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House Finance Committee
Testimony in Opposition to House Bill 7804

TO: Rep. Marvin L. Abney, Chair,
Rep. Scott A. Slater, First Vice Chair,
Rep. Alex Marszalkowski, Second Vice Chair,
& Members of the House Committee on Finance

FROM: American Cancer Society Cancer Action Network (ACS CAN)

DATE: April 9, 2026

SUBJECT: Testimony in Opposition to House Bill 7804

The American Cancer Society Cancer Action Network (ACS CAN) is the non-partisan, non-profit advocacy affiliate of the American Cancer Society. As an organization dedicated to advocating for public polices to end cancer as we know it for everyone, **ACS CAN strongly opposes House Bill 7804**, which would reduce the tax on all 'modified risk tobacco products' by 75 percent, thereby making deadly and addictive tobacco products cheaper in Rhode Island.

Reducing tobacco taxes makes them more appealing to price-sensitive consumers, including youth. In Rhode Island, 17.3% of our high school students are using tobacco products.[i] All tobacco products, including "modified risk tobacco products," are unsafe and should be taxed and regulated in the same manner to encourage people who use tobacco products to quit and keep youth from ever starting.

Increasing tobacco taxes is one of the most effective ways to reduce tobacco use, especially among kids, and tobacco companies know it. **Exempting certain tobacco products from taxation and, therefore, lowering the price of tobacco products is one major way for the tobacco industry to protect their bottom line, addict people with cheap products, and keep them addicted**.

ACS CAN, along with our public health partners, have opposed the tobacco industry's existing and proposed modified risk marketing orders. All tobacco products are unsafe, including those the FDA decides are permitted to use a modified risk claim. Tobacco products contain nicotine, which is highly addictive. The U.S. Surgeon General reports that smoking cessation is beneficial at any age and "only complete cessation of all tobacco products fully eliminates all tobacco-related health risks." The modified risk tobacco product 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.

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Rhode Island must continue to tax "modified risk tobacco products" at a rate parallel to the tax on cigarettes and all other tobacco products. Please review the attached policy sheets on why ***The Tobacco Industry is Not the Public Health Solution*** and *FDA Regulation of Tobacco Products: Modified Risk Tobacco Products*.

This bill would be nothing more than a handout to Big Tobacco, at the expense of all Rhode Islanders. ACS CAN urges you to protect kids, not Big Tobacco's profits, and opposes efforts to reduce taxes on any tobacco products, including *modified risk tobacco products*. For that reason, and for the health of generations of Rhode Islanders, we respectfully urge you to reject House Bill 7804.

Please feel free to contact ACS CAN's Rhode Island Government Relations Director, Ryan Timothy Strik, at ryan.strik@cancer.org or at (401) 259-1052 for any additional questions or information.

Thank you for your consideration.

Ryan Timothy Strik
Rhode Island Government Relations Director
American Cancer Society Cancer Action Network

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[i] Centers for Disease Control and Prevention. 2023 Youth Risk Behavior Survey.

The Tobacco Industry is Not the Public Health Solution

Big tobacco has a history of prioritizing corporate profits over people and communities burdened by tobacco-related illness and death.[i] Tobacco industry marketing strategies have led to disparities in tobacco use, including higher use of tobacco products in limited-income communities, among people of color and individuals who identify as LGBTQ+.[ii] For example, tobacco industry memos revealed a 1990s R.J. Reynolds cigarette marketing plan, known as "Project Subculture Urban Marketing," that targeted marketing at gay men and individuals experiencing homelessness in San Francisco.[iii] For decades, the tobacco industry has lied to specific communities and the public at large saying their products are not addictive, harmful or deadly. Tobacco manufacturers continue to create and flood the market with newly designed products they market as being less harmful and alternatives to quitting – a tactic that is not new.

