

# MAINE STATE LEGISLATURE

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**Senate Legislative Record**  
**One Hundred and Eighteenth Legislature**  
**State of Maine**

**Volume 1**

**First Regular & Special Session**  
**December 6, 1996 to May 19, 1997**

**Pages 1 - 980**

Comes from the House, Bill and Accompanying Papers  
**INDEFINITELY POSTPONED.**

Which Reports were **READ.**

Senator **RAND** of Cumberland moved the Senate **ACCEPT**  
the Majority **OUGHT NOT TO PASS** Report.

On further motion by same Senator, **TABLED** until Later in  
Today's Session, pending motion by same Senator to **ACCEPT**  
the Majority **OUGHT NOT TO PASS** Report.

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### ENACTORS

The Committee on **Engrossed Bills** reported as truly and  
strictly engrossed the following:

An Act to Clarify Requirements Pertaining to the Maine  
Certificate of Need Act H.P. 767 L.D. 1044  
(C "A" H-302)

An Act to Require Economic Impact Criteria on State  
Procurement Procedures S.P. 361 L.D. 1220  
(C "A" S-147)

An Act to Authorize Shellfish Management Committees to  
Determine Fees for Clam Licenses H.P. 1292 L.D. 1837

Which were **PASSED TO BE ENACTED** and having been  
signed by the President, were presented by the Secretary to the  
Governor for his approval.

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Out of order and under suspension of the Rules, the Senate  
considered the following:

### PAPERS FROM THE HOUSE

#### Joint Order

The following Joint Order: H.P. 1324

**ORDERED**, the Senate concurring, that the Joint Standing  
Committee on Taxation report out legislation concerning tax  
reform to the House.

Comes from the House **READ** and **PASSED.**

Which was **READ** and **PASSED**, in concurrence.

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### ORDERS OF THE DAY

#### Unfinished Business

The following matters in the consideration of which the  
Senate was engaged at the time of Adjournment had preference  
in the Orders of the Day and continued with such preference until  
disposed of as provided by Senate Rule 516.

The Chair laid before the Senate the following Tabled and  
Later (5/9/97) Assigned matter:

SENATE REPORTS - from the Committee on **HEALTH AND  
HUMAN SERVICES** on Bill "An Act to Ban All Smoking within  
Workplaces, Restaurants and Public Accommodations"  
S.P. 134 L.D. 413

Report "A" - **Ought Not to Pass** (7 members)

Report "B" - **Ought to Pass as Amended by Committee  
Amendment "A" (S-198)** (3 members)

Report "C" - **Ought to Pass as Amended by Committee  
Amendment "B" (S-199)** (3 members)

Tabled - May 9, 1997, by Senator **RAND** of Cumberland.

Pending - **ACCEPTANCE OF ANY REPORT**

(In Senate, May 9, 1997, Reports **READ.**)

Senator **MITCHELL** of Penobscot moved the Senate  
**ACCEPT** Report "A", **OUGHT NOT TO PASS.**

**THE PRESIDENT PRO TEM:** The Chair recognizes the  
Senator from Waldo, Senator Longley.

Senator **LONGLEY:** Thank you Madam President. I rise in  
opposition to the pending motion and I do so because we all  
know that we've got to do something about the horrible amount of  
smoking going on among our youth, ages 18 to 34. We lead the  
nation. What this Ought Not to Pass motion would do is just turn  
our heads away and say we don't want to hurt our businesses.  
This would be the best argument in favor of the Ought Not to  
Pass, but I say that it hurts us all, our businesses and our  
ourselves, when we just turn our heads away from voting  
whenever we can to stop people from having access to tobacco  
and the second-hand smoke effects. We know they're  
dangerous. What this bill does is, it bans smoking in restaurants  
and lounges, and I would encourage you to vote against the  
pending motion on the grounds that there are many things that  
we can do to decrease the amount of smoking. This is one area,  
and given the fact that we lead the nation in the number of kids  
starting to smoke, most of them by age 14, I think, that we have  
to fight smoking at every place and in every level we can. I ask  
you not to turn your heads on this issue and to wait for further  
motions so that we can do something to address the epidemic of  
smoking. Thank you.

