

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 845

S.P. 306

In Senate, March 14, 1995

An Act to Promote the Health of Maine's Children by Preventing Illegal Tobacco Sales.

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

A handwritten signature in cursive script that reads "May M. Ross".

MAY M. ROSS
Secretary of the Senate

Presented by Senator PARADIS of Aroostook.

Cosponsored by Senators: ABROMSON of Cumberland, AMERO of Cumberland, BUSTIN of Kennebec, BUTLAND of Cumberland, CLEVELAND of Androscoggin, ESTY of Cumberland, FAIRCLOTH of Penobscot, FERGUSON of Oxford, GOLDTHWAIT of Hancock, HALL of Piscataquis, KIEFFER of Aroostook, LAWRENCE of York, LONGLEY of Waldo, LORD of York, McCORMICK of Kennebec, MICHAUD of Penobscot, MILLS of Somerset, PENDEXTER of Cumberland, PINGREE of Knox, RAND of Cumberland, RUHLIN of Penobscot, Representatives: ADAMS of Portland, AHEARNE of Madawaska, AULT of Wayne, BARTH of Bethel, BENEDIKT of Brunswick, BERRY of Livermore, BOUFFARD of Lewiston, BRENNAN of Portland, BUNKER of Kossuth Township, CAMERON of Rumford, CAMPBELL of Holden, CARLETON of Wells, CHASE of China, CHICK of Lebanon, CLUKEY of Houlton, DAVIDSON of Brunswick, DESMOND of Mapleton, DEXTER of Kingfield, DONNELLY of Presque Isle, DRISCOLL of Calais, ETNIER of Harpswell, FISHER of Brewer, FITZPATRICK of Durham, GERRY of Auburn, GOOLEY of Farmington, GOULD of Greenville, GREEN of Monmouth, GUERRETTE of Pittston, GWADOSKY of Fairfield, JOHNSON of South Portland, JOYNER of Hollis, KEANE of Old Town, KILKELLY of Wiscasset, KNEELAND of Easton, LaFOUNTAIN of Biddeford, LEMAIRE of Lewiston, LEMKE of Westbrook, LEMONT of Kittery, LOOK of Jonesboro, LOVETT of Scarborough, LUMBRA of Bangor, LUTHER of Mexico, MARTIN of Eagle Lake, MARVIN of Cape Elizabeth, MAYO of Bath, MERES of Norridgewock,

Additional cosponsors on next page

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MITCHELL of Portland, MORRISON of Bangor, MURPHY of Berwick, O'GARA of Westbrook, O'NEAL of Limestone, PEAVEY of Woolwich, PENDLETON of Scarborough, PERKINS of Penobscot, PINKHAM of Lamoine, PLOWMAN of Hampden, POIRIER of Saco, POULIOT of Lewiston, REED of Dexter, RICHARDSON of Portland, ROWE of Portland, SAMSON of Jay, SAVAGE of Union, SAXL of Bangor, SAXL of Portland, SHIAH of Bowdoinham, SIROIS of Caribou, SPEAR of Nobleboro, STEDMAN of Hartland, THOMPSON of Naples, TOWNSEND of Portland, TREAT of Gardiner, TRIPP of Topsham, TRUMAN of Biddeford, TYLER of Windham, UNDERWOOD of Oxford, VIGUE of Winslow, VOLENIK of Sedgwick, WATSON of Farmingdale, WHEELER of Bridgewater, WHITCOMB of Waldo, WINGLASS of Auburn.

