

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD
OF THE
One Hundred And Fourteenth Legislature
OF THE
State Of Maine

VOLUME II

FIRST REGULAR SESSION

May 10, 1989 to June 14, 1989

The Bill was passed to be engrossed as amended by Committee Amendment "A" as amended by House Amendment "A" thereto in non-concurrence and sent up for concurrence.

(Off Record Remarks)

(At Ease to the Gong)

The House was called to order by the Speaker.

The Chair laid before the House the following matter: Majority Report (8) of the Committee on Human Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-232) on Bill "An Act to Prohibit Smoking in Hospitals" (H.P. 728) (L.D. 1005) and Minority Report (5) of the same Committee reporting "Ought Not to Pass" on same Bill which was tabled earlier in the day and later today assigned pending the motion of Representative Manning of Portland that the House accept the Majority "Ought to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Manning.

Representative MANNING: Mr. Speaker, Ladies and Gentlemen of the House: This particular piece of legislation, if enacted, would prohibit smoking in hospitals throughout the State of Maine. There are some hospitals in this state who do have this particular piece on their books now but they are only doing it on a volunteer basis. This piece of legislation would mandate that all hospitals would have to have a "no smoking" area.

Some concerns have been brought up regarding smokers who go into hospitals and, during their course of treatment, they would not be able to smoke. On page two of the amendment you will see there has been an exception written into it that would allow the doctor to write an order indicating that the patient or the resident could smoke. If that particular person needed to smoke and it happened that they were -- as it says, "a patient or resident of a hospital or state institution may smoke in a designated area within the hospital or the state institution if a licensed physician has written an order permitting the patient or resident to smoke." For instance, people who smoke at AMHI, the doctor would allow that person to smoke in a designated area. If it was at St. Mary's in Lewiston, (somebody talked to me earlier about this) it would allow that person to smoke in a designated area if the physician allowed that person to do it. The exception is only with the physician.

The bill would go into effect on November 16, 1989. The reason for that is, the Hospital Association has tried, on a volunteer basis, to get all hospitals to have smoke-free areas by that time. However, the Hospital Association was in favor of this piece of legislation and asked us to put that November 16th date in there. This is probably one of the first times in my recent memory that I have gone along with the hospitals. Many times, as some of the veterans here know, I have not been in favor of a lot of hospital legislation.

I think the reason why the majority passed this piece of legislation is the fact that many people who end up in hospitals end up there because they smoke. The last thing that we want to do is have staff smoking in front of people, staff smoking in areas that could be close to some of these people,

residents or patients smoking next to some of these people. I think it is something that we need to address. The Medicare shortfall that we hear about all the time, a good percentage of those people who are in the hospitals are in there because of diseases that were related to smoking. I think that it is time that we in the state take a hard look at trying to decrease why people end up in hospitals and, when they do go into hospitals, you take a look at hospitals that allow smoking and somebody is going in dying of lung cancer or dying of emphysema or dying of other causes that were related to smoking, I think that is where we should start and, hopefully, you will go along with the Majority Report.

The SPEAKER: The Chair recognizes the Representative from Brunswick, Representative Clark.

Representative CLARK: Mr. Speaker, Ladies and Gentlemen of the House: I would urge you to vote against the Majority Report so we may go on to accept the Minority Report today.

I would like to briefly explain the reasons why I believe this Majority Report is bad policy. I ask you as I talk to think about your own hospital. I also ask you to think about the patients who use that hospital and I ask you to think about the family members who go visit those patients. The debate today should not be whether smoking is bad for your health, because I don't think that there is a single person on the Human Resources Committee who believes that it is. However, the reality is that a number of people do smoke. It has been estimated that approximately 30 percent smoke. The reality is that many of those people, as Representative Manning pointed out, may be ill from diseases caused by smoking. However, the time that they are hospitalized for that may not be the best time to try to deal with that problem.

Representative Manning from Portland told you that this bill will not require that they not smoke. However, let me tell you some other things that may happen -- this bill does not mandate that hospitals have a designated smoking area, it only says "that physicians may determine that patients may smoke." The sponsor of this legislation envisioned that that would be the patient's room at the time the patient was in it.

Think also of patients who are in hospitals for mental illness or a hospital for substance abuse. Even if they are in fact smokers, that is the time to try to deal with their addiction.

Representative Manning has told you that the Hospital Association is in favor of this bill. Of course, they are in favor of this bill. If we mandate that this go into effect, we will pay through direct pass-throughs under our current regulatory system for any changes that the hospital needs to make in order to accommodate this policy. If they do it voluntarily, then they have made that decision as a policy. We do not need to mandate this. This is a very extreme policy. It also does not allow family members to smoke. Again, the debate is not whether that is good or bad. I would ask you to think particularly about our larger hospitals and where the intensive care unit is. At Maine Medical, I can tell you from personal experience that it is in the middle of the building on the fifth floor. You are asking people who are there to leave that area to go outside and smoke at a time that is clearly very stressful to them.

