

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 7, 1994 to June 30, 1995

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
SEPTEMBER 29, 1995

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4

J.S. McCarthy Company
Augusta, Maine
1995

a spouse is not necessary to constitute "living as spouses."

Sec. 4. 19 MRSA §769, sub-§1, as amended by PL 1993, c. 469, §4, is further amended to read:

1. Crime committed. Violation of a temporary, emergency, interim or final protective order, an order of a tribal court of the Passamaquoddy Tribe or the Penobscot Nation, any similar order issued by any court of the United States or of any other state, territory, commonwealth or tribe or a court approved consent agreement, when the defendant has prior actual notice, which may be notice by means other than service in hand, of the order or agreement, is a Class D crime, except when the only provision that is violated concerns relief authorized under section 766, subsection 1, paragraphs F to K. Violation of section 766, subsection 1, paragraphs F to K, must be treated as contempt and punished in accordance with law.

See title page for effective date.

CHAPTER 470

S.P. 306 - L.D. 845

An Act to Reduce Tobacco Use by Juveniles

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

Sec. 1. 5 MRSA §20002, sub-§3 is enacted to read:

3. Tobacco use by juveniles. To enforce the State's laws relating to the sale and use of tobacco products by juveniles and to coordinate state and local activities related to those provisions. The office shall take all necessary actions to ensure compliance with the Synar Act, 42 United States Code 300X-26, including the preparations of reports for the signature of the Governor. All law enforcement agencies, all state departments, including the Department of Public Safety and the Department of Human Services, and municipalities shall cooperate with the office in these efforts.

The office may enter into any contracts or agreements necessary or incidental to the performance of its duties under this section, subject to section 20005, subsection 6 and section 20005-A. The office shall provide or assist in the provision of voluntary training programs regarding the sales of tobacco products to juveniles.

Sec. 2. 15 MRSA §3103, sub-§1, ¶C-1, as enacted by PL 1989, c. 445, §1 is repealed.

Sec. 3. 15 MRSA §3103, sub-§1, ¶D, as amended by PL 1989, c. 445, §2, is further amended to read:

D. If a juvenile is adjudicated to have committed an action described in paragraph B; or C ~~or C-1~~ willful refusal to pay a resulting fine or willful violation of the terms of a resulting probation;

Sec. 4. 15 MRSA §3103, sub-§2, as amended by PL 1989, c. 741, §2, is further amended to read:

2. Dispositional powers. All of the dispositional powers of the Juvenile Court provided in section 3314 ~~shall~~ apply to a juvenile who is adjudicated to have committed a juvenile crime, except that no commitment to the Maine Youth Center or other detention may be imposed for conduct described in subsection 1, paragraphs B; and C ~~and C-1~~.

Sec. 5. 15 MRSA §3105-A, sub-§2, ¶C, as amended by PL 1989, c. 445, §3, is further amended to read:

C. A prosecution for conduct specified in section 3103, subsection 1, paragraph B, C, ~~C-1~~, D, E or F ~~shall~~ must be commenced within one year after it is committed.

Sec. 6. 15 MRSA §3201, sub-§3, as amended by PL 1989, c. 445, §4, is further amended to read:

3. Enforcement of other juvenile crimes. A law enforcement officer who has probable cause to believe that a juvenile crime, as defined by section 3103, subsection 1, paragraph B; or C ~~or C-1~~ has been committed may request that the juvenile provide the officer with reasonably credible evidence of the juvenile's name, address and age. The evidence may consist of oral representations by the juvenile. If the juvenile furnishes the officer with evidence of the juvenile's name, address and age and the evidence does not appear to be reasonably credible, the officer shall attempt to verify the evidence as quickly as is reasonably possible. During the period the verification is being attempted, the officer may require the juvenile to remain present for a period not to exceed 2 hours.

