

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND NINETEENTH LEGISLATURE

SECOND REGULAR SESSION
January 5, 2000 to May 12, 2000

THE GENERAL EFFECTIVE DATE FOR
SECOND REGULAR SESSION
NON-EMERGENCY LAWS IS
AUGUST 11, 2000

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
2000

Sec. 1. 20-A MRSA §12722, sub-§3, as enacted by PL 1997, c. 763, §4 and affected by §7, is amended to read:

3. Maine State Retirement System members. An eligible person who becomes a participant in the defined contribution plan offered by the board of trustees and who is a member of the Maine State Retirement System at the time participation in the defined contribution plan begins may apply for a refund of accumulated contributions from the Maine State Retirement System pursuant to Title 5, section 17705, except that any such person who has less than ~~10 years of creditable service~~ the number of years of creditable service required to be eligible for a Maine State Retirement System benefit as of the date specified in the notification in subsection 2, paragraph A or the date of hire pursuant to subsection 2, paragraph B shall apply for a refund of accumulated contributions. Participation in the defined contribution plan offered by the board of trustees pursuant to this section is considered a termination of service for purposes of Title 5, section 17705 as of the date specified in the notification in subsection 2, paragraph A or the date of hire pursuant to subsection 2, paragraph B, except that, if an application is made for refund of accumulated contributions under an election pursuant to subsection 2, paragraph A, payment must be made no later than 90 days after receipt of the application by the Maine State Retirement System. Service rendered while a participant in the defined contribution plan offered by the board of trustees does not constitute service for a Maine State Retirement System member who does not withdraw contributions from the Maine State Retirement System nor is the member considered to be in service for purposes of Title 5, chapter 423, subchapter V, articles 3-A, 4 and 5 or, if the recipient of a service retirement benefit, restored to service for purposes of Title 5, section 17855.

See title page for effective date.

CHAPTER 615

H.P. 1728 - L.D. 2434

**An Act to Improve the Lives of
People with Disabilities**

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

Sec. 1. 22 MRSA §5107-H is enacted to read:

§5107-H. Certain family members as personal care assistants

An individual eligible for personal care assistance services under section 5107-C, including consumer-directed personal care assistance services, may hire certain family members as personal care assistants to the degree permitted by federal law. The department shall adopt rules to implement this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

Sec. 2. Rulemaking; retroactive. Rules adopted by the Department of Human Services to implement the Maine Revised Statutes, Title 22, section 5107-H apply retroactively to the date that federal law authorizing the hiring of certain family members as personal care assistants was effective.

See title page for effective date.

CHAPTER 616

S.P. 897 - L.D. 2316

**An Act to Prevent Gray Market
Cigarette Sales**

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

Sec. 1. 22 MRSA §1556-A, first ¶, as enacted by PL 1995, c. 470, §9 and affected by §19, is amended to read:

The provisions of this chapter and Title 36, section 4366-C 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.

Sec. 2. 22 MRSA §1556-A, sub-§1, as enacted by PL 1995, c. 470, §9 and affected by §19, is amended to read:

1. Contract officers. The authority of contract officers hired under this chapter is limited to enforcement of this Act and Title 36, section 4366-C. 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.

Sec. 3. 36 MRSA §4366-C is enacted to read:

§4366-C. Sales of cigarettes in contravention of law

1. Cigarettes; stamps not affixed. A dealer or distributor may not offer for sale, sell or affix a stamp to a package of cigarettes if the package:

A. Does not comply with the Federal Cigarette Labeling and Advertising Act, 15 United States Code, Section 1331, et seq., for the placement of labels, warnings or any other information for a package of cigarettes to be sold within the United States;

B. Is labeled "For Export Only," "U.S. Tax Exempt," "For Use Outside U.S." or with other wording indicating that the manufacturer did not intend that the product be sold in the United States;

C. Has been altered by adding or deleting wording, labels or warnings described in paragraphs A and B;

D. Has been imported into the United States in violation of 26 United States Code, Section 5754; or

E. In any way violates federal trademark or copyright laws.

2. Deceptive practice. Selling a package of cigarettes described in subsection 1, with or without a stamp, is an unfair or deceptive act or practice under the Maine Unfair Trade Practices Act.

3. Penalties. Any dealer or distributor who violates this section is subject to the same penalties as provided in section 4366-B, subsection 4.

Sec. 4. 36 MRSA §4372-A, sub-§1, as enacted by PL 1997, c. 458, §17, is amended to read:

1. Generally. Except as provided in subsection 2, any unstamped cigarettes or cigarettes described in section 4366-C, subsection 1 that are found in this State are hereby declared to be contraband goods subject to seizure by and forfeiture to the State. All law enforcement officers, including contract officers pursuant to Title 22, section 1556-A, and duly authorized agents of the State Tax Assessor may seize contraband cigarettes under the process described in subsection 3.

Sec. 5. 36 MRSA §4372-A, sub-§2, as amended by PL 1997, c. 668, §28, is further amended to read:

2. Exceptions. The following cigarettes are not subject to seizure:

A. Unstamped cigarettes in the possession of a licensed distributor;

B. Unstamped cigarettes in the course of transit from without the State and consigned to a licensed distributor; and

C. Unstamped cigarettes in a quantity of 2 cartons or less in the possession of an individual who is not a licensed distributor.

Notwithstanding paragraphs A, B and C, cigarettes described in section 4366-C, subsection 1 are subject to seizure under the process described in subsection 3, unless the dealer or distributor can prove the cigarettes are to be exported out of the country.

Sec. 6. 36 MRSA §4372-A, sub-§§3 and 7, as enacted by PL 1997, c. 458, §17, are amended to read:

3. Procedure for seizure. Contraband cigarettes may be seized by law enforcement officers and by duly authorized agents of the State Tax Assessor who have probable cause to believe that the cigarettes are unstamped cigarettes or cigarettes described in section 4366-C, subsection 1 under the following circumstances:

A. When the cigarettes are discovered in a place where the law enforcement officer or agent has the lawful right to be in the performance of official duties; or

B. When the seizure is incident to a search under a valid search warrant or an inspection under a valid administrative inspection warrant.

7. Hearings; disposition; deposit of funds. At a hearing, other than a default proceeding, the court shall hear evidence, make findings of fact, enter conclusions of law and file a final order from which the parties have the right of appeal. When cigarettes are ordered forfeited, the final order must provide for the disposition of the cigarettes by the State Tax Assessor by public auction or by the State Purchasing Agent. Proceeds must be deposited in the General Fund. Cigarettes described in section 4366-C, subsection 1 must be destroyed by the State Tax Assessor in a manner that prevents their reintroduction into the marketplace.

See title page for effective date.