

# MAINE STATE LEGISLATURE

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# 121st MAINE LEGISLATURE

## FIRST REGULAR SESSION-2003

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Legislative Document

No. 1567

H.P. 1149

House of Representatives, April 14, 2003

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**An Act To Implement Recommendations of the MCJUSTIS Policy  
Board Concerning the Drafting of Crimes and Civil Violations  
Pursuant to Resolve 1997, Chapter 105, as Amended**

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Reported by Representative NORBERT of Portland for the MCJUSTIS Board pursuant to  
Resolve 2001, chapter 45.

Reference to the Committee on Judiciary suggested and ordered printed under Joint Rule  
218.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

2 B. Permit the person's name to be used to accomplish a  
3 contribution in violation of paragraph A; or

4 C. Accept a contribution made by one person in the name of  
5 another person.

6 **Sec. K-12. 21-A MRSA §1004, sub-§4,** as enacted by PL 1985, c.  
7 161, §6, is amended to read:

10 **4. Registration; political action committees.** No A  
11 political action committee required to be registered under  
12 section 1053 may not operate in this State unless it is so  
13 registered.

## 16 PART L

18 **Sec. L-1. 22 MRSA §47,** as amended by PL 1991, c. 797, §6, is  
19 repealed and the following enacted in its place:

### 20 **§47. Penalties and jurisdiction**

22 **1. Hinder, obstruct or interfere with agent.** A person who  
23 hinders, obstructs or interferes with an officer, inspector or  
24 duly authorized agent of the department while in the performance  
25 of the officer's, inspector's or agent's duties commits a Class E  
26 crime.

28 **2. Violation of order, rule or regulation.** A person who  
29 violates an order, rule or regulation of the department made for  
30 the protection of life or health under law commits a Class E  
31 crime unless otherwise provided in this Title.

34 **3. Violation of Title.** Unless another penalty has been  
35 expressly provided, a person who violates a provision of this  
36 Title or intentionally or knowingly fails, neglects or refuses to  
37 perform any of the duties imposed upon that person by this Title  
38 commits a Class E crime.

40 **4. Strict liability.** Except as otherwise specifically  
41 provided, violation of this section is a strict liability crime  
42 as defined in Title 17-A, section 34, subsection 4-A.

44 **Sec. L-2. 22 MRSA §48** is enacted to read:

### 46 **§48. Certificate of commissioner as evidence**

48 A certificate of the commissioner in regard to the records  
49 of the department is admissible in evidence in all prosecutions  
50 under this Title.

2           **Sec. L-3. 22 MRSA §690, sub-§1**, as enacted by PL 1983, c. 345,  
§§13 and 14, is repealed and the following enacted in its place:

4           **1. Criminal penalties.** A person who intentionally or  
6 knowingly:

8           A. Violates a provision of this Act, or a rule or order of  
10 the department in effect pursuant to this Act, commits a  
Class D crime; or

12           B. Violates a term, condition or limitation of a license or  
14 registration certificate issued under this Act, or commits a  
16 violation for which a license or registration certificate  
may be revoked under rules issued pursuant to this Act,  
commits a Class D crime.

18           **Sec. L-4. 22 MRSA §1554**, as enacted by PL 1995, c. 470, §9  
and affected by §19, is repealed.

20           **Sec. L-5. 22 MRSA §1554-A**, as amended by PL 1997, c. 305, §3,  
22 is repealed and the following enacted in its place:

24           **§1554-A. Sale of unpackaged cigarettes**

26           **1. Prohibition.** A person may not:

28           A. Sell cigarettes except in the original sealed package in  
30 which they were placed by the manufacturer, which may not be  
smaller than 20 cigarettes per package; or

32           B. Sell cigarettes in smaller quantities than placed in the  
34 package by the manufacturer.

36           **2. Penalty; employee.** A person who violates this section  
38 commits a civil violation for which a fine of not less than \$10  
and not more than \$100 may be adjudged. In all cases of  
violations, the court shall impose a fine that may not be  
40 suspended, except pursuant to Title 15, section 3314.

