

MAINE STATE LEGISLATURE

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Date: 6/19/19

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
129TH LEGISLATURE
FIRST REGULAR SESSION

HOUSE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to H.P. 758, L.D. 1028, Bill, "An Act To Prevent and Reduce Tobacco Use with Adequate Funding and by Raising the Tax on Tobacco Products"

Amend the amendment by striking out the substitute title and replacing it with the following:

'An Act To Prevent and Reduce Tobacco Use with Adequate Funding and by Equalizing the Taxes on Tobacco Products and To Improve Public Health'

Amend the amendment by striking out all of sections 1 to 7 and inserting the following:

'PART A

Sec. A-1. 36 MRSA §4401, sub-§§2-A, 2-B and 7-A are enacted to read:

2-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.

2-B. Hookah. "Hookah" means a device used for smoking tobacco that consists of a tube connected to a container where the smoke is cooled by passing through water.

7-A. Smoking. "Smoking" includes carrying or having in one's possession a lighted or heated cigarette, cigar or pipe or a lighted or heated tobacco or plant product intended for human consumption through inhalation whether natural or synthetic in any manner or in any form. "Smoking" includes the use of an electronic smoking device.

Sec. A-2. 36 MRSA §4401, sub-§9, as amended by PL 2005, c. 627, §4, is further amended to read:

9. Tobacco products. "Tobacco products" means cigars; cheroots; stogies; electronic smoking devices and liquids used in electronic smoking devices whether or not they contain nicotine; periques, granulated, plug cut, crimp cut, ready rubbed, and other

HOUSE AMENDMENT

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1 smoking tobacco; snuff; snuff flour; snus; cavendish; plug and twist tobacco; finecut and
2 other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of
3 tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable
4 ~~for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but~~
5 ~~does not include tobacco products that are subject to the tax provided by chapter 703~~
6 intended for human consumption or is likely to be consumed, whether smoked, heated,
7 chewed, absorbed, dissolved, inhaled or ingested by any other means. "Tobacco
8 products" does not include:

9 A. Products that are subject to the tax provided by chapter 703;

10 B. Drugs, devices or combination products authorized for sale by the United States
11 Department of Health and Human Services, Food and Drug Administration, as those
12 terms are defined in the Federal Food, Drug, and Cosmetic Act;

13 C. Any product that contains adult use marijuana subject to tax under Title 28-B,
14 section 1001; or

15 D. Any product that contains marijuana or marijuana products subject to control
16 under Title 22, chapter 558-C.

17 **Sec. A-3. 36 MRSA §4403, sub-§1**, as repealed and replaced by PL 2009, c. 213,
18 Pt. H, §1 and affected by §3, is amended to read:

19 **1. Smokeless tobacco.** A tax is imposed on smokeless tobacco, including chewing
20 tobacco and snuff, at the rate of:

21 A. On amounts of smokeless tobacco packaged for sale to the consumer in a package
22 that contains one ounce or more of smokeless tobacco, \$2.02 per ounce and prorated;
23 and

24 B. On smokeless tobacco packaged for sale to the consumer in a package that
25 contains less than one ounce of smokeless tobacco, \$2.02 per package.

26 Beginning January 2, 2020, the tax rates in this subsection are subject to adjustment
27 pursuant to subsection 5.

28 **Sec. A-4. 36 MRSA §4403, sub-§2**, as amended by PL 2005, c. 627, §8, is
29 further amended to read:

30 **2. Other tobacco.** A tax is imposed on cigars, pipe tobacco and other tobacco
31 intended for smoking at the rate of 20% of the wholesale sales price beginning October 1,
32 2005. Beginning January 2, 2020, a tax is imposed on all tobacco products, other than
33 those subject to tax under subsection 1, at the rate of 43% of the wholesale sales price.
34 Beginning January 2, 2020, the tax rate imposed pursuant to this subsection is subject to
35 adjustment pursuant to subsection 5.

