

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

No. 1923

S.P. 785

In Senate, May 11, 2023

**An Act to Provide for Licensing of and Tax Collection from Remote
Retail Sellers of Pipe Tobacco and Premium Cigars**

Reference to the Committee on Taxation suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT
Secretary of the Senate

Presented by Senator POULIOT of Kennebec.

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

2 **Sec. 1. 22 MRSA §1551, sub-§6** is enacted to read:

3 **6. Pipe tobacco.** "Pipe tobacco" means a tobacco product that, because of its
4 appearance, type, packaging or labeling, is suitable for use by and likely to be offered to or
5 purchased by a consumer as a tobacco product to be smoked in a pipe.

6 **Sec. 2. 22 MRSA §1551, sub-§7** is enacted to read:

7 **7. Remote retail seller.** "Remote retail seller" has the same meaning as in Title 36,
8 section 4401, subsection 6-B.

9 **Sec. 3. 22 MRSA §1555-B, sub-§1**, as amended by PL 2017, c. 308, §6, is further
10 amended to read:

11 **1. Retail sales.** Tobacco products, except for pipe tobacco and premium cigars sold
12 by remote retail sellers, may be sold at retail only in a direct, face-to-face exchange in
13 which the purchaser may be clearly identified. For direct, face-to-face sales, employees
14 who sell tobacco products must be at least 17 years of age. An employee who is 17 years
15 of age or older and under 21 years of age may sell tobacco products only in the presence of
16 an employee who is 21 years of age or older and is in a supervisory capacity.

17 **Sec. 4. 22 MRSA §1555-C**, as amended by PL 2009, c. 652, Pt. A, §30, is repealed.

18 **Sec. 5. 22 MRSA §1555-D, first ¶**, as amended by PL 2009, c. 398, §4 and affected
19 by §6, is further amended to read:

20 A person may not knowingly transport or cause to be delivered to a person in this State
21 a tobacco product purchased from a person who is not licensed as a tobacco retailer or
22 remote retail seller in this State, except that this provision does not apply to the
23 transportation or delivery of tobacco products to a licensed tobacco distributor or tobacco
24 retailer or from a remote retail seller to a consumer.

25 **Sec. 6. 22 MRSA §1555-F, sub-§1, ¶A**, as enacted by PL 2009, c. 398, §5 and
26 affected by §6, is amended to read:

27 A. A tobacco product may not be shipped to anyone other than a licensed tobacco
28 distributor or licensed tobacco retailer in this State, except that a remote retail seller
29 may ship pipe tobacco and premium cigars to a consumer.

30 **Sec. 7. 36 MRSA §4401, sub-§1-A**, as enacted by PL 2011, c. 285, §11, is amended
31 to read:

32 **1-A. Delivery sale.** "Delivery sale" means a sale of tobacco products, other than pipe
33 tobacco and premium cigars, to a consumer in this State when:

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

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

37 **Sec. 8. 36 MRSA §4401, sub-§1-B** is enacted to read:

38 **1-B. Consumer.** "Consumer" has the same meaning as in Title 22, section 1551,
39 subsection 1-A.

1 **Sec. 9. 36 MRSA §4401, sub-§4-A** is enacted to read:

2 **4-A. Pipe tobacco.** "Pipe tobacco" has the same meaning as in Title 22, section 1551,
3 subsection 6.

4 **Sec. 10. 36 MRSA §4401, sub-§4-B** is enacted to read:

5 **4-B. Premium cigar.** "Premium cigar" has the same meaning as in Title 22, section
6 1551, subsection 5.

7 **Sec. 11. 36 MRSA §4401, sub-§6-A** is enacted to read:

8 **6-A. Remote retail sale.** "Remote retail sale" means any sale of pipe tobacco or
9 premium cigars to a consumer in this State when:

10 A. The consumer submits the order for the sale when the remote retail seller is not in
11 the consumer's physical presence, including, but not limited to, through a telephone or
12 other method of voice transmission, the mail, the Internet or other online service; or

13 B. The pipe tobacco or premium cigars are delivered to the consumer and the consumer
14 takes possession of the pipe tobacco or premium cigars when the remote retail seller is
15 not in the consumer's physical presence, including, but not limited to, through a
16 common carrier, private delivery service or other method of delivery.

17 **Sec. 12. 36 MRSA §4401, sub-§6-B** is enacted to read:

18 **6-B. Remote retail seller.** "Remote retail seller" means a person located within or
19 outside of this State that meets the requirements of section 4404-A, subsection 2-A to make
20 remote retail sales.

21 **Sec. 13. 36 MRSA §4401, sub-§7-B** is enacted to read:

22 **7-B. Stock keeping unit.** "Stock keeping unit" means the unique identifier assigned
23 by a distributor or remote retail seller to a tobacco product to track inventory.

