

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)



# 114th MAINE LEGISLATURE

## FIRST REGULAR SESSION - 1989

---

Legislative Document

No. 1348

H.P. 970

House of Representatives, April 25, 1989

Reference to the Committee on Business Legislation suggested and ordered printed.

*Ed Pert*

EDWIN H. PERT, Clerk

Presented by Representative ALLEN of Washington.

Cosponsored by Senator CLARK of Cumberland, Representative PENDLETON of Scarborough and Senator BRAWN of Knox.

---

STATE OF MAINE

---

IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND EIGHTY-NINE

---

An Act to Protect Children from Illegal Tobacco Sales.

---



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

3 Sec. 1. 22 MRSA §1579, as enacted by PL 1983, c. 239, is  
5 repealed and the following enacted in its place:

7 §1579. Prohibition

9 1. Sale and distribution; penalty. No person may knowingly  
11 sell, furnish, give away or offer to sell, furnish or give away  
13 cigarettes or tobacco to any child under the age of 18 years. No  
15 person in the business of selling or otherwise distributing  
17 cigarettes or other tobacco products for profit or an employee or  
19 agent of such a person may, in the course of that person's  
21 business, distribute free any cigarette or other tobacco product  
to any children under the age of 18 years in any place,  
including, but not limited to, a public way or sidewalk, public  
park or playground, public school or other public building, or an  
entranceway, lobby, hall or other common area of a private  
building, shopping center or mall. Penalties for violation of  
this subsection shall be imposed in accordance with Title 28-A,  
chapter 101, subchapter II.

23 2. Prohibition; purchase by minors; penalty. It shall be  
25 unlawful for any person under the age of 18 to:

27 A. Purchase cigarettes or any other tobacco product; or

29 B. Accept or have possession of cigarettes or any other  
31 tobacco product, except in the scope of that person's  
employment.

33 Violation of this subsection shall result in a fine of not less  
35 than \$10 or more than \$50 for each violation. The judge, as an  
37 alternative to or in addition to the civil forfeitures required  
by this subsection, may assign the minor to perform specified  
work for the benefit of the State, the municipality or other  
public entity or a charitable institution.

39 Sec. 2. 22 MRSA §1580-B is enacted to read:

41 §1580-B. Retail tobacco sales licensing

43 1. Retail tobacco license. It shall be unlawful for any  
45 person, partnership or corporation that engages in retail sales  
47 or in free distribution of tobacco products to sell, keep for  
49 sale or give away in the course of trade any tobacco products to  
anyone without first obtaining a retail tobacco license from the  
State Liquor Commission in accordance with Title 28-A, chapter  
101, subchapter I.

51 2. Retail tobacco clerk's permit. It shall be unlawful for  
any employee or agent of a retail tobacco vendor licensed under

1 subsection 1 to sell or give away in the course of employment any  
2 tobacco products to anyone without first obtaining a retail  
3 tobacco clerk's permit as provided in Title 28-A, chapter 101,  
4 subchapter I.

5  
6 3. Violation; penalty. Imposition of penalties for  
7 violation of this section shall be in accordance with Title 28-A,  
8 chapter 101, subchapter II.

9  
10 4. Enforcement. The Bureau of Liquor and Tobacco  
11 Enforcement within the Department of Public Safety shall enforce  
12 this section.

13  
14 **Sec. 3. 25 MRSA Pt. 10**, as enacted by PL 1987, c. 45, Pt. A,  
15 §2, is amended to read:

17 PART 10

19 BUREAU OF LIQUOR AND TOBACCO ENFORCEMENT

21 CHAPTER 451

23 BUREAU OF LIQUOR AND TOBACCO ENFORCEMENT

25 **§3901. Bureau of Liquor and Tobacco Enforcement**

27 1. **Bureau of Liquor and Tobacco Enforcement.** The  
28 enforcement division of the State Liquor Commission shall be the  
29 Bureau of Liquor and Tobacco Enforcement within the Department of  
30 Public Safety, as created in this chapter. Notwithstanding any  
31 other provisions of law, the Department of Public Safety is  
32 responsible for the enforcement of the liquor laws, the retail  
33 tobacco sale laws and the rules of the commission.

35 2. **Director.** The Commissioner of Public Safety shall  
36 appoint as ~~Director~~ director of the bureau a person experienced  
37 in law enforcement or enforcement of liquor and tobacco laws, who  
38 may be removed for cause by the commissioner.