36 **Sec. A-5. 36 MRSA §4403, sub-§5** is enacted to read:

37 **5. Equivalence.** If the tax on cigarettes under chapter 703 is increased after January
38 2, 2020, the assessor shall calculate a rate of tax on other tobacco products under
39 subsections 1 and 2 that is equivalent to the same percentage change in the tax rate for
40 one cigarette. The adjusted rates calculated by the assessor take effect at the same time as
41 the increase in the tax on cigarettes.

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1 **Sec. A-6. Appropriations and allocations.** The following appropriations and
2 allocations are made.

3 **ADMINISTRATIVE AND FINANCIAL SERVICES, DEPARTMENT OF**

4 **Revenue Services, Bureau of 0002**

5 Initiative: Provides funding for one Tax Examiner position and related costs to review
6 and process additional tobacco products tax returns.

7	GENERAL FUND	2019-20	2020-21
8	POSITIONS - LEGISLATIVE COUNT	1,000	1,000
9	Personal Services	\$65,492	\$85,661
10	All Other	\$12,089	\$2,700
11			
12	GENERAL FUND TOTAL	<u>\$77,581</u>	<u>\$88,361</u>

13 **ADMINISTRATIVE AND FINANCIAL**
14 **SERVICES, DEPARTMENT OF**
15 **DEPARTMENT TOTALS**

16		2019-20	2020-21
17	GENERAL FUND	\$77,581	\$88,361
18			
19	DEPARTMENT TOTAL - ALL FUNDS	<u>\$77,581</u>	<u>\$88,361</u>

20 **HEALTH AND HUMAN SERVICES, DEPARTMENT OF**

21 **Maine Center for Disease Control and Prevention 0143**

22 Initiative: Appropriates funds for evidence-based tobacco use prevention and cessation, in
23 accordance with the United States Department of Health and Human Services, Centers
24 for Disease Control and Prevention best practices.

25	GENERAL FUND	2019-20	2020-21
26	All Other	\$2,050,000	\$4,100,000
27			
28	GENERAL FUND TOTAL	<u>\$2,050,000</u>	<u>\$4,100,000</u>

29 **Medical Care - Payments to Providers 0147**

30 Initiative: Appropriates and allocates funds for tobacco use cessation medications and
31 counseling provided to MaineCare members.

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1 January 1, 2020, the department shall reimburse for ambulance services under MaineCare
2 at a level that is not less than the average allowable reimbursement rate under Medicare
3 for such services and shall reimburse for neonatal transport services under MaineCare at
4 the average rate for critical care transport services under Medicare.

5 **Sec. B-2. Appropriations and allocations.** The following appropriations and
6 allocations are made.

7 **HEALTH AND HUMAN SERVICES, DEPARTMENT OF**

8 **Medical Care - Payments to Providers 0147**

9 Initiative: Provides funding to increase the reimbursement rate for ambulance services
10 under the MaineCare program so the rates are not less than the average allowable
11 reimbursement rate under Medicare and increase the reimbursement rate for neonatal
12 transport services under MaineCare so the rates are equal to the average rate for critical
13 care transport services under Medicare.

14	GENERAL FUND	2019-20	2020-21
15	All Other	\$1,662,060	\$3,329,640
16			
17	GENERAL FUND TOTAL	<u>\$1,662,060</u>	<u>\$3,329,640</u>

18	FEDERAL EXPENDITURES FUND	2019-20	2020-21
19	All Other	\$4,894,815	\$5,868,260
20			
21	FEDERAL EXPENDITURES FUND TOTAL	<u>\$4,894,815</u>	<u>\$5,868,260</u>

22 **PART C**

23 **Sec. C-1. 36 MRSA §5122, sub-§2, ¶QQ** is enacted to read:

24 QQ. For taxable years beginning on or after January 1, 2020, to the extent included
25 in federal adjusted gross income and not subtracted under paragraph FF, student loan
26 payments made by the taxpayer's employer directly to a lender on behalf of a
27 qualified health care employee. As used in this paragraph, "qualified health care
28 employee" means an individual who is employed by a hospital located in this State
29 and who is licensed under Title 32, chapter 31, subchapter 3 or 4; chapter 36,
30 subchapter 4; or chapter 48, subchapter 2.