The Tobacco Industry's Long History of Deceit about the Harm Caused by Cigarettes

In the 1950s, scientific studies by the American Cancer Society and others established a definitive link between tobacco use and cancer. As health concerns about smoking started to emerge at this time and in the 1960s, cigarette manufacturers began to redesign their products to offer individuals who smoke, products they claimed to be "less harmful" or as an alternative to quitting. For instance, so-called "light" cigarettes were marketed as healthier with less tar and nicotine. Yet, due to the design of these cigarettes, people who smoked actually smoked longer, inhaling more deeply and more frequently to get their desired dose of nicotine. These design changes may have actually led to an increase in lung cancer cases. Cigarette manufacturers knew these products posed no less risk, yet fraudulently sold them to Americans as such.

One of the most stunning examples of industry tactics was revealed in the landmark case of *U.S. v Philip Morris*, the litigation brought by the U.S. government against the industry accusing it of violating the Racketeering Influenced and Corrupt Organizations (or RICO) Act. After six years of litigation, nine months of trial and hundreds of depositions, U.S. District Court Judge Gladys Kessler found the tobacco industry engaged in an illegal, decades-long campaign to deceive people who smoke about the health hazards of smoking in violation of RICO. Kessler held that the defendants "have **marketed and sold their lethal product with zeal, with deception, with a single-minded focus on their financial success, and without regard for the human tragedy or social costs that success exacted**."[iv] The Court of Appeals for the DC Circuit upheld Kessler in numerous appeals, most recently in 2015, allowing a variety of remedies because defendants "**would likely commit similar violations in the future**."[v]

New Tobacco Products Marketed Using the Same Message

There is no safe form of tobacco despite the many different forms of tobacco on the market. Despite the fact that 68% of adults who smoke report that they want to quit,[vi] tobacco manufacturers continue to sell cigarettes and create new addictive tobacco products intended to attract new users and keep existing users. Contrary to claims from manufacturers that e-cigarettes transition people off cigarettes, 58.81% of young adults who currently used e-cigarettes in 2020 had never previously smoked cigarettes.[vii]

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No existing tobacco products have been FDA-approved to help individuals quit.

The tobacco industry is using the same marketing strategies as the "light" and "low" cigarettes campaigns from the past by using messages and imagery to promote and sell dangerous and highly addictive e-cigarettes, heated tobacco products, and nicotine pouches. One study showed how e-cigarette companies have used similar marketing themes historically used to sell cigarettes, including using cartoons to appeal to youth and using young models in in newspapers, magazines, TV ads as well as in, movies/streaming services geared towards young individuals. Similarly, a 2019 Stanford research report compared Juul's 2015-2018 marketing campaigns to specific cigarette ads, highlighting the similar use of playful tones and bright colors, the hiring of celebrities, and distribution of free samples at sponsored youth-oriented entertainment venues.[viii]

E-cigarette Avoidance of Federal & State Regulation

E-cigarettes started to become available on the U.S. marketplace in 2007. The FDA took action to deny importation of these products on the grounds they were approved cessation products. To escape FDA's authority, in 2009, two companies operating as NJOY sued the FDA for denying importation of its products. NJOY successfully argued their e-cigarettes are meant to deliver nicotine as a substitute for cigarettes and therefore are not therapeutic cessation devices.[xii] In 2009, Congress granted FDA the authority over all tobacco products, but it was not until 2016 that the FDA asserted its authority over e-cigarettes as tobacco products as part of the "Deeming Rule." Unsurprisingly, a number of tobacco industry lawsuits were filed against the FDA to invalidate the deeming rule, alleging the FDA did not have the ability to regulate e-cigarette and cigar products. ACS CAN along with other public health groups filed an amicus brief outlining the importance of the agency's role in regulating these products. Meanwhile, the eight years the FDA took to finalize the deeming rule and the time for the tobacco industry lawsuits to be resolved, the U.S. marketplace was flooded with e-cigarettes and other new tobacco products. The lack of FDA regulation allowed a new generation of youth to become addicted to tobacco products. E-cigarettes became the most commonly used tobacco product among U.S. youth in 2014.[xiii] By December 2018, the alarming and continued rate at which youth and young adults were using e-cigarettes lead to the U.S. Surgeon General declaring youth e-cigarette use to be an epidemic.[xiv] The tobacco industry's latest trick to sell their products without FDA oversight involved claiming certain products are made from synthetic nicotine and not tobacco. Notably some e-cigarettes that were denied marketing orders to sell their products, including Puffbar[xv] and Vapor Salon,[xvi] began to publicly announce their intentions to reintroduce their same e-cigarette products using synthetic nicotine – a loophole in the Tobacco Control Act – to circumvent FDA regulation. Fortunately, Congress closed this glaring loophole in 2022 by clarifying the definition of tobacco products to include any product that contains nicotine, regardless of the source of the nicotine.