After informing the juvenile of the provisions of this subsection, the officer may arrest the juvenile for a crime defined in section 3103, subsection 1, paragraph B; or C ~~or C-1~~ if the juvenile intentionally refuses to furnish any evidence of the juvenile's name, address and age, or if, after attempting to verify the evidence as provided for in this subsection, the officer has probable cause to believe that the juvenile has intentionally failed to provide reasonably credible evidence of the juvenile's name, address and age.

Sec. 7. 15 MRSA §3307, sub-§2, ¶B, as amended by PL 1989, c. 445, §5, is further amended to read:

B. The general public ~~shall be~~ is excluded from all other juvenile hearings and proceedings, except that a juvenile charged with a juvenile crime that would constitute murder or a Class A, Class B or Class C offense and with a juvenile crime that would constitute a juvenile's first Class D offense or Class E offense or with conduct described in section 3103, subsection 1, paragraph B, C, ~~C-1~~, D or E, arising from the same underlying transaction may elect to have all charges adjudicated in one hearing, and, ~~where~~ when a juvenile does so elect, the general public ~~shall~~ is not be excluded from that hearing.

Sec. 8. 15 MRSA §3314, sub-§1, ¶G, as amended by PL 1989, c. 445, §6, is further amended to read:

G. Except for a violation of section 3103, subsection 1, paragraph D, the court may impose a fine, subject to Title 17-A, sections 1301 to 1305. For the purpose of this section, juvenile offenses defined in section 3103, subsection 1, paragraphs B, and C, and C-1, shall be are deemed Class E crimes.

Sec. 9. 22 MRSA c. 262-A is enacted to read:

CHAPTER 262-A

RETAIL TOBACCO SALES

SUBCHAPTER I

RETAIL TOBACCO LICENSES

§1551. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Cigarette paper. "Cigarette paper" means those papers or paper-like products used to roll cigarettes, which by advertising, design or use facilitate the use of tobacco or other products for inhalation.

2. Juvenile. "Juvenile" means any individual who is younger than 18 years of age.

3. Tobacco products. "Tobacco products" includes any form of tobacco and any material or device used in the smoking, chewing or other form of tobacco consumption, including cigarette papers and pipes.

4. Vending machine. "Vending machine" means any automated, self-service device that upon insertion of money, tokens or any other form of payment, dispenses cigarettes or any other tobacco product.

§1551-A. Retail tobacco sales license required

1. Retail tobacco license. It is unlawful for any person, partnership or corporation that engages in retail sales, including retail sales through vending machines or in free distribution of tobacco products, to sell, keep for sale or give away in the course of trade any tobacco products to anyone without first obtaining a retail tobacco license from the department, in accordance with this chapter.

2. Violation; penalty. Penalties for violation of subchapters I and II are in accordance with those subchapters.

3. Enforcement. The department shall enforce this chapter in cooperation with all law enforcement officers.

4. Publish laws and rules. Every 4 years the department shall publish a compilation of laws and rules concerning retail tobacco sales.

A. The department shall supply a copy of the compilation of laws and rules to every new tobacco retail sales licensee at no charge. The department may charge a reasonable fee for that compilation to cover the cost of producing the compilation to persons other than licensees.

B. The department shall notify all licensees of changes in the tobacco laws and rules within 90 days of adjournment of each regular session of the Legislature.

(1) The department shall supply a copy of the new laws and rules at no charge when requested by licensees.

(2) The department shall supply a copy of the new laws and rules to persons other than licensees for a reasonable fee.

5. Report. The department shall report annually to the Office of Substance Abuse the number of licenses granted, the number of violations processed and the penalties imposed, and any other information that the department and the office agree is necessary to fulfill the reporting requirements of this chapter.

§1552. Application procedure

1. Application process; license fees. An applicant for a one-time retail tobacco license shall file an application in the form required by the department. The department shall make provisions for applications

under this section. The fee for a one-time retail tobacco license is set by the department at the actual cost of processing the application and issuing the license, up to but not exceeding \$25. The applicant shall enclose the fee with the application for the license.

