

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 1968

6
7 H.P. 1396

House of Representatives, February 4, 1986

8 Approved for introduction by a majority of the Legislative Council
9 pursuant to Joint Rule 26.

Reference to the Committee on Taxation suggested and ordered printed.

10 EDWIN H. PERT, Clerk

Presented by Representative Melendy of Rockland.

11 Cosponsored by Representative Pines of Limestone, Senator Gill of
Cumberland and Senator Gauvreau of Androscoggin.

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-SIX
16

17 AN ACT to Prohibit Free Distribution
18 and Establish a Warning Label and an
19 Excise Tax for Smokeless Tobacco.
20

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

23 Sec. 1. 22 MRSA §1580-B is enacted to read:

24 §1580-B. Smokeless Tobacco Act of 1986

25 1. Title. This section shall be known and may
26 be cited as the Smokeless Tobacco Act of 1986.

27 2. Definitions. As used in this section, unless
28 the context indicates otherwise, the following terms
29 have the following meanings.

30 A. "Smokeless tobacco" means:

31 (1) Dry snuff made from fire-cured tobacco
32 that is ground to a powder-like consisten-
33 cy;

1 (2) Moist snuff which is finely cut tobacco
2 with a high moisture content; or

3 (3) Fine-cut tobacco formerly classified as
4 chewing tobacco by the United States Depart-
5 ment of Agriculture until 1980.

6 3. Labeling. All containers of smokeless tobac-
7 co sold in the State must display the following warn-
8 ing label:

9 WARNING: This product may cause mouth disorders
10 and oral cancer and can be addictive.

11 4. Sale and free distribution of smokeless to-
12 bacco. The prohibition of the sale and free distribu-
13 tion of smokeless tobacco is governed by this subsec-
14 tion.

15 A. No person may knowingly sell, furnish, give
16 away or offer to sell, furnish or give away
17 smokeless tobacco. No person in the business of
18 selling or otherwise distributing smokeless to-
19 bacco products for profit, or an employee or
20 agent of such a person, may, in the course of his
21 business, distribute any smokeless tobacco
22 product free in any place, including, but not
23 limited to, a public way or sidewalk, public park
24 or playground, public school or other public
25 building or an entranceway, lobby, hall or other
26 common area of a private building, shopping cen-
27 ter or mall.

28 B. Violation of this section is a civil viola-
29 tion for which a forfeiture of not less than \$20
30 nor more than \$50 shall be adjudged for each vio-
31 lation.

32 Sec. 2. 36 MRSA §4361, sub-§1, as amended by PL
33 1983, c. 828, §12, is further amended to read:

34 1. Dealer. "Dealer" means any person other than
35 a distributor, who is engaged in this State in the
36 business of selling cigarettes or smokeless tobacco.

37 Sec. 3. 36 MRSA §4361, sub-§1-B is enacted to
38 read:

1 1-B. Smokeless tobacco. "Smokeless tobacco"
2 means:

3 A. Dried snuff made from fire-cured tobacco that
4 is ground to a powder-like consistency;

5 B. Moist snuff which is finely cut tobacco with
6 a high moisture content; or

7 C. Fine-cut tobacco formerly classified as chew-
8 ing tobacco by the United States Department of
9 Agriculture.

10 Sec. 4. 36 MRSA §4361, sub-§2, as amended by PL
11 1983, c. 828, §12, is further amended to read:

12 2. Distributor. "Distributor" means any person
13 engaged in this State in the business of producing or
14 manufacturing cigarettes or smokeless tobacco or im-
15 porting into the State cigarettes or smokeless
16 tobacco at least 75% of which are purchased directly
17 from the manufacturers thereof.

18 Sec. 5. 36 MRSA §4361, sub-§9, as amended by PL
19 1983, c. 828, §12, is further amended to read:

20 9. Unclassified importer. "Unclassified import-
21 er" means any person, firm, corporation or associa-
22 tion within the State, other than a licensed distrib-
23 utor, or licensed wholesale dealer who shall import,
24 receive or acquire from without the State, cigarettes
25 or smokeless tobacco for use or consumption within
26 the State.

