Low," and "Mild" Cigarettes

As health concerns about smoking started to emerge in the 1950s and 1960s, cigarette manufacturers created so-called "light" cigarettes, marketing them as healthier with less tar and less nicotine. Due to the design of these cigarettes, smokers actually smoked longer, inhaling more deeply and more frequently to get their desired dose of nicotine. These design changes may have led to an increase in lung cancers.

Cigarette manufacturers knew these products posed no less risk, yet fraudulently sold them to Americans as such. Decades later, the TCA outright prohibited the terms "light," "low," and "mild."

FDA can only issue a modified risk marketing order if the applicant has demonstrated that the tobacco product, as *used by consumers*, will:

- *Significantly* reduce harm and the risk of tobacco-related disease to the individual; and
- Benefit the health of *the population as a whole* taking into account both users of tobacco products and persons who do not currently use tobacco products.

In other words, the manufacturer must prove there will be a reduction in risk or a benefit to health based on how consumers would actually use the product. Simply stating a product is less harmful without providing information on how consumers would use it would be insufficient.

In issuing a modified risk marketing order, FDA will determine a fixed time period for permitting the claim at which time the application would have to be renewed. In addition, the manufacturer must conduct post-market surveillance and submit annual reports to FDA. FDA has the authority to remove a modified risk product from the market if it is not having the intended public health effect.

Where Are We Now

As of November 2020, FDA has permitted modified risk claims for two products: Swedish Match USA, Inc. snus and Philip Morris Products S.A. IQOS. Swedish Match USA, Inc. is permitted to make a disease risk claim for eight of its snus products, including several mint-flavored products. Philip Morris Products S.A. is permitted to make an exposure risk claim for its IQOS products, including menthol-flavored heatsticks. Philip Morris Products S.A. was denied a disease risk claim. In addition, applications are under review for six R.J. Reynolds Camel Snus products, U.S. Smokeless Tobacco Company's Copenhagen Snuff Fine Cut, and two 22nd Century Group Inc. low nicotine cigarettes.

ACS CAN's Position

ACS CAN, with its tobacco control partners, has opposed the existing and proposed modified risk marketing orders. The applications to date have been insufficient in proving that the products as used by consumers would lead to a reduction in risk. In addition, all the applications have lacked any information on the impact on youth – which is required under the law. In addition, local and state governments should not exempt products that have received a marketing order for a modified risk claim from their tobacco control laws, nor tax them at lower rates than cigarettes and other tobacco products. ACS CAN will continue to comment on these applications and urge FDA to deny any applications that are incomplete and do not meet the standard required by the Tobacco Control Act.

January 27, 2021

The Honorable Bob Giuda, Chair
Senate Ways and Means
State House Room 100
Concord NH 03301

RE: New Futures opposition SB 76, relative to modified risk tobacco products.

Dear Senator Giuda 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 is opposed to SB 76, which would decrease the rate of the state excise tax on tobacco products that are marketed as modified risk tobacco products.

The research is clear that increases in tobacco taxes decrease tobacco use. Raising taxes on tobacco and thereby increasing its price is one of the most effective ways to reduce tobacco use, especially for youth.¹ With vaping illnesses surging and recent data showing dramatic increases in youth use, it is paramount that New Hampshire does not look to reduce any portion of the tobacco tax.

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 use remains one of the country's highest and is continuing to rise. 40 percent of Granite State youth have tried e-cigarettes 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 e-cigarette use is not a safer alternative to traditional cigarettes. E-cigarettes are just as addictive and similarly harmful to youth brain development.

New Hampshire tobacco excise tax is already lower than our neighboring states. According to the Tax Foundation New Hampshire has the highest level of outbound smuggling at 66.8 percent of

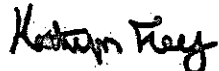
¹ <https://truthinitiative.org/research-resources/tobacco-prevention-efforts/importance-tobacco-taxes>

consumption, likely due to its relatively low tax rates and proximity to high-tax states in the northeastern United States.

New Futures supports an increase to the tobacco tax rate, so that revenue of these addictive products could be used for prevention efforts. Currently no tobacco tax revenue is spent on prevention efforts in our state.

For these reasons, New Futures opposes SB 176.

