



Testimony in Opposition to LD 754:

“An Act to Ban the Sale, Use and Possession of Single-use Electronic Cigarettes and to Review Extended Producer Responsibility Options for All Batteries”

Senator Tepler, Representative Gramlich, and the distinguished members of the Committee on Environment and Natural Resources my name is Harris Van Pate, and I serve as policy analyst for Maine Policy Institute. Maine Policy is a free-market think tank, a nonpartisan, non-profit organization that advocates for individual liberty and economic freedom in Maine. Thank you for the opportunity to submit testimony in opposition to LD 754, “An Act to Ban the Sale, Use and Possession of Single-use Electronic Cigarettes and to Review Extended Producer Responsibility Options for All Batteries.”

While we recognize and respect the Legislature’s public health concerns related to electronic nicotine delivery devices, LD 754 proposes a sweeping and overbroad prohibition on the sale, use, and possession of single-use electronic cigarettes, coupled with a vague and potentially costly directive to study extended producer responsibility (EPR) for all batteries. This bill, as drafted, poses serious economic, legal, and constitutional problems that demand careful reconsideration.

Economic Impacts

This legislation threatens to severely disrupt Maine’s small businesses, particularly vape shops and convenience stores that depend heavily on the sale of single-use e-cigarettes. These products comprise a significant portion of revenue for many local retailers, especially in rural communities. Eliminating them from the market would jeopardize jobs, reduce business viability, and curtail consumer access to less harmful nicotine alternatives.

Moreover, the complete ban on use and possession—not just sale—of these devices is likely to drive demand into the black market, undermining public health oversight and increasing the circulation of unregulated, potentially unsafe products. Since 1920, the United States has known that outright prohibitions rarely achieve their intended public health aims; instead, they foster illicit markets and erode public respect for the law.¹

Additionally, the bill’s second section introduces costly uncertainty for Maine’s business community. The Department of Environmental Protection is tasked with reviewing the feasibility of a sweeping EPR scheme for all batteries, a regulatory expansion with vast implications. Without a clear scope, timeline, or fiscal note, this proposal raises the

¹ <https://www.pbs.org/kenburns/prohibition/unintended-consequences>



specter of future mandates that would increase compliance burdens for countless sectors—automotive, electronics, logistics, and retail—while yielding unclear environmental benefits.

Legal and Constitutional Concerns

LD 754 raises significant constitutional questions. Penalizing individuals for merely possessing a legally purchased product—without grandfathering provisions—undermines due process and property rights. If someone has bought one of these products prior to the ban, their lawfully purchased products will retroactively become illegal. Maine residents who bought single-use vapes legally would be retroactively criminalized, facing escalating civil fines of up to \$5,000. This sets a dangerous precedent of punishing lawful behavior *ex post facto*.

The bill also appears to run afoul of equal protection principles. It bans single-use devices outright while permitting rechargeable versions, without providing a compelling or scientifically grounded justification for treating these similar products differently. This inconsistent treatment risks legal challenge and invites arbitrary enforcement.

Furthermore, LD 754 delegates broad authority to the Department of Environmental Protection to define and propose extended producer responsibility regulations, with little legislative oversight. Such an open-ended delegation undermines the separation of powers and may violate Maine’s nondelegation doctrine, as the legislature relinquishes its duty to set clear policy objectives and guardrails.

Interstate and International Commerce and Tourism

Perhaps most concerning is the bill’s unprecedented ban on possession, which would criminalize tourists and travelers who simply carry a legally purchased vape from another jurisdiction. Neighboring New Hampshire,² for instance, has no such ban for adults, nor do the Canadian provinces of Quebec or New Brunswick.³ As a result, adults traveling to or through Maine could inadvertently run afoul of the law and face steep fines.

This provision not only deters tourism and cross-border commerce—key pillars of Maine’s economy—but also risks conflict with the Dormant Commerce Clause of the U.S. Constitution. States may not impose protectionist measures or unduly burden interstate commerce, especially when less restrictive means are available to achieve the stated goal.

² <https://www.publichealthlawcenter.org/resources/us-e-cigarette-regulations-50-state-review/nh>

³ <https://www.smoke-free.ca/SUAP/2020/vaping-regs-timeline.pdf>



Conclusion

While we appreciate the Committee's commitment to public health, LD 754 presents an excessive, overreaching, and economically harmful approach to complex issues. It penalizes lawful conduct, endangers small businesses, risks constitutional violations, and delegates far too much discretion to the executive branch without sufficient legislative guardrails.

Maine Policy Institute urges the committee to reject this proposal in its current form and to pursue more narrowly tailored, transparent, and market-oriented solutions that respect individual liberty, consumer choice, and the rule of law. Thank you for your time and consideration.