**THE PRESIDENT PRO TEM:** The Chair recognizes the  
Senator from Somerset, Senator Mills.

Senator **MILLS:** Thank you Madam President and men and  
women of the Senate. There is a report that is the second of  
three options available to you that would, in a very reasonable  
way, respond to the request that actually came from restaurant  
owners in the State of Maine who said that we, as individual  
business owners, found it very difficult to do what we would like  
to do, which is to ban smoking within our restaurants where we  
try to welcome people to come in and eat and enjoy a meal. We  
would like to protect our help. It is impossible to distinguish one

area from another in the restaurant. It really is impossible to ask waitresses and waiters to wait on one segment of the restaurant without waiting on the other. One restaurant owner came to us in public hearing, he's a constituent of mine, he has two daughters that work in his family restaurant and he is sick and tired of having his kids, in order to earn a living in the family business, to be constantly exposed to secondary smoke in approximately 25% to 30% of the restaurant area that he owns. And he said, "Look, I'd like to ban smoking in my restaurant. I'd like to do it all by myself and I would even put a sign out advertising that I am a smoke-free restaurant. I know very well, in my region, that I would lose such a substantial fraction of my business to my nearby competitors and that I would have to close my doors. You have to do this for us. We can't do it for ourselves." It's one of the areas where a reasonable measure of government regulation seems to be required in order to get the job done and do it properly. Otherwise, if we leave restaurants with the current policies in effect, with divided areas, some smoking, some non-smoking areas within the same spaces, we have effectively very little regulation over the subject. There were strong voices of restaurant owners who appeared at the public hearing, who pleaded with us to pass some reasonable measure of restraint.

The choices that will lie before you will include banning smoking in restaurants but leaving it as a permitted activity in bars and lounges and in other areas of public accommodation. I think that the committee, which worked very, very hard on this issue, deserves to have its work acknowledged by going on to accept report "B". Thank you.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Penobscot, Senator Mitchell.

Senator **MITCHELL:** Thank you Madam President. Good morning women and men of the Senate. I speak to you this morning on behalf of our committee and the Majority report that came out of the committee. I speak to you also on behalf of the people who came before us at our hearing, and of the businesses that I've talked to over the last two weeks since we had the hearings and the work sessions on this particular bill. Let's talk about this for a minute. We are talking about private businesses. Businesses in Maine make the decision on the type of business they want to run, how they want to derive their profits and the clientele they're going to cater to. That's across the board for all businesses. Now we are talking about restaurants and lounges. We have a situation here where we have small restaurants. You have restaurants with areas for them to prohibit smoking and allow smoking in a lounge area. To enclose that lounge area would be very difficult because of the size. When we had people come before us at the hearing, we had people like Pat's Pizza in Orono, Maine. Pat Farnsworth has been in business for 60 odd years there and many of us, or those of us who have visited the University of Maine in Orono, I'm sure, patronize Pat's Pizza. This restaurant has an area where smoking is allowed and has been for years. Now, for them to renovate, with the age of that particular place and for the extra cost, would be an inconvenience and an added expense. We would be dictating and putting our hands in the pockets of these businesses and telling them that they have to put up walls.