To also avoid state regulations, the tobacco industry often requests specific tobacco product exemptions or loopholes to state and local policies. These laws can allow e-cigarettes, cigars, products with modified risk orders or products containing synthetic nicotine to be excluded from excise taxes or taxed at a significantly lower excise tax rate. Exemptions are never added to policies for public health reasons and can contribute to worsening health disparities. In addition, some state tobacco control funding has been redirected to fund the comparative risks of "alternative" products, instead of funding fact-based tobacco prevention and control programs.

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In September 2022, Altria, one of the RICO defendants and the maker of Marlboro cigarettes, and owner of the controlling share of Juul, agreed to pay $438.5 million dollars to 32 states and Puerto Rico to resolve claims of illegal conduct. According to Connecticut Attorney General William Tong, who led the bi-partisan investigation, Juul "relentlessly marketed vaping products to underage youth, manipulated their chemical composition to be palatable to inexperienced users, employed an inadequate age verification process, and misled consumers about the nicotine content and addictiveness of its products."[ix]

FDA Inadequately Enforcing Therapeutic Modified Risk Claims

Studies have shown how e-cigarette companies have marketed their products using a variety of cessation and unsubstantiated therapeutic claims both before[x] and after the FDA had authority over e-cigarettes as a tobacco product. E-cigarettes are often illegally promoted as healthier alternatives to cigarettes or as tools to help individuals quit smoking.[xi] Cessation claims, including that a product can help a person quit using tobacco, are claims that must be approved by the FDA as a medical drug or device. Tobacco manufacturers cannot make cessation claims unless they have been approved as such. Use of these illegal claims may misinform individuals to believe the tobacco products are safe, which isn't true.

Congress granted FDA the authority to regulate the tobacco industry's use of marketing claims because of the industry's long history of misleading the public on the harms of its products. To claim a tobacco product poses a "modified risk," a tobacco product manufacturer must apply and prove to the FDA the product *significantly* reduces harm and the risk of tobacco-related disease to the individuals using the product as well as non-users, while also proving how use of the modified risk claim will not result in increased initiation of the tobacco product by individuals who do not use it, particularly youth. Also, as part of this authority, tobacco manufacturers are both explicitly and implicitly prohibited from saying their product is "FDA approved." The FDA does not approve the sale of new tobacco products, as all tobacco products are harmful.

Unfortunately, the FDA has inadequately enforced the use of both therapeutic claims and modified risk claims used to sell tobacco products. ACS CAN, with its tobacco control partners, have opposed the tobacco industry's existing and proposed modified risk marketing orders, as their product applications to date have been insufficient in proving that the products as used by consumers would lead to reduced harm and risk. In addition, all the applications have lacked any information on the impact on youth – which is required under the law. ACS CAN has also sent letters to FDA urging the agency to investigate the illegal use of cessation claims by tobacco companies to market tobacco products.

ACS CAN's Position

Tobacco companies have violated civil racketeering laws and defrauded the American public by lying for decades about the health effects of smoking, manipulating their products to make them more addicting, marketing products directly to children, and more. Letting tobacco companies draft the solution to reduce tobacco product use is shortsighted. ACS CAN urges lawmakers to protect public health, not Big Tobacco's profits, by passing comprehensive tobacco control policies that apply to all tobacco products.

Ensuring tobacco control policies are comprehensive and evidenced based is the best way to overcome the tobacco industry's attempts to undermine existing laws and reduce tobacco use. The tobacco industry

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motives are very clear, they will aggressively market their products to underage individuals, people with limited-income, communities of color and LGBTQ+ individuals. All tobacco products should be treated equally in tobacco control laws because all tobacco products cause harm. The tobacco industry's constant request for exemptions to be added or requests to delay the implementation of strong tobacco control regulations only benefits Big Tobacco at the expense of everyone else's health.