31 **Sec. C-2. Reimbursement for rural hospitals and nonrural hospitals.** The
32 Department of Health and Human Services shall amend its rule Chapter 101: MaineCare
33 Benefits Manual, Chapter III, Section 45 in order to provide MaineCare reimbursement
34 for rural hospitals at 100% of inpatient hospital-based physician costs, outpatient
35 emergency room hospital-based physician costs, outpatient nonemergency room hospital-
36 based physician costs and graduate medical education costs. The department shall also
37 amend its rule Chapter 101: MaineCare Benefits Manual, Chapter III, Section 45 in order

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1 to provide MaineCare reimbursement for nonrural hospitals at 93.3% of inpatient
2 hospital-based physician costs, 93.4% of outpatient emergency room hospital-based
3 physician costs and 83.8% of outpatient nonemergency room hospital-based physician
4 costs.

5 The department shall adopt routine technical rules under the Maine Revised Statutes,
6 Title 5, chapter 375, subchapter 2-A to establish a definition of "rural hospital" that
7 reflects the regional access to hospital care and the population density of the public health
8 district in which the hospital is located, as long as the following hospitals are considered
9 rural hospitals:

- 10 1. Northern Light A.R. Gould Hospital in Presque Isle;
- 11 2. Cary Medical Center in Caribou;
- 12 3. Franklin Memorial Hospital in Farmington;
- 13 4. Northern Light Inland Hospital in Waterville;
- 14 5. Northern Light Maine Coast Hospital in Ellsworth; and
- 15 6. Northern Maine Medical Center in Fort Kent.

16 **Sec. C-3. Reimbursement for acute care critical access hospitals.** The
17 Department of Health and Human Services shall amend its rule Chapter 101: MaineCare
18 Benefits Manual, Chapter III, Section 45 regarding acute care critical access hospital
19 physician services to require MaineCare reimbursement of 100% for all hospital-based
20 physician costs.

21 **Sec. C-4. Reimbursement for rural health clinics.** The Department of Health
22 and Human Services shall amend its rule Chapter 101: MaineCare Benefits Manual,
23 Chapter II, Section 103 regarding the department's reimbursement methodology to
24 provide an alternative payment methodology option that, effective January 1, 2020, is the
25 same as the existing methodology except that rural health clinics may be reimbursed on
26 the basis of 100% of the average of the reasonable costs of providing MaineCare-covered
27 services during calendar years 2016 and 2017 as long as reimbursement is no less than
28 reimbursement received under the prospective payment system described in Section
29 1902(bb) of the United States Social Security Act. Each rural health clinic must be given
30 the option to be reimbursed under the methodology required by this section or under the
31 existing prospective payment system methodology.

32 **Sec. C-5. State plan amendments; rulemaking.** The Department of Health
33 and Human Services shall submit any necessary state plan amendments to implement the
34 requirements of this Part to the United States Department of Health and Human Services,
35 Centers for Medicare and Medicaid Services no later than January 1, 2020. Upon
36 approval, the department shall amend its rules within 180 days of approval. Rules
37 adopted pursuant to this section are routine technical rules as defined in the Maine
38 Revised Statutes, Title 5, chapter 375, subchapter 2-A.

39 **Sec. C-6. Appropriations and allocations.** The following appropriations and
40 allocations are made.

41 **HEALTH AND HUMAN SERVICES, DEPARTMENT OF**

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1 **Medical Care - Payments to Providers 0147**

2 Initiative: Provides appropriations and allocations to allow for MaineCare reimbursement
3 of 100% for all hospital-based physician costs.