42           **3. Penalty; employer.** The employer of a person who  
44 violates this section commits a civil violation for which a fine  
of not less than \$100 and not more than \$1,000 may be adjudged.  
In all cases of violations, the court shall impose a fine that  
46 may not be suspended.

48           **Sec. L-6. 22 MRSA §1554-B** is enacted to read:

**§1554-B. Sale without valid license; multiple violations;**

**penalties**

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**1. License required.** A person may not engage in retail tobacco sales or in free distribution of tobacco products in the ordinary course of trade in this State without a valid license issued under subchapter 1.

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

**A.** A person who violates subsection 1 commits a Class E crime for which the court shall impose a sentencing alternative involving a fine of not less than \$300 plus court costs and not more than \$500 plus court costs. The fine and costs may not be suspended. The court also may impose a sentencing alternative involving a term of imprisonment of not more than 30 days.

**B.** A person who violates subsection 1 and, at the time of the violation, has one prior conviction for violating this section commits a Class E crime for which the court shall impose a sentencing alternative involving a fine of not less than \$500 plus court costs and not more than \$1,000 plus court costs. The fine and costs may not be suspended. The court also may impose a sentencing alternative involving a term of imprisonment of not more than 60 days.

**C.** A person who violates subsection 1 and, at the time of the violation, has 2 or more prior convictions for violating this section commits a Class E crime for which the court shall impose a sentencing alternative involving a fine of not less than \$1,000 plus court costs and a term of imprisonment of 60 days. The fine, court costs and term of imprisonment may not be suspended. The court also may impose as a sentencing alternative an additional term of imprisonment of not more than 4 months.

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

**4. Prior convictions.** Title 17-A, section 9-A governs the use of prior convictions when determining a sentence.

**Sec. L-7.** 22 MRSA §1555-B, sub-§5, as amended by PL 1997, c. 578, §1, is repealed.

**Sec. L-8.** 22 MRSA §1555-B, sub-§§5-A to 5-C are enacted to read:

2 5-A. Possession and use of cigarettes, cigarette papers or  
3 tobacco products by minors prohibited. Except as provided in  
4 subsection 5-B, a person under 18 years of age may not:

5 A. Purchase, possess or use cigarettes, cigarette papers or  
6 any tobacco product;

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

9 C. Violate paragraph A after having previously violated  
10 this subsection 2 or more times.

11 5-B. Exception to possession by minor. A person under 18  
12 years of age may transport or permit to be transported in a motor  
13 vehicle cigarettes, cigarette papers or tobacco products in the  
14 original sealed package in which they were placed by the  
15 manufacturer if the transportation is in the scope of that  
16 person's employment.

17 5-C. Use of false identification by minors prohibited. A  
18 person under 18 years of age may not:

19 A. Offer false identification in an attempt to purchase a  
20 tobacco product or to purchase, possess or use cigarettes,  
21 cigarette papers or any other tobacco product;

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

24 C. Violate paragraph A after having previously violated  
25 this subsection 2 or more times.

26 **Sec. L-9. 22 MRSA §1555-B, sub-§8, as amended by PL 1997, c.**  
27 **393, Pt. D, §1, is further amended to read:**

28 **8. Fines.** Violations of this section are subject to fines  
29 ~~and forfeitures~~ according to this subsection.

30 A. A person who violates subsection 1, 2, 3 or 4 commits a  
31 civil violation for which a fine of not less than \$50 ~~nor~~  
32 and not more than \$1,500, plus court costs, may must be  
33 adjudged for any one offense. ~~An employer of a person who~~  
34 ~~violates subsection 1, 2, 3 or 4 commits a civil violation~~  
35 ~~for which a fine of not less than \$50 nor more than \$1,500,~~  
36 ~~plus court costs, may be adjudged. For a violation, the~~  
37 ~~court shall impose a fine that may not be suspended, except~~  
38 Except pursuant to Title 15, section 3314, the fine may not  
39 be suspended.

2 A-1. An employer of a person who violates subsection 1, 2,  
3 3 or 4 commits a civil violation for which a fine of not  
4 less than \$50 and not more than \$1,500, plus court costs,  
5 must be adjudged. The fine may not be suspended.

6 B. A person who violates subsection 5 5-A or 5-C commits a  
7 civil violation for which the following ~~forfeitures~~ fines  
8 may be adjudged.

