

Title 22: HEALTH AND WELFARE
Chapter 262-A: RETAIL TOBACCO SALES

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Maine Revised Statutes
Title 22: HEALTH AND WELFARE
Chapter 262-A: RETAIL TOBACCO SALES

Subchapter 1: RETAIL TOBACCO LICENSES

§1551. DEFINITIONS

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

1. Cigarette paper. "Cigarette paper" means those papers or paper-like products used to roll cigarettes, which by advertising, design or use facilitate the use of tobacco or other products for inhalation.

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF) .]

1-A. Consumer. "Consumer" means an individual who purchases, receives or possesses tobacco products for personal consumption and not for resale.

[2003, c. 444, §1 (NEW) .]

1-B. Delivery sale. "Delivery sale" means a sale of tobacco products to a consumer in this State when:

A. The purchaser submits the order for the sale by means of telephonic or other electronic method of voice transmission, the Internet or any delivery service; or [2003, c. 444, §1 (NEW).]

B. The tobacco products are delivered by use of a delivery service. [2003, c. 444, §1 (NEW) .]

A sale to a person who is not licensed as a tobacco distributor or tobacco retailer is a delivery sale.

[2003, c. 444, §1 (NEW) .]

1-C. Delivery service. "Delivery service" means a person, including the United States Postal Service, who is engaged in the commercial delivery of letters, packages or other containers.

[2003, c. 444, §1 (NEW) .]

2. Juvenile. "Juvenile" means any individual who is younger than 18 years of age.

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF) .]

2-A. Person. "Person" means an individual, corporation, partnership or unincorporated association.

[2003, c. 444, §1 (NEW) .]

2-B. Tobacco distributor. "Tobacco distributor" or "distributor" means a person licensed as a distributor under Title 36, chapter 704.

[2003, c. 444, §1 (NEW) .]

3. Tobacco products. "Tobacco products" includes any form of tobacco and any material or device used in the smoking, chewing or other form of tobacco consumption, including cigarette papers and pipes.

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF) .]

3-A. Tobacco retailer. "Tobacco retailer" or "retailer" means a person located within or outside the State who sells tobacco products to a person in the State for personal consumption.

[2003, c. 444, §1 (NEW) .]

4. Vending machine. "Vending machine" means any automated, self-service device that upon insertion of money, tokens or any other form of payment, dispenses cigarettes or any other tobacco product.

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF) .]

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

[2009, c. 398, §1 (NEW); 2009, c. 398, §6 (AFF) .]

SECTION HISTORY

1995, c. 470, §9 (NEW). 1995, c. 470, §19 (AFF). 2003, c. 444, §1 (AMD). 2009, c. 398, §1 (AMD). 2009, c. 398, §6 (AFF).

§1551-A. RETAIL TOBACCO SALES LICENSE REQUIRED

1. Retail tobacco license. It is unlawful for any person, partnership or corporation that engages in retail sales, including retail sales through vending machines or in free distribution of tobacco products, to sell, keep for sale or give away in the course of trade any tobacco products to anyone without first obtaining a retail tobacco license from the department, in accordance with this chapter.

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF) .]

2. Violation; penalty. Penalties for violation of subchapters I and II are in accordance with those subchapters.

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF) .]

3. Enforcement. The department shall enforce this chapter in cooperation with all law enforcement officers.

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF) .]

4. Publish laws and rules. Every 4 years the department shall publish a compilation of laws and rules concerning retail tobacco sales.

A. The department shall supply a copy of the compilation of laws and rules to every new tobacco retail sales licensee at no charge. The department may charge a reasonable fee for that compilation to cover the cost of producing the compilation to persons other than licensees. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

B. The department shall notify all licensees of changes in the tobacco laws and rules within 90 days of adjournment of each regular session of the Legislature.

(1) The department shall supply a copy of the new laws and rules at no charge when requested by licensees.

(2) The department shall supply a copy of the new laws and rules to persons other than licensees for a reasonable fee. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF) .]

5. Report.

[2011, c. 657, Pt. AA, §59 (RP) .]

SECTION HISTORY

1995, c. 470, §9 (NEW). 1995, c. 470, §19 (AFF). 2011, c. 657, Pt. AA, §59 (AMD).

§1552. APPLICATION PROCEDURE

1. Application process; license fees. An applicant for an annual retail tobacco license shall file an application in the form required by the department. The department shall make provisions for applications under this section. The department shall determine annually by rulemaking the fee for a retail tobacco license, including the proration of an initial license that is issued for less than one year. The applicant shall enclose the fee with the application for the license. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2009, c. 199, §1 (AMD) .]

2. Term of license. All retail tobacco licenses are valid for a term beginning April 1st and ending the following March 31st, or in the case of an initial license issued after April 1st, for a term beginning on the date of issue and ending the following March 31st, unless suspended, revoked or not subject to the transfer under section 1553. Licenses that have been suspended or revoked may be reinstated, as permitted by the District Court decision issued under subchapter 2, upon the receipt of an application for reinstatement and payment of all penalties and an application fee of \$50.

[2009, c. 199, §2 (AMD) .]

3. Multiple licenses. Except as provided in subsection 3-A, a licensee applying for licenses to operate more than one premises or more than one vending machine shall obtain a separate license for each premises and each machine and shall pay the fee prescribed for each premises and each machine.

[2005, c. 145, §1 (AMD) .]

3-A. Seasonal mobile tobacco vendor license. An applicant who is a seasonal mobile tobacco vendor may purchase a single annual license authorizing that vendor to operate at 2 or more agricultural fairs, festivals or exhibitions held during the agricultural fair season. A license issued under this subsection must clearly specify the name and location of each fair, festival or exhibition at which the licensee is authorized to operate and, for each location, the specific dates and number of machines for which the licensee is authorized. A licensee may not operate at any agricultural fair, festival or exhibit except as specifically provided in that license. A seasonal mobile tobacco vendor license expires upon the conclusion of the agricultural fairs, festivals or exhibitions for which it was issued. Upon issuing a license under this subsection, the department shall immediately provide the information required by this subsection to the Office of the Attorney General for purposes of inspection and enforcement.

[2009, c. 199, §3 (AMD) .]

4. Application fees. All application fees must be deposited in the General Fund.

[2003, c. 673, Pt. CC, §1 (AMD) .]

5. False answer given intentionally. A person who intentionally gives a false answer in an application for a retail tobacco license violates Title 17-A, section 453.

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF) .]

SECTION HISTORY

1995, c. 470, §9 (NEW). 1995, c. 470, §19 (AFF). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2003, c. 673, §CC1 (AMD). 2005, c. 12, §TT1 (AMD). 2005, c. 145, §§1,2 (AMD). 2009, c. 199, §§1-3 (AMD).

§1552-A. PRODUCTION OF LICENSE; NOTICES

1. Production of licenses. A licensee shall make available a copy of the license on the premises for inspection by the commissioner, the commissioner's representatives and agents or authorized municipal officials.

[2011, c. 535, §1 (AMD) .]

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

[1997, c. 305, §1 (AMD) .]

SECTION HISTORY

1995, c. 470, §9 (NEW). 1995, c. 470, §19 (AFF). 1997, c. 305, §1 (AMD). 2011, c. 535, §1 (AMD).

