

# MAINE STATE LEGISLATURE

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**LEGISLATIVE RECORD**

OF THE

***One Hundred and Twelfth  
Legislature***

OF THE

**STATE OF MAINE**

**Volume I**

**FIRST REGULAR SESSION**

**December 5, 1984 - June 20, 1985**

Office, Marie Brotherton. The Chair would ask Mrs. Brotherton to please rise and accept the greetings of the Senate. (Applause the Members rising.)

On motion by Senator **BALDACCI** of Penobscot, **RECESSED** until the sound of the Bell.

After Recess

The Senate called to order by the President.

#### ORDERS OF THE DAY

The President laid before the Senate the Tabled and Specially Assigned Matter:

Bill "An Act to Establish Policies Governing Smoking in Places of Work" (H.P. 235) (L.D. 276)

Tabled—April 9, 1985, by Senator **VIOLETTE** of Aroostook.

Pending—**PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A"** (H-53).

(In House, April 4, 1985, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A"** (H-53).)

(In Senate, April 9, 1985, **READ A SECOND TIME**.)

On motion by Senator **VIOLETTE** of Aroostook Tabled until later in today's session, pending **PASSAGE TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A"** (H-53).

On motion by Senator **BUSTIN** of Kennebec the Senate **SUSPENDED THE RULES**.

On further motion by same Senator, the Senate **RECONSIDERED** its action whereby it **ADOPTED** Committee Amendment "A" (H-53).

On motion by Senator **BUSTIN** of Kennebec, Senate Amendment "B" (S-44) to Committee Amendment "A" (H-53) **READ**.

**THE PRESIDENT:** The Chair recognizes the Senator from Kennebec, Senator Bustin.

Senator **BUSTIN:** Mr. President, Men and Women of the Senate, while most of us are undoubtedly in agreement that smoking in the workplace is an issue which must be addressed by this Legislature, and ultimately by businesses throughout this State, I find I am unable to support the Bill in its present form.

L.D. 276 as Amended by Committee Amendment "A" contains several provisions which impose unnecessary and oppressive regulations on businesses. It is for this reason that I offer Senate Amendment "B" to Committee Amendment "A".

One of the most important distinctions between Committee Amendment "A" and the one which I offer now, is that my amendment eliminates the penalties to employers for violations of the law. Our experience with smoking prohibition in public proceedings has been that the law has worked very well without sanctions. You might remember, if you were here then, that what we did with that public meetings-place law was before, you had to have a majority of the people to vote for "no smoking" in public meetings; we switched that around and said, "if one person objected, then you couldn't have smoking"; and we did not put a penalty on it.

I think that you will agree that most businessmen in this State are responsible, well intentioned people, who will make every effort to comply with the law. Penalizing them for failure to fulfill the letter of the law when they are committed to the spirit of it would be unfair and unreasonable.

Again, we have past experience on which we can rely, which attests to the fact the lack of a need for penalty provisions. I would also add that L.D. 133 "An Act to Prohibit Smoking in Certain Retail Stores" also contains no sanctions.

The second most important feature of Senate Amendment "B" is, it eliminates the provision which allows employers to ban smoking in the workplace entirely. Instead, Senate Amend-

ment "B" permits the employer to adopt a policy designating "smoking" and "non-smoking" areas in the workplace, which I think is appropriate and fair. This is a far more reasonable and practical approach than that suggested by Committee Amendment "A".

Finally, Senate Amendment "B" eliminates the language contained in Committee Amendment "A", which suggests a conclusive correlation between exposure to side-stream smoke and risks of impairment to one's health. While I would love to see statistics that would absolutely pin side-stream smoke to the impairment of one's health, we do not have that inclusive evidence yet; in the future, hopefully, we will, but we don't at the moment.

This language not only misrepresents the conclusions of many medical experts, but also provides an additional cause of action by employees, the failure on the part of the employer to comply completely with the provisions of the law.

Again, enacting intrusive legislation is not the way to solve a problem. Dictating restrictive policies could well create more serious problems for employees and employers than the problem it seeks to correct. Policy-decisions are best made by the individuals who are directly affected by them. Respect, tolerance and accommodation are and must remain the business of people — not government. Accordingly, I urge you to vote "yes" on the pending motion to adopt Senate Amendment "B".