For all those reasons, ladies and gentlemen, I would urge you that this is not a good bill, that there were middle grounds the majority of this committee was not willing to discuss and, therefore, I urge you to vote to "Ought Not to Pass" on this.

The SPEAKER: The Chair recognizes the Representative from Limestone, Representative Pines.

Representative PINES: Mr. Speaker, Ladies and Gentlemen of the House: I am the sponsor of this bill and when I was questioned and Representative Clark asked about where they would smoke, I did not wish to mandate to the hospitals where they would smoke. I allowed that to be a voluntary decision of each hospital. I, therefore, said that I think it would be in their rooms depending on their condition.

The experience I had was with a patient who was not going to live very long -- that patient was in such pain and agony, they could not have been removed from their room so we, therefore, did not mandate the place where they would have the smoking privilege. Eight hospitals now have such a policy mirroring this bill. Others have restricted policy; thus with only a physician's order. Some of those hospitals would add to the eight hospital member of the 45 hospitals we have but because they had restricted areas with a physician's order, they didn't consider themselves smokeless. Some have smoking areas. Many would like it to pass to give support to their administrators but they don't have the desire to cut it out completely. Banned smoking is already in effect in retail stores and in government buildings to protect those who are conducting their daily business.

Ladies and gentlemen of the House: These are sick people, many of them unable to protect themselves. We are talking about health care facilities in a house where people go when they are ill. Of course, there is stress for the visitor. If the visitor has to leave the area to smoke, it is not that difficult for them to go to their car or outside and have their cigarette.

I had personal experiences as I told you. We are not here to just protect our fellow workers and the public, we are here today with a bill that protects those who are ill who cannot protect themselves.

Representative Strout came in this morning and told me he had had phone calls from people saying, "I can't believe you haven't done this before, this would be the first place I would think would do this, a health care facility that most people out there think smoking is already banned.

As a young person having a tonsillectomy, I didn't speak up and tell the nurse every time she came in from having a cigarette, after having had ether, she made me vomit again. How many other people in there who are ill don't realize that there is a problem. Others who testified that day (and no one testified, absolutely no one testified against this bill) said that, during times of stress, the very last thing they were thinking of was a cigarette.

Ladies and gentlemen of the House, I hope that you will support the Majority Report.

The SPEAKER: The Chair recognizes the Representative from South Portland, Representative DiPietro.

Representative DIPIETRO: Mr. Speaker, I would like to pose a question through the Chair.

What is the present procedure in hospitals at this time? Could somebody tell us that?

The SPEAKER: The Representative from South Portland, Representative DiPietro, has posed a question through the Chair to anyone who may respond if they so desire.

The Chair recognizes the Representative from Limestone, Representative Pines.

Representative PINES: Mr. Speaker, Ladies and Gentlemen of the House: There is a great hospital smokeout day goal of November 16, 1989. This is a voluntary program being carried out by the hospitals in the State of Maine. They have offered cessation

smoking classes for their employees who are presently smoking and this bill will be an assistance to them. If the debate goes further, I will explain how this could assist them but the hospitals are trying voluntarily with the Great Smokeout Day, November 16, 1989, to make all hospitals smoke-free.

The SPEAKER: The Chair recognizes the Representative from Bangor, Representative Pederson.

Representative PEDERSON: Mr. Speaker, Ladies and Gentlemen of the House: One of the very bad things that is involved in this bill is that it includes the institutions, our mental institutions, and we have a population probably of 99 percent smokers. It is going to create a very serious problem for these minority people who have problems which is hard for the average person to even comprehend. They are not as educable in this area as we are and some other portions of the population. They have a little bit of a different problem than we do and yet we want to treat them same as we treat everybody else. I think they are a very important exception and should be taken into consideration and that is why I urge you to vote against this bill.

The SPEAKER: The Chair recognizes the Representative from Penobscot, Representative Hutchins.

Representative HUTCHINS: Mr. Speaker, Ladies and Gentlemen of the House: I rise in favor of this today looking at it as more of a protection for those that cannot protect themselves, much like we do with the seatbelt law for children. The point of the cost of the bill being borne by the taxpayers wouldn't be, in most cases, much more than "no smoking" signs. The doctors now prescribe drugs without our help and I believe they probably could also prescribe in this area for those that need the exception.

The SPEAKER: The Chair recognizes the Representative from Brunswick, Representative Clark.

Representative CLARK: Mr. Speaker, Men and Women of the House: I really feel obligated to rise to clarify the point that was just made by the last speaker and that is, he is incorrect, the cost to the taxpayer could be considerably more than the cost of "no smoking" signs. Under our current regulatory system, and I suspect under any system that we may pass in this body in the next six weeks, the cost of health care gets passed on to the consumer. The state goes through the insurance premiums we pay for our employees and because of Medicaid, we do bear a share of the hospital cost and it will be passed on to us through those two mechanisms.

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Manning.

