

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND SEVENTEENTH LEGISLATURE

SECOND SPECIAL SESSION
September 5, 1996 to September 7, 1996

ONE HUNDRED AND EIGHTEENTH LEGISLATURE

FIRST REGULAR SESSION
December 4, 1996 to March 27, 1997

FIRST SPECIAL SESSION
March 27, 1997 to June 20, 1997

THE GENERAL EFFECTIVE DATE FOR
FIRST REGULAR SESSION
NON-EMERGENCY LAWS IS
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NON-EMERGENCY LAWS IS
SEPTEMBER 19, 1997

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
1997

B. Safety guidelines for riders, if any;

C. Restrictions on the use of the amusement ride, if any;

D. Behavior or activities that are prohibited, if any; and

E. A legend providing that "State law requires riders to obey all warnings and directions for this ride and behave in a manner that will not cause or contribute to injuring themselves or others. Riders must report injuries before leaving. Failure to comply is punishable by fine and imprisonment."

Any sign required by this section must be prominently displayed at a conspicuous location, clearly visible to the public and bold and legible in design.

§805. Construction

Nothing in this chapter may be construed to preclude a criminal prosecution or civil action available under any other law.

§806. Uniformity of interpretation

This Act must be interpreted and construed as to effectuate its general purpose to make uniform the law of those states that enact it.

See title page for effective date.

CHAPTER 304

S.P. 244 - L.D. 813

An Act to Define the Projects That Public Works Departments May Undertake Without Procuring the Services of a Registered Professional Engineer

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

Sec. 1. 32 MRSA §1254 is repealed and the following enacted in its place:

§1254. Public works

1. Use of registered professional engineer not required. Except as provided in subsection 2, any department of this State or any of its political subdivisions, any county, city, town, township or plantation may engage in construction of any public work involving professional engineering without procuring the services of a registered professional engineer, as long as the contemplated expenditure for the completed project does not exceed \$100,000 and the work,

both as performed and as completed, does not create an undue risk to public safety or welfare.

2. Exception. A department of this State may require the services of a registered professional engineer for any public works project if the services of the professional engineer are required to comply with any provision of law or rule.

See title page for effective date.

CHAPTER 305

S.P. 133 - L.D. 412

An Act to Require the Purchaser of Tobacco Products to Produce Suitable Identification

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

Sec. 1. 22 MRSA §1552-A, sub-§2, as enacted by PL 1995, c. 470, §9 and affected by §19, is amended to read:

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~~ **1555-B**. 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.

Sec. 2. 22 MRSA §1553-A, sub-§1, as enacted by PL 1995, c. 470, §9 and affected by §19, is amended to read:

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.~~

Vending machines may be located only in areas in which minors are allowed only when accompanied by an adult.

Sec. 3. 22 MRSA §1554-A, sub-§1, as enacted by PL 1995, c. 470, §9 and affected by §19, is amended to read:

1. Prohibition. A person may not sell cigarettes except in the original, sealed package in which they were placed by the manufacturer, which may not be smaller than 20 cigarettes per package, nor may a person sell cigarettes in smaller quantities than placed in the package by the manufacturer.

Sec. 4. 22 MRSA §1555, as amended by PL 1995, c. 593, §3, is repealed.

Sec. 5. 22 MRSA §1555-B is enacted to read:

§1555-B. Sales of tobacco products

1. Retail sales. Tobacco products may be sold at retail only in a direct, face-to-face exchange in which the purchaser may be clearly identified and through the mail under procedures approved by the department to provide reliable verification that the purchaser is not a minor.

2. Sales to minors prohibited. A person may not sell, furnish, give away or offer to sell, furnish or give away a tobacco product to any person under 18 years of age. Tobacco products may not be sold at retail to any person under 27 years of age unless the seller first verifies that person's age by means of reliable photographic identification containing the person's date of birth.

3. Sales through vending machines. Tobacco products may be sold through vending machines according to section 1553-A.

4. Wholesale sales. Tobacco products may be distributed at wholesale without a face-to-face exchange only in the normal course of trade and under procedures approved by the Bureau of Taxation to ensure that tobacco products are not provided to any person under 18 years of age.