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

2
4 **Sec. 1. 5 MRSA §281, last ¶**, as amended by PL 1991, c. 780, Pt. Y, §20, is further 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
18 ~~within and retail tobacco sales in this State.~~ The department
20 consists of the bureaus and organizations referenced in section
22 947-B, and the State Liquor Commission, ~~except the Bureau of~~
24 ~~Liquor Enforcement and the State Lottery Commission.~~

16 **Sec. 2. 5 MRSA §947-B, sub-§1, ¶D**, as enacted by PL 1991, c.
18 780, Pt. Y, §37, is amended to read:

20 D. Director, Bureau of Alcoholic Beverages, Tobacco Sales
22 and Lottery Operations;

22 **Sec. 3. 5 MRSA §948, sub-§1, ¶B**, as enacted by PL 1983, c.
24 729, §4, is amended to read:

26 B. Director Chief, Bureau of Liquor and Tobacco Enforcement;

28 **Sec. 4. 22 MRSA §1578-C** is enacted to read:

30 **§1578-C. Retail tobacco sales licensing**

32 **1. Retail tobacco license.** It is unlawful for any person,
34 partnership or corporation that engages in retail sales,
36 including retail sales through vending machines or in free
38 distribution of tobacco products, to sell, keep for sale or give
40 away in the course of trade any tobacco products to anyone
42 without first obtaining a retail tobacco license from the State
44 Liquor and Lottery Commission in accordance with Title 28-A,
46 chapter 102, subchapter I.

42 **2. Violation; penalty.** Penalties for violation of this
44 section must be in accordance with Title 28-A, chapter 102,
46 subchapter II.

44 **3. Enforcement.** The Department of Public Safety, Bureau of
46 Liquor and Tobacco Enforcement shall enforce this section in
48 cooperation with local law enforcement officers.

2 **Sec. 5. 22 MRSA §1579, sub-§§3-A and 5** are enacted to read:

4 **3-A. Prohibition; misrepresentation by minors; penalty.** It
6 is unlawful for any person under 18 years of age to misrepresent
8 that person's age by producing fraudulent identification for the
10 purpose of purchasing cigarettes or any other tobacco product. A
12 person who violates this subsection commits a civil violation for
which a warning may be issued or a forfeiture of not less than
\$10 nor more than \$50 may be adjudged for each violation. The
judge, as an alternative to the civil forfeiture permitted by
this section, may assign the violator to perform up to 10 hours
of specified community service work.

14 **5. Enforcement.** The Department of Public Safety, Bureau of
16 Liquor and Tobacco Enforcement, and local law enforcement
18 officers shall enforce this section. A citizen may register a
20 complaint under this section with the law enforcement agency
22 having jurisdiction. The law enforcement agency shall notify,
and keep a record of notification, any establishment or
individual subject to this section of all citizen complaints
regarding that establishment or individual's alleged violation of
this section.

24 **Sec. 6. 22 MRSA §1628, sub-§1**, as enacted by PL 1987, c. 127,
26 is amended to read:

28 **1. Definition.** For purposes of this chapter, "vending
30 machine" means any automated, self-service device which, that
upon insertion of money, tokens or any other form of payment,
dispenses cigarettes or any other tobacco product.

32 **Sec. 7. 22 MRSA §1628, sub-§2**, as repealed and replaced by PL
34 1993, c. 406, §1, is amended to read:

36 **2. Violation.** It is unlawful for any person, firm or
38 corporation to knowingly distribute or sell cigarettes or any
other tobacco product:

40 A. From a vending machine to a person under the age of 18
42 years; or

44 B. From any vending machine except for a vending machine:

46 (1) From which only cigarettes are dispensed;

48 (2) On which is affixed to the front of the machine a
50 conspicuously displayed sign with letters at least 1/2
inch in height stating: "WARNING: It is unlawful for
a person under the age of 18 to purchase cigarettes in
this State. (22 M.R.S.A. §1579)"; and

2 (3) That is in a location that is at all times during
3 the hours the machine is accessible within the
4 unobstructed line of sight and under direct supervision
5 of an adult during the hours the machine is accessible,
6 who is responsible for preventing persons under 18
7 years of age from purchasing cigarettes or other
8 tobacco products from that machine; and

10 (4) That is licensed under Title 28-A, chapter 102.