2. Term of license. All retail tobacco licenses are valid indefinitely unless suspended, revoked or not subject to the transfer under section 1553. Licenses that have been suspended or revoked may be reinstated, as permitted by the Administrative Court decision issued under subchapter II, upon the receipt of an application for reinstatement and payment of all penalties and an application fee of \$25.

3. Multiple licenses. A licensee applying for licenses to operate more than one premises or more than one vending machine shall obtain a separate license for each premises and each machine and shall pay the fee prescribed for each premises and each machine.

4. Application fees. All application fees must be deposited in a nonlapsing account to be used by the department to defray administrative costs.

5. False answer given intentionally. A person who intentionally gives a false answer in an application for a retail tobacco license violates Title 17-A, section 453.

§1552-A. Display of license; notices

1. Display of licenses. A licensee shall publicly display the license on the premises and on each machine to which the license applies.

2. Display of prohibition against sales to juveniles. All licensees shall post notice of the prohibition on tobacco sales to juveniles pursuant to section 1555. Notices must be publicly and conspicuously displayed in the licensee's place of business in letters at least 3/8 inches high. Signs required by this section must be provided at cost by the department. Any person who violates this subsection commits a civil violation for which a forfeiture of not less than \$50 nor more than \$200 may be adjudged for any one offense.

§1553. Transfer of licenses; death; bankruptcy; receivership; guardianship; corporations

Except as otherwise provided in this section, a license or any interest in a license may not be sold, transferred, assigned or otherwise subjected to control by any person other than the licensee. If the business or any interest in the business connected with a licensed activity is sold, transferred or assigned, the license holder shall send immediately to the depart-

ment the license and a sworn statement showing the name and address of the purchaser.

1. Transfer within same municipality. Upon receipt of a written application, the department may transfer any retail tobacco license from one place to another within the same municipality. A transfer may not be made to a premises for which a license could not have been originally legally issued.

2. Death, bankruptcy or receivership. In the case of death, bankruptcy or receivership of any licensee, the executor or administrator of the deceased licensee, the trustee or receiver of the bankrupt licensee or the licensee in receivership may retain the license.

A. For the benefit of the estate of the deceased licensee, the personal representative, receiver or trustee of the estate may operate the premises alone or through a manager for one year from the date of appointment.

(1) A new license application must be submitted at the end of the one-year grace period.

(2) Within one year from the date of appointment, the original license becomes void and must be returned to the department for cancellation.

(3) Any suspension or revocation of the license by the Administrative Court for any violation applies to the manager or the personal representative, receiver or trustee of the estate.

(4) A personal representative, receiver or trustee of an estate or a duly appointed manager may not operate under the license unless approved by the department.

B. If a licensee dies, the following persons, with the written approval of the department, may continue to operate under the license for not more than 60 days pending appointment of a personal representative of the estate:

(1) The surviving spouse;

(2) A person who has filed a petition for appointment as executor or administrator for the estate of the deceased licensee;

(3) The sole heir of the deceased licensee; or

(4) A person designated by all of the heirs of the deceased licensee.

C. When administration of the estate of a deceased licensee is not contemplated, the surviving spouse or person designated by all the heirs of the deceased licensee may take over the license under the same conditions as are provided for operation and transfer by an executor or an administrator.

3. Guardian; conservator. A duly appointed and qualified guardian or conservator of the estate of a licensee may take over and operate any license of the ward of the deceased licensee for a period not to exceed one year if the guardian or conservator or the guardian or conservator's managers are approved by the department.

A. A guardian or conservator must apply for a new license on the ward's behalf within one year of the guardian's or conservator's appointment, if the guardian or conservator intends to continue to sell tobacco products.

B. Penalties for violations apply to both guardians or conservators and guardians' or conservators' managers in the same manner as to executors or administrators and guardians' or conservators' managers in subsection 2, paragraph A, subparagraph (3).

