

CHAPTER 263**OFFENSES AGAINST PUBLIC HEALTH****SUBCHAPTER 1****NUISANCES****§1561. Removal of private nuisance**

When any source of filth whether or not the cause of sickness is found on private property and determined to be potentially injurious to health, the owner or occupant thereof shall, within 24 hours after notice from the local health officer, at the owner's or occupant's own expense, remove or discontinue it. If the owner or occupant neglects to do so or unreasonably delays doing so, the owner or occupant forfeits a sum not exceeding \$300. The local health officer shall cause the nuisance to be removed or discontinued, and all expenses thereof must be repaid to the town by the owner or occupant or by the person who caused or permitted it. [RR 2021, c. 2, Pt. B, §93 (COR).]

SECTION HISTORY

PL 1973, c. 430 (AMD). RR 2021, c. 2, Pt. B, §93 (COR).

§1562. Depositing of dead animal where nuisance

Whoever personally or through the agency of another leaves or deposits the carcass of a dead horse, cow, sheep, hog or of any domestic animals or domestic fowl or parts thereof in any place where it may cause a nuisance shall, upon receiving a notice to that effect from the local health officer, promptly remove, bury or otherwise dispose of such carcass. If the person fails to do so within such time as may be prescribed by the local health officer, and in such manner as may be satisfactory to the health officer, the person must be punished by a fine of not less than \$10 nor more than \$100 or by imprisonment for not more than 3 months. [RR 2021, c. 2, Pt. B, §94 (COR).]

SECTION HISTORY

RR 2021, c. 2, Pt. B, §94 (COR).

§1563. Reuse of containers

(REPEALED)

SECTION HISTORY

PL 1977, c. 457, §3 (RP).

§1564. Spitting in public places

(REPEALED)

SECTION HISTORY

PL 1977, c. 457, §3 (RP).

§1565. X-ray shoe-fitting machines

(REPEALED)

SECTION HISTORY

PL 1977, c. 457, §3 (RP).

§1566. Purpose

(REPEALED)

SECTION HISTORY

PL 1971, c. 521, §1 (NEW). PL 1977, c. 696, §182 (RP).

§1567. Definitions

(REPEALED)

SECTION HISTORY

PL 1971, c. 521, §1 (NEW). PL 1977, c. 696, §182 (RP).

§1568. License

(REPEALED)

SECTION HISTORY

PL 1971, c. 521, §1 (NEW). PL 1977, c. 696, §182 (RP).

§1569. Fees

(REPEALED)

SECTION HISTORY

PL 1971, c. 521 (NEW). PL 1977, c. 696, §182 (RP).

§1570. Rules and regulations

(REPEALED)

SECTION HISTORY

PL 1971, c. 521, §1 (NEW). PL 1977, c. 696, §182 (RP).

§1571. Penalty

(REPEALED)

SECTION HISTORY

PL 1971, c. 521, §1 (NEW). PL 1977, c. 696, §182 (RP).

§1572. Immunity and employment protection

(REPEALED)

SECTION HISTORY

PL 1973, c. 518, §1 (NEW). PL 1977, c. 696, §183 (RP).

§1573. Discrimination for refusal

(REPEALED)

SECTION HISTORY

PL 1973, c. 518, §2 (NEW). PL 1977, c. 696, §183 (RP).

§1574. Sale and use of fetuses

(REPEALED)

SECTION HISTORY

PL 1973, c. 518, §3 (NEW). PL 1977, c. 696, §183 (RP).

§1575. Failure to preserve life of live born person

(REPEALED)

SECTION HISTORY

PL 1973, c. 518, §4 (NEW). PL 1977, c. 696, §183 (RP).

§1576. Live born and live birth, defined**(REPEALED)**

SECTION HISTORY

PL 1973, c. 518, §5 (NEW). PL 1977, c. 696, §183 (RP).

§1577. Abortion data**(REPEALED)**

SECTION HISTORY

PL 1977, c. 389 (NEW). PL 1977, c. 696, §184 (RP).

§1578. Smoking prohibited at public meetings**(REPEALED)**

SECTION HISTORY

PL 1981, c. 333 (NEW). PL 1985, c. 779, §61 (AMD). PL 1987, c. 20, §2 (AMD). PL 1993, c. 342, §2 (RP). PL 1993, c. 342, §9 (AFF).

§1578-A. Smoking in publicly owned buildings**(REPEALED)**

SECTION HISTORY

PL 1987, c. 332 (NEW). PL 1993, c. 342, §3 (RP). PL 1993, c. 342, §9 (AFF).

SUBCHAPTER 2**SMOKING****§1578-B. Tobacco use in elementary and secondary schools prohibited**

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

A. "Elementary or secondary school" means any public elementary or secondary school approved in accordance with Title 20-A, chapter 206, subchapter I. [PL 1987, c. 687 (NEW).]

B. "Principal" has the same meaning as defined in Title 20-A, section 1, subsection 21. [PL 1987, c. 687 (NEW).]

C. [PL 2019, c. 61, §1 (RP).]

D. "Tobacco use" means:

(1) Smoking as defined in section 1541, subsection 6; and

(2) Carrying or having in one's possession a tobacco product as defined in section 1551, subsection 3. [PL 2019, c. 61, §2 (RPR).]