39 A. The director, subject to the Civil Service Law, may  
40 appoint as many liquor and tobacco enforcement officers as  
41 may be found necessary. The liquor and tobacco enforcement  
42 officers shall be under the direct supervision and control  
43 of the director.

44 3. **Eligibility.** The director and the employees of the  
45 bureau are subject to the same eligibility requirements of Title  
46 28-A, section 52.  
47  
48  
49

1       **§3902. Enforcement powers**

3       1. **Enforcement duties.** A liquor and tobacco enforcement  
5 officer appointed under section 3901 shall enforce the provisions  
of Title 17, chapter 69, Title 28-A and of Title 29, section 2182.

7       2. **Enforcement powers.** For the purpose of enforcing the  
9 provisions referenced in subsection 1, a liquor and tobacco  
enforcement officer has the same powers throughout the several  
11 counties of the State as sheriffs have in their respective  
counties to investigate and prosecute violations, to execute  
warrants, to serve process and to arrest offenders.

13       3. **Other crimes.** In addition to the powers granted in  
15 subsection 2, a liquor and tobacco enforcement officer may arrest  
without a warrant any person who has committed or is committing  
17 any other crime in the officer's presence. An arrest made under  
this subsection must be made at the time of the criminal conduct  
19 or within a reasonable time. An arrest under this subsection may  
be made only by a liquor and tobacco enforcement officer who has  
21 completed the basic training course for liquor enforcement  
officers at the Maine Criminal Justice Academy or for whom that  
23 basic training course or a portion of that course has been waived  
by the board of trustees of the academy because of successful  
25 completion of equivalent training.

27       **Sec. 4. 28-A MRSA §2, sub-§§6 and 14,** as enacted by PL 1987, c.  
45, Pt. A, §4, are amended to read:

29       6. **Bureau.** "Bureau" means the Bureau of Alcoholic  
31 Beverages and Tobacco Sales within the Department of Finance.

33       14. **Licensee.** "Licensee" means the person to whom a license  
of any kind is issued by the commission. "Licensee" includes,  
35 but is not limited to, agency liquor stores, tobacco retailers  
and certificate of approval holders.

37       **Sec. 5. 28-A MRSA §2, sub-§22-A** is enacted to read:

39       22-A. Permittee. "Permittee" means the holder of a tobacco  
41 clerk's permit issued in accordance with chapter 101, subchapter  
I.

43       **Sec. 6. 28-A MRSA §2, sub-§27,** as amended by PL 1987, c. 342,  
45 §11, is further amended to read:

47       27. **Retailer.** "Retailer" means any person licensed by the  
commission to engage in the purchase and resale of tobacco  
49 products or of liquor, in the original container or by the drink,  
for consumption on or off the premises where sold. "Retailer"  
51 does not include wholesalers as defined in subsection 35.

1 A. "Off-premise retail licensee" means a person licensed to  
2 sell liquor in sealed bottles, containers or original  
3 packages to be consumed off the premises where sold.

4 B. "On-premise retail licensee" means a person licensed to  
5 sell liquor to be consumed on the premises where sold.

6  
7 **Sec. 7. 28-A MRSA §2, sub-§32-A is enacted to read:**

8  
9 32-A. Tobacco clerk. "Tobacco clerk" means a person  
10 employed by a tobacco retailer whose duties include the sale or  
11 free distribution of tobacco products.

12  
13 **Sec. 8. 28-A MRSA §§51 to 53, as enacted by PL 1987, c. 45,**  
14 **Pt. A, §4, are amended to read:**

15  
16 **§51. Administration; enforcement**

17  
18 **1. Administration by commission.** The State Liquor  
19 Commission, as established by Title 5, section 12004, subsection  
20 6, shall administer the state liquor and retail tobacco sales  
21 laws.

22  
23 **2. Enforcement by Bureau of Liquor and Tobacco**  
24 **Enforcement.** The Bureau of Liquor and Tobacco Enforcement within  
25 the Department of Public Safety, as established by Title 25,  
26 section 3901, shall enforce the state liquor and retail tobacco  
27 sales laws.

