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HEALTH AND HUMAN SERVICES

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
132ND LEGISLATURE
FIRST SPECIAL SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 1297, L.D. 1938, “An Act Regarding the Regulation of Tobacco”

Amend the bill by inserting after section 1 the following:

'Sec. 2. 22 MRSA §1541, sub-§1-A, as enacted by PL 2015, c. 318, §1, is amended to read:

1-A. Electronic smoking device. "Electronic smoking device" means a device used to deliver nicotine or any other substance intended for human consumption that may be used by a person ~~to simulate smoking~~ through inhalation of vapor or aerosol from the device, including, without limitation, a device manufactured, distributed, marketed or sold as an electronic cigarette, electronic cigar, electronic pipe, electronic hookah or so-called vape pen.'

Amend the bill by striking out all of section 3 and inserting the following:

'Sec. 3. 22 MRSA §1551-A, sub-§1, as enacted by PL 1995, c. 470, §9 and affected by §19, is amended to read:

1. Retail tobacco license. It is unlawful for any person, partnership or corporation that engages in retail sales, ~~including retail sales through vending machines or in free distribution of tobacco products,~~ to sell, keep for sale or give away in the course of trade any tobacco products to anyone without first obtaining a retail tobacco license from the department, in accordance with this chapter. The department may not issue a license under this chapter that permits the retail sale of tobacco products through vending machines.'

Amend the bill by inserting after section 6 the following:

'Sec. 7. 22 MRSA §1554-B, sub-§1, as enacted by PL 2003, c. 452, Pt. K, §6 and affected by Pt. X, §2, is amended to read:

1. License required. A person may not engage in retail tobacco sales ~~or in free distribution of tobacco products~~ in the ordinary course of trade in this State without a valid license issued under subchapter 1.

1 **Sec. 8. 22 MRSA §1555-B, sub-§2**, as amended by PL 2017, c. 308, §6, is further
2 amended to read:

3 **2. Sales to persons who have not attained 21 years of age prohibited.** A person
4 may not sell; or furnish, ~~give away~~ or offer to sell; or furnish ~~or give away~~, a tobacco
5 product to any person who has not attained 21 years of age, unless the person has attained
6 18 years of age as of July 1, 2018. Tobacco products may not be sold at retail to any person
7 who has not attained 30 years of age unless the seller first verifies that person's age by
8 means of reliable photographic identification containing the person's date of birth. That a
9 person appeared to be 30 years of age or older does not constitute a defense to a violation
10 of this section.'

11 Amend the bill by inserting after section 7 the following:

12 **'Sec. 8. 22 MRSA §1555-B, sub-§10**, as amended by PL 2017, c. 308, §6, is further
13 amended to read:

14 **10. Affirmative defense.** It is an affirmative defense to prosecution for a violation of
15 subsection 1, 2 or 4 that the defendant sold; or furnished, ~~gave away~~ or offered to sell; or
16 furnish ~~or give away~~, a tobacco product in violation of subsection 5-A in reasonable
17 reliance upon a fraudulent proof of age presented by the purchaser.

18 **Sec. 9. 22 MRSA §1555-B, sub-§12** is enacted to read:

19 **12. Prohibition on giving away a tobacco product.** A tobacco retailer or tobacco
20 distributor may not give away a tobacco product.'

21 Amend the bill by inserting after section 8 the following:

22 **'Sec. 9. 22 MRSA §1580-A, sub-§2, ¶D**, as enacted by PL 1985, c. 126, is
23 amended to read:

24 D. "Smoking" means carrying or having in one's possession a lighted or heated
25 cigarette, cigar, or pipe or ~~other object giving off or containing any substance giving~~
26 ~~off tobacco smoke~~ a lighted or heated tobacco or other plant product intended for
27 human consumption through inhalation whether natural or synthetic in any manner or
28 in any form. "Smoking" includes the use of an electronic smoking device as defined in
29 section 1541, subsection 1-A.'

30 Amend the bill by striking out all of section 12 and inserting the following:

31 **'Sec. 12. 36 MRSA §4401, sub-§2-A**, as enacted by PL 2019, c. 530, Pt. A, §1 and
32 affected by §7, is amended to read:

33 **2-A. Electronic smoking device.** "Electronic smoking device" means a device used
34 to deliver nicotine or any other substance intended for human consumption that may be
35 used by a person ~~to simulate smoking~~ through inhalation of vapor or aerosol from the
36 device, including, without limitation, a device manufactured, distributed, marketed or sold
37 as an electronic cigarette, electronic cigar, electronic pipe, electronic hookah or so-called
38 vape pen.'

39 Amend the bill by relettering or renumbering any nonconsecutive Part letter or section
40 number to read consecutively.

SUMMARY

This amendment, which is the majority report of the committee, makes the following changes to the bill.

1. It prohibits the giving away of tobacco products by a tobacco retailer or tobacco distributor.

2. It changes the definition of "smoking" to include the use of electronic smoking devices; this has the effect of prohibiting the use of electronic smoking devices in places of employment and broadens the definition to include the inhalation of natural or synthetic tobacco or other plant products.

3. It removes the definition of "electronic smoking device" that was in the bill and amends the current definitions in the Maine Revised Statutes, Title 22 and Title 36 to eliminate references to simulating smoking.

FISCAL NOTE REQUIRED

(See attached)