

# MAINE STATE LEGISLATURE

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RCS

L.D. 1236

DATE: 5-30-03

(Filing No. H-538)

**MAJORITY**  
**HEALTH AND HUMAN SERVICES**

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**STATE OF MAINE**  
**HOUSE OF REPRESENTATIVES**  
**121ST LEGISLATURE**  
**FIRST REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 910, L.D. 1236, Bill, "An Act To Regulate the Delivery Sales of Cigarettes and To Prevent the Sale of Cigarettes to Minors"

Amend the bill by striking out the title and substituting the following:

**'An Act To Regulate the Delivery and Sales of Tobacco Products and To Prevent the Sale of Tobacco Products to Minors'**

Further 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 §1551, sub-§§1-A, 1-B, 1-C, 2-A, 2-B and 3-A are enacted to read:**

**1-A. Consumer.** "Consumer" means an individual who purchases, receives or possesses tobacco products for personal consumption and not for resale.

**1-B. Delivery sale.** "Delivery sale" means a sale of tobacco products to a consumer in this State when:

**A. The purchaser submits the order for the sale by means of telephonic or other electronic method of voice transmission, the Internet or any delivery service; or**

**B. The tobacco products are delivered by use of a delivery service.**

**COMMITTEE AMENDMENT**

A sale to a person who is not licensed as a tobacco distributor or tobacco retailer is a delivery sale.

1-C. Delivery service. "Delivery service" means a person, including the United States Postal Service, who is engaged in the commercial delivery of letters, packages or other containers.

2-A. Person. "Person" means an individual, corporation, partnership or unincorporated association.

2-B. Tobacco distributor. "Tobacco distributor" or "distributor" means a person licensed as a distributor under Title 36, chapter 704.

3-A. Tobacco retailer. "Tobacco retailer" or "retailer" means a person located within or outside the State who sells tobacco products to a person in the State for personal consumption.

Sec. 2. 22 MRSA §§1555-C and 1555-D are enacted to read:

**§1555-C. Delivery sales of tobacco products**

The following requirements apply to delivery sales of tobacco products within the State.

1. License required. It is unlawful for any person to accept an order for a delivery sale of tobacco products to a consumer in the State unless that person is licensed under this chapter as a tobacco retailer. The following penalties apply to violations of this subsection.

A. A person who violates this subsection commits a civil violation for which a fine of not less than \$50 and not more than \$1,500 may be adjudged for each violation.

B. A person who violates this subsection after having been previously adjudicated as violating this subsection or subsection 2, 3 or 4 commits a civil violation for which a fine of not less than \$1,000 and not more than \$5,000 may be adjudged.

2. Requirements for accepting order for delivery sale. The following provisions apply to acceptance of an order for a delivery sale of tobacco products.

A. When accepting the first order for a delivery sale from a consumer, the tobacco retailer shall obtain the following information from the person placing the order:

2 (1) A copy of a valid government-issued document that  
3 provides the person's name, current address, photograph  
4 and date of birth; and

5 (2) An original written statement signed by the person  
6 documenting that the person:

7 (a) Is of legal age to purchase tobacco products  
8 in the State;

9 (b) Has made a choice whether to receive mailings  
10 from a tobacco retailer;

11 (c) Understands that providing false information  
12 may constitute a violation of law; and

13 (d) Understands that it is a violation of law to  
14 purchase tobacco products for subsequent resale or  
15 for delivery to persons who are under the legal  
16 age to purchase tobacco products.

17 B. If an order is made as a result of advertisement over  
18 the Internet, the tobacco retailer shall request the e-mail  
19 address of the purchaser and shall receive payment by credit  
20 card or check prior to shipping.

21 C. Prior to shipping the tobacco products, the tobacco  
22 retailer shall verify the information provided under  
23 paragraph A against a commercially available database  
24 derived solely from government records consisting of age and  
25 identity information, including date of birth.

26 D. A person who violates this subsection commits a civil  
27 violation for which a fine of not less than \$50 and not more  
28 than \$1,500 may be adjudged for each violation.

