

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 1399

S.P. 514

Received by the Secretary, April 18, 1995

An Act to Control the Sale and Display of Tobacco Products.

Referred to the Committee on Legal and Veterans Affairs and ordered printed pursuant to Joint Rule 14.

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

MAY M. ROSS
Secretary of the Senate

Presented by Senator MILLS of Somerset.

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

2 Sec. 1. 22 MRSA §1579, as corrected by RR 1993, c. 1, §52, is
4 repealed.

6 Sec. 2. 22 MRSA §1579-B is enacted to read:

8 §1579-B. Sale and display of tobacco products

10 1. Definitions. As used in this section, unless the
12 context otherwise indicates, the following terms have the
following meanings.

14 A. "Advertising" means a promotion or display of tobacco
products in signs, print or electronic media.

16 B. "Business" means a person, partnership, corporation or
18 other entity engaged, in whole or in part, in the sale or
distribution of tobacco products in this State.

20 C. "Display" means an advertisement or shelving, rack or
22 other arrangement by which tobacco products are shown or
their use or sale is promoted to the consumer.

24 D. "Minor" means a person under 18 years of age.

26 E. "Parent" means a natural or adoptive parent, foster
28 parent, guardian or other adult similarly responsible for
the long-term general care and welfare of a minor.

30 F. "Person" means an individual, business, distributor or
32 retailer.

34 G. "Promotional offer" means an advertisement, offer or
36 inducement to purchase or use tobacco products, by means of
a contest, game, coupon, prize, rebate, award or other
incentive.

38 H. "Retailer" means a business engaged, in whole or in
40 part, in the sale of tobacco products to consumers and
includes the employees of the retailer.

42 I. "Sale" means the transfer, exchange, barter or gift, for
44 any consideration, of tobacco products.

46 J. "Self-service merchandising" means a display from which
48 tobacco products are made accessible to the public without
the assistance of the retailer, including but not limited to
vending machines.

50

2 K. "Tobacco products" means cigarettes, as defined by the
4 Internal Revenue Code of 1954, 26 United States Code,
6 Section 5701 et seq.; cigarette roll papers; cigars;
8 cheroots; stogies; periques' granulated, plug cut, crimp
10 cut, ready rubbed and other smoking tobacco; snuff; snuff
12 flour; cavendish; plug and twist tobacco; fine cut and other
 chewing tobacco; shorts; refuse scraps, clippings, cuttings
 and sweepings of tobacco; and other kinds and forms of
 tobacco, prepared in such a manner as to be suitable for
 chewing, inhaling or smoking. "Tobacco products" includes
 any tobacco promotional products offered, given or sold to
 consumers.

14 L. "Vendor-assisted" means that a retailer must assist the
16 consumer by obtaining a product from an area inaccessible to
18 the consumer and delivering the product to the consumer at
 the time of the purchase of that product.

20 2. Regulated conduct. The following requirements apply to
 the sale, display and extension of promotional offers of tobacco
 products.

22 A. Tobacco products may be sold only by vendor-assisted
24 methods and may not be sold through any form of self-service
26 merchandising.

28 B. A business may not exhibit or permit others to exhibit
30 on its business premises any advertising of tobacco
32 products, any display of tobacco products that is accessible
 to the public or any promotional offer concerning tobacco
 products.

34 C. Promotional offers of tobacco products are prohibited in
36 this State. Any promotional offer of tobacco products made
 in this State is null and void.

38 D. The advertising of tobacco products is prohibited except
40 for advertisements that appear as an incidental portion of a
 publication in interstate commerce, the primary purpose of
 which is not to promote or advertise tobacco products.

42 E. Except as provided in paragraph F, a minor may not
44 possess, receive or purchase tobacco products.

46 F. A parent may provide tobacco products to the parent's
48 minor child within the parent's home solely for use within
 the parent's home.

50 G. Except as provided in paragraph F, a person may not
 knowingly sell or provide tobacco products to a minor. It

2 is an affirmative defense to a prosecution under this
3 paragraph that the person providing tobacco products to a
4 minor did so in justifiable reliance on a fraudulent proof
5 of age of that minor.

6 3. Penalties. The following penalties apply to violations
7 of this section.

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10 A. The first violation of this section by a minor is a
11 civil violation for which a forfeiture of up to \$100 may be
12 adjudged. As an alternative to or in addition to the
13 penalty under this paragraph the judge may assign the
14 juvenile to perform specified work for the benefit of the
15 State, a municipality, a public entity or a corporation
16 organized pursuant to Title 13, section 901.

17
18 B. Any second or subsequent violation of this section by a
19 minor within 12 months of the next prior violation is a
20 juvenile offense. Any second or subsequent violation of
21 this section by a minor more than 12 months after the next
22 prior violation is subject to the penalties of paragraph A.

23
24 C. The first violation of this section by a person who is
25 not a minor is a civil violation for which a forfeiture of
26 up to \$300 may be adjudged.

27
28 D. Any second or subsequent violation of this section by a
29 person who is not a minor within 12 months of the next prior
30 violation is a Class E crime. Any second or subsequent
31 violation of this section by a person who is not a minor
32 more than 12 months after the next prior violation is
33 subject to the penalties of paragraph C.

34 4. Display of prohibition. All retailers of tobacco
35 products must display in a public and conspicuous manner and in
36 letters at least 3/8 inch high a sign stating the prohibition
37 against selling or providing tobacco products to minors.

38
39 5. Rulemaking. The Department of Human Services may adopt
40 any rules, pursuant to Title 5, chapter 375, for the
41 implementation and enforcement of this section.

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43 **Sec. 3. Effective date.** This Act takes effect January 1, 1996.

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46 **STATEMENT OF FACT**

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48 This bill controls the manner of sale and the display of
tobacco products in this State in the following ways.

2 1. It prohibits the display of tobacco products and
promotional displays of tobacco products within businesses.

4

6 2. It prohibits self-service merchandising of tobacco
products. It allows vendor-assisted sales of tobacco products.

8 3. It repeals and reenacts much of the law prohibiting the
sale of tobacco products to minors. With the exception of
10 tobacco products provided by a parent to a minor within the
parent's home for use there, it prohibits minors from possessing,
12 receiving or purchasing tobacco products.

14 4. It authorizes the Department of Human Services to make
rules to implement and enforce the provisions of the bill.

16

18 5. It provides penalties for violations of the provisions
of the bill for minors, adults and businesses.