

BUREAU OF HEALTH

Chapter 203: RULES RELATING TO THE RETAIL SALE AND DELIVERY OF TOBACCO PRODUCTS IN MAINE

1. DEFINITIONS

As used in these rules, unless the context otherwise indicates, the following terms have the following meanings.

- A. **Adult.** Any individual 21 years of age or older.
- B. **Applicant.** Any person 18 years of age or older or any partnership or corporation where the partners or managing officers are 18 years of age or older.
- C. **Cigarette paper.** 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.
- D. **Consumer.** "Consumer" means an individual who purchases, receives or possesses tobacco products for personal consumption and not for resale.
- E. **Delivery sale.** "Delivery sale" means a sale of tobacco products to a consumer in this State when:
- 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
- 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.
- F. **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.
- G. **Department.** The Department of Health and Human Services.
- H. **Gross revenue.** "Gross revenue" means the total sales of the business, excluding motor fuel oil sales.
- I. **Juvenile.** Any person who is younger than 18 years of age.
- J. **Motor fuel oil.** "Motor fuel oil" means internal combustion fuel sold for use in motor vehicles as defined in Title 29-A, section 101, subsection 42.

- K. **Person.** "Person" means an individual, corporation, partnership or unincorporated association.
- L. **Seasonal mobile tobacco vendor.** "Seasonal mobile tobacco vendor" means a person who sells tobacco products at two or more fairs, festivals or exhibitions during the agricultural fair season.
- M. **Seasonal mobile tobacco vendor license.** "Seasonal mobile tobacco vendor license" means a license issued to an applicant who is a seasonal mobile tobacco vendor that operates at two or more agricultural fairs, festivals or exhibitions held during the agricultural fair season.
- N. **Tobacco distributor.** "Tobacco distributor" or "distributor" means a person licensed as a distributor under 36 MRSA, chapter 704.
- O. **Tobacco products.** 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.
- P. **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.
- Q. **Tobacco specialty store.** "Tobacco specialty store" means a retail business under 2,000 square feet in which at least 60% of the business's gross revenue for the last calendar year was derived from the sale of tobacco or tobacco-related products.
- R. **Vending machine.** Any automated, self-service device that upon insertion of money, tokens or any other form of payment, dispenses cigarettes or any other tobacco product.

2. **RETAIL TOBACCO LICENSE REQUIRED**

It is unlawful for any person, partnership or corporation that engages in retail sales, including retail sales through vending machines, delivery sales 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 these rules. The retail tobacco license for a vending machine shall be obtained by the vending company. The retail tobacco license for a delivery seller shall be obtained by the person taking orders for tobacco products.

3. **APPLICATION PROCEDURE**

A. **Application process; license fees.**

1. **Application and Fees**

An applicant for an annual retail tobacco license shall file an application in the form required by the department. The application shall include the name under which the applicant transacts or intends to transact business and the address of the location of the applicant’s place of business. In the case of vending machines the applicant shall include the name, address and type of liquor license, or other legal requirement which prohibits, in whole or in part, the presence of minors, of the business or other facility where the vending machine is located Delivery sellers must include the name and address of the location where orders are received and processed and the name and address of the locations from which tobacco products are shipped. If the applicant is a person, the application must include their name and address. If the applicant is a partnership, the application must include the names and addresses of all the partners. If the applicant is a corporation, the application must include the names and addresses of the principal officers of the corporation. The license fee determined by the Department for a retail tobacco license is as specified in Table 3A. The license fee as determined in Table 3A is derived from calculation of the percentage of annual tobacco (i.e. total tobacco) sales relative to the annual gross revenue of the business. The applicant shall remit the fee with the application for the license.

Table 3A: Retail Tobacco License Fees	
LICENSE TYPE	FEE
Retail Tobacco I < 30% annual gross revenue from total cigarette/tobacco sales	\$100
Retail Tobacco II > or = 30-50% of annual gross revenue from total cigarette/tobacco sales	\$125
Retail Tobacco III > 50% of annual gross revenue from total cigarette/tobacco sales	\$150
Seasonal Mobile Tobacco Vendor License	\$50 for the first fair location + \$10 for each additional fair location
Tobacco Vending Machine	\$50 per machine

2. **Reconsideration**

Any licensee may request reconsideration of the licensee’s determined license fee by providing notarized documents substantiating the establishment’s tobacco revenue as well as the total gross revenue and calculating the percentage of tobacco sales. Upon receipt and complete review of such documentation the Department may adjust the license fee or account to reflect the licensee’s actual tobacco sales revenue. Any such adjustment will be through a credit to the licensing account.

