

APPROVED | CHAPTER  
JUN 09 '03 | 444  
BY GOVERNOR | PUBLIC LAW

STATE OF MAINE

—  
IN THE YEAR OF OUR LORD  
TWO THOUSAND AND THREE  
—

H.P. 910 - L.D. 1236

An Act To Regulate the Delivery and Sales of Tobacco  
Products and To Prevent the Sale of Tobacco Products to  
Minors

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

Sec. 1. 22 MRSA §1551, sub-§§1-A, 1-B, 1-C, 2-A, 2-B and 3-A are enacted to read:

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

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

B. The tobacco products are delivered by use of a delivery service.

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

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.

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

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

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.

Sec. 2. 22 MRSA §§1555-C and 1555-D are enacted to read:

§1555-C. Delivery sales of tobacco products

The following requirements apply to delivery sales of tobacco products within the State.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. The tobacco retailer shall clearly mark the outside of the package of tobacco products to be shipped to indicate that the contents are tobacco products and to show the name and State of Maine tobacco license number of the tobacco retailer.

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

(1) The purchaser must be the addressee;

(2) The addressee must be of legal age to purchase tobacco products and must sign for the package; and

(3) If the addressee is under 27 years of age, the addressee must show valid government-issued identification that contains a photograph of the addressee and indicates that the addressee is of legal age to purchase tobacco products.

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

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

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

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

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

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

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

6. Rulemaking. The department and the Department of Administrative and Financial Services shall adopt rules to implement this section. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

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

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

#### §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. A person is deemed to know that a package contains a tobacco product if the package is marked in accordance with the requirements of section 1555-C, subsection 3, paragraph B or if the person receives the package from a person listed as an unlicensed tobacco retailer by the Attorney General under this section.

1. Lists. The Attorney General shall maintain lists of licensed tobacco retailers and known unlicensed tobacco retailers. The Attorney General shall provide to a delivery service lists of licensed tobacco retailers and known unlicensed tobacco retailers. The list of known unlicensed tobacco retailers is confidential. A delivery service that receives a list of known unlicensed tobacco retailers shall maintain the confidentiality of the list.

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.

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.

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.

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.

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.

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.