

MAINE STATE LEGISLATURE

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LEGAL AND VETERANS AFFAIRS

Reported by: Senator MICHAUD of Penobscot for the Committee.

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**STATE OF MAINE
SENATE
117TH LEGISLATURE
FIRST REGULAR SESSION**

COMMITTEE AMENDMENT " A " to S.P. 306, L.D. 845, Bill, "An Act to Promote the Health of Maine's Children by Preventing Illegal Tobacco Sales"

Amend the bill by striking out the title and substituting the following:

'An Act to Reduce Tobacco Use by Juveniles'

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 §20002, sub-§3 is enacted to read:

3. Tobacco use by juveniles. To enforce the State's laws relating to the sale and use of tobacco products by juveniles and to coordinate state and local activities related to those provisions. The office shall take all necessary actions to ensure compliance with the Synar Act, 42 United States Code 300X-26, including the preparations of reports for the signature of the Governor. All law enforcement agencies, all state departments, including the Department of Public Safety and the Department of Human Services, and municipalities shall cooperate with the office in these efforts.

The office may enter into any contracts or agreements necessary or incidental to the performance of its duties under this section, subject to section 20005, subsection 6 and section 20005-A. The office shall provide or assist in the provision of voluntary training programs regarding the sales of tobacco products to juveniles.

2 **Sec. 2. 15 MRSA §3103, sub-§1, ¶C-1**, as enacted by PL 1989, c.
445, §1 is repealed.

4 **Sec. 3. 15 MRSA §3103, sub-§1, ¶D**, as amended by PL 1989, c.
6 445, §2, is further amended to read:

8 D. If a juvenile is adjudicated to have committed an action
10 described in paragraph B, or C ~~or~~ C-1 willful refusal to pay
a resulting fine or willful violation of the terms of a
12 resulting probation;

12 **Sec. 4. 15 MRSA §3103, sub-§2**, as amended by PL 1989, c. 741,
14 §2, is further amended to read:

16 **2. Dispositional powers.** All of the dispositional powers of
18 the Juvenile Court provided in section 3314 shall apply to a
juvenile who is adjudicated to have committed a juvenile crime,
20 except that no commitment to the Maine Youth Center or other
detention may be imposed for conduct described in subsection 1,
22 paragraphs B, and C ~~and~~ C-1.

22 **Sec. 5. 15 MRSA §3105-A, sub-§2, ¶C**, as amended by PL 1989, c.
24 445, §3, is further amended to read:

26 C. A prosecution for conduct specified in section 3103,
28 subsection 1, paragraph B, C, ~~C-1~~, D, E or F shall must be
commenced within one year after it is committed.

30 **Sec. 6. 15 MRSA §3201, sub-§3**, as amended by PL 1989, c. 445,
32 §4, is further amended to read:

34 **3. Enforcement of other juvenile crimes.** A law enforcement
officer who has probable cause to believe that a juvenile crime,
36 as defined by section 3103, subsection 1, paragraph B, or C ~~or~~
C-1 has been committed may request that the juvenile provide the
38 officer with reasonably credible evidence of the juvenile's name,
address and age. The evidence may consist of oral representations
40 by the juvenile. If the juvenile furnishes the officer with
evidence of the juvenile's name, address and age and the evidence
42 does not appear to be reasonably credible, the officer shall
attempt to verify the evidence as quickly as is reasonably
44 possible. During the period the verification is being attempted,
the officer may require the juvenile to remain present for a
46 period not to exceed 2 hours.

48 After informing the juvenile of the provisions of this
subsection, the officer may arrest the juvenile for a crime
50 defined in section 3103, subsection 1, paragraph B, or C ~~or~~ C-1
if the juvenile intentionally refuses to furnish any evidence of

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2 the juvenile's name, address and age, or if, after attempting to
3 verify the evidence as provided for in this subsection, the
4 officer has probable cause to believe that the juvenile has
5 intentionally failed to provide reasonably credible evidence of
6 the juvenile's name, address and age.

