

# MAINE STATE LEGISLATURE

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**LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED BY THE**

**ONE HUNDRED AND TWENTY-SECOND LEGISLATURE**

**SECOND SPECIAL SESSION**  
**July 29, 2005**

**SECOND REGULAR SESSION**  
**January 4, 2006 to May 24, 2006**

**THE GENERAL EFFECTIVE DATE FOR**  
**SECOND SPECIAL SESSION**  
**NON-EMERGENCY LAWS IS**  
**OCTOBER 28, 2005**

**THE GENERAL EFFECTIVE DATE FOR**  
**SECOND REGULAR SESSION**  
**NON-EMERGENCY LAWS IS**  
**AUGUST 23, 2006**

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

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**Penmor Lithographers**  
**Lewiston, Maine**  
**2006**

to safety and ethics in the operation of ATVs. The costs of this training program are borne by the person undertaking the training. The commissioner shall establish by rule the procedures for completion of mandatory training pursuant to this subsection. A person who satisfactorily completes a training program approved by the department pursuant to this subsection is deemed to have satisfied the outdoor ethics training course requirements established under section 10903. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**Sec. 2. 12 MRSA §10902, sub-§10** is enacted to read:

**10. Mandatory suspension for certain ATV violations.** The commissioner shall suspend for at least one year all licenses, permits and registrations issued by the department pursuant to this Part to any person convicted or adjudicated of:

A. Abuse of another person's property as prohibited under section 13157-A, subsection 22;

B. Operating an ATV under the influence as prohibited under section 10701, subsection 1-A, paragraph D;

C. Operating an ATV to endanger, as prohibited under section 13157-A, subsection 11;

D. Reckless operation of an ATV, as prohibited under section 13157-A, subsection 10; or

E. Failure or refusal to stop an ATV or attempting to elude an officer, as prohibited under section 10651, subsection 1, paragraphs C and D.

The commissioner shall reinstate licenses, permits and registrations that have been suspended pursuant to this subsection after the period of suspension has lapsed and after that person has successfully completed an ATV safety and ethics course as provided in subsection 9.

**Sec. 3. 12 MRSA §13157-A, sub-§6, ¶A,** as enacted by PL 2003, c. 655, Pt. B, §414 and affected by §422, is amended to read:

A. A properly registered ATV may be operated on a public way only the distance necessary, but in no case to exceed ~~300~~ 500 yards, on the extreme right of the traveled way for the purpose of crossing, as directly as possible, a public way, bridge, overpass, underpass, sidewalk or culvert as long as that operation can be made safely and does not interfere with traffic approaching from either direction on the public way.

**Sec. 4. 12 MRSA §13157-A, sub-§6, ¶B,** as enacted by PL 2003, c. 655, Pt. B, §414 and affected by §422, is repealed.

**Sec. 5. Appropriations and allocations.** The following appropriations and allocations are made.

**CONSERVATION, DEPARTMENT OF**

**Off-road Recreational Vehicles Program 0224**

Initiative: Allocates funds to establish 4 part-time Recreational Trail Coordinator positions and necessary operating expenses.

OTHER SPECIAL REVENUE FUNDS	2005-06	2006-07
POSITIONS -		
LEGISLATIVE COUNT	0.000	4.000
Personal Services	\$0	\$104,556
All Other	\$0	\$8,400
OTHER SPECIAL REVENUE FUNDS TOTAL	\$0	\$112,956

See title page for effective date.

**CHAPTER 627**

**H.P. 1485 - L.D. 2093**

**An Act To Strengthen the Collection of the Tax on Tobacco Products**

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

**Sec. 1. 36 MRSA §4401, sub-§2,** as enacted by PL 1985, c. 783, §16, is amended to read:

**2. Distributor.** "Distributor" means any person engaged in the business of producing or manufacturing tobacco products in this State for sale in this State, any person engaged in the business of selling tobacco products in this State who brings, or causes to be brought, into this State any tobacco products for sale to a retailer or any person engaged in the business of selling tobacco products who ships or transports tobacco products to retailers for sale in this State or any retailer who imports, receives or acquires, from a person other than a licensed distributor, tobacco products for sale within the State.

