

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred And Sixteenth Legislature

OF THE

State Of Maine

VOLUME V

SECOND REGULAR SESSION

House of Representatives

January 5, 1994 to April 14, 1994

concurrence and the House Papers were Passed to be Engrossed as Amended and sent up for concurrence.

Bill "An Act to Provide for Greater Efficiency within the Department of Agriculture, Food and Rural Resources" (H.P. 1191) (L.D. 1588) (C. "A" H-944)

Was reported by the Committee on Bills in the Second Reading and read the second time.

On motion of Representative TARDY of Palmyra, was set aside.

On further motion of the same Representative, tabled pending passage to be engrossed and later today assigned.

Bill "An Act to Amend the Public Smoking Laws" (S.P. 724) (L.D. 1945) (C. "A" S-488)

Was reported by the Committee on Bills in the Second Reading, and read the second time.

On motion of Representative KERR of Old Orchard Beach, was set aside.

On further motion of the same Representative, the House reconsidered its action whereby Committee Amendment "A" (S-488) was adopted.

The same Representative presented House Amendment "A" (H-967) to Committee Amendment "A" (S-488) which was read by the Clerk.

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

Representative KERR: Mr. Speaker, Men and Women of the House: We are back to the smoking bills again. Last year's bill which is current law, I felt reached a compromise between anti-smokers and those who believed the laws were adequate. The current law has only been in effect for approximately a few months. Store owners and other small business owners are making great efforts to both comply with the law and not irritate their smoking customers. As you all know, signs must be posted in all businesses affected by the law. Current law exempts certain locations from smoking, religious ceremonies, theater productions, taverns, lounges, beano games and everything else that we discussed last year.

The current law also establishes separate rules for schools, workplaces, restaurants, private offices and hospitals. It also imposes a \$100 fine for persons violating the law. The proposal, L.D. 1945, and the amendment is on your desk but I am going to take a few seconds just to read a portion of it. Under Section - 1, it says it "exempts pool halls serving alcohol where minors are not allowed." I concur with that and that is not the section that I have a problem with. As you move down, it says, under Section - 2 "prohibit smoking in mixed use areas such as restaurants, bowling alleys, lunch counters and stores." As you all know, Wal*Mart, K-Mart, the mom and pop stores have established these lunch areas, so now there will be no smoking in any of those areas, lounges, restaurants, hotel lobbies.

It also imposes up to a \$500 fine for subsequent violations, not only on the smoker, but also the employees of a business where the infraction occurs.

Also, it allows the courts to impose injunctive relief. That means close down your establishment for a period of time or suspend your license.

This friendly amendment that I have presented will maintain pool hall exemptions in the bill. That is the Section - 1. What it does do is it clarifies that the smoking law that applies to a given business will apply to the area where the business activity is occurring. For instance, the restaurant law will apply to an area of a lunch counter in a store and prohibit — the smoking will apply to the remainder of the store.

I would like to give you another example of how this provision will work — it would be a situation where a retail store also operated a restaurant or a lunch counter which was not separate physically from the retail store establishment. In this instance, the law governing smoking in restaurants would apply to the lunch counter or restaurant portion of the business and the law with respect to smoking in public places such as the retail store would apply to that portion of business operated as a retail store.

Where we have increased the current fine in the present bill, 1945, the fine is \$100 and I recommend in my amendment that we increase that to \$200. The power of the injunctive relief and the \$500 fine is not included, because as a non-smoker and being in business, I think we are doing everything we possibly can to accommodate the law. It is not an easy thing to do when you have "vacationland" for your license plate. We cater to a lot of tourists.

This bill does one thing that I have a problem with that we did accomplish last year, it created a level playing field. We no longer have that level playing field without my friendly amendment.

Thank you very much. I urge you to support the amendment.

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

Representative TREAT: Mr. Speaker, Men and Women of the House: The bill before you, if it is not amended as it is proposed to be, is the first bill in the history of this legislature that I am aware of that addresses the subject of smoking that came out of that committee with a unanimous report.

