

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.

Penmor Lithographers
Lewiston, Maine
2006

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.

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:

§1065. Influenza immunizing agent distribution report

A manufacturer or distributor that ships or distributes influenza immunizing agents to or within this State shall report information on the distribution of such agents to the Maine Center for Disease Control and Prevention as provided in this section.

1. Report timing and content. A manufacturer or distributor shall report the following information on the distribution of influenza immunizing agents in this State every 2 weeks during influenza season and on a monthly basis thereafter:

A. Contact name, company name, address, phone number and e-mail address of the manufacturer or distributor that is shipping or distributing influenza immunizing agents;

B. Contact name, business name, type of provider, address, phone number and e-mail address of the licensed health care provider or facility that will receive influenza immunizing agents;

C. The date that the manufacturer or distributor ships or distributes influenza immunizing agents and date that the delivery is received by the licensed health care provider or facility that ordered influenza immunizing agents; and

D. The type, quantity and dosage of influenza immunizing agents distributed to the licensed health care provider or facility.

2. Supply and demand. The department shall estimate the supply and demand for influenza immunizing agents at the beginning of each influenza season by assessing aggregate orders; reviewing information disseminated by manufacturers, distributors and the United States Department of Health and Human Services, Centers for Disease Control and Prevention; identifying the number and location of high priority populations; identifying possible geographic and provider type disparities; and reviewing historical demand patterns.

3. Confidentiality. Information obtained by the department under this section is confidential and may not be disclosed by the department except that the department may provide information obtained under this section to a licensed health care provider or facility located in the State in order to facilitate access to influenza immunizing agents for patients of that licensed health care provider or facility that are residents of the State.

4. Rules. The department shall adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect when approved.

Effective May 4, 2006.

CHAPTER 629

H.P. 1398 - L.D. 1996

An Act To Prevent Unauthorized Practice of Immigration and Nationality Law

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

Whereas, the unauthorized practice of immigration and nationality law in the State has resulted in the loss of rights of and severe damages to the people of the State and constitutes an ongoing threat to those rights and the well-being of the public; 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. 4 MRSA §807-B is enacted to read:

§807-B. Authorized immigration and nationality law assistance

1. Short title. This section may be known and cited as "the Immigration and Nationality Law Assistance Act."

2. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Compensation" means money, property, the reciprocal exchange of services or anything else of value.

B. "Federally authorized immigration representative" means an attorney who is admitted to and in good standing before the bar of a state of the United States other than Maine, or other person who is authorized to represent another in immigration and nationality law matters to the extent allowed under federal law or regulations, including 8 Code of Federal Regulations, Section 292.1 and 1292.1 (1996), with such representa-