12 **Sec. 8. 25 MRSA Pt. 10, first 4 lines**, as enacted by PL 1987, c.
13 45, Pt. A, §2, are repealed and the following enacted in their
14 place:

16 **PART 10**

18 **BUREAU OF LIQUOR AND TOBACCO ENFORCEMENT**

20 **CHAPTER 451**

22 **BUREAU OF LIQUOR AND TOBACCO ENFORCEMENT**

24 **Sec. 9. 25 MRSA §3901**, as amended by PL 1993, c. 730, §§2 and
25 3, is further amended to read:

26 **§3901. Bureau of Liquor and Tobacco Enforcement**

28 **1. Bureau of Liquor and Tobacco Enforcement.** The
29 Department of Public Safety, Bureau of Liquor and Tobacco
30 Enforcement, as established in this chapter, is responsible for
31 the enforcement of the liquor laws and--rules--established
32 governing the manufacture, importation, storage, transportation
33 and sale of all liquor and, in cooperation with local law
34 enforcement officers, for the enforcement of the retail tobacco
35 sales laws and rules established under these laws.

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

40 **A.** The chief, subject to the Civil Service Law, may appoint
41 as many liquor and tobacco enforcement officers as
42 necessary. The liquor and tobacco enforcement officers are
43 under the direct supervision and control of the chief.

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

2 **Sec. 10. 28-A MRSA first 2 lines**, as enacted by PL 1987, c. 45,
Pt. A, §4, are repealed and the following enacted in their place:

4
6 **TITLE 28-A**

8 **LIQUOR AND TOBACCO**

10 **Sec. 11. 28-A MRSA §2, sub-§6**, as amended by PL 1993, c. 730,
§4, is further amended to read:

12 **6. Bureau.** "Bureau" means the Bureau of Liquor and Tobacco
Enforcement, which includes the Liquor Licensing and Tax
14 Division, within the Department of Public Safety.

16 **Sec. 12. 28-A MRSA §2, sub-§8-A**, as enacted by PL 1993, c.
730, §5, is amended to read:

18 **8-A. Chief.** "Chief" means the Chief of the Bureau of
20 Liquor and Tobacco Enforcement.

22 **Sec. 13. 28-A MRSA §2, sub-§14**, as enacted by PL 1987, c. 45,
Pt. A, §4, is amended to read:

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

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

32 **§51. Administration; enforcement**

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

40 **2. Enforcement by Bureau of Liquor and Tobacco**
Enforcement. The Department of Public Safety, Bureau of Liquor
42 and Tobacco Enforcement ~~within the Department of Public Safety,~~
as established by Title 25, section 3901, shall enforce the state
44 liquor and retail tobacco sales laws.

46 **Sec. 15. 28-A MRSA §52, sub-§1**, as enacted by PL 1987, c. 45,
Pt. A, §4, is amended to read:

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

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

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

Sec. 17. 28-A MRSA §62, first ¶, as amended by PL 1993, c. 730, §15, is further amended to read:

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

Sec. 18. 28-A MRSA §62-A, as enacted by PL 1993, c. 730, §21, is amended to read:

§62-A. Duties of the Bureau of Liquor and Tobacco Enforcement

The bureau shall establish policies and rules concerning the administration and the enforcement of the liquor and retail tobacco sales laws. The bureau shall:

1. General supervision. Supervise the manufacture, importation, storage, transportation and sale of all liquor and retail sales of tobacco products;

2. Rules. Adopt rules not inconsistent with this Title or other laws of the State for the administration, clarification, execution and enforcement of all laws concerning liquor and retail tobacco sales and to help prevent violations of those laws. The observance of these rules is a condition precedent to the issuing or renewing of any license to sell liquor or to sell tobacco products. The rules adopted by the State Liquor Commission prior to May 1, 1993 are adopted by the bureau;

3. Licensing. Issue and renew all licenses when provided for by this Title and hold licensing hearings;

4. Prevent sale to minors and others. Prevent the sale of liquor by licensees to minors and intoxicated persons;

2 **5. Act as a review board.** Act as a review board on all
3 appeals from the decisions of municipal officers. The bureau
4 shall appoint a hearings officer to conduct appeal hearings.
5 Except as provided in section 805, the decision of the chief is
6 final. The hearings officer for the bureau is the Director of
7 the Liquor and Tobacco Licensing and Tax Division.

