

Testimony for LD1938 An Act Regarding the Regulation of Tobacco

Good afternoon, Senator Ingwerson and Representative Meyer,

My name is Anthony Scott and I'm an owner of 4 vape shops in the State of Maine. I'm here today to speak in opposition to 1938 as written.

I want to express serious concern about the unintended consequences of LD 1938, particularly the broad language used in 36MRSA 4401 Section 2(A) defining "electronic smoking device."

As currently written the language is too broad and could be interpreted to include:

- Replacement coils, tanks, pods, and other components of open systems

These items are not currently taxed and are part of a stagnant — if not rapidly declining — segment of the market in Maine. Consumers who use open-system devices typically do so to save money by refilling them with bottled e-liquid, as opposed to purchasing more expensive, closed-system alternatives.

A useful parallel is the roll-your-own cigarette market: while the tobacco itself is taxed, the papers, rolling machines, injectors, and other accessories are not. This approach makes sense and should be mirrored in the treatment of vaping products — taxing the consumable, not the hardware.

As currently written, the language could be interpreted to exclude:

- Vuse (RJ Reynolds) FDA Approved Products
- NJOY (ALTRIA) FDA Approved Products
- Logic - FDA Approved products
- All Big tobacco batteries and chargers such as Vuse, NJOY, Juul which are commonly sold separately unlike open system devices
- Other companies gaining approval of PMTA regulation in the future

This change would expand what is considered "taxable" in Maine, placing additional financial pressure on small businesses and adult consumers who rely on open-system vaping products as an alternative to combustible tobacco. At the same time, it hands a significant advantage to Big Tobacco by potentially exempting FDA-approved products or other currently marketed products from taxation.

To maintain consistency with Maine's existing tax structure on vaping products, I urge that the definition explicitly exclude components, parts, or accessories sold separately. This

would help ensure that consumers aren't hit with an unexpected increase of tax and that small businesses aren't further burdened.

Suggested action: If the intent behind the FDA approval exemption is to apply solely to FDA-approved smoking cessation devices, then the language should be clarified accordingly. Otherwise, I recommend removing the exemption altogether. I also urge caution about the long-term implications of including such an exemption in the definition. Will this definition be adopted in other statutes, such as Title 22, Section 1541(1-A)? If so, it could significantly impact future legislation — potentially exempting certain products from requirements like stewardship programs.

I ask these questions to the committee for consideration during the workshop.

What feedback do we have from Maine Revenue Services about how they interpret the current Tax on vaping products and how that will change with this bill. Is the language confusing or ambiguous for out-of-state distributors?

What will the loss of revenue be from excluding Big Tobacco batteries and chargers sold separately?

Should this new tax structure be heard in front of the Committee on taxation as this would be adding an additional tax on open system vaping products?

I appreciate the time and consideration and am happy to speak in more detail or provide further information as needed.

Thank you

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