

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1344

S.P. 506

In Senate, March 28, 1991

Reference to the Committee on Legal Affairs suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator CLARK of Cumberland
Cosponsored by Representative PENDLETON of Scarborough.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND NINETY-ONE

An Act to Protect Children from Illegal Tobacco Sales.



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

2

4 **Sec. 1. 5 MRSA §281, 3rd ¶**, as enacted by PL 1987, c. 402, Pt. A, §11, is amended to read:

6 The department shall coordinate financial planning and
8 programming activities of departments and agencies of the State
10 Government for review and action by the Governor, prepare and
12 report to the Governor and to the Legislature financial data and
14 statistics and administer under the direction of the State Liquor
16 Commission the laws relating to legalized alcoholic beverages
 ~~within~~ and retail tobacco sales in this State. The department
 shall consist 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.

18 **Sec. 2. 5 MRSA §283, sub-§6**, as amended by PL 1985, c. 785,
20 Pt. A, §27, is further amended to read:

22 **6. Bureau of Alcoholic Beverages and Tobacco Sales.** The
24 Bureau of Alcoholic Beverages and Tobacco Sales, the head of
 which shall be the State Director of Alcoholic Beverages and
 Tobacco Sales; and

26 **Sec. 3. 5 MRSA §939, sub-§1, ¶E**, as enacted by PL 1983, c.
28 729, §4, is amended to read:

30 E. Director, Bureau of Alcoholic Beverages and Tobacco
 Sales;

32 **Sec. 4. 5 MRSA §948, sub-§1, ¶B**, as enacted by PL 1983, c.
34 729, §4, is amended to read:

36 B. Director, Bureau of Liquor and Tobacco Enforcement;

38 **Sec. 5. 22 MRSA §1579, sub-§3**, as enacted by PL 1989, c. 445,
40 §8, is amended to read:

42 **3. Display of prohibition against sales to minors.** All
44 dealers and distributors of tobacco products shall post notice of
46 this section prohibiting tobacco sales to persons under the age
48 of 18 years. Notices shall be publicly and conspicuously
 displayed in the dealers' or distributors' places of business in
 letters at least 3/8 inches high. Signs required by this section
 may be provided at cost by the Bureau of Liquor and Tobacco
 Enforcement. Any person who violates this subsection commits a
 civil violation for which a forfeiture of not less than \$50 nor
 more than \$200 may be adjudged for any one offense.

50

52 **Sec. 6. 22 MRSA §1580-E** is enacted to read:

2 **§1580-E. Retail tobacco sales licensing**

4 **1. Retail tobacco license.** It is unlawful for any person,
6 partnership or corporation that engages in retail sales or in
8 free distribution of tobacco products to sell, keep for sale or
10 give away in the course of trade any tobacco products to anyone
12 without first obtaining a retail tobacco license from the State
14 Liquor Commission in accordance with Title 28-A, chapter 102,
16 subchapter I.

18 **2. Retail tobacco clerk's permit.** It is unlawful for any
20 employee or agent of a retail tobacco vendor licensed under
22 subsection 1 to sell or give away in the course of employment any
24 tobacco products to anyone without first obtaining a retail
26 tobacco clerk's permit as provided in Title 28-A, chapter 102,
28 subchapter I.

30 **3. Violation; penalty.** Imposition of penalties for
32 violation of this section must be in accordance with Title 28-A,
34 chapter 102, subchapter II.

36 **4. Enforcement.** The Bureau of Liquor and Tobacco
38 Enforcement within the Department of Public Safety shall enforce
40 this section.

42 **Sec. 7. 22 MRSA §1628, sub-§2,** as amended by PL 1989, c. 445,
44 §9, is further amended to read:

46 **2. Violation.** It is unlawful for any person, firm or
48 corporation to knowingly distribute or sell cigarettes by the use
50 of a vending machine ~~to minors or in a location other than a~~
52 ~~location that is at all times under direct supervision by an~~
~~adult during the hours the machine is accessible.~~

54 **Sec. 8. 25 MRSA Pt. 10,** as enacted by PL 1987, c. 45, Pt. A,
56 §2, is amended to read:

58 **PART 10**

60 **BUREAU OF LIQUOR AND TOBACCO ENFORCEMENT**

62 **CHAPTER 451**

64 **BUREAU OF LIQUOR AND TOBACCO ENFORCEMENT**

66 **§3901. Bureau of Liquor and Tobacco Enforcement**

68 **1. Bureau of Liquor and Tobacco Enforcement.** The
70 enforcement division of the State Liquor Commission shall be is
72 the Bureau of Liquor and Tobacco Enforcement within the

2 Department of Public Safety, as created in this chapter.
3 Notwithstanding any other provisions of law, the Department of
4 Public Safety is responsible for the enforcement of the liquor
5 laws, the retail tobacco sale laws and the rules of the
6 commission.

