

Vermont State Legislature
House Committee on Commerce and Economic Development
Senate Bill 198
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Chair Marcotte, Vice Chair Graning, and committee members, thank you for the opportunity to submit testimony on S.198.

My name is Guy Bentley, and I am the director of consumer freedom at Reason Foundation, a 501(c)3 nonprofit think tank. The Consumer Freedom Project analyzes and promotes policy solutions that enhance public health while minimizing unintended consequences and preserving consumer choice.

I appreciate the opportunity to share our perspective on S.198, which makes several changes to Vermont's tobacco and tobacco substitute laws. It expands the scope of businesses that need a tobacco license, raises license fees, and decouples tobacco licensing from liquor licensing. It increases penalties on sellers who furnish tobacco products to minors while eliminating possession penalties for minors themselves. It requires tax stamps for tobacco substitutes and, in the version passed by the Senate, establishes a tiered excise tax on tobacco substitutes based on nicotine concentration. It also creates a new investigator position in the Department of Liquor and Lottery and directs two departments to study whether oversight of tobacco taxation should shift from the Department of Taxes to that department.

While the bill contains provisions we support, particularly the elimination of possession penalties for minors, we have significant concerns about the bill's tax structure for safer alternatives to cigarettes. The Senate passed the bill with a tiered wholesale tax on tobacco substitutes based on nicotine concentration, with 92 percent for products below 5 mg/g and 100 percent for those at or above that threshold, while also directing the Department of Taxes to study the processes for implementing such taxes and report back by January 2027. That study will report back only after the tax has already taken effect. We welcome the study as a signal that the legislature recognizes the complexity of taxing these products, but the House has an opportunity to adopt a more risk-proportionate tax structure that better serves public health before this bill becomes law.

As it stands, the tax structure treats safer nicotine alternatives as equivalent to or more heavily taxed than cigarettes themselves, which the evidence shows will drive consumers back to the most dangerous product on the market.

Decriminalization of minor possession

Reason Foundation supports the bill's elimination of tobacco product possession penalties for minors and the conversion of the false-ID offense from a criminal misdemeanor to a modest civil fine. Punishing young people for purchasing or using tobacco products is counterproductive.¹ The best approach to minimize youth use is to hold sellers accountable for compliance with age-of-sale laws rather than criminalizing youth behavior. The bill's increased penalties for sellers who furnish tobacco products to minors, combined with more robust compliance testing and escalating license suspensions, correctly place enforcement responsibility on the supply side.

The tax structure is not risk-proportionate

The most damaging aspect of S.198 is that its tax framework treats safer nicotine alternatives as equivalent to or subjected to even more taxation than cigarettes themselves, even though public health authorities have found these substitutes to be substantially less harmful than combustible cigarettes..

Cigarettes remain the leading cause of preventable death and disease in the United States.² In Vermont, smoking kills an estimated 1,000 people annually.³ Despite decades of progress, millions of Americans still smoke. Many of these smokers have tried and been unable to quit using traditional cessation methods such as nicotine patches and gums, which have a failure rate exceeding 90 percent.⁴ For these individuals, safer nicotine alternatives offer a viable path away from smoking.

The principal harm from tobacco comes not from nicotine, which, while addictive, is not the primary cancer-causing agent, but from the combustion of tobacco and the inhalation of the resulting smoke. Products that deliver nicotine without combustion, such as nicotine pouches and e-cigarettes, pose a fraction of the risk of cigarettes. The U.S. Food and Drug Administration (FDA) recognizes a "continuum of risk" regarding nicotine products, with cigarettes being the

¹ Institute of Medicine. "Public Health Implications of Raising the Minimum Age of Legal Access to Tobacco Products." Washington, DC: The National Academies Press. 2015.

<https://www.nationalacademies.org/publications/18997>

² Centers for Disease Control and Prevention. "Current Cigarette Smoking Among Adults in the United States." 2024. <https://www.cdc.gov/tobacco/php/data-statistic.s/adult-data-cigarettes/index.html>

³ Campaign for Tobacco-Free Kids. "The Toll of Tobacco in Vermont." January 2026.

<https://www.tobaccofreekids.org/problem/toll-us/vermon.t>

⁴ Hartmann-Boyce, J., et al. "Nicotine Replacement Therapy Versus Control for Smoking Cessation." Cochrane Database of Systematic Reviews. Issue 5, Art. No.: CD000146. 2018.

