

February 8, 2024

Chair Nicole Grohoski, Chair Joe Perry, and Members of the Committee
Joint Standing Committee on Taxation
Maine Legislature

RE: Opposition to Definitional Change in LD 2028

Chair Grohoski, Chair Perry, and Members of the Committee on Taxation, my name is Dr. Brian Erkkila, and I am testifying today in opposition to the change to the definition of tobacco products in Section B-5 of LD 2028/SP 0856.

I am the Director of Regulatory Science for Swedish Match, and prior to this role, I served as Lead Toxicologist at the Food and Drug Administration and held positions at the National Institutes of Health. These experiences make me uniquely qualified to talk to you today about the importance of reduced risk products and their vital role in public health.

The definitional change in LD 2028 expands the tax code definition of tobacco products for tax purposes with overly broad and vague language. This type of broad definition is workable in the health code for application of Maine's regulatory framework, but not in the tax code. Under current tax law in Maine "Tobacco Products" must all contain tobacco to be taxed and different tobacco products are taxed differently. Introducing products that "contain nicotine" but do not contain tobacco without defining them and assigning a tax methodology and rate, could capture a wide array of tobacco-leaf free products including not only gums and lozenges but even nightshade vegetables like eggplant and tomatoes. This would make Maine's tobacco tax code vague and compliance nearly impossible.

In addition, and perhaps more importantly, changes to tax codes can have implications for public health. Public health authorities, including the FDA, agree that tobacco products fall on a "continuum of risk." On one end, combustible cigarettes are the most harmful and widely used products¹. On the other, medicinal nicotine products, such as gums and lozenges, are widely accepted as safe but are not widely used. Smoke-free products, which don't burn tobacco, fall well below combustible cigarettes on the continuum of risk. As a state which has championed harm reduction, Maine surely understands that embracing tobacco harm reduction and moving adult Mainers down this continuum of risk is in the interest of public health. The proposed changes to the tax laws in LD2028 would do the opposite.

This is because research shows that these tax changes will have the opposite effect. A study out of Yale demonstrated that increased taxes on smoke-free products results in increased smoking rates among young adults². Similarly, a consortium of academic researchers and the National Bureau of Economics Research found that increased taxes on smoke-free products can increase underage use of combusted cigarettes³.

On the other hand, research out of Georgetown University has found that smoke-free products could prevent millions of deaths due to decreased combusted cigarette use in the United States⁴. Innovative products like nicotine pouches have similar

¹ Gottlieb S, Zeller M. A Nicotine-Focused Framework for Public Health. *N Engl J Med*. 2017 Sep 21;377(12):1111-1114.

² Friedman AS, Pesko MF. Young adult responses to taxes on cigarettes and electronic nicotine delivery systems. *Addiction*. 2022; 117(12): 3121–3128.

³ 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. *J Health Econ*. 2023 Jan;87:102720.

⁴ Levy DT, Borland R, Lindblom EN, Goniewicz ML, Meza R, Holford TR, Yuan Z, Luo Y, O'Connor RJ, Niaura R, Abrams DB. Potential deaths averted in USA by replacing cigarettes with e-cigarettes. *Tob Control*. 2018 Jan;27(1):18-25. doi: 10.1136/tobaccocontrol-2017-053759.

chemical profiles to nicotine replacement therapy⁵. These tobacco-leaf free products have allowed many people who smoke to move away from combusted cigarettes use, and research has shown that these nicotine pouches could save hundred of thousands of American lives in the future.

Maine has made great strides with a record low prevalence of smoking, however, over 2,300 Mainers still lose their lives each year due to smoking related diseases. For the more than 200,000 adults who smoke in Maine⁶, LD2028 could deter their switching to a smoke-free alternative, leaving them at elevated risk for death and disease through continued smoking. This is because increasing the price of these alternative products disincentivizes consumers from making the switch. It's difficult enough for adults to quit smoking – in fact, the CDC has found that, despite the fact that most adult smokers want to quit, fewer than one in ten adult cigarette smokers succeed in quitting each year⁷.

This legislation could prevent adults who smoke to make better choices and also introduces significant complexity to the tax code by taxing an entirely new and poorly defined range of products without any guidance for Maine Revenue Services. The definition may be appropriate in other sections of Maine law, such the public health code, but its inclusion in the tax code seems to go against workable public policy.

We respectfully request that the committee remove the proposed definitional expansion of tobacco products listed in Section B-5. Thank you for your time and consideration.

Sincerely,

Brian Erkkila, PhD
Director of Regulatory Science
Swedish Match

Brian.erkkila@swedishmatch.com
(804) 614-82787

⁵ Back S, Masser AE, Rutqvist LE, Lindholm J. Harmful and potentially harmful constituents (HPHCs) in two novel nicotine pouch products in comparison with regular smokeless tobacco products and pharmaceutical nicotine replacement therapy products (NRTs). BMC Chem. 2023 Mar 3;17(1):9.

⁶ Maine Tobacco Prevention and Control Advisory Council Report, December 2022

⁷ [Smoking Cessation: Fast Facts | Smoking & Tobacco Use | CDC](#)