I would like to allay some fears or some allegations that I've heard privately, that I have been bought by the tobacco lobby. I don't think, and I would hope that nobody in their right minds in this Senate Chamber or in the other Body would think, that I could be bought by any lobby, let alone the tobacco lobby.

I have been in the forefront of pushing for control of smoking. If I had my way, and if I had thought of it early enough, and if the coalition that put together this Bill had come to me, I would have suggested then, as we had suggested before when we wanted the indoor smoking act, that what we do in the future, seeing there are so many bills in this Legislature about smoking is that we have a ban on smoking in the entire State of Maine; and only have smoking in designated areas, and then fine the people who light up in non-designated areas. That seems to make some sense to me. The way this Bill is presently written does not.

I am happy with the amendment, and I think that it will work. I know that from statistics I have read, that throughout the country, (it is sweeping the county) to have "smoking" and non-smoking policies in the workplace. The businesses are doing this, they really, truly are doing this. Do we need to fine them to make sure that they do it? I don't think so. Thank you.

**THE PRESIDENT:** The Chair is pleased to interrupt proceedings to recognize in the rear of the Chamber a couple more former Members who have come in: Former Senator Frank Harding of Rockland and Senator Ed Greeley. The Chair would ask the Gentlemen to please rise and accept the greetings of the Senate. (Applause, the Members rising)

**THE PRESIDENT:** The Chair recognizes the Senator from Androscoggin, Senator Berube.

Senator **BERUBE:** Members of the Senate, my colleague down the other way, has said that her amendment will work. It sure will. It's going to kill a perfectly good Bill.

I'll tell you about the Bill. I would say, at this point, that the Committee Bill, by the way, is a report of 12 to 1, with one unenlightened colleague. This Bill is an amended version of the original bill. It requires an employer to establish, to post like a sign and to supervise a written policy concerning smoking in the working place. It designates a smoking area —

the employer designates. The employer selects the smoking area and basically, that's all there is to it.

Further, the Bureau of Health will assist the employer in developing a policy. Yes, there is a penalty which could be up to one hundred dollars if there is no sign that can be seen or written policy that can be inspected. Now, those businesses which presently have a smoking policy, which has been mutually agreed upon between both employer and employee, they are exempt.

Let's talk about the amendment now. I would say, also, that our Bill, the Committee Bill has addressed all the concerns and some certainly were valid, concerns from the industry, from the employers of our State. The Maine Merchants Association is supportive of this Bill. The Chamber of Commerce is supportive of this Bill, and if they don't know, then who does? Because they're the ones who are the employers.

The Bill assures the right, which is not a privilege, but a right, a right to a clean air working environment for everybody — management, employers, employees.

Now, I want to talk about the amendment. It does three things. It deletes the safety clause for the employees while retaining the protection against liability for the employer. Now why do we take out one and leave the other in? The Bill clearly states that the employer would not be liable for any illness or whatever which might be caused that might have a detrimental effect from smoking. So, the liability aspect of the Bill has been addressed. There's no concern with that now.

The Committee Bill allows for a policy to protect the non-smoker. Mutual determination regarding a designated "smoking" area. This amendment would allow the designation to be, perhaps, one chair; that's all they'd need, if you accept this amendment. Some one could say, "one chair out in the 'boonies' would be a smoking area or non-smoking area."

Senator Bustin's amendment deletes the section where the Bureau of Health would oversee, would help to write a policy enforcing, for example, the posting of a sign. Now, some one reminded me that we've heard that enforcement is not a good thing. Strange that we can hear it in the Senate today, when in the other Body, two years ago, there was a bill being debated on banning smoking in retail establishments, and at that time, the representatives of the group that my colleague here mentioned a minute ago, helped defeat that bill on the basis, that there was indeed, no enforcement clause. So, two years they turn around say "that's a bad clause."

Now, my astute and very intelligent, however, naive colleague knows better; she knows this is a good Bill — deep down in her heart she knows it.

I asks that you reject the amendment which is presently being offered to you. Thank you very much.