8 The hearings officer may conduct hearings in any licensing matter
9 pending before the bureau. The hearings officer shall, after
10 holding the hearing, file with the bureau all papers connected
11 with the case and report the findings to the director. The
12 director shall render a final decision based upon the record of
13 the hearing.

14 The hearings officer may administer oaths and issue subpoenas for
15 witnesses and subpoenas duces tecum to compel the production of
16 books and papers relating to any license question in dispute
17 before the bureau or to any matter involved in a hearing.
18 Witness fees in all proceedings are the same as for witnesses
19 before the Superior Court and must be paid by the bureau, except
20 that, notwithstanding Title 16, section 253, the bureau is not
21 required to pay the fees before the travel and attendance occur;

22 **6. Food servicing organizations.** Adopt rules permitting
23 food servicing organizations that cater to passengers on
24 international flights and cruises to purchase wine and malt
25 liquor from wholesale outlets or distributors as long as the wine
26 and malt liquor are resold for consumption during international
27 travel. Food servicing organizations include ship chandlers as
28 long as the wine and malt liquor are resold to vessels of foreign
29 registry for consumption after those vessels have left port.
30 Food servicing organizations are not subject to section 2,
31 subsection 15; and

32 **7. Recommend revocation of licenses.** Recommend to the
33 Administrative Court that it suspend or revoke, in accordance
34 with sections 802, 803 and, 1503, 2622 and 2623, any license
35 issued pursuant to this Title or the rules adopted under this
36 Title.

37 **Sec. 19. 28-A MRSA §63, sub-§3,** as repealed and replaced by PL
38 1987, c. 342, §16, is amended to read:

39 **3. Publish laws and rules.** The Every 4 years, the
40 commission shall publish a compilation containing this Title,
41 other laws concerning liquor and, all rules adopted under this
42 Title every--4--years and a compilation of laws and rules
43 concerning retail tobacco sales.

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

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

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

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

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

18 **Sec. 20. 28-A MRSA Pt. 9** is enacted to read:

20
22 **PART 9**

24 **TOBACCO LICENSING**

26 **CHAPTER 102**

28 **TOBACCO LICENSES**

30 **SUBCHAPTER I**

32 **RETAIL TOBACCO LICENSES**

34 **§2601. Applications**

36 **1. File application with commission.** An applicant for a
37 retail tobacco license shall file an application in the form
38 required by the commission. The commission shall make provision
39 for joint applications under this section and section 651 for
40 establishments seeking both licenses.

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

46 **§2602. Application procedure**

48 **1. License fee.** The fee for a retail tobacco license is
49 \$20. The applicant must enclose the fee with the application for
50 the license.

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

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

10 4. Multiple licenses. A licensee applying for licenses to
12 operate more than one premises or more than one vending machine
14 shall obtain a separate license for each premises and each
 machine and shall pay the fee prescribed for each premises and
 each machine.

16 **§2603. Display of notices**

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

22 2. Display of prohibition against sales to minors. All
24 licensees shall post notice of Title 22, section 1579,
26 prohibiting tobacco sales to minors. Notices must be publicly
28 and conspicuously displayed in the licensee's place of business
 in letters at least 1/2 inch high. Signs required by this
 section may be provided at cost by the Department of Public
 Safety, Bureau of Liquor and Tobacco Enforcement.

30 **§2604. Notification of license expiration**

32 1. Grace period upon license expiration. Except as
34 provided in subsection 3, a retail tobacco licensee who
36 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 2607 for a period of
 7 days following the expiration date.

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

46 3. Illegal sales after expiration of grace period or after
48 notice. A retail tobacco licensee who continues to make sales of
50 tobacco products after receiving proper notification of the
 expired license may be charged with illegal sales under section
 2607.