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

18 (2) For a 2nd offense, a ~~forfeiture~~ fine of not less  
19 than \$200 and not more than \$500 may be imposed. The  
20 judge, as an alternative to or in addition to the  
21 ~~forfeiture~~ fine permitted by this subparagraph, may  
22 assign the violator to perform specified work for the  
23 benefit of the State, the municipality or other public  
24 entity or a charitable institution.

26 (3) For all subsequent offenses, a ~~forfeiture~~ fine of  
27 \$500 must be imposed and that ~~forfeiture~~ fine may not  
28 be suspended. The judge, in addition to the ~~forfeiture~~  
29 fine permitted by this subparagraph, may assign the  
30 violator to perform specified work for the benefit of  
31 the State, the municipality or other public entity or a  
32 charitable institution.

34 C. A person who violates subsection 6 commits a civil  
35 violation for which a ~~forfeiture~~ fine of not less than \$50  
36 ~~ne~~ and not more than \$200 may be adjudged for any one  
37 offense.

38 **Sec. L-10. 22 MRSA §1593**, as enacted by PL 1977, c. 696,  
39 §186, is repealed and the following enacted in its place:

42 **§1593. Sale and use of fetuses**

44 **1. Prohibition.** A person may not use, transfer, distribute  
45 or give away a live human fetus, whether intrauterine or  
46 extrauterine, or any product of conception considered live born,  
47 for scientific experimentation or for any form of experimentation.  
48

1, chapter 13, subchapter 1 to the contrary, records pertaining to transportation permits required to be kept by the Wild Blueberry Commission of Maine under this section are confidential to the extent necessary to preserve the identity of parties to individual business transactions. The confidential status does not apply when records kept by the Wild Blueberry Commission of Maine are needed as evidence in a proceeding to enforce a provision of section 4314 or this section or in a prosecution for a violation of any other criminal law.

Sec. V-8. 36 MRSA §4315, sub-§3, as amended by PL 1997, c. 511, §23, is repealed and the following enacted in its place:

**3. Violation.** The following penalties apply to violations of this section.

A. A person who transports wild blueberries in violation of this section commits a Class E crime. Violation of this paragraph is a strict liability crime as defined in Title 17-A, section 34, subsection 4-A.

B. A person who violates any other provision of this section commits a civil violation for which a fine of not more than \$500 may be adjudged.

Sec. V-9. 36 MRSA §4362-A, sub-§4, as enacted by PL 1997, c. 458, §3, is repealed and the following enacted in its place:

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

A. A distributor who imports into this State any cigarettes 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 who 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 who sells at wholesale, offers for sale at wholesale or possesses with intent to sell at wholesale any cigarettes 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.

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

12 **Sec. V-10. 36 MRSA §4366-A, sub-§1,** as enacted by PL 1997, c.  
14 458, §10, is repealed and the following enacted in its place:

16 **1. Generally.** A distributor may not:

18 A. Sell, offer for sale or display for sale any cigarettes  
20 within this State that do not bear stamps evidencing the  
22 payment of the tax imposed by this chapter; or

24 B. Violate paragraph A when the distributor has 2 prior  
26 convictions for violation of this chapter.

28 The face value of the stamps must be considered as part of the  
30 retail cost of the cigarettes.

32 **Sec. V-11. 36 MRSA §4366-A, sub-§4,** as enacted by PL 1997, c.  
34 458, §10, is repealed and the following enacted in its place:

36 **4. Resale and reuse of stamps prohibited.** A distributor  
38 may not:

40 A. Sell, transfer or use more than once cigarette stamps  
42 issued by the assessor pursuant to this chapter; or

44 B. Violate paragraph A when the distributor has 2 prior  
46 convictions for violation of this chapter.

48 **Sec. V-12. 36 MRSA §4366-A, sub-§4-A** is enacted to read:

50 **4-A. Redemption of stamps.** The assessor shall redeem any  
unused, uncanceled stamps presented within one year of the date  
of purchase by a licensed distributor at a price equal to the  
amount paid for them. The assessor may also redeem, at face  
value, cigarette tax stamps affixed to packages of cigarettes  
that have become unsalable if application is made within 90 days  
of the return of the unsalable cigarettes to the manufacturer.  
The Treasurer of State shall provide out of money collected  
pursuant to this chapter, the funds necessary for the redemption.