Well established and effective multi-prong tobacco control policies that are comprehensive are necessary to eliminate tobacco-related disparities and health inequities. Specifically, ACS CAN advocates for evidence-based tobacco control policies at the federal, state and local levels, including:

- the FDA using its full authority to enforce premarket review of new tobacco products, restrict the marketing of these products to youth, and enforce the prohibition on unsubstantiated therapeutic claims;
- fully fund federal and state tobacco control programs to prevent initiation of tobacco products, monitor tobacco product use, identify tobacco related disparities, and promote effective strategies to help individuals who use tobacco products to successfully quit;
- enact comprehensive tobacco control policies with clear definitions that apply to all tobacco products, including e-cigarettes, hookah and other emerging tobacco products and do not exclude specific products from regulations or make location exemptions for the use of certain products;
- increase the tax on cigarettes by at least $1.00 per pack with a parallel tax on all other tobacco products, including e-cigarettes;
- end the sale of menthol cigarettes and all other flavored tobacco products;
- enact comprehensive smoke-free policies in all workplaces, including restaurants, bars and gaming facilities;
- provide access to comprehensive tobacco cessation services and effective FDA-approved cessation medications without barriers or cost-sharing to help people quit tobacco; and
- preserve the right of local governments to pass public health policies that are stronger than state and federal laws.

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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.

The tobacco industry has a long history of misleading the public on the harms of its products. One of the most critical provisions of the TCA requires tobacco companies to receive a marketing order to prove the truthfulness of any claims that their product is "modified risk."

What are Modified Risk Tobacco Products

The term "modified risk tobacco product" is defined in federal law as 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 modified risk tobacco product cannot be sold in the US without a marketing order from the FDA. A product manufacturer can apply for a marketing order 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 does not 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; and
- Data and information on how consumers actually use the tobacco product.

ACS CAN does not believe any product has met the standard to receive a marketing order as a modified risk tobacco product.

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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.

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. When issuing a modified risk marketing order, FDA will review the proposed product, labeling and advertising for use of the claim. Additionally, 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.

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 cancer cases. 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 Decisions

As of September 2022, the FDA has permitted modified risk claims for four products: (1) Swedish Match USA, Inc. snus, (2) Philip Morris Products S.A. IQOS, (3) 22nd Century Group, Inc. VLN low nicotine cigarettes, and (4) Philip Morris Products S.A. IQOS 3 System holder and Charger.

1. Swedish Match USA, Inc. is permitted to make a disease risk claim for eight of its snus products, including several mint-flavored products.
2. 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.
3. 22nd Century Group, Inc. is authorized both modified risk and exposure modification orders for their lower nicotine combusted cigarettes, including lower nicotine menthol-flavored cigarettes, allowing the products to be marketed with reduced exposure claims that they include "95% less nicotine."
4. Philip Morris Product S.A. can market the IQOS 3 System Holder and Charger noting that the product "heats tobacco but does not burn it." In addition, applications are under review for six R.J. Reynolds Camel Snus products and U.S. Smokeless Tobacco Company's Copenhagen Snuff Fine Cut.

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On August 23, 2022, the FDA issued a Final Guidance on Tobacco Product Perception and Intention Studies for tobacco product manufacturer applicants to develop and conduct studies that assess, among other things, individuals' perceptions of tobacco products, understanding of tobacco product information and intentions to use tobacco products.

ACS CAN's Position

ACS CAN, with its tobacco control partners, has opposed the tobacco industry's existing and proposed modified risk marketing orders. All tobacco products are unsafe, including those the FDA decides are permitted to use a modified risk claim. Tobacco products contain nicotine, which is highly addictive. The U.S. Surgeon General reports that smoking cessation is beneficial at any age and "only complete cessation of all tobacco products fully eliminates all tobacco-related health risks."[i]

The modified risk tobacco product 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 urge the FDA to deny any applications that are incomplete and do not meet the standard required by the Tobacco Control Act.

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