

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1907

S.P. 716

In Senate, May 28, 1991

Reference to the Committee on Human Resources suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by President PRAY of Penobscot
Cosponsored by Representative CLARK of Millinocket.

STATE OF MAINE

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

An Act Concerning Smoking in the Workplace.



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

2
4 Sec. 1. 22 MRSA §1580-A, as enacted by PL 1985, c. 126, is amended to read:

6 **§1580-A. Smoking in places of employment**

8 1. ~~Title.~~ This law shall be section is known as the "Workplace Smoking Act of 1985."

10 2. **Definitions.** As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

14 A. "Business facility" means a structurally enclosed location or portion thereof at which employees perform services for their employer. A business facility ~~shall~~ does not include any workplace or portion of a workplace ~~which~~ that also serves as the employee's or employer's personal residence.

22 A-1. "Collective bargaining unit" means any lawful association, organization, federation, council or labor union, including those whose members are public employees, that assists its members to improve their wages, hours and conditions of employment.

28 A-2. "Commissioner" means the Commissioner of Labor.

30 A-3. "Department" means the Department of Labor.

32 B. "Employee" means a person who performs a service for wages or other remuneration under a contract of hire, written or oral, expressed or implied. Employee "Employee" includes a person employed by the State or a political subdivision of the State.

38 C. "Employer" means a person who has one or more employees. Employer includes an agent of an employer and the State or a political subdivision of the State.

42 C-1. "Enclosed" means an area, other than a public lobby, that is closed in by a roof and 4 walls, sides or partitions, either complete or partial, with openings for ingress and egress.

46 D. "Smoking" means carrying or having in one's possession a lighted cigarette, cigar, pipe or other object giving off or containing any substance giving off tobacco smoke.

50 E. "Workplace" means any enclosed area of a structure or portion thereof not open to the general public intended for

2 occupancy by employees of any private or public entities
3 whether for profit or not.

4 **3. Policy; notice.** Each employer shall establish, or may
5 negotiate through the collective bargaining process, a written
6 policy concerning smoking and nonsmoking by employees in that
7 portion of any business facility for which he the employer is
8 responsible. In order to protect the employer and employees from
9 the detrimental effects of smoking by others, the policy shall
10 must prohibit smoking except in designated smoking areas. The
11 policy may prohibit smoking throughout the business facility.
12 The employer shall post and supervise the implementation of the
13 policy. The employer shall provide a copy of this policy to any
14 employee upon request. Nothing in this section may affect the
15 right of any employer to establish policies concerning smoking
16 and nonsmoking by members of the public who have access to the
17 business facility. Nothing in this section may be construed to
18 subject an employer to any additional liability, other than
19 liability which may exist by law, for harm to an employee from
20 smoking by others in any business facility covered by this
21 section.

22 The ~~Bureau of Health~~ department shall accept inquiries from
23 employers and employees and shall, when requested, assist
24 employers in developing a policy.

25 A. An employer who operates a business facility in the
26 State shall within 6 months of the effective date of this
27 paragraph, implement, maintain and post a written policy
28 governing smoking in the workplace.

29 B. A person who becomes an employer in the State shall,
30 within 3 months of becoming an employer, develop, implement,
31 maintain and conspicuously post for all employees a written
32 smoking policy in accordance with this section.

33 C. The policy may be uniform throughout the workplace or
34 may vary from location to location within the workplace.

35 D. The policy must include the designation of smoking and
36 no smoking areas within the workplace. The employer is not
37 required to make any structural or physical changes to the
38 workplace.

39 E. The policy must be readily available for viewing by the
40 employer's employees and the employer shall provide a copy
41 to any employee upon request.

42 F. An employer shall provide a copy of the policy to all
43 prospective employees in advance of their acceptance of
44 employment with that employer.

2 G. In drafting the policy, an employer shall make a
3 reasonable effort to determine the needs of the employees
4 located in that workplace.