Now, the technology of air purifiers was brought to our attention. This past weekend I patronized and went into 3 small restaurants in the little town of Newport, Maine. Friday evening I stopped, on the way home from a session, at Pat's Pizza. The woman, the manager, met me at the door and said "What are

you doing about this no smoking situation. Look at what you see here. Can you smell smoke?" No, you couldn't. The bar area and lounge, pizza places, beer and pizza, you could not smell the smoke because of the air purifier. The people were having their beer and pizza at one end and the non-smokers were sitting in the other. They were not inconvenienced. They had a choice to go in there and you could not smell smoke with the air purification. She pleaded, "Please, I cannot change the decor, or build, or enclose this lounge in this small restaurant. And I have better protection than Hawaiian Paradise, the restaurant on the other side of town." I ventured down to the Chinese restaurant, Hawaiian Paradise, which is one big, open room with a sign in the middle of it that says NO SMOKING on one end and SMOKING on the other. Again, because of the air purification you couldn't smell the smoke. Irving's, the truck-stop in Newport, as you come off the interstate, last evening after my education forum, I met there with the participants of our forum and we went in and there's a sign in the middle of the restaurant SMOKING on one side and people smoking at the bar area where you have food and one area for NON-SMOKING. Once again, air purifiers keep the smoke cleared and people go in there because it's a convenience. They patronize it because they want to go in to that particular restaurant. They have a choice. People of Maine currently have a choice. We are putting our hands in these people's pockets, incurring additional expense when there are precautions. We have choices to go to other restaurants. Bangor, Maine, The Lemon Tree, a small restaurant, no smoking, we, all of us, know smokers go there. But it gives people a choice. We had people from a small diner down in Wiscasset come to our hearing. One woman said, "People come in here and not just spend an hour to eat, but they play cribbage, they play cards and part of the reason they come here is because they can smoke and socialize, and if you ban smoking from here or tell me that I have to put a wall up, I'd have to close my doors." Small restaurants in downtown Portland, in the Old Port area, same rationale. I have not had one small restaurant or lounge area say to me, put this law into effect. We need it.

The excuse that Peter illustrated to, from the restaurants in Skowhegan that are saying, if you enact this law that gives me the reason that I can tell my people I can't have smoking here. Now, how many businesses come to government and ask them to protect them? If you're in business you make a decision on what clientele to serve and address that clientele. We should not be doing this. When you look at one of the amendments, it states having a lounge area with a no smoking area. The Days Inn here in Augusta, if you go into that lounge area you cannot smell smoke, again, because of the air purifiers, but where would you put a no smoking area? The manager said, "I could put one table in the corner and put a NO SMOKING sign in front of it." Is that what we want to do for them, to say that we are appealing government so we're sticking a NO SMOKING sign up there instead of letting them run their business the way they want to run it? On one of the amendments it states that we can allow the wait staff to make a choice, if they want to work in a smoking or a non-smoking area of the restaurant. Now, stop and think about that. You're telling the managers of these businesses that they are going to offer their wait staff a choice. Now, if all of their wait staff wants to work in the restaurant area, who are they going to look at and say, "If you want a job, you have to work in the lounge area." We have air purifiers. You can't smell smoke, but because you don't want to work in their lounge, are they going to keep you there where they don't need you? Again, we are micro-

managing business folks and I don't think that's what we want to do.

I've never smoked, and no one in my family smokes. My children have never smoked and I'm against it. But I have a choice on where I want to go, on where I want to participate in eating and social activities and I can make that choice. And I make sure there are air purifiers when I go into an area that has smoking allowed. It's children we're focusing on. Yes, we are going to work hard with our programs, with our education programs. We have schools on board and communities working to eliminate smoking with youth. But remember, we can talk to people who are older and made the decision to smoke, but one other factor that I would say to you, I spoke to some people on welfare in the Portland area. I said to them, "Now this is finally something that is going to force you to quit smoking, if we would put a cigarette tax on." Their response was, "No, I will take more money from my welfare check and buy cigarettes and go without what I need because I'm addicted. It's a disease and that's my choice and I don't need you telling me. If you put a tax on cigarettes or enact a smoking bill, I'm still going to do what I want to do with my life." So I ask you, please, to support the businesses of Maine and support my motion this morning of Ought Not to Pass on this bill. Thank you.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Hancock, Senator Goldthwait.

