

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE

ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE

FIRST REGULAR SESSION
December 3, 2008 to June 13, 2009

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TITLE 3, SECTION 163-A, SUBSECTION 4.

Augusta, Maine
2009

CHAPTER 398
H.P. 850 - L.D. 1230

**An Act To Prohibit the
Delivery of Tobacco Products
to Minors**

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

Sec. 1. 22 MRSA §1551, sub-§5 is enacted to read:

5. Premium cigar. "Premium cigar" means a cigar that weighs more than 3 pounds per 1,000 and is wrapped in whole tobacco leaf.

Sec. 2. 22 MRSA §1555-B, sub-§1, as amended by PL 2005, c. 223, §4, is further amended to read:

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.~~ For direct, face-to-face sales, employees who sell tobacco products must be at least 17 years of age. An employee who is at least 17 years of age but less than 21 years of age may sell tobacco products only in the presence of an employee who is at least 21 years of age and is in a supervisory capacity.

Sec. 3. 22 MRSA §1555-C, as enacted by PL 2003, c. 444, §2, is amended to read:

§1555-C. Delivery sales of premium cigars

The following requirements apply to delivery sales of ~~tobacco products~~ premium cigars within the State beginning October 1, 2009.

1. License required. It is unlawful for any person to accept an order for a delivery sale of ~~tobacco products~~ premium cigars to a consumer in the State unless that person is licensed under this chapter as a tobacco retailer. The following penalties apply to violations of this subsection.

A. A person who violates this subsection commits a civil violation for which a fine of not less than \$50 and not more than \$1,500 may be adjudged for each violation.

B. A person who violates this subsection after having been previously adjudicated as violating this subsection or subsection 2, ~~3~~ or 4 commits a civil violation for which a fine of not less than \$1,000 and not more than \$5,000 may be adjudged.

2. Requirements for accepting order for delivery sale. The following provisions apply to acceptance of an order for a delivery sale of ~~tobacco products~~ premium cigars.

A. When accepting the first order for a delivery sale from a consumer, the tobacco retailer shall obtain the following information from the person placing the order:

(1) A copy of a valid government-issued document that provides the person's name, current address, photograph and date of birth; and

(2) An original written statement signed by the person documenting that the person:

(a) Is of legal age to purchase tobacco products in the State;

~~(b) Has made a choice whether to receive mailings from a tobacco retailer;~~

(c) Understands that providing false information may constitute a violation of law; and

(d) Understands that it is a violation of law to purchase ~~tobacco products~~ premium cigars for subsequent resale or for delivery to persons who are under the legal age to purchase ~~tobacco products~~ premium cigars.

B. If an order is made as a result of advertisement over the Internet, the tobacco retailer shall request the e-mail address of the purchaser and shall receive payment by credit card or check prior to shipping.

C. Prior to shipping the ~~tobacco products~~ premium cigars, the tobacco retailer shall verify the information provided under paragraph A against a commercially available database derived solely from government records consisting of age and identity information, including date of birth.

D. A person who violates this subsection commits a civil violation for which a fine of not less than \$50 and not more than \$1,500 may be adjudged for each violation.

E. A person who violates this subsection after having been previously adjudicated as violating this subsection or subsection 1, 3 or 4 commits a civil violation for which a fine of not less than \$1,000 and not more than \$5,000 may be adjudged.

~~**3. Requirements for shipping a delivery sale.** The following provisions apply to a tobacco retailer shipping tobacco products pursuant to a delivery sale.~~

~~A. Prior to shipping, the tobacco retailer shall provide to the delivery service the age of the purchaser as provided under subsection 2, paragraph A and verified under subsection 2, paragraph C.~~

~~B. The tobacco retailer shall clearly mark the outside of the package of tobacco products to be~~

~~shipped to indicate that the contents are tobacco products and to show the name and State of Maine tobacco license number of the tobacco retailer.~~

~~C. The tobacco retailer shall utilize a delivery service that imposes the following requirements:~~

- ~~(1) The purchaser must be the addressee;~~
- ~~(2) The addressee must be of legal age to purchase tobacco products and must sign for the package; and~~
- ~~(3) If the addressee is under 27 years of age, the addressee must show valid government-issued identification that contains a photograph of the addressee and indicates that the addressee is of legal age to purchase tobacco products.~~

~~D. The delivery instructions must clearly indicate the requirements of this subsection and must declare that state law requires compliance with the requirements.~~

~~E. A person who violates this subsection commits a civil violation for which a fine of not less than \$50 and not more than \$1,500 may be adjudged for each violation.~~

~~F. A person who violates this subsection after having been previously adjudicated as violating this subsection or subsection 1, 2 or 4 commits a civil violation for which a fine of not less than \$1,000 and not more than \$5,000 may be adjudged.~~

4. Reporting requirements. No later than the 10th day of each calendar month, a tobacco retailer that has made a delivery sale of ~~tobacco products~~ premium cigars or shipped or delivered ~~tobacco products~~ premium cigars into the State in a delivery sale in the previous calendar month shall file with the Department of Administrative and Financial Services, Bureau of Revenue Services a memorandum or a copy of each invoice that provides for each delivery sale the name and address of the purchaser and the brand or brands and quantity of ~~tobacco products~~ premium cigars sold. ~~A tobacco retailer that meets the requirements of 15 United States Code, Section 375 et seq. (1955) satisfies the requirements of this subsection.~~ The following penalties apply to violations of this subsection.

A. A person who violates this subsection commits a civil violation for which a fine of not less than \$50 and not more than \$1,500 may be adjudged for each violation.