24 **Sec. 14. 36 MRSA §4402, sub-§1**, as amended by PL 2019, c. 379, Pt. B, §15, is
25 repealed and the following enacted in its place:

26 **1. Generally.** Every distributor and remote retail seller shall obtain a license from the
27 assessor before engaging in business in this State in accordance with this subsection.

28 A. A retailer required to be licensed as a distributor pursuant to this section must also
29 hold a current retail tobacco license issued under Title 22, chapter 262-A, subchapter
30 1. A distributor's license must be prominently displayed on the premises of the
31 business covered by the license and may not be transferred to any other person. A
32 distributor's license issued pursuant to this section is not a license within the meaning
33 of that term in the Maine Administrative Procedure Act.

34 B. A retailer required to be licensed as a remote retail seller pursuant to this section
35 must also hold a current retail tobacco license issued under Title 22, chapter 262-A,
36 subchapter 1. A remote retail seller's license issued pursuant to this section must be
37 issued for the remote retail seller's principal place of business, whether or not the
38 principal place of business is in the State. A remote retail seller is not required to
39 display the license. A remote retail seller's license issued pursuant to this section is not
40 a license within the meaning of that term in the Maine Administrative Procedure Act.

1 **Sec. 15. 36 MRSA §4402, sub-§2**, as enacted by PL 2005, c. 627, §7, is repealed
2 and the following enacted in its place:

3 **2. Applications; forms.** Every license application must be made on a form prescribed
4 by the assessor and must state the name and address of the applicant, the address of the
5 applicant's principal place of business and such other information as the assessor may
6 require for the proper administration of this chapter.

7 A. A person outside the State who ships or transports tobacco products to a retailer in
8 this State must make application as a distributor and be granted by the assessor a license
9 subject to all the provisions of this chapter and agree, upon applying for a license, to
10 submit that person's books, accounts and records to examination by the bureau during
11 reasonable business hours and to accept service of process by mail when service is
12 made in any proceeding involving enforcement of this chapter.

13 B. A person that ships or transports pipe tobacco or premium cigars must make
14 application as a remote retail seller and be granted by the assessor a license subject to
15 all the provisions of this chapter and agree, upon applying for a license, to submit that
16 person's books, accounts and records to examination by the bureau during reasonable
17 business hours and to accept service of process by mail when service is made in any
18 proceeding involving enforcement of this chapter.

19 **Sec. 16. 36 MRSA §4402, sub-§4**, as enacted by PL 2005, c. 627, §7, is amended
20 to read:

21 **4. Penalties.** The following penalties apply to a violation of this section.

22 A. A distributor or remote retail seller that imports into this State any tobacco product
23 without holding a distributor's license issued by the assessor pursuant to this section
24 commits a civil violation for which a fine of not less than \$250 and not more than \$500
25 must be adjudged.

26 B. A distributor or remote retail seller that violates paragraph A after having been
27 previously adjudicated as violating paragraph A commits a civil violation for which a
28 fine of not less than \$500 and not more than \$1,000 must be adjudged for each
29 subsequent violation.

30 C. A distributor or remote retail seller that sells at wholesale or retail, offers for sale
31 at wholesale or retail or possesses with intent to sell at wholesale or retail any tobacco
32 product without holding a distributor's license issued by the assessor pursuant to this
33 section commits a civil violation for which a fine of not less than \$250 and not more
34 than \$500 must be adjudged.

35 D. A distributor or remote retail seller that violates paragraph C after having been
36 previously adjudicated as violating paragraph C commits a civil violation for which a
37 fine of not less than \$500 and not more than \$1,000 must be adjudged for each
38 subsequent violation.

39 **Sec. 17. 36 MRSA §4402, sub-§5**, as amended by PL 2019, c. 379, Pt. B, §17, is
40 further amended to read:

41 **5. Surrender, revocation or suspension.** When the business with respect to which a
42 license was issued pursuant to this section is sold or ceases to do business in this State, the
43 holder of the license shall immediately surrender it to the assessor. The assessor may

1 revoke or suspend the license of any distributor or remote retail seller for failure to comply
2 with any provision of this chapter or if the person no longer imports or sells tobacco
3 products. A license that has been revoked or suspended pursuant to this subsection must
4 be immediately surrendered to the assessor. A person aggrieved by a revocation or
5 suspension may request reconsideration as provided in section 151.

6 **Sec. 18. 36 MRSA §4403**, as amended by 2019, c. 530, Pt. A, §§3 to 5, is further
7 amended by enacting at the beginning a new paragraph to read:

8 A tobacco product may be taxed only once in accordance with this section.

9 **Sec. 19. 36 MRSA §4403, sub-§2**, as amended by PL 2019, c. 530, Pt. A, §4, is
10 further amended to read:

11 **2. Other tobacco.** ~~A tax is imposed on cigars, pipe tobacco and other tobacco intended~~
12 ~~for smoking at the rate of 20% of the wholesale sales price beginning October 1, 2005.~~
13 Beginning January 2, 2020, a tax is imposed on all tobacco products, other than those
14 subject to tax under subsection 1 or 2-A, at the rate of 43% of the wholesale sales price.
15 Beginning January 2, 2020, the tax rate imposed pursuant to this subsection is subject to
16 adjustment pursuant to subsection 5.