Senator **GOLDTHWAIT:** Thank you Madam President, ladies and gentlemen of the Senate. I just want to speak briefly to this issue because I do feel strongly about smoking in public places and I, too, did a bit of a survey in the town that I live in. It's just opening up for the summer, one of my favorite events of the year. I did have an opportunity, in this early quiet season, to speak with many of the restaurant owners in the Bar Harbor area. Many of them did say that the issue would be better resolved as a uniform policy rather than trying to do it as an individual policy. It creates a lot of competitive issues that they are concerned about and that, in fact, they would just as soon not expose their employees to cigarette smoke. It's difficult for them to make that choice because of their marketing situation and so, they would prefer that we manage this at the state level. It reminds me of another issue that came up last session where businesses did come to us and say, "This would be helpful if you would do this for us."

The attitudes of our society about smoking have changed significantly, and I'm happy to say that the State of Maine has been a leader in that area. It always surprises me, when I visit other states and attend business, or go out in the evening, and find that many states have a much more liberal smoking policy than our state does, and I'm proud of that. Our kids have been increasingly involved in anti-smoking campaigns. I know I have a very active project-assist group in my own community. Really, it's our kids who are asking us to tighten up the controls on smoking so that they can go about their normal business and not have to worry about if this is a particular establishment that allows smoking or not, to know that they can go to any restaurant and not have to be subjected to cigarette smoke.

I would submit that even the best of air purifiers does not solve the problem, particularly for people with respiratory disease, and they will react to the cigarette smoke despite the best purification systems available. So, if you want to leave the current situation in place, press 1. If you want to mostly ban smoking in restaurants, press 2. If you want to slightly ban smoking in restaurants, press 3. We have all those choices in

front of us today and I would urge you to vote against the Ought Not to Pass motion.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Piscataquis, Senator Hall.

Senator **HALL:** Thank you Madam President, ladies and gentlemen. I've heard a couple of people speak that this will help our young people from smoking. I beg to differ with you. You can ban cigarettes everywhere and they will be smoking. Nicotine is a very addictive substance. I'm living proof of that. I've smoked for many, many years and have attempted to quit, many, many times. I am also attempting to quit this morning, so be careful of what you say to me today. I may bite your head off.

It's interesting, when we passed the other smoking bill a few years ago, that a lot of people were going to be run out of business and so on and so forth. Most of those people made the right choice and banned smoking in their restaurants.

Let me tell you a little story that happened to me on Sunday. I decided to take my wife out to dinner. Well, dummy me, I neglected to make any reservations. So we went to two well-established large restaurants and couldn't get in. The only restaurant that I could find was a smoking restaurant. That restaurant is for sale. It's doing the poorest business of any restaurant in my District. I elected not to go in there, a smoker. I didn't want to go in there. So, I ended up taking my wife to Subway and ended up getting a nice sandwich and that was our dinner, at her suggestion by the way. I think she was getting hungry.

I'm for letting these people decide what they want to do themselves, and anyone who is still allowing smoking in their restaurants, once they come to the realization that they should ban smoking completely, they will be happy. Their business will be better. I will assure them of that. Regardless, there will be a few outspoken people, but it will be better for everyone if there is no smoking in any restaurants. The purifiers do a good job, there is no question about that. But I will be voting for the pending motion of Ought Not to Pass because I think it's the right of the owners of these businesses to make up their own mind of what they want to do. And you may have heard from one or two who don't want to make that decision. They want us to be the heavies. It's still eroding personal rights and therefore, I'll be voting for the Ought Not to Pass. Thank you.

On motion by Senator **RAND** of Cumberland, supported by a Division of at least one-fifth of the members present and voting, a Roll Call was ordered.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Washington, Senator Cassidy.

