

STATE OF MAINE

IN THE YEAR OF OUR LORD
TWO THOUSAND AND SEVENTEEN

S.P. 391 - L.D. 1170

An Act To Reduce Youth Access to Tobacco Products

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 22 MRSA §1551, sub-§1-D is enacted to read:

1-D. Electronic smoking device. "Electronic smoking device" has the same meaning as in section 1541, subsection 1-A.

Sec. 2. 22 MRSA §1551, sub-§2, as enacted by PL 1995, c. 470, §9 and affected by §19, is repealed.

Sec. 3. 22 MRSA §1551, sub-§3, as enacted by PL 1995, c. 470, §9 and affected by §19, is repealed and the following enacted in its place:

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.

Sec. 4. 22 MRSA §1552-A, sub-§2, as amended by PL 1997, c. 305, §1, is further amended to read:

2. Display of prohibition against sales to persons who have not attained 21 years of age. All licensees shall post notice of the prohibition on tobacco sales to ~~juveniles~~ persons who have not attained 21 years of age, unless the person has attained 18 years of age as of July 1, 2018, pursuant to section 1555-B. Notices must be publicly and conspicuously displayed in the licensee's place of business in letters at least 3/8 inches

high. Signs required by this section must be provided at cost by the department. Any person who violates this subsection commits a civil violation for which a forfeiture of not less than \$50 nor more than \$200 may be adjudged for any one offense.

Sec. 5. 22 MRSA §1553-A, sub-§1, as amended by PL 1997, c. 305, §2, is further amended to read:

1. Vending requirements. When the sale of cigarettes or any other tobacco product is made from a vending machine the following is required.

- A. Only cigarettes or any other tobacco products may be dispensed by that machine.
- B. A sign must be affixed conspicuously to the front of the machine. The sign must:
 - (1) Contain lettering that is at least 3/8 inches in height; and
 - (2) State the following: "WARNING. It is unlawful for to sell tobacco products in this State to any person under the age of 18 to purchase cigarettes in this State who has not attained 21 years of age, unless the person has attained 18 years of age as of July 1, 2018."

~~C. At all times during the hours the vending machine is accessible, it must be located within the unobstructed line of sight and under the direct supervision of an adult. That adult is responsible for preventing persons under 18 years of age from purchasing cigarettes or any other tobacco product from that vending machine.~~

Vending machines may be located only in areas in which ~~minors~~ persons who are 21 years of age or older are allowed ~~only when accompanied by an adult.~~

Sec. 6. 22 MRSA §1555-B, as amended by PL 2009, c. 398, §2 and affected by §6, is further amended to read:

§1555-B. Sales of tobacco products

1. Retail sales. Tobacco products may be sold at retail only in a direct, face-to-face exchange in which the purchaser may be clearly identified. For direct, face-to-face sales, employees who sell tobacco products must be at least 17 years of age. An employee who is at least 17 years of age but less than or older and under 21 years of age may sell tobacco products only in the presence of an employee who is at least 21 years of age or older and is in a supervisory capacity.

2. Sales to persons who have not attained 21 years of age prohibited. A person may not sell, furnish, give away or offer to sell, furnish or give away a tobacco product to any person under 18 who has not attained 21 years of age, unless the person has attained 18 years of age as of July 1, 2018. Tobacco products may not be sold at retail to any person under 27 who has not attained 30 years of age unless the seller first verifies that person's age by means of reliable photographic identification containing the person's date of birth. That a person appeared to be 30 years of age or older does not constitute a defense to a violation of this section.

3. Sales through vending machines. Tobacco products may be sold through vending machines according to section 1553-A.

4. Wholesale sales. Tobacco products may be distributed at wholesale without a face-to-face exchange only in the normal course of trade and under procedures approved by the Bureau of Revenue Services to ensure that tobacco products are not provided to any person ~~under 18~~ who has not attained 21 years of age.

5-A. Purchase of tobacco products by persons who have not attained 21 years of age prohibited. Except as provided in subsection 5-B, a person ~~under 18~~ who has not attained 21 years of age may not:

A. Purchase, ~~possess or use~~ cigarettes, cigarette papers or any attempt to purchase a tobacco product;

B. ~~Violate paragraph A after having previously violated this subsection; or~~

C. ~~Violate paragraph A after having previously violated this subsection 2 or more times.~~

This subsection does not apply to a person who has attained 18 years of age as of July 1, 2018.

5-B. Exception to possession by persons who have not attained 21 years of age. A person ~~under 18~~ who has not attained 21 years of age may transport or permit to be transported in a motor vehicle ~~cigarettes, cigarette papers or~~ tobacco products in the original sealed package in which they were placed by the manufacturer if the transportation is in the scope of that person's employment.