29 E. A person who violates this subsection after having been  
30 previously adjudicated as violating this subsection or  
31 subsection 1, 3 or 4 commits a civil violation for which a  
32 fine of not less than \$1,000 and not more than \$5,000 may be  
33 adjudged.

34 3. Requirements for shipping a delivery sale. The  
35 following provisions apply to a tobacco retailer shipping tobacco  
36 products pursuant to a delivery sale.

37 A. Prior to shipping, the tobacco retailer shall provide to  
38 the delivery service the age of the purchaser as provided  
39 under subsection 2, paragraph A and verified under  
40 subsection 2, paragraph C.

2           B. The tobacco retailer shall clearly mark the outside of  
4           the package of tobacco products to be shipped to indicate  
              that the contents are tobacco products and to show the name  
6           and State of Maine tobacco license number of the tobacco  
              retailer.

8           C. The tobacco retailer shall utilize a delivery service  
              that imposes the following requirements:

10                   (1) The purchaser must be the addressee;

12                   (2) The addressee must be of legal age to purchase  
14                   tobacco products and must sign for the package; and

16                   (3) If the addressee is under 27 years of age, the  
18                   addressee must show valid government-issued  
              identification that contains a photograph of the  
20                   addressee and indicates that the addressee is of legal  
              age to purchase tobacco products.

22           D. The delivery instructions must clearly indicate the  
              requirements of this subsection and must declare that state  
24           law requires compliance with the requirements.

26           E. A person who violates this subsection commits a civil  
              violation for which a fine of not less than \$50 and not more  
28           than \$1,500 may be adjudged for each violation.

30           F. A person who violates this subsection after having been  
              previously adjudicated as violating this subsection or  
32           subsection 1, 2 or 4 commits a civil violation for which a  
              fine of not less than \$1,000 and not more than \$5,000 may be  
34           adjudged.

36           4. Reporting requirements. No later than the 10th day of  
              each calendar month, a tobacco retailer that has made a delivery  
38           sale of tobacco products or shipped or delivered tobacco products  
              into the State in a delivery sale in the previous calendar month  
40           shall file with the Department of Administrative and Financial  
              Services, Bureau of Revenue Services a memorandum or a copy of  
42           each invoice that provides for each delivery sale the name and  
              address of the purchaser and the brand or brands and quantity of  
44           tobacco products sold. A tobacco retailer that meets the  
              requirements of 15 United States Code, Section 375 et seq. (1955)  
46           satisfies the requirements of this subsection. The following  
              penalties apply to violations of this subsection.

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2 A. A person who violates this subsection commits a civil  
4 violation for which a fine of not less than \$50 and not more  
6 than \$1,500 may be adjudged for each violation.

8 B. A person who violates this subsection after having been  
10 previously adjudicated as violating this subsection or  
12 subsection 1, 2 or 3 commits a civil violation for which a  
14 fine of not less than \$1,000 and not more than \$5,000 may be  
16 adjudged.

18 5. Unlawful ordering. It is unlawful to submit ordering  
20 information for tobacco products by delivery sale under  
22 subsection 2, paragraph A in the name of another person. A  
24 person who violates this subsection commits a civil violation for  
26 which a fine of not more than \$10,000 may be adjudged.

28 6. Rulemaking. The department and the Department of  
30 Administrative and Financial Services shall adopt rules to  
32 implement this section. Rules adopted pursuant to this  
34 subsection are routine technical rules as defined in Title 5,  
36 chapter 375, subchapter 2-A.

38 7. Forfeiture. Any tobacco product sold or attempted to be  
40 sold in a delivery sale that does not meet the requirements of  
42 this section is deemed to be contraband and is subject to  
44 forfeiture in the same manner as and in accordance with the  
46 provisions of Title 36, section 4372-A.

48 8. Enforcement. The Attorney General may bring an action  
50 to enforce this section in District Court or Superior Court and  
may seek injunctive relief, including a preliminary or final  
injunction, and fines, penalties and equitable relief and may  
seek to prevent or restrain actions in violation of this section  
by any person or any person controlling such person. In  
addition, a violation of this section is a violation of the Maine  
Unfair Trade Practices Act.