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

4 Except as otherwise provided in this section, a license or
5 any interest in a license may not be sold, transferred, assigned
6 or otherwise subjected to control by any person other than the
7 licensee. If the business or any interest in the business
8 connected with a licensed activity is sold, transferred or
9 assigned, the license holder shall immediately send to the
10 commission the license and a sworn statement showing the name and
11 address of the purchaser. The commission is not required to
12 refund any portion of the license fee if the license is
13 surrendered before it expires.

14
15 **1. Transfer within same municipality.** Upon receipt of a
16 written application, the commission may transfer any retail
17 tobacco license from one place to another within the same
18 municipality. A transfer may not be made to a premises for which
19 a license could not have been originally legally issued.

20
21 **2. Death, bankruptcy or receivership.** In the case of
22 death, bankruptcy or receivership of any licensee, the executor
23 or administrator of the deceased licensee, the trustee or
24 receiver of the bankrupt licensee or the licensee in receivership
25 may retain the license for the remaining term of the license or
26 transfer the license without an additional fee.

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

31
32 (1) The license may be renewed upon the expiration
33 date at the regular license fee.

34
35 (2) If the license or renewed license is not
36 transferred within one year from the date of
37 appointment, the license becomes void and must be
38 returned to the commission for cancellation.

39
40 (3) Any suspension or revocation of the license by the
41 Administrative Court for any violation applies to the
42 manager or the personal representative, receiver or
43 trustee of the estate.

44
45 (4) A personal representative, receiver or trustee of
46 an estate or a duly appointed manager may not operate
47 under the license unless approved by the commission.
48

2 B. If a licensee dies, the following persons, with the
4 written approval of the commission, 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 no administration of the estate of a deceased
26 licensee is 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. Guardians and conservators.** Duly appointed and
38 qualified guardians and conservators of the estate of a licensee
40 may take over, operate and renew licenses of their wards during
42 their term of office if they or their managers are approved by
44 the commission.

46 A. Guardians and conservators may not transfer the licenses
48 of their wards licenses and shall renew the licenses each
50 year.

52 B. Penalties for violations apply to both guardians or
54 conservators and their managers in the same manner as to
56 executors or administrators and their managers in subsection
58 2.

60 **4. Sale of stock of a corporate licensee.** Any sale or
62 transfer of stock of a corporate licensee that results in the
64 sale or transfer of more than 10% of the shares of stock of the
66 corporate licensee is considered a transfer within the meaning of
68 this section.

70 **5. Incorporation of licensee's business.** The incorporation
72 of a licensee's business or a change in the form of incorporation
74 of a licensee's business is a transfer within the meaning of this
76 section.

2 6. Change in partnership. The addition or deletion of a
partner in a partnership is a transfer within the meaning of this
section.

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

8
10 **§2606. Information to retail clerks**

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

14
16 2. Schedule for information program. The information
program must take place prior to the employee's initial
assignments.

18
20 3. Information program contents. The information program
must include the following:

22 A. The provisions of this chapter;

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

26 C. Techniques for identifying underage purchasers of
tobacco products.

28
30 **§2607. Sale of tobacco products without a valid license**

32 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,
pursuant to Title 17-A.

36 **§2608. Identification cards**

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

44 **§2609. Municipal regulation**

46 This chapter does not prevent municipalities from enacting
ordinances or regulations more restrictive than the provisions of
this chapter, including but not limited to additional license
requirements and enforcement provisions.

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SUBCHAPTER II

REVOCATION AND SUSPENSION

§2621. Jurisdiction of the 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 federal regulation or state law related to tobacco sales.

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

§2622. Causes for imposition of penalties

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 any federal regulation or 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 the application for the license.

§2623. Revocation or suspension procedure

1. Violation of law or rule. Upon discovering a violation of a federal regulation or state law or rule related to retail tobacco sales, the Chief of the Bureau of Liquor and Tobacco Enforcement within the Department of Public Safety or the chief'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 on the licensee a copy of the complaint and a notice stating the time and place of the hearing and that the licensee may appear in person or by counsel at the hearing. Service of the complaint and hearing notice is sufficient

2 when sent by registered or certified mail at least 7 days
4 before the date of the hearing to the address given by the
6 licensee at the time of application for a license.

