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

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

Sec. 1. 22 MRSA §1542, sub-§2, ¶F, as enacted by PL 1993, c. 342, §1 and affected by §9, is repealed.

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

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

- (1) In the residence, during the hours of operation as a day care or baby-sitting service;
- (2) In outdoor areas on the property of that private residence, wherever a child under care may be present; and
- (3) During the facility's hours of operation, in a motor vehicle owned or operated by the facility whenever a child under care is in the vehicle.

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

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

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

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 A, §15, is repealed.

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

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. A business facility is a place of employment. Notwithstanding this paragraph, a personal residence or unit or apartment in a residential facility is a business facility only during the period of time that an employee is physically present to perform work there. A residential facility, nursing home or a hospital is a business facility.

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

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

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

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

Sec. 8. 22 MRSA §1580-A, sub-§3, as amended by PL 2005, c. 338, §4, is repealed and the following enacted in its place:

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

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

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

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

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

SUMMARY

This bill does the following:

1. It prohibits designated smoking areas indoors in places of employment and provides a definition of permitted outdoor designated smoking areas;

2. It repeals the laws on smoking in hospitals, nursing homes and jury rooms that differed from the public place and workplace laws;

3. It clarifies in the laws governing workplace smoking that "business facility" may include a private residence or unit or apartment within a residential facility during the period of time that the private residence or unit or apartment is a place of employment; and

4. It clarifies that "residential facility" means a facility licensed by the Department of Health and Human Services.