**§1555-D. Illegal delivery of tobacco products**

A person may not knowingly transport or cause to be  
delivered to a person in this State a tobacco product purchased  
from a person who is not licensed as a tobacco retailer in this  
State, except that this provision does not apply to the  
transportation or delivery of tobacco products to a licensed  
tobacco distributor or tobacco retailer. A person is deemed to  
know that a package contains a tobacco product if the package is  
marked in accordance with the requirements of section 1555-C,  
subsection 3, paragraph B or if the person receives the package  
from a person listed as an unlicensed tobacco retailer by the  
Attorney General under this section.

2       1. Lists. The Attorney General shall maintain lists of  
3 licensed tobacco retailers and known unlicensed tobacco  
4 retailers. The Attorney General shall provide to a delivery  
5 service lists of licensed tobacco retailers and known unlicensed  
6 tobacco retailers. The list of known unlicensed tobacco  
7 retailers is confidential. A delivery service that receives a  
8 list of known unlicensed tobacco retailers shall maintain the  
9 confidentiality of the list.

10       2. Penalty. The following penalties apply for violation of  
11 this section.

12           A. A person who violates this section commits a civil  
13 violation for which a fine of not less than \$50 nor more  
14 than \$1500 may be adjudged for each violation. A fine  
15 imposed under this paragraph may not be suspended.

16           B. An employer of a person who, while working and within  
17 the scope of that person's employment, violates this section  
18 commits a civil violation for which a fine of not less than  
19 \$50 nor more than \$1,500 may be adjudged for each  
20 violation. A fine imposed under this paragraph may not be  
21 suspended.

22       3. Enforcement. The Attorney General may bring an action  
23 to enforce this section in District Court or Superior Court and  
24 may seek injunctive relief, including a preliminary or final  
25 injunction, and fines, penalties and equitable relief and may  
26 seek to prevent or restrain actions in violation of this section  
27 by any person or any person controlling such person. In  
28 addition, a violation of this section is a violation of the Maine  
29 Unfair Trade Practices Act.

30       4. Affirmative defense. It is an affirmative defense to a  
31 prosecution under this section that a person who transported  
32 tobacco products or caused tobacco products to be delivered  
33 reasonably relied on licensing information provided by the  
34 Attorney General under this section.

35       5. Rulemaking. The department shall adopt rules to  
36 implement this section. Rules adopted pursuant to this  
37 subsection are routine technical rules as defined in Title 5,  
38 chapter 375, subchapter 2-A.

39       6. Forfeiture. Any tobacco product sold or attempted to be  
40 sold in a delivery sale that does not meet the requirements of  
41 this section is deemed to be contraband and is subject to  
42 forfeiture in the same manner as and in accordance with the  
43 provisions of Title 36, section 4372-A.

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**SUMMARY**

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This amendment replaces the bill. It prohibits the delivery of tobacco products in the State from unlicensed retailers. It requires the Attorney General to make available lists of licensed and known unlicensed tobacco retailers. It prohibits unlicensed sales of tobacco products using telephonic or other electronic method of voice transmission or delivery services or the Internet. It imposes requirements on delivery sales and provides for enforcement by the Attorney General. It provides for seizure and forfeiture of contraband products in the same manner as and in accordance with the provisions applicable to contraband cigarettes.

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**FISCAL NOTE REQUIRED**  
(See attached)





**121st Maine Legislature  
Office of Fiscal and Program Review**

**LD 1236**

**An Act To Regulate the Delivery Sales of Tobacco Products and To  
Prevent the Sale of Tobacco Products to Minors**

**LR 1230(02)**

**Fiscal Note for Bill as Amended by Committee Amendment " "**

**Committee: Health and Human Services**

**Fiscal Note Required: Yes**

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**Fiscal Note**

Minor cost increase - General Fund  
Minor revenue increase - General Fund

**Correctional and Judicial Impact Statements**

Establishes new civil violations  
May increase the number of civil suits filed in the court system.

**Fiscal Detail and Notes**

Costs associated with enforcing compliance with these provisions and making available lists of licensed and unlicensed tobacco retailers and tobacco distributors can be absorbed by the Department of the Attorney General utilizing existing budgeted resources.