

MAINE STATE LEGISLATURE

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L.D. 1344

(Filing No. S-554)

STATE OF MAINE
SENATE
115TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A " to S.P. 506, L.D. 1344, Bill, "An Act to Protect Children from Illegal Tobacco Sales"

Amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

'Sec. 1. 5 MRSA §281, last ¶, as enacted by PL 1987, c. 402, Pt. A, §11, is amended to read:

The department shall coordinate financial planning and programming activities of departments and agencies of the State Government for review and action by the Governor, prepare and report to the Governor and to the Legislature financial data and statistics and administer under the direction of the State Liquor Commission the laws relating to legalized alcoholic beverages within and retail tobacco sales in this State. The department ~~shall-consist~~ consists of the bureaus and organizations described in section 283, and the State Liquor Commission, except the Bureau of Liquor and Tobacco Enforcement and the State Lottery Commission.

Sec. 2. 22 MRSA §1578-C is enacted to read:

§1578-C. Retail tobacco sales licensing

1. Retail tobacco license. It is unlawful for any person, partnership or corporation that engages in retail sales, including retail sales through vending machines, or in free distribution of tobacco products to sell, keep for 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 102, subchapter I.

2. Violation; penalty. Imposition of penalties for violation of this section must be in accordance with Title 28-A, chapter 102, subchapter III.

2 3. Enforcement. The Bureau of Liquor and Tobacco
4 Enforcement within the Department of Public Safety shall enforce
 this section.

6 4. Repeal. This section is repealed December 1, 1994.

8 Sec. 3. 22 MRSA §1579, sub-§4 is enacted to read:

10 4. Prohibition; misrepresentation by minors; penalty. It
12 is unlawful for any person under the age of 18 to misrepresent
14 that person's age by producing fraudulent identification for the
16 purpose of purchasing cigarettes or any other tobacco product. A
18 person who violates this subsection commits a civil violation for
20 which a warning may be issued or a forfeiture of not less than
 \$10 nor more than \$50 may be adjudged for each violation. The
 judge, as an alternative to the civil forfeiture permitted by
 this section, may assign the violator to perform up to 10 hours
 of specified community service work.

22 Sec. 4. 22 MRSA §1628, sub-§2, as amended by PL 1989, c. 445,
 §9, is further amended to read:

24 2. Violation. It is unlawful for any person, firm or
26 corporation to knowingly distribute or sell cigarettes or any
 other tobacco products by the use of a vending machine to minors
28 ex. It is unlawful for any person, firm or corporation to
30 knowingly distribute or sell cigarettes or any other tobacco
32 product by the use of a vending machine that is placed in a
34 location other than a location that is at all times under direct
 supervision by an adult during the hours the machine is
 accessible or that also offers for sale products other than
 cigarettes and other tobacco products.

36 Sec. 5. 25 MRSA §3901, sub-§§1 and 2, as enacted by PL 1987, c.
 45, Pt. A, §2, are amended to read:

38 1. Bureau of Liquor and Tobacco Enforcement. The
40 enforcement division of the State Liquor Commission ~~shall be~~ is
42 the Bureau of Liquor and Tobacco Enforcement within the
44 Department of Public Safety, as created in this chapter.
 Notwithstanding any other provisions of law, the Department of
 Public Safety is responsible for the enforcement of the liquor
 laws, the retail tobacco sale laws and the rules of the
 commission.

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

2 A. The director, subject to the Civil Service Law, may
3 appoint as many liquor and tobacco enforcement officers as
4 may be found necessary. The liquor and tobacco enforcement
5 officers shall--be are under the direct supervision and
6 control of the director.

8 Sec. 6. 28-A MRSA first 2 lines are repealed and the following
9 enacting in their place:

10 TITLE 28-A

12 LIQUOR AND TOBACCO

14 Sec. 7. 28-A MRSA §2, sub-§14, as enacted by PL 1987, c. 45,
15 Pt. A, §4, is amended to read:

18 14. Licensee. "Licensee" means the person to whom a license
19 of any kind is issued by the commission. "Licensee" includes,
20 but is not limited to, agency liquor stores, tobacco retailers,
21 wholesalers and distributors and certificate of approval holders.

22 Sec. 8. 28-A MRSA §51, as amended by PL 1989, c. 503, Pt. B,
23 §117, is further amended to read:

26 §51. Administration; enforcement

28 1. Administration by commission. The State Liquor
29 Commission, as established by Title 5, section 12004-E,
30 subsection 3, shall administer the state liquor and retail
31 tobacco sales laws.