7 **Sec. 7. 15 MRSA §3307, sub-§2, ¶B,** as amended by PL 1989, c.
8 445, §5, is further amended to read:

10 B. The general public shall ~~be~~ is excluded from all other
11 juvenile hearings and proceedings, except that a juvenile
12 charged with a juvenile crime that would constitute murder
13 or a Class A, Class B or Class C offense and with a juvenile
14 crime that would constitute a juvenile's first Class D
15 offense or Class E offense or with conduct described in
16 section 3103, subsection 1, paragraph B, C, ~~E-1,~~ D or E,
17 arising from the same underlying transaction may elect to
18 have all charges adjudicated in one hearing, and, ~~where~~ when
19 a juvenile does so elect, the general public shall is not be
20 excluded from that hearing.

22 **Sec. 8. 15 MRSA §3314, sub-§1, ¶G,** as amended by PL 1989, c.
23 445, §6, is further amended to read:

24 G. Except for a violation of section 3103, subsection 1,
25 paragraph D, the court may impose a fine, subject to Title
26 17-A, sections 1301 to 1305. For the purpose of this
27 section, juvenile offenses defined in section 3103,
28 subsection 1, paragraphs B, and C, ~~and C-1,~~ ~~shall be~~ are
29 deemed Class E crimes.
30

32 **Sec. 9. 22 MRSA c. 262-A** is enacted to read:

34 CHAPTER 262-A

36 RETAIL TOBACCO SALES

38 SUBCHAPTER I

40 RETAIL TOBACCO LICENSES

42 §1551. Definitions

44 As used in this chapter, unless the context otherwise
45 indicates, the following terms have the following meanings.

46 1. Cigarette paper. "Cigarette paper" means those papers
47 or paper-like products used to roll cigarettes, which by
48 advertising, design or use facilitate the use of tobacco or other
49 products for inhalation.
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2. Juvenile. "Juvenile" means any individual who is younger than 18 years of age.

3. Tobacco products. "Tobacco products" includes any form of tobacco and any material or device used in the smoking, chewing or other form of tobacco consumption, including cigarette papers and pipes.

4. Vending machine. "Vending machine" means any automated, self-service device that upon insertion of money, tokens or any other form of payment, dispenses cigarettes or any other tobacco product.

§1551-A. Retail tobacco sales license required

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 department, in accordance with this chapter.

2. Violation; penalty. Penalties for violation of subchapters I and II are in accordance with those subchapters.

3. Enforcement. The department shall enforce this chapter in cooperation with all law enforcement officers.

4. Publish laws and rules. Every 4 years the department shall publish a compilation of laws and rules concerning retail tobacco sales.

A. The department shall supply a copy of the compilation of laws and rules to every new tobacco retail sales licensee at no charge. The department may charge a reasonable fee for that compilation to cover the cost of producing the compilation to persons other than licensees.

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

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

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

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2 5. Report. The department shall report annually to the
3 Office of Substance Abuse the number of licenses granted, the
4 number of violations processed and the penalties imposed, and any
5 other information that the department and the office agree is
6 necessary to fulfill the reporting requirements of this chapter.

8 **§1552. Application procedure**

10 1. Application process; license fees. An applicant for a
11 one-time retail tobacco license shall file an application in the
12 form required by the department. The department shall make
13 provisions for applications under this section. The fee for a
14 one-time retail tobacco license is set by the department at the
15 actual cost of processing the application and issuing the
16 license, up to but not exceeding \$25. The applicant shall
17 enclose the fee with the application for the license.

18 2. Term of license. All retail tobacco licenses are valid
19 indefinitely unless suspended, revoked or not subject to the
20 transfer under section 1553. Licenses that have been suspended
21 or revoked may be reinstated, as permitted by the Administrative
22 Court decision issued under subchapter II, upon the receipt of an
23 application for reinstatement and payment of all penalties and an
24 application fee of \$25.