27 Sec. 6. 36 MRSA §4362, as amended by PL 1983, c.
28 828, §13, is further amended to read:

29 §4362. Licenses

30 Each person engaging in the business of selling
31 cigarettes or smokeless tobacco in this State, in-
32 cluding any distributor or dealer, excepting a dealer
33 who exclusively sells at retail or through a vending
34 machine, shall secure a license from the State Tax
35 Assessor before engaging in such business. A separate
36 application and license shall be required for each
37 wholesale outlet. Such license shall be issued on

1 forms prescribed by the State Tax Assessor, and shall
2 contain the name and address of the applicant, the
3 address of the place of business and such other in-
4 formation as the State Tax Assessor may require for
5 the proper administration of this chapter. Each ap-
6 plication for a wholesale outlet license shall be ac-
7 companied by a fee of \$25. Each application for a
8 sub-jobber's license, to be known as a "wholesale
9 dealer's license," shall be accompanied by a fee of
10 \$10. Each license so issued shall be prominently
11 displayed on the premises covered by the license.
12 Each unclassified importer shall, before importing,
13 receiving or acquiring cigarettes or smokeless
14 tobacco from without the State, secure a license from
15 the State Tax Assessor. There shall be no charge for
16 a license issued to an unclassified importer. Any
17 person who shall sell, offer for sale or possess with
18 intent to sell any cigarettes or smokeless tobacco,
19 without a license as provided in this section, com-
20 mits a civil violation for which a forfeiture not to
21 exceed \$25 may be adjudged for the first violation
22 and a forfeiture of not less than \$25 nor more than
23 \$200 shall be adjudged for each subsequent violation.
24 Any unclassified importer who shall import, receive
25 or acquire from without the State cigarettes or
26 smokeless tobacco for use or consumption within the
27 State without a license as provided in this section
28 commits a civil violation for which a forfeiture not
29 to exceed \$25 may be adjudged for the first violation
30 and a forfeiture of not less than \$25 nor more than
31 \$200 shall be adjudged for each subsequent violation.

32 Sec. 7. 36 MRSA §4365, as amended by PL 1983, c.
33 859, Pt. M, §§8, 13, is further amended to read:

34 §4365. Rate of tax

35 A tax is imposed on all cigarettes held in this
36 State by any person for sale, the tax to be at the
37 rate of 14 mills for each cigarette and the payment
38 of the tax to be evidenced by the affixing of stamps
39 to the packages containing the cigarettes. If a fed-
40 eral program similar to that provided in Title 22,
41 section 3185, becomes effective, this tax is reduced
42 by one mill for each cigarette. The Governor shall
43 determine by proclamation when the federal program
44 has become effective. A tax is imposed on each pack-

1 age or container of smokeless tobacco with a net
2 weight of over one ounce held in this State by any
3 person for sale, the tax to be at the rate of 20¢ and
4 the payment of the tax to be evidenced by the affix-
5 ing of stamps to the packages or containers of
6 smokeless tobacco. Any cigarette or package or con-
7 tainer of smokeless tobacco on which a tax has been
8 paid, such payment being evidenced by the affixing of
9 such stamp, shall not be subject to a further tax un-
10 der this chapter. Nothing contained in this chapter
11 shall may be construed to impose a tax on any trans-
12 action, the taxation of which by this State is pro-
13 hibited by the Constitution of the United States.

14 Each unclassified importer shall, within 24 hours
15 after receipt of any unstamped cigarettes or
16 smokeless tobacco in this State, notify the State Tax
17 Assessor of the number of cigarettes or packages or
18 containers of smokeless tobacco received, and the
19 name and address of consignor. The State Tax Asses-
20 sor thereupon shall notify the unclassified importer
21 of the amount of the tax due thereon, which shall be
22 at the rate of 14 mills per cigarette and 20¢ per
23 package or container of smokeless tobacco with a net
24 weight of over one ounce. Payment of the amount due
25 the State shall be made within 10 days from mailing
26 date of notice thereof.