32 2. Enforcement by Bureau of Liquor and Tobacco
33 Enforcement. The Bureau of Liquor and Tobacco Enforcement within
34 the Department of Public Safety, as established by Title 25,
35 section 3901, shall enforce the state liquor and retail tobacco
36 sales laws.

38 Sec. 9. 28-A MRSA §52, sub-§1, as enacted by PL 1987, c. 45,
39 Pt. A, §4, is amended to read:

42 1. Interest in corporation. Has any connection with,
43 official, professional or otherwise, or who owns any stock in a
44 corporation interested either directly or indirectly in the
45 manufacture or sale of liquor or tobacco; or

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

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

Sec. 11. 28-A MRSA §62, first ¶, as enacted by PL 1987, c. 45, Pt. A, §4, is amended to read:

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

Sec. 12. 28-A MRSA §62, sub-§§3 and 8, as enacted by PL 1987, c. 45, Pt. A, §4, are amended to read:

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

8. Prevent sale to minors and others. To prevent the sale of liquor by licensees to minors, to intoxicated persons and to interdicted persons and to prevent retail sales of tobacco products to persons under 18 years of age;

Sec. 13. 28-A MRSA §63, sub-§3, as repealed and replaced by PL 1987, c. 342, §16, is amended to read:

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

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

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

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

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

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

Sec. 14. 28-A MRSA Pt. 9 is enacted to read:

PART 9

TOBACCO LICENSING

CHAPTER 102

TOBACCO LICENSES

SUBCHAPTER I

RETAIL TOBACCO LICENSES

§2601. Applications

1. File application with commission. An applicant for a retail tobacco license shall file an application in the form required by the commission.

2. False answer given intentionally. A person who intentionally gives a false answer in an application for a retail tobacco license violates Title 17-A, section 453.

§2602. Application procedure

1. License fee. The fee for a retail tobacco license is \$5 for retail premises whose annual volume of tobacco sales is less than 20,000 cartons; \$50 for retail premises whose annual volume of tobacco sales is 20,000 cartons or greater; and \$50 for persons engaged in free distribution of tobacco products. The applicant must enclose the fee with the application for the license. For purposes of this section, each vending machine is considered a separate retail premise.

2. Effective date and term of license. All retail tobacco licenses are for a term of one year and are effective from the date of issuance.

2 3. Renewal. Licenses may be renewed upon application for
3 renewal and payment of the annual fee, subject to commission
4 rules.

5 4. Multiple licenses. A licensee applying for licenses to
6 operate more than one premises or more than one vending machine
7 shall obtain a separate license for each premises and each
8 machine and shall pay the fee prescribed for each premises and
9 each machine.

10 §2603. Display of notices

11 1. Display of licenses. A licensee shall publicly display
12 the license on the premises and the machines to which the license
13 applies.

14 2. Display of prohibition against sales to minors. All
15 licensees shall post notice of Title 22, section 1579,
16 prohibiting tobacco sales to minors. Notices must be publicly
17 and conspicuously displayed in the licensee's place of business
18 in letters at least 3/8 inches high. Signs required by this
19 section may be provided at cost by the Bureau of Liquor and
20 Tobacco Enforcement within the Department of Public Safety.

21 §2604. Notification of license expiration

22 1. Grace period upon license expiration. Except as
23 provided in subsection 3, a retail tobacco licensee who
24 unintentionally fails to renew any license upon its expiration
25 date and continues to make sales of tobacco products is not
26 chargeable with illegal sales under section 2607 for a period of
27 7 days following the expiration date.

28 2. Commission shall notify licensee of expiration. The
29 commission shall notify the licensee by the most expedient means
30 available that the license has expired and that all sales of
31 tobacco products must be suspended immediately and remain
32 suspended until the license is properly renewed.

33 3. Illegal sales after expiration of grace period or after
34 notice. A retail tobacco licensee who continues to make sales of
35 tobacco products after receiving proper notification of the
36 expired license must be charged with illegal sales under section
37 2607.