§1553. TRANSFER OF LICENSES; DEATH; BANKRUPTCY; RECEIVERSHIP; GUARDIANSHIP; CORPORATIONS

Except as otherwise provided in this section, a license or any interest in a license may not be sold, transferred, assigned or otherwise subjected to control by any person other than the licensee. If the business or any interest in the business connected with a licensed activity is sold, transferred or assigned, the license holder shall send immediately to the department the license and a sworn statement showing the name and address of the purchaser. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

1. Transfer within same municipality. Upon receipt of a written application, the department may transfer any retail tobacco license from one place to another within the same municipality. A transfer may not be made to a premises for which a license could not have been originally legally issued.

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF) .]

2. Death, bankruptcy or receivership. In the case of death, bankruptcy or receivership of any licensee, the executor or administrator of the deceased licensee, the trustee or receiver of the bankrupt licensee or the licensee in receivership may retain the license.

A. For the benefit of the estate of the deceased licensee, the personal representative, receiver or trustee of the estate may operate the premises alone or through a manager for one year from the date of appointment.

(1) A new license application must be submitted at the end of the one-year grace period.

(2) Within one year from the date of appointment, the original license becomes void and must be returned to the department for cancellation.

(3) Any suspension or revocation of the license by the District Court for any violation applies to the manager or the personal representative, receiver or trustee of the estate.

(4) A personal representative, receiver or trustee of an estate or a duly appointed manager may not operate under the license unless approved by the department. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF).]

B. If a licensee dies, the following persons, with the written approval of the department, may continue to operate under the license for not more than 60 days pending appointment of a personal representative of the estate:

(1) The surviving spouse;

(2) A person who has filed a petition for appointment as executor or administrator for the estate of the deceased licensee;

(3) The sole heir of the deceased licensee; or

(4) A person designated by all of the heirs of the deceased licensee. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

C. When administration of the estate of a deceased licensee is not contemplated, the surviving spouse or person designated by all the heirs of the deceased licensee may take over the license under the same conditions as are provided for operation and transfer by an executor or an administrator. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

3. Guardian; conservator. A duly appointed and qualified guardian or conservator of the estate of a licensee may take over and operate any license of the ward of the deceased licensee for a period not to exceed one year if the guardian or conservator or the guardian or conservator's managers are approved by the department.

A. A guardian or conservator must apply for a new license on the ward's behalf within one year of the guardian's or conservator's appointment, if the guardian or conservator intends to continue to sell tobacco products. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

B. Penalties for violations apply to both guardians or conservators and guardians' or conservators' managers in the same manner as to executors or administrators and guardians' or conservators' managers in subsection 2, paragraph A, subparagraph (3). [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF) .]

4. Transfers. The following changes in a licensee's business are considered transfers under this section:

A. The sale or transfer of stock of a corporate licensee whose stock is not publicly traded that results in the sale or transfer of more than 10% of the shares of stock of the corporate licensee; [1995, c. 593, §1 (AMD).]

A-1. The sale or transfer of stock of a corporate licensee whose stock is publicly traded that results in the sale or transfer of more than 51% of the voting shares of the corporate licensee; [1995, c. 593, §2 (NEW).]

B. The incorporation of a licensee's business or a change in the form of incorporation of a licensee's business; [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

C. The addition or deletion of a partner in a partnership; or [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

D. The merger or acquisition of a licensee that is incorporated. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

[1995, c. 593, §§1, 2 (AMD) .]

SECTION HISTORY

1995, c. 470, §9 (NEW). 1995, c. 470, §19 (AFF). 1995, c. 593, §§1,2 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF).

§1553-A. SALES OF TOBACCO PRODUCTS; VENDING MACHINES

In addition to the tobacco license required in section 1551-A, the sale of cigarettes or any other tobacco product through a vending machine is subject to the following provisions. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

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

A. Only cigarettes or any other tobacco products may be dispensed by that machine. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

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

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

(2) State the following: "WARNING. It is unlawful for any person under the age of 18 to purchase cigarettes in this State." [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

C. At all times during the hours the vending machine is accessible, it must be located within the unobstructed line of sight and under the direct supervision of an adult. That adult is responsible for preventing persons under 18 years of age from purchasing cigarettes or any other tobacco product from that vending machine. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

Vending machines may be located only in areas in which minors are allowed only when accompanied by an adult.

[1997, c. 305, §2 (AMD) .]

2. Penalty. Any person, firm or corporation, in control of a facility in which a vending machine is located, who violates this section commits a civil violation for which a forfeiture of not less than \$100 nor more than \$500 may be adjudged or for which the person, firm or corporation may be prohibited for a period of not more than 6 months from having a cigarette vending machine located on the premises or both.

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF) .]

SECTION HISTORY

1995, c. 470, §9 (NEW). 1995, c. 470, §19 (AFF). 1997, c. 305, §2 (AMD).

Subchapter 2: PROHIBITED SALES, POSSESSION AND USE

§1554. SALE WITHOUT A VALID LICENSE; CRIME; PENALTY

(REPEALED)

SECTION HISTORY

1995, c. 470, §9 (NEW). 1995, c. 470, §19 (AFF). 2003, c. 452, §X2 (AFF). 2003, c. 452, §K4 (RP).

§1554-A. SALE OF UNPACKAGED CIGARETTES

1. Prohibition. A person may not:

A. Sell cigarettes except in the original sealed package in which they were placed by the manufacturer, which may not be smaller than 20 cigarettes per package; or [2003, c. 452, Pt. K, §5 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. Sell cigarettes in smaller quantities than placed in the package by the manufacturer. [2003, c. 452, Pt. K, §5 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. K, §5 (RPR); 2003, c. 452, Pt. X, §2 (AFF) .]

2. Penalty; employee. A person who violates this section 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 suspended, except pursuant to Title 15, section 3314.

[2003, c. 452, Pt. K, §5 (RPR); 2003, c. 452, Pt. X, §2 (AFF) .]

3. Penalty; employer. The employer of a person who 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 may not be suspended.

[2003, c. 452, Pt. K, §5 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY

1995, c. 470, §9 (NEW). 1995, c. 470, §19 (AFF). 1997, c. 305, §3 (AMD). 2003, c. 452, §X2 (AFF). 2003, c. 452, §K5 (RPR).

§1554-B. SALE WITHOUT VALID LICENSE; MULTIPLE VIOLATIONS; PENALTIES

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.

[2003, c. 452, Pt. K, §6 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

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. [2003, c. 452, Pt. K, §6 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

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. [2003, c. 452, Pt. K, §6 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

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. [2003, c. 452, Pt. K, §6 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. K, §6 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

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

[2003, c. 452, Pt. K, §6 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

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

[2003, c. 452, Pt. K, §6 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

SECTION HISTORY

2003, c. 452, §K6 (NEW). 2003, c. 452, §X2 (AFF).

§1555. SALES OF TOBACCO PRODUCTS TO JUVENILES

(REPEALED)

SECTION HISTORY

1995, c. 470, §9 (NEW). 1995, c. 470, §19 (AFF). 1995, c. 593, §3 (AMD). 1997, c. 305, §4 (RP).

§1555-A. IDENTIFICATION CARDS

A licensee may refuse to sell tobacco to any person who fails to display upon request an identification card issued under Title 29-A, section 1410 or a motor vehicle operator's license bearing the photograph of the operator and issued under Title 29-A. [1997, c. 437, §2 (AMD).]

SECTION HISTORY

1995, c. 470, §9 (NEW). 1995, c. 470, §19 (AFF). 1997, c. 437, §2 (AMD).

§1555-B. SALES OF TOBACCO PRODUCTS

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. 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.

[2009, c. 398, §2 (AMD); 2009, c. 398, §6 (AFF) .]