5-C. Use of false identification by persons who have not attained 21 years of age prohibited. A person ~~under 18~~ who has not attained 21 years of age may not:

A. Offer false identification in an attempt to purchase a tobacco product or to purchase, possess or use ~~cigarettes, cigarette papers or any other~~ a tobacco product;

B. Violate paragraph A after having previously violated this subsection; or

C. Violate paragraph A after having previously violated this subsection 2 or more times.

6. Display of prohibition of sales to persons who have not attained 21 years of age. A dealer or distributor of tobacco products shall post notice of this section prohibiting tobacco ~~and cigarette paper~~ product sales to persons ~~under 18~~ who have not attained 21 years of age, unless the person has attained 18 years of age as of July 1, 2018. Notices must be publicly and conspicuously displayed in the dealer's or distributor's place of business in letters at least 3/8 inches in height. Signs required by this section may be provided at cost by the department.

7. Enforcement. Law enforcement officers shall enforce this section. A citizen may register a complaint under this section with the law enforcement agency having jurisdiction. The law enforcement agency may notify any establishment or individual subject to this section of a citizen complaint regarding that establishment's or individual's alleged violation of this section and shall keep a record of that notification.

8. Fines. Violations of this section are subject to fines or other penalties according to this subsection.

~~A. A person who violates subsection 1, 2, 3 or 4 commits a civil violation for which a fine of not less than \$50 and not more than \$1,500, plus court costs, must be adjudged for any one offense. Except pursuant to Title 15, section 3314, the fine may not be suspended.~~

A-1. An employer of a person who violates subsection 1, 2, 3 or 4 commits a civil violation for which a fine of not less than ~~\$50 and not more than \$1,500~~ \$300 for the first offense, not less than \$600 for the 2nd offense and not less than \$1,000 for each offense thereafter, plus court costs, must be adjudged. The fine may not be suspended. Each day in which a violation occurs constitutes a separate violation.

~~B. A person who violates subsection 5-A or 5-C commits a civil violation for which the following fines may be adjudged and may be subject to completing tobacco-related education classes, diversion programs or specified work for the benefit of the State, the municipality or other public entity or a charitable institution.~~

~~(1) For a first offense, a fine of not less than \$100 and not more than \$300 may be imposed. The judge, as an alternative to or in addition to the fine permitted by this subparagraph, may assign the violator to perform specified work for the benefit of the State, the municipality or other public entity or a charitable institution.~~

~~(2) For a 2nd offense, a fine of not less than \$200 and not more than \$500 may be imposed. The judge, as an alternative to or in addition to the fine permitted by this subparagraph, may assign the violator to perform specified work for the benefit of the State, the municipality or other public entity or a charitable institution.~~

~~(3) For all subsequent offenses, a fine of \$500 must be imposed and that fine may not be suspended. The judge, in addition to the fine permitted by this subparagraph, may assign the violator to perform specified work for the benefit of the State, the municipality or other public entity or a charitable institution.~~

B-1. A person who violates subsection 5-C commits a civil violation for which the following fines may be adjudged.

(1) For a first offense, a fine of not less than \$100 and not more than \$300 may be imposed. The judge, as an alternative to or in addition to the fine permitted by this subparagraph, may assign the violator to perform specified work for the benefit of the State, the municipality or other public entity or a charitable institution.

(2) For a 2nd offense, a fine of not less than \$200 and not more than \$500 may be imposed. The judge, as an alternative to or in addition to the fine permitted by this subparagraph, may assign the violator to perform specified work for the benefit of the State, the municipality or other public entity or a charitable institution.

(3) For all subsequent offenses, a fine of \$500 must be imposed and that fine may not be suspended. The judge, in addition to the fine permitted by this subparagraph, may assign the violator to perform specified work for the benefit of the State, the municipality or other public entity or a charitable institution.

C. A person who violates subsection 6 commits a civil violation for which a fine of not less than \$50 and not more than \$200 may be adjudged for any one offense.

9. Distribution of fines. Fines ~~and forfeitures~~ collected pursuant to subchapter 1 and this subchapter must be credited as follows: one half to the General Fund and 1/2 to be deposited in a nonlapsing account of the Maine Criminal Justice Academy for the purpose of providing funds for training and recertification of part-time and full-time law enforcement officers.

10. Affirmative defense. It is an affirmative defense to prosecution for a violation of subsection 1, 2 or 4 that the defendant sold, furnished, gave away or offered to sell, furnish or give away a tobacco product ~~to a person under 18 years of age~~ in violation of subsection 5-A in reasonable reliance upon a fraudulent proof of age presented by the purchaser.

11. Manner of displaying and offering for sale. Tobacco products may be displayed or offered for sale only in a manner that does not allow the purchaser direct access to the tobacco products. The requirements of this subsection do not apply to the display or offering for sale of tobacco products in multi-unit packages of 10 or more units, in tobacco specialty stores or in locations in which the presence of minors is generally prohibited. This requirement does not preempt a municipal ordinance that provides for more restrictive regulation of the sale of tobacco products.

Sec. 7. Transfer. Notwithstanding any other provision of law to the contrary, the State Controller, by June 30, 2019, shall transfer \$106,075 from the Maine Center for Disease Control and Prevention program, Fund for a Healthy Maine account in the Department of Health and Human Services to the unappropriated surplus of the General Fund.