Senator **CASSIDY:** Thank you Madam President, men and women of the Senate. I wanted to speak briefly about this proposal that we have before us as well. I probably am using poor judgment telling you, but, three weeks ago tomorrow I quit smoking, and the reason I shouldn't tell you now is because it's going to put pressure on me not to start again. It was tough. I want to tell you the truth, and I agree with the good Senator Hall from Piscataquis that it frosts me when I hear people say that nicotine is not addictive. I think the thing that pushed me over during my weak points was when the President of one of the large companies told us, if you heard on the news, that "cigarettes and nicotine are no more addictive than gummy

bears." I don't know if any of you heard that, but that made me say that I was very ugly when I heard him say that because it is very addictive. The toughest thing that I have ever had to do, and I tried these patches and all kinds of things for a day or two and I said the heck with it. I'm going to do this cold turkey. I'm not going to suffer with this, I mean, I was ready. As a matter of fact, I was not very kind to a couple of people here one day as well. They didn't realize. I mean your nerves, it's terrible, it's a withdrawal but fortunately, that chemical withdrawal, I think from my experience, only lasts about three days. The rest of it is a psychological thing. There's no question about it. When I drove home Saturday, eleven hours from Delaware, as I mentioned yesterday, and I got through that eleven hour drive without a cigarette, so I think I can do it. Now that I have told you all, I'll have to do it. I really wanted to quit smoking years ago and my family and my children, and so on and so forth, have been after me and some of you, as a matter of fact, Senator Hall was the one that sort of inspired me to do it because I'm quitting and if you ever looked around here, I don't know if you ever realized this, there's 35 of us in this Chamber and Senator Hall and I were the only two that were out on the deck other than to get fresh air. So I think it will be great if we both can do this and we can say that we have 100% non-smokers in the Maine State Senate.

That being said, I have to go back to where I have on some other bills here, that I just hate the government telling people what to do from the time they get up in the morning until we rest our heads in the evening. I go into restaurants, and I tell you this that after you quit smoking you really notice it more than people that never smoked. I go into a restaurant that is full of smoke and it bothers me more than it did, more than it may some of you that have never smoked. But I have that choice, I can go to the non-smoking area, I can go to the smoking area, I can go to a non-smoking restaurant. I can smoke. I can chew tobacco or whatever I want to do. And that's the right we have because we live in this country. I think that Number 1, you are going to put a burden, I've heard, on the people who own restaurants. The government is telling them what to do again and I don't agree with that. The other thing is that there are people who enjoy smoking, and like to go to a smoking restaurant and have a cup of coffee or glass of wine, or whatever they would enjoy. I don't think it's right for us to get in people's lives again, and I hope you realize the value of living in this country. I hope you realize that I know smoking is terrible for us. It's terrible for you. And I'm going to do everything I can to hope that the young folks don't smoke, and all those kinds of things, but yet, I'm not going to take the rights away from citizens in Maine to go or not to go. To smoke or not to smoke. And I hope that you will join me in supporting this motion Ought Not to Pass. Thank you.

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The Chair noted the absence of the Senator from Aroostook, Senator **KIEFFER**, and further excused the same Senator from today's Roll Call votes.

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The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:

**ROLL CALL**

**YEAS:** Senators: AMERO, BENOIT, BUTLAND, CAREY, CASSIDY, DAGGETT, HALL, LAFOUNTAIN, MICHAUD, MITCHELL, O'GARA, PENDLETON, SMALL

**NAYS:** Senators: ABROMSON, BENNETT, CATHCART, CLEVELAND, FERGUSON, GOLDTHWAIT, JENKINS, KILKELLY, LAWRENCE, LIBBY, LONGLEY, MACKINNON, MILLS, MURRAY, NUTTING, PARADIS, RAND, RUHLIN, TREAT, THE PRESIDENT PRO TEM - CHELLIE PINGREE

**ABSENT:** Senator: HARRIMAN

**EXCUSED:** Senator: KIEFFER

13 Senators having voted in the affirmative and 20 Senators having voted in the negative, with 1 Senator being absent and 1 Senator being excused, the motion by Senator **MITCHELL** of Penobscot to **ACCEPT** Report "A", **OUGHT NOT TO PASS**, **FAILED**.