B. Term of license.

All retail tobacco licenses are valid for one year at one location unless suspended, revoked or not subject to the transfer under 22 MRSA §1553. All retail licenses expire on July 29th of each year. Renewal applications may be provided and received within 30 days of the license expiration. Licenses that have been suspended or revoked may be reinstated upon the receipt of an application for reinstatement, payment of all penalties, an application fee of \$50 and proof from the District Court that the license may be reinstated.

C. Multiple licenses.

1. **Multiple licenses required.** Except as provided in subsection C-2, an applicant 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.
2. **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 on that license. 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.

D. False answer given intentionally.

A person who intentionally gives a false answer in an application for a retail tobacco license violates 17-A MRSA §453.

E. Age Considerations

1. **Age requirements.**
 - a. **Retail Tobacco Licensure.** Retail tobacco licenses shall be issued only to persons who are 18 years of age or older or to partnerships or corporations the officers of which are 18 years of age or older.
 - b. **Retail Tobacco Sales.** 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.
2. **Age restrictions for tobacco specialty stores.** A person under 18 years of age is prohibited from entering a business licensed as a tobacco specialty store unless

accompanied by a parent or legal guardian, regardless of whether smoking is allowed in that store.

4. **DISPLAY OF LICENSE; NOTICES**

- A. A licensee shall publicly display the license on the premises and on each machine to which the license applies.
- B. Delivery Sellers shall prominently display a notice of Maine licensure, including the license number, on all media used to solicit sales. The display shall use an Arial Black font with a minimum font size of 12.
- C. All licensees shall post notice of the prohibition on tobacco sales to juveniles and the requirement that tobacco cannot be sold to any person under 27 years of age without age verification by reliable photo identification. Notices must be publicly and conspicuously displayed in the licensee's place of business in letters at least 3/8 inches high. Delivery Sellers shall prominently display a notice of the above prohibition and identification requirement on all media used to solicit sales. The display shall use an Arial Black font with a minimum font size of 12. Signs required by this section shall be provided at cost by the Department at the time of licensure.
- D. Any person who violates this section commits a civil violation for which a forfeiture of not less than \$50 nor more than \$200 may be adjudged for one offense.

5. **TRANSFER OF LICENSES**

Except as otherwise provided in 22 MRSA §1553, a license or any interest in a license may not be sold, transferred, assigned or otherwise controlled 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. A license shall not be transferred to another applicant until the current license and sworn statement of the former licensee are received by the Department.

6. **SALES OF TOBACCO PRODUCTS**

- A. **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 and through the mail under procedures required by 22 MRSA §1555-C and Section 10 of these Rules.
- B. **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.

- C. **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.
- D. **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.
- E. **Civil violation.** It is a civil violation for any person, firm, or corporation to knowingly distribute or sell cigarettes or any other tobacco product from a vending machine to a person under 18 years of age.
- F. **Penalties.** Any person who violates subsections A through E commits a civil violation for which a fine of not less than \$50 nor more than \$1500, plus court costs, may be adjudged for any one offense. Any employer of a person who violates this subsection commits a civil violation for which a fine of not less than \$50 nor more than \$1500, plus court costs, may be adjudged for any one offense. In all cases of violations, the court shall impose a fine that may not be suspended, except pursuant to 15 MRSA §3314.
- G. **Vending machines.** In addition to the tobacco license required in subsection 2, the sale of cigarettes or any other tobacco product through a vending machine is subject to the following provisions:
1. Only cigarettes or other tobacco products may be dispensed by that machine.
 2. A sign with lettering at least 3/8 inches in height stating ‘WARNING. It is unlawful for any person under the age of 18 to purchase cigarettes in this State’ must be affixed conspicuously to the front of the machine.
 3. 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.
 4. Vending machines may be located only in areas in which minors are allowed by law only when accompanied by an adult.
 5. Any person, firm or corporation, in control of a facility in which a vending machine is located, who violates this subsection 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.

