

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 764

S.P. 259

In Senate, February 18, 2003

An Act To Ensure Choice for Maine Consumers

Reference to the Committee on Business, Research and Economic Development suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MAYO of Sagadahoc.
Cosponsored by Representative PATRICK of Rumford and
Senators: BROMLEY of Cumberland, President DAGGETT of Kennebec, HALL of Lincoln,
KNEELAND of Aroostook, LaFOUNTAIN of York, Representative: WOODBURY of
Yarmouth.

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

4 **Sec. 1. 10 MRSA c. 204-C** is enacted to read:

6 **CHAPTER 204-C**

8 **REGULATION OF TOBACCO PRODUCTS**

10 **§1200. Regulation of cigarette merchandising and promotion**

12 **1. Retailers authorized.** A cigarette retailer may enter
14 into and participate in a cigarette manufacturer's merchandising,
advertising, display or consumer discount or promotional
agreement or program in which the retailer:

16 A. Provides cigarette merchandising, shelf-space,
advertising, stocking or display to the manufacturer;

18 B. Conducts the manufacturer's consumer promotion and
20 discount programs and provides such promotions and discounts
to consumers; and

22 C. Is paid or compensated by the manufacturer for
24 performing such activities.

26 **2. Manufacturers authorized.** A cigarette manufacturer may:

28 A. Offer and enter into retailer agreements and programs as
30 described in subsection 1;

32 B. Pay or provide other compensation to retailers for
participating in any such agreements or programs; and

34 C. Provide consumer promotions and discounts to retailers
36 for the retailers to furnish to consumers.

38 **3. Prohibition.** A cigarette manufacturer may not directly
or indirectly:

40 A. Condition a retailer's receipt of consumer promotions or
42 consumer price discounts on the retailer's conduct or
actions relating to the manufacturer's products or the
44 products of any other manufacturer, except for requirements
that the retailer:

46 (1) Provide the promotion or discount to consumers; and

48 (2) Advertise and display the promotion and the
promoted or discounted product to consumers;

50

2 B. Require or cause the retailer to allocate a specified
4 percentage or fraction of the retailer's merchandising,
stocking, display, shelf or advertising space to the
manufacturer;

6 C. Prevent, restrict or limit a retailer from stocking,
8 advertising, displaying or participating in a program for
another manufacturer's product;

10 D. Prevent, restrict or limit the retailer from determining
12 the size or location of the space that the retailer uses to
stock, display, promote or advertise cigarettes; or

14 E. Require the retailer to raise its prices on, or prevent
16 the retailer from setting, retaining or reducing its prices
on, another manufacturer's products.

18 4. Application. With respect to any contract or agreement
20 entered into on or before the effective date of this section, the
requirements of this section apply and are enforceable only on
22 and after the original date of the expiration of the contract or
agreement, exclusive of any renewal or extension of the contract
or agreement.

24 5. Enforcement. The Attorney General may bring a civil
26 action seeking equitable relief, including injunctive relief, to
enforce this section. Any person who has been adversely affected
28 by any act or practice declared unlawful by this section may
bring an action for damages and equitable relief, including
30 injunctive relief. If such a person prevails in obtaining
monetary relief, injunctive relief, or both, the court shall
32 award attorneys' fees, regardless of the amount in controversy,
and assess costs against the opposing party.

36 **SUMMARY**

38 This bill allows cigarette manufacturers and retailers to
40 enter into promotional or discount agreements but prohibits
cigarette manufacturers from requiring that the retailer:

42 1. Dedicate a specified percentage of its shelf space to
44 the manufacturer; or

46 2. Cease or limit its stocking of, or raise its prices on,
cigarettes from a competing manufacturer.

48 The bill also bars manufacturers from dictating the size or
50 location of the space used by the retailer to stock, display,
promote or advertise cigarettes.

2 The bill does not apply to contracts or agreements in
existence on its effective date, but would apply to renewals or
4 extensions. The bill provides for enforcement by the Attorney
General and by a private right of action.