7
8 2. **Director.** The Commissioner of Public Safety shall
9 appoint as ~~Director~~ director of the bureau a person experienced
10 in law enforcement or enforcement of liquor and tobacco laws, who
11 may be removed for cause by the commissioner.

12 A. The director, subject to the Civil Service Law, may
13 appoint as many liquor and tobacco enforcement officers as
14 may be found necessary. The liquor and tobacco enforcement
15 officers ~~shall--be~~ are under the direct supervision and
16 control of the director.

17 3. **Eligibility.** The director and the employees of the
18 bureau are subject to the same eligibility requirements of Title
19 28-A, section 52.

20
21 **§3902. Enforcement powers**

22
23 1. **Enforcement duties.** A liquor and tobacco enforcement
24 officer appointed under section 3901 shall enforce the provisions
25 of Title 17, chapter 69, Title 28-A and of Title 29, section 2182.

26
27 2. **Enforcement powers.** For the purpose of enforcing the
28 provisions referenced in subsection 1, a liquor and tobacco
29 enforcement officer has the same powers throughout the several
30 counties of the State as sheriffs have in their respective
31 counties to investigate and prosecute violations, to execute
32 warrants, to serve process and to arrest offenders.

33
34 3. **Other crimes.** In addition to the powers granted in
35 subsection 2, a liquor and tobacco enforcement officer may arrest
36 without a warrant any person who has committed or is committing
37 any other crime in the officer's presence. An arrest made under
38 this subsection must be made at the time of the criminal conduct
39 or within a reasonable time. An arrest under this subsection may
40 be made only by a liquor and tobacco enforcement officer who has
41 completed the basic training course for liquor and tobacco
42 enforcement officers at the Maine Criminal Justice Academy or for
43 whom that basic training course or a portion of that course has
44 been waived by the board of trustees of the academy because of
45 successful completion of equivalent training.

46
47 **Sec. 9. 28-A MRSA §2, sub-§§6 and 14, as enacted by PL 1987, c.**
48 **45, Pt. A, §4, are amended to read:**

49
50 6. **Bureau.** "Bureau" means the Bureau of Alcoholic
51 Beverages and Tobacco Sales within the Department of Finance.
52

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

6 **Sec. 10. 28-A MRSA §2, sub-§22-A** is enacted to read:

8 **22-A. Permittee.** "Permittee" means the holder of a tobacco
10 clerk's permit issued in accordance with chapter 102, subchapter
I.

12 **Sec. 11. 28-A MRSA §2, sub-§27,** as amended by PL 1987, c. 342,
14 §11, is further amended to read:

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

22 A. "Off-premise retail licensee" means a person licensed to
24 sell tobacco products or liquor in sealed bottles,
containers or original packages to be consumed or smoked off
26 the premises where sold.

28 B. "On-premise retail licensee" means a person licensed to
30 sell tobacco products or liquor to be consumed or smoked on
the premises where sold.

32 **Sec. 12. 28-A MRSA §2, sub-§32-A** is enacted to read:

34 **32-A. Tobacco clerk.** "Tobacco clerk" means a person
36 employed by a tobacco retailer whose duties include the sale or
free distribution of tobacco products.

38 **Sec. 13. 28-A MRSA §12,** as enacted by PL 1987, c. 45, Pt. A,
40 §4, is amended to read:

42 **§12. Inspection of premises**

44 No licensee may refuse the commission, its representatives
or representatives of the Bureau of Liquor and Tobacco
46 Enforcement the right at any time to inspect the entire licensed
premises or to audit the books and records of the licensee.

