

MAINE STATE LEGISLATURE

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129th MAINE LEGISLATURE

SECOND REGULAR SESSION-2020

Legislative Document

No. 2052

S.P. 725

In Senate, January 16, 2020

An Act To Enact Restrictions on Electronic Smoking Devices and New Tobacco Products

Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 203.

Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator MILLETT of Cumberland.
Cosponsored by Representative HYMANSON of York and
Senators: CARPENTER of Aroostook, CYRWAY of Kennebec, GRATWICK of Penobscot,
SANBORN, L. of Cumberland, Representatives: CRAVEN of Lewiston, MEYER of Eliot,
TALBOT ROSS of Portland.

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

2 **Sec. 1. 22 MRSA c. 249** is enacted to read:

3 **CHAPTER 249**

4 **ELECTRONIC SMOKING DEVICES AND NEW TOBACCO PRODUCTS**

5 **SUBCHAPTER 1**

6 **ELECTRONIC SMOKING DEVICES**

7 **§791. Definitions**

8 As used in this subchapter, unless the context otherwise indicates, the following
9 terms have the following meanings.

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

12 **2. Nicotine liquid.** "Nicotine liquid" means a liquid, gel or other substance
13 containing nicotine that is sold, marketed or intended for use with an electronic smoking
14 device.

15 **§792. Electronic smoking devices and nicotine liquid prohibited**

16 **1. Prohibition.** Notwithstanding any provision of law to the contrary, except as
17 provided in section 793, 794 or 795, a person may not sell, furnish, give away or offer to
18 sell, furnish or give away an electronic smoking device or nicotine liquid.

19 **2. Penalty.** The following penalties apply to violations of subsection 1.

20 A. A person who violates subsection 1 commits a civil violation for which a fine of
21 \$500 may be adjudged.

22 B. A person who violates subsection 1 after having previously violated subsection 1
23 commits a civil violation for which a fine of \$1,000 may be adjudged.

24 C. A person who violates subsection 1 after having previously violated subsection 1
25 more than once commits a civil violation for which a fine of \$5,000 may be adjudged.

26 **§793. Sales of electronic smoking devices and nicotine liquid by tobacco retailers**

27 **1. Retail sales.** A person authorized to sell tobacco products pursuant to chapter
28 262-A may sell, furnish, give away or offer to sell, furnish or give away electronic
29 smoking devices and nicotine liquid only after the department adopts rules in accordance
30 with subsection 2 and only in accordance with those rules.

31 **2. Rulemaking required.** The department shall adopt rules governing selling,
32 furnishing or giving away or offering to sell, furnish or give away electronic smoking
33 devices and nicotine liquid when all of the following events have occurred:

- 1 A. The United States Department of Health and Human Services, Food and Drug
- 2 Administration approves the use of electronic smoking devices as an evidence-based
- 3 tobacco cessation strategy;
- 4 B. The United States Department of Health and Human Services, Food and Drug
- 5 Administration promulgates regulations to promote public safety relating to the
- 6 manufacture, testing, sale and use of electronic smoking devices; and
- 7 C. The federal Secretary of Health and Human Services issues an order in
- 8 accordance with 21 United States Code, Section 387j that authorizes electronic
- 9 smoking devices to be introduced or delivered for introduction into interstate
- 10 commerce.

11 Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5,

12 chapter 375, subchapter 2-A.

13 **§794. Sales of electronic smoking devices under the Maine Medical Use of**

14 **Marijuana Act**

15 Nothing in this subchapter limits a registered dispensary, as defined in section 2422,

16 subsection 6, from selling, furnishing, giving away or offering to sell, furnish or give

17 away electronic smoking devices as part of and in accordance with the registered

18 dispensary's authorized activities under chapter 558-C.

19 **§795. Sales of electronic smoking devices under the Marijuana Legalization Act**

20 **1. Retail sales.** A marijuana store, as defined in Title 28-B, section 102, subsection

21 34, may sell, furnish, give away or offer to sell, furnish or give away electronic smoking

22 devices only after the Department of Administrative and Financial Services adopts rules

23 in accordance with subsection 2 and only in accordance with those rules.

24 **2. Rulemaking required.** The Department of Administrative and Financial Services

25 shall adopt rules governing the sale of electronic smoking devices when the federal

26 Secretary of Health and Human Services issues an order in accordance with 21 United

27 States Code, Section 387j that authorizes electronic smoking devices to be introduced or

28 delivered for introduction into interstate commerce. Rules adopted pursuant to this

29 subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

30 **SUBCHAPTER 2**

31 **NEW TOBACCO PRODUCTS**

32 **§796. Definitions**

33 As used in this subchapter, unless the context otherwise indicates, the following

34 terms have the following meanings.

35 **1. New tobacco product.** "New tobacco product" means any tobacco product

36 determined by rule by the department to be new. In adopting rules defining "new tobacco

37 product," the department shall ensure the definition includes any new tobacco product

38 governed by 21 United States Code, Section 387j, other than products governed by

1 subchapter 1. Rules adopted pursuant to this subsection are routine technical rules as
2 defined in Title 5, chapter 375, subchapter 2-A.

3 **§797. New tobacco products prohibited**

4 **1. Prohibition.** Notwithstanding any provision of law to the contrary, except as
5 provided in section 798, a person may not sell, furnish, give away or offer to sell, furnish
6 or give away a new tobacco product.

7 **2. Penalty.** The following penalties apply to violations of subsection 1.

8 A. A person who violates subsection 1 commits a civil violation for which a fine of
9 \$500 may be adjudged.

10 B. A person who violates subsection 1 after having previously violated subsection 1
11 commits a civil violation for which a fine of \$1,000 may be adjudged.