5. Use of false identification by minors prohibited. A person under 18 years of age may not 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.

6. Display of prohibition of sales to juveniles.

A dealer or distributor 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 place of business in letters at least 3/8 inches in height. Signs required by this section may be provided at cost by the department.

7. Enforcement. 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 a citizen complaint regarding that establishment's or individual's alleged violation of this section and shall keep a record of that notification.

8. Fines and forfeitures. Violations of this section are subject to fines and forfeitures according to this subsection.

A. A person who violates subsection 1, 2, 3 or 4 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. An employer of a person who violates subsection 1, 2, 3 or 4 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 a violation, the court shall impose a fine that may not be suspended, except pursuant to Title 15, section 3314.

B. A person who violates subsection 2 commits a civil violation for which the following forfeitures may be adjudged.

(1) 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 subparagraph, may assign the violator to perform specified work for the benefit of the State, the municipality or other public entity or a charitable institution.

(2) 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 subparagraph, 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) 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 subparagraph, 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. A person who violates subsection 6 commits a civil violation for which a forfeiture of not less than \$50 nor more than \$200 may be adjudged for any one offense.

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

10. Affirmative defense. It is an affirmative defense to prosecution for a violation of subsection 1, 2 or 4 that the defendant sold, furnished, gave away or offered to sell, furnish or give away a tobacco product to a person under 18 years of age in reasonable reliance upon a fraudulent proof of age presented by the purchaser.

Sec. 6. 22 MRSA §1556-A, sub-§2, as repealed and replaced by PL 1995, c. 593, §4, is amended to read:

2. Enforcement; jurisdiction. Enforcement of criminal offenses may be carried out by written summons pursuant to Title 17-A filed in the District Court. Enforcement of civil violations set forth in section ~~4555~~ 1555-B, subsection 2 may be carried out by complaint filed in District Court. All other civil violations under this chapter are within the jurisdiction of the Administrative Court pursuant to section 1557, subsection 1.

See title page for effective date.

CHAPTER 306

H.P. 997 - L.D. 1389

An Act to Allow Partially Consumed Bottles of Wine to be Taken from Restaurants

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

Sec. 1. 28-A MRSA §1051, sub-§§4 and 5 are enacted to read:

4. Partially consumed bottles of wine. Notwithstanding subsection 3, any establishment licensed

by the State to sell wine on the premises may permit a person who has purchased a full course meal, and purchased and partially consumed a bottle of table wine with the meal, to remove the partially consumed bottle from the premises upon departure, provided that the person is not visibly intoxicated as provided in section 2503, subsection 7, and the bottle of table wine is removed and transported in a manner consistent with subsection 5.

5. Transporting partially consumed bottles. A partially consumed bottle of table wine that is removed from the premises under subsection 4 must be securely sealed and bagged by the licensee, either to be in conformance with any applicable open container law for those patrons on foot or transported in the trunk of a motor vehicle. If the vehicle is not equipped with a trunk, the securely sealed opened table wine bottle may be transported in that compartment of the vehicle that is the least accessible to the driver.

Sec. 2. 28-A MRSA §2074, sub-§1, as enacted by PL 1987, c. 45, Pt. A, §4, is amended to read:

1. Transportation on-premises or off-premises. ~~Any~~ Except as provided in section 1051, any person who transports liquor onto or off of the premises of an on-premise retail licensee is guilty of a Class E crime.

See title page for effective date.

CHAPTER 307

S.P. 285 - L.D. 893

An Act to Conform the Provisions of the Maine Business Corporation Act Regarding Derivative Proceedings to the Provisions of the Revised Model Business Corporation Act

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

Sec. 1. 13-A MRSA §627, as amended by PL 1973, c. 455, is repealed.

Sec. 2. 13-A MRSA §§628 to 635 are enacted to read:

§628. Definitions

As used in sections 628 to 635, unless the context otherwise indicates, the following terms have the following meanings.

1. Derivative proceeding. "Derivative proceeding" means a civil suit in the right of a domestic