We have a committee that includes smokers and non-smokers and people with differing views on the subject of smoking regulation. This bill came to our committee and we worked extremely hard in coming up with a report that we could bring to this floor and have you vote on. In fact, at one point, it was a divided report, we reconsidered it and came back with something that everyone could support.

The original bill that was before us did something very similar to what is in this proposed amendment, House Amendment "A" and that was unilaterally rejected by the committee.

We clarified the law in three ways and I would like to go through what our bill does. I would urge you to vote against the pending amendment which would change the intent of what our correction to the law does. Basically, it is a clarification.

The first piece which Representative Kerr's amendment does not affect is the part that basically creates a larger loophole in the existing law. It creates that loophole for pool halls that serve alcohol. Those of us that are more on the side of restricting smoking were not totally comfortable with this. We had a lot of argument about it but we were willing to go along with it because of the other

parts of the bill which clarify the law in a more restrictive direction.

The second piece of the bill, which Representative Kerr's amendment would simply reverse the intent of, basically clarifies what happens in a situation where you have one kind of use in the middle of another kind of use. This actually came to us from bowling alleys that were very concerned, they had restaurants in the middle of the bowling alley — they didn't know what part of the law applied to those restaurants because, as you know, within the restaurant part of the smoking law, you can have smoking areas but within bowling alleys, you can't have smoking.

We clarified the law to make it clear that either the area had to be entirely enclosed or you couldn't have smoking. That was something that many small businesses appreciated. They wanted us to do that because they had already gone to the expense of doing that, that is what the original law intended but it wasn't clearly stated. Our amendment clearly stated it.

Representative Kerr's amendment reverses that and basically says that if smoking is allowed, then it can be allowed to seep out into the entire rest of the area. So basically you have the lowest level of restriction apply under his amendment in a mixed use area.

In terms of the penalty, the concern was that there was no increased penalty for someone who repeatedly violates the law. We kept the penalty at only \$100 in our amendment but we bumped it up to \$500 for those who do violate the law more than once. That is an appropriate penalty. This is something we worked out with the sponsor of the bill and he is happy with the bill as it is now.

I urge you to stick with the bill that came out unanimously from our smoking and non-smoking members of the Human Resources Committee and vote red on the pending amendment.

The SPEAKER: The Chair recognizes the Representative from Scarborough, Representative Pendexter.

Representative PENDEXTER: Mr. Speaker, Men and Women of the House: I, too, rise to ask you to vote against the pending motion. The whole issue around mixed use has had some confusion in the legislation that we passed last year and I think this just clarifies it. I think that you need to be concerned in situations where there is mixed use or one or two more activities that children frequent these areas as well and the bowling alleys are the perfect example. I think we need to continue to show that we do have a commitment in realizing the fact that environmental tobacco smoke is a health hazard, that we need to protect our children and we need to protect the people who don't smoke. I think it would be unfortunate for us to regress at this point, especially when on the national level now we are hearing a lot about — there is this whole movement nationally to ban smoking in public places because it has certainly been very well accepted that environmental tobacco smoke is a health hazard.

It is also, as the Chair of my committee pointed out, something that we were able to compromise with. We have smokers and non-smokers on our committee and it was a compromise that was agreed to from both perspectives. So, I ask you to support the committee and to vote down this amendment.

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

Representative KERR: Mr. Speaker, Men and Women of the House: The issue of smoking and not smoking — at any establishment in this state at the present time, the licensee can allow or not allow smoking in their establishments, if they choose to do so. I would like to make that point clear.

The section under penalty in this bill where it says, "A person or entity subsequently violates any provision of this chapter within 12 months of a previous violation commits a civil violation for which a forfeiture not to exceed \$500 may be adjudged. This section does not prohibit the court from issuing injunctions or contempt orders to enjoin continued violations in this chapter."

People, the courts can take their license. That is a serious offense. If a licensee does not want to have smoking in their establishments, they can put up "no smoking" signs.