7. **SALE WITHOUT A VALID LICENSE; CRIME; PENALTY**

Notwithstanding 17-A MRSA §4-A, any person who engages in retail tobacco sales, delivery sales or in free distribution of tobacco products in the ordinary course of trade in or into this State without a valid license commits a Class E crime and is subject to the penalties listed in 22 MRSA §1554.

8. **IDENTIFICATION CARDS**

A licensee may refuse to sell tobacco to any person who fails to display upon request an identification card issued under 29-A MRSA §1410, or a motor vehicle operator's license bearing the photograph of the operator and issued under 29-A MRSA.

9. **SALE OF UNPACKAGED CIGARETTES**

A. **Prohibition.** A person may not 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, nor may a person sell cigarettes in smaller quantities than placed in the package by the manufacturer.

B. **Penalties.**

1. **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.
2. **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.

10. DELIVERY SALES OF TOBACCO PRODUCTS

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

- A. **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.
1. 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.
 2. A person who violates this subsection having been previously adjudicated of a violation of either 22 M.R.S.A. §1555-C (2), (4) or subsection (B), (C), or (D) of this section commits a civil violation for which a fine of not less than \$1,000 more than \$5,000 may be adjudged.
- B. **Requirements for accepting order for delivery sale.** The following provisions apply to acceptance of an order for a delivery sale of tobacco products.
1. 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:
 - a. A copy of a valid government-issued document that provides the person's name, current address, photograph and date of birth; and
 - b. An original written statement signed by the person documenting that the person:
 - 1) Is of legal age to purchase tobacco products in the State;
 - 2) Has made a choice whether to receive mailings from a tobacco retailer;
 - 3) Understands that providing false information may constitute a violation of law; and
 - 4) 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.
 2. 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.
 3. Prior to shipping the tobacco products, the tobacco retailer shall verify the information provided under paragraph 1 against a commercially available

database derived solely from government records consisting of age and identity information, including date of birth.

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

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

1. Prior to shipping, the tobacco retailer shall provide to the delivery service the age of the purchaser pursuant to the requirements of 22 M.R.S.A. §1555-C(2)(A) and subsection 10(B)(1) of these rules, and verified in accordance with 22 M.R.S.A. §1555-C(2)(C) and subsection 10(B)(3) of these rules.
2. 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. Such marking shall, at a minimum, appear on the same plane of the package as the shipping label that identifies the delivery address.
3. The delivery instructions must clearly indicate the requirements of this subsection and must declare that state law requires compliance with the requirements.
4. 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.
5. A person who violates this subsection after having been previously adjudicated of a violation of this subsection or subsection A, B or D commits a civil violation for which a fine of not less than \$1,000 and not more than \$5,000 may be adjudged.

D. 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.

1. 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.
 2. A person who violates this subsection after having been previously adjudicated of a violation of this subsection or subsection 1, 2, or 3 of 22 M.R.S.A. §1555-C or subsections A, B, or C of this section commits a civil violation for which a fine of not less than \$1,000 nor more than \$5,000 may be adjudged.
- E. **Unlawful ordering.** It is unlawful to submit ordering information for tobacco products by delivery sale under 22 M.R.S.A. §1555-C (A) or subsection 10 (B)(1) of these rules in the name of another person. A person who violates this subsection commits a civil violation for which a fine of more than \$10,000 may be adjudged.
- F. **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.
- G. **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.

11. **JURISDICTION; DISTRICT COURT**

- A. **Jurisdiction.** The District Court shall conduct hearings on all matters concerning violations by tobacco licensees of any state law related to tobacco sales. Notwithstanding 5 MRSA §10051, the District Court Judge has exclusive jurisdiction over all violations of these rules by licensees and their agents when no criminal penalty is provided.
- B. **Powers.** The District Court may impose fines or suspend or revoke licenses in accordance with 22 MRSA §§ 1557-1559.
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STATUTORY AUTHORITY: 22 MRSA §1551 *et seq.*
22 MRSA §42 sub-§1

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