

MAINE STATE LEGISLATURE

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L.D. 2316

DATE: 3/7/2000

(Filing No. S-524)

TAXATION

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**STATE OF MAINE
SENATE
119TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to S.P. 897, L.D. 2316, Bill, "An Act to Prevent Gray Market Cigarette Sales"

Amend the bill by inserting after the enacting clause and before section 1 the following:

Sec. 1. 22 MRSA §1556-A, first ¶, as enacted by PL 1995, c. 470, §9 and affected by §19, is amended to read:

The provisions of this chapter and Title 36, section 4366-C may be enforced by law enforcement officers as defined by Title 17-A or by individuals hired by contract with the department to enforce this law.

Sec. 2. 22 MRSA §1556-A, sub-§1, as enacted by PL 1995, c. 470, §9 and affected by §19, is amended to read:

1. Contract officers. The authority of contract officers hired under this chapter is limited to enforcement of this Act and Title 36, section 4366-C. Authorization to enforce this chapter is granted by the Commissioner of Public Safety, by terms mutually agreed upon between the department and the Department of Public Safety. Contract officers must have an appropriate background in law enforcement. Contract officers are exempt from ongoing training requirements except as otherwise determined by the Commissioner of Public Safety. These contract officers are not considered law enforcement officers for the purposes of enforcing the Maine Juvenile Code.'

COMMITTEE AMENDMENT

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2 Further amend the bill in section 1 in that part designated
3 "~~§4366-C.~~" in subsection 1 in the 2nd line (page 1, line 8 in
4 L.D.) by inserting after the following: "may not" the
5 following: 'offer for sale, sell or'

6
7 Further amend the bill in section 1 in that part designated
8 "~~§4366-C.~~" in subsection 3 in the first and 2nd lines (page 1,
9 lines 34 and 35 in L.D.) by striking out the following: "affixes
10 stamps to cigarettes in violation of" and inserting in its place
11 the following: 'violates'

12
13 Further amend the bill by inserting after section 1 the
14 following:

15 'Sec. 2. 36 MRSA §4372-A, sub-§1, as enacted by PL 1997, c.
16 458, §17, is amended to read:

17
18 1. **Generally.** Except as provided in subsection 2, any
19 unstamped cigarettes or cigarettes described in section 4366-C,
20 subsection 1 that are found in this State are hereby declared to
21 be contraband goods subject to seizure by and forfeiture to the
22 State. All law enforcement officers, including contract officers
23 pursuant to Title 22, section 1556-A, and duly authorized agents
24 of the State Tax Assessor may seize contraband cigarettes under
25 the process described in subsection 3.

26
27 **Sec. 3. 36 MRSA §4372-A, sub-§2,** as amended by PL 1997, c.
28 668, §28, is further amended to read:

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30 2. **Exceptions.** The following cigarettes are not subject to
31 seizure:

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33 A. Unstamped cigarettes in the possession of a licensed
34 distributor;

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36 B. Unstamped cigarettes in the course of transit from
37 without the State and consigned to a licensed distributor;
38 and

39
40 C. Unstamped cigarettes in a quantity of 2 cartons or less
41 in the possession of an individual who is not a licensed
42 distributor.

43
44 Notwithstanding paragraphs A, B and C, cigarettes described in
45 section 4366-C, subsection 1 are subject to seizure under the
46 process described in subsection 3, unless the dealer or
47 distributor can prove the cigarettes are to be exported out of
48 the country.

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Sec. 4. 36 MRSA §4372-A, sub-§§3 and 7, as enacted by PL 1997, c. 458, §17, are amended to read:

3. Procedure for seizure. Contraband cigarettes may be seized by law enforcement officers and by duly authorized agents of the State Tax Assessor who have probable cause to believe that the cigarettes are unstamped cigarettes or cigarettes described in section 4366-C, subsection 1 under the following circumstances:

A. When the cigarettes are discovered in a place where the law enforcement officer or agent has the lawful right to be in the performance of official duties; or

B. When the seizure is incident to a search under a valid search warrant or an inspection under a valid administrative inspection warrant.

7. Hearings; disposition; deposit of funds. At a hearing, other than a default proceeding, the court shall hear evidence, make findings of fact, enter conclusions of law and file a final order from which the parties have the right of appeal. When cigarettes are ordered forfeited, the final order must provide for the disposition of the cigarettes by the State Tax Assessor by public auction or by the State Purchasing Agent. Proceeds must be deposited in the General Fund. Cigarettes described in section 4366-C, subsection 1 must be destroyed by the State Tax Assessor in a manner that prevents their reintroduction into the marketplace.

Further amend the bill by relettering or renumbering any nonconsecutive Part letter or section number to read consecutively.

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

FISCAL NOTE

The additional enforcement mechanism against "gray market cigarettes" is not expected to significantly increase General Fund revenue from cigarette taxes.

The additional costs associated with an increase in discretionary prosecutions can be absorbed by the Department of the Attorney General utilizing existing budgeted resources.

This bill may increase prosecutions for Class E crimes. If a jail sentence is imposed, the additional costs to the counties

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2 are estimated to be \$83.36 per day per prisoner. The number of
3 prosecutions that may result in a jail sentence and the resulting
4 costs to the county jail system are expected to be insignificant.

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

12 **SUMMARY**

14 The amendment makes clear that gray market cigarettes may be
15 seized and, if so, are to be destroyed. The amendment also
16 ensures that contract officers who already enforce tobacco sales
17 laws will have jurisdiction to enforce gray market restrictions.
18 It also adds a fiscal note.