Respectfully,

A handwritten signature in black ink that reads "Kathryn Frey". The signature is written in a cursive, slightly slanted style.

Kathryn (Kate) Frey
Vice President of Advocacy
New Futures

NATIONAL ASSOCIATION OF TOBACCO OUTLETS, INC.

January 26, 2021

To: Chairman Robert Giuda and Members of the Senate Ways and Means Committee

From: Thomas Briant, NATO Executive Director

The National Association of Tobacco Outlets (NATO) is a national trade association that represents hundreds of retail store-members across the State of New Hampshire. NATO and its New Hampshire member stores urge you to support SB76, which would reduce the tax on tobacco products that have been determined by the FDA to be modified risk products. This is a forward-thinking bill that will encourage long-term benefits for the State and its consumers.

To designate a product as a "modified risk product," the FDA reviews applications under rigorous scientific standards. Manufacturers are required to provide the FDA with a great deal of detailed information regarding each product including:

- Relative health risks to individuals of the product.
- Likelihood that existing users of tobacco products will switch to the product rather than quit altogether or that persons who do not use tobacco products will use the product.
- Risks and benefits to persons from the use of the product compared to approved smoking cessation products.
- Comments, data, and other information submitted to the FDA.

The FDA will only designate a product as "modified risk" if, at the end of their detailed review of this information, it determines that the product will or is expected to benefit the health of the entire population. Thus far, the FDA has only designated twelve products as modified risk; at this time three other applications are pending.

Tobacco taxes are typically passed on to the consumer and constitute a significant part of the purchase price. Reducing the State's tobacco taxes on these modified products by 25% to 50%, as provided in SB76, would create a substantial incentive for consumers to at least try them and perhaps adopt them as a significant or exclusive part of their use of tobacco products. As doing so has been determined scientifically by the FDA to be beneficial to the health of the entire population, this is an unalloyed good that the State should encourage for both its citizens and the general public health.

For these reasons, and on behalf of all NATO member retailers in New Hampshire, I urge you to support SB76.

Voting Sheets

Senate Ways & Means Committee
EXECUTIVE SESSION RECORD
2021-2022 Session

Bill # SB76-FN

Hearing date: 1-27-21

Executive Session date: 1-27-21

Motion of: ITL Vote: 3-2

Committee Member	Present	Made by	Second	Yes	No
Sen. Giuda, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sen. D'Allesandro, VC	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Daniels	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Sen. Hennessey	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Rosenwald	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: _____ Vote: _____

Committee Member	Present	Made by	Second	Yes	No
Sen. Giuda, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. D'Allesandro VC	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Daniels	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Hennessey	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Rosenwald	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Motion of: _____ Vote: _____

Committee Member	Present	Made by	Second	Yes	No
Sen. Giuda, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. D'Allesandro, VC	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Daniels	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Hennessey	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Rosenwald	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: D'Allesandro

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE
SENATE
REPORT OF THE COMMITTEE

Wednesday, January 27, 2021

THE COMMITTEE ON Ways and Means

to which was referred SB 76-FN

AN ACT relative to modified risk tobacco products.

Having considered the same, the committee recommends that the Bill

IS INEXPEDIENT TO LEGISLATE

BY A VOTE OF: 3-2

Senator Lou D'Allesandro
For the Committee

Sonja Caldwell 271-2117

WAYS AND MEANS

SB 76-FN, relative to modified risk tobacco products.

Inexpedient to Legislate, Vote 3-2.

Senator Lou D'Allesandro for the committee.

General Court of New Hampshire - Bill Status System

Docket of SB76

Docket Abbreviations

Bill Title: relative to modified risk tobacco products.*Official Docket of SB76.:*

Date	Body	Description
1/19/2021	S	Introduced 01/06/2021 and Referred to Ways and Means; SJ 3
1/21/2021	S	Remote Hearing: 01/27/2021, 01:00 pm; Links to join the hearing can be found in the Senate Calendar; SC 8
1/27/2021	S	Committee Report: Inexpedient to Legislate, 02/04/2021; SC 9
2/4/2021	S	Sen. Giuda Moved Laid on Table, RC 14Y-10N, MA ; 02/04/2021; SJ 3
2/4/2021	S	Pending Motion Inexpedient to Legislate; 02/04/2021; SJ 3

