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An Act To Amend the Retail Tobacco and Liquor Licensing Laws

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, prompt implementation of revised licensing procedures for retail tobacco establishment licenses is necessary to ensure that prorated licensing fees are assessed for licenses set to expire as of March 31, 2010, and timely implementation of the new licensing system is related to the public health; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

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

Sec. 1. 22 MRSA §1552, sub-§1, as amended by PL 2005, c. 12, Pt. TT, §1, is further amended to read:

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 fee for a retail tobacco license must be determined~~The department shall determine annually by the department 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.

Sec. 2. 22 MRSA §1552, sub-§2, as amended by PL 2003, c. 673, Pt. CC, §1, is further amended to read:

2. Term of license. All retail tobacco licenses are valid for ~~one year~~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.

Sec. 3. 22 MRSA §1552, sub-§3-A, as enacted by PL 2005, c. 145, §2, is amended to read:

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.

Sec. 4. 22 MRSA §1557, as amended by PL 1995, c. 593, §6 and PL 1999, c. 547, Pt. B, §78 and affected by §80, is further amended to read:

§ 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 ~~VI~~6, the District Court Judge has exclusive jurisdiction over all violations of this chapter by licensees and their agents or employees when ~~no~~a criminal penalty is not provided.

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

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.

Sec. 5. 22 MRSA §1558, sub-§2, as enacted by PL 1995, c. 470, §9 and affected by §19 and amended by PL 1999, c. 547, Pt. B, §78 and affected by §80, is further amended to read:

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

A. ~~The District Court~~ 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.

B. The District Court shall conduct a hearing limited to the facts, laws and rules specified in the complaint.

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

(1) The District Court may ~~subpoena and examine witnesses, administer oaths and subpoena~~ and 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 ~~state in writing the findings and~~ 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.

Sec. 6. 22 MRSA §1558, sub-§8, as amended by PL 2005, c. 223, §5, is further amended to read:

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 H1 or H2 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 Office of Substance Abuse the total amount of fines collected.

Sec. 7. 28-A MRSA §803, sub-§2, as amended by PL 1997, c. 373, §77 and PL 1999, c. 547, Pt. B, §78 and affected by §80, is further amended to read:

2. Notice and hearing. Except as provided under subsection 6, upon receipt of a signed complaint prepared under subsection 1, paragraph A, ~~the District Court Judge shall notify the licensee and hold a hearing~~ notice must be provided and a hearing must be held according to the following procedures.

A. ~~The District Court Judge~~ commissioner or the commissioner's designee shall notify the licensee or the licensee's agent or employee by serving on the licensee or the licensee's agent or employee a copy of the complaint and a notice stating the time and place of the hearing and that the licensee or the licensee's agent or employee may appear in person or by counsel at the hearing. Service of the complaint and hearing notice upon the licensee is sufficient ~~if~~ 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 the licensee's 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 bureau of the violation. The commissioner or the commissioner's designee shall file proof of service with the District Court.

B. The District Court Judge shall conduct a hearing limited to the facts, the law and rules of the bureau, as specified in the complaint.

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

(1) ~~The District Court Judge may subpoena and examine witnesses, administer oaths and subpoena and 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 bureau shall pay to the witnesses the legal fees for travel and attendance, except that, notwithstanding Title 16, section 253, the bureau 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 Judge shall conduct hearings in one or more designated places that are the most convenient and economical for all parties concerned in the hearing.

D. The District Court Judge shall ~~state in writing the findings and~~ render a decision in each case, based upon the facts, the law and the rules of the bureau. The findings must specify the facts found and the law or rules found to be violated.

Sec. 8. 28-A MRSA §803, sub-§8, as enacted by PL 1987, c. 45, Pt. A, §4 and amended by PL 1999, c. 547, Pt. B, §78 and affected by §80, is further amended to read:

8. Fines. Notwithstanding any other provisions of this Title, ~~an~~ the District Court Judge may impose a fine of a specific sum on a licensee or the licensee's agent or employee, of not less than \$50 nor more than \$1,500, for any one offense. Such a fine may be imposed instead of or in addition to any suspension or revocation of a license by the court.

A. The District Court Judge shall maintain a record of all fines received by the court and shall pay the fines into the General Fund by the 15th day of each month.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

Effective May 26, 2009.