38 §2605. Transfer of licenses; death; bankruptcy; receivership;
39 guardianship; corporations

40 Except as otherwise provided in this section, a license or
41 any interest in a license may not be sold, transferred, assigned
42 or otherwise disposed of.

or otherwise subject to control by any person other than the licensee. If the business or any interest in the business 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. Transfer within same municipality. Upon receipt of a written application, the commission may transfer any retail tobacco license from one place to another within the same municipality. A transfer may not be made to premises for which the licenses could not have been originally legally issued.

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

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

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

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

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

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

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

(1) The surviving spouse;

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

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

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

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

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

24 A. Guardians and conservators may not transfer their wards'
25 licenses and shall renew licenses each year.

26 B. Penalties for violations apply to both guardians or
27 conservators and their managers in the same manner as
28 executors or administrators and their managers in subsection
29 2.

32 4. Sale of stock of a corporate licensee. Any sale or
33 transfer of stock of a corporate licensee that results in the
34 sale or transfer of more than 10% of the shares of stock of the
35 corporate licensee is considered a transfer within the meaning of
36 this section.

38 5. Incorporation of licensee's business. The incorporation
39 of a licensee's business or a change in the form of incorporation
40 of a licensee's business is a transfer within the meaning of this
41 section.

42 6. Change in partnership. Addition or deletion of a
43 partner in a partnership is a transfer within the meaning of this
44 section.

46 7. Corporate merger or acquisition. The merger or
47 acquisition of a licensee that is incorporated is a transfer
48 within the meaning of this section.

§2606. Information to retail clerks

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

2. Schedule for information program. The information program must commence prior to the employee's initial assignments.

3. Information program contents. The information program must include the following:

A. The provisions of this chapter;

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

C. Techniques for identifying underage purchasers of tobacco products.

§2607. Sale of tobacco products without a valid license

Any person who engages in retail tobacco sales or in free distribution of tobacco products in the ordinary course of trade in this State without a valid license commits a Class E crime.

§2608. Identification cards

A licensee 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.

SUBCHAPTER II

TOBACCO DISTRIBUTOR AND WHOLESALE LICENSES

§2609. Applications

1. File application with commission. An applicant for a tobacco distributor or wholesaler license shall file an application in the form required by the commission.

2. False answer given intentionally. A person who intentionally gives a false answer in an application for a tobacco distributor or wholesaler license violates Title 17-A, section 453.

§2610. Application procedure

COMMITTEE AMENDMENT "A" to S.P. 506, L.D. 1344

1. License fee. The fee for a tobacco distributor or wholesaler license is \$5,000. The license applies to all outlets of the distributor or wholesaler. The applicant must enclose the fee with the application for the license.

2. Effective date and term of license. All tobacco distributor or wholesaler licenses are for a term of one year and are effective from the date of issuance.

3. Renewal. Licenses may be renewed upon application for renewal and payment of the annual fee, subject to commission rules.

§2611. Notification of license expiration

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

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

3. Illegal sales after expiration of grace period or after notice. A tobacco distributor or wholesaler who continues to make sales of tobacco products after receiving proper notification of the expired license must be charged with illegal sales under section 2613.

§2612. Transfer of licenses; death; bankruptcy; receivership; guardianship; corporations

Except as otherwise provided in this section, a license or any interest in a license may not be sold, transferred, assigned or otherwise subject to control by any person other than the licensee. If the business or any interest in the business 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.

2. Death, bankruptcy or receivership. In the case of death, bankruptcy or receivership of any licensee, the executor

COMMITTEE AMENDMENT "A" to S.P. 506, L.D. 1344

or administrator of the deceased licensee, the trustee or receiver of the bankrupt licensee or the licensee in receivership may retain the license for the remaining term of the license or transfer the license without additional fee.

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

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

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

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

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

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

(1) The surviving spouse;

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

(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.

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

7 A. Guardians and conservators may not transfer their wards'
8 licenses and shall renew licenses each year.

9 B. Penalties for violations apply to both guardians or
10 conservators and their managers in the same manner as
11 executors or administrators and their managers in subsection
12 2.

13 4. Sale of stock of a corporate licensee. Any sale or
14 transfer of stock of a corporate licensee that results in the
15 sale or transfer of more than 10% of the shares of stock of the
16 corporate licensee is considered a transfer within the meaning of
17 this section.

18 5. Incorporation of licensee's business. The incorporation
19 of a licensee's business or a change in the form of incorporation
20 of a licensee's business is a transfer within the meaning of this
21 section.

22 6. Change in partnership. Addition or deletion of a
23 partner in a partnership is a transfer within the meaning of this
24 section.

