

# MAINE STATE LEGISLATURE

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DATE: 5-19-97

(Filing No. H-538)

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**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
118TH LEGISLATURE  
FIRST SPECIAL SESSION**

HOUSE AMENDMENT "A" to COMMITTEE AMENDMENT "A" to S.P. 133, L.D. 412, Bill, "An Act to Require the Purchaser of Tobacco Products to Produce Suitable Identification"

Amend the amendment by striking out everything after the title and inserting in its place the following:

Amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

**Sec. 1. 22 MRSA §1552-A, sub-§2**, as enacted by PL 1995, c. 470, §9 and affected by §19, is amended to read:

**2. Display of prohibition against sales to juveniles.** All licensees shall post notice of the prohibition on tobacco sales to juveniles pursuant to section ~~1555~~ 1555-B. Notices must be publicly and conspicuously displayed in the licensee's place of business 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.

**Sec. 2. 22 MRSA §1553-A, sub-§1**, as enacted by PL 1995, c. 470, §9 and affected by §19, is amended to read:

**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.

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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.~~

Vending machines may be located only in areas in which minors are allowed only when accompanied by an adult.

Sec. 3. 22 MRSA §1554-A, sub-§1, as enacted by PL 1995, c. 470, §9 and affected by §19, is amended to read:

1. **Prohibition.** A person may not sell cigarettes except in the original, sealed package in which they were placed by the manufacturer, which may not be smaller than 20 cigarettes per package, nor may a person sell cigarettes in smaller quantities than placed in the package by the manufacturer.

Sec. 4. 22 MRSA §1555, as amended by PL 1995, c. 593, §3, is repealed.

Sec. 5. 22 MRSA §1555-B is enacted to read:

**§1555-B. Sales of tobacco products**

1. **Retail sales.** Tobacco products may be sold at retail only in a direct, face-to-face exchange in which the purchaser may be clearly identified and through the mail under procedures approved by the department to provide reliable verification that the purchaser is not a minor.

2. **Sales to minors prohibited.** A person may not sell, furnish, give away or offer to sell, furnish or give away a tobacco product to any person under 18 years of age. Tobacco products may not be sold at retail to any person under 27 years

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2 of age unless the seller first verifies that person's age by  
means of reliable photographic identification containing the  
4 person's date of birth.

6 3. Sales through vending machines. Tobacco products may be  
sold through vending machines according to section 1553-A.

8 4. Wholesale sales. Tobacco products may be distributed at  
wholesale without a face-to-face exchange only in the normal  
10 course of trade and under procedures approved by the Bureau of  
Taxation to ensure that tobacco products are not provided to any  
12 person under 18 years of age.

14 5. Use of false identification by minors prohibited. A  
person under 18 years of age may not offer false identification  
16 in an attempt to purchase any tobacco products or to purchase,  
possess or use cigarettes, cigarette paper or any other tobacco  
18 product.

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

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

36 8. Fines and forfeitures. Violations of this section are  
38 subject to fines and forfeitures according to this subsection.

40 A. A person who violates subsection 1, 2, 3 or 4 commits a  
civil violation for which a fine of not less than \$50 nor  
42 more than \$1,500, plus court costs, may be adjudged for any  
one offense. An employer of a person who violates  
44 subsection 1, 2, 3 or 4 commits a civil violation for which  
a fine of not less than \$50 nor more than \$1,500, plus court  
46 costs, may be adjudged. For a violation, the court shall  
impose a fine that may not be suspended, except pursuant to  
48 Title 15, section 3314.

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2 B. A person who violates subsection 5 commits a civil  
4 violation for which the following forfeitures may be  
6 adjudged.

8 (1) For a first offense, a forfeiture of not less than  
10 \$100 and not more than \$300 may be imposed. The judge,  
12 as an alternative to or in addition to the forfeiture  
14 permitted by this subparagraph, may assign the violator  
16 to perform specified work for the benefit of the State,  
18 the municipality or other public entity or a charitable  
20 institution.

22 (2) For a 2nd offense, a forfeiture of not less than  
24 \$200 and not more than \$500 may be imposed. The judge,  
26 as an alternative to or in addition to the forfeiture  
28 permitted by this subparagraph, may assign the violator  
30 to perform specified work for the benefit of the State,  
32 the municipality or other public entity or a charitable  
34 institution.

36 (3) For all subsequent offenses, a forfeiture of \$500  
38 must be imposed and that forfeiture may not be  
40 suspended. The judge, in addition to the forfeiture  
42 permitted by this subparagraph, may assign the violator  
44 to perform specified work for the benefit of the State,  
46 the municipality or other public entity or a charitable  
institution.

C. A person who violates subsection 6 commits a civil  
violation for which a forfeiture of not less than \$50 nor  
more than \$200 may be adjudged for any one offense.

9. Distribution of fines. Fines and forfeitures collected  
pursuant to subchapter I and this subchapter must be credited as  
follows: one half to the General Fund and 1/2 to be deposited in  
a nonlapsing account to be paid to law enforcement agencies.

10. Affirmative defense. It is an affirmative defense to  
prosecution for a violation of subsection 1, 2 or 4 that the  
defendant sold, furnished, gave away or offered to sell, furnish  
or give away a tobacco product to a person under 18 years of age  
in reasonable reliance upon a fraudulent proof of age presented  
by the purchaser.

Sec. 6. 22 MRSA §1556-A, sub-§2, as repealed and replaced by  
PL 1995, c. 593, §4, is amended to read:

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2 **2. Enforcement; jurisdiction.** Enforcement of criminal  
offenses may be carried out by written summons pursuant to Title  
4 17-A filed in the District Court. Enforcement of civil  
violations set forth in section 1555 1555-B, subsection 2 may be  
6 carried out by complaint filed in District Court. All other  
civil violations under this chapter are within the jurisdiction  
8 of the Administrative Court pursuant to section 1557, subsection  
1.'

10 Further amend the bill by inserting at the end before the  
summary the following:

12 **FISCAL NOTE**

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16 The increased restrictions on vending machines and sales of  
tobacco products may reduce General Fund revenue from the taxes  
18 on tobacco products. The amount of any reduction of General Fund  
revenue from these taxes is not expected to be significant.

20 The additional workload and administrative costs associated  
with the minimal number of new cases filed in the court system  
22 can be absorbed within the budgeted resources of the Judicial  
Department. The collection of additional fines may increase  
24 General Fund revenue by minor amounts.'

26 **SUMMARY**

28 This amendment incorporates all of Senate Amendment "A" to  
Committee Amendment "A" (S-157), but corrects an internal  
30 reference to a subsection.

32 This amendment alters the provisions controlling sales of  
cigarettes from vending machines, restricting vending machines to  
34 areas in which minors are allowed only when accompanied by an  
adult. It requires that all retail sales of tobacco products be  
36 face-to-face sales or sales through the mail, with provisions to  
ensure that the purchaser is not a minor. It requires proof of  
38 identification for all retail tobacco sales to persons under 27  
years of age. It requires wholesale tobacco sales that are not  
40 face-to-face to meet department standards. It prohibits the sale

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2 of cigarettes in packages smaller than 20 cigarettes. It  
prohibits the sale of tobacco products to minors without regard  
4 to the state of mind of the seller. It retains the affirmative  
defense of reliance on identification to the extent that reliance  
is reasonable. It adds a fiscal note.

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SPONSORED BY: *J. Elizabeth Mitchell*  
(Representative J. MITCHELL)

TOWN: Portland

# HOUSE AMENDMENT