

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

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

VOLUME II

FIRST REGULAR SESSION

House of Representatives
May 20, 1991 to July 10, 1991

MacBride, Manning, Marsano, Marsh, Melendy, Mitchell, J.; Morrison, Nadeau, Nash, Norton, O'Dea, O'Gara, Oliver, Paradis, J.; Paul, Pendexter, Pfeiffer, Pines, Plourde, Pouliot, Powers, Rand, Richards, Ruhlin, Salisbury, Savage, Simonds, Small, Spear, Stevens, A.; Stevenson, Strout, Tracy, Treat, Vigue, Waterman, Wentworth, Whitcomb.

NAY - Aikman, Aliberti, Carroll, J.; Cathcart, Chonko, Clark, H.; Clark, M.; Coles, Constantine, Crowley, DiPietro, Donnelly, Dore, Duffy, Duplessis, Dutremble, L.; Farnsworth, Farnum, Gean, Gould, R. A.; Graham, Gray, Greenlaw, Gwadosky, Hepburn, Hoglund, Holt, Jacques, Joseph, Kerr, Ketterer, Kontos, Larrivee, Libby, Lipman, Mahany, Martin, H.; McHenry, McKeen, Mitchell, E.; Murphy, Nutting, Ott, Paradis, P.; Parent, Pendleton, Poulin, Reed, G.; Reed, W.; Richardson, Ricker, Rotondi, Rydell, Saint Onge, Sheltra, Skoglund, Stevens, P.; Swazey, Tammaro, Tardy, Townsend, Tupper.

ABSENT - Bowers, Butland, Cashman, Jalbert, Macomber, Merrill, Michaud, Pineau, Simpson, The Speaker.

PAIRED - Hale, Mayo.

Yes, 77; No, 62; Absent, 10; Paired, 2; Excused, 0.

77 having voted in the affirmative and 62 in the negative with 10 being absent and 2 having paired, the Majority "Ought Not to Pass" Report was accepted. Sent up for concurrence.

Divided Report

Later Today Assigned

Majority Report of the Committee on Human Resources reporting "Ought Not to Pass" on Bill "An Act to Amend the Laws Concerning Smoking in Restaurants" (H.P. 420) (L.D. 603)

Signed:

Senators: BOST of Penobscot
CONLEY of Cumberland
GILL of Cumberland

Representatives: PENDLETON of Scarborough
DUPLESSIS of Old Town
CLARK of Brunswick
GEAN of Alfred

Minority Report of the same Committee reporting "Ought to Pass" as amended by Committee Amendment "A" (H-486) on same Bill.

Signed:

Representatives: MANNING of Portland
GOODRIDGE of Pittsfield
SIMONDS of Cape Elizabeth
WENTWORTH of Arundel
PENDEXTER of Scarborough
TREAT of Gardiner

Reports were read.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Portland, Representative Manning.
Representative MANNING: Mr. Speaker, Ladies and

Gentlemen of the House: I move that the House accept the Minority "Ought to Pass" Report.

Two years ago, the legislature passed legislation that required the Department of Human Services to look into how we should be addressing smoking in restaurants. Last June or July, the department held hearings here in Augusta on a proposal that, if it was a one room restaurant, there would be no smoking. At that particular time, many of the one room restaurants operators came up and said that that was not going to be a good procedure, that it would affect them. Since then, a lot of them have said, if you are going to do it, just ban it completely and that way the one room, two rooms, three rooms all are under the same law. Therefore, this year I put in a piece of legislation that did just exactly that.

Currently, if you fly from here to Boston or from here to California, you cannot smoke on an airplane. Currently, if you go in and watch a movie at a theater for an hour and a half or two hours, you cannot smoke. There are many restrictions that are on the books right now whether it is federal or state restrictions that require you not to smoke in certain areas of the state.

What we are saying is, while you are inside a restaurant, you should not be smoking.

