

Testimony on LD 754

Good Morning Senator Tepler, Representative Gramlich and members of the Committee on Environment and Natural Resources. I am Owen Casas and on behalf of the Maine Vapors Association am providing testimony, neither for or against, on 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.

I have come before this committee on this type issue and will be brief in my remarks on LD 754. My understanding is that this bill may be carried over to next session so time can be given to convening a stakeholder group. We continue to support a modest period of time for a stakeholder discussion so the committee can take this program concept up with better information. Below are comments on specific sections in LD 754 we recommend be discussed in more detail.

In closing, I wanted to highlight our sincere appreciation to Sen Bennett, his staff and others for actively engaging with us. We very much value the collaborative approach we've seen from Sen Bennett and I believe this is/ has been extended to all stakeholders, which we support.

Thank you for your time and I'm happy to answer any questions you have.

Owen Casas

1. §1560-C (1)(A) of LD 754 reads, “*Electronic nicotine delivery device*’ has the same meaning as in section 1560-B, subsection 1, paragraph B.”

- §1560-B (1)(B) of state statute reads, “*Electronic nicotine delivery device*’ means any noncombustible device containing or delivering nicotine or any other substance intended for human consumption that employs a heating element, power source, electronic circuit or other electronic, chemical or mechanical means and that may be used 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. “*Electronic nicotine delivery device*” does not include any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act.”
- We oppose including the exemption for “any product regulated as a drug or device by the United States Food and Drug Administration”.
  - To be clear, the US Food and Drug Administration has authorized the sale of the products as smoking devices, not as smoking cessation devices. Including this exemption removes most product stewardship requirements for 3 of the “top 5” global tobacco companies, as there are only 34 products made by 3 companies that have received FDA “approval”.
  - The three companies with FDA approval are:
    - Altria, previously Philip Morris (NJOY)
    - R. J. Reynolds (Vuse)
    - Japan Tobacco (Logic Vape)

- Including an exemption for FDA approved “electronic smoking devices” would significantly handicap any stewardship organization’s success NOW because the companies most capable of funding said program wouldn’t have a requirement to do so. Additionally, there are MANY products with applications for approval “pending”. Any products receiving approval in the future would no longer meet the product stewardship definition, eventually cutting most funding sources from the program and leaving the expense balance to be born by smaller product manufacturers, who already lack the financial resources needed to receive FDA approval (the process from application submission to potential approval can take in excess of four years).

2. Sect 1, §1560-C (2) & (3) of LD 754 addresses prohibitions on sales and possession of “single-use electronic nicotine delivery device”. These devices definition includes products “designed for one-time use and is not rechargeable”.

- We believe this definition should be reviewed during the “stakeholder group” meetings described in section 2 of the bill. This is a rapidly evolving industry that is significantly impacted by federal regulations and it is arguably more important to know where the industry is going then where it is now.
- For example, federal regulation prohibited the sales of certain refillable/ rechargeable (open system) flavored products but did not include said prohibition for “single use disposable”. This had a significant impact on style/ type of devices producers subsequently developed.

3. Sect 2 of LD 754 describes the Department of Environmental Protections to convene a stakeholder group that will review the “feasibility and viability of establishing an extended producer responsibility approach to all batteries” “including, but not limited to, batteries used in electronic cigarettes” etc.

- We strongly support this stakeholder group review and believe it aligns well with the timeline Maine DEP described as necessary to bring recommendations on vape products to the committee.
- We believe the stakeholder groups submission date of Dec. 3 2025 should be reassessed, with Department input, to ensure said group has reasonable time to meet and that their report is submitted in accordance with the requirements needed for the committee to consider it during the 132nd Maine Legislatures second regular session.
- We encourage the committee to be more specific in the “stakeholder group” makeup. Specifically, naming positions within professions, relevant to the style of stewardship program the committee intends to consider.
  - For example, if the stewardship program the committee intends to consider would include “all batteries not currently covered by an extended producer responsibility requirement”, the committee should name some “representatives of battery manufacturers”. However, if the committee intends to only regulate batteries in relation to “electronic smoking devices”, “representatives of battery manufacturers” may not be necessary.

4. In regards to the “stakeholder group” discussed above, we propose the following topics be included on said groups agenda.

- Prioritization, waiving of fees, and other reasonable supports to existing tobacco license holders (there are three retail tobacco licenses and reflect the % of annual sales revenue the applicant has related to tobacco products. “Smoke and vape” shops typically have retail tobacco license 3, when annual revenues for applicants tobacco products is, or anticipated to be, in excess of 60%) who proactively engage with the DEP, within the required time limits, on establishing a stewardship program.
- Review of existing federal rules and regulations, as well as relevant “case studies” or other informational documents related to “electronic smoking devices” laws enacted, or proposed, in other US states, countries, or organization closely resembling a “government”.
  - This should include review of the FDA’s Pre Market Tobacco Application (PMTA) system.

