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Legislative Document

No. 1170

S.P. 391

In Senate, March 28, 2017

An Act To Reduce Youth Access to Tobacco Products

Reference to the Committee on Health and Human Services suggested and ordered printed.

A handwritten signature in cursive script, reading "Heather J.R. Priest".

HEATHER J.R. PRIEST
Secretary of the Senate

Presented by Senator DAVIS of Piscataquis.
Cosponsored by Representative GUERIN of Glenburn and
Senators: DOW of Lincoln, JACKSON of Aroostook, LANGLEY of Hancock, LIBBY of
Androscoggin, Representatives: CHACE of Durham, GOLDEN of Lewiston, HYMANSON of
York, WARD of Dedham.

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

2 **Sec. 1. 22 MRSA §1551, sub-§1-D** is enacted to read:

3 **1-D. Electronic smoking device.** "Electronic smoking device" has the same
4 meaning as in section 1541, subsection 1-A.

5 **Sec. 2. 22 MRSA §1551, sub-§2**, as enacted by PL 1995, c. 470, §9 and affected
6 by §19, is repealed.

7 **Sec. 3. 22 MRSA §1551, sub-§3**, as enacted by PL 1995, c. 470, §9 and affected
8 by §19, is repealed and the following enacted in its place:

9 **3. Tobacco product.** "Tobacco product" means any product that is made from or
10 derived from tobacco, or that contains nicotine, that is intended for human consumption
11 or is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved,
12 inhaled or ingested by any other means, including, but not limited to, a cigarette, a cigar,
13 a hookah, pipe tobacco, chewing tobacco, snuff or snus. "Tobacco product" also means
14 an electronic smoking device and any component or accessory used in the consumption
15 of a tobacco product, such as filters, rolling papers, pipes and liquids used in electronic
16 smoking devices, whether or not they contain nicotine. "Tobacco product" does not
17 include drugs, devices or combination products authorized for sale by the United States
18 Food and Drug Administration, as those terms are defined in the Federal Food, Drug, and
19 Cosmetic Act.

20 **Sec. 4. 22 MRSA §1552-A, sub-§2**, as amended by PL 1997, c. 305, §1, is
21 further amended to read:

22 **2. Display of prohibition against sales to persons under 21 years of age.** All
23 licensees shall post notice of the prohibition on tobacco sales to ~~juveniles~~ persons under
24 21 years of age pursuant to section 1555-B. Notices must be publicly and conspicuously
25 displayed in the licensee's place of business in letters at least 3/8 inches high. Signs
26 required by this section must be provided at cost by the department. Any person who
27 violates this subsection commits a civil violation for which a forfeiture of not less than
28 \$50 nor more than \$200 may be adjudged for any one offense.

29 **Sec. 5. 22 MRSA §1553-A, sub-§1**, as amended by PL 1997, c. 305, §2, is
30 further amended to read:

31 **1. Vending requirements.** When the sale of cigarettes or any other tobacco product
32 is made from a vending machine the following is required.

33 A. Only cigarettes or any other tobacco products may be dispensed by that machine.

34 B. A sign must be affixed conspicuously to the front of the machine. The sign must:

35 (1) Contain lettering that is at least 3/8 inches in height; and

36 (2) State the following: "WARNING. It is unlawful for to sell tobacco products
37 to any person under the age of 18 to purchase cigarettes 21 in this State."

1 ~~C. At all times during the hours the vending machine is accessible, it must be located~~
2 ~~within the unobstructed line of sight and under the direct supervision of an adult.~~
3 ~~That adult is responsible for preventing persons under 18 years of age from~~
4 ~~purchasing cigarettes or any other tobacco product from that vending machine.~~

5 Vending machines may be located only in areas in which ~~minors~~ persons over 21 years of
6 age are allowed ~~only when accompanied by an adult.~~

7 **Sec. 6. 22 MRSA §1555-B**, as amended by PL 2009, c. 398, §2 and affected by
8 §6, is further amended to read:

9 **§1555-B. Sales of tobacco products**

10 **1. Retail sales.** Tobacco products may be sold at retail only in a direct, face-to-face
11 exchange in which the purchaser may be clearly identified. For direct, face-to-face sales,
12 employees who sell tobacco products must be at least 17 years of age. An employee who
13 is at least 17 years of age but less than 21 years of age may sell tobacco products only in
14 the presence of an employee who is at least 21 years of age and is in a supervisory
15 capacity.

16 **2. Sales to persons under 21 years of age prohibited.** A person may not sell,
17 furnish, give away or offer to sell, furnish or give away a tobacco product to any person
18 under ~~18~~ 21 years of age. Tobacco products may not be sold at retail to any person under
19 ~~27~~ 30 years of age unless the seller first verifies that person's age by means of reliable
20 photographic identification containing the person's date of birth. That a person appeared
21 to be 30 years of age or older does not constitute a defense to a violation of this section.

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

24 **4. Wholesale sales.** Tobacco products may be distributed at wholesale without a
25 face-to-face exchange only in the normal course of trade and under procedures approved
26 by the Bureau of Revenue Services to ensure that tobacco products are not provided to
27 any person under ~~18~~ 21 years of age.