17 **Sec. 20. 36 MRSA §4403, sub-§2-A** is enacted to read:

18 **2-A. Pipe tobacco and premium cigars.** Beginning January 1, 2024, a tax is imposed
19 on pipe tobacco and premium cigars sold by remote retail sellers at the rate of 43% of the
20 retail sales price at the time of a remote retail sale to a consumer in this State. For purposes
21 of this subsection, "retail sales price" means:

22 A. The actual cost paid by a remote retail seller for the pipe tobacco or premium cigar
23 as designated by the stock keeping unit as supported by documentation from the remote
24 retail seller; or

25 B. If documentation under paragraph A is unavailable, the average of the actual cost
26 paid by a remote retail seller for the pipe tobacco or premium cigar as designated by
27 the stock keeping unit over the 12 calendar months before January 1st of the year in
28 which the remote retail sale occurs.

29 **Sec. 21. 36 MRSA §4403, sub-§3**, as amended by PL 2005, c. 627, §9, is further
30 amended to read:

31 **3. Imposition.** The tax is imposed at the time the distributor or remote retail seller
32 brings or causes to be brought into this State tobacco products that are for sale to consumers
33 or to retailers or for use or at the time tobacco products are manufactured or fabricated in
34 this State for sale in this State.

35 **Sec. 22. 36 MRSA §4404**, as amended by PL 2019, c. 379, Pt. B, §§19 and 20, is
36 repealed and the following enacted in its place:

37 **§4404. Returns; payment of tax and penalty**

38 **1. Distributor returns.** This subsection governs distributor returns.

39 A. Every distributor subject to the licensing requirement of section 4402 shall file, on
40 or before the last day of each month, a return on a form prescribed and furnished by
41 the assessor together with payment of the tax due under this chapter. The return must
42 report all tobacco products held, purchased, manufactured, brought in or caused to be

1 brought in from outside the State or shipped or transported to retailers within the State
2 during the preceding calendar month. Every distributor shall keep a complete and
3 accurate record at its principal place of business to substantiate all receipts and sales of
4 tobacco products.

5 B. The return must include further information as the assessor may prescribe and must
6 show a credit for any tobacco products exempted as provided in section 4403. Records
7 must be maintained to substantiate the exemption. Tax previously paid on tobacco
8 products that are returned to a manufacturer or a distributor because the product has
9 become unfit for use, sale or consumption and for tobacco products that are returned
10 to a distributor that are subsequently destroyed by the distributor may be taken as a
11 credit on a subsequent return. The assessor may either witness the destruction of the
12 product or may accept another form of proof that the product has been destroyed by
13 the distributor or returned to the manufacturer.

14 **2. Remote retail seller returns.** This subsection governs remote retail seller returns.

15 A. A remote retail seller subject to the licensing requirement of section 4402 shall file,
16 on or before the last day of each month, a return on a form prescribed and furnished by
17 the assessor together with payment of the tax due under this chapter. The return must
18 report all tobacco products brought in or caused to be brought in from outside the State
19 or shipped or transported to consumers within the State during the preceding calendar
20 month. A remote retail seller shall keep a complete and accurate record at its principal
21 place of business to substantiate all receipts and sales of tobacco products to consumers
22 in the State.

23 B. The return must include further information as the assessor may prescribe and must
24 show the total actual cost or actual cost list price paid by the remote retail seller for the
25 pipe tobacco or premium cigar as designated by the stock keeping unit for the previous
26 calendar month. Records must be maintained to substantiate the exemption. The return
27 must show the amount of tax due for all remote retail sales made from within or outside
28 the State to a consumer within the State during the preceding calendar month. The
29 remote retail seller shall remit the tax at the time the return is filed.

30 **3. Other returns.** A person who is not a distributor licensed pursuant to this chapter
31 who imports, receives or otherwise acquires tobacco products for use or consumption in
32 the State from a person other than a licensed distributor shall file, on or before the last day
33 of the month following each month in which tobacco products were acquired, a return on
34 a form prescribed by the assessor together with payment of the tax imposed by this chapter
35 at the rate provided in section 4403. The return must report the quantity of tobacco products
36 imported, received or otherwise acquired from a person other than a licensed distributor or
37 retailer during the previous calendar month and additional information the assessor may
38 require.

39 **Sec. 23. 36 MRSA §4404-A, sub-§1,** as enacted by PL 2005, c. 627, §11, is
40 amended to read:

41 **1. Generally.** Except as provided in subsections 2, 2-A and 3, only a person licensed
42 pursuant to section 4402 may import tobacco products into this State.

43 **Sec. 24. 36 MRSA §4404-A, sub-§2-A** is enacted to read:

