

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. Avar, 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 struckthrough]~~
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.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:	☒ General	☒ Education	☐ Highway	☐ 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