12 C. A person who violates subsection 1 after having previously violated subsection 1
13 more than once commits a civil violation for which a fine of \$5,000 may be adjudged.

14 **§798. Sales of new tobacco products by tobacco retailers**

15 **1. Retail sales.** A person authorized to sell tobacco products pursuant to chapter
16 262-A may sell, furnish, give away or offer to sell, furnish or give away new tobacco
17 products only after the adoption of rules in subsection 2 and only in accordance with the
18 rules adopted under subsection 2.

19 **2. Rulemaking required.** The department shall adopt rules governing the sale of a
20 new tobacco product when the federal Secretary of Health and Human Services issues an
21 order in accordance with 21 United States Code, Section 387j that authorizes the new
22 tobacco product to be introduced or delivered for introduction into interstate commerce.
23 Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5,
24 chapter 375, subchapter 2-A.

25 **Sec. 2. 22 MRSA §1551, sub-§1-E** is enacted to read:

26 **1-E. Nicotine liquid.** "Nicotine liquid" has the same meaning as in section 791,
27 subsection 2.

28 **Sec. 3. 22 MRSA §1553-B** is enacted to read:

29 **§1553-B. Electronic smoking devices**

30 A person may not sell, furnish, give away or offer to sell, furnish or give away an
31 electronic smoking device or nicotine liquid except as permitted under chapter 249,
32 subchapter 1.

33 **Sec. 4. 22 MRSA §1560-B, sub-§2,** as enacted by PL 2015, c. 288, §1, is
34 amended to read:

35 **2. Prohibition.** Beginning January 1, 2016, a A person may not sell, furnish, give
36 away or offer to sell, furnish or give away a nicotine liquid container unless the container

1 is child-resistant packaging. Selling, furnishing, giving away and offering to sell, furnish
2 or give away nicotine liquid is governed by chapter 249, subchapter 1.

3 **Sec. 5. 22 MRSA §2422, sub-§3-D** is enacted to read:

4 **3-D. Electronic smoking device.** "Electronic smoking device" has the same
5 meaning as in section 1541, subsection 1-A.

6 **Sec. 6. 22 MRSA §2430-I** is enacted to read:

7 **§2430-I. Electronic smoking devices**

8 A person may not sell, furnish, give away or offer to sell, furnish or give away an
9 electronic smoking device except as permitted under chapter 249, subchapter 1.

10 **Sec. 7. 28-B MRSA §102, sub-§16-A** is enacted to read:

11 **16-A. Electronic smoking device.** "Electronic smoking device" has the same
12 meaning as in section 1541, subsection 1-A.

13 **Sec. 8. 28-B MRSA §504, sub-§2, ¶C**, as enacted by PL 2017, c. 409, Pt. A, §6,
14 is amended to read:

15 C. Sell adult use marijuana, adult use marijuana products or marijuana plants using:

- 16 (1) An automated dispensing or vending machine;
17 (2) A drive-through sales window;
18 (3) An Internet-based sales platform; or
19 (4) A delivery service; or

20 **Sec. 9. 28-B MRSA §504, sub-§2, ¶D**, as enacted by PL 2017, c. 409, Pt. A, §6,
21 is amended to read:

22 D. Sell adult use marijuana or adult use marijuana products to a person who is
23 visibly intoxicated; or

24 **Sec. 10. 28-B MRSA §504, sub-§2, ¶E** is enacted to read:

25 E. Sell, furnish, give away or offer to sell, furnish or give away an electronic
26 smoking device except as permitted in Title 22, chapter 249, subchapter 1.

27 **Sec. 11. 36 MRSA §4401, sub-§9**, as amended by PL 2019, c. 530, Pt. A, §2 and
28 affected by §7, is further amended to read:

29 **9. Tobacco products.** "Tobacco products" means cigars; cheroots; stogies;
30 electronic smoking devices and liquids used in electronic smoking devices, whether or
31 not they contain nicotine, sold in accordance with Title 22, chapter 249; periques,
32 granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco; snuff; snuff
33 flour; snus; cavendish; plug and twist tobacco; finecut and other chewing tobaccos;
34 shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and

1 forms of tobacco, prepared in such manner as to be intended for human consumption or is
2 likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled or
3 ingested by any other means. "Tobacco products" does not include:

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

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

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

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

12 SUMMARY

13 This bill accomplishes the following. It:

14 1. Generally prohibits selling, furnishing, giving away or offering to sell, furnish or
15 give away electronic smoking devices and nicotine liquid;

16 2. Allows a registered dispensary under the Maine Medical Use of Marijuana Act to
17 continue to sell electronic smoking devices as part of its authorized activity as a
18 dispensary;

19 3. Allows tobacco retailers to sell electronic smoking devices and nicotine liquid
20 after the Department of Health and Human Services has adopted governing rules. These
21 rules are permitted only after the United States Department of Health and Human
22 Services, Food and Drug Administration approves the use of electronic smoking devices
23 as an evidence-based tobacco cessation strategy and promulgates regulations relating to
24 the manufacture, testing, sale and use of the devices and the federal Secretary of Health
25 and Human Services issues an order authorizing the devices to be introduced or delivered
26 for introduction into interstate commerce;

27 4. Allows marijuana stores to sell electronic smoking devices after the Department of
28 Administrative and Financial Services adopts rules governing the sale of the devices by a
29 marijuana store. The rules may be adopted only after the federal Secretary of Health and
30 Human Services issues an order authorizing the devices to be introduced or delivered for
31 introduction into interstate commerce; and

32 5. Prohibits the sale of other new tobacco products until the Department of Health
33 and Human Services adopts rules governing their sale. The rules governing a new
34 tobacco product may be adopted only after the federal Secretary of Health and Human
35 Services issues an order authorizing the new product to be introduced or delivered for
36 introduction into interstate commerce.