48 **Sec. 14. 28-A MRSA §51,** as amended by PL 1989, c. 503, Pt. B,
50 §117, is further amended to read:

52 **§51. Administration; enforcement**

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

6 2. Enforcement by Bureau of Liquor and Tobacco
Enforcement. The Bureau of Liquor and Tobacco Enforcement within
8 the Department of Public Safety, as established by Title 25,
section 3901, shall enforce the state liquor and retail tobacco
10 sales laws.

12 Sec. 15. 28-A MRSA §§52 and 53, as enacted by PL 1987, c. 45,
Pt. A, §4, are amended to read:

14 §52. Eligibility of members and employees

16 No A person is not eligible for appointment as a member of
18 the State Liquor Commission, as an employee of the commission,
the Bureau of Alcoholic Beverages and Tobacco Sales or the Bureau
20 of Liquor and Tobacco Enforcement, in any capacity, including the
director, who:

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

28 2. Violation of state or federal law. Has been convicted
or adjudicated guilty of violating any state or federal law
30 regulating the manufacture, sale or transportation of liquor or
tobacco.

32 §53. Conflict of interest

34 In addition to the limitations of Title 5, section 18, any a
36 member of the commission or any an employee of the commission,
the bureau or the Bureau of Liquor and Tobacco Enforcement, may
38 not accept directly or indirectly any samples, gratuities, favors
or anything of value from a manufacturer, wholesaler, wholesale
40 licensee or retail licensee or any a representative of a
manufacturer, wholesaler, wholesale licensee or retail licensee
42 under circumstances which might reasonably be construed as
influencing or improperly relating to past, present or future
44 performance of his official duties.

46 Sec. 16. 28-A MRSA §61, sub-§5, as enacted by PL 1987, c. 45,
Pt. A, §4, is amended to read:

48 5. Public meetings. The commission may hold public
50 meetings each year at various locations within in the State for
the purpose of outlining operations under the liquor laws and the

2 retail tobacco sales laws, receiving suggestions and
disseminating information to the public.

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

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

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

14 1. **Supervision of the Bureau of Alcoholic Beverages and
Tobacco Sales.** To supervise and direct the Director of the
16 Bureau of Alcoholic Beverages and Tobacco Sales relating to all
phases of the merchandising of liquor through state liquor stores
18 and agency liquor stores;

20 2. **General supervision.** To have general supervision of
manufacturing, importing, storing, transporting and sale of all
22 liquor;

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

34 4. **Purchase, transportation and sale of liquor.** To control
and supervise the purchase, importation, transportation and sale
36 of liquor;

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

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

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

4 8. **Prevent sale to minors and others.** To prevent the sale
of liquor by licensees to minors, to intoxicated persons and to
6 interdicted persons and to prevent retail sales of tobacco
products to minors;

8 9. **Act as review board.** To act as a review board and on
10 all appeals from the decisions of municipal officers. Except as
provided by section 805, the decisions of the commission shall-be
12 are final. All decisions of the commission acting as a review
board must be approved by at least 2 members;

14 10. **Hearings.** An individual member of the commission may
16 conduct hearings in any matter pending before the commission. He
The member shall, after holding the hearing, file with the
18 commission all papers connected with the case, a transcript of
all the testimony and a report of his the member's findings. The
20 commission shall review the evidence and examine all papers and
the findings of the individual member of the commission before
22 rendering its decision;

24 11. **Oaths; subpoenas; witnesses.** Any member of the
commission may administer oaths and issue subpoenas for witnesses
26 and subpoenas duces tecum to compel the production of books and
papers relating to any question in dispute before the commission
28 or to any matter involved in a hearing. Witness fees in all
proceedings shall-be are the same as for witnesses before the
30 Superior Court and shall-be are paid by the commission, except
that, notwithstanding Title 16, section 253, the commission is
32 not required to pay the fees before the travel and attendance
occur; and

34 12. **Food servicing organizations.** To adopt rules and
36 requirements permitting food servicing organizations catering to
passengers on international flights to purchase wine and malt
38 liquor from wholesale outlets or distributors, provided that the
wine and malt liquor are resold for consumption during
40 international travel.

