

MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE
4

5 Legislative Document

No. 174

7 S.P. 68

In Senate, January 13, 1983

8 Reference to the Committee on Health and Institutional Services. Sent
9 down for concurrence and ordered printed.

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Twitchell of Oxford.
11

12 STATE OF MAINE
13

14 IN THE YEAR OF OUR LORD
15 NINETEEN HUNDRED AND EIGHTY-THREE
16

17 AN ACT to Prohibit Smoking in Food
18 Stores and Portions of Restaurants.
19

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

22 22 MRSA c. 269 is enacted to read:

23 CHAPTER 269

24 SMOKING IN RESTAURANTS

25 AND RETAIL FOOD STORES

26 §1681. Definitions

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

1 1. Restaurants. "Restaurants" means any enclosed
2 indoor restaurant or other enclosed indoor establish-
3 ment serving food for consumption on the premises,
4 used by the general public to which it is invited.

5 2. Smoking. "Smoking" includes being in posses-
6 sion of or responsible for a lighted cigar, ciga-
7 rette, pipe or any other lighted smoking equipment.

8 §1682. Designation of "smoking permitted" areas

9 1. Exceptions to designated smoking areas.
10 Smoking shall be prohibited in all sections of res-
11 taurants and retail food stores, except in areas des-
12 ignated as "smoking permitted" areas. Where smoking
13 areas are designated, at least one of the following
14 conditions shall exist to minimize the movement of
15 smoke into adjacent "no smoking" areas.

16 A. There shall be a continuous physical barrier,
17 such as a wall, partition or furnishing of at
18 least 4 1/2 feet in height to separate the
19 "smoking permitted" and "no smoking" areas. The
20 barrier may contain doors or portals for exit and
21 entry.

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

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

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

37 (1) A bar or tavern, whether a separate
38 establishment or part of an establishment
39 primarily serving food, is exempt from this

1 chapter if the facilities for serving food
2 in a bar or tavern area accommodate fewer
3 than 50 persons at one time.

4 (2) A restaurant or other establishment
5 -serving food is exempt from this chapter if
6 the total seating capacity does not exceed
7 50 persons.

8 (3) Where a separate room or an establish-
9 ment in its entirety is rented for a private
10 function that is not open to the public and
11 is under the exclusive control of the
12 sponsor, it may be designated as either a
13 "smoking permitted" or "no smoking" area by
14 the sponsor.

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

18 (5) Private offices or work areas not gener-
19 ally open to the public may be designated
20 "no smoking," "smoking permitted" or
21 sectioned into different areas at the dis-
22 cretion of the employer or responsible
23 person or persons in charge.

24 §1683. Responsibility of proprietors; employers

25 1. Persons responsible. The person actually in
26 charge of the operation of the establishment is
27 responsible for implementation of and compliance with
28 this chapter.

29 2. Posting signs. There shall be posted in con-
30 spicuous places, a sufficient number of "no smoking"
31 or "smoking permitted" signs, with letters at least
32 1 1/2 inches high and proportionately wide.

33 3. Smoking permitted areas. The "smoking permit-
34 ted" area shall not exceed 75% of the total area used
35 by the public. A "no smoking" area shall be no less
36 attractive or convenient than a "smoking permitted"
37 area.

1 4. Restricted to smoking permitted areas. Lighted
2 smoking instruments, such as cigarettes, cigars or
3 pipes, may not be carried outside "smoking permitted"
4 areas.

5 §1684. Waiver; application

6 To apply for a waiver of this chapter, the person
7 responsible for a restaurant or retail food store
8 shall submit a written application to the Department
9 of Human Services stating the grounds for the waiver.
10 The department has the right to request any other
11 information reasonably necessary to determine the
12 merits of the waiver application.

13 An applicant for a waiver has the burden of pro-
14 ducing clear and convincing evidence to demonstrate
15 that compelling reasons exist to necessitate a
16 waiver. These compelling reasons consist of evidence
17 that implementation of this chapter would endanger
18 the ability of the public place to produce sufficient
19 income to meet its operating expenses. Acceptable
20 evidence of these compelling reasons consists of
21 financial records and projections, based upon demon-
22 strable proof, reasonably showing changes of income
23 and expenses which are directly attributable to this
24 chapter; and that, even with a waiver of this chap-
25 ter, the concentration of carbon monoxide in all sec-
26 tions of the restaurant or retail food store will at
27 no time exceed the concentration of carbon monoxide
28 in outside air within 12 feet of the building by more
29 than 9 parts per million.

30 §1685. Determination of eligibility for waiver

31 In making a determination of eligibility of an
32 applicant for a waiver, the Department of Human Ser-
33 vices shall:

34 1. Consider information. Consider information
35 supplied by the responsible person in the application
36 for a waiver;

37 2. Consider prevailing smoking restrictions. Con-
38 sider prevailing smoking restrictions and other prac-
39 tices relating to similar restaurants or retail food
40 stores in the community; and