25 7. Corporate merger or acquisition. The merger or
26 acquisition of a licensee that is incorporated is a transfer
27 within the meaning of this section.

28 \$2613. Distribution of tobacco products without a valid
29 license; distribution to unlicensed retailer

30 A person who engages in distribution of tobacco products in
31 the ordinary course of trade in this State without a valid
32 license or who distributes tobacco products to a retailer who is
33 not licensed pursuant to this chapter commits a Class E crime.

34 SUBCHAPTER III

35 REVOCATION AND SUSPENSION

36 \$2614. Jurisdiction of the Administrative Court

37 1. Jurisdiction. The Administrative Court, pursuant to the
38 Maine Administrative Procedure Act, shall conduct hearings on all

2 matters concerning violations by tobacco licensees of any federal
3 or state law or regulation related to tobacco sales.

4 2. Powers. The Administrative Court may impose fines or
5 suspend or revoke licenses in accordance with this chapter.

6 **§2615. Causes for imposition of penalties**

7 The Administrative Court may impose fines or revoke or
8 suspend licenses for the following causes:

9 1. Violation of law or infraction of rule. Violation of
10 any federal or state law, rule or regulation related to the sale
11 of tobacco products; or

12 2. False material statement. Knowingly making a false
13 material statement of fact in the application for the license.

14 **§2616. Revocation or suspension procedure**

15 1. Violation of law or rule. Upon discovering a violation
16 of a federal or state law, rule or regulation related to retail
17 tobacco sales, the Director of the Bureau of Liquor and Tobacco
18 Enforcement within the Department of Public Safety or the
19 director's designee shall:

20 A. Report the violation to the Administrative Court in a
21 signed complaint; or

22 B. Issue warnings to the licensees involved.

23 2. Notice and hearing. Except as provided under subsection
24 7, upon receipt of a signed complaint prepared under subsection
25 1, paragraph A, the Administrative Court shall notify the
26 licensee and hold a hearing according to the following procedures.

27 A. The Administrative Court shall notify the licensee by
28 serving on the licensee a copy of the complaint and a notice
29 stating the time and place of the hearing and that the
30 licensee may appear in person or by counsel at the hearing.
31 Service of the complaint and hearing notice is sufficient
32 when sent by registered or certified mail at least 7 days
33 before the date of the hearing to the address given by the
34 licensee at the time of application for a license.

35 B. The Administrative Court shall conduct a hearing limited
36 to the facts, laws and rules, as specified in the complaint.

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

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

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

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

15 (3) The Administrative Court shall state in writing
16 the findings and decision in each case, based on the
17 facts, laws and the rules cited in the complaint. The
18 findings must specify the facts found and the laws or
19 rules found to be violated.

20 3. Suspension or revocation decision. The Administrative
21 Court shall issue the decision in writing within 12 days of the
22 hearing.

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

25 A. Suspend a penalty; or

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

27 5. Application of suspension or revocation. A suspension
28 or revocation applies to premises and persons in the following
29 manner.

30 A. If a licensee is interested directly or indirectly in
31 more than one license, suspensions apply only to the
32 premises where the violation occurs or to the machine
33 through which the illegal sales were made.

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

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

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

8
9 7. Warnings. Upon the written recommendation of the
10 Director of the Bureau of Liquor and Tobacco Enforcement within
11 the Department of Public Safety, or the director's designee, the
12 Administrative Court, instead of notifying a licensee against
13 whom a complaint is pending to appear for hearing, may send the
14 licensee a warning. Warnings must be sent by registered or
15 certified mail and contain a copy of the complaint. A licensee
16 to whom a warning is sent may demand a hearing by notifying the
17 Administrative Court by registered or certified mail within 10
18 days from the date the warning was mailed.

19 8. License subsequent to violation. If violations by a
20 licensee occur during one license term and remain undiscovered or
21 carry over into the next license term pending investigation or
22 final disposition either in criminal courts or before the
23 Administrative Court, any license issued for a new license term
24 subsequent to the violation may be suspended or revoked by the
25 Administrative Court.

26
27 9. Fines. Notwithstanding any other provisions of this
28 Title, the Administrative Court may impose on a licensee a fine
29 of a specific sum of not less than \$50 nor more than \$1,500 for
30 any one offense. The fine may be imposed instead of or in
31 addition to any suspension or revocation of a license.

