

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 1494

S.P. 546

In Senate, May 4, 1995

An Act to Strengthen Prohibitions against Youth Access to Tobacco Products.

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 CAREY of Kennebec.
Cosponsored by Senators: BENOIT of Franklin, HALL of Piscataquis, Representatives:
BUCK of Yarmouth, FISHER of Brewer, TRUE of Fryeburg.

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 amended to read:

6 **§1579. Prohibition**

8 **1. Distribution; penalty.** ~~No A person may knowingly sell,~~
9 ~~furnish, give-away~~ not distribute or offer to sell, ~~furnish or~~
10 ~~give-away-cigarettes~~ distribute a tobacco product, cigarette
11 ~~paper or any other tobacco product~~ sample to any person under the
12 ~~age of who has not attained~~ 18 years of age. ~~No A person in the~~
13 ~~business of selling or otherwise~~ distributing cigarettes,
14 cigarette paper or ~~other~~ tobacco products for profit ~~nor~~ or an
15 employee or agent of that person may not, in the course of that
16 person's business, distribute free any cigarette, cigarette paper
17 or ~~other~~ tobacco product to any person ~~under the age of who has~~
18 not attained 18 years of age in any place, including, but not
19 limited to, a public way or sidewalk, public park or playground,
20 public school or other public building, or an entranceway, lobby,
21 hall or other common area of a private building, shopping center
22 or mall, except that a person may distribute a tobacco product,
23 cigarette paper or sample to a family member or a personal
24 acquaintance who has not attained 18 years of age for
25 noncommercial purposes or to an employee who has not attained 18
26 years of age when required in the performance of that employee's
27 duties. A person engaged in the distribution of tobacco products
28 or cigarette paper shall demand proof of age from a prospective
29 purchaser or recipient if that person has reason to believe that
30 the prospective purchaser or recipient has not attained 18 years
31 of age.

32
33 Any person who violates this subsection commits a civil violation
34 for which a forfeiture of not less than \$25 ~~\$100~~ nor more than
35 \$200 may be adjudged for any one offense. Any person who employs
36 a person who violates this subsection commits a civil violation
37 for which a forfeiture of not less than \$100 nor more than \$1,000
38 may be adjudged. In all cases of violations, the court shall
39 impose a forfeiture that may not be suspended, except pursuant to
40 Title 15, section 3314.

41
42 It is an affirmative defense to prosecution under this subsection
43 that the defendant ~~sold cigarettes, cigarette paper or any other~~
44 ~~tobacco product to a person under the age of 18 years who~~
45 ~~furnished fraudulent~~ demanded, was shown and reasonably relied
46 upon proof of age.

47 **2. Prohibition; purchase by minors; penalty.** It is
48 unlawful for any person ~~under the age of who has not attained~~ 18
49 years of age to purchase cigarettes, or receive or attempt to
50 purchase or receive a tobacco product or cigarette paper or any
51 ~~other tobacco product.~~

2 Any person who violates this subsection commits a civil violation
4 for which a forfeiture of not less than ~~\$25~~ \$100 nor more than
6 \$200 may be adjudged for each violation. The judge, as an
8 alternative to or in addition to the civil forfeitures 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.

10 **3. Display of prohibition against sales to minors.** All
12 ~~dealers-and-distributors-of~~ A person who sells a tobacco products
14 ~~product or cigarette paper shall post notice-of-this-section~~
16 ~~prohibiting-tobacco-and-cigarette-paper-sales-to-persons-under~~
18 ~~the-age-of-18-years.---Notices and keep posted a notice, no~~
20 ~~smaller than 93 1/2 square inches and posted so as to ensure that~~
22 ~~it is likely to be read at each point of sale, stating the~~
24 ~~following: "STATE LAW PROHIBITS THE SALE OF TOBACCO PRODUCTS AND~~
26 ~~CIGARETTE PAPER TO A PERSON UNDER THE AGE OF 18 YEARS. PROOF OF~~
28 ~~AGE MAY BE REQUIRED."~~ This notice must be publicly and
30 conspicuously displayed in-the-dealers'-or-distributors'-places
of-business and must be printed in letters at least 3/8 inches
high. Signs required by this section may be provided at cost by
the Bureau of Liquor-Enforcement State Police. Any person who
violates this subsection commits a civil violation for which a
forfeiture of not less than \$50 ~~\$100~~ nor more than \$200 may be
adjudged for any one offense. The notice required by this
subsection is the only notice regarding a tobacco product or
cigarette paper that may be required to be posted or maintained
in a retail establishment that sells a tobacco product or
cigarette paper.