<https://pubmed.ncbi.nlm.nih.gov/29852054/>

most dangerous and non-combustible alternatives being far less harmful.⁵ The United Kingdom's Office for Health Improvement and Disparities has stated that e-cigarettes are approximately 95 percent less harmful than smoking.⁶

Vermont's cigarette tax is \$0.154 per cigarette, or \$3.08 per pack. Under S.198, products with a nicotine concentration below 5 mg/g would be taxed at 92 percent of the wholesale price, and those at or above 5 mg/g would be taxed at 100 percent of the wholesale price. Applied to nicotine pouches and e-cigarettes, these rates could easily meet or exceed the effective tax rate on a pack of cigarettes. A risk-proportionate framework would tax safer alternatives at a fraction of the cigarette tax rate to preserve the price signal and encourage smokers to switch.

The literature consistently shows that higher taxes on safer nicotine products result in more cigarette smoking. An analysis of Minnesota's 95 percent wholesale tax on e-cigarettes found 32,400 additional smokers than there would have been without the tax.⁷ A separate analysis found that for every e-cigarette pod eliminated by an e-cigarette tax, 1.9 additional cigarette packs are sold.⁸ Research on young adults aged 18–25 found that e-cigarette taxes were associated with reduced vaping but were similarly associated with increases in smoking.⁹ Because safer nicotine products are substitutes for cigarettes, policies that make them more expensive relative to cigarettes drive consumers back to the more dangerous product.

The two-tier nicotine concentration tax penalizes the most effective cessation products

The bill's two-tier tax structure imposes a higher rate on products with a nicotine concentration of 5 mg/g or higher (100 percent of wholesale value) than on those below that threshold (92 percent of wholesale value). This penalizes the products that are more effective for quitting

⁵ U.S. Food and Drug Administration. "FDA Announces Comprehensive Regulatory Plan to Shift Trajectory of Tobacco-Related Disease, Death." July 2017. <https://www.fda.gov/news-events/speeches-fda-officials/protecting-american-families-comprehensive-approach-nicotine-and-tobacco-06282017>

⁶ McNeill, A., et al. "Nicotine Vaping in England: 2022 Evidence Update." Office for Health Improvement and Disparities. September 2022. <https://www.gov.uk/government/publications/nicotine-vaping-in-england-2022-evidence-update/nicotine-vaping-in-england-2022-evidence-update-main-findings>

⁷ Saffer, H., Dench, D., Grossman, M., Dave, D. "E-Cigarettes and Adult Smoking: Evidence from Minnesota." *Journal of Risk Uncertainty*. June 2020. <https://pubmed.ncbi.nlm.nih.gov/32943812/>

⁸ Cotti, C., Courtemanche, C., Maclean, J.C., Nesson, E., Pesko, M.F., Tefft, N.W. "The Effects of E-Cigarette Taxes on E-Cigarette Prices and Tobacco Product Sales: Evidence from Retail Panel Data." *Journal of Health Economics*. 86: 102676. December 2022. <https://pmc.ncbi.nlm.nih.gov/articles/PMC11268994/>

⁹ Abouk, R., Courtemanche, C., Dave, D., et al. "Intended and Unintended Effects of E-Cigarette Taxes on Youth Tobacco Use." *Journal of Health Economics*. January 2023. <https://pubmed.ncbi.nlm.nih.gov/36565585/>

cigarettes.¹⁰ Higher-nicotine products are what adult smokers typically need to successfully transition away from cigarettes. A smoker accustomed to the rapid nicotine delivery of a cigarette is far more likely to find a higher-nicotine pouch or e-cigarette satisfying enough to replace cigarettes entirely. Taxing these products more heavily undermines harm reduction by making the most effective substitutes less affordable relative to cigarettes.

Recommendations

We respectfully urge the House Committee on Economic Development to consider the following:

First, preserve the Senate's study process for nicotine-concentration-based taxes and ensure that the study is guided by the principle of risk-proportionate taxation.

Second, avoid imposing wholesale tax rates on tobacco substitutes that meet or exceed the effective tax rate on cigarettes. The empirical evidence shows that high taxes on safer nicotine alternatives lead to increased cigarette smoking and worse public health outcomes.

Third, eliminate the two-tier nicotine concentration tax, which penalizes higher-nicotine products that are most effective at helping adult smokers switch away from cigarettes.

Aligning Vermont's tax policy with the FDA's scientific framework and the international evidence on tobacco harm reduction would represent sound fiscal policy and, more importantly, would save lives by helping smokers transition away from the most dangerous nicotine product on the market.

Thank you.

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¹⁰ Gades MS, Alcheva A, Riegelman AL, Hatsukami DK. "The Role of Nicotine and Flavor in the Abuse Potential and Appeal of Electronic Cigarettes for Adult Current and Former Cigarette and Electronic Cigarette Users: A Systematic Review." *Nicotine & Tobacco Research*. August 2022.
<https://pmc.ncbi.nlm.nih.gov/articles/PMC9356694/>