[PL 2019, c. 61, §§1, 2 (AMD).]

2. Prohibition. A person may not engage in tobacco use in the buildings or on the grounds of any elementary or secondary school, on a school bus or at any school-sponsored event at any time.

[PL 2019, c. 61, §3 (RPR).]

3. Exceptions.

[PL 2019, c. 61, §4 (RP).]

4. Employees.

[PL 2007, c. 156, §3 (RP).]

5. Public.

[PL 2007, c. 156, §4 (RP).]

6. Enforcement. The principal of the elementary or secondary school, or the principal's designee, shall enforce the law prohibiting and restricting tobacco use under this section.

[PL 1987, c. 687 (NEW).]

SECTION HISTORY

PL 1987, c. 687 (NEW). PL 1993, c. 342, §4 (AMD). PL 1993, c. 342, §9 (AFF). PL 2007, c. 156, §§2-4 (AMD). PL 2019, c. 61, §§1-4 (AMD).

§1579. Prohibition

(REPEALED)

SECTION HISTORY

PL 1983, c. 226 (NEW). PL 1983, c. 239 (NEW). PL 1983, c. 816, §A15 (RAL). PL 1989, c. 445, §8 (RPR). RR 1993, c. 1, §52 (COR). PL 1993, c. 301, §1 (AMD). PL 1995, c. 470, §12 (RP). PL 1995, c. 470, §19 (AFF).

§1579-A. Smoking in restaurants

(REPEALED)

SECTION HISTORY

PL 1987, c. 191 (NEW). PL 1989, c. 451, §§1,2 (AMD). PL 1999, c. 54, §4 (RP).

§1580. Smoking prohibited in jury rooms

(REPEALED)

SECTION HISTORY

PL 1983, c. 816, §A15 (RAL). PL 2009, c. 300, §3 (RP).

§1580-A. Smoking in places of employment

1. Title. This law shall be known as the "Workplace Smoking Act of 1985."
[PL 1985, c. 126 (NEW).]

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

A. "Business facility" means a structurally enclosed location or portion thereof at which employees perform services for their employer. A business facility does not include any workplace or portion of a workplace that also serves as the employee's or employer's personal residence. A business facility is a place of employment. Notwithstanding this paragraph, a personal residence or unit or apartment in a residential facility is a business facility only during the period of time that an employee is physically present to perform work there. A residential facility, nursing home or a hospital is a business facility. [PL 2009, c. 300, §4 (AMD).]

A-1. "Club" means a reputable group of individuals, including a veterans' service organization chartered under 36 United States Code, Subtitle II, Part B (2004), incorporated and operating in a

bona fide manner solely for purposes of a recreational, social, patriotic or fraternal nature and not for pecuniary gain. [PL 2005, c. 338, §3 (NEW).]

A-2. "Designated smoking area" means an outdoor area where smoking is permitted, which must be at least 20 feet from entryways, vents and doorways. [PL 2009, c. 300, §5 (NEW).]

B. "Employee" means a person who performs a service for wages or other remuneration under a contract of hire, written or oral, expressed or implied. Employee includes a person employed by the State or a political subdivision of the State. [PL 1985, c. 126 (NEW).]

C. "Employer" means a person who has one or more employees. Employer includes an agent of an employer and the State or a political subdivision of the State. [PL 1985, c. 126 (NEW).]

C-1. "Member" means a person who, whether as a charter member or admitted in accordance with applicable bylaws, is a bona fide member of a club and who maintains membership in good standing by payment of dues in a bona fide manner in accordance with bylaws and whose name and address are entered on the list of members. A person who does not have full membership privileges may not be considered a bona fide member. [PL 2005, c. 338, §3 (NEW).]

C-2. "Qualifying club" means a veterans' service organization chartered under 36 United States Code, Subtitle II, Part B (2004) that is not open to the public or any other club that was not open to the public and that was in operation prior to January 1, 2004. [PL 2005, c. 581, §1 (NEW).]

C-3. "Residential facility" means a facility with one or more residential units or apartments that is licensed by the Department of Health and Human Services. [PL 2009, c. 300, §6 (NEW).]

D. "Smoking" means carrying or having in one's possession a lighted cigarette, cigar, pipe or other object giving off or containing any substance giving off tobacco smoke. [PL 1985, c. 126 (NEW).]

[PL 2009, c. 300, §§4-6 (AMD).]

3. Policy; notice. Each employer shall establish, or may negotiate through the collective bargaining process, a written policy concerning smoking and nonsmoking by employees in that portion of any business facility for which the employer is responsible, subject to paragraph A. In order to protect the employer and employees from the detrimental effects of smoking by others, the policy must prohibit smoking indoors subject to paragraph A, prevent environmental tobacco smoke from circulating into enclosed areas and prohibit smoking outdoors except in designated smoking areas. The policy may prohibit smoking throughout the business facility, including outdoor areas. The employer shall post and supervise the implementation of the policy. The employer shall provide a copy of this policy to any employee upon request. Nothing in this section may be construed to subject an employer to any additional liability, other than liability that may exist by law, for harm to an employee from smoking by others in any business facility covered by this section.

