

MAINE STATE LEGISLATURE

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121st MAINE LEGISLATURE

FIRST REGULAR SESSION-2003

Legislative Document

No. 1236

H.P. 910

House of Representatives, March 6, 2003

An Act To Regulate the Delivery Sales of Cigarettes and To Prevent the Sale of Cigarettes to Minors

Reference to the Committee on Health and Human Services suggested and ordered printed.

Millicent M. MacFarland
MILLICENT M. MacFARLAND
Clerk

Presented by Representative CUMMINGS of Portland.
Cosponsored by President DAGGETT of Kennebec and
Representative: Speaker COLWELL of Gardiner.

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

4 **Sec. 1. 22 MRSA §1551, sub-§§1-A to 1-D** are enacted to read:

5 1-A. Consumer. "Consumer" means an individual who
6 purchases, receives or possesses cigarettes for personal
7 consumption and not for resale.

8 1-B. Delivery sale. "Delivery sale" means:

9 A. A sale of cigarettes to a consumer in the State when:

10
11 (1) The purchaser submits the order for the sale by
12 means of a telephonic or other method of voice
13 transmission, the mail or any other delivery service or
14 the Internet or other on-line service; or

15
16 (2) The cigarettes are delivered by use of the mail or
17 other delivery service; or

18
19 B. A sale of cigarettes that satisfies the criteria in
20 paragraph A, subparagraph (1) regardless of whether the
21 seller is located inside or outside of the State.

22
23 For purposes of this subsection, a sale of cigarettes to an
24 individual in the State must be treated as a sale to a consumer
25 unless the individual is licensed as a distributor or retailer of
26 cigarettes by the department.

27
28 1-C. Delivery service. "Delivery service" means a person,
29 including the United States Postal Service, that is engaged in
30 the commercial delivery of letters, packages or other containers.

31
32 1-D. Distributor. "Distributor" means a person, whether
33 located inside or outside of the borders of the State, other than
34 a retailer, who sells or distributes cigarettes inside the
35 boundaries of the State. "Distributor" does not include a
36 cigarette manufacturer, export warehouse proprietor or importer
37 with a valid permit under 26 United States Code, Section 5712
38 (1997) if the person sells or distributes cigarettes in the State
39 only to distributors who hold valid and current licenses under
40 the laws of a state or to an export warehouse proprietor or
41 another manufacturer. "Distributor" does not include a common or
42 contract carrier that is transporting cigarettes under a proper
43 bill of lading or freight bill that states the quantity, source
44 and destination of cigarettes or a person who ships cigarettes
45 through this State by common or contract carrier under a bill of
46 lading or freight bill.

47
48
49 **Sec. 2. 22 MRSA §1551, sub-§2-A** is enacted to read:

2 2-A. Retailer. "Retailer" means a person, whether located
3 inside or outside the borders of the State, who sells or
4 distributes cigarettes to a consumer in the State.

6 Sec. 3. 22 MRSA §1555-C is enacted to read:

8 §1555-C. Delivery sales of cigarettes

10 1. Unlawful sale of cigarettes. It is unlawful for a
11 person in the business of selling cigarettes to take an order for
12 cigarettes through the mail or through any telecommunication
13 means, including by telephone, facsimile or the Internet, if the
14 person fails to comply with subsection 2.

16 This subsection does not apply to the sale of cigarettes to a
17 person who is licensed to sell cigarettes.

18 2. Delivery sale. Before a delivery sale may be completed,
19 the following requirements must be met.

21 A. At the time of the first delivery sale to an individual,
22 the retailer must acquire the following information from the
23 individual who places the order:

25 (1) A copy of a valid government-issued document that
26 provides the name, address and date of birth of the
27 individual; and

29 (2) A signed statement in writing from the individual
30 providing a certification that the individual:

31 (a) Is of legal age to purchase cigarettes in the
32 State;

33 (b) Wants to receive mailings from a tobacco
34 company; and

35 (c) Understands that providing false information
36 may constitute a violation of law.

37 B. Prior to delivery of the cigarettes pursuant to the
38 delivery sale under paragraph A, the retailer must:

39 (1) Verify the date of birth or age of the individual
40 against a commercially available database; or

41 (2) Obtain a photocopy or other image of the valid,
42 government-issued identification stating the date of
43 birth or age of the individual placing the order.

2 C. If an order for cigarettes is made pursuant to an
4 advertisement on the Internet, the retailer must receive
payment by credit card or check for the order before mailing
or shipping the cigarettes.

6 D. The retailer must use a delivery service that requires
8 the individual purchasing the cigarettes to:

10 (1) Be the addressee;

12 (2) Have an individual of legal age sign for the
package; and

14 (3) If the person signing for the package appears to
16 be under 27 years of age, produce a valid
government-issued identification that:

18 (a) Contains a photograph of the person;

20 (b) Indicates that the person is of legal age to
22 purchase cigarettes; and

24 (c) Indicates that the person is not younger than
the age indicated on the copy of the
26 government-issued document received under
paragraph A.

28 The bill of lading must clearly state the requirements of
30 this paragraph and specify that state law requires
compliance with these requirements.

32 E. The retailer must notify the delivery service in writing
34 of the age of the addressee as indicated by the
government-issued document received under paragraph A.

36 **3. Common carriers.** This section may not be construed as
38 imposing liability upon any common carrier, or officers or
employees of the common carrier, when acting within the scope of
40 business of the common carrier.

42 **4. E-mail addresses.** Persons taking delivery sale orders
may request that prospective purchasers provide their e-mail
44 addresses.

46 **5. Registration requirement.** Prior to making delivery
sales or shipping cigarettes in connection with any sales, a
48 distributor shall file with the department a statement setting
forth the distributor's name, trade name and the address of the
50 distributor's principal place of business and any other place of
business.

2 6. Reporting requirement. No later than the 10th day of
3 each calendar month, each distributor that has made a delivery
4 sale or shipped or delivered cigarettes in connection with any
5 sale during the previous calendar month shall file with the
6 department a memorandum or a copy of the invoice that provides
7 for each delivery sale:

8 A. The name and address of the individual to whom that
9 delivery sale was made;

10 B. The brand or brands of the cigarettes that were sold in
11 the delivery sale; and

12 C. The quantity of cigarettes that was sold in the delivery
13 sale.

14 A distributor that meets the requirements of 15 United States
15 Code, Section 376 (1955) satisfies the requirements of this
16 subsection.

17 7. Collection of taxes. A distributor making a delivery
18 sale shall collect and remit to the Department of Administrative
19 and Financial Services, Bureau of Revenue Services any taxes
20 levied by the State with respect to the delivery sale pursuant to
21 Title 36, section 4366-A, except that collection and remission is
22 not required if the distributor has obtained proof in the form of
23 applicable tax stamps or otherwise that the taxes already have
24 been paid to the State.

25 8. Unpaid tax. A distributor who fails to pay any tax due
26 pursuant to subsection 7 shall pay, in addition to any other
27 penalty, a penalty of 50% of the tax due but unpaid.

28 9. Forfeiture. Any cigarettes sold or attempted to be sold
29 in a delivery sale that does not meet the requirements of this
30 chapter must be forfeited to the State and destroyed pursuant to
31 Title 36, section 4372-A.

32 10. Civil violations. The following violations are civil
33 penalties.

34 A. A person may not violate this section or rules adopted
35 pursuant to this chapter. A person who violates this
36 paragraph commits a civil violation and is subject to the
37 following fines:

38 (1) For the first violation, a fine of not more than
39 \$1,000 may be adjudged; and