27 Sec. 8. 36 MRSA §4366, as amended by PL 1983, c.
28 828, §15, is further amended to read:

29 §4366. Stamps provided by State Tax Assessor

30 The State Tax Assessor shall secure stamps, of
31 such design and denomination as he shall prescribe,
32 suitable to be affixed to packages of cigarettes and
33 smokeless tobacco as evidence of the payment of the
34 tax imposed by this chapter. To licensed distribu-
35 tors he shall sell such cigarette and smokeless
36 tobacco stamps at a discount of 2 1/2% of their face
37 value. To dealers he shall sell all stamps at face
38 value. The face value of the stamps when affixed
39 shall be considered as part of the cost of the mer-
40 chandise. The State Tax Assessor may, in his discre-
41 tion, permit a licensed distributor or dealer to pay
42 for such stamps within 30 days after the date of pur-
43 chase, provided a bond satisfactory to the State Tax

1 Assessor in an amount not less than the sale price of
2 such stamps shall have been filed with the State Tax
3 Assessor conditioned upon payment for such stamps.
4 He shall keep accurate records of all stamps sold to
5 each distributor and dealer.

6 Sec. 9. 36 MRSA §4367, as amended by PL 1971, c.
7 22, is further amended to read:

8 §4367. Resale of stamps prohibited; redemption

9 No distributor or dealer ~~shall~~ may sell or trans-
10 fer any stamps issued under this chapter. The Tax
11 Assessor shall redeem any unused, uncanceled stamps
12 presented within one year of the date of purchase by
13 any licensed distributor or dealer, at a price equal
14 to the amount paid ~~therefor~~ for those stamps by such
15 dealer or distributor and the ~~said~~ Tax Assessor may,
16 upon proof satisfactory to him and in accordance with
17 ~~regulations~~ rules promulgated by him, redeem, at a
18 price equal to the amount paid ~~therefor~~ for those
19 stamps, Maine cigarette and smokeless tobacco tax
20 stamps affixed to packages of cigarettes and packages
21 or containers of smokeless tobacco which have become
22 unfit for use and consumption, or unsalable, provided
23 application ~~therefor~~ for redemption is made within 90
24 days of the return of such unsalable cigarettes and
25 smokeless tobacco to the manufacturer, and the Trea-
26 surer of State shall provide, out of money collected
27 ~~hereunder~~ under this chapter, the funds necessary for
28 such redemption.

29 Sec. 10. 36 MRSA §4368 is amended to read:

30 §4368. Stamps affixed by distributors

31 Each distributor shall affix, or cause to be af-
32 fixed, in such manner as the Tax Assessor may specify
33 in ~~regulations~~ rules issued pursuant to this chapter,
34 to each individual package of cigarettes or package
35 or container of smokeless tobacco over one ounce sold
36 or distributed by him, stamps of the proper denomina-
37 tions, as required by section 4365. Such stamps may
38 be affixed by a distributor at any time before the
39 cigarettes or smokeless tobacco are transferred out
40 of his possession.

1 Sec. 11. 36 MRSA §4369, as amended by PL 1983,
2 c. 828, §16, is further amended to read:

3 §4369. Stamps affixed by licensed dealers

4 Each dealer shall, within 72 hours after coming
5 into possession of any cigarettes or smokeless
6 tobacco not bearing proper stamps evidencing payment
7 of the tax imposed by this chapter, and before sell-
8 ing such cigarettes or smokeless tobacco, affix or
9 cause to be affixed, in such manner as the State Tax
10 Assessor may specify in ~~regulations~~ rules issued pur-
11 suant to this chapter, to each individual package of
12 cigarettes and packages or containers of smokeless
13 tobacco over one ounce, stamps of the proper denomi-
14 nation as required by section 4365.