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

46 B. Food servicing organizations are not subject to section
48 2, subsection 15.

50 **Sec. 18. 28-A MRSA §63, sub-§1,** as enacted by PL 1987, c. 45,
Pt. A, §4, is amended to read:

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

Sec. 19. 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. 20. 28-A MRSA c. 3, sub-c. III, as enacted by PL 1987, c.
45, Pt. A, §4, is amended to read:

SUBCHAPTER III

BUREAU OF ALCOHOLIC BEVERAGES AND TOBACCO SALES

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

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

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

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

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

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

1. **Administration of the bureau.** The Director of the 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 shall ~~have~~ has general charge of the office and records.

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

3. **Power to hire personnel and make expenditures.** The 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, and may make expenditures necessary to carry out the purposes of this Title.

Sec. 21. 28-A MRSA §124, sub-§3, as enacted by PL 1987, c. 45, Pt. A, §4, is amended to read:

3. **Existing licenses.** The holder of any license issued and outstanding on the effective date of the local option vote which denies issuance of that type of license and specifically indicates that the existing privilege is to be voided shall immediately surrender it to the Bureau of Alcoholic Beverages and Tobacco Sales. The bureau shall refund that portion of the unused fee paid.

Sec. 22. 28-A MRSA §201, 2nd ¶, as enacted by PL 1987, c. 45, Pt. A, §4, is amended to read:

The Bureau of Alcoholic Beverages and Tobacco Sales shall compensate the Maine Turnpike Authority for the full cost of erecting the guidepost.

2 **Sec. 23. 28-A MRSA §601-A**, as enacted by PL 1989, c. 526,
§§2 and 28, is amended to read:

4 **§601-A. Examination of new applicants**

6 The Bureau of Liquor and Tobacco Enforcement shall
8 investigate the feasibility of developing an examination to be
10 administered to new applicants for retail liquor licenses that
12 will enable the applicants to demonstrate knowledge of the liquor
laws and rules. The bureau shall report its findings to the
joint standing committee of the Legislature having jurisdiction
over legal affairs no later than January 31, 1990.

14 **Sec. 24. 28-A MRSA §703-A**, as enacted by PL 1989, c. 526,
§§3 and 28, is amended to read:

16 **§703-A. Prohibition of employment of violators as**
18 **retail employees**

20 1. **Employment prohibited.** No A retail licensee may not
22 employ a person as a retail employee if that person, within 5
24 years of the date of that person's application for employment,
has been convicted of violating section 2078 or section 2081,
subsection 1, paragraph A or B.

26 2. **Affidavit required.** Retail licensees shall require a
28 person applying for employment as a retail employee to furnish to
30 the licensee an affidavit stating that the applicant has not been
32 convicted of violating section 2078 or section 2081, subsection
34 1, paragraph A or B, within 5 years of the date of the
affidavit. The affidavit must be executed at the time of
application. The Bureau of Liquor and Tobacco Enforcement shall
develop the affidavit required by this section and make single
copies of that affidavit available to retailers.

36 **Sec. 25. 28-A MRSA §754**, as enacted by PL 1987, c. 45, Pt. A,
§4, is amended to read:

38 **§754. Records open for inspection**

40 1. **Records open for inspection.** All records required to be
42 kept under this chapter are open for inspection to the
44 commission, its representatives or representatives of the Bureau
46 of Liquor and Tobacco Enforcement at any time. The commission,
its representatives or representatives of the Bureau of Liquor
and Tobacco Enforcement may make copies of records which may be
used as evidence of violation of this chapter.

48 2. **Refusal of access.** No A licensee may not refuse to
50 allow the commission, its representatives or representatives of
52 the Bureau of Liquor and Tobacco Enforcement to audit the books
and records of the licensee.

2 **Sec. 26. 28-A MRSA §803, sub-§1**, as amended by PL 1987, c.
342, §51, is further amended to read:

4
6 **1. Violation of law or rule.** Upon discovering a violation
of federal or state law, rule or regulation relating to liquor,
8 or an infraction of a rule issued by the commission, the Director
of the Bureau of Liquor and Tobacco Enforcement, or the
director's designee, shall:

10 A. Report the violation to the Administrative Court Judge
12 in a signed complaint; or

14 B. Issue warnings to the licensees involved.

16 **Sec. 27. 28-A MRSA §803, sub-§2, ¶¶A and D**, as enacted by PL
1987, c. 45, Pt. A, §4, are amended to read:

18 A. The Administrative Court Judge shall notify the licensee
20 by serving on ~~him~~ the licensee a copy of the complaint and a
notice stating the time and place of the hearing and that he
22 the licensee may appear in person or by counsel at the
hearing. Service of the complaint and hearing notice is
24 sufficient if sent by registered or certified mail at least
7 days before the date of the hearing to the address given
26 by the licensee at the time of his the licensee's
application for a license.