4. Transfers. The following changes in a licensee's business are considered transfers under this section:

A. The sale or transfer of stock of a corporate licensee that results in the sale or transfer of more than 10% of the shares of stock of the corporate licensee;

B. The incorporation of a licensee's business or a change in the form of incorporation of a licensee's business;

C. The addition or deletion of a partner in a partnership; or

D. The merger or acquisition of a licensee that is incorporated.

§1553-A. Sales of tobacco products; vending machines

In addition to the tobacco license required in section 1551-A, the sale of cigarettes or any other tobacco product through a vending machine is subject to the following provisions.

1. Vending requirements. When the sale of cigarettes or any other tobacco product is made from a vending machine the following is required.

A. Only cigarettes or any other tobacco products may be dispensed by that machine.

B. A sign must be affixed conspicuously to the front of the machine. The sign must:

(1) Contain lettering that is at least 3/8 inches in height; and

(2) State the following: "WARNING. It is unlawful for any person under the age of 18 to purchase cigarettes in this State."

C. At all times during the hours the vending machine is accessible, it must be located within the unobstructed line of sight and under the direct supervision of an adult. That adult is responsible for preventing persons under 18 years of age from purchasing cigarettes or any other tobacco product from that vending machine.

This subsection does not apply to any vending machine located in an area where minors are not allowed by law or by policy of the owner of the premises.

2. Penalty. Any person, firm or corporation, in control of a facility in which a vending machine is located, who violates this section commits a civil violation for which a forfeiture of not less than \$100 nor more than \$500 may be adjudged or for which the person, firm or corporation may be prohibited for a period of not more than 6 months from having a cigarette vending machine located on the premises or both.

SUBCHAPTER II

PROHIBITED SALES, POSSESSION AND USE

§1554. Sale without a valid license; crime; penalty

Notwithstanding Title 17-A, section 4-A, any person who engages in retail tobacco sales or in free distribution of tobacco products in the ordinary course of trade in this State without a valid license commits a Class E crime and is subject to the following penalties.

1. First offense. For the first offense, the penalty is a forfeiture of not less than \$300 plus court costs and not more than \$500 plus court costs. The forfeiture and costs may not be suspended. An additional penalty of not more than 30 days imprisonment may be imposed at the discretion of the court.

2. Second offense. For the 2nd offense, the penalty is a forfeiture of not less than \$500 plus court costs and not more than \$1,000 plus court costs. The forfeiture and costs may not be suspended. An additional penalty of not more than 60 days imprisonment may be imposed at the discretion of the court.

3. Subsequent offenses. For all subsequent offenses, the penalty is a forfeiture of not less than

\$1,000 plus court costs and 60 days imprisonment. The forfeiture, court costs and sentence may not be suspended. An additional penalty of 4 months imprisonment may be imposed at the discretion of the court.

§1554-A. Sale of unpackaged cigarettes

1. Prohibition. A person may not sell cigarettes except in the original, sealed package in which they were placed by the manufacturer nor may a person sell cigarettes in smaller quantities than placed in the package by the manufacturer.

2. Penalty. A person who violates this section commits a civil violation for which a forfeiture of not less than \$10 nor more than \$100 may be adjudged. An employer of a person who violates this subsection commits a civil violation for which a forfeiture of not less than \$100 nor more than \$1,000 may be adjudged. In all cases of violations, the court shall impose a forfeiture that may not be suspended, except pursuant to Title 15, section 3314.

§1555. Sales of tobacco products to juveniles

1. Sale and distribution; penalty. A person may not knowingly sell, furnish, give away or offer to sell, furnish or give away cigarettes, cigarette paper or any other tobacco product to any person under 18 years of age. A person in the business of selling or otherwise distributing cigarettes, cigarette paper or other tobacco products for profit or an employee or agent of that person may not, in the course of that person's business, distribute free any cigarette, cigarette paper or other tobacco product to any person under 18 years of age in any place, including, but not limited to, a public way or sidewalk, public park or playground, public school or other public building or an entranceway, lobby, hall or other common area of a private building, shopping center or mall.