15 Sec. 12. 36 MRSA §4370, as amended by PL 1983,
16 c. 828, §17, is further amended to read:

17 §4370. Sale of unstamped cigarettes and smokeless
18 tobacco prohibited

19 No distributor may sell, and no other person may
20 sell, offer for sale, display for sale or possess
21 with intent to sell, any cigarettes or smokeless
22 tobacco which do not bear stamps evidencing the pay-
23 ment of the tax imposed by this chapter, provided a
24 dealer may keep on hand unstamped cigarettes or
25 smokeless tobacco for a period not exceeding 72
26 hours, and provided a distributor may sell to another
27 distributor, subject to ~~regulations~~ rules prescribed
28 by the State Tax Assessor, cigarettes or smokeless
29 tobacco stamped with the indicia of another state.
30 Any unstamped cigarettes or packages or containers of
31 smokeless tobacco in the possession of a dealer shall
32 be presumed to have been held by him for more than 72
33 hours unless proof be shown to the contrary. Any
34 person violating any provision of this section shall
35 be guilty of a Class E crime, provided that no im-
36 prisonment penalty may be imposed for a first of-
37 fense.

38 Sec. 13. 36 MRSA §4371, as amended by PL 1983,
39 c. 828, §18, is further amended to read:

40 §4371. Possession of unstamped cigarettes and
41 smokeless tobacco; prima facie evidence

1 The possession by any person, other than a li-
2 censed distributor or dealer of cigarettes or
3 smokeless tobacco which do not bear stamps, shall be
4 prima facie evidence that the cigarettes or smokeless
5 tobacco have been imported and that they are intended
6 for use or consumption within the State.

7 Sec. 14. 36 MRSA §4372, as amended by PL 1983,
8 c. 828, §19, is further amended to read:

9 §4372. Unstamped cigarettes and smokeless tobacco to
10 be confiscated

11 Any cigarettes or smokeless tobacco found at any
12 place in this State without stamps affixed thereto as
13 required by this chapter, unless such cigarettes or
14 smokeless tobacco shall be in the possession of a li-
15 censed distributor, or unless they shall be in course
16 of transit from without this State and consigned to a
17 licensed distributor or dealer, or unless they shall
18 have been received by a dealer within 72 hours, or
19 unless they shall have been imported, received or ac-
20 quired within 24 hours by a licensed unclassified im-
21 porter who has notified the State Tax Assessor as
22 provided in section 4365, are declared to be contra-
23 band goods and are subject to forfeiture to the
24 State. Sheriffs, deputy sheriffs, police officers and
25 duly authorized agents of the State Tax Assessor
26 shall have the power to seize the same with or with-
27 out process. In case such cigarettes or smokeless
28 tobacco are seized without a warrant, they shall be
29 kept in some safe place for a reasonable time until a
30 warrant can be procured. When such cigarettes or
31 smokeless tobacco are seized as provided, the officer
32 or agent seizing them shall immediately file with the
33 judge before whom such warrant is returnable, a libel
34 against such cigarettes or smokeless tobacco setting
35 forth the seizure and describing the cigarettes or
36 smokeless tobacco, their packaging and the place of
37 seizure in sufficient manner to reasonably identify
38 them, and that they were kept or intended for unlaw-
39 ful sale or use in violation of law and pray for a
40 decree of forfeiture thereof. Such judge shall fix a
41 time for the hearing of such libel and shall issue
42 his monition and notice of the same to all persons
43 interested, citing them to appear at the time and
44 place appointed to show cause why such cigarettes or

1 smokeless tobacco and their packaging should not be
2 declared forfeited, by causing true and attested
3 copies of the libel and monition to be posted in 2
4 public and conspicuous places in the town or place
5 where such cigarettes or smokeless tobacco were
6 seized, 10 days at least before the libel is return-
7 able. In lieu of forfeiture proceedings, title to
8 such seized, unstamped cigarettes or smokeless
9 tobacco may be transferred to the State of Maine by
10 the owner thereof. If title to and ownership in such
11 cigarettes or smokeless tobacco is transferred to the
12 State, a receipt for the cigarettes or smokeless
13 tobacco shall be given to the former owner by the
14 State Tax Assessor or his authorized agent.

15 Any person possessing contraband cigarettes or
16 smokeless tobacco at the time of seizure shall be
17 guilty of a Class E crime; provided the amount of
18 seized cigarettes totals at least 20 cartons of ciga-
19 rettes or 4,000 cigarettes or at least 20 packages or
20 containers of smokeless tobacco with a net weight of
21 over one ounce.