26 3. Multiple licenses. A licensee applying for licenses to
27 operate more than one premises or more than one vending machine
28 shall obtain a separate license for each premises and each
29 machine and shall pay the fee prescribed for each premises and
30 each machine.

32 4. Application fees. All application fees must be
33 deposited in a nonlapsing account to be used by the department to
34 defray administrative costs.

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

40 **§1552-A. Display of license; notices**

42 1. Display of licenses. A licensee shall publicly display
43 the license on the premises and on each machine to which the
44 license applies.

46 2. Display of prohibition against sales to juveniles. All
47 licensees shall post notice of the prohibition on tobacco sales
48 to juveniles pursuant to section 1555. Notices must be publicly
49 and conspicuously displayed in the licensee's place of business
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in letters at least 3/8 inches high. Signs required by this section must be provided at cost by the department. 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.

§1553. 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 subjected 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 send immediately to the department the license and a sworn statement showing the name and address of the purchaser.

1. Transfer within same municipality. Upon receipt of a written application, the department may transfer any retail tobacco license from one place to another within the same municipality. A transfer may not be made to a premises for which a license 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.

A. For the benefit of the estate of the deceased licensee, the personal representative, receiver or trustee of the estate may operate the premises alone or through a manager for one year from the date of appointment.

(1) A new license application must be submitted at the end of the one-year grace period.

(2) Within one year from the date of appointment, the original license becomes void and must be returned to the department for cancellation.

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

(4) A personal representative, receiver or trustee of an estate or a duly appointed manager may not operate under the license unless approved by the department.

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

10 (1) The surviving spouse;

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

18 (3) The sole heir of the deceased licensee; or

20 (4) A person designated by all of the heirs of the
22 deceased licensee.

24 C. When administration of the estate of a deceased licensee
26 is not contemplated, the surviving spouse or person
28 designated by all the heirs of the deceased licensee may
30 take over the license under the same conditions as are
32 provided for operation and transfer by an executor or an
34 administrator.

36 3. Guardian; conservator. A duly appointed and qualified
38 guardian or conservator of the estate of a licensee may take over
40 and operate any license of the ward of the deceased licensee for
42 a period not to exceed one year if the guardian or conservator or
44 the guardian or conservator's managers are approved by the
46 department.

48 A. A guardian or conservator must apply for a new license
on the ward's behalf within one year of the guardian's or
conservator's appointment, if the guardian or conservator
intends to continue to sell tobacco products.

B. Penalties for violations apply to both guardians or
conservators and guardians' or conservators' managers in the
same manner as to executors or administrators and guardians'
or conservators' managers in subsection 2, paragraph A,
subparagraph (3).

4. Transfers. The following changes in a licensee's
business are considered transfers under this section:

A. The sale or transfer of stock of a corporate licensee
that results in the sale or transfer of more than 10% of the
shares of stock of the corporate licensee;

B. The incorporation of a licensee's business or a change in the form of incorporation of a licensee's business;

C. The addition or deletion of a partner in a partnership; or

D. The merger or acquisition of a licensee that is incorporated.

§1553-A. Sales of tobacco products; vending machines

In addition to the tobacco license required in section 1551-A, the sale of cigarettes or any other tobacco product through a vending machine is subject to the following provisions.

1. Vending requirements. When the sale of cigarettes or any other tobacco product is made from a vending machine the following is required.

A. Only cigarettes or any other tobacco products may be dispensed by that machine.

B. A sign must be affixed conspicuously to the front of the machine. The sign must:

(1) Contain lettering that is at least 3/8 inches in height; and

(2) State the following: "WARNING. It is unlawful for any person under the age of 18 to purchase cigarettes in this State."

C. At all times during the hours the vending machine is accessible, it must be located within the unobstructed line of sight and under the direct supervision of an adult. That adult is responsible for preventing persons under 18 years of age from purchasing cigarettes or any other tobacco product from that vending machine.