One of the things that was brought up at the public hearing were waitresses and waiters who came up and said the real problem for them is being there sometimes as much as eight or nine hours and working in areas with a lot of smoke.

I go back to the argument a few hours ago on Workers' Compensation. I am telling you, ladies and gentlemen, that is going to be a major issue in Workers' Compensation before the year 1994 because it has already started. You start to talk to some of the insurance agents and you go over and talk to the people over in the Bureau of Personnel and they will tell you that already within our own institutions there are problems of Workers' Compensation dealing with smoking.

We have to look at those people who have to spend sometimes as much as eight hours inside those restaurants. We have to protect their health. If not, if that second-hand smoke gets to them, there is going to be a Workers' Compensation claim and they are probably going to be out for a long time.

So there are two issues. Issue one is, we already say to the public, you can't smoke in airplanes, you cannot smoke in theaters. The average flight may be two, two and a half hours, the average movie, as most people know, if it is a 7:30 movie, you are in there at quarter past seven and you don't get out until quarter of ten. If you have to smoke, you go outside, go outside completely.

I would hope that people would take a look at that because that is one of the inconveniences we already have on the books.

The other thing, we are truly thinking about Workers' Compensation. We need to address that with those people who are in those restaurants day in and day out and what effect it is going to have on them. If we don't think about that, believe me, there are going to be people who are going to be putting in claims because of the second-stream smoking. I know of one already and there will be more to come.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Pittsfield, Representative Goodridge.

Representative GOODRIDGE: Mr. Speaker and

Members of the House: I just want to urge you to support the Minority "Ought to Pass" Report. There are several reasons why I voted for passage of this bill when it was before the committee.

First and foremost is the health issue which I will leave up to you to decide. I think we all know the facts of smoking and what it does to you.

I just want you to remember that it isn't just the health of the non-smoking patrons that we have to protect, it is the health of the worker who is exposed daily to second-hand smoke, often for hours at end. Restaurant staff doesn't have the luxury of moving to another table or leaving the restaurant if they feel the smoke is a hazard. More often than not, they are there because they need the income and there aren't many other jobs for them to find.

Secondly is the economic issue. Many small restaurants find it impossible to create a separate smoking area, at least one that is effective. In a small restaurant, there is limited space for the smoke to go. Believe me, speaking as one of those working people in a small restaurant, the smoke does not stay in the smoking area. Many say a small restaurant can already ban smoking. Yes, they can, but why should they when a larger restaurant 300 yards down the road doesn't ban smoking?

This bill would put all restaurants on a level playing field. The Restaurant Association admits that, if we are going to ban smoking, we must ban it in all restaurants. Smoking in small restaurants is a problem and we can't allow small restaurants to be put at a competitive disadvantage. So, I urge you to support the Minority Report and pass this bill for the health of the worker who has to work in this environment and also for the economic well-being of Maine's small restaurants who find it impossible to construct separate smoking areas and who also find it impossible to ban smoking knowing it will put them at an economic disadvantage with their larger counterparts.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Portland, Representative Ketover.

Representative KETOVER: Mr. Speaker, Ladies and Gentlemen of the House: Today, I am going to wear a different hat because I am also a member of the American Cancer Society. I am speaking in favor of the Minority Report. I don't know about you but a lot of people out there who work in those restaurants — I have talked to some of those waitresses and chefs and people who work in the restaurants — their biggest complaint is they have a very hard time breathing. As a matter of fact, I was in a restaurant in Portland and the circulation in that restaurant was so unbelievably poor that you could not even sit there because your eyes were watering. I asked the waitress, how do you stay in this environment and work? She said it was very difficult but she cannot leave her job or move around because there aren't that many jobs out there.

I understand the rights of smokers and I understand the rights of competition in this world and I believe that that is very important. I also believe if we are going to pass legislation, we must make sure that those environments that people are working in — as you know, I serve on the Banking and Insurance Committee and we are working on Workers' Compensation and we hear more complaints from injured workers and employers, this is definitely what Representative Manning was saying that it will be a problem down the road with Workers' Compensation.