5 (1) An employer whose employees are not represented by
6 a collective bargaining unit may satisfy this
7 requirement by using one or more of the following
8 procedures:

9 (a) Establishing a joint committee of labor and
10 management;

11 (b) Conducting interviews with employees;

12 (c) Distributing and evaluating employee
13 questionnaires; or

14 (d) Any other appropriate method that allows for
15 broad employee participation.

16 (2) In workplaces in which the employees are
17 represented by a collective bargaining unit, the
18 establishment of a smoking policy may be addressed
19 through collective bargaining.

20 H. The written smoking policy must, at a minimum:

21 (1) Require the employer to make reasonable
22 accommodations for employees who demonstrate an
23 individual need, based on hypersensitivity or other
24 condition, for a nonsmoking environment;

25 (2) Set forth a grievance procedure;

26 (3) Accommodate the reasonable needs of smoking and
27 nonsmoking employees;

28 (4) Comply with ANSA/ASHRAE Ventilation for Acceptable
29 Indoor Air Quality Standard No. 62-1989 (June 29,
30 1989), with respect to:

31 (a) New commercial construction constructed and
32 occupied after October 1, 1992;

33 (b) All commercial buildings in which a minimum
34 of 50% of the floor space, excluding warehouse and
35 garage space, has been renovated at one time after
36 October 1, 1992;

37 (c) Buildings in which a minimum of 75% of the
38 floor space has been renovated during a 3-year
39 period beginning after October 1, 1992; and
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(d) All office and commercial space after October 1, 1997.

I. An employer shall review and revise if necessary its policy governing smoking in its workplace or workplaces not later than 12 months after the original implementation of that policy and not less frequently than every 2 years thereafter.

J. An employer shall conspicuously mark with signs areas where smoking has been prohibited within the workplace.

3-A. Exempted workplaces. The following workplaces are exempted from the provisions of this section:

A. A private home that serves as a workplace, except when licensed for child care;

B. Office space leased or rented by a sole independent contractor for that contractor's own use;

C. Retail tobacco stores;

D. Any employer in the State whose employees are represented by a collective bargaining unit, such unit having established negotiation and grievance procedures;

E. Restaurants, bars, lounges, taverns, private rooms of hotels and motels and function rooms rented solely for the use of a private individual or business; and

F. A business facility where policies concerning smoking have been mutually agreed upon by the employer and all employees.

4. Violations. Failure to establish, post or supervise the implementation of a policy is a civil violation for which a fine of not more than \$100 may be adjudged. The Bureau-of-Health shall-have department has authority to enforce provisions of this section.

4-A. Grievance procedure; administrative review. Grievance procedures and administrative review are governed by the following provisions.

A. After 6 months of continuous employment with an employer, an employee may request an employer to make accommodations for the employee in accordance with subsection 3, paragraph H, subparagraph (1). The employee must give written notice to the employer of the request. Upon receipt of the notice, the employer shall make a reasonable and diligent attempt to address the employee's request.

2 B. If the employer's decision resulting from the
3 established grievance procedure does not attempt to
4 reasonably satisfy the employee, or if the employer has
5 failed to take any action within 30 days after receiving
6 written notice of the employee's objection, the employee may
7 file a complaint with the department.

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10 C. The department, upon receipt of written complaint from
11 an employee, shall:

12 (1) Hold a hearing within 45 days of the date of the
13 employee's complaint to determine whether the
14 employer's smoking policy conforms to the requirements
15 of this section, and whether the employer's smoking
16 policy is being enforced by the employer; and

17 (2) Attempt to resolve the dispute to the satisfaction
18 of the employer and the employee.

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21 D. The commissioner has the right to enter any workplace to
22 investigate any complaint made under this section.