22 Sec. 15. 36 MRSA §4373, as amended by PL 1983,
23 c. 828, §20, is further amended to read:

24 §4373. Forfeiture proceedings

25 If no claimant appears, such the judge shall, on
26 proof of notice, declare the same to be forfeited to
27 the State. If any person appears and claims such cig-
28 arettes or smokeless tobacco, or any part thereof, as
29 having a right to the possession ~~thereof~~ of the ciga-
30 rettes or smokeless tobacco at the time when the same
31 were seized, he shall file with the judge such claim
32 in writing, stating specifically the right so
33 claimed, the foundation thereof, the items so
34 claimed, the time and place of the seizure and the
35 name of the officer or duly authorized agent of the
36 State Tax Assessor by whom the same were seized, and
37 in it declare that they were not so kept or deposited
38 for unlawful sale and use as alleged in the libel and
39 monition, and state his business and place of resi-
40 dence and shall sign and make oath to the same before
41 the judge. If any person so makes claim, he shall be
42 admitted as a party to the process; and the judge
43 shall proceed to determine the truth of the allega-

1 tions in the claim and libel, and may hear any perti-
2 nent evidence offered by the libelant or claimant. If
3 the judge is, upon hearing, satisfied that the ciga-
4 rettes or smokeless tobacco were not so kept or de-
5 posited for unlawful sale or use, and that the claim-
6 ant is entitled to the custody of any part thereof,
7 he shall give him an order in writing, directed to
8 the officer or duly authorized agent of the State Tax
9 Assessor having the same in custody, commanding him
10 to deliver to the claimant the cigarettes or
11 smokeless tobacco to which he is so found to be enti-
12 tled, within 48 hours after demand. If the judge
13 finds the claimant entitled to no part of the ciga-
14 rettes or smokeless tobacco, he shall render judgment
15 against him for the libelant for costs, to be taxed
16 as in civil cases before such judge, and issue execu-
17 tion thereon, and shall declare the cigarettes or
18 smokeless tobacco forfeited to the State. The claim-
19 ants may appeal and shall recognize with sureties as
20 on appeals in civil actions from a judge. All ciga-
21 rettes or smokeless tobacco declared forfeited to the
22 State, or title to which has been transferred to the
23 State in lieu of forfeiture proceedings, shall be
24 sold by the State Purchasing Agent, and the funds de-
25 rived from such sales shall be paid into the State
26 Treasury. In the case of cigarettes or smokeless
27 tobacco seized from any dealer because of insuffi-
28 cient stamps, the owner from whom they are seized
29 shall be reimbursed within 30 days of forfeiture for
30 the face value of any Maine cigarette or smokeless
31 tobacco tax stamps affixed to the packages, provided
32 the face value of such stamps exceeds \$1. The Trea-
33 surer of State shall provide, out of money collected
34 under this chapter, the funds necessary for such re-
35 imbursement.

36 Sec. 16. 36 MRSA §4380, as amended by PL 1983,
37 c. 828, §21, is further amended to read:

38 §4380. Use of metering machines

39 The State Tax Assessor, if he shall determine
40 that it is practicable to stamp by impression pack-
41 ages of cigarettes and smokeless tobacco by means of
42 a metering machine, may, in lieu of selling stamps
43 under section 4366, authorize any licensed distribu-
44 tor or dealer to use any metering machine approved by