Senator **GOLDTHWAIT** of Hancock moved the Senate **ACCEPT** Report "B", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-198)**.

The Chair ordered a Division.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Hancock, Senator Goldthwait.

Senator **GOLDTHWAIT:** Thank you, Madam President, ladies and gentlemen of the Senate. This amendment would ban smoking in restaurants, except for those with separate bars in which smoking would be allowed, and it would also require that taverns and lounges would have a no smoking area similar to the current no smoking areas in restaurants, and I urge your support for this.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Somerset, Senator Mills.

Senator **MILLS:** Madam President. I have my light on purely for the same purpose as Senator Goldthwait had, just to support the Report "B".

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Piscataquis, Senator Hall.

Senator **HALL:** Thank you Madam President, ladies and gentlemen. This amendment further restricts business and I will not vote to do that and I wish that you would think about that and read that amendment before you vote. And, to give you time, I'd make the motion to indefinitely postpone this L.D. and all its' accompanying papers.

Senator **HALL** of Piscataquis moved to **INDEFINITELY POSTPONE** the Bill and Accompanying Papers.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Somerset, Senator Mills.

Senator **MILLS:** Madam President, I would ask for a roll call if that is the pending motion, but I would inquire of the good Senator whether there is any point to the motion since it seems to be exactly the same on which we have already had a roll call, which was on the Ought Not to Pass and wonder whether it would not be appropriate to withdraw that motion so that we could go on to address one report or the other?

**THE PRESIDENT PRO TEM:** The motion is in order. The Chair recognizes the Senator from Piscataquis, Senator Hall.

Senator **HALL:** Thank you Madam President. I am more than willing to answer that question. This is entirely a different motion. We won't know until we take the vote to what the outcome is, so I think it's very appropriate and go along with the roll call.

On motion by Senator **MILLS** of Somerset, supported by a Division of at least one-fifth of the members present and voting, a Roll Call was ordered.

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:

**ROLL CALL**

**YEAS:** Senators: AMERO, BUTLAND, CAREY, CASSIDY, DAGGETT, HALL, MICHAUD, MITCHELL, O'GARA, PENDLETON, SMALL

**NAYS:** Senators: ABROMSON, BENNETT, BENOIT, CATHCART, CLEVELAND, FERGUSON, GOLDTHWAIT, JENKINS, KILKELLY, LAFOUNTAIN, LAWRENCE, LIBBY, LONGLEY, MACKINNON, MILLS, MURRAY, NUTTING, PARADIS, RAND, RUHLIN, TREAT, THE PRESIDENT PRO TEM - CHELLIE PINGREE

**ABSENT:** Senator: HARRIMAN

**EXCUSED:** Senator: KIEFFER

11 Senators having voted in the affirmative and 22 Senators having voted in the negative, with 1 Senator being absent and 1 Senator being excused, the motion by Senator **HALL** of Piscataquis to **INDEFINITELY POSTPONE** the Bill and Accompanying Papers, **FAILED**.

On motion by Senator **MILLS** of Somerset, supported by a Division of at least one-fifth of the members present and voting, a Roll Call was ordered.

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:

**ROLL CALL**

**YEAS:** Senators: BENNETT, CATHCART, FERGUSON, GOLDTHWAIT, JENKINS, LIBBY, MACKINNON, MILLS, MURRAY, NUTTING, PARADIS, RAND, RUHLIN, TREAT, THE PRESIDENT PRO TEM - CHELLIE PINGREE

**NAYS:** Senators: ABROMSON, AMERO, BENOIT, BUTLAND, CAREY, CASSIDY, CLEVELAND, DAGGETT, HALL, KILKELLY, LAFOUNTAIN, LAWRENCE, LONGLEY, MICHAUD, MITCHELL, O'GARA, PENDLETON, SMALL

**ABSENT:** Senator: HARRIMAN

**EXCUSED:** Senator: KIEFFER

15 Senators having voted in the affirmative and 18 Senators having voted in the negative, with 1 Senator being absent and 1 Senator being excused, the motion by Senator **GOLDTHWAIT** of Hancock to **ACCEPT** Report "B", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-198)**, **FAILED**.