We are trying to cut costs in this state and we are trying to make reform in the Workers' Compensation so we can change and make a better working environment. If it is not a healthy environment, who complains the loudest? It is the people who work in office buildings whose windows don't open, whose doors are not open so they can have air circulation, they are sealed up in these office buildings. Yet, we make them put in air circulators and we make them make sure that all the proper things are done for an environmentally safe working place.

I understand we have a problem with the small restaurant but we need to be fair. We need to be fair for the person who comes into that restaurant, who is allergic. Oh, sure, you can walk out and say, I am not going to eat there and I don't have to be a patron to that restaurant, but it should be a safe environment.

I think Representative Manning and members of the Minority Report are right on.

I haven't spoken on any of the other issues on smoking because I think that some of them have been a little more difficult, but we can take one step at a time. This one here, more people use restaurants than any other place and it is a public place. We should all be able to walk into an environment that is healthy and safe but it should also be safe for the worker that is working in that environment.

We did something in airlines and it took a lot of work in Congress. My doctor and my constituent, Dr. Mc Afee in Portland, who has been involved nationally and you have seen him on national television on Today and Donahue, and he has been probably one of the largest proponents of doing more for smoking problems in this United States and he tells me that this is the best thing to do and that is to protect those people who come in and work in that environment.

This is not something that we would go down (I am going to make a pun) in flames if we do not pass this piece of legislation, it is a very important one. I hope you will support the Minority vote.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Eastport, Representative Townsend.

Representative TOWNSEND: Mr. Speaker, Men and Women of the House: I also went to the public hearing. I did listen to a couple of the waitresses. I think there were two or three that showed up to testify for the bill. However, who I have heard from the most, are restaurants, especially restaurants in my area. It has been kind of hinted here today that perhaps the restaurants might support this. That is not what I have heard. Yes, they did fight the proposal making change last year to ban smoking for one room restaurants but that doesn't go to the point of saying the Restaurant Association or restaurants in your area support this bill because those I have heard from in my area do not support this bill.

Ladies and gentlemen, I think we underestimate the power of a consumer. If there is a restaurant that doesn't have an area where you can go and sit without somebody sitting beside you smoking, you have the right to go to another restaurant.

I also want to point out that I consider this a mandate on businesses. Businesses right now have the right to put a sign in their window or on their door, "This is a smoke-free environment." If that is the customer they want to go after, they have the right to do that right now.

I have not had one restaurant owner call me and

say, yes, this is a good idea and we want it.

As far as the secondary smoke bothering people, I am not a doctor or scientist, I am not going to argue on that. However, everything that I have read in the paper on this study or that study or shows I have watched such as Donahue or what have you, the evidence is still inconclusive. I would say that the evidence probably does tend to suggest that second-hand smoke bothers you and I am not going to argue that. I think it is a silly point to argue. However, there are a lot of second-hand residues from different activities of our lives that bother us. You go for a nice walk out here (if we get a break today) around the State House and you are subject to carbon monoxide from cars that go by, back and forth, you are subject to industrial waste in the air. What about people who have allergies subject to pollen in the spring. My wife suffers very much from that.

I am not going to stand up here and argue that smoking is good for you. I smoke and I know it is bad for me. It is one of the few sins left in my life that my wife will allow me.

However, we get to a point where, what are we going to do to protect people? When we are born, maybe we should put ourselves in plastic bags and then when we die take the plastic bags out and — there are so many things out there that other people do that affect our health and it is a matter of common decency. If I am in a restaurant and if I am in the smoking section and somebody came over to me and said that it is bothering them, I would put it out because that is the way I was raised. My habit, I would not purposely put it off on anyone else. If I am in somebody's car, I do not smoke unless I ask permission; if I am in someone's home, I do not smoke until I ask permission. It is my habit and I most certainly do not want to push it off on someone else. I do think we have a limit to as far as we can go with the legislative body to protect people from this.