28  
29 **§52. Eligibility of members and employees**

30  
31 No person is eligible for appointment as a member of the  
32 State Liquor Commission, as an employee of the commission, the  
33 Bureau of Alcoholic Beverages and Tobacco Sales or the Bureau of  
34 Liquor and Tobacco Enforcement, in any capacity, including the  
35 director, who:

36  
37 **1. Interest in corporation.** Has any connection with,  
38 official, professional or otherwise, or who owns any stock in a  
39 corporation interested either directly or indirectly in the  
40 manufacture or sale of liquor or tobacco; or

41  
42 **2. Violation of state or federal law.** Has been convicted  
43 or adjudicated guilty of violating any state or federal law  
44 regulating the manufacture, sale or transportation of liquor or  
45 tobacco.

46  
47 **§53. Conflict of interest**

48  
49 In addition to the limitations of Title 5, section 18, any  
50 member of the commission or any employee of the commission, the  
51 bureau or the Bureau of Liquor and Tobacco Enforcement, may not

1 accept directly or indirectly any samples, gratuities, favors or  
2 anything of value from a manufacturer, wholesaler, wholesale  
3 licensee or retail licensee or any representative of a  
4 manufacturer, wholesaler, wholesale licensee or retail licensee  
5 under circumstances which might reasonably be construed as  
6 influencing or improperly relating to past, present or future  
7 performance of his official duties.

9 **Sec. 9. 28-A MRSA §61, sub-§5**, as enacted by PL 1987, c. 45,  
10 Pt. A, §4, is amended to read:

11 **5. Public meetings.** The commission may hold public  
12 meetings each year at various locations within the State for the  
13 purpose of outlining operations under the liquor laws and the  
14 retail tobacco sales laws, receiving suggestions and  
15 disseminating information to the public.

17 **Sec. 10. 28-A MRSA §62**, as amended by PL 1987, c. 769, Pt. A,  
18 §112, is further amended to read:

21 **§62. Powers of the State Liquor Commission**

23 The State Liquor Commission shall establish the policy and  
24 rules concerning the administration and enforcement of the liquor  
25 and retail tobacco sales laws. The commission has the following  
26 powers:

27 **1. Supervision of the Bureau of Alcoholic Beverages and**  
28 **Tobacco Sales.** To supervise and direct the Director of the  
29 Bureau of Alcoholic Beverages and Tobacco Sales relating to all  
30 phases of the merchandising of liquor through state liquor stores  
31 and agency liquor stores;

33 **2. General supervision.** To have general supervision of  
34 manufacturing, importing, storing, transporting and sale of all  
35 liquor;

37 **3. Rules and requirements.** To adopt rules and  
38 requirements, not inconsistent with this Title or other laws of  
39 the State, for the administration, clarification, execution and  
40 enforcement of all laws concerning liquor and retail tobacco  
41 sales, and to help prevent violation of those laws. These rules  
42 and requirements shall have the force and effect of law, unless  
43 and until set aside by a court of competent jurisdiction or  
44 revoked by the commission. The observance of these rules and  
45 requirements are conditions precedent to the issuing of any  
46 license to sell liquor;

49 **4. Purchase, transportation and sale of liquor.** To control  
50 and supervise the purchase, importation, transportation and sale  
51 of liquor;

1           **5. Spirits for sale.** To buy and have in its possession  
2 spirits for sale to the public. The commission shall buy spirits  
3 directly and not through the State Purchasing Agent. All spirits  
4 must be free from adulteration and misbranding. In purchases of  
5 liquor the commission shall give priority, wherever feasible, to  
6 those products manufactured or bottled in the State;

7  
8           **6. Sell at retail.** To sell at retail in state liquor  
9 stores in original packages, either over the counter or by  
10 shipment to points within the State, spirits of all kinds for  
11 consumption off the premises at state liquor stores to be  
12 operated under the direction of the commission;

13  
14           **7. Licensing.** To issue and renew all licenses when provided  
15 for by this Title and to hold licensing hearings;

16  
17           **8. Prevent sale to minors and others.** To prevent the sale  
18 of liquor by licensees to minors, to intoxicated persons and to  
19 interdicted persons and to prevent retail sales of tobacco  
20 products to minors;

21  
22           **9. Act as review board.** To act as a review board and on  
23 all appeals from the decisions of municipal officers. Except as  
24 provided by section 805, the decisions of the commission shall be  
25 final. All decisions of the commission acting as a review board  
26 must be approved by at least 2 members;

27  
28           **10. Hearings.** An individual member of the commission may  
29 conduct hearings in any matter pending before the commission. He  
30 The member shall, after holding the hearing, file with the  
31 commission all papers connected with the case, a transcript of  
32 all the testimony and a report of his the member's findings. The  
33 commission shall review the evidence and examine all papers and  
34 the findings of the individual member of the commission before  
35 rendering its decision;