28 D. The Administrative Court Judge shall state in writing
30 his the judge's findings and decision in each case, based
upon the facts, the law and the rules of the commission.
32 The findings shall specify the facts found and the law or
rules found to be violated.

34 **Sec. 28. 28-A MRSA §803, sub-§5**, as enacted by PL 1987, c. 45,
36 Pt A, §4, is amended to read:

38 **5. Term of suspension or revocation.** Except as provided by
section 802, subsection 3, suspensions must be for a definite
40 period of time. If the Administrative Court Judge revokes a
license, he the judge shall specify that the commission may not
42 issue a license to the person whose license is revoked for a
period of not less than one nor more than 5 years from the date
44 of such revocation.

46 **Sec. 29. 28-A MRSA §803, sub-§6**, as amended by PL 1987, c.
342, §54, is further amended to read:

48 **6. Warnings.** Upon the written recommendation of the
50 Director of the Bureau of Liquor and Tobacco Enforcement, or the
director's designee, the Administrative Court Judge, instead of
52 notifying a licensee against whom a complaint is pending to

2 appear for hearing, may send the licensee a warning. Warnings
3 must be sent by registered or certified mail and contain a copy
4 of the complaint. A licensee to whom a warning is sent may demand
5 a hearing by notifying the Administrative Court Judge by
6 registered or certified mail within 10 days from the date the
warning was mailed.

8 **Sec. 30. 28-A MRSA §803, sub-§9, ¶B,** as enacted by PL 1987, c.
9 45, Pt. A, §4, is amended to read:

10 B. The fine in lieu of suspension, when an offer in
11 compromise is accepted by the Administrative Court Judge,
12 ~~shall--be~~ is calculated in accordance with the following
13 formula:

14 (1) Fifty percent of the daily gross profit multiplied
15 by the number of license suspension days. Daily gross
16 profit ~~shall--be~~ is determined to be 1/30 of the total
17 gross receipts from the sale of liquor during the 30
18 business days immediately before the date of receipt of
19 the notice of the license suspension, less the invoice
20 cost of the liquor which was sold by the wholesale
21 licensee or certificate of approval holder during those
22 30 business days;

23 (2) No such fine, in any event, ~~shall~~ must be less
24 than \$75 for each day of license suspension; and

25 (3) The fine must not exceed \$1,500 for any one
26 offense.

27 **Sec. 31. 28-A MRSA §806, sub-§3,** as enacted by PL 1989, c.
28 526, §§6 and 28, is amended to read:

29 3. **Notice of violators.** The Administrative Court clerk
30 shall provide the Bureau of Liquor and Tobacco Enforcement with
31 the names and dates of final adjudication of all persons found in
32 violation of this Title or the rules of the commission.

33 **Sec. 32. 28-A MRSA §1070, sub-§4,** as amended by PL 1987, c.
34 342, §95, is further amended to read:

35 4. **Licensee must notify Bureau of Liquor and Tobacco**
36 **Enforcement.** The civic auditorium licensee shall give written
37 notice to the Bureau of Liquor and Tobacco Enforcement at least
38 24 hours before a function or event.

39 **Sec. 33. 28-A MRSA §1205, sub-§2,** as enacted by PL 1989, c.
40 488, is amended to read:

41 2. **Conditions on taste-testing activities.** The following
42 conditions apply to taste-testing activities under this section:
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- 2 A. ~~No-wine~~ Wine may not be served to persons who have not
4 yet attained the-age-of 21 years of age;
- 6 B. ~~No~~ A person may not be served more than a total of 5
8 ounces of wine;
- 10 C. ~~No~~ A person may not be charged a fee for any wine served
12 as part of a taste-testing activity;
- 14 D. ~~No~~ A person may not be served who is visibly intoxicated;
- 16 E. Taste testing shall ~~shall~~ must be limited to a designated area;
- 18 F. Taste testing shall ~~shall~~ must be conducted within the hours
20 of retail sale established in this Title;
- 22 G. The retail licensee must obtain the written permission
24 of the commission before conducting any taste-testing
26 activity;
- 28 H. A retail licensee may not conduct ~~no~~ more than one taste
30 testing per month;
- 32 I. Taste testing is not allowed in any municipality where
34 on-premise and off-premise sales are not allowed pursuant to
chapter 5;
- 36 J. The retail licensee must notify the Bureau of Liquor and
38 Tobacco Enforcement of the date and time scheduled for an
on-premise taste testing; and
- 40 K. The retail licensee must purchase all wine served at a
42 taste testing from a wholesale licensee.