A. All areas of a business facility into which members of the public are invited or allowed are governed by the provisions of chapter 262. [PL 2009, c. 300, §7 (NEW).]

B. The Maine Center for Disease Control and Prevention shall accept inquiries from employers and employees and shall, when requested, assist employers in developing a policy. [PL 2009, c. 300, §7 (NEW).]

[PL 2009, c. 300, §7 (RPR).]

4. Violations. Any violation of this section is a civil violation for which a fine of not more than \$100 may be adjudged, except that a fine of not more than \$1,500 may be adjudged for each violation of this section in cases in which the employer has engaged in a pattern of conduct that demonstrates a lack of good faith in complying with the requirements of this section. The Bureau of Health has authority to enforce provisions of this section.

[PL 2005, c. 338, §4 (AMD).]

4-A. Injunctive relief. 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 violations of this section by any person.

[PL 2005, c. 338, §5 (NEW).]

5. Civil remedies. Nothing in the section may be construed as precluding any person from pursuing, in any court of competent jurisdiction, any civil remedy that person may have at law or in equity for harm occasioned to that person from smoking by others in any business facility covered by this section.

[PL 1985, c. 126 (NEW).]

6. Discharge, discipline or discrimination against employees. It is unlawful for any employer to discharge, discipline or otherwise discriminate against any of its employees because that employee has assisted in the supervision or enforcement of this section.

[PL 1985, c. 126 (NEW).]

7. Application.

[PL 2005, c. 683, Pt. G, §1 (AMD); PL 2005, c. 683, Pt. G, §3 (AFF); MRSA T. 22 §1580-A, sub-§7 (RP).]

8. Effective date. This section shall take effect January 1, 1986.

[PL 1985, c. 126 (NEW).]

9. Exception. Beginning September 1, 2006, and notwithstanding any provision to the contrary in this section, a qualifying club may allow smoking in its business facility in accordance with the following provisions.

A. Policies concerning smoking must have been mutually agreed upon by the employer and all the employees. [PL 2005, c. 581, §3 (NEW); PL 2005, c. 683, Pt. G, §3 (AFF).]

B. The qualifying club must have met the requirements of this paragraph.

(1) The qualifying club must have written policies allowing onto the premises only the employer and employees, members and invited guests accompanied by a member.

(2) A vote in favor of smoking has been conducted according to the following provisions:

(a) The qualifying club must provide all members notice of the date of the vote at least 30 days prior to the vote and an opportunity for an absentee ballot. Information designed to influence the vote of the member may not be provided with the notice and the absentee ballot;

(b) Members may not be subjected to undue influence regarding the vote;

(c) A majority of all valid ballots received must be in favor of smoking; and

(d) The ballot and procedures for voting and making available, collecting and counting absentee ballots must meet the requirements established by rule adopted by the Maine Center for Disease Control and Prevention.

(3) The qualifying club must have provided written notice to the Maine Center for Disease Control and Prevention of the results of the vote within 30 days of the vote. [PL 2005, c. 581, §3 (NEW); PL 2005, c. 683, Pt. G, §3 (AFF).]

C. The qualifying club may allow smoking under authority of this subsection for no longer than 3 years from the date of the vote. [PL 2005, c. 581, §3 (NEW); PL 2005, c. 683, Pt. G, §3 (AFF).]

D. The qualifying club may revote under this subsection at any time. [PL 2005, c. 581, §3 (NEW); PL 2005, c. 683, Pt. G, §3 (AFF).]

E. The qualifying club must have retained all ballots for at least 3 years and make them available to the Maine Center for Disease Control and Prevention upon request. [PL 2005, c. 581, §3 (NEW); PL 2005, c. 683, Pt. G, §3 (AFF).]

F. The Maine Center for Disease Control and Prevention shall adopt rules to implement this subsection. Rules adopted pursuant to this subparagraph are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2005, c. 581, §3 (NEW); PL 2005, c. 683, Pt. G, §3 (AFF).]

[PL 2005, c. 683, Pt. G, §2 (AMD); PL 2005, c. 683, Pt. G, §3 (AFF).]

SECTION HISTORY

PL 1985, c. 126 (NEW). PL 2005, c. 338, §§3-6 (AMD). PL 2005, c. 581, §§1-3 (AMD). PL 2005, c. 581, §4 (AFF). PL 2005, c. 683, §§G1,2 (AMD). PL 2005, c. 683, §G3 (AFF). PL 2009, c. 300, §§4-7 (AMD).

§1580-B. Smoking in hospitals

(REPEALED)

SECTION HISTORY

PL 1989, c. 210 (NEW). PL 1989, c. 241 (NEW). PL 1989, c. 715 (AMD). PL 1989, c. 878, §G1 (RPR). PL 1991, c. 501 (AMD). PL 2001, c. 59, §§1-3 (AMD). PL 2009, c. 300, §8 (RP).

