

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 462

S.P. 165

In Senate, February 10, 2009

An Act To Amend the Retail Tobacco and Liquor Licensing Laws

Submitted by the Department of Health and Human Services pursuant to Joint Rule 204.
Reference to the Committee on Health and Human Services 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 MILLS of Somerset.
Cosponsored by Representative MILLER of Somerville.

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

2 **Sec. 1. 22 MRSA §1552, sub-§1**, as amended by PL 2005, c. 12, Pt. TT, §1, is
3 further amended to read:

4 **1. Application process; license fees.** An applicant for an annual retail tobacco
5 license shall file an application in the form required by the department. The department
6 shall make provisions for applications under this section. ~~The fee for a retail tobacco~~
7 ~~license must be determined~~ The department shall determine annually by the department
8 by rulemaking the fee for a retail tobacco license, including the proration of an initial
9 license that is issued for less than one year. The applicant shall enclose the fee with the
10 application for the license. Rules adopted pursuant to this section are routine technical
11 rules as defined in Title 5, chapter 375, subchapter 2-A.

12 **Sec. 2. 22 MRSA §1552, sub-§2**, as amended by PL 2003, c. 673, Pt. CC, §1, is
13 further amended to read:

14 **2. Term of license.** All retail tobacco licenses are valid for ~~one year a term~~
15 beginning April 1st and ending the following March 31st, or in the case of an initial
16 license issued after April 1st, for a term beginning on the date of issue and ending the
17 following March 31st, unless suspended, revoked or not subject to the transfer under
18 section 1553. Licenses that have been suspended or revoked may be reinstated, as
19 permitted by the District Court decision issued under subchapter 2, upon the receipt of an
20 application for reinstatement and payment of all penalties and an application fee of \$50.

21 **Sec. 3. 22 MRSA §1552, sub-§3-A**, as enacted by PL 2005, c. 145, §2, is
22 amended to read:

23 **3-A. Seasonal mobile tobacco vendor license.** An applicant who is a seasonal
24 mobile tobacco vendor may purchase a single annual license authorizing that vendor to
25 operate at 2 or more agricultural fairs, festivals or exhibitions held during the agricultural
26 fair season. A license issued under this subsection must clearly specify the name and
27 location of each fair, festival or exhibition at which the licensee is authorized to operate
28 and, for each location, the specific dates and number of machines for which the licensee
29 is authorized. A licensee may not operate at any agricultural fair, festival or exhibit
30 except as specifically provided in that license. A seasonal mobile tobacco vendor license
31 expires upon the conclusion of the agricultural fairs, festivals or exhibitions for which it
32 was issued. Upon issuing a license under this subsection, the department shall
33 immediately provide the information required by this subsection to the Office of the
34 Attorney General for purposes of inspection and enforcement.

35 **Sec. 4. 22 MRSA §1557**, as amended by PL 1995, c. 593, §6 and PL 1999, c. 547,
36 Pt. B, §78 and affected by §80, is further amended to read:

37 **§1557. Jurisdiction; District Court**

38 **1. Jurisdiction.** The District Court, pursuant to the Maine Administrative Procedure
39 Act, shall conduct hearings on all matters concerning violations by tobacco licensees of
40 any state law related to tobacco sales. Notwithstanding Title 5, chapter 375, subchapter

1 VI 6, the District Court Judge has exclusive jurisdiction over all violations of this chapter
2 by licensees and their agents or employees when ~~no~~ a criminal penalty is not provided.

3 2. **Powers.** The District Court may impose fines ~~or~~ on licensees and their agents or
4 employees and suspend or revoke licenses in accordance with this chapter.

5 3. **Injunction.** If the person licensed to sell tobacco products has engaged in or is
6 about to engage in any act or practice that violates this chapter, the District Court may
7 grant a permanent or temporary injunction, restraining order or other order as appropriate.

8 **Sec. 5. 22 MRSA §1558, sub-§2**, as enacted by PL 1995, c. 470, §9 and affected
9 by §19 and amended by PL 1999, c. 547, Pt. B, §78 and affected by §80, is further
10 amended to read:

11 2. **Notice and hearing.** Except as provided under subsection 7, upon receipt of a
12 signed complaint prepared under subsection 1, paragraph A, the District Court shall
13 ~~notify the licensee~~ provide notice and hold a hearing according to the following
14 procedures.

15 A. The District Court shall notify the licensee or the licensee's agent or employee by
16 serving the licensee or the licensee's agent or employee with a copy of the complaint
17 and a notice that states the time and place of the hearing and that the licensee or the
18 licensee's agent or employee may appear in person or be represented by counsel at the
19 hearing. Service of the complaint and hearing notice upon the licensee is sufficient
20 when sent by registered or certified mail at least 7 days before the date of the hearing
21 to the address given by the licensee at the time of application for a license. Service of
22 the complaint and hearing notice upon a licensee's agent or employee is sufficient
23 when sent by registered or certified mail at least 7 days before the date of the hearing
24 to the address given by the agent or employee at the time the agent or employee was
25 initially notified by the department of the violation.