**Sec. V-13. 36 MRSA §4366-A, sub-§6,** as enacted by PL 1997, c.  
458, §10, is repealed and the following enacted in its place:

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

2           A. A person who sells, offers for sale, displays for sale  
3           or possesses with intent to sell unstamped cigarettes in  
4           violation of this section commits a Class D crime.

6           B. A person who violates paragraph A when the person has 2  
7           or more prior convictions for violation of this chapter  
8           commits a Class C crime.

10          C. A person who sells or transfers cigarette stamps or uses  
11          stamps more than once in violation of this section commits a  
12          Class D crime.

14          D. A person who violates paragraph C when the person has  
15          one or more prior convictions for violation of this chapter  
16          commits a Class C crime.

18          Except as otherwise specifically provided, violation of this  
19          subsection is a strict liability crime as defined in Title 17-A,  
20          section 34, subsection 4-A.

22          Title 17-A, section 9-A governs the use of prior convictions when  
23          determining a sentence.

24                    **Sec. V-14. 36 MRSA §4366-B, sub-§4**, as enacted by PL 1997, c.  
25                    458, §10, is repealed and the following enacted in its place:

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

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

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

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

42                    **Sec. V-15. 36 MRSA §4366-C, sub-§3**, as enacted by PL 1999, c.  
43                    616, §3, is repealed and the following enacted in its place:

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

48                    A. A dealer or distributor who violates this section  
49                    commits a Class E crime.

50

2 liability crime as defined in Title 17-A, section 34, subsection  
4 4-A. Notwithstanding Title 17-A, section 1301, the maximum fine  
6 under this subsection is not more than \$25,000 per violation.

## 8 PART Y

10 **Sec. Y-1. 14 MRSA §5604** is enacted to read:

### 12 **§5604. Monetary sanctions**

14 1. Designation. A monetary sanction authorized by law and  
16 imposed by the court for a civil violation may be designated a  
18 "fine," "penalty," "forfeiture," "surcharge" or "assessment" or  
20 may be designated by another similar term.

22 2. Civil violation. Use of the terminology under  
24 subsection 1 in describing a monetary sanction for a civil  
26 violation does not limit or prohibit the application of Title  
28 17-A, section 4-B, subsection 3.

30 **Sec. Y-2. Effective date.** This Act takes effect July 1, 2004.

## 32 SUMMARY

34 This bill is the report of the Maine Criminal Justice  
36 Information System, MCJUSTIS, Policy Board pursuant to Resolve  
38 2001, chapter 45.

40 MCJUSTIS is an information clearinghouse, the purpose of  
42 which is to provide access to shared uniform information on  
44 criminal defendants and crime data. In order for the information  
46 to be uniform and accurate, it must be entered and accessed by  
48 all participants in the same way. To ensure that crimes are  
entered accurately, the statutes defining each crime must be  
precise and narrow enough to ensure that citing to the specific  
statutory unit will be the same as describing the elements and  
class of that exact crime. There must be a one-to-one  
relationship between each crime and the statutory unit that  
defines it. The 120th Legislature enacted Public Law 2001,  
chapter 383, which revised the Maine Criminal Code to establish  
that one-to-one relationship for each crime and its unique  
statutory cite. This bill revises crimes and civil violations in  
all other Titles of the Maine Revised Statutes that require  
amendment to ensure that each crime and civil violation has its  
own unique statutory cite.

2 The original resolve directed the MCJUSTIS policy board to  
propose only those changes to the laws that are necessary to  
4 result in a unique statutory cite for each violation. In working  
through each crime and civil violation in the Maine Revised  
6 Statutes, the MCJUSTIS policy board and staff used drafting  
standards that were adopted in Public Law 2001, chapter 383 and  
8 sought input from state department and agency representatives,  
including assistance from the Attorney General's office.  
10 Comments and drafting suggestions from these departments were  
incorporated into this bill.