36  
37           **11. Oaths; subpoenas; witnesses.** Any member of the  
38 commission may administer oaths and issue subpoenas for witnesses  
39 and subpoenas duces tecum to compel the production of books and  
40 papers relating to any question in dispute before the commission  
41 or to any matter involved in a hearing. Witness fees in all  
42 proceedings shall be the same as for witnesses before the  
43 Superior Court and shall be paid by the commission, except that,  
44 notwithstanding Title 16, section 253, the commission is not  
45 required to pay the fees before the travel and attendance occur;  
46 and

47  
48           **12. Food servicing organizations.** To adopt rules and  
49 requirements permitting food servicing organizations catering to  
50 passengers on international flights to purchase wine and malt  
51 liquor from wholesale outlets or distributors, provided that the



1 wine and malt liquor are resold for consumption during  
2 international travel.

3

4 A. Food servicing organizations include ship chandlers,  
5 provided ~~the~~ that the wine and malt liquor are resold to  
6 vessels of foreign registry for consumption after those  
7 vessels have left port.

8 B. Food servicing organizations are not subject to section  
9 2, subsection 15.

10

11 **Sec. 11. 28-A MRSA §63, sub-§1**, as enacted by PL 1987, c. 45,  
12 Pt. A, §4, is amended to read:

13 1. **Bureau of Alcoholic Beverages and Tobacco Sales; rules.**  
14 The commission shall establish rules and procedures for the  
15 administration and operation of the Bureau of Alcoholic Beverages  
16 and Tobacco Sales.

17

18 **Sec. 12. 28-A MRSA §63, sub-§3**, as repealed and replaced by PL  
19 1987, c. 342, §16, is amended to read:

20 3. **Publish laws and rules.** The commission shall publish a  
21 ~~compilation~~ compilations containing this Title, other laws  
22 concerning liquor and all rules adopted under this Title and  
23 containing laws and rules concerning retail tobacco sales every 4  
24 years.

25 A. The commission shall supply a copy of the appropriate  
26 compilation to every new licensee at no charge.

27

28 B. The commission shall notify all licensees of changes in  
29 the ~~law~~ laws and rules within 90 days of adjournment of each  
30 regular session of the Legislature.

31

32 (1) The commission shall supply a copy of the new laws  
33 and rules at no charge when requested by licensees.

34

35 (2) The commission shall supply a copy of the new laws  
36 and rules to persons other than licensees for a  
37 reasonable fee.

38 C. The commission may charge a reasonable fee for ~~the~~ a  
39 compilation to cover the cost of producing the compilation  
40 to persons other than licensees.

41

42 **Sec. 13. 28-A MRSA c. 3, sub-c. III**, as enacted by PL 1987, c.  
43 45, Pt. A, §4, is amended to read:

44

1 SUBCHAPTER III

3 BUREAU OF ALCOHOLIC BEVERAGES AND TOBACCO SALES

5 §71. Director of the Bureau of Alcoholic Beverages and Tobacco  
7 Sales; appointment

9 1. Appointment. The Commissioner of Finance, with the  
11 advice and consent of a majority of the State Liquor Commission,  
shall appoint a Director of the Bureau of Alcoholic Beverages and  
Tobacco Sales.

13 2. Term. The director's term of office is continuous,  
15 subject only to removal by a majority of the commission and the  
Commissioner of Finance.

17 3. Salary. With the advice and consent of a majority of  
19 the commission, the Commissioner of Finance shall set the salary  
of the director.

21 4. Qualifications and eligibility. In appointing a  
23 director, the Commissioner of Finance and the commission shall  
25 give consideration to the following qualifications: Sound  
27 judgment; practical experience and ability in merchandising;  
executive administration; salesmanship; and sound business  
principles. The director must not be a member of the commission.

29 §72. Director of the Bureau of Alcoholic Beverages and Tobacco  
Sales; powers and duties

31 1. Administration of the bureau. The Director of the  
33 Bureau of Alcoholic Beverages and Tobacco Sales is the chief  
administrative officer of the bureau and shall administer the  
policies and rules of the State Liquor Commission. The director  
35 shall have general charge of the office and records.

37 2. Direction from commission. The Director of the Bureau  
of Alcoholic Beverages and Tobacco Sales is subject to the  
39 direction of the commission and shall operate the bureau and  
implement the liquor and tobacco sales laws according to the  
41 procedures established by the commission.