§1580-C. Smoking on public transportation buses prohibited

(REPEALED)

SECTION HISTORY

PL 1989, c. 743 (NEW). PL 1993, c. 342, §5 (RP). PL 1993, c. 342, §9 (AFF).

§1580-D. Smoking in enclosed areas on ferries prohibited

(REPEALED)

SECTION HISTORY

PL 1989, c. 878, §G2 (NEW). PL 1993, c. 342, §6 (RP). PL 1993, c. 342, §9 (AFF).

§1580-E. Smoking in state parks and state historic sites

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

A. "Enclosed area" has the same meaning as in section 1541, subsection 2; [PL 2009, c. 65, §1 (NEW).]

B. "Public place" has the same meaning as in section 1541, subsection 4; [PL 2009, c. 65, §1 (NEW).]

C. "Smoking" has the same meaning as in section 1541, subsection 6; [PL 2009, c. 65, §1 (NEW).]

D. "State historic site" has the same meaning as "historic site" in Title 12, section 1801, subsection 5; and [PL 2009, c. 65, §1 (NEW).]

E. "State park" has the same meaning as "park" in Title 12, section 1801, subsection 7. [PL 2009, c. 65, §1 (NEW).]

[PL 2009, c. 65, §1 (NEW).]

2. Smoking prohibited. A person may not smoke tobacco or any other substance in, on or within 20 feet of a beach, playground, snack bar, group picnic shelter, business facility, enclosed area, public place or restroom in a state park or state historic site.
[PL 2009, c. 65, §1 (NEW).]

3. Signs; public education. To the extent possible within existing budgeted resources, the Maine Center for Disease Control and Prevention shall erect signs and undertake public education initiatives regarding the prohibition on smoking in certain areas of state parks and state historic sites.
[PL 2009, c. 65, §1 (NEW).]

SECTION HISTORY

PL 2009, c. 65, §1 (NEW).

§1580-F. Furnishing or allowing consumption of tobacco products by certain persons prohibited

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

A. "Minor" means a person who has not reached the age of 21 years, unless the person has attained 18 years of age as of July 1, 2018. [PL 2019, c. 495, §3 (NEW).]

B. "Tobacco product" has the same meaning as in section 1551, subsection 3. [PL 2019, c. 495, §3 (NEW).]

[PL 2019, c. 495, §3 (NEW).]

2. Offense. Except as provided in subsection 3, a person who is 21 years of age or older may not knowingly:

A. Procure, or in any way aid or assist in procuring, furnish, give, sell or deliver a tobacco product for or to a minor. The following penalties apply to violations of this paragraph.

(1) A person who violates this paragraph commits a Class D crime.

(2) A person who violates this paragraph commits a Class D crime for which a fine of not less than \$500 may be imposed, none of which may be suspended, if the violation involves a minor who is less than 18 years of age.

(3) A person who violates this paragraph after having been previously convicted of violating this paragraph or paragraph B within a 6-year period commits a Class D crime for which a fine of not less than \$1,000 may be imposed, none of which may be suspended.

(4) A person who violates this paragraph after having been previously convicted of violating this paragraph or paragraph B 2 or more times within a 6-year period commits a Class D crime for which a fine of not less than \$1,500 may be imposed, none of which may be suspended; or
[PL 2019, c. 495, §3 (NEW).]

B. Allow a minor under that person's control or in a place under that person's control to possess or consume a tobacco product. The following penalties apply to violations of this paragraph.

(1) A person who violates this paragraph commits a Class D crime.

(2) A person who violates this paragraph commits a Class D crime for which a fine of not less than \$1,000 may be imposed, none of which may be suspended, if the violation involves a minor who is less than 18 years of age.

(3) A person who violates this paragraph after having been previously convicted of violating this paragraph or paragraph A within a 6-year period commits a Class D crime for which a fine of not less than \$2,000 may be imposed, none of which may be suspended. [PL 2019, c. 495, §3 (NEW).]

[PL 2019, c. 495, §3 (NEW).]

3. Exceptions. This section does not apply to a licensee under chapter 262-A or an agent of that licensee in the scope of employment.

[PL 2019, c. 495, §3 (NEW).]

SECTION HISTORY

PL 2019, c. 495, §3 (NEW).

SUBCHAPTER 3

TOBACCO MANUFACTURERS ACT

§1580-G. Findings and purpose

Cigarette smoking presents serious public health concerns to the State and to the citizens of the State. The Surgeon General has determined that smoking causes lung cancer, heart disease and other serious diseases, and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking. [PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

Cigarette smoking also presents serious financial concerns for the State. Under certain health-care programs, the State may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance. [PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

Under these programs, the State pays millions of dollars each year to provide medical assistance for these persons for health conditions associated with cigarette smoking. [PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

It is the policy of the State that financial burdens imposed on the State by cigarette smoking be borne by tobacco product manufacturers rather than by the State to the extent that such manufacturers either determine to enter into a settlement with the State or are found culpable by the courts. [PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

On November 23, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the "Master Settlement Agreement," with the State. The Master Settlement Agreement obligates these manufacturers, in return for a release of past, present and certain future claims against them as described therein, to pay substantial sums to the State (tied in part to their volume of sales); to fund a national foundation devoted to the interest of public health; and to make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking. [PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

It would be contrary to the policy of the State if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the State will have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the State to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise. [PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

SECTION HISTORY

PL 1999, c. 401, §U1 (NEW). PL 1999, c. 401, §U2 (AFF).