**Sec. 2. 36 MRSA §4401, sub-§7,** as enacted by PL 1985, c. 783, §16, is amended to read:

**7. Sale.** "Sale" means any transfer, exchange, barter or gift in any manner or by any means whatsoever, for a consideration. It shall include "Sale" includes a gift for advertising by a person engaged in the business of selling tobacco products.

**Sec. 3. 36 MRSA §4401, sub-§8**, as enacted by PL 1985, c. 783, §16, is repealed.

**Sec. 4. 36 MRSA §4401, sub-§9**, as enacted by PL 1985, c. 783, §16, is amended to read:

**9. Tobacco products.** "Tobacco products" means cigars; cheroots; stogies; ~~periques'~~ periques, granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; finecut and other chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of tobacco, prepared in such manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking; but ~~shall~~ does not include tobacco products ~~which~~ that are subject to the tax provided by chapter 703.

**Sec. 5. 36 MRSA §4401, sub-§10**, as enacted by PL 1985, c. 783, §16, is repealed.

**Sec. 6. 36 MRSA §4401, sub-§11**, as enacted by PL 1985, c. 783, §16, is amended to read:

**11. Wholesale sales price.** "Wholesale sales price" means the ~~established~~ price for which a manufacturer sells tobacco products to a distributor, exclusive of any discount or other reduction.

**Sec. 7. 36 MRSA §4402**, as amended by PL 2003, c. 439, §4, is repealed and the following enacted in its place:

#### **§4402. Licenses**

**1. Generally.** Every distributor shall obtain a license from the State Tax Assessor before engaging in business. A retailer required to be licensed as a distributor pursuant to this chapter must also hold a current retail tobacco license issued under Title 22, section 1551-A.

**2. Applications; forms.** Every license application must be made on a form prescribed by the assessor and must state the name and address of the applicant, the address of the applicant's principal place of business and such other information as the assessor may require for the proper administration of this chapter. A person outside the State who ships or transports tobacco products to a retailer in this State must make application as a distributor and be granted by the assessor a license subject to all the provisions of this chapter and agree, upon applying for a license, to submit that person's books, accounts and records to examination by the bureau during reasonable business hours and to accept service of process by mail when service is made in any proceeding involving enforcement of this chapter.

**3. Expiration and reissuance.** A license issued pursuant to this section expires on June 30th of each year unless sooner revoked by the assessor. The license must be prominently displayed on the premises covered by the license and may not be transferred to any other person.

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

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

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

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

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

**5. Revocation or suspension.** The assessor may revoke or suspend the license of any distributor for failure to comply with any provision of this chapter or if the person no longer imports or sells tobacco products. A person aggrieved by a revocation or suspension may petition the assessor for a hearing as provided in section 151.

**6. License directory maintained.** The assessor shall maintain a directory of distributors licensed pursuant to this chapter. The assessor shall update the directory as necessary, but not less than annually. Notwithstanding the provisions of section 191, the list must be available to the public and must be posted on a publicly accessible website maintained by the assessor. The directory must be mailed annually to all retailers at or near the time of renewal of a retail tobacco license issued under Title 22, section 1551-A.

**7. Notification.** A licensed distributor that does not renew or maintain a license, or that has its license

suspended or revoked, shall inform in writing all its accounts in this State that it no longer holds a valid license under this section. The licensed distributor shall inform its accounts in this State within 10 business days of the event giving rise to such notice. Notwithstanding the provisions of section 191, the assessor may publish the names of distributors that have not renewed or maintained a license or that have had a license suspended or revoked.

**Sec. 8. 36 MRSA §4403, sub-§§1 and 2**, as amended by PL 2005, c. 457, Pt. AA, §6 and affected by §8, are further amended to read:

**1. Smokeless tobacco.** A tax is imposed on all smokeless tobacco, including chewing tobacco and snuff, at the rate of 78% of the wholesale sales price beginning October 1, 2005.

**2. Other tobacco.** A tax is imposed on cigars, pipe tobacco and other tobacco intended for smoking at the rate of 20% of the wholesale sales price beginning October 1, 2005.