2. Sales to minors prohibited. A person may not sell, furnish, give away or offer to sell, furnish or give away a tobacco product to any person under 18 years of age. Tobacco products may not be sold at retail to any person under 27 years of age unless the seller first verifies that person's age by means of reliable photographic identification containing the person's date of birth.

[1997, c. 305, §5 (NEW) .]

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

[1997, c. 305, §5 (NEW) .]

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

[1997, c. 305, §5 (NEW); 1997, c. 526, §14 (AMD) .]

5. Possession and use of cigarettes, cigarette papers or tobacco products; use of false identification by minors prohibited.

[2003, c. 452, Pt. K, §7 (RP); 2003, c. 452, Pt. X, §2 (AFF) .]

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

A. Purchase, possess or use cigarettes, cigarette papers or any tobacco product; [2003, c. 452, Pt. K, §8 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. Violate paragraph A after having previously violated this subsection; or [2003, c. 452, Pt. K, §8 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

C. Violate paragraph A after having previously violated this subsection 2 or more times. [2003, c. 452, Pt. K, §8 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. K, §8 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

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

[2003, c. 452, Pt. K, §8 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

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

A. Offer false identification in an attempt to purchase a tobacco product or to purchase, possess or use cigarettes, cigarette papers or any other tobacco product; [2003, c. 452, Pt. K, §8 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. Violate paragraph A after having previously violated this subsection; or [2003, c. 452, Pt. K, §8 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

C. Violate paragraph A after having previously violated this subsection 2 or more times. [2003, c. 452, Pt. K, §8 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. K, §8 (NEW); 2003, c. 452, Pt. X, §2 (AFF) .]

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

[1997, c. 305, §5 (NEW) .]

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

[1997, c. 305, §5 (NEW) .]

8. Fines. Violations of this section are subject to fines according to this subsection.

A. A person who violates subsection 1, 2, 3 or 4 commits a civil violation for which a fine of not less than \$50 and not more than \$1,500, plus court costs, must be adjudged for any one offense. Except pursuant to Title 15, section 3314, the fine may not be suspended. [2003, c. 452, Pt. K, §9 (AMD); 2003, c. 452, Pt. X, §2 (AFF).]

A-1. An employer of a person who violates subsection 1, 2, 3 or 4 commits a civil violation for which a fine of not less than \$50 and not more than \$1,500, plus court costs, must be adjudged. The fine may not be suspended. [2003, c. 452, Pt. K, §9 (NEW); 2003, c. 452, Pt. X, §2 (AFF).]

B. A person who violates subsection 5-A or 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. [2003, c. 452, Pt. K, §9 (AMD); 2003, c. 452, Pt. X, §2 (AFF).]

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. [2003, c. 452, Pt. K, §9 (AMD); 2003, c. 452, Pt. X, §2 (AFF).]

[2003, c. 452, Pt. K, §9 (AMD); 2003, c. 452, Pt. X, §2 (AFF) .]

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.

[2003, c. 20, Pt. R, §7 (AMD) .]

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

[1997, c. 305, §5 (NEW) .]

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.

[1999, c. 314, §1 (NEW); 1999, c. 314, §2 (AFF) .]

SECTION HISTORY

1997, c. 305, §5 (NEW). 1997, c. 393, §D1 (AMD). 1997, c. 562, §D3 (AMD). 1997, c. 562, §D11 (AFF). 1997, c. 578, §1 (AMD). 1999, c. 314, §1 (AMD). 1999, c. 314, §2 (AFF). 2003, c. 20, §R7 (AMD). 2003, c. 452, §§K7-9 (AMD). 2003, c. 452, §X2 (AFF). 2005, c. 223, §4 (AMD). 2009, c. 398, §2 (AMD). 2009, c. 398, §6 (AFF).

§1555-C. DELIVERY SALES OF PREMIUM CIGARS

The following requirements apply to delivery sales of premium cigars within the State beginning October 1, 2009. [2009, c. 398, §3 (AMD); 2009, c. 398, §6 (AFF).]

1. License required. It is unlawful for any person to accept an order for a delivery sale of 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. [2003, c. 444, §2 (NEW).]

B. A person who violates this subsection after having been previously adjudicated as violating this subsection or subsection 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. [2009, c. 398, §3 (AMD); 2009, c. 398, §6 (AFF) .]

[2009, c. 398, §3 (AMD); 2009, c. 398, §6 (AFF) .]

2. Requirements for accepting order for delivery sale. The following provisions apply to acceptance of an order for a delivery sale of 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) Understands that providing false information may constitute a violation of law; and
 - (c) Understands that it is a violation of law to purchase premium cigars for subsequent resale or for delivery to persons who are under the legal age to purchase premium cigars. [2009, c. 398, §3 (AMD); 2009, c. 398, §6 (AFF).]

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. [2003, c. 444, §2 (NEW).]

C. Prior to shipping the 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. [2009, c. 398, §3 (AMD); 2009, c. 398, §6 (AFF).]

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. [2003, c. 444, §2 (NEW).]

E. A person who violates this subsection after having been previously adjudicated as violating this subsection or subsection 1 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. [2009, c. 652, Pt. A, §30 (AMD).]

[2009, c. 652, Pt. A, §30 (AMD) .]

3. Requirements for shipping a delivery sale.

[2009, c. 398, §6 (AFF); 2009, c. 398, §3 (RP) .]

4. Reporting requirements. No later than the 10th day of each calendar month, a tobacco retailer that has made a delivery sale of premium cigars or shipped or delivered 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 premium cigars sold. 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. [2003, c. 444, §2 (NEW).]

B. A person who violates this subsection after having been previously adjudicated as violating this subsection or subsection 1 or 2 commits a civil violation for which a fine of not less than \$1,000 and not more than \$5,000 may be adjudged. [2009, c. 398, §3 (AMD); 2009, c. 398, §6 (AFF).]

[2009, c. 398, §3 (AMD); 2009, c. 398, §6 (AFF) .]

5. Unlawful ordering. It is unlawful to submit ordering information for 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.

[2009, c. 398, §3 (AMD); 2009, c. 398, §6 (AFF) .]

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.

[2003, c. 444, §2 (NEW) .]

7. Forfeiture. Any 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.

[2009, c. 398, §3 (AMD); 2009, c. 398, §6 (AFF) .]

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.

[2003, c. 444, §2 (NEW) .]

SECTION HISTORY

2003, c. 444, §2 (NEW). 2009, c. 398, §3 (AMD). 2009, c. 398, §6 (AFF). 2009, c. 652, Pt. A, §30 (AMD).

§1555-D. ILLEGAL DELIVERY OF TOBACCO PRODUCTS

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. [2009, c. 398, §4 (AMD); 2009, c. 398, §6 (AFF) .]

1. Lists.

[2011, c. 524, §1 (RP) .]

2. Penalty. The following penalties apply for violation of this section.

A. A person who violates this section commits a civil violation for which a fine of not less than \$50 nor more than \$1500 may be adjudged for each violation. A fine imposed under this paragraph may not be suspended. [2003, c. 444, §2 (NEW) .]

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 \$50 nor more than \$1,500 may be adjudged for each violation. A fine imposed under this paragraph may not be suspended. [2003, c. 444, §2 (NEW) .]

[2003, c. 444, §2 (NEW) .]

3. 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.

[2003, c. 444, §2 (NEW) .]