§1580-H. Definitions

1. "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

[PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

2. "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the equivalent thereof, of ten percent or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

[PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

3. "Allocable share" means allocable share as that term is defined in the Master Settlement Agreement.

[PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

4. "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains

A. any roll of tobacco wrapped in paper or in any substance not containing tobacco; or [PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

B. tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or [PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

C. any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in paragraph A of this definition. The term "cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette." [PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

[PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

5. "Master Settlement Agreement" means the settlement agreement (and related documents) entered into on November 23, 1998 by the State and the leading United States tobacco product manufacturers, docketed by the Superior Court on December 9, 1998, in State of Maine v. Philip Morris, et al., Kennebec County Superior Court, Docket No. CV-97-134.

[PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

6. "Qualified escrow fund" means an escrow arrangement with a federally or State chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least \$1,000,000,000 where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as consistent with section 1580-I, subsection 2, paragraph A of this Act.

[PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

7. "Released claims" means Released Claims as that term is defined in the Master Settlement Agreement.

[PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

8. "Releasing parties" means releasing parties as that term is defined in the Master Settlement Agreement.

[PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

9. "Tobacco Product Manufacturer" means an entity that after the date of enactment of this Act directly (and not exclusively through any affiliate):

A. manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsection II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States); [PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

B. is the first purchaser anywhere for the resale in the United States of cigarettes manufactured anywhere that the manufacturer does not intend to be sold in the United States; or [PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

C. becomes a successor of an entity described in paragraph A or B. [PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

The term "tobacco product manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of paragraphs A to C above. [PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

10. "Units sold" means the number of individual cigarettes sold in the State by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the State on packs bearing the excise tax stamp of the State or "roll-your-own" tobacco containers. The Attorney General may adopt rules as are necessary to obtain information from any tobacco product retailer, distributor or manufacturer to ascertain the amount of state excise tax paid on tobacco products of each tobacco product manufacturer for each year. Rules established pursuant to this section are routine technical rules, as provided in Title 5, chapter 375, subchapter 2-A. Notwithstanding any other provision of law, the Bureau of Revenue Services may provide information to the Attorney General as is necessary for a tobacco product manufacturer to compile its escrow payment hereunder. In addition, the Attorney General may subpoena the records of any tobacco product retailer, distributor or manufacturer to enforce this Act. [PL 2003, c. 435, §1 (AMD).]

SECTION HISTORY

PL 1999, c. 401, §U1 (NEW). PL 1999, c. 401, §U2 (AFF). PL 2003, c. 435, §1 (AMD).

§1580-I. Requirements

(CONTAINS TEXT WITH VARYING EFFECTIVE DATES)

Any tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after the date of enactment of this Act shall do one of the following: [PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

1. Become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or [PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

2. place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation) --

1999: \$.0094241 per unit sold after the date of enactment of this Act.

2000: \$.0104712 per unit sold.

For each of 2001 and 2002: \$.0136125 per unit sold.

For each of 2003 through 2006: \$.0167539 per unit sold.

For each of 2007 and each year thereafter: \$.0188482 per unit sold.

A. A tobacco product manufacturer that places funds into escrow pursuant to this subsection shall receive the interest or other appreciation on such funds as earned. Such funds themselves must be released from escrow only under the following circumstances:

(1) to pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State or any releasing party located or residing in the State. Funds must be released from escrow under this subparagraph:

(a) in the order in which they were placed into escrow; and

(b) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(2) **(TEXT REPEALED ON CONTINGENCY: If court of competent jurisdiction holds that subparagraph (2) is unconstitutional)** to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the State in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to section IX(i) of that agreement including after final determination of all adjustments, that such manufacturer would have been required to make an account of such units sold had it been a participating manufacturer, the excess must be released from escrow and revert back to such tobacco product manufacturer. If a court of competent jurisdiction holds that this subparagraph is unconstitutional, then this subparagraph is deemed repealed; or

(2-A) (TEXT EFFECTIVE ON CONTINGENCY: Only if, following repeal of subparagraph (2), court of competent jurisdiction holds that paragraph A is unconstitutional) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the State's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment) had it been a participating manufacturer, the excess must be released from escrow and revert back to such tobacco product manufacturer. This subparagraph takes effect only if, following the repeal of subparagraph (2), as described therein, a court of competent jurisdiction holds that paragraph A is unconstitutional; or

(3) to the extent not released from escrow under subparagraph (1) or (2), funds must be released from escrow and revert back to such tobacco product manufacturer 25 years after the date on which they were placed into escrow. [PL 2003, c. 435, §2 (AMD).]

B. Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the Attorney General that it is in compliance with this subsection. The Attorney General may bring a civil action on behalf of the State against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall --

(1) be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a

civil penalty in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

(2) in the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow;

(3) in the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed 2 years. [PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

[PL 2003, c. 435, §2 (AMD).]

Each failure to make an annual deposit required under this section shall constitute a separate violation. In addition to the amounts set forth above, the State's costs and attorney's fees shall be paid by the violator. [PL 1999, c. 401, Pt. U, §1 (NEW); PL 1999, c. 401, Pt. U, §2 (AFF).]

SECTION HISTORY

PL 1999, c. 401, §U1 (NEW). PL 1999, c. 401, §U2 (AFF). PL 2003, c. 435, §2 (AMD).

SUBCHAPTER 4

TOBACCO PRODUCT MANUFACTURERS

§1580-L. Tobacco product manufacturer

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

A. "Brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers, including, but not limited to, menthol, lights, kings and 100s. "Brand family" includes any brand name alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors or any other indicia of product identification identical or similar to or identifiable with a previously known brand of cigarettes. [PL 2003, c. 439, §1 (NEW).]

B. "Cigarette" has the same meaning as in section 1580-H, subsection 4. [PL 2003, c. 439, §1 (NEW).]

C. "Distributor" means a person that is authorized to affix tax stamps to packages or other containers of cigarettes under Title 36, section 4366-A or any person that is required to pay the excise tax imposed on cigarettes, including roll-your-own tobacco, pursuant to Title 36, chapter 703 or chapter 704. [PL 2003, c. 439, §1 (NEW).]

D. "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer. [PL 2003, c. 439, §1 (NEW).]

E. "Participating manufacturer" means a manufacturer as defined in the Master Settlement Agreement, as that agreement is defined in section 1580-H, subsection 5. [PL 2003, c. 439, §1 (NEW).]

F. "Qualified escrow fund" has the same meaning as in section 1580-H, subsection 6. [PL 2003, c. 439, §1 (NEW).]

G. "Tobacco product manufacturer" has the same meaning as in section 1580-H, subsection 9. "Tobacco product manufacturer" also means a participating manufacturer or a nonparticipating manufacturer. [PL 2003, c. 439, §1 (NEW).]

H. "Units sold" has the same meaning as in section 1580-H, subsection 10. [PL 2003, c. 439, §1 (NEW).]

[PL 2003, c. 439, §1 (NEW).]

2. Certification; participating manufacturer. Every participating manufacturer whose cigarettes are sold in this State, whether directly or through a distributor, retailer or similar intermediary, shall execute and deliver in the manner prescribed by the Attorney General a certification to the Attorney General no earlier than April 15th of each year and no later than April 30th of each year under penalty of perjury that as of the date of certification the tobacco product manufacturer is a participating manufacturer.

A. A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall provide an updated list 30 calendar days prior to any addition to or modification of its brand families and deliver a supplemental certification to the Attorney General. [PL 2003, c. 439, §1 (NEW).]

[PL 2003, c. 439, §1 (NEW).]

3. Certification; nonparticipating manufacturer. Every nonparticipating manufacturer whose cigarettes are sold in this State, whether directly or through a distributor, retailer or similar intermediary, shall execute and deliver in the manner prescribed by the Attorney General a certification to the Attorney General no earlier than April 15th of each year and no later than April 30th of each year under penalty of perjury that as of the date of certification the tobacco product manufacturer is in full compliance with subchapter 3.

A. A nonparticipating manufacturer shall include in its certification a complete list of all of its brand families that:

- (1) Separately lists for each brand family the number of units sold in the State during the preceding calendar year;
- (2) Indicates all of the nonparticipating manufacturer's brand families that have been sold in the State at any time during the current calendar year;
- (3) Indicates by an asterisk any brand family sold in the State during the preceding calendar year that is no longer being sold in the State as of the date of certification; and
- (4) Identifies by name and address any other manufacturer of the brand families in the preceding or current calendar year.

The nonparticipating manufacturer shall provide an updated list to the Attorney General 30 days prior to any addition to or modification of its brand families and deliver a supplemental certification to the Attorney General. [PL 2003, c. 439, §1 (NEW).]

B. In addition to submitting the lists required in paragraph A, a nonparticipating manufacturer shall also state in its certification that:

- (1) The nonparticipating manufacturer is registered to do business in the State or has appointed a resident agent for service of process and provided notice of the registration as required under subsection 8;
- (2) The nonparticipating manufacturer has:

(a) Established and continues to maintain a qualified escrow fund pursuant to section 1580-I; and

(b) Executed an escrow agreement, reviewed and approved by the Attorney General, that governs the qualified escrow fund;

(3) The nonparticipating manufacturer is in full compliance with subchapter 3 and any rules adopted pursuant to this section and subchapter 3;

(4) The name, address and telephone number of the financial institution where the nonparticipating manufacturer has established the qualified escrow fund required under section 1580-I;

(5) The account number of the qualified escrow fund and the subaccount number for the State;

(6) The amount the nonparticipating manufacturer placed in the qualified escrow fund for cigarettes sold in the State during the preceding calendar year, the date and amount of each deposit and evidence or verification as may be determined necessary by the Attorney General to confirm the amount; and

(7) The amount and date of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from the qualified escrow fund or from any other qualified escrow fund into which the nonparticipating manufacturer has made escrow payments. [PL 2003, c. 439, §1 (NEW).]