I called a bowling alley because this amendment, and I refer to it as a friendly amendment only because of what we went through last year, does not impact the Section — 1 of the original bill.

What I am trying to continue to do is create that level playing field. I would just urge your support of this amendment because it is a great deviation, I believe, from the original bill of 1945 that was brought to this committee. It originally dealt with pool halls and billiard parlors. If in fact you looked at the Marriott in South Portland and we chose this hall to be the Marriott, they have a restaurant, they have a lounge and they have a lobby, under the current law where we don't allow smoking, those areas could not have it or if they did it would have to be in a designated area. At the present time without this amendment, there would be no smoking in that area. I am not saying that that is all bad, but the establishment can do that now if they choose to do so.

The other thing I would like to bring out is the fine because I think it is very important to realize that if the law were to pass with the fines and someone in the lobby was smoking and an inspector came in and said you are not allowed to smoke and even if the manager said, don't smoke, there is going to be a confrontation. There will also be fines that are levied on the manager and the individual that was smoking. That is the first offense.

The second offense could happen a few days later — same situation. You end up in court, this individual may lose their license.

I would just, again, try to create the same playing field, the ink is barely dry on the bill that was passed last year and I believe on your desks there are several letters that I have had circulated from the Maine Merchants Association. In the second paragraph, if I may read because I believe there is a minor error, I will begin at the second paragraph, "Based on feedback I have had from small businesses and restaurants since the enactment of L.D. 904 last year it says, "the least, it should be the most restrictive language of the committee version of L.D. 1945 would only increase confusion in a troublesome spot of the existing law."

Again, I would urge you to support the amendment.

The SPEAKER: The Chair recognizes the Representative from Cape Elizabeth, Representative Simonds.

Representative SIMONDS: Mr. Speaker, Ladies and Gentlemen of the House: As sponsor of the bill, L.D. 1904 in the last session, I did want to rise and urge you not to adopt the proposed amendment for these reasons. I did participate in the hearing on this year's bill, L.D. 1945, and, frankly, considering the number of interests represented in that hearing from business owners, from health people, from members of the Liquor Commission and from the Attorney General and law enforcement, I really did not expect the committee to find agreement. I commend the members of the committee in finding a unanimous position on this bill.

On the question of injunctive relief, I remember some discussions with the Attorney General pointing out that they obviously do not have the manpower to go about the entire state in all questions involving some element of enforcement. It was from the beginning the intent to allow common sense and judgment to rule and that has worked in most cases. In a few cases, there have been those who are simply standing pat and not interested in changing. They will pay the \$100 fine and so that is the cost of doing business, they will pay it again as a cost of doing business and it was the Attorney General's feeling that there needed to be some method by which those individuals can be brought to justice. The suggestion was that after several instances of ignoring the law and advice, then the powers of the court, under injunctive relief, should be brought to bear.

I urge you, ladies and gentlemen, not to turn the clock back on this important measure and reject the pending motion.

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

Representative CLARK: Mr. Speaker, I would like to pose a question through the Chair. To anyone who can answer, can businesses do this right now? If this is not the bill, can business do this right now?

The SPEAKER: Representative Clark of Millinocket has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from Gardiner, Representative Treat.

Representative TREAT: Mr. Speaker, Ladies and Gentlemen of the House: I am not sure what "this" is, but I will try to answer your question and if I guess wrong on the "this", you can let me know, Representative Clark.

Right now, I think there is some confusion in terms of how the law is currently written, what happens with mixed uses. I think there has been an interest in enforcing the law to require the most restrictive use but the law does not specifically state what happens in cases of mixed uses. This has come up a lot, as I mentioned before, with the bowling alley example where a bowling alley is a public place — under the law, bowling alleys clearly cannot have smoking and yet there is a restaurant which is allowed to have a smoking area within the restaurant.