12 In addition to the MCJUSTIS formatting changes, Public Law  
2001, chapter 383 identified several drafting changes that were  
14 substantive in nature and necessary to accomplish the MCJUSTIS  
policy board's directive. These changes also apply in this  
16 bill. Specifically, the category of substantive changes that are  
necessary relates to how to handle facts about a crime that are  
18 not technically elements of the crime but are currently used for  
determining the class of crime for sentencing purposes. The  
20 statute currently does not require that such "enhancers" be  
proved beyond a reasonable doubt by the prosecution. The Law  
22 Court has required, however, that the prosecution must prove such  
facts beyond a reasonable doubt if the facts are to be used to  
24 make the underlying crime a higher class than it would otherwise  
be or would require a specific punishment. This bill  
26 incorporates each enhancer into the elements of the crime that it  
enhances. This results in the statutory requirement that the  
28 enhancer be proved beyond a reasonable doubt in order to secure a  
conviction for that crime at that class. The enhancers that this  
30 bill includes are for prior convictions. When a person has a  
prior conviction for committing the same or another crime, that  
32 prior conviction may sometimes be used to enhance the penalty,  
but the State must plead and prove to a jury that the prior  
34 conviction did occur, instead of the court making that  
determination in order to enhance a crime at the point of  
36 sentencing.

38 The bill adopts the standard language used in Public Law  
2001, chapter 383 for referring to prior convictions when prior  
40 convictions are used to affect one class of a newly committed  
crime. Provisions in the bill that include these prior  
42 convictions cite the Maine Revised Statutes, Title 17-A, section  
9-A, which provides general rules for using prior convictions to  
44 enhance a new crime. These general rules are consistent with  
most existing provisions concerning the use of prior  
46 convictions.

48 The bill rewrites as an element of a crime any fact  
regarding the crime that is used to establish the class for the  
50 crime or the appropriate sentence. This is a substantive change,

2           although it will make little difference in how cases are  
currently prosecuted.

4           Civil violations are frequently prosecuted in a different  
manner than crimes. It is not uncommon for a prosecution for a  
6           civil violation to be initiated after the violator has committed  
several civil violations. At the time that violator comes to  
8           court, the prosecutor may charge the violator with more than one  
violation. These violations may be used to enhance the  
10          violator's penalty if the violator is adjudicated as having  
committed multiple violations. Instead of using the prior  
12          conviction language explained above for committing multiple  
crimes, the bill specifies that enhanced penalties for civil  
14          violations may be applied if the violator has previously violated  
that statute or another statute, as specified.

16           The bill identifies those crimes that do not require a  
culpable state of mind as strict liability crimes as defined in  
18          Title 17-A, section 34, subsection 4-A. This distinction is not  
made for civil violations.

22          The bill includes language to make the statutes gender  
neutral and to correct and update grammar. "Exceeds" is changed  
24          to "more than," and "under" is changed to "less than." These  
changes are made for consistency and are not intended to be  
26          substantive.

28          The bill changes reference to all monetary sanctions  
authorized by law, including fines, forfeitures, penalties or  
30          surcharges imposed by the court for a civil violation, to "fine"  
unless the sanction is payable to an entity other than the State,  
32          in which case the sanction continues to be identified as a civil  
penalty. A general provision that indicates this change is added  
34          to Title 14. Current law distinguishes between monetary  
sanctions for civil violations based on the amount of the  
36          penalty. If the sanction is less than \$1,000, it is called a  
civil forfeiture. If the sanction is more than \$1,000, it is  
38          called a civil penalty. Because "forfeiture" frequently carries  
a different meaning under the statutes and because a distinction  
40          based upon the monetary amount of a sanction appears to be  
unknown to many and often used inconsistently even by those aware  
42          of the distinction, the bill instead uses "fine" to refer to all  
monetary sanctions for civil violations, just as the term is used  
44          for crimes. Again, the only exception to this in the bill is  
when the monetary sanction is to be paid to someone other than  
46          the State, in which case "civil penalty" continues to be used to  
distinguish to whom the sanction is paid.

48

2           The bill also adds an effective date of July 1, 2004 in  
order to give district attorneys, the courts and others adequate  
time to update their charging instruments and computer systems.