[PL 2003, c. 439, §1 (NEW).]

4. Tobacco product manufacturer; brand family. A tobacco product manufacturer may not include a brand family in its certification unless:

A. In the case of a participating manufacturer, the participating manufacturer affirms that the brand family is deemed to be the participating manufacturer's cigarettes for purposes of calculating its payments under the Master Settlement Agreement for the relevant year, in the volume and shares determined pursuant to the Master Settlement Agreement; and [PL 2003, c. 439, §1 (NEW).]

B. In the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is deemed to be the nonparticipating manufacturer's cigarettes for purposes of subchapter 3.

Nothing in this subsection may be construed as limiting or otherwise affecting the State's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the Master Settlement Agreement or for purposes of subchapter 3. [PL 2003, c. 439, §1 (NEW).]

[PL 2003, c. 439, §1 (NEW).]

5. Maintain invoices. A tobacco product manufacturer of any cigarettes sold in this State shall maintain all invoices and documentation of sales and other information relied upon for certification for a period of 5 years unless otherwise required by law to maintain those invoices and documentation of sales and other information for a greater period of time.

[PL 2003, c. 439, §1 (NEW).]

6. Directory of cigarettes. The Attorney General shall develop and make available for public inspection a directory listing all tobacco product manufacturers that have provided accurate certifications conforming to the requirements of this section and all brand families that are listed in the certifications.

A. The Attorney General may not include or retain in the directory the name or brand families of any nonparticipating manufacturer that fails to provide the required certification or whose certification the Attorney General determines is not in compliance with subsection 3, paragraphs A

and B, unless the Attorney General has determined that the nonparticipating manufacturer is no longer in violation of subsection 3, paragraphs A and B. [PL 2003, c. 439, §1 (NEW).]

B. Neither a tobacco product manufacturer nor brand family may be included or retained in the directory if the Attorney General concludes that:

(1) In the case of a nonparticipating manufacturer, all escrow payments required pursuant to subchapter 3 for any period for any brand family, whether or not listed by the nonparticipating manufacturer, have not been fully deposited into a qualified escrow fund governed by an escrow agreement that has been approved by the Attorney General; or

(2) All outstanding final judgments, including interest on the judgment, for violations of subchapter 3 have not been fully satisfied for the brand family or the tobacco product manufacturer. [PL 2003, c. 439, §1 (NEW).]

C. The Attorney General shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this section. A determination by the Attorney General not to list or to remove from the directory a brand family or tobacco product manufacturer is a final agency action as defined in Title 5, section 8002. [PL 2003, c. 439, §1 (NEW).]

[PL 2003, c. 439, §1 (NEW).]

7. Prohibition against stamping or sale of cigarettes. It is unlawful for any person to affix a tax stamp to a package or other container of cigarettes of a tobacco product manufacturer or brand family not included in the directory or to distribute, sell or offer or possess for sale in this State cigarettes of a tobacco product manufacturer or brand family not included in the directory.

A person who violates this subsection engages in an unfair and deceptive act in violation of the Maine Unfair Trade Practices Act.

[PL 2003, c. 439, §1 (NEW).]

8. Agent for service of process. Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the State as a foreign corporation or business entity shall, as a condition precedent to having its brand families listed or retained in the directory, appoint and continually engage without interruption the services of an agent in this State for the service of process concerning or arising out of the enforcement of this section and subchapter 3. Such service constitutes legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, phone number and proof of the appointment and availability of the agent to the Attorney General.

The nonparticipating manufacturer shall provide notice to the Attorney General 30 days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the Attorney General of the appointment of a new agent no less than 5 days prior to the termination of an existing agent appointment. In the event an agent terminates that agent's appointment by the nonparticipating manufacturer, the nonparticipating manufacturer shall notify the Attorney General of the termination within 5 days and shall include proof to the satisfaction of the Attorney General of the appointment of a new agent.

[PL 2003, c. 439, §1 (NEW).]

9. Reporting by distributors. No later than 20 days after the end of each calendar quarter and more frequently if so directed by the Attorney General, each distributor shall submit information as the Attorney General requires to facilitate compliance with this section, including, but not limited to, a list by brand family of the total number of cigarettes upon which the distributor affixed tax stamps during the previous calendar quarter or, in the case of roll-your-own tobacco, the equivalent stick count for which the distributor paid the tax due. The distributor shall maintain all invoices and documentation

of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the Attorney General for a period of 5 years.

[PL 2003, c. 439, §1 (NEW).]