Representative MANNING: Mr. Speaker, Ladies and Gentlemen of the House: The point that was just made about direct payments coming from the consumers, I think the veterans in this House remember me sitting here about the last few days of the legislative session last year about one-thirty in the morning arguing about the consumers. I know what this bill will do, I am certainly fighting for the consumers, but I don't think it is going to be that costly. I don't think we are going to be talking that much money.

There is one particular hospital in my community who has constantly criticized the MHCFC statutes that did it voluntarily. They do not allow smoking at all. It is the fifth largest hospital in the State of Maine. I don't think they went to MHCFC and asked to have a designated smoking area nor, if this bill goes through, I don't think they will do that then.

The other thing about the institutions, they can have a designated area at AMHI or at Bangor. Members of my committee were over there a couple of months

ago and right now they have a designated area. They don't smoke in their rooms, they smoke in a designated area. If the physician allows that to happen, they can smoke in a designated area. Those people at AMHI can still smoke.

I think we have put some safeguards in here with the "exceptions." I think if that is the thing people are worried about, they should look at that on the amendment. It allows for designated areas, if the patient get an order from the physician. At AMHI, St. Mary's, St. Joseph's, at CMMC, many of those places could have a designated area if the physician allowed it.

The SPEAKER: The Chair recognizes the Representative from Bangor, Representative Pederson.

Representative PEDERSON: Mr. Speaker, Ladies and Gentlemen of the House: I realize that there is a designated area on this amendment. I also realize that sometimes the designated areas are less than desirable and they sometimes make designated areas so bad that some people might not wish to smoke there. It's almost like a punishment and this is the last thing in the world that I think you want to do with people that are in an institution and that is to create something that is more like a punishment than that small contentment they may get out of life.

The SPEAKER: The Chair recognizes the Representative from Vassalboro, Representative Burke.

Representative BURKE: Mr. Speaker, Ladies and Gentlemen of the House: In response to Representative Pederson's concern that the designated areas in the psychiatric areas of hospitals or psychiatric hospitals would not create a nice ambiance for the patients, the psychiatric institutions currently have designated areas, patients are not allowed to smoke in their rooms and not allowed to have matches in their rooms for very obvious reasons. In many instances, the psychiatric institutions make a decided attempt to control the amount that the patients are smoking anyway because there is often a tendency to chain smoke, which is bad on many levels.

The other thing I would like to present is the fact that people keep saying that, under a lot of stress, people should be allowed to smoke and when a loved one is in the hospital, it is a very stressful time and you shouldn't expect them to have to leave the area and leave the hospital or go outside the hospital to smoke -- I would like to submit to you that many people use alcohol as a stress release when they are under a lot of tension but we do not ask hospitals to create an area where people can go and drink. I think to create an area where people can go and smoke is a very similar circumstance. We need to make it a very decided policy that, if a patient within the hospital is addicted, the doctor can leave an order that the patient can go and smoke in a designated area, but that other people entering the hospital, both workers and visitors, should not be allowed to smoke.

The SPEAKER: The Chair recognizes the Representative from Orono, Representative Cathcart.

Representative CATHCART: Mr. Speaker, Ladies and Gentlemen of the House: I urge you to vote against the Majority Report. I would just remind the members that the way the law is now, hospitals are free to pass a "no smoking" policy and I believe Representative Pines said that 8 of our hospitals have done so and I applaud that effort. However, we have a large variety of hospitals in the state and I would prefer to see it left where the hospital boards and administrators can make their own decisions about a smoking policy.

The SPEAKER: The Chair recognizes the Representative from Stockton Springs, Representative Crowley.

Representative CROWLEY: Mr. Speaker, Ladies and Gentlemen of the House: I have voted for every single, I think, smoking restriction bill that we have had until this one. As I listen to the debate, we do have smoke-free nursing rooms, we do have smoke-free hospitals and we do it through local control and every one of these boards have doctors on that hospital board. Today, I am going to vote to leave them alone and let them handle this on a local basis.

The SPEAKER: The Chair recognizes the Representative from Limestone, Representative Pines.

Representative PINES: Mr. Speaker, Ladies and Gentlemen of the House: I urge you to vote for the Majority Report. This morning I called my own local hospital, I didn't ask to speak to the non-smoker, I asked to speak to the smoker and he said, "If this bill doesn't pass, the smokers win, but I lose personally because I will continue to smoke. I will no longer have the desire to go the cessation classes."

So I urge you, along with the committee members, to vote for the Majority Report.

The SPEAKER: The Chair will order a vote. The pending question before the House is the motion of the Representative from Portland, Representative Manning, that the House accept the Majority "Ought to Pass" Report. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

71 having voted in the affirmative and 55 in the native, the Majority "Ought to Pass" Report was accepted, the Bill read once.

Committee Amendment "A" (H-232) was read by the Clerk and adopted and the Bill assigned for second reading Tuesday, May 23, 1989.

(Off Record Remarks)

On motion of Representative Ridley of Shapleigh, Adjourned until Tuesday, May 23, 1989, at twelve o'clock noon.