This subsection does not apply to any vending machine located in an area where minors are not allowed by law or by policy of the owner of the premises.

2. Penalty. Any person, firm or corporation, in control of a facility in which a vending machine is located, who violates this section commits a civil violation for which a forfeiture of not less than \$100 nor more than \$500 may be adjudged or for which the person, firm or corporation may be prohibited for a period of not more than 6 months from having a cigarette vending machine located on the premises or both.

SUBCHAPTER II

PROHIBITED SALES, POSSESSION AND USE

§1554. Sale without a valid license; crime; penalty

Notwithstanding Title 17-A, section 4-A, 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 and is subject to the following penalties.

1. First offense. For the first offense, the penalty is a forfeiture of not less than \$300 plus court costs and not more than \$500 plus court costs. The forfeiture and costs may not be suspended. An additional penalty of not more than 30 days imprisonment may be imposed at the discretion of the court.

2. Second offense. For the 2nd offense, the penalty is a forfeiture of not less than \$500 plus court costs and not more than \$1,000 plus court costs. The forfeiture and costs may not be suspended. An additional penalty of not more than 60 days imprisonment may be imposed at the discretion of the court.

3. Subsequent offenses. For all subsequent offenses, the penalty is a forfeiture of not less than \$1,000 plus court costs and 60 days imprisonment. The forfeiture, court costs and sentence may not be suspended. An additional penalty of 4 months imprisonment may be imposed at the discretion of the court.

§1554-A. Sale of unpackaged cigarettes

1. Prohibition. A person may not sell cigarettes except in the original, sealed package in which they were placed by the manufacturer nor may a person sell cigarettes in smaller quantities than placed in the package by the manufacturer.

2. Penalty. A person who violates this section commits a civil violation for which a forfeiture of not less than \$10 nor more than \$100 may be adjudged. An employer of a person who violates this subsection commits a civil violation for which a forfeiture of not less than \$100 nor more than \$1,000 may be adjudged. In all cases of violations, the court shall impose a forfeiture that may not be suspended, except pursuant to Title 15, section 3314.

§1555. Sales of tobacco products to juveniles

1. Sale and distribution; penalty. A person may not knowingly sell, furnish, give away or offer to sell, furnish or give away cigarettes, cigarette paper or any other tobacco product to any person under 18 years of age. A person in the business of selling or otherwise distributing cigarettes, cigarette paper or other tobacco products for profit or an employee or agent of that person may not, in the course of that person's business, distribute free any cigarette, cigarette paper or other tobacco product to any person under 18 years of age in any place, including, but not limited to, a public way or sidewalk, public park or playground, public school or other public building or an entranceway, lobby, hall or other common area of a private building, shopping center or mall.

It is a civil violation for any person, firm or corporation to knowingly distribute or sell cigarettes or any other tobacco product from a vending machine to a person under 18 years of age. Violators are subject to the penalties established in this section.

A. Any person who violates this subsection commits a civil violation for which a fine of not less than \$50 nor more than \$1,500, plus court costs, may be adjudged for any one offense. Any employer of a person who violates this subsection commits a civil violation for which a fine of not less than \$50 nor more than \$1,500, plus court costs, may be adjudged. In all cases of violations, the court shall impose a fine that may not be suspended, except pursuant to Title 15, section 3314.

B. It is an affirmative defense to prosecution under this subsection that the defendant sold cigarettes, cigarette paper or any other tobacco product to a person under 18 years of age who furnished fraudulent proof of age.

2. Prohibition; false identification, purchase, possession and use by juveniles; forfeitures. It is unlawful for any person under 18 years of age to offer false identification in an attempt to purchase any tobacco products or to purchase, possess or use cigarettes, cigarette paper or any other tobacco product. Any person who violates this section commits a civil violation for which the following forfeitures may be adjudged.

