

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 2119

H.P. 1479

House of Representatives, March 30, 1999

An Act to Enhance Competition and Public Health.

Reference to the Committee on Legal and Veterans Affairs suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative O'NEIL of Saco.
Cosponsored by President LAWRENCE of York and
Representatives: BRENNAN of Portland, COLWELL of Gardiner, ETNIER of Harpswell,
KANE of Saco, Speaker ROWE of Portland, SAXL of Portland, TOWNSEND of Portland,
Senator: MILLS of Somerset.

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

2
4 **Sec. 1. 22 MRSA §1551-A, sub-§1**, as enacted by PL 1995, c. 470, §9 and affected by §19, is amended to read:

6 **1. Retail tobacco license.** It is unlawful for any person, partnership or corporation that engages in retail sales, including retail sales through vending machines ~~or--in--free distribution-of-tobacco-products,~~ to sell, or keep for sale ~~or give-away-in-the-course-of-trade~~ any tobacco products ~~to anyone~~ without first obtaining a retail tobacco license from the department, in accordance with this chapter.

14 **Sec. 2. 22 MRSA §§1554-B and 1554-C** are enacted to read:

16 **§1554-B. Free distribution**

18 **1. Prohibition.** It is unlawful in the ordinary course of trade or other business or corporate enterprise for any person, partnership or corporation to furnish, give away or freely distribute tobacco products or to offer to furnish, give away or freely distribute tobacco products to any person.

24 **2. Penalty.** A violation of this section constitutes a civil violation for which a forfeiture of not less than \$10 nor more than \$100 may be adjudged. An employer of a person who violates this section commits a civil violation for which a forfeiture of not less than \$100 nor more than \$1,000 may be adjudged. In all cases of violations, the court shall impose a forfeiture that may not be suspended, except pursuant to Title 15, section 3314.

32 **§1554-C. Incentives prohibited**

34 **1. Incentives prohibited.** It is unlawful in the ordinary course of trade or other business or corporate enterprise for any person, partnership or corporation to accept from a producer of tobacco products incentives to increase sales of tobacco products. For the purpose of this section, "incentives" includes, but is not limited to:

42 **A. Rebates;**

44 **B. Kickbacks;**

46 **C. Direct payment for prominent point-of-sale displays; and**

48 **D. Unit price reductions based on graduated higher sales volume.**

50

2 2. Penalty. A violation of this section constitutes a
3 civil violation for which a forfeiture of not less than \$10 nor
4 more than \$100 may be adjudged. An employer of a person who
5 violates this section commits a civil violation for which a
6 forfeiture of not less than \$100 nor more than \$1,000 may be
7 adjudged. In all cases of violations, the court shall impose a
8 forfeiture that may not be suspended, except pursuant to Title
15, section 3314.

10 **Sec. 3. 22 MRSA §1555-B, sub-§1,** as enacted by PL 1997, c.
11 305, §5, is amended to read:

12 1. **Retail sales.** Tobacco products may be sold at retail
13 only in a direct, face-to-face exchange in which the purchaser
14 may be clearly identified and through the mail under procedures
15 approved by the department to provide reliable verification that
16 the purchaser is not a minor. Except in a place of business
17 where the retail sale of tobacco products is the primary
18 business, self-service displays of tobacco products, from which
19 individual packages, cartons or items may be selected by the
20 purchaser, are prohibited.

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SUMMARY

26 This bill prohibits the free distribution of tobacco
27 products to any person in the ordinary course of trade, business
28 or other corporate enterprise and creates a civil penalty similar
29 to that in current law for the sale of unpackaged cigarettes.
30 This prohibition is distinguished from another in current law
31 that prohibits the free distribution of tobacco products to
32 minors by any person whether that person is acting in the course
33 of business or not. The bill prohibits self-service displays of
34 tobacco products unless in a business establishment where the
35 primary business is the retail sale of tobacco products. The
36 bill also prohibits the producers of tobacco products from
37 offering incentives as a reward for increasing sales of tobacco
38 products. The penalty for a violation of these prohibitions is
39 the same as for violations of other tobacco product sales
40 prohibitions, such as sales to minors and sales through vending
41 machines in unlawful ways.

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