1 him, such machine to be sealed by the State Tax As-
2 sessor before being used in accordance with regula-
3 tions prescribed by him. Any licensed distributor or
4 dealer authorized by the State Tax Assessor to affix
5 stamps to packages by means of a metering machine
6 shall file with the State Tax Assessor a bond issued
7 by a surety company licensed to do business in this
8 State, in such amount as the State Tax Assessor may
9 fix, conditioned upon the payment of the tax upon
10 cigarettes and smokeless tobacco so stamped. The bond
11 shall be in full force and effect for a period of one
12 year and a day after the expiration of the bond, un-
13 less a certificate be issued by the State Tax Asses-
14 sor to the effect that all taxes due to the State
15 have been paid. In the discretion of the State Tax
16 Assessor, cash may be accepted in lieu of a surety
17 bond, such cash to be paid over by the State Tax As-
18 sessor to the Treasurer of State, who may deposit or
19 hold the same subject to further order of the State
20 Tax Assessor. The State Tax Assessor shall cause each
21 metering machine approved by him to be read and in-
22 spected at least once a month and shall determine as
23 of the time of each inspection the amount of tax due
24 from the distributor or dealer using such machine af-
25 ter allowing for the discount, if any, provided for
26 in section 4366, which tax shall be due and payable
27 upon demand of the State Tax Assessor or his duly au-
28 thorized agent.

29 Sec. 17. 36 MRSA §4382 is amended to read:

30 §4382. Tax is levy on consumer

31 The liability for, or the incidence of, the tax
32 on cigarettes and smokeless tobacco is declared to be
33 a levy on the consumer. The distributors shall add
34 the amount of the tax on cigarettes and smokeless
35 tobacco presently levied to the price of the ciga-
36 rettes and smokeless tobacco and the distributor may
37 state the amount of the taxes separately from the
38 price of such cigarettes and smokeless tobacco on all
39 price display signs, sales or delivery slips, bills
40 and statements which advertise or indicate the price
41 of such cigarettes and smokeless tobacco. This sec-
42 tion shall in no way affect the method of collection
43 of such taxes on cigarettes and smokeless tobacco as
44 now provided by existing law.

1 Sec. 18. Smokeless Tobacco Education Fund. One
2 half of all revenue raised through the smokeless to-
3 bacco excise tax shall be placed in a Smokeless To-
4 bacco Education Fund, to be administered by the Bu-
5 reau of Health, for use in educational programs de-
6 signed to inform the public of the dangers of
7 smokeless tobacco use. Funds in this account shall
8 not lapse, but shall be carried over at the end of
9 the fiscal year.

10 Sec. 19. Appropriation. The following funds are
11 appropriated from the General Fund to carry out the
12 purposes of this Act.

13 1986-87

14 HUMAN SERVICES, DEPARTMENT OF

15 Bureau of Health

16 Smokeless Tobacco Education Fund \$50,000

17 STATEMENT OF FACT

18 The use of smokeless tobacco products, primarily
19 chewing tobacco and snuff, has been growing rapidly
20 in recent years, especially among teenagers and chil-
21 dren. Studies have shown that almost 10% of high
22 school students regularly use smokeless tobacco
23 products.

24 There are significant health risks associated
25 with smokeless tobacco products. The United States
26 Surgeon General has reported that smokeless tobacco
27 contains the highest amount of certain cancer-causing
28 toxins in a consumer product for oral consumption
29 and, in a December 1984 letter to the Federal Trade
30 Commission, stated that "Smokeless tobacco, including
31 snuff, does indeed pose a cancer threat and is asso-
32 ciated as well with certain other pathological oral
33 conditions."

34 Use of smokeless tobacco has been linked to the
35 development of precancerous lesions, such as
36 leukoplakia, as well as certain alterations in the
37 tissues of the mouth, such as gingival recession,
38 periodontal bone destruction and tooth abrasion.

1 This bill proposes a number of state actions to
2 deal with this public health hazard.

3 It requires a warning label on all smokeless to-
4 bacco products sold in the State. This label will
5 state:

6 WARNING: THIS PRODUCT MAY CAUSE MOUTH DISORDERS,
7 ORAL CANCER AND CAN BE ADDICTIVE.

8 It prohibits the free distribution of smokeless
9 tobacco products.

10 It establishes an excise tax on smokeless tobacco
11 and a Smokeless Tobacco Education Fund. Half of the
12 revenues from the excise tax will go into the fund
13 for use in programs designed to educate the public
14 about the health hazards, with an emphasis on
15 teenagers and children.

16 The state tax assessor estimates minimum revenues
17 of \$100,000 a year from the excise tax.

18

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