**Sec. 9. 36 MRSA §4403, sub-§3**, as amended by PL 2001, c. 382, §2, is further amended to read:

**3. Imposition.** The tax is imposed at the time the distributor, ~~retailer or unclassified importer~~ brings or causes to be brought into this State tobacco products that are for sale to consumers or to retailers or for use or at the time tobacco products are manufactured or fabricated in this State for sale in this State.

**Sec. 10. 36 MRSA §4404**, as amended by PL 2001, c. 382, §3, is further amended to read:

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

Every distributor, ~~retailer and unclassified importer~~ subject to the licensing requirement of section 4402 shall on or before the last day of each month submit, on a form prescribed and furnished by the State Tax Assessor, a report together with payment of the tax due under this chapter stating the quantity and the wholesale ~~sale~~ sales price of all tobacco products held, purchased, manufactured, brought in or caused to be brought in from outside the State or shipped or transported to retailers within the State during the preceding calendar month. Every such distributor, ~~retailer and unclassified importer~~ shall keep a complete and accurate record at its principal place of business to substantiate all receipts of tobacco products.

Such monthly reports must contain such further information as the State Tax Assessor may prescribe and must show a credit for any tobacco products exempted as provided in section 4403. Records must be maintained to substantiate the exemption. Tobacco

products previously taxed that are returned to a manufacturer because the product has become unfit for use, sale or consumption may be taken as a credit on a subsequent return upon receipt of the credit notice from the original supplier.

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

**Sec. 11. 36 MRSA §§4404-A, 4404-B and 4404-C** are enacted to read:

**§4404-A. Importation of tobacco products**

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

**2. Manufacturers.** A manufacturer may transport tobacco products into this State and may transport tobacco products from place to place within this State in quantities greater than those excepted in section 3 for the purpose of marketing and sales if the sale or distribution of those tobacco products is accounted for and the taxes are paid by a person licensed pursuant to section 4402.

**3. Exception for personal use.** A person who is not a licensed distributor may:

A. Transport tobacco products other than cigars into this State and transport those tobacco products from place to place within this State for personal use in a quantity not greater than one pound; or

B. Import or transport cigars into this State and transport those cigars from place to place within this State for personal use in a quantity of no more than 125 cigars.

**4. Evidence.** The possession by a person who is not licensed pursuant to section 4402 of more than 125 cigars or one pound of other tobacco product for which the tax imposed by this chapter has not been paid is prima facie evidence of a violation of this section.

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

A. A person who violates this section commits a Class E crime.

B. A person who violates this section when the person has one or more prior convictions for violation of this section commits a Class D crime. Title 17-A, section 9-A governs the use of prior convictions when determining a sentence.

Violation of this section by a person other than a retailer is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A. It is an affirmative defense to a prosecution under this section that a retailer, alleged to have imported tobacco products or caused tobacco products to be imported, reasonably relied on licensing information annually mailed to the retailer pursuant to section 4402, subsection 6 that listed the company from which the retailer obtained tobacco products as being a licensed distributor.

**§4404-B. Sales of tobacco products in contravention of law**

**1. Tobacco products.** A distributor may not offer for sale or sell tobacco products if the package containing the tobacco products:

A. Is subject to and does not comply with 15 United States Code, Section 4401, et seq., for the placement of labels, warnings or any other information for a package of tobacco products to be sold within the United States and 26 United States Code, Section 5723;

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. Shipment only to licensed retailers.** A distributor may not sell or offer to sell tobacco products to a retailer unless the retailer has provided documentation to the distributor that the retailer holds a current retail tobacco license issued under Title 22, section 1551-A.

**3. Deceptive practice.** A distributor that sells tobacco products described in subsection 1, with or without having paid the appropriate tax, commits an unfair or deceptive act or practice under the Maine Unfair Trade Practices Act.

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

A. A distributor that violates this section commits a Class E crime.

B. A distributor that violates this section when the distributor has one or more prior convictions for violation of this section commits a Class D crime. Title 17-A, section 9-A governs the use of prior convictions when determining a sentence.