32
33 A. The Administrative Court shall maintain a record of all
34 finances received by the court and shall pay the fines into the
35 General Fund by the 15th of each month.

36
37 §2617. Record of proceedings and transcript

38
39 1. Court record. The Administrative Court shall keep a
40 full and complete record of all proceedings before the court on
41 the revocation and suspension of any license issued by the
42 commission. The Administrative Court is not required to have a
43 transcript of the testimony prepared unless required for
44 rehearing or appeal.

45
46 2. Notice to Bureau of Liquor and Tobacco Enforcement. The
47 Administrative Court shall forward to the Bureau of Liquor and
48 Tobacco Enforcement within the Department of Public Safety notice
49 of final disposition of all proceedings conducted pursuant to
50

this subchapter. The Bureau of Liquor and Tobacco Enforcement shall maintain these records for not less than 5 years.

§2618. Appeal from decision of Administrative Court

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

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

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

(2) In the case of refusal by the commission to issue a license, the day when the commission sends notice of refusal, by registered or certified mail, to the applicant for a license.

B. Filing the complaint in the Superior Court suspends the running of the limitation period.

2. Suspension or revocation suspended pending appeal. The operation of a suspension or revocation of a license imposed by the Administrative Court must be suspended, pending judgment of the Superior Court, if the licensee files an appeal in the Superior Court and notifies the Administrative Court that the appeal has been filed within 7 days of the mailing of the decision of the Administrative Court. Notice of the decision must be sent by certified mail to the address given by the licensee at the time of the application for a license.

3. Superior Court hearing. The Superior Court shall fix a time and place for an immediate hearing and notify the Administrative Court of the hearing.

4. Superior Court decision. After the hearing, the Superior Court may affirm, modify or reverse the decision of the Administrative Court.

5. Further appeal. An aggrieved person may appeal the Superior Court decision to the Supreme Judicial Court. Upon appeal, the Supreme Judicial Court may, after consideration, reverse or modify any decree made by the Superior Court based upon an erroneous ruling or finding of law.

2 **\$2619. Repeal**

4 This chapter is repealed December 1, 1994.

6 **Sec. 15. Report.** The Department of Public Safety, Bureau of
8 Liquor and Tobacco Enforcement shall submit a report to the joint
10 standing committee of the Legislature having jurisdiction over
12 legal affairs matters by January 30, 1994 regarding the operation
 of the tobacco licensing laws, including the number of citations
 issued for violations of tobacco sales and licensing laws, and
 the actions taken and penalties imposed upon those violators.

14 **Sec. 16. Educational programs.** To the extent that funds are
16 available, the Department of Human Services, Bureau of Health
18 shall develop and implement programs to educate retailers,
20 schools, retail clerks, minors and the general public about the
22 laws relating to cigarette sales to minors and purchases by
 minors and the consequences of violating those laws. The Bureau
 of Health shall develop and implement these educational programs
 in cooperation with the Department of Public Safety Bureau of
 Liquor and Tobacco Enforcement.

24 **Sec. 17. Maine Revised Statutes amended; Bureau of Liquor**
26 **Enforcement; revision clause.** Wherever in the Maine Revised
28 Statutes the words "Bureau of Liquor Enforcement" appear or
30 reference is made to those words, they are amended to read and
 mean "Bureau of Liquor and Tobacco Enforcement," and the Revisor
 of Statutes shall implement this revision when updating,
 publishing or republishing the statutes.

32 **Sec. 18. Maine Revised Statutes amended; Bureau of Alcoholic**
34 **Beverages; revision clause.** Wherever in the Maine Revised Statutes
36 the words "Bureau of Alcoholic Beverages" appear or reference is
38 made to those words, they are amended to read and mean "Bureau of
 Alcoholic Beverages and Tobacco Sales," and the Revisor of
 Statutes shall implement this revision when updating, publishing
 or republishing the statutes.

40 **Sec. 19. Maine Revised Statutes amended; liquor enforcement**
42 **officer; revision clause.** Wherever in the Maine Revised Statutes the
44 words "liquor enforcement officer" appear or reference is made to
46 those words, they are amended to read and mean "liquor and
 tobacco enforcement officer," and the Revisor of Statutes shall
 implement this revision when updating, publishing or republishing
 the statutes.