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24 E. When warranted, the commissioner may order the employer
25 to implement or enforce a policy that is adequate to provide
26 reasonable protection for the demonstrable health concerns
27 of the complaining employee, giving due consideration to the
28 reasonable needs of the employer's business and the
29 reasonable needs of other employees. The employer shall
30 implement any such order within 30 days or other such
31 reasonable time limit set by the commissioner. The employer
32 may not be required to make any structural or physical
33 changes to the workplace. The commissioner may not require
34 an employer to prohibit smoking in an entire workplace or
35 substantial portion of a workplace.

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37 F. Upon failure of an employer to implement an order of the
38 commissioner, the employer may be subject to a fine of not
39 more than \$1,000.

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41 G. If an employer fails to comply with an order of the
42 commissioner, the commissioner may file a written complaint
43 with the District Court for injunctive relief.

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45 H. The department may adopt rules necessary to implement
46 and enforce the provisions of this section. Any such rules
47 adopted under this paragraph must recognize that collective
48 bargaining agreements and grievance procedures that
49 reference workplace smoking policies supersede all other
50 regulations of smoking in the workplace, except fire codes,
51 and that copies of any complaints must be filed with the
52 department.

2 5. Civil remedies. Nothing in the this section may be
4 construed as precluding any person from pursuing, in any court of
6 competent jurisdiction, any civil remedy that person may have at
law or in equity for harm occasioned to that person from smoking
by others in any business facility covered by this section.

8 6. Discharge, discipline or discrimination against
10 employees. ~~It is unlawful for any employer to~~ The discharge, and
12 discipline or--otherwise discriminate of and discrimination
14 against any-of-its employees because-that-employee-has-assisted
in-the-supervision-or-enforcement-of-this-section are governed by
the following provisions.

16 A. It is unlawful for any employer to discharge, discipline
18 or otherwise discriminate against any of its employees
because that employee has assisted in the supervision or
enforcement of this section.

20 B. It is unlawful for an employer to discharge, refuse to
22 hire or in any manner discriminate against any employee or
24 applicant for employment based on whether the employee or
applicant is a smoker or whether the employee or applicant
exercises rights granted under this section.

26 C. If the commissioner has reason to believe that any
28 employer has dismissed, refused to hire or in any manner
30 discriminated against any employee or applicant for
32 employment because the employee or applicant is a smoker or
34 a nonsmoker or for asserting rights granted under this
36 section, the commissioner may, after hearing at which the
38 employer has had an opportunity to be heard, order the
employer to take whatever action is necessary to remedy the
situation, including but not limited to, reinstatement of
the employee's former position, with all rights appurtenant
to that position, payment of lost wages and civil
administrative fines not exceeding the employee's gross
annual income, or \$10,000, whichever is larger.

40 ~~7. Application. This section does not apply to any~~
42 ~~business facility where policies concerning smoking have been~~
~~mutually agreed upon by employer and all the employees.~~

44 ~~8. Effective date. This section shall take effect January~~
46 ~~1, 1986.~~

48 9. Construction. Nothing in this section may be construed
50 to require an employer to prohibit smoking in an entire workplace
or a substantial portion of the workplace.

52 10. Application. Notwithstanding any other ordinance or
regulation except fire or safety, this section constitutes the

2 exclusive system of regulating smoking in the workplace in the
3 State.

4 **Sec. 2. Effective date.** This Act takes effect October 1, 1992.

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7 **STATEMENT OF FACT**

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9 The purpose of this bill is to address concerns regarding
10 the effects of environmental tobacco smoke on the nonsmoker by
11 strengthening the State's current workplace smoking law. The
12 bill establishes criteria for the formulation and content of
13 smoking policies; establishes an employee grievance process for
14 violations of the policies; and strengthens the enforcement
15 provisions of the current law. The bill also provides an
16 appropriate amount of flexibility to employers and employees in
17 tailoring smoking policies to meet the particular needs and
18 physical limitations of the variety of workplaces that exist in
19 the State. The bill transfers the responsibility for regulation
20 of the workplace smoking laws to the Department of Labor.