Violation of this section is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

**§4404-C. Seizure and forfeiture of contraband tobacco products**

**1. Generally.** Except as provided in subsection 2, any tobacco products for which the tax imposed by this chapter has not been paid or tobacco products described in section 4404-B, subsection 1 that are found in this State are contraband goods subject to seizure by and forfeiture to the State. A law enforcement officer, including a contract officer pursuant to Title 22, section 1556-A, and a duly authorized agent of the State Tax Assessor may seize contraband tobacco products under the process described in subsection 3.

**2. Exceptions.** The following tobacco products are not subject to seizure:

A. Tobacco products in the possession of a licensed distributor or manufacturer for which the tax imposed by this chapter has not been paid;

B. Tobacco products for which the tax imposed by this chapter has not been paid that are in the course of transit from without the State and:

(1) Consigned to a licensed distributor; or

(2) In transit by common carrier or contract carrier.

C. Tobacco products in a quantity of no more than 125 cigars or one pound of other tobacco product in the possession of an individual who is not a licensed distributor for which the tax imposed by this chapter has not been paid.

Notwithstanding paragraphs A, B and C, tobacco products described in section 4404-B, subsection 1 are subject to seizure under the process described in

subsection 3 unless the distributor can prove the tobacco products are to be exported out of the country.

**3. Procedure for seizure.** Contraband tobacco products may be seized by a law enforcement officer or duly authorized agent of the assessor who has probable cause to believe that the tobacco products are untaxed or are tobacco products described in section 4404-B, subsection 1 under the following circumstances:

A. When the tobacco products 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.

**4. Procedure for forfeiture.** A petition for forfeiture must be filed as provided in this subsection.

A. A district attorney or an assistant district attorney, or the Attorney General or an assistant attorney general, may petition the District Court in the name of the State in the nature of a proceeding in rem to order the forfeiture of contraband tobacco products.

B. There may be no discovery other than under the Maine Rules of Civil Procedure, Rule 36 except by order of the court upon a showing of substantial need. An order permitting discovery must set forth in detail the areas in which substantial need has been shown and the extent to which discovery may take place.

C. A petition for forfeiture filed pursuant to this section must be accepted by the District Court without the assessment or payment of civil entry or filing fees otherwise provided for by rule of court.

**5. Jurisdiction and venue.** Tobacco products subject to forfeiture under this section must be declared forfeited by the District Court having jurisdiction over the tobacco products. Venue is in the location where the contraband tobacco products are seized or in Kennebec County.

**6. Type of action; burden of proof.** A proceeding instituted pursuant to this section is an in rem civil action. The State has the burden of proving all material facts by a preponderance of the evidence. The owner of the tobacco products or other person claiming the tobacco products has the burden of proving by a preponderance of the evidence one of the exceptions set forth in subsection 2.

**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 to which the parties have the right of appeal. When tobacco products are ordered forfeited, the final order must provide for the disposition of the tobacco products by the assessor by public auction or by the State Purchasing Agent. Proceeds must be deposited in the General Fund. Tobacco products described in section 4404-B, subsection 1 must be destroyed by the assessor in a manner that prevents their reintroduction into the marketplace.

**8. Default proceedings.** Default proceedings must be held in the same manner as default proceedings in other civil actions, except that service of motions and affidavits related to the default proceedings need not be served upon any person who has not answered or otherwise defended in the action under this section.

See title page for effective date.

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## CHAPTER 628

H.P. 1496 - L.D. 2106

### An Act To Address Potential Shortages of Influenza Immunizing Agents in Maine

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

**Whereas**, certain segments of the Maine public are at high risk of contracting the flu, and the flu can be deadly to these specific risk groups, which include the elderly, the very young and those suffering chronic illnesses; and

**Whereas**, in recent years, there have been shortages of influenza immunizing agents and delays in receiving influenza immunizing agents, and the availability of the influenza immunizing agents has varied widely both geographically and by the type of health care provider obtaining them; and

**Whereas**, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

**Sec. 1.** 22 MRSA §1065 is enacted to read: