

MAINE STATE LEGISLATURE

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HEALTH AND HUMAN SERVICES

Reported by: Majority Report

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**STATE OF MAINE
SENATE
118TH LEGISLATURE
FIRST SPECIAL SESSION**

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 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Sec. 2. 22 MRSA §1553-A, as enacted by PL 1995, c. 470, §9 and affected by §19, is repealed.

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.

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4 repealed.

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

8 **§1555-B. Sales of tobacco products**

10 **1. Retail sales.** Tobacco products may be sold at retail
12 only in a direct, face-to-face exchange in which the purchaser
14 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.

16 **2. Sales to minors prohibited.** A person may not sell,
18 furnish, give away or offer to sell, furnish or give away a
20 tobacco product to any person under 18 years of age. Tobacco
22 products may not be sold at retail to any person under 27 years
of age unless the seller first verifies that person's age by
means of reliable photographic identification containing the
person's date of birth.

24 **3. Sales through vending machines prohibited.** Tobacco
products may not be sold through vending machines.

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

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

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

48 **7. Enforcement.** Law enforcement officers shall enforce
this section. A citizen may register a complaint under this
50 section with the law enforcement agency having jurisdiction. The
law enforcement agency may notify any establishment or

individual subject to this section of a citizen complaint regarding that establishment's or individual's alleged violation of this section and shall keep a record of that notification.

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

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 more than \$1,500, plus court costs, may be adjudged for any one offense. An employer of a person who violates 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 costs, may be adjudged. For a violation, the court shall impose a fine that may not be suspended, except pursuant to Title 15, section 3314.

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

(1) 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 subparagraph, may assign the violator to perform specified work for the benefit of the State, the municipality or other public entity or a charitable institution.

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

(3) For all subsequent offenses, a forfeiture of \$500 must be imposed and that forfeiture may not be suspended. The judge, in addition to the forfeiture permitted by this subparagraph, may assign the violator to perform specified work for the benefit of the State, 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.

2 9. Distribution of fines. Fines and forfeitures collected
4 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.

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

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

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

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

28 **FISCAL NOTE**

30 Prohibiting vending machine sales of tobacco products and
32 placing new restrictions on tobacco sales may reduce General Fund
revenues from the taxes on tobacco products. The amount of any
34 reduction of General Fund revenue from these taxes is not
expected to be significant.

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

42 **SUMMARY**

44 This amendment repeals the provisions controlling sales of
46 cigarettes from vending machines and prohibits such sales. It
48 requires that all retail sales of tobacco products be
face-to-face sales or sales through the mail with provisions to
50 ensure that the purchaser is not a minor. It requires proof of

COMMITTEE AMENDMENT "A" to S.P. 133, L.D. 412

2 identification for all retail tobacco sales to persons under 27
years of age. It requires wholesale tobacco sales that are not
face-to-face to meet department standards. It prohibits the sale
4 of cigarettes in packages smaller than 20 cigarettes. It
prohibits the sale of tobacco products to minors without regard
6 to the state of mind of the seller. It retains the affirmative
defense of reliance on identification to the extent that reliance
8 is reasonable. It adds a fiscal note.