I urge that you support the Majority "Ought Not to Pass" Report on this.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Old Orchard Beach, Representative Kerr.

Representative KERR: Mr. Speaker, Men and Women of the House: This bill that is before us today discriminates and is unfair to operators of a restaurant that also has a lounge. I am in the hospitality business. I have a Class A restaurant and lounge. I am a non-smoker but this bill would prohibit me from competing on an even keel with other businesses that have a restaurant and lounge. In a bar, you are allowed to smoke; in restaurants you are not allowed to smoke, should this bill be passed. If you are an operator of a Class A restaurant and lounge where you cater to both, being a restaurant and a lounge, you have restricted me from allowing people to smoke. They can go right next door, go to a bar and be permitted to smoke.

This bill is discriminatory, it creates more problems than solving problems and I would urge you to vote against the pending motion because this bill does discriminate from fair competition.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Lisbon, Representative Jalbert.

Representative JALBERT: Mr. Speaker, Ladies and Gentlemen of the House: I think it is about time that we got off the backs of people. Most of my constituents on this issue tell me, why don't you go

clean up your own backyard in Augusta before you tell us what to do?

We have made a mess of our educational system by mandates that now we can't pay for. Now we are telling people what you will do and what you will not do.

I think we are losing the idea of free enterprise. I used to smoke four or five packs a day. I gave it up because I wasn't enjoying it. If somebody does not like smoke in a restaurant, just don't go in that restaurant. If you turn around and say to a one room restaurant, you shall break it up so that people who don't like the smell of smoke can have their own spot. What you are doing is telling a small restaurant owner, close shop and let the big boys take over.

I repeat again, and I will close by saying, let's get off the people's backs.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Rumford, Representative Erwin.

Representative ERWIN: Mr. Speaker, Ladies and Gentlemen of the House: I urge you to oppose the pending motion. To prohibit smoking in all restaurants would virtually close every restaurant in my district. The State of Maine is made up of many, many small businesses and by passing this legislation, you will be putting them out of business.

I am a non-smoker and I have been a non-smoker all of my life. When my husband and I go into a restaurant, which is very often, we are asked whether we prefer smoking or non-smoking. Generally we take the smoking because we like to have our friends join us if they care to.

I was walking down the street in Rumford last weekend and I was stopped by a jogger who was jogging down the street and crossed the street just to speak to me, a constituent of mine, a non-smoker all of his life and he said, "I urge you to vote against the bill to prohibit smoking in restaurants." The people out there don't want us to take away all the rights of the smokers. Good ventilation in a restaurant or lounge can take care of many of these problems. I urge you to defeat the motion before you.

The SPEAKER PRO TEM: The Chair recognizes the Representative Caribou, Representative Bell.

Representative BELL: Mr. Speaker, Ladies and Gentlemen of the House: I contacted my local restaurant regarding this bill, they feel that they are being harassed by many of our law changes. We have asked them to divide their areas into smoking and non-smoking areas, they have done that.

Then we told them to charge ten percent extra on drinks, they have done that, plus many other mandates to their industry. Now we are offering even more changes. They have asked me to tell you that they would like to see us either outlaw all smoking everywhere or leave it as it is now. They are sick and tired of being the guinea pigs of most of the anti-smoking bills so I urge you to vote no on this Minority Report.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Alfred, Representative Gean.

Representative GEAN: Mr. Speaker, Ladies and Gentlemen of the House: I would just like to point out and then get off of this real quick. I think the State of Maine owes Representative Manning and Dr. Lani Graham of the Department of Human Services many thanks for the work they have done over the years in setting up one of the most sensible systems regulating smoking in any state that I have been in.

I mean that in all sincerity because of what I am about to say. I truly think that they have done a good job in identifying ways to control smoking to get that issue to the people in this state because I think that public awareness, that educational push is what enables people to finally make their own free choice on whether to smoke or not to smoke.