B. A person who violates this subsection after having been previously adjudicated as violating this subsection or subsection 1, ~~or 2 or 3~~ commits a civil violation for which a fine of not less than \$1,000 and not more than \$5,000 may be adjudged.

5. Unlawful ordering. It is unlawful to submit ordering information for ~~tobacco products~~ premium cigars by delivery sale under subsection 2, paragraph A in the name of another person. A person who violates this subsection commits a civil violation for which a fine of not more than \$10,000 may be adjudged.

6. Rulemaking. The department and the Department of Administrative and Financial Services 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.

7. Forfeiture. Any ~~tobacco product~~ premium cigar sold or attempted to be sold in a delivery sale that does not meet the requirements of this section is deemed to be contraband and is subject to forfeiture in the same manner as and in accordance with the provisions of Title 36, section 4372-A.

8. Enforcement. The Attorney General may bring an action to enforce this section in District Court or Superior Court and may seek injunctive relief, including a preliminary or final injunction, and fines, penalties and equitable relief and may seek to prevent or restrain actions in violation of this section by any person or any person controlling such person. In addition, a violation of this section is a violation of the Maine Unfair Trade Practices Act.

Sec. 4. 22 MRSA §1555-D, first ¶, as enacted by PL 2003, c. 444, §2, is amended to read:

A person may not knowingly transport or cause to be delivered to a person in this State a tobacco product purchased from a person who is not licensed as a tobacco retailer in this State, except that this provision does not apply to the transportation or delivery of tobacco products to a licensed tobacco distributor or tobacco retailer. ~~A person is deemed to know that a package contains a tobacco product if the package is marked in accordance with the requirements of section 1555-C, subsection 3, paragraph B or if the person receives the package from a person listed as an unlicensed tobacco retailer by the Attorney General under this section.~~

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

§1555-F. Delivery sales of tobacco products

1. Prohibition against delivery sales to consumers. The following requirements apply to delivery sales of tobacco products within the State.

A. A tobacco product may not be shipped to any one other than a licensed tobacco distributor or licensed tobacco retailer in this State.

B. A person may not, with knowledge or reason to know of the violation, provide substantial assistance to a person in violation of this section.

2. Acceptance of delivery of tobacco products. Only a licensed tobacco distributor or licensed tobacco retailer may accept delivery of tobacco products in this State.

3. Penalties. The following penalties apply to violations of this section.

A. A person who violates this section commits a civil violation for which a fine of not less than \$1,000 and not more than \$5,000 may be adjudged for each violation.

B. An employer of a person who, while working and within the scope of that person's employment, violates this section commits a civil violation for which a fine of not less than \$1,000 and not more than \$5,000 may be adjudged for each violation.

C. For purposes of this section, each shipment or transport of tobacco products constitutes a separate violation.

D. The Attorney General may bring an action to enforce this section in District Court or Superior Court and may seek injunctive relief, including preliminary or final injunction, and fines, penalties and equitable relief and may seek to prevent or restrain actions in violation of this section by any person or any person controlling such person. In addition, a violation of this section is a violation of the Maine Unfair Trade Practices Act.

E. If a court determines that a person has violated the provisions of this section, the court shall order any profits, gains, gross receipts or other benefits from the violation to be disgorged and paid to the Treasurer of State for deposit in the General Fund. Unless otherwise expressly provided, the penalties or remedies or both under this section are in addition to any other penalties and remedies available under any other law of this State.

4. Rulemaking. The department and the Department of Administrative and Financial Services 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.

5. Forfeiture. Any tobacco product sold or attempted to be sold in violation of this section is deemed to be contraband and is subject to forfeiture in the same manner as and in accordance with the provisions of Title 36, section 4372-A.

6. Exemption. The provisions of this section do not apply to the delivery sale of premium cigars to a consumer.

Sec. 6. Effective date. This Act takes effect October 1, 2009.

Effective October 1, 2009.

CHAPTER 399 H.P. 657 - L.D. 954

An Act To Clarify the Role of the Public Advocate

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

Sec. 1. 35-A MRSA §1701, sub-§1, as enacted by PL 1987, c. 141, Pt. A, §6, is repealed.

Sec. 2. 35-A MRSA §1701, sub-§1-A is enacted to read:

1-A. Appointment of the Public Advocate; term; removal. This subsection governs the appointment, term of service and removal of the Public Advocate.

A. The Governor shall appoint the Public Advocate, subject to review by the joint standing committee of the Legislature having jurisdiction over public utilities matters and to confirmation by the Legislature.

B. The Public Advocate shall serve for a 4-year term of office, beginning on February 1, 2013 and every 4 years thereafter.

C. The Public Advocate may continue to serve beyond the end of the 4-year term until a successor is appointed and qualified.

D. Any vacancy occurring must be filled by appointment for the unexpired portion of the term.

E. Any willful violation of this chapter by the Public Advocate constitutes sufficient cause for removal of the Public Advocate by the Governor, on the address of both branches of the Legislature or by impeachment pursuant to the Constitution of Maine, Article IX, Section 5.

Sec. 3. Transition of Public Advocate. Notwithstanding the Maine Revised Statutes, Title 35-A, section 1701, subsection 1-A, paragraph B, the term of the Public Advocate holding that office on the effective date of this Act ends on January 31, 2013.

See title page for effective date.

CHAPTER 400 H.P. 731 - L.D. 1056

An Act To Simplify the Assessment of E-9-1-1 Surcharges on Prepaid Wireless Telecommunications Service