It is my belief that the law that we enacted last year would require an enclosure around that restaurant but there was no specific provision in the law last year that stated that one way or the other. Either we clarify it in one direction, which is to make it clear that the more restrictive law applies, that would be the committee approach or under Representative Kerr's approach, we would clarify it

to say that the least restrictive law applies and therefore smoke could go out into the bowling alley.

I think there is some need for clarification here and that is why we agreed to put this provision into the law that we have right now.

I hope that that answers your question. I think that it clarifies what we have right now but there is some difference of opinion between those who are enforcing the law and those who are trying to comply with it.

The SPEAKER: The Chair recognizes the Representative from Scarborough, Representative Pendexter.

Representative PENDEXTER: Mr. Speaker, Men and Women of the House: I just want to, very briefly, clarify because some of the handouts are a little misleading so that it is very clear in your mind that this does not have anything to do with restaurants and lounges, that those are covered by a totally different law and that we are just dealing with public places and we are dealing with multiple use places.

As the speaker before me just reiterated, I guess this is a vote on whether you want to decide whether you want to clarify the issue of mixed use in a way that reflects what we all voted in last session or whether you want to regress and go back to the less restrictive.

Again, I ask you to vote against this motion.

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

Representative DIPIETRO: Mr. Speaker, Ladies and Gentlemen of the House: I didn't think I was going to get up on this item here today but it seems that we have made so many rules and regulations for our constituents out there that they don't know what to believe and what not to believe. What I am referring to is that we pass laws here and we have nobody to enforce them. I think that we are wasting our time and the taxpayers' money by making laws that nobody is going to enforce. We don't have the manpower to take care of this enforcement, so you can pass all the laws you want, there's going to be people out there breaking them constantly. I say to you, let's do what Representative Kerr is asking, let's follow his light.

The SPEAKER: The Chair will order a vote. The pending question before the House is adoption of House Amendment "A" (H-967). Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

Representative Treat of Gardiner requested a roll call vote.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

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

Representative TREAT: Mr. Speaker, Men and Women of the House: I hope that you will vote against the pending motion and against adoption of this floor amendment which in essence guts the bill that came

out of the Human Resources Committee unanimously on smoking.

As I stated earlier, this is the first bill that was agreed to by everyone on the committee. If you adopt this amendment, it will essentially make many places right now that are considered public places such as bowling alley's, parts of department stores, areas where smoke can come into because we will no longer be required to put walls around the smoking area.

I urge you to vote against the pending motion so we can go on to adopt this bill.

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

Representative TOWNSEND: Mr. Speaker, Men and Women of the House: I would also like to add my two cents. One of the arguments that you have read in some of the letters which have been circulated is that the bill creates confusion. I would argue that that is simply not true. The testimony we heard in deliberating on this bill was that the bill we passed last year has left some room for confusion. For instance, we have instances where corner convenience stores, which have say two corner tables, are claiming to be restaurants and, therefore, not subject to this smoking law we passed last year.

This bill we are passing now clears up that confusion. I would urge you to reject the floor amendment.

Representative Kerr of Old Orchard Beach was granted permission to address the House a third time.

Representative KERR: Mr. Speaker, Men and Women of the House: It seems very clear that the supporters of the unanimous committee report continues to avoid the penalty issue in this bill.

I would like to read it again. It says, "A person or entity who subsequently violates any provision of this chapter within 12 months of a previous violation commits a civil violation for which a forfeiture not to exceed \$500 may be adjudged. This section does not prohibit the court from issuing injunctions or contempt orders to enjoin continued violation of this chapter."

Remember, your license can be taken. There is no business in this state today — remember, I am a small business owner, I have to work for a living and be in this legislature and I just want you to remember that any licensee in this state can put up a no smoking sign with or without this law.

I urge your support of the amendment.

The SPEAKER: The Chair recognizes the Representative from Rome, Representative Tracy.

Representative TRACY: Mr. Speaker, Men and Women of the House: I would like to tell the good Representative from Old Orchard Beach, Representative Kerr, that Representative Tracy and other members in this House also have to work for a living.