36 **Sec. 34. 28-A MRSA §1351, sub-§1, as enacted by PL 1987, c.**
38 **45, Pt. A, §4, is amended to read:**

40 **1. Certificate of approval required.** All in-state
42 manufacturers, out-of-state manufacturers and out-of-state
wholesalers must obtain a certificate of approval from the Bureau
of Alcoholic Beverages and Tobacco Sales.

44 **Sec. 35. 28-A MRSA §2519, sub-§2, ¶B, as enacted by PL 1987,**
46 **c. 45, Pt. A, §4, is amended to read:**

48 **B.** A representative of the Bureau of Liquor and Tobacco
Enforcement;

50 **Sec. 36. 28-A MRSA §2520, as enacted by PL 1989, c. 526, §§26**
52 **and 28, is amended to read:**

2 **§2520. Liquor service education**

4 The Bureau of Liquor and Tobacco Enforcement shall provide
educational services regarding retail liquor sales as follows.

6 1. **Seminars.** The Bureau of Liquor and Tobacco Enforcement
shall, from time to time, conduct seminars throughout the State
8 to provide retailers and their employees with information on
changes in the laws governing retail sales of liquor.

10 2. **Informational signs.** The Bureau of Liquor and Tobacco
12 Enforcement shall develop informational signs which may be
located in retail establishments. These signs shall must outline
14 requirements of state law regarding proper identification for
retail sales and other information to enhance compliance with
16 state liquor laws.

18 3. **Legal pamphlet.** The Bureau of Liquor and Tobacco
Enforcement shall prepare a pamphlet summarizing state laws
20 governing retail liquor sales. The bureau shall make single
copies of this pamphlet available to retailers.

22 4. **Legislative review.** The Bureau of Liquor and Tobacco
24 Enforcement shall inform the joint standing committee of the
Legislature having jurisdiction over legal affairs of the manner
26 in which that agency intends to comply with this section no later
than January 31, 1990.

28 **Sec. 37. 28-A MRSA c. 102** is enacted to read:

30 **CHAPTER 102**

32 **RETAIL TOBACCO LICENSES**

34 **SUBCHAPTER I**

36 **RETAIL TOBACCO LICENSES AND PERMITS**

38 **§2601. Applications**

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

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

48 **§2602. Application procedure**

50 1. **License fee.** The fee for a retail tobacco license is
52 \$50 for retail outlets whose annual volume of tobacco sales is

2 less than 5,000 cartons; \$100 for retail outlets whose annual
4 volume of tobacco sales is 5,000 cartons or greater; and \$100 for
6 persons engaged in free distribution of tobacco products. The
8 applicant must enclose the fee with the application for the
10 license.

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

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

24 4. Multiple licenses. Any licensee applying for licenses
26 to operate more than one premises shall obtain a separate license
28 for each premises and shall pay the fee prescribed for the type
30 of license to be exercised at each premises.

32 §2603. Display of notices

34 1. Display of licenses. A licensee shall publicly display
36 the license on the premises to which the license applies.

38 2. Display of prohibition against sales to minors. All
40 licensees shall post notice of Title 22, section 1579,
42 prohibiting tobacco sales to minors. Notices must be publicly
44 and conspicuously displayed in the licensee's place of business
46 in letters at least 3/8 inches high. Signs required by this
48 section may be provided at cost by the Bureau of Liquor and
50 Tobacco Enforcement.

52 §2604. Notification of license expiration

1. Grace period upon license expiration. Except as
provided in subsection 3, a retail tobacco 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 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 retail tobacco licensee 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.

2 **§2605. Transfer of licenses; death; bankruptcy; receivership;**
4 **guardianship; corporations**

6 Except as otherwise provided in this section, no license or
8 any interest in a license may be sold, transferred, assigned or
10 otherwise subject to control by any person other than the
12 licensee. If the business or any interest in the business
14 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.