A. For a first offense, a forfeiture of not less than \$100 and not more than \$300 may be imposed. The judge, as an alternative to or in addition to the forfeiture permitted by this subsection, may assign the violator to perform specified work for the benefit of the State, the municipality or other public entity or a charitable institution.

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2 B. For a 2nd offense, a forfeiture of not less than \$200
4 and not more than \$500 may be imposed. The judge, as an
6 alternative to or in addition to the forfeiture permitted by
8 this subsection, may assign the violator to perform
 specified work for the benefit of the State, the
 municipality or other public entity or a charitable
 institution.

10 C. For all subsequent offenses, a forfeiture of \$500 must
12 be imposed and that forfeiture may not be suspended. The
14 judge, in addition to the forfeiture permitted by this
16 subsection, may assign the violator to perform specified
 work for the benefit of the State, the municipality or other
 public entity or a charitable institution.

18 3. Display of prohibition; sales to juveniles. All dealers
20 and distributors of tobacco products shall post notice of this
22 section prohibiting tobacco and cigarette paper sales to persons
24 under 18 years of age. Notices must be publicly and
26 conspicuously displayed in the dealer's or distributor's places
 of business in letters at least 3/8 inches high. Signs required
 by this section may be provided at cost by the department. 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.

28 4. Enforcement. All law enforcement officers shall enforce
30 this section. A citizen may register a complaint under this
32 section with the law enforcement agency having jurisdiction. The
34 law enforcement agency may notify any establishment or
 individual subject to this section of all citizen complaints
 regarding that establishment or individual's alleged violation of
 this section and keep a record of that notification.

36 5. Distribution of fines. Fines collected pursuant to this
38 chapter must be deposited in a nonlapsing account to be used to
40 defray the costs of enforcing this section and credited as
 follows: 1/2 to the General Fund and 1/2 to the law enforcement
 agency that issued the summons.

42 §1555-A. Identification cards

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

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§1556. Municipal regulation

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Except as otherwise provided in this section, nothing in this chapter affects the authority of municipalities to enact ordinances or regulations that are more restrictive than this chapter. Municipalities are expressly prohibited from enacting ordinances and regulations regarding tobacco displays, product placement and the time of tobacco product sales after the effective date of this Act.

§1556-A. Enforcement

The provisions of this chapter may be enforced by law enforcement officers as defined by Title 17-A or by individuals hired by contract with the department to enforce this law.

1. Contract officers. The authority of contract officers hired under this chapter is limited to enforcement of this Act. Authorization to enforce this chapter is granted by the Commissioner of Public Safety, by terms mutually agreed upon between the department and the Department of Public Safety. Contract officers must have an appropriate background in law enforcement. Contract officers are exempt from ongoing training requirements except as otherwise determined by the Commissioner of Public Safety. These contract officers are not considered law enforcement officers for the purposes of enforcing the Maine Juvenile Code.

2. Enforcement of violations. Enforcement may be carried out by written summons pursuant to Title 17-A and also by complaint filed in either District Court or in Administrative Court. The District Court has jurisdiction over enforcement of civil violations and section 1555.

3. Injunction. If the person licensed to sell tobacco products has engaged in or is about to engage in any act or practice that violates this chapter, the Administrative Court may grant a permanent or temporary injunction, restraining order or other order as appropriate.

SUBCHAPTER III

FINES, REVOCATION AND SUSPENSION

§1557. Jurisdiction; Administrative Court

1. Jurisdiction. The Administrative Court, pursuant to the Maine Administrative Procedure Act, shall conduct hearings on all matters concerning violations by tobacco licensees of any state law related to tobacco sales. Notwithstanding Title 5, chapter

375, subchapter VI, the Administrative Court Judge has exclusive jurisdiction over all violations of this chapter by licensees and their agents when no criminal penalty is provided.