The SPEAKER: A roll call has been ordered. The pending question before the House is adoption of House Amendment "A" (H-967). Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 281

YEA - Ahearne, Aliberti, Anderson, Bailey, H.; Bailey, R.; Bennett, Birney, Cameron, Campbell, Carleton, Caron, Chonko, Clark, Cloutier, Clukey, Coffman, Cote, Cross, Daggett, DiPietro, Driscoll, Dutremble, L.; Erwin, Farnum, Farren, Gamache, Gould, R. A.; Gray, Hale, Heino, Hussey, Jacques, Jalbert,

Joseph, Joy, Kerr, Ketterer, Kneeland, Larrivee, Lemont, Libby Jack, Libby James, Lord, MacBride, Marshall, Martin, J.; Michael, Michaud, Murphy, Nash, Nickerson, Norton, O'Gara, Ott, Paradis, P.; Pineau, Plourde, Poulin, Pouliot, Reed, W.; Ricker, Robichaud, Rotondi, Ruhlin, Saint Onge, Saxl, Simoneau, Skoglund, Spear, Stevens, A.; Strout, Sullivan, Swazey, Townsend, G.; True, Tufts, Vigue, Winn, Young, Zirkilton.

NAY - Adams, Aikman, Ault, Barth, Beam, Bowers, Brennan, Bruno, Carroll, Cashman, Cathcart, Chase, Coles, Constantine, Dexter, Donnelly, Dore, Faircloth, Farnsworth, Fitzpatrick, Foss, Gean, Greenlaw, Hatch, Heesch, Hichborn, Hoglund, Holt, Johnson, Kilkelly, Kontos, Lemke, Lindahl, Lipman, Marsh, Melendy, Mitchell, E.; Mitchell, J.; Morrison, Nadeau, Oliver, Pendexter, Pendleton, Pfeiffer, Pinette, Plowman, Rand, Reed, G.; Richardson, Rowe, Rydell, Simonds, Stevens, K.; Taylor, Townsend, E.; Townsend, L.; Tracy, Treat, Walker, Wentworth, Whitcomb.

ABSENT - Carr, Clement, Hillock, Kutasi, Look, Martin, H.; Small, Tardy, Thompson, The Speaker.

Yes, 80; No, 61; Absent, 10; Paired, 0; Excused, 0.

80 having voted in the affirmative and 61 in the negative, with 10 being absent, House Amendment "A" (H-967) to Committee Amendment "A" (S-488) was adopted.

Committee Amendment "A" (S-488) as amended by House Amendment "A" (H-967) thereto was adopted.

The Bill was passed to be engrossed as amended by Committee Amendment "A" (S-488) as amended by House Amendment "A" (H-967) thereto in non-concurrence and sent up for concurrence.

By unanimous consent, all matters having been acted upon were ordered sent forthwith.

The Chair laid before the House the following item which was tabled earlier in today's session:

SENATE DIVIDED REPORT - Majority (9) "Ought to Pass" as amended by Committee Amendment "A" (S-442) - Minority (4) "Ought Not to Pass" - Committee on Banking and Insurance on Bill "An Act to Promote Economic and Employment Growth in the Financial Services Sector" (S.P. 620) (L.D. 1722) which was tabled by Representative JACQUES of Waterville pending the motion of Representative HALE of Sanford to accept the Minority "Ought Not to Pass" Report. (Roll Call Requested)

The SPEAKER: The Chair recognizes the Representative from Sanford, Representative Hale.

Representative HALE: Mr. Speaker, Ladies and Gentlemen of the House: I am not going to reiterate what I said this morning but I would like to pass on to you a message from the good Representative from Van Buren at her request. I spoke quite extensively to her about this particular bill because knowing that she had served six years on Banking and Insurance and Business Legislation Committees when it was all incorporated into one committee — she very emphatically agrees with the "Ought Not to Pass." She said they worked on it very extensively and the reason for that was because of the small loan