

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 1257

H. P. 1038

House of Representatives, March 11, 1981

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

EDWIN H. PERT, Clerk

Presented by Representative H. Higgins of Portland.

Cosponsor: Representative Manning of Portland.

STATE OF MAINE

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

AN ACT Concerning Clean Indoor Air.

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

22 MRSA c. 262 is enacted to read:

CHAPTER 262

MAINE CLEAN INDOOR AIR ACT

§ 1531. Title

This chapter may be cited as the "Maine Clean Indoor Air Act."

§ 1532. Public Policy

The purpose of this chapter is to protect the public health, prevent discomfort and annoyance to the public and preserve the quality of the indoor environment by prohibiting smoking in public places, except in properly designated and maintained smoking areas.

§ 1533. Definitions

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

1. **Public meeting.** “Public Meeting” means any public proceeding as defined in Title 1, section 402, required to be open to the public under Title 1, section 403, and any hearing, trial or other official proceeding open to the public.

2. **Public place.** “Public place” means any enclosed, indoor area used by the general public or serving as a place of work, including, but not limited to, eating establishments as defined in section 2491, retail stores, hotel lobbies, public conveyances of all kinds, elevators, educational facilities, hospitals and other health care institutions and facilities, theaters, auditoriums and arenas, but excluding private, enclosed offices occupied exclusively by smokers even though these offices may occasionally be visited by nonsmokers.

3. **Smoking.** “Smoking” includes carrying or having in one’s possession a lighted cigarette, cigar, pipe or other object giving off or containing any substance giving off smoke.

§ 1534. Prohibitions

1. **Smoking prohibited.** No person may smoke in a public place or at a public meeting after being requested by any person not to do so, except in properly designated and maintained smoking areas. This prohibition does not apply to smoking that is part of a theatrical performance or in cases when an entire room or hall is used for a private social function and seating arrangements are under the control of the sponsor of the function and not of the proprietor or other person in charge of the place, provided that this prohibition applies if the sponsor so elects and complies with the requirements of this chapter.

2. **Signs; removal, alteration, defacing.** No person may remove, alter or deface any sign posted in accordance with this chapter, except a person acting in compliance with section 1536.

§ 1535. Permission to designate smoking areas

1. **Smoking areas.** Smoking areas may be designated by the proprietor or other person in charge of a public place, except where the smoke from any such area causes harm, discomfort or annoyance to persons in the nonsmoking areas of that same place.

2. **Barriers and ventilation systems.** Where smoking areas are designated, existing physical barriers and ventilation systems shall be used to prevent harm, discomfort and annoyance to persons in nonsmoking areas.

3. **Size of smoking areas.** The size of any smoking area so designated shall not be more than proportional to the demand of users of the public place for a smoking area, except as permitted under section 1538, subsection 3.

§ 1536. Responsibilities of proprietors

The proprietor or other person in charge of a public place shall make reasonable efforts to prevent smoking in that place by:

1. **Signs.** Posting appropriate signs;
2. **Seating.** Arranging seating so as to provide an acceptable smoke-free area for nonsmokers;
3. **Requests to refrain from smoking.** Asking smokers to refrain from smoking in nonsmoking areas upon request of any person complaining of smoke or smoking; and
4. **Other means.** Any other means that may be appropriate in the circumstances.

§ 1537. Penalties and remedies

1. **Violation of section 1534.** Any person who violates section 1534 commits a civil violation for which a forfeiture of \$25 for the first violation and \$50 for any subsequent violation shall be adjudged.
2. **Violation of section 1536.** Any person who violates section 1536 commits a civil violation for which a forfeiture of \$50 shall be adjudged.
3. **Enjoining repeated violations.** The commissioner, a local board of health or any person may institute a civil action in the Superior Court to enjoin repeated violations of any provision of this chapter.
4. **Other remedies.** The enumeration of penalties and remedies under this section shall not be construed to limit the availability of any other penalty or remedy provided or prescribed under any other statute or under the common law or any ordinance, bylaw, rule or regulation.

§ 1538. Rulemaking; waiver of chapter

1. **Promulgation of rules.** The commissioner shall prescribe rules reasonably necessary to implement this chapter, subject to the requirements of the Maine Administrative Procedures Act, Title 5, chapter 375.
2. **Waiver of provisions.** The commissioner may, upon application of the proprietor or other person in charge of a public place, waive the provisions of this chapter as to such public place, if he determines that there are compelling reasons to do so and that a waiver will not significantly affect the health and comfort of nonsmokers.
3. **Bars and certain restaurants; waiver.** If he so elects, the proprietor of any of the following establishments shall, upon application made in the manner set forth in subsection 2, be granted a waiver under the provision of subsection 2:
 - A. A bar at which meals are not served; or
 - B. A restaurant consisting of a single dining room and having a customary seating capacity of not more than 50 persons.
4. **Signs.** The proprietor of a public place to which a waiver has been granted

shall post appropriate signs at all entrances used by the public and that posting shall be deemed to be required under section 1536, subsection 1.

§ 1539. Construction

This chapter shall be liberally construed as to effectuate its intended purposes.

§ 1540. Relation to other laws

1. Smoking prohibited by other law. This chapter shall not be construed to allow smoking in any place where smoking is prohibited by any other statute or by any ordinance, bylaw, rule or regulation.

2. Smoking allowed by other law. Any statute, ordinance, bylaw, rule or regulation that would allow smoking in any place where smoking is prohibited under this chapter is to that extent void and of no effect.

STATEMENT OF FACT

This bill lends recognition and protection to the legitimate health concerns of nonsmokers for indoor air that is relatively free from pollution caused by indiscriminate smoking in public places. Proceeding from the premise that no asserted right can ever be absolute, the bill represents a fair and practical accommodation between the desire of both smokers and nonsmokers to make important decisions affecting their enjoyment of life. The bill accomplishes this objective by restricting smoking in most public places to properly designated and maintained smoking areas, placing primary reliance for its success on voluntary compliance by the public.