It is a civil violation for any person, firm or corporation to knowingly distribute or sell cigarettes or any other tobacco product from a vending machine to a person under 18 years of age. Violators are subject to the penalties established in this section.

A. Any person who violates this subsection commits a civil violation for which a fine of not less than \$50 nor more than \$1,500, plus court costs, may be adjudged for any one offense. Any employer of a person who violates this subsection commits a civil violation for which a fine of not less than \$50 nor more than \$1,500, plus court costs, may be adjudged. In all cases of violations, the court shall impose a fine that may not be suspended, except pursuant to Title 15, section 3314.

B. It is an affirmative defense to prosecution under this subsection that the defendant sold cigarettes, cigarette paper or any other tobacco product to a person under 18 years of age who furnished fraudulent proof of age.

2. Prohibition; false identification, purchase, possession and use by juveniles; forfeitures. It is unlawful for any person under 18 years of age to offer false identification in an attempt to purchase any tobacco products or to purchase, possess or use cigarettes, cigarette paper or any other tobacco product. Any person who violates this section commits a civil violation for which the following forfeitures may be adjudged.

A. For a first offense, a forfeiture of not less than \$100 and not more than \$300 may be imposed. The judge, as an alternative to or in addition to the forfeiture permitted by this subsection, may assign the violator to perform specified work for the benefit of the State, the municipality or other public entity or a charitable institution.

B. For a 2nd offense, a forfeiture of not less than \$200 and not more than \$500 may be imposed. The judge, as an alternative to or in addition to the forfeiture permitted by this subsection, may assign the violator to perform specified work for the benefit of the State, the municipality or other public entity or a charitable institution.

C. For all subsequent offenses, a forfeiture of \$500 must be imposed and that forfeiture may not be suspended. The judge, in addition to the forfeiture permitted by this subsection, may assign the violator to perform specified work for the benefit of the State, the municipality or other public entity or a charitable institution.

3. Display of prohibition; sales to juveniles. All dealers and distributors of tobacco products shall post notice of this section prohibiting tobacco and cigarette paper sales to persons under 18 years of age. Notices must be publicly and conspicuously displayed in the dealer's or distributor's places of business in letters at least 3/8 inches high. Signs required by this section may be provided at cost by the department. Any person who violates this subsection commits a civil violation for which a forfeiture of not less than \$50 nor more than \$200 may be adjudged for any one offense.

4. Enforcement. All law enforcement officers shall enforce this section. A citizen may register a complaint under this section with the law enforcement agency having jurisdiction. The law enforcement agency may notify any establishment or individual subject to this section of all citizen complaints regarding that establishment or individual's alleged

violation of this section and keep a record of that notification.

5. Distribution of fines. Fines and forfeitures collected pursuant to subchapter I and this subchapter must be credited as follows: 1/2 to the General Fund and 1/2 to be deposited in a nonlapsing account to be paid to law enforcement agencies.

§1555-A. Identification cards

A licensee may refuse to sell tobacco to any person who fails to display upon request an identification card issued under Title 5, section 88-A or a motor vehicle operator's license bearing the photograph of the operator and issued under Title 29-A.

§1556. Municipal regulation

Except as otherwise provided in this section, nothing in this chapter affects the authority of municipalities to enact ordinances or regulations that are more restrictive than this chapter. Municipalities are expressly prohibited from enacting ordinances and regulations regarding tobacco displays, product placement and the time of tobacco product sales after the effective date of this Act.

§1556-A. Enforcement

The provisions of this chapter may be enforced by law enforcement officers as defined by Title 17-A or by individuals hired by contract with the department to enforce this law.