At this moment, all I have to say about all of the smoking legislation that is coming before us and will continue to come is that there is a point that you have to throw up your hands and say, "enough is enough." What my message is in urging you to defeat this Minority opinion is that this is enough. Representative Manning has pointed that out very clearly in identifying all of the places today you cannot smoke in this society. They are endless. I am real concerned about those amongst us who have not gotten the right amount of education up to this point to make their own free choices. We cannot legislate and put into law all our population's behaviors. I am glad that we can't because it means that we still have human beings that are alive and well and making free choices.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Scarborough, Representative Pendleton.

Representative PENDLETON: Mr. Speaker, Men and Women of the House: We have debated this issue over and over and we have revisited it and revisited it. I would just like to point out something that wasn't mentioned.

The difference in this particular bill is that it bans smoking in restaurants and, as was mentioned before, not in taverns and in bars. That would suggest to me, again, that we are tinkering with the business that serves food and alcohol. I am not going to carry the banner heralding choice on this bill because the choice is already in place.

One restaurant owner that testified before our committee chose, I said chose, to ban smoking, a very courageous decision on his part. He said at first his business was a little bit slow but, when the word got out, non-smokers and families with children, patronized his business. Clearly, there is a choice and clearly it seems to me that we should not be stifling that that choice by mandating legislation, interfering what is already in law, a vehicle to do the job.

The SPEAKER PRO TEM: The Chair recognizes the Representative from South Berwick, Representative Farnum.

Representative FARNUM: Mr. Speaker, Ladies and Gentlemen of the House: I represent three towns, some 23 restaurants, all small ones in those three towns plus a couple in Eliot and two or three in Wells and one in Kittery. Now we sent a petition to each of these restaurants to be filled out and the people in those restaurants, smokers and non-smokers, all voted almost to a person to allow smoking in these restaurants.

We have a problem, if they are not allowed to smoke in these restaurants, just a mile or two miles away, there is a series of restaurants in New Hampshire that do allow smoking. Are we going to send the business to New Hampshire? Are we going to send the money to New Hampshire or are we going to allow the money to stay in Maine?

The SPEAKER PRO TEM: The Chair recognizes the Representative from Van Buren, Representative Martin.

Representative MARTIN: Mr. Speaker, Ladies and

Gentlemen of the House: I think it is my duty to report to you how my constituents feel about this bill. I put out a petition in every restaurant in my town for one week. If this bill passed, we might be able to save one restaurant, all others will have to be closed. There is no way to separate them or do anything else you want to do with them. Anyway, getting back to the beginning of my story, in one week, I picked up 300 names and I made sure that the owners did not let any Canadian citizen sign, they were all Maine citizens. I am talking about a population of 3,082 people. That includes every man, woman and child in the town of Van Buren in the last census. Now 10 percent were able to sign that petition in one week and I think that should tell you how they feel about closing these restaurants. I hope you will vote against this motion.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Gardiner, Representative Treat.

Representative TREAT: Mr. Speaker, Women and Men of the House: I would like to remind this House what this issue is about. I am on the Human Resources Committee and voted with the Minority "Ought to Pass" Report and I do urge that you support that report in the vote ahead.

Unlike other people in this body, I have had restaurant owners contact me and say that they think this is a good idea. They are small restaurants where it is a real problem right now.

This is a health issue. Second-hand smoke is a public health hazard and one that many people cannot avoid when they work and eat in restaurants.

The current policy is simply ineffective. It is okay to say "enough is enough" but when the policy doesn't work that we have now, it is our responsibility to look at it, decide whether changes need to be made.

People have gotten up here today and stated that "well, we all know that cigarette smoke is bad but..." — I would just like to note for you on the Record what cigarette smoke is actually is. Cigarette smoke, tobacco smoke contains over 4,000 chemicals, 43 of these are known carcinogens. That means they cause cancer. Several are mutagens and that means they cause birth defects. Some of the chemicals that are in tobacco smoke include carbon monoxide, nicotine, ammonia, vinyl chloride, formaldehyde, benzene, radionuclides and arsenic. I know some of you that are familiar with workplace safety regulations know that many of those chemicals are regulated in the workplace already because of the harmful effects that they have on workers.