4. Affirmative defense. It is an affirmative defense to a prosecution under this section that a person who transported tobacco products or caused tobacco products to be delivered reasonably relied on licensing information provided by the Attorney General under this section.

[2003, c. 444, §2 (NEW) .]

5. Rulemaking. 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.

[2003, c. 444, §2 (NEW) .]

6. Forfeiture. Any tobacco product 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.

[2003, c. 444, §2 (NEW) .]

SECTION HISTORY

2003, c. 444, §2 (NEW). 2009, c. 398, §4 (AMD). 2009, c. 398, §6 (AFF).
2011, c. 524, §1 (AMD).

§1555-E. REDUCED IGNITION PROPENSITY CIGARETTES

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

A. "Agent" means any person licensed by the State Tax Assessor to purchase and affix stamps on packages of cigarettes. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

B. "ASTM" means the American Society of Testing and Materials or a successor organization. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

C. "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use and consists of or contains any roll of tobacco wrapped in paper or in any substance not containing tobacco or in any substance other than tobacco and, because of its appearance, the type of tobacco used or its packaging or labeling, is offered to or purchased by consumers as a cigarette. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

D. "Distributor" has the same meaning as in Title 36, section 4401, subsection 2. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

E. "Manufacturer" means:

(1) An entity that manufactures or otherwise produces cigarettes, or causes cigarettes to be manufactured or produced anywhere, that the entity intends to be sold in this State, including cigarettes intended to be sold in the United States through an importer;

(2) The first purchaser anywhere that intends to resell in the United States cigarettes manufactured anywhere that the original manufacturer or maker does not intend to be sold in the United States; or

(3) An entity that becomes a successor of an entity described in subparagraph (1) or (2). [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

F. "Quality control and quality assurance program" means the laboratory procedures implemented to ensure that operator bias, systematic and nonsystematic methodological errors and equipment-related problems do not affect the results of testing under subsection 2. A quality control and quality assurance program ensures that the testing repeatability remains within the required repeatability values stated in subsection 2, paragraph A, subparagraph (6) for all test trials used to certify cigarettes in accordance with this section. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

G. "Repeatability" means the range of values within which the results of repeated cigarette test trials from a single laboratory will fall 95% of the time. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

H. "Sale" means any transfer of possession or exchange or barter, conditional or otherwise, of cigarettes in any manner or by any means or any agreement. In addition to cash and credit sales, the giving of cigarettes as samples, prizes or gifts and the exchanging of cigarettes for any consideration other than money are considered sales. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

I. "Sell" includes offering to sell or agreeing to sell. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

J. "Tobacco retailer" has the same meaning as in section 1551, subsection 3-A. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

[2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF) .]

2. Test methods and performance standards. Cigarette test methods and performance standards are governed by the provisions of this subsection.

A. Unless federal law provides otherwise, cigarettes may not be sold or offered for sale in this State or offered for sale or sold to persons located in this State unless the cigarettes have been tested in accordance with the test methods and meet the performance standards specified in this subsection, a written certification has been filed by the manufacturer with the State Fire Marshal in accordance with subsection 3 and the cigarettes have been marked in accordance with subsection 4.

- (1) Testing of cigarettes must be conducted in accordance with ASTM Standard E2187-04, "Standard Test Method for Measuring the Ignition Strength of Cigarettes."
- (2) Testing must be conducted on 10 layers of filter paper.
- (3) No more than 25% of the cigarettes tested in a test trial in accordance with this subsection may exhibit full-length burns. Forty replicate tests constitutes a complete test trial for each cigarette tested.
- (4) The performance standards required by this subsection may be applied only to a complete test trial.
- (5) Written certifications must be based upon testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the International Organization for Standardization or other comparable accreditation standards required by the State Fire Marshal.
- (6) Laboratories conducting testing in accordance with this subsection shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results. The repeatability value must be no greater than 0.19.
- (7) This subsection does not require additional testing if cigarettes are tested consistent with this section for any other purpose.
- (8) Testing performed or sponsored by the State Fire Marshal to determine a cigarette's compliance with the performance standards required by this subsection must be conducted in accordance with this subsection. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

B. Each cigarette listed in a certification submitted pursuant to subsection 3 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standards set forth in this subsection must have at least 2 nominally identical bands on the paper surrounding the tobacco column. At least one complete band must be located at least 15 millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there must be at least 2 bands located at least 15 millimeters from the lighting end and 10 millimeters from the filter end of the tobacco column or 10 millimeters from the labeled end of the tobacco column for nonfiltered cigarettes. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

C. The provisions of this paragraph apply to alternative test methods.

- (1) A manufacturer of a cigarette that the State Fire Marshal determines cannot be tested in accordance with the test methods prescribed in paragraph A shall propose test methods and performance standards for the cigarette to the State Fire Marshal. Upon approval of the proposed test methods and a determination by the State Fire Marshal that the performance standards proposed by the manufacturer are equivalent to the performance standards prescribed in paragraph A, the manufacturer may employ the test methods and performance standards to certify the cigarette pursuant to subsection 3.

(2) If a manufacturer has certified a cigarette pursuant to subsection 3 and thereafter makes any change to the cigarette that is likely to alter its compliance with the reduced ignition propensity standards required by this section, that cigarette may not be sold or offered for sale in this State until the manufacturer retests the cigarette in accordance with the testing standards set forth in this subsection and maintains records of that retesting as required by this subsection. Any altered cigarette that does not meet the performance standards set forth in this subsection may not be sold in this State.

(3) If the State Fire Marshal determines that another state has enacted reduced ignition propensity standards that include test methods and performance standards that are the same as those contained in this subsection and finds that the officials responsible for implementing those requirements have approved the proposed alternative test methods and performance standards for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation, then the State Fire Marshal shall authorize that manufacturer to employ the alternative test methods and performance standards to certify that cigarette for sale in this State, unless the State Fire Marshal finds a reasonable basis that the alternative test should not be accepted under this section. All other applicable requirements of this subsection apply to the manufacturer. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

D. Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for a period of 3 years and shall make copies of these reports available to the State Fire Marshal and the Attorney General upon written request. Any manufacturer who fails to make copies of these reports available within 60 days of receiving a written request commits a civil violation for which a fine not to exceed \$5,000 must be applied for each day after the 60th day that the manufacturer does not make such copies available. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

E. The State Fire Marshal may adopt a subsequent ASTM standard test method for measuring the ignition strength of cigarettes upon a finding that the subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette when compared to the percentage of full-length burns the same cigarette would exhibit when tested in accordance with ASTM Standard E2187-04 and the performance standard in paragraph A, subparagraph (3). [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

[2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF) .]

3. Certification. This subsection governs the certification of cigarettes under this section.

A. Each manufacturer shall submit to the State Fire Marshal a written certification attesting that:

- (1) Each cigarette listed in the certification has been tested in accordance with subsection 2; and
- (2) Each cigarette listed in the certification meets the performance standards set forth in subsection 2. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

B. Information listed in the certification of each cigarette must include:

- (1) Brand or trade name on the package;
- (2) Style, such as light or ultra light;
- (3) Length in millimeters;
- (4) Circumference in millimeters;
- (5) Flavor, such as menthol, if applicable;
- (6) Filter or nonfilter;
- (7) Package description, such as soft pack or box;
- (8) Marking approved in accordance with subsection 4;

(9) The name, address and telephone number of the laboratory, if different than the manufacturer, that conducted the test; and

(10) The date that the testing occurred. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

C. The manufacturer must make a certification available to the Attorney General for purposes consistent with this section and the State Tax Assessor for the purposes of ensuring compliance with this section. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

D. Each cigarette certified under this subsection must be recertified every 3 years. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

[2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF) .]

