

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 509

H. P. 457

House of Representatives, January 29, 1981

Referred to the Committee on Health and Institutional Services. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative Twitchell of Norway.

Cosponsors: Representative Kany of Waterville and Representative Rolde of York.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

AN ACT to Prohibit Smoking in Food Stores and Portions of Restaurants.

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

22 MRSA c. 271 is enacted to read:

CHAPTER 271

SMOKING IN RESTAURANTS

AND RETAIL FOOD STORES

§ 1681. Definitions

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

1. **Restaurants.** "Restaurants" means any enclosed indoor restaurant or other enclosed indoor establishment serving food for consumption on the premises, used by the general public and to which it is invited.

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

§ 1682. Designation of "smoking permitted" areas

1. Exceptions to designated smoking areas. Smoking shall be prohibited in all sections of restaurants and retail food stores 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 4 1/2 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.

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.

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

(2) A restaurant or other establishment serving food is exempt from this chapter if the total seating capacity does not exceed 50 persons.

(3) 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.

(4) A retail food store is exempt from this chapter if the total area open to the public does not exceed 5,000 square feet.

(5) 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.

§ 1683. Responsibility of proprietors; employers

1. Persons responsible. The person actually in charge of the operation of the establishment is 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 1 1/2 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.

§ 1684. Waiver; application

To apply for a waiver of this chapter the person responsible for a restaurant or retail food store 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.

An applicant for a waiver has 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 consists 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 restaurant or retail food store 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.

§ 1685. Determination of eligibility for waiver

In making determination of 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 restaurants or retail food stores in the community; and

3. Consider other relevant information. Consider other relevant information consistent with the intent of 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.

§ 1686. 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 to restrict smoking in restaurants and retail food stores.