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

§1557-A. Imposition of penalties; causes

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

1. Violation of law or infraction of rule. Violation of state law or rule related to the sale of tobacco products; or

2. False material statement. Knowingly making a false material statement of fact in an application for licensure of the sale of tobacco products.

§1558. Revocation or suspension procedure

1. Violation of law or rule. Upon discovering a violation of state law or rule related to retail tobacco sales, the commissioner or the commissioner's designee shall:

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

B. Issue warnings to the licensees involved.

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

A. The Administrative Court shall notify the licensee by serving the licensee with a copy of the complaint and a notice that states the time and place of the hearing and that the licensee may appear in person or be represented by counsel at the hearing. Service of the complaint and hearing notice is sufficient when sent by registered or certified mail at least 7 days before the date of the hearing to the address given by the licensee at the time of application for a license.

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

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

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

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

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

18 (3) The Administrative Court shall state in writing
20 the findings and decision in each case based on the
22 facts, laws and rules cited in the complaint. The
 findings must specify the facts found and the laws or
 rules violated.

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

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

32 A. Suspend a penalty; or

34 B. Place a case on file instead of imposing a penalty.

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

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

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

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

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2 6. Term of suspension or revocation. Suspensions must be
for a definite period of time. If the Administrative Court
4 revokes a license, the court shall specify when the department
may reinstate a license to the person whose license is revoked.

6 7. Warnings. Upon the written recommendation of the
commissioner, or the commissioner's designee, the Administrative
8 Court, instead of notifying a licensee against whom a complaint
is pending to appear for hearing, may send the licensee a
10 warning. Warnings must be sent by registered or certified mail
and contain a copy of the complaint. A licensee to whom a
12 warning is sent may demand a hearing by notifying the
Administrative Court by registered or certified mail within 10
14 days from the date the warning was mailed.

16 8. Fines. Notwithstanding any other provisions of this
Title, the Administrative Court may impose on a licensee a fine
18 of a specific sum of not less than \$50 nor more than \$1,500 for
any one offense. The fine is independent of any forfeiture
20 adjudged and may be imposed instead of or in addition to any
suspension or revocation of a license.

22 A. The Administrative Court shall maintain a record of all
24 finances received by the court. Any fines received must be
deposited in a nonlapsing account and credited as follows:
26 1/2 to the General Fund to defray the administrative costs
of enforcing this section and 1/2 to law enforcement
28 agencies paid biannually by the 30th of January and July of
each calendar year. Annually, the court shall report to the
30 Office of Substance Abuse the total amount of fines
collected and to whom and in what amounts those fines
32 collected were dispersed.

34 **§1558-A. Record of proceedings; transcript**

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

42 2. Notice to department. The Administrative Court shall
44 forward to the department notice of final disposition of all
proceedings conducted pursuant to this subchapter. The
46 department shall maintain the records of the proceedings for at
least 5 years. Annually, the department shall report a summary
48 of the types and number of cases heard and the dispositions of
the cases to the Office of Substance Abuse.

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148

2 3. Notice to defendant. Notice of the decision of the
3 Administrative Court must be sent to the defendant by certified
4 mail to the address given by the licensee to the department.

6 **§1559. Appeal decision of Administrative Court**

8 1. Aggrieved person may appeal within 30 days. A person
9 aggrieved by the decision of the Administrative Court in imposing
10 any forfeiture or fine or in revoking or suspending a license
11 issued by the department or by refusal of the department to issue
12 a license applied for may appeal to the Superior Court by filing
13 a complaint within 30 days of the decision or refusal.

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

16 (1) The effective date of the suspension or revocation
17 in the case of a license revocation or suspension; or

18 (2) The day when the department sends notice of
19 refusal, by registered or certified mail, to the
20 applicant for a license in the case of refusal by the
21 department to issue a license.