4. Marking of cigarette packaging. The provisions of this subsection govern marking of cigarette packaging.

A. The packaging of cigarettes that are certified by a manufacturer in accordance with subsection 3 must be marked to indicate compliance with the requirements of subsection 2. The marking must be in 8-point or larger type and consist of:

(1) Modification of the universal product code to include a visible mark printed in the area of the universal product code. This mark may consist of an alphanumeric or symbolic character or characters permanently stamped, engraved, embossed or printed in conjunction with the universal product code; or

(2) Any visible combination of alphanumeric or symbolic characters or text permanently stamped, engraved or embossed upon the cigarette package or cellophane wrap. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

B. A manufacturer shall use only one marking and shall apply this marking uniformly for all packages, including, but not limited to, packs, cartons and cases, and brands marketed by that manufacturer. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

C. Prior to the certification of any cigarette, a manufacturer shall present its proposed marking to the State Fire Marshal for approval. Upon receipt of the request, the State Fire Marshal shall approve or disapprove the marking offered, except that the State Fire Marshal shall approve any marking in use and approved for sale in New York pursuant to the New York Fire Safety Standards for Cigarettes. Proposed markings are deemed approved if the State Fire Marshal fails to act within 10 business days of receiving a request for approval. The State Fire Marshal shall notify the State Tax Assessor as to the marking that has been approved. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

D. A manufacturer may not modify its approved marking unless the modification has been approved by the State Fire Marshal in accordance with this subsection. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

E. A manufacturer certifying cigarettes in accordance with subsection 3 shall provide a copy of the certification to all distributors and agents to which the manufacturer sells cigarettes and shall also provide sufficient copies of an illustration of the package marking used by the manufacturer pursuant to this section for each tobacco retailer to which the distributors or agents sell cigarettes. Distributors and agents shall provide copies of these illustrations to all tobacco retailers to which they sell cigarettes. Distributors, agents and tobacco retailers shall permit the State Fire Marshal, the State Tax Assessor, the Attorney General and their employees to inspect cigarette packaging marked in accordance with this subsection. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

[2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF) .]

5. Violations. Penalties for violating this section are as set out in this subsection.

A. A manufacturer, distributor, agent or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of subsection 2, paragraph A commits a civil violation for which a fine of not more than \$10,000 per each sale of cigarettes must be imposed. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

B. A manufacturer, distributor, agent or any other person or entity who knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of subsection 2, paragraph A and has previously been adjudicated of violating that subsection commits a civil violation for which a fine of not more than \$25,000 per each sale of cigarettes must be imposed, except that the fine against any one person or entity may not exceed \$100,000 during any 30-day period. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

C. A tobacco retailer who knowingly sells 1,000 cigarettes or less in violation of subsection 2, paragraph A commits a civil violation for which a fine of not more than \$500 per each sale or offer for sale of cigarettes must be imposed. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

D. A tobacco retailer who commits a violation as described in paragraph C and has previously been adjudicated of committing that violation commits a civil violation for which a fine of not more than \$2,000 per each sale or offer for sale of cigarettes must be imposed. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

E. A tobacco retailer who knowingly sells more than 1,000 cigarettes in violation of subsection 2, paragraph A commits a civil violation for which a fine of not more than \$1,000 per each sale or offer for sale of cigarettes must be imposed, except that this fine against any tobacco retailer may not exceed \$25,000 during a 30-day period. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

F. A tobacco retailer who commits a violation as described in paragraph E and has previously been adjudicated of committing that violation commits a civil violation for which a fine of not more than \$5,000 per each sale or offer for sale of cigarettes must be imposed, except that this fine against any tobacco retailer may not exceed \$25,000 during a 30-day period. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

G. In addition to any other penalty prescribed by law, a corporation, partnership, sole proprietor, limited partnership or association engaged in the manufacture of cigarettes that knowingly makes a false certification pursuant to subsection 3 commits a civil violation for which a fine of not less than \$75,000 must be imposed for each false certification. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

H. A corporation, partnership, sole proprietor, limited partnership or association engaged in the manufacture of cigarettes that commits a violation as described in paragraph G after having previously being adjudicated of committing that violation commits a civil violation for which a fine of at least \$75,000 and not more than \$250,000 must be imposed for each false certification. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

I. A person who commits a violation of a provision of this section other than those described in paragraphs A to H commits a civil violation for which a fine of not more than \$1,000 must be imposed for each violation. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

J. A person who commits a violation as described in paragraph I and has been previously adjudicated of committing a violation described in paragraph I commits a civil violation for which a fine of not more than \$5,000 must be imposed for each violation. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

[2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF) .]

6. Forfeiture. Any cigarettes that have been sold or offered for sale that do not comply with the performance standards required by this section are subject to forfeiture under Title 36, section 4372-A, as long as, prior to the destruction of any cigarette forfeited pursuant to these provisions, the true holder of the trademark rights in the cigarette brand must be permitted to inspect the cigarette.

[2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF) .]

7. Injunctive relief. In addition to any other remedy provided by law, the Attorney General may file an action in District Court or Superior Court for a violation of this section, including petitioning for injunctive relief or to recover any costs or damages suffered by the State because of a violation of this section, including enforcement costs relating to the specific violation and attorney's fees. Each violation of this section or of rules adopted under this section constitutes a separate civil violation for which the State Fire Marshal or Attorney General may obtain relief.

[2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF) .]

8. Implementation. This section must be implemented as set out in this subsection.

A. The State Fire Marshal may adopt routine technical rules, pursuant to Title 5, chapter 375, subchapter 2-A, necessary to effectuate the purposes of this section. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

B. The State Tax Assessor in the regular course of conducting inspections of distributors, agents and tobacco retailers, as authorized under Title 36, section 4373-A, may inspect cigarette packaging to determine if it is marked as required in subsection 4. If the packaging is not marked as required, the State Tax Assessor shall notify the State Fire Marshal. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

C. Beginning in 2009 and every 3 years thereafter, the State Fire Marshal shall review the effectiveness of this section and report to the Legislature the State Fire Marshal's findings and, if appropriate, recommendations for legislation to improve the effectiveness of the implementation of the standards and certification of those standards in this section. The report and legislative recommendations must be submitted no later than March 1st of each year a report is required. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

D. This section must be implemented by the State Fire Marshal in accordance with the implementation and substance of the New York Fire Safety Standards for Cigarettes or a comparable or successor standard. [2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF).]

[2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF) .]

9. Inspection. To enforce the provisions of this section, the Attorney General and the State Fire Marshal may examine the books, papers, invoices and other records of any person in possession, control or occupancy of any premises where cigarettes are manufactured, tested, placed, stored, sold or offered for sale, as well as the stock of cigarettes on the premises. Such a person shall give the Attorney General and the State Fire Marshal the means, facilities and opportunity for the examinations authorized by this subsection.

[2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF) .]

10. Fire Prevention and Public Safety Fund. The Fire Prevention and Public Safety Fund is established as a nonlapsing fund. The fund must consist of all money recovered as penalties for violations of this section. The money must be deposited to the credit of the fund and, in addition to any other money made available for such purpose, must be made available to the State Fire Marshal to support fire safety and prevention programs.

[2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF) .]

