

MAINE STATE LEGISLATURE

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124th MAINE LEGISLATURE

FIRST REGULAR SESSION-2009

Legislative Document

No. 1429

S.P. 513

In Senate, April 7, 2009

An Act To Strengthen the Workplace Smoking Laws and Other Laws Governing Smoking

Reference to the Committee on Health and Human Services 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 Senator MILLS of Somerset.

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

2 **Sec. 1. 22 MRSA §1542, sub-§2, ¶F,** as enacted by PL 1993, c. 342, §1 and
3 affected by §9, is repealed.

4 **Sec. 2. 22 MRSA §1542, sub-§2, ¶J,** as amended by PL 2005, c. 257, §4, is
5 further amended to read:

6 J. Smoking is not prohibited in a private residence, subject to section 1580-A,
7 unless the private residence is used as a day care or baby-sitting service. If a private
8 residence is used as a day care or baby-sitting service, smoking is prohibited:

9 (1) In the residence, during the hours of operation as a day care or baby-sitting
10 service;

11 (2) In outdoor areas on the property of that private residence, wherever a child
12 under care may be present; and

13 (3) During the facility's hours of operation, in a motor vehicle owned or operated
14 by the facility whenever a child under care is in the vehicle.

15 **Sec. 3. 22 MRSA §1545-A** is enacted to read:

16 **§1545-A. Exposure to secondhand smoke; nuisance and trespass**

17 Exposing another person nonconsensually to secondhand smoke in areas where
18 smoking is prohibited is a nuisance and a trespass and may be enforced as a nuisance or
19 as a trespass.

20 **Sec. 4. 22 MRSA §1580,** as reallocated by PL 1983, c. 816, Pt. A, §15, is
21 repealed.

22 **Sec. 5. 22 MRSA §1580-A, sub-§2, ¶A,** as enacted by PL 1985, c. 126, is
23 amended to read:

24 A. "Business facility" means a structurally enclosed location or portion thereof at
25 which employees perform services for their employer. A business facility ~~shall~~ **does**
26 not include any workplace or portion of a workplace ~~which that~~ also serves as the
27 employee's or employer's personal residence. A business facility is a place of
28 employment. Notwithstanding this paragraph, a personal residence or unit or
29 apartment in a residential facility is a business facility only during the period of time
30 that an employee is physically present to perform work there. A residential facility,
31 nursing home or a hospital is a business facility.

32 **Sec. 6. 22 MRSA §1580-A, sub-§2, ¶A-2** is enacted to read:

33 A-2. "Designated smoking area" means an outdoor area where smoking is permitted,
34 which must be at least 20 feet from entryways, vents and doorways.

35 **Sec. 7. 22 MRSA §1580-A, sub-§2, ¶C-3** is enacted to read:

1 C-3. "Residential facility" means a facility with one or more residential units or
2 apartments that is licensed by the Department of Health and Human Services.

3 **Sec. 8. 22 MRSA §1580-A, sub-§3**, as amended by PL 2005, c. 338, §4, is
4 repealed and the following enacted in its place:

5 **3. Policy; notice.** Each employer shall establish, or may negotiate through the
6 collective bargaining process, a written policy concerning smoking and nonsmoking by
7 employees in that portion of any business facility for which the employer is responsible,
8 subject to paragraph A. In order to protect the employer and employees from the
9 detrimental effects of smoking by others, the policy must prohibit smoking indoors
10 subject to paragraph A, prevent environmental tobacco smoke from circulating into
11 enclosed areas and prohibit smoking outdoors except in designated smoking areas. The
12 policy may prohibit smoking throughout the business facility, including outdoor areas.
13 The employer shall post and supervise the implementation of the policy. The employer
14 shall provide a copy of this policy to any employee upon request. Nothing in this section
15 may be construed to subject an employer to any additional liability, other than liability
16 that may exist by law, for harm to an employee from smoking by others in any business
17 facility covered by this section.

18 A. All areas of a business facility into which members of the public are invited or
19 allowed are governed by the provisions of chapter 262.

20 B. The Maine Center for Disease Control and Prevention shall accept inquiries from
21 employers and employees and shall, when requested, assist employers in developing
22 a policy.

23 **Sec. 9. 22 MRSA §1580-B**, as amended by PL 2001, c. 59, §§1 to 3, is repealed.

24 **Sec. 10. 22 MRSA §1825**, as enacted by PL 1983, c. 293, is repealed.

25 **SUMMARY**

26 This bill does the following:

- 27 1. It prohibits designated smoking areas indoors in places of employment and
28 provides a definition of permitted outdoor designated smoking areas;
- 29 2. It repeals the laws on smoking in hospitals, nursing homes and jury rooms that
30 differed from the public place and workplace laws;
- 31 3. It clarifies in the laws governing workplace smoking that "business facility" may
32 include a private residence or unit or apartment within a residential facility during the
33 period of time that the private residence or unit or apartment is a place of employment;
34 and
- 35 4. It clarifies that "residential facility" means a facility licensed by the Department of
36 Health and Human Services.