24 B. Filing the complaint in Superior Court suspends the
25 running of the 30-day period.

26 2. Suspension or revocation suspended pending appeal. If
27 the licensee files an appeal in the Superior Court and notifies
28 the Administrative Court that the appeal has been filed within 7
29 days of the mailing of the decision of the Administrative Court
30 required in section 1558-A, subsection 3, the operation of a
31 suspension or revocation of a license imposed by the
32 Administrative Court must be suspended, pending judgment of the
33 Superior Court.

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

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

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

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Sec. 16. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

	1995-96	1996-97
HUMAN SERVICES, DEPARTMENT OF		
Health - Bureau of		
All Other	\$5,000	\$5,000
Allocates funds for the costs of administering retail tobacco sales licensure.		
DEPARTMENT OF HUMAN SERVICES		
TOTAL	\$5,000	\$5,000
JUDICIAL DEPARTMENT		
Tobacco Law Enforcement		
All Other	\$5,000	\$5,000
Allocates funds to authorize the distribution of 1/2 of fine revenue to law enforcement agencies.		
JUDICIAL DEPARTMENT		
TOTAL	\$5,000	\$5,000
TOTAL ALLOCATIONS	\$10,000	\$10,000

Sec. 17. Report. The Office of Substance Abuse in cooperation with the Department of Human Services shall submit interim reports to the joint standing committee of the Legislature having jurisdiction over legal affairs by March 30, 1996 and by January 30, 1997 regarding the operation of the tobacco education programs and other pertinent statistics. The reports must contain reliable information comparing the percentage of juveniles smoking in this State within 3 months of the effective date of this Act with the percentage of juveniles smoking in this State within 3 months of the reporting date.

Sec. 18. Educational programs. To the extent that funds are available, the Department of Human Services and the Office of Substance Abuse shall collaboratively coordinate, develop and implement programs to educate retailers, schools, retail clerks, juveniles and the general public about the laws relating to

COMMITTEE AMENDMENT

cigarette sales to, and purchases by, juveniles, the consequences of violating those laws and the consequences of using tobacco products. The Department of Human Services and the Office of Substance Abuse shall work in cooperation with the Department of Education, tobacco industry retailers and nonprofit health agencies, including, but not limited to, the Maine Lung Association and the American Cancer Society.

Sec. 19. Office of Substance Abuse; approval to hire project personnel. The Office of Substance Abuse is granted legislative approval to use federal block grant dollars to hire project personnel to conduct education in, and research on, tobacco use by juveniles. The Office of Substance Abuse is authorized to subcontract, with the Department of Human Services, to hire contract personnel for the department to enforce the tobacco laws.

Sec. 20. Application. During the first 6 months after the effective date of this Act, when a juvenile is summonsed for the purchase, possession or use of tobacco products, that summons is a warning and not subject to the fines established in the Maine Revised Statutes, Title 22. The Office of Substance Abuse shall make cigarette smoking and tobacco use cessation programs available throughout the State and send notices of those programs to local schools and public service agencies to make juveniles aware of the availability of those programs.'

Further amend the bill by inserting at the end before the statement of fact the following:

FISCAL NOTE

	1995-96	1996-97
APPROPRIATIONS/ALLOCATIONS		
General Fund	\$52,000	\$52,500
Other Funds	10,000	10,000
REVENUES		
Other Funds	\$10,000	\$10,000

This bill may significantly increase prosecutions for Class E and Class D crimes and civil violations. If a jail sentence is imposed for the Class E and D crimes, the additional costs to the counties are estimated to be \$83.22 per day per prisoner. These costs are not reimbursed by the State. The number of prosecutions that may result in a jail sentence and the resulting costs to the county jail system are expected to be insignificant.

2 One-half of the fine revenue collected will be deposited in
4 the General Fund. The other half will be dedicated revenue to be
6 distributed to law enforcement agencies. The Judicial Department
8 will require allocations to authorize the distribution of these
10 funds. Allocations of \$5,000 annually are included as base
12 allocations for this authorization. The actual amounts of
14 additional General Fund and dedicated revenues collected from
16 fines can not be estimated at this time.

