

MAINE STATE LEGISLATURE

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Minority

HEALTH AND HUMAN SERVICES

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
129TH LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 325, L.D. 416, Bill, "An Act To Allow Eating Establishments To Permit Smoking Tobacco in Designated Outdoor Eating Areas"

Amend the bill by striking out everything after the enacting clause and inserting the following:

Sec. 1. 22 MRSA §1541, sub-§1, as amended by PL 2005, c. 257, §1, is further amended to read:

1. Designated smoking area. "Designated smoking area" means an enclosed area or outdoor eating area designated as a place for smoking. A designated area must be designed to prevent smoke escaping from the designated area into a public place.

Sec. 2. 22 MRSA §1541, sub-§2-A is enacted to read:

2-A. Outdoor eating area. "Outdoor eating area" means a patio, deck or other property that is partially enclosed or open to the sky that is permitted for outdoor eating or drinking under the control of an eating establishment, as defined in section 2491, subsection 7, as long as food or drink is served by the eating establishment to the public for consumption on the premises.

Sec. 3. 22 MRSA §1542, sub-§1, as amended by PL 2009, c. 140, §1, is further amended to read:

1. Prohibition. Smoking is prohibited in all enclosed areas of public places, outdoor eating areas as provided in section 1550 and all rest rooms made available to the public. In the case of a child care facility that is not home-based, smoking is also prohibited in a facility-designated motor vehicle within 12 hours before transporting a child who is in the care of the child care facility, and whenever such a child is present in the vehicle. Smoking is also prohibited in outdoor areas of the facility where children may be present.

Sec. 4. 22 MRSA §1542, sub-§2, ¶O is enacted to read:

O. Smoking is not prohibited in an outdoor eating area as provided by section 1550.

COMMITTEE AMENDMENT

1 **Sec. 5. 22 MRSA §1543**, as enacted by PL 1993, c. 342, §1 and affected by §9, is
2 amended to read:

3 **§1543. Posting signs**

4 Signs must be posted conspicuously in buildings where smoking is regulated by this
5 chapter. Designated smoking areas must have signs that read "Smoking Permitted" with
6 letters at least one inch in height. Places where smoking is prohibited must have signs
7 that read "No Smoking" with letters at least one inch in height or the international symbol
8 for no smoking.

9 **Sec. 6. 22 MRSA §1550**, as enacted by PL 2009, c. 140, §2, is amended to read:

10 **§1550. Smoking in outdoor eating areas**

11 ~~1. Definition. As used in this section, "outdoor eating area" means a patio, deck or~~
12 ~~other property that is partially enclosed or open to the sky that is permitted for outdoor~~
13 ~~eating or drinking under the control of an eating establishment, as defined in section~~
14 ~~2491, subsection 7, as long as food or drink is served by the eating establishment to the~~
15 ~~public for consumption on the premises.~~

16 ~~2. Smoking. Smoking is not prohibited in an outdoor eating area if the outdoor~~
17 ~~eating area or any portion thereof is open and available for dining and beverage service~~
18 ~~no one under 21 years of age is permitted in the outdoor eating area.~~

19 **3. Notification; request for compliance.** An eating establishment, as defined in
20 section 2491, subsection 7, with an outdoor eating area shall post signs in accordance
21 with section 1543, notify its patrons ~~of the prohibition on whether smoking is prohibited~~
22 in the outdoor eating areas and request that all persons within an the outdoor eating
23 area comply with this section.

24 **4. Protection of employees.** If an eating establishment allows smoking in an
25 outdoor eating area, the eating establishment shall:

26 A. Prohibit employees of the eating establishment from providing dining and
27 beverage service in the outdoor eating area;

28 B. Require its patrons to obtain and purchase food and drink in an area of the eating
29 establishment that prohibits smoking; and

30 C. Maintain and enforce policies that limit the circumstances in which employees of
31 the eating establishment may enter an outdoor eating area during the times in which
32 smoking is allowed.'

33 **SUMMARY**

34 This amendment, which is the minority report of the committee, replaces the bill. It
35 amends the laws about smoking in public places to not prohibit smoking in an outdoor
36 eating area of an eating establishment as long as no one under 21 years of age is
37 permitted in the outdoor eating area. It requires an eating establishment that allows
38 smoking to prohibit employees of the eating establishment from providing dining and
39 beverage service in an outdoor eating area, require its patrons to obtain and purchase food
40 and drink in an area of the eating establishment that prohibits smoking and maintain and

COMMITTEE AMENDMENT "*A*" to H.P. 325, L.D. 416

1 enforce policies that limit the circumstances in which employees of an eating
2 establishment may enter an outdoor eating area during the times in which smoking is
3 allowed.