11. Sale outside of State. Nothing in this section may be construed to prohibit a person or entity from manufacturing or selling cigarettes that do not meet the requirements of this section if the cigarettes are or will be stamped for sale in another state or are packaged for sale outside the United States and that person or entity has taken reasonable steps to ensure that such cigarettes will not be sold or offered for sale to persons located in this State.

[2007, c. 253, §1 (NEW); 2007, c. 253, §3 (AFF) .]

SECTION HISTORY

2007, c. 253, §1 (NEW). 2007, c. 253, §3 (AFF).

§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 anyone other than a licensed tobacco distributor or licensed tobacco retailer in this State. [2009, c. 398, §5 (NEW); 2009, c. 398, §6 (AFF).]

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. [2009, c. 398, §5 (NEW); 2009, c. 398, §6 (AFF).]

[2009, c. 398, §5 (NEW); 2009, c. 398, §6 (AFF) .]

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.

[2009, c. 398, §5 (NEW); 2009, c. 398, §6 (AFF) .]

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. [2009, c. 398, §5 (NEW); 2009, c. 398, §6 (AFF).]

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. [2009, c. 398, §5 (NEW); 2009, c. 398, §6 (AFF).]

C. For purposes of this section, each shipment or transport of tobacco products constitutes a separate violation. [2009, c. 398, §5 (NEW); 2009, c. 398, §6 (AFF).]

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. [2009, c. 398, §5 (NEW); 2009, c. 398, §6 (AFF).]

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. [2009, c. 398, §5 (NEW); 2009, c. 398, §6 (AFF).]

[2009, c. 398, §5 (NEW); 2009, c. 398, §6 (AFF) .]

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.

[2009, c. 398, §5 (NEW); 2009, c. 398, §6 (AFF) .]

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.

[2009, c. 398, §5 (NEW); 2009, c. 398, §6 (AFF) .]

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

[2009, c. 398, §5 (NEW); 2009, c. 398, §6 (AFF) .]

SECTION HISTORY

2009, c. 398, §5 (NEW). 2009, c. 398, §6 (AFF).

§1556. MUNICIPAL REGULATION

Except as otherwise provided in this section, nothing in this chapter affects the authority of municipalities to enact ordinances or regulations that are more restrictive than this chapter. [1997, c. 63, §1 (AMD).]

When a municipality intends to consider an ordinance or regulation or intends to amend an ordinance or regulation so that the ordinance or regulation would be more restrictive than this chapter, the municipality shall give notice of that intention by mail, at least 30 days prior to consideration of the ordinance, regulation or amendment, to the last known address of each retail tobacco licensee doing business within the municipal corporate limits. This notice must state the time, place and date of a hearing or proposed enactment and the subject matter of the proposed ordinance, regulation or amendment. [1997, c. 63, §1 (NEW).]

SECTION HISTORY

1995, c. 470, §9 (NEW). 1995, c. 470, §19 (AFF). 1997, c. 63, §1 (AMD).

§1556-A. ENFORCEMENT

The provisions of this chapter and Title 36, section 4366-C may be enforced by law enforcement officers as defined by Title 17-A or by individuals hired by contract with the department to enforce this law. [1999, c. 616, §1 (AMD).]

1. Contract officers. The authority of contract officers hired under this chapter is limited to enforcement of this chapter and Title 36, section 4366-C. Authorization to enforce this chapter is granted by the Commissioner of Public Safety, by terms mutually agreed upon between the department and the Department of Public Safety. Contract officers must have an appropriate background in law enforcement. Contract officers are exempt from ongoing training requirements except as otherwise determined by the Commissioner of Public Safety. These contract officers are not considered law enforcement officers for the purposes of enforcing the Maine Juvenile Code.

[2007, c. 467, §1 (AMD) .]

2. Enforcement; jurisdiction. Enforcement of criminal offenses may be carried out by written summons pursuant to Title 17-A filed in the District Court. Enforcement of civil violations set forth in section 1555-B may be carried out by complaint filed in District Court. All civil violations involving licenses issued pursuant to section 1551-A are within the jurisdiction of the District Court pursuant to section 1557, subsection 1.

[1999, c. 2, §23 (AFF); 1999, c. 2, §22 (COR) .]

3. Injunction.

[1995, c. 593, §5 (RP) .]

SECTION HISTORY

1995, c. 470, §9 (NEW). 1995, c. 470, §19 (AFF). 1995, c. 593, §§4,5 (AMD). 1997, c. 305, §6 (AMD). 1997, c. 562, §D4 (AMD). 1997, c. 562, §D11 (AFF). RR 1999, c. 2, §23 (AFF). RR 1999, c. 2, §22 (COR). 1999, c. 616, §§1,2 (AMD). 2007, c. 467, §1 (AMD).

Subchapter 3: FINES, REVOCATION AND SUSPENSION

§1557. JURISDICTION; DISTRICT COURT

1. Jurisdiction. The District Court, pursuant to the Maine Administrative Procedure Act, shall conduct hearings on all matters concerning violations by tobacco licensees of any state law related to tobacco sales. Notwithstanding Title 5, chapter 375, subchapter 6, the District Court Judge has exclusive jurisdiction over all violations of this chapter by licensees and their agents or employees when a criminal penalty is not provided.

[2009, c. 199, §4 (AMD) .]

2. Powers. The District Court may impose fines on licensees and their agents or employees and suspend or revoke licenses in accordance with this chapter.

[2009, c. 199, §4 (AMD) .]

3. Injunction. If the person licensed to sell tobacco products has engaged in or is about to engage in any act or practice that violates this chapter, the District Court may grant a permanent or temporary injunction, restraining order or other order as appropriate.

[1995, c. 593, §6 (NEW); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

SECTION HISTORY

1995, c. 470, §9 (NEW). 1995, c. 470, §19 (AFF). 1995, c. 593, §6 (AMD). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2009, c. 199, §4 (AMD).

§1557-A. IMPOSITION OF PENALTIES; CAUSES

The District Court may impose fines or revoke or suspend licenses for the following causes: [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF).]

1. Violation of law or infraction of rule. Violation of state law or rule related to the sale of tobacco products; or

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF) .]

2. False material statement. Knowingly making a false material statement of fact in an application for licensure of the sale of tobacco products.

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF) .]

SECTION HISTORY

1995, c. 470, §9 (NEW). 1995, c. 470, §19 (AFF). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF).

§1558. REVOCATION OR SUSPENSION PROCEDURE

1. Violation of law or rule. Upon discovering a violation of state law or rule related to retail tobacco sales, the commissioner or the commissioner's designee shall:

A. Report the violation to the District Court in a signed complaint; or [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF).]

B. Issue warnings to the licensees involved. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

2. Notice and hearing. Except as provided under subsection 7, upon receipt of a signed complaint prepared under subsection 1, paragraph A, notice must be provided and a hearing must be held according to the following procedures.

A. The commissioner or the commissioner's designee shall notify the licensee or the licensee's agent or employee by serving the licensee or the licensee's agent or employee with a copy of the complaint and a notice that states the time and place of the hearing and that the licensee or the licensee's agent or employee may appear in person or be represented by counsel at the hearing. Service of the complaint and hearing notice upon the licensee is sufficient when served in hand by the commissioner's designee or when sent by registered or certified mail at least 7 days before the date of the hearing to the address given by the licensee at the time of application for a license. Service of the complaint and hearing notice upon a licensee's agent or employee is sufficient when served in hand by the commissioner's designee or when sent by registered or certified mail at least 7 days before the date of the hearing to the address given by the agent or employee at the time the agent or employee was initially notified by the department of the violation. The commissioner or the commissioner's designee shall file proof of service with the District Court. [2009, c. 199, §5 (AMD).]