18 The Judicial Department will require additional General Fund
20 appropriations of \$52,000 in fiscal year 1995-96 and \$52,500 in
22 fiscal year 1996-97 to fund the additional workload and
24 administrative costs in the court system associated with
26 additional criminal and civil cases and to administer and
28 distribute dedicated fine revenue.

30 The Department of Human Services will incur additional costs
32 associated with retail tobacco sales licensure and enforcement
34 requirements. The department is authorized to set a fee of up to
36 \$25 for a one-time retail tobacco license to defray the costs of
38 administration. This fee will generate dedicated revenue
40 primarily in fiscal years 1995-96 and 1996-97. The amounts of
42 dedicated revenue generated in subsequent fiscal years will be
44 minimal. The actual amounts of dedicated revenue can not be
46 estimated at this time. Allocations of \$5,000 annually in fiscal
48 years 1995-96 and 1996-97 are included as base allocations of
50 Other Special Revenue for expenditure authorization. These
additional costs will also be supported with available Federal
Block Grant allocations within the department and the Office of
Substance Abuse.

The additional costs to provide voluntary training programs
can be absorbed by the Office of Substance Abuse utilizing
existing budgeted resources.

The additional costs to enforce these provisions of this
bill can be absorbed by the Department of Public Safety utilizing
existing budgeted resources.'

STATEMENT OF FACT

The amendment replaces the bill. Retail tobacco sellers are
required to obtain a one-time license, which may be revoked or
suspended, from the Department of Human Services. It permits
municipalities to exercise home rule regarding retail tobacco
sales and smoking with some exceptions; existing municipal
ordinances are grandfathered.

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The amendment expands the prohibitions section relating to sales of cigarettes and tobacco products to juveniles, by making it unlawful for a juvenile to use fraudulent identification to obtain these products. It makes special provisions for citizen enforcement of the laws regulating the sales to juveniles by complaint to law enforcement officers.

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 license if cigarettes are sold to juveniles through a machine. The amendment also prohibits the sale of cigarettes in vending machines if the machine also sells products other than cigarettes. The amendment imposes a maximum license fee of \$25 on machines, as well as on retail licensees, and requires the Office of Substance Abuse to provide funds for contract enforcement officers, to be subcontracted through the Department of Human Services.

The amendment establishes procedures for license revocation and enforcement that are equivalent to those applicable to liquor licenses.

Currently, the purchase of tobacco products by a juvenile is a juvenile crime, but possession and use of tobacco products by juveniles are not crimes. The amendment makes the purchase, possession or use of cigarettes or other tobacco products by a juvenile a civil violation. For the first 6 months that these provisions are in effect, any summons issued for these violations is deemed to be a warning and is not punishable by forfeiture or community service. Thereafter, these violations are punishable by fines between \$100 and \$500, community service work or both. Fines collected are divided equally between the courts and law enforcement agencies.

The amendment requires the Bureau of Health, which has recently received federal money to aid in smoking prevention for juveniles, to work with the Office of Substance Abuse to develop programs to educate tobacco sellers, juveniles and the general public about the laws prohibiting tobacco products to be sold to or purchased by juveniles, the consequences of violating those laws and the consequences of using tobacco.

The Department of Corrections has prepared the following correctional impact statement for the original bill pursuant to the Maine Revised Statutes, Title 34-A, section 1402: "L.D. 845, An Act to Promote the Health of Maine's Children by Preventing

COMMITTEE AMENDMENT

12/18

COMMITTEE AMENDMENT "A" to S.P. 306, L.D. 845

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Illegal Tobacco Sales, would create a new Class E penalty. The projected cost of a county jail sentence for a Class E offense is \$5,576."

The amendment adds an appropriation and an allocation section. It also adds a fiscal note to the bill.

COMMITTEE AMENDMENT