43 3. Power to hire personnel and make expenditures. The  
45 Director of the Bureau of Alcoholic Beverages and Tobacco Sales  
may employ personnel, with the approval of the Commissioner of  
Finance and the commission and subject to the Civil Service Law,  
47 and may make expenditures necessary to carry out the purposes of  
this Title.



1  
3 §2604. Notification of license expiration

5 1. Grace period upon license expiration. Except as  
7 provided in subsection 3, a retail tobacco licensee who  
9 unintentionally fails to renew any license upon its expiration  
11 date and continues to make sales of tobacco products is not  
13 chargeable with illegal sales under section 2613 for a period of  
15 7 days following the expiration date.

17 2. Commission must notify licensee of expiration. The  
19 commission shall notify the licensee by the most expedient means  
21 available that the license has expired and all sales of tobacco  
23 products must be suspended immediately and remain suspended until  
25 the license is properly renewed.

27 3. Illegal sales after expiration of grace period or after  
29 notice. A retail tobacco licensee who continues to make sales of  
31 tobacco products after receiving proper notification of the  
33 expired license shall be charged with illegal sales under section  
35 2613.

37 §2605. Transfer of licenses; death; bankruptcy; receivership;  
39 guardianship; corporations

41 Except as otherwise provided in this section, no license or  
43 any interest in a license may be sold, transferred, assigned or  
45 otherwise subject to control by any person other than the  
47 licensee. If the business or any interest in the business  
49 connected with a licensed activity is sold, transferred or  
assigned, the license holder shall immediately send to the  
commission the license and a sworn statement showing the name and  
address of the purchaser. The commission is not required to  
refund any portion of the license fee if the license is  
surrendered before it expires.

1 1. Transfer within same municipality. Upon receipt of a  
3 written application, the commission may transfer any retail  
5 tobacco license from one place to another within the same  
7 municipality. No transfer may be made to premises for which the  
9 license could not have been originally legally issued.

11 2. Death, bankruptcy or receivership. In the case of  
13 death, bankruptcy or receivership of any licensee, the executor  
15 or administrator of the deceased licensee, the trustee or  
17 receiver of the bankrupt licensee or the licensee in receivership  
19 may retain the license for the remaining term of the license or  
21 transfer the license without additional fee.

1 A. For the benefit of the estate, personal representatives,  
3 receivers or trustees may operate the premise themselves or  
5 through a manager for one year from the date of their  
7 appointment.

9 (1) The license must be renewed upon the expiration  
11 date at the regular license fee.

13 (2) If the license or renewed license is not  
15 transferred within one year from the date of  
17 appointment, the license becomes void and must be  
19 returned to the commission for cancellation.

21 (3) Any suspension or revocation of the license by the  
23 Administrative Court for any violation applies to the  
25 manager and the personal representative, receiver or  
27 trustee.

29 (4) No personal representative, receiver, trustee or  
31 duly appointed manager may operate under the license  
33 unless approved by the commission.

35 B. If a licensee dies, the following persons, with the  
37 written approval of the commission, may continue to operate  
39 under the license for not more than 60 days pending  
41 appointment of a personal representative of the estate:

43 (1) The surviving spouse;

45 (2) A person who has filed a petition for appointment  
47 as executor or administrator for the estate of the  
49 deceased licensee;

51 (3) Any sole heir of the deceased licensee; or

(4) Any person designated by all of the heirs of the  
deceased licensee.

C. When no administration of the estate of a deceased  
licensee is contemplated, the surviving spouse or person  
designated by all the heirs of the deceased licensee may  
take over the license under the same conditions as are  
provided for operation and transfer by executors and  
administrators.

3. Guardians and conservators. Duly appointed and  
qualified guardians and conservators of the estate of a licensee  
may take over, operate and renew licenses of their wards during  
their term of office if they or their managers are approved by  
the commission.

1       A. Guardians and conservators may not transfer their wards'  
2       licenses and must renew licenses each year.

3  
4       B. Penalties for violations apply to both guardians or  
5       conservators and their managers in the same manner as  
6       executors or administrators and their managers in subsection  
7       2.

8  
9       4. Sale of stock of a corporate licensee. Any sale or  
10       transfer of stock of a corporate licensee that results in the  
11       sale or transfer of more than 10% of the shares of stock of the  
12       corporate licensee shall be considered a transfer within the  
13       meaning of this section and a new license must be purchased.