B. The District Court shall conduct a hearing limited to the facts, laws and rules specified in the complaint. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF).]

C. The District Court shall conduct the hearing in the following manner.

(1) The District Court may administer oaths to witnesses and issue subpoenas at the request of any party, including subpoenas to compel the attendance of parents and legal guardians of unemancipated minors.

(a) The department shall pay to the witnesses the legal fees for travel and attendance, except that, notwithstanding Title 16, section 253, the department is not required to pay the fees before the travel and attendance occur.

(2) Hearsay testimony is not admissible during the hearing. The licensees, agents or employees named in the complaint have the right to have all witnesses testify in person at the hearing.

(3) The District Court shall render a decision in each case based on the facts, laws and rules cited in the complaint. The findings must specify the facts found and the laws or rules violated. [2009, c. 199, §5 (AMD).]

[2009, c. 199, §5 (AMD) .]

3. Suspension or revocation decision.

[2011, c. 559, Pt. A, §22 (RP) .]

4. Suspension of penalty; case on file. After the hearing, the District Court may:

A. Suspend a penalty; or [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

B. Place a case on file instead of imposing a penalty. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

5. Application of suspension or revocation. A suspension or revocation applies to premises and persons in the following manner.

A. If a licensee is interested directly or indirectly in more than one license, suspensions apply only to the premises where the violation occurs. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

B. If a licensee is interested directly or indirectly in more than one license, the District Court may order that a revocation apply to any of those premises or machines. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF).]

C. If the licensee is a corporation, the District Court shall treat the officers, directors and substantial stockholders as individuals. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF).]

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

6. Term of suspension or revocation. Suspensions must be for a definite period of time. If the District Court revokes a license, the court shall specify when the department may reinstate a license to the person whose license is revoked.

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

7. Warnings. Upon the written recommendation of the commissioner, or the commissioner's designee, the District Court, instead of notifying a licensee against whom a complaint is pending to appear for hearing, may send the licensee a warning. Warnings must be sent by registered or certified mail and contain a copy of the complaint. A licensee to whom a warning is sent may demand a hearing by notifying the District Court by registered or certified mail within 10 days from the date the warning was mailed.

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

8. Fines. Notwithstanding any other provisions of this Title, the District Court may impose on a licensee or the licensee's agent or employee a fine of a specific sum of not less than \$50 nor more than \$1,500 for any one offense. The fine is independent of any fine or forfeiture adjudged under subchapter 1 or 2 and may be imposed instead of or in addition to any suspension or revocation of a license.

A. The District Court shall maintain a record of all fines received by the court. Any fines received must be credited as follows: 1/2 to the Department of Health and Human Services in a nonlapsing account to be used by the department to defray administrative costs of retail tobacco licensing and 1/2 to a nonlapsing account to be used by the Attorney General to support enforcement and responsible retailing education programs. Annually, the court shall report to the department the total amount of fines collected. [2011, c. 657, Pt. AA, §60 (AMD).]

[2011, c. 657, Pt. AA, §60 (AMD) .]

SECTION HISTORY

1995, c. 470, §9 (NEW). 1995, c. 470, §19 (AFF). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2003, c. 689, §B6 (REV). 2005, c. 223, §5 (AMD). 2009, c. 199, §§5, 6 (AMD). 2011, c. 559, Pt. A, §22 (AMD). 2011, c. 657, Pt. AA, §60 (AMD).

§1558-A. RECORD OF PROCEEDINGS; TRANSCRIPT

1. Court record. The District Court shall keep a full and complete record of all proceedings before the court of any enforcement actions or on the revocation and suspension of any license issued by the department. The District Court is not required to have a transcript of the testimony prepared unless required for rehearing or appeal.

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

2. Notice to department. The District Court shall forward to the department notice of final disposition of all proceedings conducted pursuant to this subchapter. The department shall maintain the records of the proceedings for at least 5 years.

[2011, c. 657, Pt. AA, §61 (AMD) .]

3. Notice to defendant. Notice of the decision of the District Court must be sent to the defendant by certified mail to the address given by the licensee to the department.

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

SECTION HISTORY

1995, c. 470, §9 (NEW). 1995, c. 470, §19 (AFF). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2011, c. 657, Pt. AA, §61 (AMD).

§1559. APPEAL DECISION OF DISTRICT COURT

1. Aggrieved person may appeal within 30 days. A person aggrieved by the decision of the District Court in imposing any forfeiture or fine or in revoking or suspending a license issued by the department or by refusal of the department to issue a license applied for may appeal to the Superior Court by filing a complaint within 30 days of the decision or refusal.

A. The 30-day period for appeal begins on:

(1) The effective date of the suspension or revocation in the case of a license revocation or suspension; or

(2) The day when the department sends notice of refusal, by registered or certified mail, to the applicant for a license in the case of refusal by the department to issue a license. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

B. Filing the complaint in Superior Court suspends the running of the 30-day period. [1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF).]

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

2. Suspension or revocation suspended pending appeal. If the licensee files an appeal in the Superior Court and notifies the District Court that the appeal has been filed within 7 days of the mailing of the decision of the District Court required in section 1558-A, subsection 3, the operation of a suspension or revocation of a license imposed by the District Court must be suspended, pending judgment of the Superior Court.

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

3. Superior Court hearing.

[2011, c. 559, Pt. A, §23 (RP) .]

4. Superior Court decision. After the hearing, the Superior Court may affirm, modify or reverse the decision of the District Court.

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF); 1999, c. 547, Pt. B, §78 (AMD); 1999, c. 547, Pt. B, §80 (AFF) .]

5. Further appeal. An aggrieved person may appeal the Superior Court decision to the Supreme Judicial Court. Upon appeal, the Supreme Judicial Court, after consideration, may reverse or modify any decree made by the Superior Court based upon an erroneous ruling or finding of law.

[1995, c. 470, §9 (NEW); 1995, c. 470, §19 (AFF) .]

SECTION HISTORY

1995, c. 470, §9 (NEW). 1995, c. 470, §19 (AFF). 1999, c. 547, §B78 (AMD). 1999, c. 547, §B80 (AFF). 2011, c. 559, Pt. A, §23 (AMD).

§1559-A. TRANSFER OF FUNDS

(REPEALED)

SECTION HISTORY

1995, c. 470, §9 (NEW). 1995, c. 470, §19 (AFF). 2003, c. 673, §CC2 (RP).

Subchapter 4: NICOTINE-CONTAINING SUBSTANCES

§1560. NICOTINE WATER

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

A. "Nicotine water" means water that is sold in the State, that is intended for human consumption and that contains as an added ingredient nicotine or an alkaloid having similar physiological activity. [2003, c. 623, §1 (NEW).]

[2003, c. 623, §1 (NEW) .]

2. Prohibition. A person may not sell, furnish, give away or offer to sell, furnish or give away nicotine water in this State.

[2003, c. 623, §1 (NEW) .]

3. Violation. A person who violates this section commits a civil violation for which fines may be imposed under subsection 4.

[2003, c. 623, §1 (NEW) .]

4. Fines. The following fines apply to violations of this section.

A. A person who violates subsection 2 commits a civil violation for which a fine of \$500 may be adjudged. [2003, c. 623, §1 (NEW).]

B. A person who violates subsection 2 after having previously violated subsection 2 commits a civil violation for which a fine of \$1,000 may be adjudged. [2003, c. 623, §1 (NEW).]

