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Date: (Filing No. H- )

**HEALTH AND HUMAN SERVICES**

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
127TH LEGISLATURE  
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT “ ” to H.P. 769, L.D. 1108, Bill, “An Act To Protect Children and the Public from Electronic Cigarette Vapor”

Amend the bill by striking out the title and substituting the following:

**'An Act To Restrict the Use of Electronic Nicotine Delivery Devices in Hospitals, Schools and Day Cares'**

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

**'Sec. 1. 22 MRSA §1541, sub-§1-A** is enacted to read:

**1-A. Electronic nicotine delivery device.** "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.

**Sec. 2. 22 MRSA §1542, sub-§1,** as amended by PL 2009, c. 140, §1, is further amended to read:

**1. Prohibition.** Smoking is prohibited in all enclosed areas of public places, outdoor eating areas as provided in section 1550 and all rest rooms made available to the public. In the case of a child care facility that is not home-based, smoking is also prohibited in a facility-designated motor vehicle within 12 hours before transporting a child who is in the care of the child care facility, and whenever such a child is present in the vehicle. Smoking is also prohibited in outdoor areas of the facility where children may be present. Use of an electronic nicotine delivery device does not constitute smoking. Use of an

**COMMITTEE AMENDMENT**

1 electronic nicotine delivery device is prohibited in a child care facility that is not home-  
2 based.

3 **Sec. 3. 22 MRSA §1542, sub-§2, ¶J,** as amended by PL 2009, c. 300, §2, is  
4 further amended to read:

5 J. Smoking is and the use of an electronic nicotine delivery device are not  
6 prohibited in a private residence, subject to section 1580-A, unless the private  
7 residence is used as a day care or baby-sitting service. If a private residence is used  
8 as a day care or baby-sitting service, smoking is and the use of an electronic nicotine  
9 delivery device are prohibited:

10 (1) In the residence, during the hours of operation as a day care or baby-sitting  
11 service;

12 (2) In outdoor areas on the property of that private residence, wherever a child  
13 under care may be present; and

14 (3) During the facility's hours of operation, in a motor vehicle owned or operated  
15 by the facility whenever a child under care is in the vehicle.

16 **Sec. 4. 22 MRSA §1578-B, sub-§2,** as amended by PL 2007, c. 156, §2, is  
17 further amended to read:

18 **2. Prohibition.** Except as provided in subsection 3, tobacco use and the use of an  
19 electronic nicotine delivery device as defined in section 1541, subsection 1-A in the  
20 buildings or on the grounds of any elementary or secondary school is are prohibited.

21 **Sec. 5. 22 MRSA §1578-B, sub-§§3 and 6,** as enacted by PL 1987, c. 687, are  
22 amended to read:

23 **3. Exceptions.** Tobacco use and the use of an electronic nicotine delivery device as  
24 defined in section 1541, subsection 1-A may be permitted in classrooms only as part of a  
25 bona fide demonstration during a class lesson, with prior notice being given to the  
26 school's administrator.

27 **6. Enforcement.** The principal of the elementary or secondary school, or the  
28 principal's designee, shall enforce the law prohibiting and restricting tobacco use and the  
29 use of an electronic nicotine delivery device as defined in section 1541, subsection 1-A  
30 under this section.

31 **Sec. 6. 22 MRSA §1580-A, sub-§3-A** is enacted to read:

32 **3-A. Policy for use of an electronic nicotine delivery device in hospitals.** Each  
33 hospital shall establish, or may negotiate through the collective bargaining process, a  
34 written policy concerning the use of electronic nicotine delivery devices as defined in  
35 section 1541, subsection 1-A by employees in that portion of any hospital for which the  
36 employer is responsible, subject to paragraph A. The policy must prohibit the use of an  
37 electronic nicotine delivery device indoors subject to paragraph A and may prohibit the  
38 use of an electronic nicotine delivery device outdoors except in designated areas.

39 A. All areas of a business facility into which members of the public are invited or  
40 allowed are governed by the provisions of chapter 262.'

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**SUMMARY**

This amendment, which is the minority report, changes the bill's title and replaces the bill. It enacts a definition of "electronic nicotine delivery device" and restricts the use of an electronic nicotine delivery device in hospitals, schools and day cares.