

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1230

H.P. 850

House of Representatives, March 26, 2009

**An Act To Prohibit the Delivery of Tobacco Products to Consumers
To Prevent the Sale of Tobacco Products 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 PERRY of Calais.
Cosponsored by Representatives: PETERSON of Rumford, STUCKEY of Portland,
WEBSTER of Freeport, Senator: MARRACHÉ of Kennebec.

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

2 **Sec. 1. 22 MRSA §1555-B, sub-§1**, as amended by PL 2005, c. 223, §4, is
3 further amended to read:

4 **1. Retail sales.** Tobacco products may be sold at retail only in a direct, face-to-face
5 exchange in which the purchaser may be clearly identified and through the mail under
6 procedures approved by the department to provide reliable verification that the purchaser
7 is not a minor. For direct, face-to-face sales, employees who sell tobacco products must
8 be at least 17 years of age. An employee who is at least 17 years of age but less than 21
9 years of age may sell tobacco products only in the presence of an employee who is at
10 least 21 years of age and is in a supervisory capacity.

11 **Sec. 2. 22 MRSA §1555-C**, as enacted by PL 2003, c. 444, §2, is repealed.

12 **Sec. 3. 22 MRSA §1555-D, first ¶**, as enacted by PL 2003, c. 444, §2, is
13 amended to read:

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

22 **Sec. 4. 22 MRSA §1555-F** is enacted to read:

23 **§1555-F. Delivery sales of tobacco products**

24 **1. Prohibition against delivery sales to consumers.** The following requirements
25 apply to delivery sales of tobacco products within the State.

26 A. A tobacco product may not be shipped to anyone other than a licensed tobacco
27 distributor or licensed tobacco retailer in this State.

28 B. A person may not, with knowledge or reason to know of the violation, provide
29 substantial assistance to a person in violation of this section.

30 **2. Acceptance of delivery of tobacco products.** Only a licensed tobacco distributor
31 or licensed tobacco retailer may accept delivery of tobacco products in this State.

32 **3. Penalties.** The following penalties apply to violations of this section.

33 A. A person who violates this section commits a civil violation for which a fine of
34 not less than \$1,000 and not more than \$5,000 may be adjudged for each violation.

35 B. An employer of a person who, while working and within the scope of that
36 person's employment, violates this section commits a civil violation for which a fine
37 of not less than \$1,000 and not more than \$5,000 may be adjudged for each violation.

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C. For purposes of this section, each shipment or transport of tobacco products constitutes a separate violation.

D. The Attorney General may bring an action to enforce this section in District Court or Superior Court and may seek injunctive relief, including 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.

E. If a court determines that a person has violated the provisions of this section, the court shall order any profits, gains, gross receipts or other benefits from the violation to be disgorged and paid to the Treasurer of State for deposit in the General Fund. Unless otherwise expressly provided, the penalties or remedies or both under this section are in addition to any other penalties and remedies available under any other law of this State.

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

5. Forfeiture. Any tobacco product sold or attempted to be sold in violation of this section is deemed to be contraband and is subject to forfeiture in the same manner as and in accordance with the provisions of Title 36, section 4372-A.

SUMMARY

This bill prohibits delivery sales of tobacco products in the State to anyone other than a licensed tobacco distributor or a licensed tobacco retailer.