

OFFICE OF POLICY AND LEGAL ANALYSIS

Date: May 12, 2021
To: Joint Standing Committee on Health & Human Services
From: Erin Dooling, Esq., Legislative Analyst

LD 1550 An Act To End the Sale of Flavored Tobacco Products

SUMMARY: This bill prohibits the sale and distribution of flavored tobacco products, including flavored cigars and electronic smoking devices. It:

- Amends the definition of “electronic smoking device.” (*Sec. 1*)

Current definition: [22 M.R.S. § 1541\(1-A\)](#)

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.

- Adds a definition of “flavored tobacco product.” (*Sec. 2*)
- Repeals the prohibition on certain flavored cigars (*Sec. 4*)
- Prohibits a tobacco retailer from selling, distributing or offering to sell or distribute any flavored tobacco product (*Sec. 3, 5*)
 - A public statement or claim by the retailer or manufacturer that a tobacco product has or produces a taste or smell other than tobacco constitutes presumptive evidence that it’s a flavored tobacco product
 - Establishes fines for tobacco retailers in violation of the prohibition from selling, distributing or offering to sell or distribute any flavored tobacco product
 - Fine of \$1,000
 - Fine of \$5,000 for subsequent violations

DRAFTING ISSUES:

- Are “flavored tobacco products” sufficiently described? (*Sec. 2.*) Current law prohibits certain flavored cigars, which are described as having a “[characterizing flavor](#).” The definition of “characterizing flavor” includes the taste or aroma of berries and nuts. The section governing flavored cigars is repealed (*Sec. 4*), but because cigars are included in the definition of a “[tobacco product](#),” flavored cigars would also be prohibited by this bill (*Sec. 5*). The definition of “flavored tobacco products” in this bill does not include berries and nuts.

ADDITIONAL INFORMATION REQUESTED BY COMMITTEE:

- What tobacco products are affected by this bill?

3. Tobacco product. "Tobacco product" means any product that is made from or derived from tobacco, or that contains nicotine, that is intended for human consumption or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar, a hookah, pipe tobacco, chewing tobacco, snuff or snus. "Tobacco product" also means an electronic smoking device and any component or accessory used in the consumption of a tobacco product, such as filters, rolling papers, pipes and liquids used in electronic smoking devices, whether or not they contain nicotine. "Tobacco product" does not include drugs, devices or combination products authorized for sale by the United States Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act. [22 M.R.S. § 1551\(3\)](#)

- Information on vaping risks from the Surgeon General.
- Scientific information about vaping being a good alternative to quitting smoking.
- Information about impact of Massachusetts menthol-flavored tobacco ban.
- List of the chemicals/ingredients in Juul and other popular e-cigarette brands.
- Information on the health issues, such as cancer, associated with chewing tobacco.

FISCAL IMPACT: Not yet determined