28 **5-A. Purchase of tobacco products by persons under 21 years of age prohibited.**
29 Except as provided in subsection 5-B, a person under ~~18~~ 21 years of age may not:

30 A. ~~Purchase, possess or use cigarettes, cigarette papers or any attempt to purchase a~~
31 ~~tobacco product;~~

32 B. ~~Violate paragraph A after having previously violated this subsection; or~~

33 C. ~~Violate paragraph A after having previously violated this subsection 2 or more~~
34 ~~times.~~

35 **5-B. Exception to possession by persons under 21 years of age.** A person under
36 ~~18~~ 21 years of age may transport or permit to be transported in a motor vehicle ~~cigarettes,~~
37 ~~cigarette papers or~~ tobacco products in the original sealed package in which they were
38 placed by the manufacturer if the transportation is in the scope of that person's
39 employment.

1 **5-C. Use of false identification by persons under 21 years of age prohibited.** A
2 person under ~~18~~ 21 years of age may not:

3 A. Offer false identification in an attempt to purchase a tobacco product or to
4 purchase, possess or use ~~cigarettes, cigarette papers or any other~~ a tobacco product;

5 B. Violate paragraph A after having previously violated this subsection; or

6 C. Violate paragraph A after having previously violated this subsection 2 or more
7 times.

8 **6. Display of prohibition of sales to persons under 21 years of age.** A dealer or
9 distributor of tobacco products shall post notice of this section prohibiting tobacco ~~and~~
10 ~~cigarette paper~~ product sales to persons under ~~18~~ 21 years of age. Notices must be
11 publicly and conspicuously displayed in the dealer's or distributor's place of business in
12 letters at least 3/8 inches in height. Signs required by this section may be provided at cost
13 by the department.

14 **7. Enforcement.** Law enforcement officers shall enforce this section. A citizen may
15 register a complaint under this section with the law enforcement agency having
16 jurisdiction. The law enforcement agency may notify any establishment or individual
17 subject to this section of a citizen complaint regarding that establishment's or individual's
18 alleged violation of this section and shall keep a record of that notification.

19 **8. Fines.** Violations of this section are subject to fines or other penalties according
20 to this subsection.

21 ~~A. A person who violates subsection 1, 2, 3 or 4 commits a civil violation for which~~
22 ~~a fine of not less than \$50 and not more than \$1,500, plus court costs, must be~~
23 ~~adjudged for any one offense. Except pursuant to Title 15, section 3314, the fine may~~
24 ~~not be suspended.~~

25 A-1. An employer of a person who violates subsection 1, 2, 3 or 4 commits a civil
26 violation for which a fine of not less than ~~\$50 and not more than \$1,500~~ \$300 for the
27 first offense, not less than \$600 for the 2nd offense and not less than \$1,000 for each
28 offense thereafter, plus court costs, must be adjudged. The fine may not be
29 suspended. Each day in which a violation occurs constitutes a separate violation.

30 B. A person who violates subsection 5-A ~~or 5-C~~ commits a civil violation ~~for which~~
31 ~~the following fines may be adjudged and may be subject to completing~~
32 tobacco-related education classes, diversion programs or specified work for the
33 benefit of the State, the municipality or other public entity or a charitable institution.

34 ~~(1) For a first offense, a fine of not less than \$100 and not more than \$300 may~~
35 ~~be imposed. The judge, as an alternative to or in addition to the fine permitted by~~
36 ~~this subparagraph, may assign the violator to perform specified work for the~~
37 ~~benefit of the State, the municipality or other public entity or a charitable~~
38 ~~institution.~~

39 ~~(2) For a 2nd offense, a fine of not less than \$200 and not more than \$500 may~~
40 ~~be imposed. The judge, as an alternative to or in addition to the fine permitted by~~
41 ~~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 fine of \$500 must be imposed and that fine may not be suspended. The judge, in addition to the fine 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.

B-1. A person who violates subsection 5-C commits a civil violation for which the following fines may be adjudged.

(1) For a first offense, a fine of not less than \$100 and not more than \$300 may be imposed. The judge, as an alternative to or in addition to the fine 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 fine of not less than \$200 and not more than \$500 may be imposed. The judge, as an alternative to or in addition to the fine 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 fine of \$500 must be imposed and that fine may not be suspended. The judge, in addition to the fine 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 fine of not less than \$50 and not more than \$200 may be adjudged for any one offense.

9. Distribution of fines. Fines and forfeitures collected pursuant to subchapter 1 and this subchapter must be credited as follows: one half to the General Fund and 1/2 to be deposited in a nonlapsing account of the Maine Criminal Justice Academy for the purpose of providing funds for training and recertification of part-time and full-time law enforcement officers.

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~~ 21 years of age in reasonable reliance upon a fraudulent proof of age presented by the purchaser.

11. Manner of displaying and offering for sale. Tobacco products may be displayed or offered for sale only in a manner that does not allow the purchaser direct access to the tobacco products. The requirements of this subsection do not apply to the display or offering for sale of tobacco products in multi-unit packages of 10 or more units, in tobacco specialty stores or in locations in which the presence of minors is generally prohibited. This requirement does not preempt a municipal ordinance that provides for more restrictive regulation of the sale of tobacco products.

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SUMMARY

This bill raises the minimum legal age to purchase tobacco products from 18 years of age to 21 years of age. The definition of "tobacco product" is expanded to include additional forms of tobacco and materials and devices used in the consumption of tobacco, including electronic smoking devices. The bill also changes the penalties for the unlawful sale and purchase of tobacco products.