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

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

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

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

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

42 (3) The Administrative Court shall state in writing
44 the findings and decision in each case, based on the
46 facts, laws and rules cited in the complaint. The
48 findings must specify the facts found and the laws or
50 rules violated.

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

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

A. Suspend a penalty; or

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

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

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

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

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

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

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

26 8. License subsequent to violation. If a violation by a
27 licensee occurs during one license term and remains undiscovered
28 or carries over into the next license term pending investigation
29 or final disposition either in criminal courts or before the
30 Administrative Court, any license issued for a new license term
31 subsequent to the violation may be suspended or revoked by the
32 Administrative Court.

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

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

41 §2624. Record of proceedings and transcript

42 1. Court record. The Administrative Court shall keep a
43 full and complete record of all proceedings before the court on
44 the revocation and suspension of any license issued by the
45 Administrative Court.

2 commission. The Administrative Court is not required to have a
3 transcript of the testimony prepared unless required for
4 rehearing or appeal.

6 2. Notice to Bureau of Liquor and Tobacco Enforcement. The
7 Administrative Court shall forward to the Bureau of Liquor and
8 Tobacco Enforcement notice of final disposition of all
9 proceedings conducted pursuant to this subchapter. The bureau
10 shall maintain these records for not less than 5 years.

12 §2625. Appeal from decision of Administrative Court

14 1. Aggrieved person may appeal within 30 days. A person
15 aggrieved by the decision of the Administrative Court in revoking
16 or suspending a license issued by the commission or by refusal of
17 the commission to issue a license applied for may, within 30 days
18 of the decision or refusal, appeal to the Superior Court by
19 filing a complaint.

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

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

24 (2) The day when the commission sends notice of
25 refusal, by registered or certified mail, to the
26 applicant for a license in the case of refusal by the
27 commission to issue a license.

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

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

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

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

50

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

8 **Sec. 21. Application.** During the first 12 months after the
9 effective date of this Act, when an applicant for a retail
10 tobacco license already has a liquor license and the applicant
11 wishes to use the joint application procedures of the Maine
12 Revised Statutes, Title 28-A, section 2601, the term of the first
13 tobacco license must expire on the same date as the preexisting
14 liquor license and the fee must be waived for the tobacco license
15 for that portion of a year, so that the licenses may be put on
16 the same schedule for expiration and renewal.

18 **Sec. 22. Report.** The Department of Public Safety, Bureau of
19 Liquor and Tobacco Enforcement shall submit a report to the joint
20 standing committee of the Legislature having jurisdiction over
21 legal affairs by January 30, 1997 regarding the operation of the
22 tobacco licensing laws, including the number of citations issued
23 for violations of tobacco sales and licensing laws, and the
24 actions taken and penalties imposed upon those violators.

26 **Sec. 23. Educational programs.** To the extent that funds are
27 available, the Department of Human Services, Bureau of Health
28 shall develop and implement programs to educate retailers,
29 schools, retail clerks, minors and the general public about the
30 laws relating to cigarette sales to minors and purchases by
31 minors and the consequences of violating those laws. The Bureau
32 of Health shall develop and implement these educational programs
33 in cooperation with the Department of Public Safety, Bureau of
34 Liquor and Tobacco Enforcement.

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

44 **Sec. 25. Maine Revised Statutes amended; Bureau of Alcoholic
Beverages and Lottery Operation; revision clause.** Wherever in the
46 Maine Revised Statutes the words "Bureau of Alcoholic Beverages"
47 or "Bureau of Alcoholic Beverages and Lottery Operations" appear
48 or reference is made to those words, they are amended to read and
49 mean "Bureau of Alcoholic Beverages, Tobacco Sales and Lottery
50 Operations," and the Revisor of Statutes shall implement this
revision when updating, publishing or republishing the statutes.