- Specific to the PMTA, review of what environmental concerns are evaluated in the application, the number of applications submitted and approved, what products are being approved, what “authorized for sale by FDA” actually means, what (if any, currently there are ZERO) “electronic smoking cessation devices” are pending, the average cost and time needed to complete the application process, etc
- Review existing statutory language in Title 38, Chpt 18 regarding “product stewardship programs”, including current bills under consideration of the legislature, and the applicability or practicality to both “all batteries not currently covered by an extended producer responsibility requirement” generally and “electronic smoking devices” specifically.
  - For example, legislation currently pending on this topic defines “producer” in three different ways: the manufacturer of the product, those who import and/ or distribute the product and the retailer who sells the product. The organizations/ individuals who could be considered “producers” would change significantly if the program was for the batteries generally, versus vape products specifically.
  - “Program” is defined as those producer who “individually, collectively or through a stewardship organization” are responsible for the “implementation and financing of a product stewardship program to manage the product at the end of the product's life”.
  - The requirements for a stewardship “program” are understandably robust and indicate the required success metrics are statewide (like “collection locations located within 15 miles of 90% of the residents of the State”). This seems reasonable if the “stewardship organization” is actually comprised of all manufacturers, distributors, and or retail tobacco stores. However, an “individual” retailer who intends to implement a stewardship program (as is allowed under the law) would likely have the resources to manage a program within their consumers “catchment” area, but lack the resources to accomplish this statewide, making them ineligible to receive DEP approval.

Below is a rough timeline a stakeholder group (referred to a “working group” here) could take and bring information to the Committee in their Second Regular session.

### Proposed Product Stewardship Timeline

#### **May 2025**

##### Committee

- Votes to carry LD 754 over to 2nd Regular Session.
- Decide to formalize working group (*Special Study Table for funding*) or keep informal.
- Straw pole vote on working group member makeup
  - ENR Committee liaison(s)?
  - Industry reps- how many and who?
  - State dept? DEP, Revenue Service?
  - Solid Waste operator, Call2Recycle?
- Straw pole on specific charge of working group
  - Is this necessary or would it muddy the waters?
  - If it is necessary, how narrow or broad a charge should be given?

##### Working Group (*very informally defined at this time*)

- Discusses and makes recommendations on the Committee decisions considered above.
- Depending on decisions of ENR Committee, could schedule meetings, “elect” Group Chairs, and start gathering, sharing & considering relevant information.

## **June-August**

*(typically the first session adjourns June. Special session may alter this timing but the Working Group could meet 2-3 times throughout June, allowing for an initial check-in before summer adjournment)*

### Committee

- Completes legislative work for 1st Special Session.
- Schedules working group for update & check-in in final days of session
- Potentially adjust Working Group charge, based on feedback given by Working Group

### Working Group

- Continue meeting and information sharing.
- Scope the discussion into understandable “bins” that could each be voted on by Group for recommendation. (This allows potential presentation of the areas/ “bins” of unanimous agreement within the Group, bifurcating the Group product/ report into two general buckets: areas of agreement & areas off disagreement.)
- Within charge given by ENR Committee
  - Define expectations of Group members, including resources available for the Group
  - Define style, substance & format of Working Group report

## **September-December**

### Committee

- Committee Chairs meet with Committee Liaison(s) to Group and Working Group Chairs
- Request the Presiding Officers allow ENR Committee to meet and more formally check- in with Working Group

### Working Group

- Continue meeting
- Sept- Produce first “draft” of report within style, substance & format *(this will likely be incomplete in that information needed to “make a decision” is still being acquired/ digested, therefor “placeholders” will indicate both progress of the Group and areas still needing focus)*
- Dec- Produce final “draft” of report for review by ENR Committee Chairs and Liaison(s) with Working Group Chairs (potentially review with entire ENR Committee, depending)
- Adjust, as needed and based on input from Committee

## **January 2026**

*(“the first Wednesday after the first Tuesday of January in the subsequent even-numbered year in what shall be designated the second regular session of the Legislature; provided, however, that the business of the second regular session of the Legislature shall be limited to... legislation referred to committees for study” -State Constitution)*

### Committee

- TBD

### Working Group

- TBD

## **February-April**

### Committee

- Receive Final Report from Working Group

Working Group

- Deliver Final Report to Committee