1. Contract officers. The authority of contract officers hired under this chapter is limited to enforcement of this Act. Authorization to enforce this chapter is granted by the Commissioner of Public Safety, by terms mutually agreed upon between the department and the Department of Public Safety. Contract officers must have an appropriate background in law enforcement. Contract officers are exempt from ongoing training requirements except as otherwise determined by the Commissioner of Public Safety. These contract officers are not considered law enforcement officers for the purposes of enforcing the Maine Juvenile Code.

2. Enforcement of violations. Enforcement may be carried out by written summons pursuant to Title 17-A and also by complaint filed in either District Court or in Administrative Court. The District Court has jurisdiction over enforcement of civil violations and section 1555.

3. Injunction. If the person licensed to sell tobacco products has engaged in or is about to engage in any act or practice that violates this chapter, the Administrative Court may grant a permanent or

temporary injunction, restraining order or other order as appropriate.

SUBCHAPTER III

FINES, REVOCATION AND SUSPENSION

§1557. Jurisdiction; Administrative Court

1. Jurisdiction. The Administrative Court, pursuant to the Maine Administrative Procedure Act, shall conduct hearings on all matters concerning violations by tobacco licensees of any state law related to tobacco sales. Notwithstanding Title 5, chapter 375, subchapter VI, the Administrative Court Judge has exclusive jurisdiction over all violations of this chapter by licensees and their agents when no criminal penalty is provided.

2. Powers. The Administrative Court may impose fines or suspend or revoke licenses in accordance with this chapter.

§1557-A. Imposition of penalties; causes

The Administrative Court may impose fines or revoke or suspend licenses for the following causes:

1. Violation of law or infraction of rule. Violation of state law or rule related to the sale of tobacco products; or

2. False material statement. Knowingly making a false material statement of fact in an application for licensure of the sale of tobacco products.

§1558. Revocation or suspension procedure

1. Violation of law or rule. Upon discovering a violation of state law or rule related to retail tobacco sales, the commissioner or the commissioner's designee shall:

A. Report the violation to the Administrative Court in a signed complaint; or

B. Issue warnings to the licensees involved.

2. Notice and hearing. Except as provided under subsection 7, upon receipt of a signed complaint prepared under subsection 1, paragraph A, the Administrative Court shall notify the licensee and hold a hearing according to the following procedures.

A. The Administrative Court shall notify the licensee by serving the licensee with a copy of the complaint and a notice that states the time and place of the hearing and that the licensee may appear in person or be represented by counsel at the hearing. Service of the complaint and hearing notice is sufficient when sent by registered or

certified mail at least 7 days before the date of the hearing to the address given by the licensee at the time of application for a license.

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

C. The Administrative Court shall conduct the hearing in the following manner.

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

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

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

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

3. Suspension or revocation decision. The Administrative Court shall issue the decision in writing within 12 days of the hearing.

4. Suspension of penalty; case on file. After the hearing, the Administrative Court may:

A. Suspend a penalty; or

B. Place a case on file instead of imposing a penalty.

5. Application of suspension or revocation. A suspension or revocation applies to premises and persons in the following manner.

A. If a licensee is interested directly or indirectly in more than one license, suspensions apply only to the premises where the violation occurs.

B. If a licensee is interested directly or indirectly in more than one license, the Administrative Court may order that a revocation apply to any of those premises or machines.

C. If the licensee is a corporation, the Administrative Court shall treat the officers, directors and substantial stockholders as individuals.

6. Term of suspension or revocation. Suspensions must be for a definite period of time. If the Administrative Court revokes a license, the court shall specify when the department may reinstate a license to the person whose license is revoked.

7. Warnings. Upon the written recommendation of the commissioner, or the commissioner's designee, the Administrative Court, instead of notifying a licensee against whom a complaint is pending to appear for hearing, may send the licensee a warning. Warnings must be sent by registered or certified mail and contain a copy of the complaint. A licensee to whom a warning is sent may demand a hearing by notifying the Administrative Court by registered or certified mail within 10 days from the date the warning was mailed.