32 **4. Definitions.** As used in this section, the--term
34 ~~"cigarette paper"--means-these-paper-or-paper-like-products-used~~
36 ~~to--roll--cigarettes,--which--by--advertising,--design--or--use~~
facilitate-the-use-of-tobacco-or-other-products-for-inhalation
unless the context otherwise indicates, the following terms have
the following meanings.

38
40 A. "Cigarette paper" means those paper or paper-like
42 products used to roll cigarettes that, by advertising,
design or use, facilitate the use of tobacco or other
products for inhalation.

44 B. "Distribute" means to sell, furnish, give or provide.

46 C. "Proof of age" means a driver's license or other
48 documentary or written evidence that purports to establish
that a person is 18 years of age or older.

50 D. "Sample" means a tobacco product distributed to a member
52 of the general public at no cost for the purpose of
promoting the product.

2 E. "Tobacco product" means cigarettes, cigars, snuff,
4 smokeless tobacco, products containing tobacco and tobacco
 in any other form.

6 5. Unannounced inspections. The Chief of the State Police,
 acting in conjunction with the sheriffs and the chiefs of police
8 of the several counties and municipalities, respectively, shall
 enforce this section so as to reduce the extent to which tobacco
10 products are sold or distributed to persons who have not attained
 18 years of age, and shall conduct annually random, unannounced
12 inspections at locations where tobacco products are sold or
 distributed to ensure compliance with this section. The Chief of
14 the State Police shall rely to the fullest extent possible on the
 sheriffs or chiefs of police, or employees of the sheriffs or
16 chiefs, to enforce this section. To the extent permitted by
 applicable law, regulation or contract, the Chief of the State
18 Police shall obtain funds for the enforcement of this section
 from funds granted to the Department of Human Services by the
20 United States Department of Health and Human Services under the
 American Stop Smoking Intervention Study for Cancer Prevention
22 program, or ASSIST.

24 A person who has not attained 18 years of age may be enlisted by
 a sheriff or chief of police, or an employee of a sheriff or
26 chief, to test compliance with this section, provided that such a
 person may be used to test compliance with this section only if
28 the testing is conducted under the direct supervision of a
 sheriff or chief of police, or an employee of a sheriff or chief,
30 and written parental consent has been provided. Any other use of
 this person who has not attained 18 years of age to test
32 compliance with this section or any other similar prohibition is
 unlawful and a person responsible for such use is subject to the
34 forfeiture under subsection 1.

36 6. Reporting and compliance. The Chief of the State Police
 shall prepare for submission annually to the Secretary of the
38 United States Department of Health and Human Services the report
 required by the federal Public Health Service Act, 42 United
40 States Code, Section 300x-26 (1995) and is otherwise responsible
 for ensuring the State's compliance with that provision of
42 federal law and any implementation of regulations adopted by the
 United States Department of Health and Human Services.

44 7. Statewide uniformity. The State intends to occupy the
46 entire field of legislation concerning the regulation of the
 sale, distribution, display and promotion of tobacco products in
48 order that this section may be implemented in an equitable and
 uniform manner throughout the State and may be enforced to ensure
50 eligibility for receipt of any federal funds or grants that the

2 State now receives or may receive relating to the provisions of
3 this section. A county, municipality, city, township or village
4 corporation, or a department, board or agency thereof or other
5 political subdivision or agency of the State may not enact an
6 order, law, ordinance or rule concerning the sale, distribution,
7 display or promotion of tobacco products.

8
9
10 **STATEMENT OF FACT**

11 This bill provides mechanisms by which the State's laws
12 prohibiting the sale to and use of tobacco products by minors can
13 be enforced. The bill increases some of the penalties in the
14 current law, requires the State Police to provide at cost signs
15 for display by retailers of tobacco products notifying the public
16 that the sale of tobacco to minors is prohibited and directs the
17 Chief of the State Police to conduct unannounced inspections in
18 conjunction with municipal chiefs of police and county sheriffs
19 in order to reduce illegal sales of tobacco products to minors.
20 Finally, this bill allows law enforcement officials to enlist
21 persons under 18 years of age to test compliance with the law and
22 requires that a report on compliance be submitted to the United
23 States Department of Health and Human Services in order to comply
24 with a federal mandate.