

**TESTIMONY OF  
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DEPARTMENT OF ADMINISTRATIVE AND FINANCIAL SERVICES**

Before the Joint Standing Committee on Health and Human Services  
Hearing Date: *May 13, 2025*

LD 1938 – “*An Act Regarding the Regulation of Tobacco*”

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Senator Ingwersen, Representative Meyer, and members of the Health and Human Services Committee – good afternoon, my name is Michael Allen, Associate Commissioner for Tax Policy in the Department of Administrative and Financial Services. I am testifying at the request of the Administration Neither For Nor Against LD 1938, “*An Act Regarding the Regulation of Tobacco*.”

Relevant to taxation, this bill would (1) prohibit the retail sale of tobacco products in vending machines and amend the cigarette and tobacco products excise taxes accordingly; (2) increase the penalties for licensing violations by cigarette distributors; and (3) modify the tobacco products tax definition of “electronic smoking device.” The Administration would like to note the testimony’s concerns are based on (3), the proposed changes in Section 12, and is otherwise neutral regarding the prohibitional and penalty provisions.

Section 12 of the bill would amend the definition of “electronic smoking device” under the Tobacco Products Tax to mean “a device that *can be used* to deliver aerosolized or vaporized *nicotine* to the person inhaling from the device” and to include “*any substance* intended to be aerosolized or vaporized by using the device.” It should be noted that “electronic smoking device” was originally enacted under the tobacco products tax to mirror the definition under Title 22. 22 M.R.S. § 1541(1-A). The purpose of decoupling these definitions is unclear.

MRS would interpret this updated definition to include a device that can be used to deliver any aerosolized or vaporized substance, including hemp or other nicotine-free products. However, the definitional discrepancies and the phrase “can be used to deliver . . . nicotine” could cause confusion.

The bill would define “electronic smoking device” to include “any component, part or accessory of such a device, whether or not sold separately,” but would exclude “any battery or battery charger when sold separately.” Electronic smoking devices are often referred to or marketed as “batteries.” It is possible the bill could potentially make component parts of electronic smoking devices subject to the tobacco products tax but exempt the actual device itself from taxability. The meaning of “battery” should be clarified to address this potential ambiguity.

The bill’s proposed amendment to the definition of “electronic smoking device” to exclude “drugs, devices or combination products authorized for sale by the [U.S. Food and Drug Administration], as those terms are defined in the Federal Food, Drug and Cosmetic Act,” is unnecessary because all such items are already exempt from tobacco products tax. 36 M.R.S. § 4403-A(1)(B).

The Administration looks forward to working with the Committee on the bill.