26 B. The District Court shall conduct a hearing limited to the facts, laws and rules
27 specified in the complaint.

28 C. The District Court shall conduct the hearing in the following manner.

29 (1) The District Court may subpoena and examine witnesses, administer oaths
30 and subpoena and compel the attendance of parents and legal guardians of
31 unemancipated minors.

32 (a) The department shall pay to the witnesses the legal fees for travel and
33 attendance, except that, notwithstanding Title 16, section 253, the department
34 is not required to pay the fees before the travel and attendance occur.

35 (2) Hearsay testimony is not admissible during the hearing. The licensees,
36 agents or employees named in the complaint have the right to have all witnesses
37 testify in person at the hearing.

38 (3) The District Court shall state in writing the findings and decision in each case
39 based on the facts, laws and rules cited in the complaint. The findings must
40 specify the facts found and the laws or rules violated.

1 **Sec. 6. 22 MRSA §1558, sub-§8**, as amended by PL 2005, c. 223, §5, is further
2 amended to read:

3 **8. Fines.** Notwithstanding any other provisions of this Title, the District Court may
4 impose on a licensee or the licensee's agent or employee a fine of a specific sum of not
5 less than \$50 nor more than \$1,500 for any one offense. The fine is independent of any
6 fine or forfeiture adjudged under subchapter ~~I~~ 1 or ~~H~~ 2 and may be imposed instead of or
7 in addition to any suspension or revocation of a license.

8 A. The District Court shall maintain a record of all fines received by the court. Any
9 fines received must be credited as follows: 1/2 to the Department of Health and
10 Human Services in a nonlapsing account to be used by the department to defray
11 administrative costs of retail tobacco licensing and 1/2 to a nonlapsing account to be
12 used by the Attorney General to support enforcement and responsible retailing
13 education programs. Annually, the court shall report to the Office of Substance
14 Abuse the total amount of fines collected.

15 **Sec. 7. 28-A MRSA §803, sub-§2**, as amended by PL 1997, c. 373, §77 and PL
16 1999, c. 547, Pt. B, §78 and affected by §80, is further amended to read:

17 **2. Notice and hearing.** Except as provided under subsection 6, upon receipt of a
18 signed complaint prepared under subsection 1, paragraph A, the District Court Judge shall
19 ~~notify the licensee~~ provide notice and hold a hearing according to the following
20 procedures.

21 A. The District Court Judge shall notify the licensee or the licensee's agent or
22 employee by serving on the licensee or the licensee's agent or employee a copy of the
23 complaint and a notice stating the time and place of the hearing and that the licensee
24 or the licensee's agent or employee may appear in person or by counsel at the hearing.
25 Service of the complaint and hearing notice upon the licensee is sufficient if sent by
26 registered or certified mail at least 7 days before the date of the hearing to the address
27 given by the licensee at the time of the licensee's application for a license. Service of
28 the complaint and hearing notice upon a licensee's agent or employee is sufficient
29 when sent by registered or certified mail at least 7 days before the date of the hearing
30 to the address given by the agent or employee at the time the agent or employee was
31 initially notified by the bureau of the violation.

32 B. The District Court Judge shall conduct a hearing limited to the facts, the law and
33 rules of the bureau, as specified in the complaint.

34 C. The District Court Judge shall conduct the hearing in the following manner.

35 (1) The District Court Judge may subpoena and examine witnesses, administer
36 oaths and subpoena and compel the attendance of parents and legal guardians of
37 unemancipated minors.

38 (a) The bureau shall pay to the witnesses the legal fees for travel and
39 attendance, except that, notwithstanding Title 16, section 253, the bureau is
40 not required to pay the fees before the travel and attendance occur.

1 (2) Hearsay testimony is not admissible during the hearing. The licensees,
2 agents or employees named in the complaint have the right to have all witnesses
3 testify in person at the hearing.

4 (3) The District Court Judge shall conduct hearings in one or more designated
5 places that are the most convenient and economical for all parties concerned in
6 the hearing.

7 D. The District Court Judge shall state in writing the findings and decision in each
8 case, based upon the facts, the law and the rules of the bureau. The findings must
9 specify the facts found and the law or rules found to be violated.

10 **Sec. 8. 28-A MRSA §803, sub-§8**, as enacted by PL 1987, c. 45, Pt. A, §4 and
11 amended by PL 1999, c. 547, Pt. B, §78 and affected by §80, is further amended to read:

12 **8. Fines.** Notwithstanding any other provisions of this Title, ~~an~~ the District Court
13 Judge may impose a fine of a specific sum on a licensee or the licensee's agent or
14 employee, of not less than \$50 nor more than \$1,500, for any one offense. Such a fine
15 may be imposed instead of or in addition to any suspension or revocation of a license by
16 the court.

17 A. The District Court Judge shall maintain a record of all fines received by the court
18 and shall pay the fines into the General Fund by the 15th day of each month.

19 **SUMMARY**

20 This bill clarifies that all retail tobacco licenses expire March 31st each year and
21 requires the Department of Health and Human Services' rules to provide for prorated
22 license fees for new applications received after April 1st. The bill further clarifies the
23 jurisdiction of and provides consistent procedures for the District Court over agents and
24 employees of both retail tobacco licensees and liquor licensees when charged with
25 administrative violations.