14       5. Incorporation of licensee's business. The incorporation  
15       of a licensee's business or a change in the form of incorporation  
16       of a licensee's business are transfers within the meaning of this  
17       section.

18  
19       6. Change in partnership. Addition or deletion of a  
20       partner in a partnership is a transfer within the meaning of this  
21       section.

22  
23       7. Corporate merger or acquisition. The merger or  
24       acquisition of a licensee which is incorporated is a transfer  
25       within the meaning of this section.

26  
27       §2606. Violation; jurisdiction

28  
29       1. Violation. A retail tobacco license may be revoked or  
30       suspended or a fine may be imposed in lieu of or in addition to  
31       suspension or revocation if the licensee has violated any  
32       provisions of this chapter or if the licensee has violated the  
33       prohibition against tobacco sales to minors in Title 22, section  
34       1579.

35  
36       2. Jurisdiction. The Administrative Court, pursuant to the  
37       Maine Administrative Procedure Act, Title 5, chapter 375, shall  
38       have jurisdiction over violations of this chapter, in accordance  
39       with subchapter II.

40  
41       §2607. Tobacco clerk's permit required

42  
43       1. Permit required. Any person employed by a retail  
44       tobacco licensee who engages in the sale of tobacco products  
45       shall have a valid tobacco clerk's permit issued in accordance  
46       with this subchapter.

47  
48       2. Licensee responsibility. No retail tobacco licensee may  
49       permit any person to engage in the sale of tobacco products  
50       unless that person has a valid tobacco clerk's permit issued in  
51       accordance with this subchapter.

1  
3 3. Inspection of permits. Licensees shall retain on the  
5 premises a file of permits of all tobacco clerks in their employ  
7 and shall make those permits available at any time for immediate  
9 inspection by any inspector or investigator employed by the  
11 Bureau of Liquor and Tobacco Enforcement or by any other peace  
13 officer.

15 §2608. Characteristics of permit

17 1. Restrictions. A tobacco clerk's permit shall be a  
19 personal privilege, valid only upon licensed premises for the  
21 period of time stated on the permit and may be suspended or  
23 revoked for any reason set forth in subchapter II.

25 2. License not transferable. No tobacco clerk's permit may  
27 be used by any person other than the person to whom it is issued.

29 §2609. Permitting procedures

31 1. Permits administered by licensees. Forms for a tobacco  
33 clerk's permit shall be supplied by the commission to all retail  
35 tobacco licensees. The licensee shall complete and retain a form  
37 for each person the licensee employs to engage in the retail sale  
39 of tobacco products. A copy of the permit shall be given to the  
41 permittee.

43 2. Application contents. The application shall contain:

45 A. The name and address of the permittee;

47 B. The date;

49 C. A statement, signed by the licensee, that the licensee  
51 has verified with the Bureau of Liquor and Tobacco  
53 Enforcement that the permittee has not had a tobacco clerk's  
permit revoked or suspended or had fines imposed pursuant to  
subchapter II within the previous 2 years;

D. A statement, signed by the licensee, that the licensee  
has furnished the permittee the information prescribed in  
section 2611; and

E. A statement, signed by the permittee, that the permittee  
has received and understood the information furnished by the  
licensee in accordance with section 2611.

The applicant shall truly answer all questions and provide any  
further information required.

3. Effective date; expiration. All tobacco clerks' permits  
shall be effective on the date of issuance and shall remain in  
effect unless suspended or revoked.

1  
3 §2610. Bureau of Liquor and Tobacco Enforcement records

5 The Bureau of Liquor and Tobacco Enforcement shall retain  
7 records of all disciplinary proceedings referred to the Bureau of  
9 Liquor and Tobacco Enforcement pursuant to section 2616 and shall  
make that information available to retail tobacco licensees upon  
request. Records of a proceeding shall be retained for 5 years  
from the date of the proceeding.

11 §2611. Permittee information

13 1. Educational program required. Retail tobacco licensees  
15 shall provide information on the laws regarding retail tobacco  
sales to all employees whose duties include those sales.

17 2. Schedule for information program. The information  
19 program shall commence prior to a permittee's initial assignments.

21 3. Information program contents. The information program  
shall include the following:

23 A. The provisions of this chapter;

25 B. The provisions of Title 22, section 1579; and

27 C. Techniques for identifying underage purchasers of  
29 tobacco products.

31 §2612. Violation; jurisdiction

33 1. Violation. A tobacco clerk's permit may be revoked or  
35 suspended, or a fine may be imposed in lieu of or in addition to  
37 revocation or suspension, when the permittee has made any false  
statement in the application for the permit or the permittee has  
violated the prohibition against tobacco sales to minors in Title  
22, section 1579.

