



**Rhode Island State Legislature
House Committee on Finance
Testimony: H 7225**

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Chair Abney and committee members, thank you for the opportunity to submit testimony on H 7225.

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

I appreciate the opportunity to share our concerns about the proposed tax on e-cigarettes and the codification of regulations banning the sale of e-cigarettes in flavors other than tobacco.

E-cigarettes and their risks relative to cigarettes

Around 1,800 Rhode Islanders die every year from smoking-related disease.¹ Many smokers in the Ocean State wish to quit cigarettes but find products like nicotine patches and gums, which have a 90 percent failure rate, unsatisfying and therefore fail. But over the past 15 years a variety of alternatives like e-cigarettes have come to market. These products deliver the nicotine smokers want without the smoke that may kill them.

Making these products available to smokers who wish to quit is part of the Food and Drug Administration's (FDA) strategy for reducing the harms of smoking. The FDA recognizes there is a "continuum of risk" when it comes to tobacco products, with cigarettes being the most dangerous and alternatives such as e-cigarettes, smokeless tobacco, nicotine pouches, and heated tobacco products being less dangerous.² As such, when the FDA authorizes a new tobacco product for sale, it must be evaluated as to whether it is "appropriate for the protection of public health," meaning the product must provide a net benefit to public health.

To date, the FDA has authorized 23 e-cigarette products for sale. Unfortunately, many people are unaware that these products are safer than cigarettes. In 2023, writing in the journal *Addiction*, Director of FDA's Center for Products Brian King expressed concern about the

¹ Campaign for Tobacco-Free Kids. "The Toll of Tobacco in Rhode Island." November 2023.

https://www.tobaccofreekids.org/problem/toll-us/rhode_island

² U.S. Food and Drug Administration. "FDA Authorizes Modified Risk Tobacco Products." May 2020.

misunderstanding among the public about the relative safety of e-cigarettes, saying there exists “opportunities exist to educate adult smokers about the relative risks of tobacco products—particularly e-cigarettes.”³ The prestigious *Cochrane Review* concludes e-cigarettes are more effective than traditional nicotine replacement therapies in helping smokers quit smoking cigarettes.⁴ To advance the public health mission of reducing smoking-related death and disease, it’s important these products are both available and affordable to adult smokers.

Empirical effects of e-cigarette taxes

There is substantial economic literature on the effects of e-cigarette taxes. Because e-cigarettes are substitutes for cigarettes, e-cigarette taxes serve to disincentivize smokers from switching to e-cigarettes. An analysis of Minnesota’s 95 percent wholesale tax on e-cigarettes found there were 32,400 additional smokers than there would have been without the tax.⁵ A separate analysis focusing on young adults aged 18-25 found e-cigarette taxes were associated with reduced vaping but were similarly associated with increases in smoking. These effects are also seen in youth aged 18 or younger, with the authors concluding that “the unintended effects of ... taxation may considerably undercut or even outweigh any public health gains.”⁶ The evidence is clear that high taxes on e-cigarettes, such as those proposed by H 7225, will keep more Rhode Islanders smoking.

People who smoke cigarettes tend to have lower incomes and spend a higher proportion of their disposable income on tobacco taxes than wealthy smokers spend. By having a substantially lower tax on e-cigarettes than on combustible cigarettes, Rhode Island can provide a strong financial incentive for adult smokers to improve their health. In addition to a lower rate of tax than what is currently proposed, we also recommend the adoption of a bifurcated model of taxation, with a wholesale tax applied to open-system e-cigarettes and a per-milliliter tax for closed-system e-cigarettes. Several states have bifurcated e-cigarette taxes, and this ensures a

³ King, B. A., & Toll, B. A. “Commentary on Wackowski et al.: Opportunities and Considerations for Addressing Misperceptions About the Relative Risks of Tobacco Products among Adult Smokers.” *Addiction*. August 2023. <https://onlinelibrary.wiley.com/doi/full/10.1111/add.16296>

⁴ *Cochrane Review*. “Updated Cochrane Review shows electronic cigarettes can help people quit smoking.” November 17, 2022. <https://www.cochrane.org/news/latest-cochrane-review-finds-high-certainty-evidence-nicotine-e-cigarettes-are-more-effective>

⁵ Saffer H, Dench D, Grossman M, Dave D. “E-Cigarettes and Adult Smoking: Evidence from Minnesota.” *Journal of Risk Uncertainty*. June, 2020. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7491748/#:~:text=Estimates%20suggest%20that%20the%20e-%2Dcigarette%20prices%20of%200.13.>

⁶ Abouk R, Courtemanche C, Dave D, Feng B, Friedman AS, Maclean JC, Pesko MF, Sabia JJ, Safford S. “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/>

more neutral tax arrangement so the state isn't preferencing some e-cigarette companies over others.

Flavors and FDA product authorization

By codifying Rhode Island's current restrictions on e-cigarette flavors other than tobacco, H 7225 would preemptively ban the sale of products that the FDA may deem to be net beneficial to public health and then authorize for sale. We recommend the measure be changed to ensure products in flavors other than tobacco that are authorized for sale by the FDA also be permitted for sale in Rhode Island. We further recommend that menthol-flavored e-cigarettes remain permitted for sale pending FDA authorization. Menthol cigarettes are currently legally available in Rhode Island, so e-cigarettes should also be allowed as a safer alternative for menthol cigarette smokers.

While passed with the best of intentions, prohibitions of flavored vaping products can have unintended consequences. A study of 375 localities and seven states, including Rhode Island, that ban flavored e-cigarettes found that for every pod not sold because of the flavor ban, an additional 12 cigarettes were sold.⁷ According to a 2020 study by Yale School of Public Health researchers, e-cigarette flavors are positively associated with smoking cessation outcomes for adults but not associated with increased youth smoking.⁸ By keeping the option open for flavored products to assist adult smokers in quitting, these reforms would be in keeping with Rhode Island's tradition of promoting evidence-based harm reduction strategies, such as overdose prevention centers, to improve public health.

Thank you for your time.

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⁷ Friedman, Abigail and Liber, Alex C. and Crippen, Alyssa and Pesko, Michael. "E-cigarette Flavor Restrictions' Effects on Tobacco Product Sales." SSRN. January, 2024.

https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4586701

⁸ Abigail S. Friedman, PhD; SiQing Xu, BS. "Associations of Flavored e-Cigarette Uptake With Subsequent Smoking Initiation and Cessation." *JAMA*. June, 2020.

<https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2766787>