

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 125

H. P. 99

House of Representatives, January 18, 1979

Referred to the Committee on Energy and Natural Resources. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Twitchell of Norway (by request).

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

AN ACT to Establish the Maine State Indoor Air Act.

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

22 MRSA c. 267 is enacted to read:

CHAPTER 267

INDOOR AIR ACT

§ 1651 Purpose

This legislation is promulgated in the interest of protecting and preserving the public health.

In view of the fact that the Surgeon General of the United States has determined that the smoking of tobacco can constitute a hazard to health, and that smoke may produce irritation, discomfort, or harm to health of nonsmokers, the State of Maine recognizes the right of individuals using or visiting public places to an environment reasonably free of such agents as may produce those results. At the same time, also recognized are the rights of individuals to elect to smoke, provided that action does not prevent the achievement and maintenance of a smoke-free environment for the nonsmokers.

Nothing in this chapter shall be construed in any way to detract from smoking restrictions or prohibitions imposed by other governmental authorities by law, ordinance or regulation.

§ 1652 Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. **Public place.** "Public place" means any enclosed indoor area used by the general public and to which it is invited, including, but not limited to, the following where smoking may be prohibited entirely or permitted, in accordance with subsequent provisions of this chapter:

A. Restaurants and other establishments serving food for consumption on the premises;

B. Retail food stores;

C. Meeting places and places of recreation, including, but not limited to, theaters, auditoriums, schools and other institutions providing education or training, and places of assembly used for religious, recreational, political, educational, social or any other public purpose;

D. Museums, libraries and certified historical buildings; and

E. Health care facilities required to be licensed by the State, including, but not limited to, hospitals, clinics, nursing homes, convalescent homes and extended care facilities, including state, county and city institutions.

2. **Smoking.** "Smoking" includes being in possession of or responsible for a lighted cigar, cigarette, pipe or any other lighted smoking equipment.

§ 1653. Designation of "smoking permitted" areas

1. **Exceptions to designated smoking areas.** Smoking shall be prohibited in all sections of public places except in areas designated as "smoking permitted" areas. Where smoking areas are designated, at least one of the following conditions shall exist to minimize the movement of smoke into adjacent "no smoking" areas.

A. There shall be a continuous physical barrier, such as a wall, partition or furnishing of at least 4½ feet in height to separate the "smoking permitted" and "no smoking" areas. The barrier may contain doors or portals for exit and entry;

B. There shall be a space of at least 4 feet in width to separate the areas. This space may be either an unoccupied area or a section of seating area acting as a buffer zone and in which smoking is not permitted;

C. The ventilation system in the room containing both a "smoking permitted" and "no smoking" area shall have total air circulation consisting of recirculated air plus outside air of not less than 6 air changes per hour; or

D. The concentration of carbon monoxide in the "no smoking" area shall at no time exceed the concentration of carbon monoxide in outside air within 12 feet of the building by more than 9 parts per million.

2. Bar or tavern. A bar or tavern, whether a separate establishment or part of an establishment primarily serving food, shall be exempt from this chapter if the facilities for serving food in the bar or tavern area accommodate fewer than 50 persons at one time.

3. Restaurant or other establishment serving food. A restaurant or other establishment serving food shall be exempt from this chapter if the total seating capacity does not exceed 50 persons.

4. Separate room. Where a separate room or an establishment in its entirety is rented for a private function that is not open to the public and is under the exclusive control of the sponsor, it may be designated as either a "smoking permitted" or "no smoking" area by the sponsor.

5. Retail food store. A retail food store shall be exempt from this chapter if the total area open to the public does not exceed 5,000 square feet.

6. Patient rooms in health care facilities. Patient rooms in health care facilities may be designated "smoking permitted" only if all occupants of the room are smokers.

7. Private offices or work areas. Private offices or work areas not generally open to the public may be designated "no smoking," "smoking permitted" or sectioned into different areas at the discretion of the employer or responsible person or persons in charge.

§ 1654. Responsibility of proprietors; employers

1. Persons responsible. The person actually in charge of the operation of the establishment shall be responsible for implementation of and compliance with this chapter.

2. Posting signs. There shall be posted in conspicuous places, a sufficient number of "no smoking" or "smoking permitted" signs, with letters at least 1½ inches high and proportionately wide.

3. Smoking permitted areas. The "smoking permitted" area shall not exceed 75% of the total area used by the public. A "no smoking" area shall be no less attractive or convenient than a "smoking permitted" area.

4. Restricted to smoking permitted areas. Lighted smoking instruments such as cigarettes, cigars or pipes, cannot be carried outside "smoking permitted" areas.

5. Location of smoking permitted areas. Proprietors of auditoriums, arenas and theaters may provide "smoking permitted" areas in their lobbies or other designated locations provided the area does not produce a situation where

separation of nonsmoking and smoking areas cannot be guaranteed, such as refreshment stands, ticket lines and restrooms.

§ 1655. Waiver; application

To apply for a waiver of this chapter the person responsible for a public place or public meeting shall submit a written application to the Department of Human Services stating the grounds for the waiver. The department has the right to request any other information reasonably necessary to determine the merits of the waiver application. Failure to submit the requested information may result in denial of the application.

An applicant for a waiver shall have the burden of producing clear and convincing evidence to demonstrate that compelling reasons exist to necessitate a waiver. These compelling reasons consist of evidence that implementation of this chapter would endanger the ability of the public place to produce sufficient income to meet its operating expenses. Acceptable evidence of these compelling reasons shall consist of financial records and projections, based upon demonstrable proof, reasonably showing changes of income and expenses which are directly attributable to this chapter; and that even with a waiver of this chapter the concentration of carbon monoxide in all sections of the public place shall at no time exceed the concentration of carbon monoxide in outside air within 12 feet of the building by more than 9 parts per million.

§ 1656. Determination of eligibility for waiver

In making determination of the eligibility of an applicant for a waiver, the Department of Human Services shall:

1. Consider information. Consider information supplied by the responsible person in the application for a waiver;
2. Consider prevailing smoking restrictions. Consider prevailing smoking restrictions and other practices relating to similar public places in the community; and
3. Consider other relevant information. Consider other relevant information consistent with the public policy expressed in this chapter.

After the department has reviewed the information required, the department shall make the final decision on the waiver application and shall respond in writing to the applicant, indicating that the waiver request has been denied or approved and the reasons therefor.

§ 1657. Civil violation

Failure of an individual to comply with this chapter is a civil violation for which a forfeiture of not more than \$20 may be adjudged.

STATEMENT OF FACT

The purpose of this bill is reflected in the first section of the bill.