39 2. Jurisdiction. The Administrative Court, pursuant to the  
41 Maine Administrative Procedure Act, Title 5, chapter 375, shall  
43 have jurisdiction over violations of this section, in accordance  
with subchapter II.

45 §2613. Sale of tobacco products without a valid license

47 1. Penalties. Any person who engages in retail tobacco  
49 sales or in free distribution of tobacco products in the ordinary  
51 course of trade within this State without a valid license, or  
whose employees or agents engage in retail tobacco sales or in  
free distribution of tobacco products without a valid permit,  
commits a Class E crime and, notwithstanding Title 17-A, section  
4-A, shall be punished:



1  
3 A. For the first offense by a fine of not less than \$100  
plus costs nor more than \$300 plus costs and the fine and  
costs may not be suspended;

5  
7 B. For a 2nd offense by a fine of not less than \$300 plus  
costs nor more than \$500 plus costs and the fine and costs  
may not be suspended; and

9  
11 C. For all subsequent offenses by a fine of not less than  
\$500 plus costs and the fine and costs may not be suspended.

13 2. Employee or agent equally responsible. Any agent or  
other person in the employment of or on the premises of a  
licensee who violates or in any manner assists in violating any  
law relating to retail tobacco sales is equally responsible with  
the licensee and is subject to the same penalties, except that  
minimum and maximum penalties for tobacco clerks operating  
without a permit shall be 1/2 those for licensees.

21 §2614. Identification cards

23 A licensee or a permittee may refuse to sell tobacco to any  
person who fails to display upon request an identification card  
issued under Title 5, section 88-A, or a motor vehicle operator's  
license bearing the photograph of the operator and issued under  
Title 29, chapter 7.

29 SUBCHAPTER II

31 REVOCATION AND SUSPENSION

33 §2615. Jurisdiction of the Administrative Court

35 1. Jurisdiction. The Administrative Court, pursuant to the  
Maine Administrative Procedure Act, Title 5, chapter 375, shall  
conduct hearings on all matters concerning violations by retail  
tobacco licensees or tobacco clerk permittees of any federal or  
state law or regulation relating to retail tobacco sales.

41 2. Powers. The Administrative Court may impose fines or  
suspend or revoke licenses or permits.

43 §2616. Causes for imposition of penalties

45 The Administrative Court may impose fines or revoke or  
suspend licenses pursuant to sections 2605 and 2612. This  
section does not require the Administrative Court to hold liable  
licensees or permittees who sold tobacco products to minors who  
furnished fraudulent proof of age.

1 §2617. Revocation or suspension procedure

3 1. Violation of law or rule. Upon discovering a violation  
5 of federal or state law, rule or regulation relating to retail  
7 tobacco sales or an infraction of a commission rule, the Director  
9 of the Bureau of Liquor and Tobacco Enforcement or the director's  
11 designee shall:

13 A. Report the violation to the Administrative Court in a  
15 signed complaint; or

17 B. Issue warnings to the licensees and permittees involved.

19 2. Notice and hearing. Except as provided under subsection  
21 6, upon receipt of a signed complaint prepared under subsection  
23 1, paragraph A, the Administrative Court shall notify the  
25 licensee or the permittee, or both, and hold a hearing according  
27 to the following procedures.

29 A. The Administrative Court shall notify the licensee or  
31 permittee, or both, by serving on the licensee or permittee  
33 a copy of the complaint and a notice stating the time and  
35 place of the hearing and that the licensee or permittee may  
37 appear in person or by counsel at the hearing. Service of  
39 the complaint and hearing notice is sufficient when sent by  
41 registered or certified mail at least 7 days before the date  
43 of the hearing to the address given by the licensee or  
45 permittee at the time of application for a license or permit.

47 B. The Administrative Court shall conduct a hearing limited  
49 to the facts, state laws and rules of the commission, as  
51 specified in the complaint.

C. The Administrative Court shall conduct the hearing in  
the following manner.

(1) The Administrative Court may subpoena and examine  
witnesses, administer oaths and subpoena and compel the  
attendance of parents and legal guardians of  
unemancipated minors.

(a) The commission shall pay to the witnesses the  
legal fees for travel and attendance, except that,  
notwithstanding Title 16, section 253, the  
commission is not required to pay the fees before  
the travel and attendance occur.