16 1. Transfer within same municipality. upon receipt of a
18 written application, the commission may transfer any retail
20 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.

22 2. Death, bankruptcy or receivership. In the case of
24 death, bankruptcy or receivership of any licensee, the executor
26 or administrator of the deceased licensee, the trustee or
28 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.

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

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

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

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

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

52 B. If a licensee dies, the following persons, with the
written approval of the commission, may continue to operate

2 under the license for not more than 60 days pending
3 appointment of a personal representative of the estate:

4 (1) The surviving spouse;

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

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

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

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

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

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

30 B. Penalties for violations apply to both guardians or
31 conservators and their managers in the same manner as
32 executors or administrators and their managers in subsection
34 2.

36 4. Sale of stock of a corporate licensee. Any sale or
37 transfer of stock of a corporate licensee that results in the
38 sale or transfer of more than 10% of the shares of stock of the
39 corporate licensee is considered a transfer within the meaning of
40 this section and a new license must be purchased.

42 5. Incorporation of licensee's business. The incorporation
43 of a licensee's business or a change in the form of incorporation
44 of a licensee's business is a transfer within the meaning of this
45 section.

46 6. Change in partnership. Addition or deletion of a
47 partner in a partnership is a transfer within the meaning of this
48 section.

50

2 7. Corporate merger or acquisition. The merger or
acquisition of a licensee that is incorporated is a transfer
4 within the meaning of this section.

6 **§2606. Violation; jurisdiction**

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

14 2. Jurisdiction. The Administrative Court, pursuant to the
Maine Administrative Procedure Act, Title 5, chapter 375, has
16 jurisdiction over violations of this chapter, in accordance with
subchapter II.

18 **§2607. Tobacco clerk's permit required**

20 1. Permit required. A person employed by a retail tobacco
22 licensee who engages in the sale of tobacco products must have a
valid tobacco clerk's permit issued in accordance with this
24 subchapter.

26 2. Licensee responsibility. A retail tobacco licensee may
not permit any person to engage in the sale of tobacco products
28 unless that person has a valid tobacco clerk's permit issued in
accordance with this subchapter.

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

38 **§2608. Characteristics of permit**

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

44 2. License not transferable. A tobacco clerk's permit may
46 not be used by any person other than the person to whom it is
issued.

48 **§2609. Permitting procedures**

50 1. Permits administered by licensees. The commission shall
52 supply forms for a tobacco clerk's permit to all retail tobacco

licensees. The licensee shall complete and retain a form for each person the licensee employs to engage in the retail sale of tobacco products. A copy of the permit must be given to the permittee.

2. Application contents. The application must contain:

A. The name and address of the permittee;

B. The date;

C. A statement, signed by the licensee, that the licensee has verified with the Bureau of Liquor and Tobacco 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 are effective on the date of issuance and remain in effect unless suspended or revoked.

§2610. Bureau of Liquor and Tobacco Enforcement records

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

§2611. Permittee information

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 a permittee's initial assignments.

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

- 2 A. The provisions of this chapter;
4 B. The provisions of Title 22, section 1579; and
6 C. Techniques for identifying underage purchasers of
8 tobacco products.

10 §2612. Violation; jurisdiction

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

24 2. Jurisdiction. The Administrative Court, pursuant to the
26 Maine Administrative Procedure Act, Title 5, chapter 375, has
28 jurisdiction over violation of this section, in accordance with
30 subchapter II.

32 §2613. Sale of tobacco products without a valid license

34 1. Penalties. Any person who engages in retail tobacco
36 sales or in free distribution of tobacco products in the ordinary
38 course of trade in this State without a valid license, or whose
40 employees or agents engage in retail tobacco sales or in free
42 distribution of tobacco products without a valid permit, commits
44 a Class B crime and, notwithstanding Title 17-A, section 4-A,
46 must be punished:

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

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

60 C. For all subsequent offenses by a fine of not less than
62 \$500 plus costs and the fine and costs may not be suspended.

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

78 §2614. Identification cards

2 A licensee or a permittee may refuse to sell tobacco to any
4 person who fails to display upon request an identification card
6 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.