8. Fines. Notwithstanding any other provisions of this Title, the Administrative Court may impose on a licensee a fine of a specific sum of not less than \$50 nor more than \$1,500 for any one offense. The fine is independent of any fine or forfeiture adjudged under subchapter I or II and may be imposed instead of or in addition to any suspension or revocation of a license.

A. The Administrative Court shall maintain a record of all fines received by the court. Any fines received must be credited as follows: 1/2 to the Department of Human Services in the account established in section 1552, subsection 4 and 1/2 to a nonlapsing account to be distributed twice a year to law enforcement agencies. Annually, the court shall report to the Office of Substance Abuse the total amount of fines collected and to whom and in what amounts the collected fines were dispersed.

§1558-A. Record of proceedings; transcript

1. Court record. The Administrative Court shall keep a full and complete record of all proceedings before the court of any enforcement actions or on the revocation and suspension of any license issued by the department. The Administrative Court is not required to have a transcript of the testimony prepared unless required for rehearing or appeal.

2. Notice to department. The Administrative Court shall forward to the department notice of final disposition of all proceedings conducted pursuant to this subchapter. The department shall maintain the records of the proceedings for at least 5 years. Annually, the department shall report a summary of the types and number of cases heard and the dispositions of the cases to the Office of Substance Abuse.

3. Notice to defendant. Notice of the decision of the Administrative Court must be sent to the defendant by certified mail to the address given by the licensee to the department.

§1559. Appeal decision of Administrative Court

1. Aggrieved person may appeal within 30 days. A person aggrieved by the decision of the Administrative Court in imposing any forfeiture or fine or in revoking or suspending a license issued by the department or by refusal of the department to issue a license applied for may appeal to the Superior Court by filing a complaint within 30 days of the decision or refusal.

A. The 30-day period for appeal begins on:

(1) The effective date of the suspension or revocation in the case of a license revocation or suspension; or

(2) The day when the department sends notice of refusal, by registered or certified mail, to the applicant for a license in the case of refusal by the department to issue a license.

B. Filing the complaint in Superior Court suspends the running of the 30-day period.

2. Suspension or revocation suspended pending appeal. If the licensee files an appeal in the Superior Court and notifies the Administrative Court that the appeal has been filed within 7 days of the mailing of the decision of the Administrative Court required in section 1558-A, subsection 3, the operation of a suspension or revocation of a license imposed by the Administrative Court must be suspended, pending judgment of the Superior Court.

3. Superior Court hearing. The Superior Court shall fix a time and place for an immediate hearing and notify the Administrative Court of the hearing.

4. Superior Court decision. After the hearing, the Superior Court may affirm, modify or reverse the decision of the Administrative Court.

5. Further appeal. An aggrieved person may appeal the Superior Court decision to the Supreme Judicial Court. Upon appeal, the Supreme Judicial Court, after consideration, may reverse or modify any decree made by the Superior Court based upon an erroneous ruling or finding of law.

§1559-A. Transfer of funds

The Department of Human Services shall transfer from the account established in section 1552, subsection 4, an amount mutually agreed upon by the

commissioner and the State Court Administrator to be the Judicial Department costs of implementing this chapter. The agreed upon amount must be transferred to a nonlapsing Judicial Department account to defray administrative costs. The first payment must be made by January 1, 1996 and additional payments must be made annually after that date.

Sec. 10. 22 MRSA c. 263 is amended by inserting before §1561 the following:

SUBCHAPTER I

NUISANCES

Sec. 11. 22 MRSA c. 263 is amended by inserting before §1578-B the following:

SUBCHAPTER II

SMOKING

Sec. 12. 22 MRSA §1579, as corrected by RR 1993, c. 1, §2, is repealed.

Sec. 13. 22 MRSA c. 265-B, as amended, is repealed.

Sec. 14. 22 MRSA c. 265-C, as enacted by PL 1989, c. 445, §10, is repealed.