4	GENERAL FUND	2019-20	2020-21
5	All Other	\$371,768	\$753,736
6			
7	GENERAL FUND TOTAL	<u>\$371,768</u>	<u>\$753,736</u>

8	FEDERAL EXPENDITURES FUND	2019-20	2020-21
9	All Other	\$793,942	\$1,577,684
10			
11	FEDERAL EXPENDITURES FUND TOTAL	<u>\$793,942</u>	<u>\$1,577,684</u>

12 **Medical Care - Payments to Providers 0147**

13 Initiative: Provides appropriations and allocations to allow for MaineCare reimbursement
14 for rural hospitals at 100% of inpatient hospital-based physician costs, outpatient
15 emergency room hospital-based physician costs, outpatient nonemergency room hospital-
16 based physician costs and graduate medical education costs and to allow for MaineCare
17 reimbursement for nonrural hospitals at 93.3% of inpatient hospital-based physician
18 costs, 93.4% of outpatient emergency room hospital-based physician costs and 83.8% of
19 outpatient nonemergency room hospital-based physician costs.

20	GENERAL FUND	2019-20	2020-21
21	All Other	\$263,428	\$534,084
22			
23	GENERAL FUND TOTAL	<u>\$263,428</u>	<u>\$534,084</u>

24	FEDERAL EXPENDITURES FUND	2019-20	2020-21
25	All Other	\$562,573	\$1,117,918
26			
27	FEDERAL EXPENDITURES FUND TOTAL	<u>\$562,573</u>	<u>\$1,117,918</u>

28 **Medical Care - Payments to Providers 0147**

29 Initiative: Provides appropriations and allocations to allow for an alternative payment
30 methodology option that is the same as the existing methodology except that rural health
31 clinics may be reimbursed on the basis of 100% of the average of the reasonable costs of
32 providing MaineCare-covered services during calendar years 2016 and 2017 as long as
33 reimbursement is no less than reimbursement received under the prospective payment
34 system.

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1	GENERAL FUND	2019-20	2020-21
2	All Other	\$739,449	\$1,499,185
3			
4	GENERAL FUND TOTAL	<u>\$739,449</u>	<u>\$1,499,185</u>
5	FEDERAL EXPENDITURES FUND	2019-20	2020-21
6	All Other	\$1,579,154	\$3,138,020
7			
8	FEDERAL EXPENDITURES FUND TOTAL	<u>\$1,579,154</u>	<u>\$3,138,020</u>
9	HEALTH AND HUMAN SERVICES,		
10	DEPARTMENT OF		
11	DEPARTMENT TOTALS	2019-20	2020-21
12			
13	GENERAL FUND	\$1,374,645	\$2,787,005
14	FEDERAL EXPENDITURES FUND	\$2,935,669	\$5,833,622
15			
16	DEPARTMENT TOTAL - ALL FUNDS	<u>\$4,310,314</u>	<u>\$8,620,627</u>

17 **PART D**

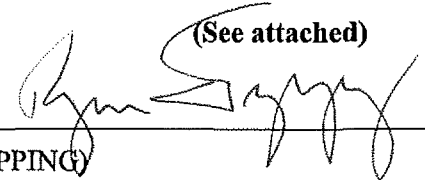
18 **Sec. D-1. Transfer.** Notwithstanding any provision of law to the contrary, the
19 State Controller shall transfer from the Hospital Tax, Other Special Revenue Funds
20 account in the Department of Health and Human Services \$946,925 on or before June 30,
21 2020 and \$946,925 on or before June 30, 2021 to the unappropriated surplus of the
22 General Fund.'

23 **SUMMARY**

24 This amendment reduces appropriations for tobacco use prevention and cessation and
25 adds provisions increasing reimbursement for certain services under the MaineCare
26 program, providing an income tax deduction for student loan payments made by a
27 taxpayer's employer directly to a lender on behalf of a qualified health care employee and
28 transferring Other Special Revenue Funds in the Department of Health and Human
29 Services to the unappropriated surplus of the General Fund.