NH House

NH Senate

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: SB76-FN

Senate Committee: WAYS & MEANS

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

- Bill version as it came to the committee
- All Calendar Notices
- Hearing Sign-up sheet(s)
- Prepared testimony, presentations, & other submissions handed in at the public hearing
- Hearing Report
- Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

___ - amendment # _____ ___ - amendment # _____
 ___ - amendment # _____ ___ - amendment # _____

- Executive Session Sheet
- Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

___ - amendment # _____ ___ - amendment # _____
 ___ - amendment # _____ ___ - amendment # _____

Post Floor Action: (if applicable) {Clerk's Office}

- ___ Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):
- ___ Enrolled Bill Amendment(s)
- ___ Governor's Veto Message

All available versions of the bill: {Clerk's Office}

___ as amended by the senate ___ as amended by the house
 ___ final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

SLC
Committee Aide

7-15-21
Date

Senate Clerk's Office [Signature]

New Hampshire Department of Revenue Administration

Fiscal Note Quick Guide

21-1034

SB 76-FN, *relative to modified risk tobacco products.*

Senate Ways & Means

The proposed legislation would reduce the rate of the Tobacco Tax for “modified risk tobacco products” as follows:

- For modified risk tobacco products commercially marketed pursuant to and order of the U.S. Dept. of HHS under 21 U.S.C. section 387k(g)(1), the Tobacco Tax rate as applied to cigarettes, other tobacco products, and electronic cigarettes is reduced by 50%.
- For modified risk tobacco products for which an order issued by the Secretary of the U.S. Dept. of HHS under 21 U.S.C. section 387k(g)(2) that the tobacco product may be introduced or delivered for introduction into interstate commerce, the Tobacco Tax rate as applied to cigarettes, other tobacco products, and electronic cigarettes is reduced by 25%.

The Department of Revenue Administration (DRA) does not have data relative to the current proportion of tobacco products currently subject to the Tobacco Tax that would qualify as a “modified risk tobacco products” and we therefore cannot estimate the fiscal impact of reducing the Tobacco Tax rate for those products. We assume that some amount of tobacco products subject to the Tobacco Tax would qualify as “modified risk tobacco products” and that the proposed legislation would therefore result in a reduction in revenues.

The Tobacco Tax assessed on other tobacco products and e-cigarettes is assessed and collected by the filing of monthly returns by tobacco wholesalers. Therefore, relative to the modified tax rate applicable to other tobacco products and e-cigarettes, the proposed legislation would require the DRA to update all necessary tax return forms and electronic management systems utilized to administer the Tobacco Tax assessed on other tobacco products and e-cigarettes. The DRA believes that we could administer this portion of the proposed legislation without any additions to our current operating budget.

However, relative to the tax rate applicable to cigarettes, the Tobacco Tax is administered via the application of a tobacco tax stamp to each package of cigarettes. Each stamp has a designated value based on the number of cigarettes in the package as well as whether the manufacturer is a participant or non-participant in the Master Settlement Agreement (MSA). The DRA currently purchases 4 stamps in order to administer the Tobacco Tax applicable to cigarettes, designated “A stamps” (packages of 25 for participating manufacturers) “B stamps” (packages of 20 for participating manufacturers) “C stamps” (packages of 20 cigarettes for non-participating manufacturers) and “D stamps” (packages of 25 cigarettes for non-participating manufacturers). The DRA believes we would need to purchase an additional 8 types of stamps pursuant to the proposed legislation, 4 additional stamps for each category A-D for products that are entitled to a

50% reduction in the Tobacco Tax rate, and 4 additional stamps for each category A-D for products that are entitled to a 25% reduction in the Tobacco Tax rate. The cost to design and purchase these 8 additional types of stamps will result in an indeterminable increase in expenses to the DRA.

The proposed legislation is effective July 1, 2021, which does not provide the DRA adequate time to update all necessary administrative rules, tax return forms and electronic management systems utilized to administer the Tobacco Tax, nor design and purchase the additional tobacco tax stamps required to administer the proposed legislation. Additionally, the proposed legislation will likely require stakeholder outreach to educate and alert them to the modified tax rate applicable to "modified risk tobacco products." The DRA would recommend an effective date of not earlier than January 1, 2022.