

MAINE STATE LEGISLATURE

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HEALTH AND HUMAN SERVICES

Reported by: Minority Report

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

COMMITTEE AMENDMENT " B " 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, 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.

COMMITTEE AMENDMENT

2 B. A sign must be affixed conspicuously to the front of the
machine. The sign must:

4 (1) Contain lettering that is at least 3/8 inches in
height; and

6 (2) State the following: "WARNING. It is unlawful
8 for any person under the age of 18 to purchase
cigarettes in this State."

10 C. At all times during the hours the vending machine is
12 accessible, it must be located within the unobstructed line
of sight and under the direct supervision of an adult. That
14 adult is responsible for preventing persons under 18 years
of age from purchasing cigarettes or any other tobacco
16 product from that vending machine.

18 ~~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
20 owner of the premises.~~

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

24 **Sec. 3. 22 MRSA §1554-A, sub-§1**, as enacted by PL 1995, c.
26 470, §9 and affected by §19, is amended to read:

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

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repealed.

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

38 **§1555-B. Sales of tobacco products**

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

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

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

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

8 4. Wholesale sales. Tobacco products may be distributed at
9 wholesale without a face-to-face exchange only in the normal
10 course of trade and under procedures approved by the Bureau of
11 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
15 person under 18 years of age may not offer false identification
16 in an attempt to purchase any tobacco products or to purchase,
17 possess or use cigarettes, cigarette paper or any other tobacco
18 product.

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

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

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

40 A. A person who violates subsection 1, 2, 3 or 4 commits a
41 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
43 one offense. An employer of a person who violates
44 subsection 1, 2, 3 or 4 commits a civil violation for which
45 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
47 impose a fine that may not be suspended, except pursuant to
48 Title 15, section 3314.

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

5 (1) For a first offense, a forfeiture of not less than
6 \$100 and not more than \$300 may be imposed. The judge,
7 as an alternative to or in addition to the forfeiture
8 permitted by this subparagraph, may assign the violator
9 to perform specified work for the benefit of the State,
10 the municipality or other public entity or a charitable
11 institution.

12 (2) For a 2nd offense, a forfeiture of not less than
13 \$200 and not more than \$500 may be imposed. The judge,
14 as an alternative to or in addition to the forfeiture
15 permitted by this subparagraph, may assign the violator
16 to perform specified work for the benefit of the State,
17 the municipality or other public entity or a charitable
18 institution.

19 (3) For all subsequent offenses, a forfeiture of \$500
20 must be imposed and that forfeiture may not be
21 suspended. The judge, in addition to the forfeiture
22 permitted by this subparagraph, may assign the violator
23 to perform specified work for the benefit of the State,
24 the municipality or other public entity or a charitable
25 institution.

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

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

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

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

41 2. Enforcement; jurisdiction. Enforcement of criminal
42 offenses may be carried out by written summons pursuant to Title
43 17-A filed in the District Court. Enforcement of civil
44 offenses may be carried out by written summons pursuant to Title
45 17-A filed in the District Court. Enforcement of civil
46 offenses may be carried out by written summons pursuant to Title
47 17-A filed in the District Court. Enforcement of civil
48 offenses may be carried out by written summons pursuant to Title
49 17-A filed in the District Court. Enforcement of civil
50 offenses may be carried out by written summons pursuant to Title

violations set forth in section ~~1555~~ 1555-B, subsection 2 may be 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.'

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

FISCAL NOTE

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

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

SUMMARY

This amendment alters the provisions controlling sales of cigarettes from vending machines, restricting vending machines to areas in which minors are allowed only when accompanied by an adult. It requires that all retail sales of tobacco products be face-to-face sales or sales through the mail, with provisions to ensure that the purchaser is not a minor. It requires proof of 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 of cigarettes in packages smaller than 20 cigarettes. It prohibits the sale of tobacco products to minors without regard 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.