C. A person who violates subsection 2 after having previously violated subsection 2 more than once commits a civil violation for which a fine of \$5,000 may be adjudged. [2003, c. 623, §1 (NEW).]

[2003, c. 623, §1 (NEW) .]

SECTION HISTORY

2003, c. 623, §1 (NEW).

§1560-A. HARD SNUFF

(REPEALED)

SECTION HISTORY

2007, c. 467, §2 (NEW). 2007, c. 487, §1 (RP).

§1560-B. LIQUID NICOTINE

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

A. "Child-resistant packaging" means packaging meeting the specifications in 16 Code of Federal Regulations, Section 1700.15(b) (2015) and tested by the method described in 16 Code of Federal Regulations, Section 1700.20 (2015). [2015, c. 288, §1 (NEW).]

B. "Electronic nicotine delivery device" means any noncombustible device containing or delivering nicotine or any other substance intended for human consumption that employs a heating element, power source, electronic circuit or other electronic, chemical or mechanical means and that may be used to simulate smoking through inhalation of vapor or aerosol from the device, including, without limitation, a device manufactured, distributed, marketed or sold as an electronic cigarette, electronic cigar, electronic pipe, electronic hookah or so-called vape pen. "Electronic nicotine delivery device" does not include any product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act. [2015, c. 288, §1 (NEW).]

C. "Nicotine liquid container" means a container used to hold a liquid, gel or other substance containing nicotine that is sold, marketed or intended for use as or with an electronic nicotine delivery device. "Nicotine liquid container" does not include a cartridge or other container that contains a liquid or other substance containing nicotine and is sold, marketed or intended for use as long as the cartridge or other container is prefilled and sealed by the manufacturer and not intended to be opened by the consumer. [2015, c. 288, §1 (NEW).]

[2015, c. 288, §1 (NEW) .]

2. Prohibition. Beginning January 1, 2016, a person may not sell, furnish, give away or offer to sell, furnish or give away a nicotine liquid container unless the container is child-resistant packaging.

[2015, c. 288, §1 (NEW) .]

3. Penalties. This subsection applies to violations of subsection 2.

A. A person who violates subsection 2 commits a civil violation for which a fine of \$500 may be adjudged. [2015, c. 288, §1 (NEW).]

B. A person who violates subsection 2 after having previously violated subsection 2 commits a civil violation for which a fine of \$1,000 may be adjudged. [2015, c. 288, §1 (NEW).]

C. A person who violates subsection 2 after having previously violated subsection 2 more than once commits a civil violation for which a fine of \$5,000 may be adjudged. [2015, c. 288, §1 (NEW).]

[2015, c. 288, §1 (NEW) .]

4. Repeal. The commissioner shall monitor the status of any effective date of final regulations issued by the United States Food and Drug Administration or by any other federal agency that mandate child-resistant packaging standards for nicotine liquid containers. The commissioner shall notify the joint standing committee of the Legislature having jurisdiction over health and human services matters when the final regulations have been adopted. The joint standing committee, upon receiving this notification, may report out a bill repealing this section.

[2015, c. 288, §1 (NEW) .]

SECTION HISTORY

2015, c. 288, §1 (NEW).

Subchapter 5: FLAVORED CIGARS

§1560-D. FLAVORED CIGARS

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

A. "Characterizing flavor" means a distinguishable taste or aroma of candy, chocolate, vanilla, fruit, berry, nut, herb, spice, honey or an alcoholic drink that is imparted to tobacco or tobacco smoke either prior to or during consumption. "Characterizing flavor" does not include a taste or aroma from tobacco. A cigar is deemed to have a characterizing flavor if the cigar is advertised or marketed as having or producing the taste or aroma of candy, chocolate, vanilla, fruit, berry, nut, herb, spice, honey or an alcoholic drink. [2009, c. 606, §1 (AMD).]

B. "Component part" includes but is not limited to the tobacco, filter and paper in a cigar. [2009, c. 606, §1 (AMD).]

C. "Constituent" means any ingredient, substance, chemical or compound, other than tobacco, water or reconstituted tobacco sheet, that is added by the manufacturer to the tobacco, paper or filter of a cigar during the processing, manufacture or packing of the cigar. "Constituent" includes a smoke constituent. [2009, c. 606, §1 (AMD).]

D. "Flavored cigar" means a cigar or any component part of the cigar that contains a constituent that imparts a characterizing flavor. [2009, c. 606, §1 (AMD).]

E. [2009, c. 606, §1 (RP).]

E-1. "Premium cigar" means a cigar that weighs more than 3 pounds per 1,000 cigars and is wrapped in whole tobacco leaf. [2009, c. 606, §1 (NEW).]

F. "Smoke constituent" means any chemical or chemical compound in mainstream or sidestream tobacco smoke that either transfers from any component of the cigar to the smoke or that is formed by the combustion or heating of tobacco, additives or other component of the tobacco product. [2009, c. 606, §1 (AMD).]

[2009, c. 606, §1 (AMD).]

2. Prohibition on sale or distribution of flavored cigars. Except as provided in subsection 5-A, a person may not sell or distribute or offer to sell or distribute in this State any flavored cigar unless the cigar is a premium cigar.

A. [2009, c. 606, §1 (RP).]

B. [2009, c. 606, §1 (RP).]

C. [2009, c. 606, §1 (RP).]

[2009, c. 606, §1 (AMD).]

3. Violation. A person who violates this section commits a civil violation for which fines may be imposed under subsection 4.

[2007, c. 467, §3 (NEW).]

4. Fines. The fines that apply to violations of this section are as set out in this subsection.

A. A person who violates subsection 2 commits a civil violation for which a fine of \$1,000 may be adjudged. [2009, c. 606, §1 (AMD).]

B. A person who violates subsection 2 after having previously been convicted of a violation of that subsection commits a civil violation for which a fine of \$5,000 may be adjudged. [2009, c. 606, §1 (AMD).]

[2009, c. 606, §1 (AMD).]

5. Exemptions.

[2009, c. 606, §1 (RP).]

5-A. Exemptions. Any flavored cigar that the Attorney General determined had no characterizing flavor or was otherwise exempt under former subsection 5 is exempt from the prohibition on flavored nonpremium cigars in subsection 2 so long as no material change is made to the cigar's flavoring, packaging or labeling subsequent to the Attorney General's determination.

[2009, c. 606, §1 (NEW) .]

6. Tobacco distributors.

[2009, c. 606, §1 (RP) .]

7. Transition.

[2009, c. 606, §1 (RP) .]

8. Website information. To the extent that resources permit, the Attorney General shall maintain on a publicly accessible website a list of flavored cigars that are exempt from the prohibition under subsection 5-A and authorized for distribution and sale in the State.

[2009, c. 606, §1 (AMD) .]

9. Rulemaking.

[2009, c. 606, §1 (RP) .]

10. Transfers of funds. Notwithstanding any other provision of law, for fiscal years beginning on or after July 1, 2009 the State Controller shall transfer \$92,660 no later than June 30, 2010 and \$145,147 no later than June 30, 2011 from the Fund for a Healthy Maine to General Fund undedicated revenue.

[2011, c. 380, Pt. II, §2 (AMD) .]

SECTION HISTORY

2007, c. 467, §3 (NEW). 2007, c. 612, §1 (AMD). 2009, c. 606, §1 (AMD).
2011, c. 380, Pt. II, §2 (AMD).

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