8 SUBCHAPTER II

10 REVOCATION AND SUSPENSION

12 §2615. Jurisdiction of the Administrative Court

14 1. Jurisdiction. The Administrative Court, pursuant to the
16 Maine Administrative Procedure Act, Title 5, chapter 375, shall
18 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.

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

24 §2616. Causes for imposition of penalties

26 The Administrative Court may impose fines or revoke or
28 suspend licenses pursuant to sections 2612 and 2617. This
30 section does not require the Administrative Court to hold liable
32 licensees or permittees who sold tobacco products to minors who
furnished fraudulent proof of age.

34 §2617. Revocation or suspension procedure

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

44 A. Report the violation to the Administrative Court in a
46 signed complaint; or

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

50 2. Notice and hearing. Except as provided under subsection
52 6, upon receipt of a signed complaint prepared under subsection
1, paragraph A, the Administrative Court shall notify the
licensee or the permittee, or both, and hold a hearing according
to the following procedures.

A. The Administrative Court shall notify the licensee or
permittee, or both, by serving on the licensee or permittee
a copy of the complaint and a notice stating the time and

2 place of the hearing and that the licensee or permittee may
3 appear in person or by counsel at the hearing. Service of
4 the complaint and hearing notice is sufficient when sent by
5 registered or certified mail at least 7 days before the date
6 of the hearing to the address given by the licensee or
7 permittee at the time of application for a license or permit.

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

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

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

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

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

26 (3) The Administrative Court shall state in writing
27 the findings and decision in each case, based on the
28 facts, state laws and the rules of the commission. The
29 findings must specify the facts found and the laws or
30 rules found to be violated.

31 3. Suspension or revocation decision. The Administrative
32 Court shall issue the decision in writing within 12 days of the
33 hearing.

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

36 A. Suspend a penalty; or

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

38 5. Application of suspension or revocation. A suspension
39 or revocation applies to premises and persons in the following
40 manner.

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

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

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

11 D. In the case of a permittee, suspension or revocation
12 applies only to that individual's permit.

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

19 7. Warnings. Upon the written recommendation of the
20 Director of the Bureau of Liquor and Tobacco Enforcement, or the
21 director's designee, the Administrative Court, instead of
22 notifying a licensee or permittee against whom a complaint is
23 pending to appear for hearing, may send the licensee or permittee
24 a warning. Warnings must be sent by registered or certified mail
25 and contain a copy of the complaint. A licensee or permittee to
26 whom a warning is sent may demand a hearing by notifying the
27 Administrative Court by registered or certified mail within 10
28 days from the date the warning was mailed.

29 8. License subsequent to violation. If violations by a
30 licensee occur during one license term and remain undiscovered or
31 carry over into the next license term, pending investigation or
32 final disposition either in criminal courts or before the
33 Administrative Court, any license issued for a new license term
34 subsequent to the violation may be suspended or revoked by the
35 Administrative Court.

36 9. Fines. Notwithstanding any other provisions of this
37 Title, the Administrative Court may impose on a licensee a fine
38 of a specific sum of not less than \$50 nor more than \$1,500 for
39 any one offense and may impose on a permittee a fine of a
40 specific sum of not less than \$10 nor more than \$100. The fine
41 may be imposed instead of or in addition to any suspension or
42 revocation of a license.

43 A. The Administrative Court shall maintain a record of all
44 finances received by the court and shall pay the fines into the
45 General Fund by the 15th of each month.

2 **§2618. Record of proceedings and transcript**

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

10 **2. Notice to Bureau of Liquor and Tobacco Enforcement.** The
12 Administrative Court shall forward to the Bureau of Liquor and
14 Tobacco Enforcement notice of final disposition of all
16 proceedings conducted pursuant to this subchapter. The Bureau of
 Liquor and Tobacco Enforcement shall maintain these records for
 not less than 5 years.

18 **§2619. Appeal from decision of Administrative Court**

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

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

28 **(1) In the case of a license or permit revocation or**
30 **suspension, the effective date of the suspension or**
32 **revocation; or**

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

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

42 **2. Suspension or revocation suspended pending appeal.** The
44 operation of a suspension or revocation of a license or permit
46 imposed by the Administrative Court must be suspended, pending
48 judgment of the Superior Court, if the licensee or permittee
50 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 or permittee at the time of the
 application for a license or permit.