10. Disclosure of information. Notwithstanding any provision of law to the contrary, the Department of Administrative and Financial Services, Bureau of Revenue Services is authorized to disclose to the Attorney General any tax information received by the Bureau of Revenue Services and requested by the Attorney General for purposes of determining compliance with and enforcing the provisions of this section. The Attorney General may share any information received under this section, other than information received from the Bureau of Revenue Services, with:

A. Federal, state or local agencies but only for purposes of enforcement of this section, subchapter 3 or corresponding laws of other states; and [PL 2019, c. 381, §1 (NEW).]

B. Courts, arbitrators, data clearinghouses or similar entities for the purpose of assessing compliance with, resolving disputes arising under or making calculations required by the Master Settlement Agreement or agreements resolving disputes arising under the Master Settlement Agreement, and with counsel for the parties or expert witnesses in any such proceeding, if the information otherwise remains confidential. [PL 2019, c. 381, §1 (NEW).]

The Attorney General shall provide notice to the Department of Administrative and Financial Services, Bureau of Revenue Services of those persons certified under this section.

[PL 2019, c. 381, §1 (RPR).]

11. Verification of qualified escrow fund. The Attorney General may require at any time that the nonparticipating manufacturer provide from the financial institution in which the nonparticipating manufacturer has established a qualified escrow fund for the purpose of compliance with subchapter 3 proof of the amount of money in the qualified escrow fund being held on behalf of the State, the dates of deposits and a listing of the amounts of all withdrawals from the fund and the dates of the withdrawals.

[PL 2003, c. 439, §1 (NEW).]

12. Requests for additional information. The Attorney General may require a distributor or tobacco product manufacturer to submit any additional information, including, but not limited to, samples of the packaging or labeling of each brand family necessary to enable the Attorney General to determine whether a tobacco product manufacturer is in compliance with this section.

[PL 2003, c. 439, §1 (NEW).]

13. Escrow installments. To promote compliance with the provisions of this section, the Attorney General may adopt rules requiring a tobacco product manufacturer subject to the requirements of subsection 3, paragraph A to make the required deposits in the qualified escrow fund in installments during the year in which the sales covered by the deposits are made. The Attorney General may require sufficient information to enable the Attorney General to determine the adequacy of the amount of the installment deposit.

[PL 2003, c. 439, §1 (NEW).]

14. Rules. The Attorney General may adopt rules necessary to carry out the purposes of this section. Rules adopted pursuant to this section are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[PL 2003, c. 439, §1 (NEW).]

15. Unlawful acts. A person may not:

A. Sell or distribute cigarettes in violation of subsection 7; [PL 2003, c. 439, §1 (NEW).]

B. Violate paragraph A after having been previously convicted of a violation of this section; [PL 2003, c. 439, §1 (NEW).]

C. Acquire, hold, own, possess, transport, import or cause to be imported cigarettes that the person knows or should have known are intended for distribution or sale in the State in violation of subsection 7; or [PL 2003, c. 439, §1 (NEW).]

D. Violate paragraph C after having been previously convicted of a violation of this section. [PL 2003, c. 439, §1 (NEW).]
[PL 2003, c. 439, §1 (NEW).]

16. Criminal penalty. A violation of this section is a Class E crime except that violation of this section is a Class D crime when the person has one or more prior convictions for violation of this section. Title 17-A, section 9-A governs the use of prior convictions when determining a sentence.

Each stamp affixed and each offer to sell cigarettes in violation of subsection 7 constitutes a separate violation.

[PL 2003, c. 439, §1 (NEW).]

17. Contraband; seizure. Cigarettes that have been sold, offered for sale or possessed for sale in this State in violation of subsection 7 are deemed contraband under Title 36, section 4372-A and the cigarettes are subject to seizure and forfeiture as provided in section 4372-A. All cigarettes so seized and forfeited must be destroyed and may not be resold.

[PL 2003, c. 439, §1 (NEW).]

18. Injunction. The Attorney General may seek an injunction to restrain a threatened or actual violation of subsection 7, 9 or 12 and to compel compliance with these subsections.

[PL 2003, c. 439, §1 (NEW).]

19. Recovery of costs. In any action brought by the State to enforce this section, the State is entitled to recover the costs of investigation, expert witness fees, costs of the action and reasonable attorney's fees.

[PL 2003, c. 439, §1 (NEW).]

20. Profits. If a court determines that a person has violated this section, the court shall order any profits, gain, gross receipts or other benefit from the violation to be paid to the Fund for a Healthy Maine. Unless otherwise expressly provided, the remedies or penalties provided by this section are cumulative to each other and to the remedies or penalties available under all other laws of this State.

[PL 2003, c. 439, §1 (NEW).]

21. Construction; severability. If a court of competent jurisdiction finds that the provisions of this section and of subchapter 3 conflict, then the provisions of subchapter 3 control. If any portion of this section causes subchapter 3 to no longer constitute a qualifying or model statute, as those terms are defined in the Master Settlement Agreement, then that portion of this section is not valid.

[PL 2003, c. 439, §1 (NEW).]

SECTION HISTORY

PL 2003, c. 439, §1 (NEW). PL 2019, c. 381, §1 (AMD).

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