R. of S.

COMMITTEE AMENDMENT "A" to S.P. 506, L.D. 1344

Sec. 20. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1992-93

PUBLIC SAFETY, DEPARTMENT OF

Liquor and Tobacco Enforcement

Positions	(2.0)
Personal Services	\$62,214
All Other	16,866
Capital Expenditures	36,554

Provides funds for 2 Liquor and Tobacco Enforcement Officer positions and related expenses.

DEPARTMENT OF PUBLIC SAFETY

TOTAL

\$115,634

Sec. 21. Allocation. The following funds are allocated from Alcoholic Beverages Fund to carry out the purposes of this Act.

1992-93

ADMINISTRATIVE AND FINANCIAL SERVICES,
DEPARTMENT OF

Bureau of Alcoholic Beverages

Positions	(2.0)
Personal Services	\$61,490
All Other	10,000
Capital Expenditures	3,720

Provides funding for a Clerk Typist III position and a Clerk Typist II position and computer hardware and programming to assist in the collection of tobacco license fees. This allocation will reduce General Fund revenue by \$75,210.

DEPARTMENT OF ADMINISTRATIVE AND
FINANCIAL SERVICES

TOTAL

\$75,210

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FISCAL NOTE

1992-93

APPROPRIATIONS/ALLOCATIONS

General Fund

\$115,634

REVENUES

General Fund

\$124,790

Tobacco license fees will increase General Fund revenue by \$200,000 in fiscal year 1992-93. However, the Bureau of Alcoholic Beverages will require allocations from the Alcoholic Beverages Fund of \$75,210 in fiscal year 1992-93 to administer the collection of these license fees. This allocation will reduce General Fund revenue by the same amount. The net increase in General Fund revenue will be \$124,790 in fiscal year 1992-93.

The General Fund appropriation of \$115,634 in fiscal year 1992-93 is provided to the Bureau of Liquor and Tobacco Enforcement for 2 Liquor and Tobacco Enforcement Officers and related expenses.

The additional workload and administrative costs associated with the minimal number of new cases filed in the court system will be absorbed within the budgeted resources of the Judicial Department. The collection of additional fines may also increase General Fund revenue by a minor amount.

Sentences imposed for Class E offenses must be served in a county jail facility. The additional costs to the counties for housing each person sentenced under this new crime represent a state mandate which must be reimbursed pursuant to the Maine Revised Statutes, Title 30-A, section 5684. The General Fund appropriations required to reimburse these costs can not be estimated at this time. The cost per sentence for a Class E crime is \$4,020 based upon an average length of stay of 67 days.

The Bureau of Health within the Department of Human Services will be able to absorb the costs of preparing educational programs utilizing existing resources.

The Department of the Attorney General will be able to absorb the costs of appearing in administrative court to handle license revocation cases.'

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STATEMENT OF FACT

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The amendment replaces the bill. It retains the requirement that retail tobacco sellers obtain a license from the Bureau of Alcoholic Beverages and Tobacco Sales, but deletes the requirement that retail clerks obtain permits to sell tobacco products. The amendment imposes a licensing requirement on tobacco distributors and wholesalers. The amendment also repeals the licensing requirements December 1, 1994 and requires the Bureau of Liquor and Tobacco Enforcement to submit a report on the operation of the licensing law to the joint standing committee having jurisdiction over legal affairs matters by January 30, 1994.

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The amendment also changes the provisions of the bill related to cigarette vending machines. The bill prohibited the sale of cigarettes in vending machines. The amendment allows the sale of cigarettes through vending machines, but requires the vending machines to be licensed, and provides for revocation or suspension of the machine license if cigarettes are sold to minors through the machine. The amendment imposes license fees on distributors, wholesalers and machine operators, as well as on retail licensees, to help pay for additional officers to enforce the liquor and tobacco laws. The amendment also prohibits the sale of cigarettes in vending machines if the machine also sells products other than cigarettes. The restrictions that apply to cigarettes apply also to other tobacco products.

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The amendment provides a penalty for minors who misrepresent their age by producing fraudulent identification in order to purchase tobacco products. The penalty would be a warning, a fine of between \$10 and \$50 or up to 10 hours of community service.

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The amendment requires the Bureau of Health, which has recently received federal money to aid in smoking prevention for minors, to work with the Bureau of Liquor and Tobacco Enforcement to develop programs to educate tobacco sellers, minors and the general public about the laws prohibiting sale to and purchase by minors and the consequences of violating those laws.

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Reported by the Minority for the Committee on Legal Affairs.
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