(2) Hearsay testimony is not admissible during the  
hearing. The licensees and permittees named in the  
complaint have the right to have all witnesses testify  
in person at the hearing.

1           (3) The Administrative Court shall state in writing  
3           the findings and decision in each case, based on the  
5           facts, state laws and the rules of the commission. The  
              findings shall specify the facts found and the laws or  
              rules found to be violated.

7           3. Suspension or revocation decision. The Administrative  
9           Court shall issue the decision in writing within 12 days of the  
              hearing.

11           4. Suspension of penalty; place case on file. After  
              hearing, the Administrative Court may:

13                   A. Suspend a penalty; or

15                   B. Place a case on file instead of imposing any penalty.

17           5. Application of suspension or revocation. A suspension  
19           or revocation applies to premises and persons in the following  
21           manner.

23                   A. If a licensee is interested directly or indirectly in  
              more than one license, suspensions apply only to the premise  
              where the violation occurs.

25                   B. If a licensee is interested directly or indirectly in  
27           more than one license, the Administrative Court may order  
              that a revocation apply to any of those premises.

29                   C. If the licensee is a corporation, the Administrative  
31           Court shall treat the officers, directors and substantial  
              stockholders as individuals.

33                   D. In the case of a permittee, suspension or revocation  
35           shall apply only to that individual's permit.

37           6. Term of suspension or revocation. Suspensions must be  
39           for a definite period of time. If the Administrative Court  
41           revokes a license or a permit, the court shall specify that the  
              commission may not issue a license or permit to the person whose  
              license or permit is revoked for a period of not less than one  
43           nor more than 5 years from the date of revocation.

45           7. Warnings. Upon the written recommendation of the  
47           Director of the Bureau of Liquor and Tobacco Enforcement, or the  
              director's designee, the Administrative Court, instead of  
49           notifying a licensee or permittee against whom a complaint is  
              pending to appear for hearing, may send the licensee or permittee  
51           a warning. Warnings must be sent by registered or certified mail  
              and contain a copy of the complaint. A licensee or permittee to  
53           whom a warning is sent may demand a hearing by notifying the  
              Administrative Court by registered or certified mail within 10  
              days from the date the warning was mailed.

1  
3 8. License subsequent to violation. If violations by a  
5 licensee occur during one license term and remain undiscovered or  
7 carry over into the next license term, pending investigation or  
9 final disposition either in criminal courts or before the  
11 Administrative Court, any license issued for a new license term  
13 subsequent to the violation may be suspended or revoked by the  
15 Administrative Court.

17  
19 9. Fines. Notwithstanding any other provisions of this  
21 Title, the Administrative Court may impose on a licensee a fine  
23 of a specific sum of not less than \$50 nor more than \$1,500 for  
25 any one offense and may impose on a permittee a fine of a  
27 specific sum of not less than \$10 nor more than \$100. The fine  
29 may be imposed instead of or in addition to any suspension or  
31 revocation of a license.

33 A. The Administrative Court shall maintain a record of all  
35 finances received by the court and shall pay the fines into the  
37 General Fund by the 15th day of each month.

39 §2618. Record of proceedings and transcript

41 1. Court record. The Administrative Court shall keep a  
43 full and complete record of all proceedings before the court on  
45 the revocation and suspension of any license or permit issued by  
47 the commission. The Administrative Court is not required to have  
49 a transcript of the testimony prepared unless required for  
51 rehearing or appeal.

53 2. Notice to Bureau of Liquor and Tobacco Enforcement. The  
55 Administrative Court shall forward to the Bureau of Liquor and  
57 Tobacco Enforcement notice of final disposition of all  
59 proceedings conducted pursuant to this subchapter. The Bureau of  
61 Liquor and Tobacco Enforcement shall maintain these records for  
63 not less than 5 years.

65 §2619. Appeal from decision of Administrative Court

67 1. Aggrieved person may appeal within 30 days. Any person  
69 aggrieved by the decision of the Administrative Court in revoking  
71 or suspending any license or permit issued by the commission or  
73 by refusal of the commission to issue any license or permit  
75 applied for may, within 30 days of the decision or refusal,  
77 appeal to the Superior Court by filing a complaint.

79 A. The 30-day period for appeal begins on:

81 (1) In the case of a license or permit revocation or  
83 suspension, the effective date of the suspension or  
85 revocation; or