Sec. 15. Allocation. The following funds are allocated from Other Special Revenue to carry out the purposes of this Act.

	1995-96	1996-97
HUMAN SERVICES, DEPARTMENT OF		
Health - Bureau of		
All Other	\$5,000	\$5,000
Allocates funds for the costs of administering retail tobacco sales licensure.		
DEPARTMENT OF HUMAN SERVICES TOTAL	\$5,000	\$5,000
JUDICIAL DEPARTMENT		
Tobacco Law Enforcement		
All Other	\$5,000	\$5,000
Allocates funds to authorize the distribution of 1/2 of fine revenue collected pursuant to the Maine Revised Statutes,		

Title 22, chapter 262-A to law enforcement agencies.

Tobacco Licensing Violations

Positions - Other Count	(1.0)	(1.0)
Personal Services	\$25,250	\$50,500
All Other	11,000	2,000
Capital Expenditures	12,500	
TOTAL	\$48,750	\$52,500

Provides funds for one Clerk position for the Administrative Court, per diems for active retired judges, programming costs for dedicating fine revenue and other miscellaneous expenses associated with tobacco sales licensure and enforcement.

JUDICIAL DEPARTMENT TOTAL	\$53,750	\$57,500
TOTAL ALLOCATIONS	\$58,750	\$62,500

Sec. 16. Report. The Office of Substance Abuse in cooperation with the Department of Human Services shall submit interim reports to the joint standing committee of the Legislature having jurisdiction over legal affairs by March 30, 1996 and by January 30, 1997 regarding the operation of the tobacco education programs and other pertinent statistics. The reports must contain reliable information comparing the percentage of juveniles smoking in this State within 3 months of the effective date of this Act with the percentage of juveniles smoking in this State within 3 months of the reporting date.

Sec. 17. Educational programs. To the extent that funds are available, the Department of Human Services and the Office of Substance Abuse shall collaboratively coordinate, develop and implement programs to educate retailers, schools, retail clerks, juveniles and the general public about the laws relating to cigarette sales to, and purchases by, juveniles, the consequences of violating those laws and the consequences of using tobacco products. The Department of Human Services and the Office of Substance Abuse shall work in cooperation with the Department of Education, tobacco industry retailers and nonprofit health agencies, including, but not limited to, the Maine Lung Association and the American Cancer Society.

Sec. 18. Office of Substance Abuse; approval to hire project personnel. The Office

of Substance Abuse is granted legislative approval to use federal block grant dollars to hire project personnel to conduct education in, and research on, tobacco use by juveniles. The Office of Substance Abuse is authorized to subcontract, with the Department of Human Services, to hire contract personnel for the department to enforce the tobacco laws.

Sec. 19. Application. During the first 6 months after the effective date of this Act, when a juvenile is summonsed for the purchase, possession or use of tobacco products, that summons is a warning and not subject to the fines established in the Maine Revised Statutes, Title 22. The Office of Substance Abuse shall make cigarette smoking and tobacco use cessation programs available throughout the State and send notices of those programs to local schools and public service agencies to make juveniles aware of the availability of those programs.

See title page for effective date.

CHAPTER 471

S.P. 214 - L.D. 556

An Act Concerning the Participation of Teachers of Adult Education in the Maine State Retirement System

Mandate preamble. This measure requires one or more local units of government to expand or modify activities so as to necessitate additional expenditures from local revenues but does not provide funding for at least 90% of those expenditures. Pursuant to the Constitution of Maine, Article IX, Section 21, two thirds of all of the members elected to each House have determined it necessary to enact this measure.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, current law requires part-time, seasonal and temporary state employees, including adult education teachers, to be members of the Maine State Retirement System; and

Whereas, that requirement creates financial and other hardships for certain part-time, uncertified adult education teachers that must be addressed through legislation; and

Whereas, legislation taking effect July 1, 1995 is necessary to address the hardships created by current law; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of