30 **FISCAL NOTE REQUIRED**

31 (See attached)

32 SPONSORED BY: 
33 (Representative TIPPING)
34 TOWN: Orono



129th MAINE LEGISLATURE

LD 1028

LR 493(06)

An Act To Prevent and Reduce Tobacco Use with Adequate Funding and by Raising the Tax on Tobacco Products

Fiscal Note for House Amendment "A" to Committee Amendment "A"

Sponsor: Rep. Tipping of Orono

Fiscal Note Required: Yes

Fiscal Note

	FY 2019-20	FY 2020-21	Projections FY 2021-22	Projections FY 2022-23
Net Cost (Savings)				
General Fund	(\$934,095)	\$5,135,686	\$6,209,139	\$6,217,079
Appropriations/Allocations				
General Fund	(\$513,295)	\$5,116,645	\$5,129,112	\$5,118,112
Federal Expenditures Fund	\$7,830,484	\$11,701,882	\$11,700,415	\$11,700,315
Revenue				
General Fund	(\$526,125)	(\$965,966)	(\$1,080,027)	(\$1,098,967)
Federal Expenditures Fund	\$7,831,484	\$11,701,882	\$11,700,415	\$11,700,415
Other Special Revenue Funds	(\$1,375)	(\$9,524)	(\$9,475)	(\$9,524)
Transfers				
General Fund	\$946,925	\$946,925	\$0	\$0
Other Special Revenue Funds	(\$946,925)	(\$946,925)	\$0	\$0

Fiscal Detail and Notes

Part A of the amendment provides an exemption to the tobacco products tax for electronic smoking devices and liquids used with medical marijuana. General Fund revenue relative to the committee amendment would be reduced by \$526,125 in fiscal year 2019-20 and \$965,966 in fiscal year 2020-21. Local Government Fund revenue would be reduced by \$1,375 in fiscal year 2019-20 and \$15,826 in fiscal year 2020-21.

Part A of this amendment also reduces the General Fund appropriations to the Department of Health and Human Services by \$3,550,000 in fiscal year 2019-20 and \$1,000,000 in fiscal year 2020-21 for evidence-based tobacco use prevention and cessation services and for tobacco use cessation medications and counseling provided to MaineCare members.

Part B of this amendment includes General Fund appropriations to the Department of Health and Human Services of \$1,662,060 in fiscal year 2019-20 and \$3,329,640 in fiscal year 2020-21 to increase the reimbursement rate for ambulance services under the MaineCare program so the rates are not less than the average allowable reimbursement rate under Medicare and reimbursement for neonatal transport services under MaineCare must be at the average rate for critical care transport services under Medicare. Federal Expenditures Fund allocations are also included for the FMAP match.

Part C of the amendment provides a subtraction modification from income tax for student loan payments made by a taxpayer's employer directly to a lender on behalf of a qualified health care employee. It would result in a reduction of General Fund revenue of \$133,000 in fiscal year 2021-22 and a reduction in Local Government Fund revenue of \$7,000 in fiscal year 2021-22. The Department of Administrative and Financial Services would require a one-time General Fund appropriation of \$11,000 in fiscal year 2021-22 for computer programming to update the individual income tax return.

Part C of this amendment also includes General Fund appropriations to the Department of Health and Human Services of \$1,374,645 in fiscal year 2019-20 and \$2,787,005 in fiscal year 2020-21 for the Department of Health and Human Services to amend its rule Chapter 101: MaineCare Benefits Manual, Chapter III, Section 45 regarding the department's total annual obligation to rural and nonrural hospitals and acute care critical access hospitals and to amend its rule Chapter 101: MaineCare Benefits Manual, Chapter II, Section 103 regarding the department's reimbursement methodology to provide an alternative payment methodology option for rural health clinics. Federal Expenditures Fund allocations are also included for the FMAP match.

Part D of this amendment transfers \$946,925 from the Hospital Tax, Other Special Revenue Funds account in the Department of Health and Human Services to the unappropriated surplus of the General Fund in each year of the biennium.