A recent EPA report, which was just reported in local newspapers, attributed the death of 53,000 persons a year, 53,000 non-smokers a year, from the effects of breathing in tobacco smoke from other people's cigarettes.

I would just point out one of the reasons I am cosponsor of this bill and one of the reasons that I was willing to cosponsor is that I was contacted by workers who have to work in restaurants, who in fact have to work in the smoking sections of restaurants, which are even worse than the rest of the restaurant.

I would just like to close by reading a comment of one of the those workers who did testify in the hearing that we had. It happens to be a constituent of mine who said the following and I think it is something to keep in mind. She suffers from asthma and so has a particular reason to be concerned about the existing law. She said, "Dividing space is one

thing but it is much more difficult to tell air where it can and cannot go."

I urge your support of the pending motion.

On motion of Representative Mayo of Thomaston, tabled pending the motion of Representative Manning of Portland that the House accept the Minority "Ought to Pass" Report and later today assigned.

(Off Record Remarks)

On motion of Representative Jacques of Waterville, Recessed at 12:10 p.m. until 5:00 p.m.

(After Recess)

The House was called to order by the Speaker pro tem.

Divided Report

Later Today Assigned

Majority Report of the Committee on **State and Local Government** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (H-499) on Bill "An Act to Provide for Deferrals of Unfunded State Mandates for Municipalities Experiencing Financial Hardships" (EMERGENCY) (H.P. 1190) (L.D. 1743)

Signed:

Senators: BERUBE of Androscoggin
BUSTIN of Kennebec
EMERSON of Penobscot

Representatives: WATERMAN of Buxton
NASH of Camden
LOOK of Jonesboro
KILKELLY of Wiscasset
SAVAGE of Union
GRAY of Sedgwick
KERR of Old Orchard Beach

Minority Report of the same Committee reporting "**Ought Not to Pass**" on same Bill.

Signed:

Representatives: LARRIVEE of Gorham
JOSEPH of Waterville
HEESCHEN of Wilton

Reports were read.

Representative Joseph of Waterville moved that the House accept the Minority "Ought Not to Pass" Report.

On further motion of the same Representative, tabled pending her motion that the House accept the Minority "Ought Not to Pass" Report and later today

assigned.

Divided Report

Later Today Assigned

Majority Report of the Committee on **Transportation** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (H-475) on Bill "An Act Concerning Abandoned Property" (H.P. 462) (L.D. 653)

Signed:

Senators: THERIAULT of Aroostook
MILLS of Oxford

Representatives: MACOMBER of South Portland
STROUT of Corinth
HUSSEY of Milo
MARTIN of Van Buren
BAILEY of Farmington
HALE of Sanford

Minority Report of the same Committee reporting "**Ought to Pass**" as amended by Committee Amendment "B" (H-476) on same Bill.

Signed:

Senator: GOULD of Waldo

Representatives: BOUTILIER of Lewiston
SMALL of Bath
RICKER of Lewiston
TAMMARO of Baileyville

Reports were read.

On motion of Representative Mayo of Thomaston, tabled pending acceptance of either report and later today assigned.

Divided Report

Later Today Assigned

Majority Report of the Committee on **Judiciary** reporting "**Ought Not to Pass**" on Bill "An Act to Amend the Child Support Law to Include Coverage for Children in College" (H.P. 803) (L.D. 1149)

Signed:

Senators: BERUBE of Androscoggin
GAUVREAU of Androscoggin

Representatives: FARNSWORTH of Hallowell
PARADIS of Augusta
HANLEY of Paris
ANTHONY of South Portland
OTT of York
COTE of Auburn
RICHARDS of Hampden
KETTERER of Madison