**THE PRESIDENT:** The Chair recognizes the Senator from Kennebec, Senator Bustin.

Senator **BUSTIN:** I usually do not like to rise two and three times on a bill, but there's been some allegations of my naivete and my unenlightenment. Somebody speaking for me, I assure you, my colleagues, that I can speak very well for myself; and what I have said is what I mean, and I've never considered an honest disagreement and difference of opinion to be unenlightenment.

I would also mention that I am not aware, and if it is it's unintentional, I am pretty sure that I have not, I don't have time right now to double check it, but I would almost assure you that my amendment, still allows the Bureau of Health to go in and assist at the request of the employer or employee, to help them to write a policy. That is not the problem.

I leave you with the Bureau of Health already has, I think it is like nine sanitarians who can-

not now cover all of the restaurants they have to inspect. I can't figure out how they are going to inspect all of these businesses to make sure they have a smoking sign.

**THE PRESIDENT:** The Chair recognizes the Senator from Cumberland, Senator Gill.

Senator **GILL:** Mr. President and Members of the Senate, the amendment offers the Committee nothing new. The Human Resources Committee really dealt with this issue long and hard. We had a large hearing on this; we had on the wall in Room 113 in the State Office Building a large poster with all of the groups who were supportive of this legislation. There were many who worked long and hard to come up with some legislation that they felt they could support. There were diverse groups among them but they got together on this legislation.

The Committee worked with all the information they had at hand with all the testimony that was given, and they came up with an almost unanimous report.

You know we have to realize that seventy percent of the people do not smoke, and people who don't care about smoking or being made ill by smoking, will usually avoid those smoky bars and will usually avoid the smoky restaurants that do not have non-smoking areas. However, there is one place that they can't remove themselves from and that is the workplace, and that's what we are dealing with here today.

This is a reasonable approach. The Committee, as I said, worked hard on this Bill with the help from a whole coalition of groups of people. This proposal is a simple proposal that will protect the people who cannot tolerate smoke while they are at their place of work.

As I said, the issues in the amendment that was offered today were discussed; and they were discarded along the way, and we came out with that near unanimous report of the Committee.

I received a letter (among many of the letters that I received on this issue) from some one that I respect a great deal. He said "we hear so much about acid rain and we hear so much about pollution on such a grand scale, that we shake to think of the changes necessary in our society to alter them.

Let's not back away from doing something where the action is double. Not only smoking what it does to you, but the side-stream effect of it." I think he states it very succinctly, and I think we should discard the amendment that has been offered today and go with the Committee Report.

**THE PRESIDENT:** The Chair is pleased to interrupt the debate to recognize in the rear of the Chamber a former Member, Clair Lewis. The Chair would ask Senator Lewis to please rise and accept the greetings of the Senate. (Applause, the Members rising)

The Chair, also, notes in the rear of the Chamber a former Member who had stood up on the floor a number of times to discuss this very issue, dealing with smoking. The Chair is pleased to recognize the former Senator from Knox, Senator Collins and his wife, Dorothy. The Chair would ask them to rise and please accept the greetings of the Senate. (Applause, the Members rising)

**THE PRESIDENT:** The pending question is the **ADOPTION** of Senate Amendment "B" to Committee Amendment "A".

The Chair will order a Division.

Will all those Senators in favor of the motion to Adopt Senate Amendment "B" to Committee Amendment "A", please rise in their places to be counted.

Will all those Senators opposed, please rise in their places to be counted.

13 Senators having voted in the affirmative, and 17 Senators in the negative, the motion to **ADOPT** Senate Amendment "B" (S-44)

to Committee Amendment "A" (H-53) **FAILED**.

Committee Amendment "A" (H-53) was **ADOPTED**, in concurrence.

Which was **PASSED TO BE ENGROSSED, AS AMENDED**, in concurrence.

(Off Record Remarks)

**THE PRESIDENT:** The Chair is pleased to recognize in the rear of the Chamber another former Member, Richard Olfene, Auburn. The Chair would ask the Senator to please rise and accept the greetings of the Senate. (Applause, the Members rising)

On motion by Senator **TRAFTON** of Androscoggin, **ADJOURNED** until 12 o'clock tomorrow.