Senator **LONGLEY** of Waldo moved the Senate **ACCEPT** Report "C", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (S-199)**.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Waldo, Senator Longley.

Senator **LONGLEY:** Thank you. Colleagues in the Senate. Obviously, this is a tough issue where we understand the hazards of smoking and we want to respect the interests of a business person deciding for themselves. I move Ought to Pass on Committee Amendment "C" because it tries to strike a happy middle, if there can be such a thing. Basically, in voting for this, and in voting against the Ought Not to Pass, I think we ought to do something. I couldn't vote for the Ought Not to Pass because it was, ought to turn my head away, and deny the fact that smoking is an epidemic in this state and it's costing us more than it's earning us, and for that reason I couldn't vote for that motion, and support this motion because it strikes a middle ground.

The middle ground is, if I am a waitress, going to any one of you who run a restaurant when I apply for a job, and supposing you want to hire me, you ask me do I have a preference, smoking or no smoking? As a non-smoker who hates being around smoke, of course, I'm going to choose non-smoking to the extent that the employer can accommodate me. I'm also going to choose non-smoking because I think that the tips are going to be higher in that area, if for no other reason that fewer coins have gone into a vending machine to buy cigarettes and the money goes to Maine workers as opposed to out of state tobacco companies. I was asked by my colleague next to me to be brief, I will end on that note. I think that it allows choice for the employer, choice for the employee and also as a note, it asks the employer to set aside one side of his or her bar for the non-smokers. 75% of us do not smoke. Many of us do not go out and deny other Mainers our business because we don't want to be around smoke. I think, that by sending a message and having employers be more aware of all of us who choose not to be

around smoke, we will get the message out that non-smoking is better for your business, as the good Senator from Piscataquis, has said. Thank you for listening and I urge you to vote for the pending measure.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Penobscot, Senator Mitchell.

Senator **MITCHELL:** Thank you Madam President, women and men of the Senate. I oppose the good Senator from Waldo County because once again I implore you, I'm speaking to you on behalf of the businesses of Maine. This is a burden that you are placing on the owners of these restaurants and lounges. You're asking them to make a decision and offering them, and demanding them to allow their wait staff to make a choice.

We do not need to micro-manage our businesses in Maine. We need to allow them the freedom of running their business at their choice and the way they prefer to manage their businesses. The current law allows that and I implore you to be very careful when you think about your vote on this, because it does affect the employers and the employees in a negative way. The people still have the choice, so let's allow the people of Maine the freedom of being able to make a decision on the clientele they wish to address coming into their lounges. Remember, the technology changes on air purifiers, the sizes of these lounges that we are talking about, and the impossibility for them to allow a no smoking area and have that enclosed, or even a sign in front of a small table in one end of the lounge. Lounges are atmosphere, they are not large rooms, they're small rooms which do not allow, when they were constructed, for a separation of smoking and non-smoking. That's why the business of air purification went into effect and became such a great business because they were able to purify the air in small enclosed areas for more health and safety precautions. I urge you to vote in opposition of this. Thank you.

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Off Record Remarks

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**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Hancock, Senator Goldthwait.

Senator **GOLDTHWAIT:** Thank you Madam President, ladies and gentlemen of the Senate. Reluctantly, I wish to explain that I will be voting against this pending motion, although it is a weak, but not unreasonable, compromise in terms of the issue of smoking in restaurants. The part of the bill that would provide for wait staff to designate where they chose to work would, I believe, be unworkable for many of our small restaurants in Maine and because of that piece I'm unable to support the pending motion. Thank you.

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Off Record Remarks

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**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Aroostook, Senator Paradis.

Senator **PARADIS:** Thank you Madam President, men and women of the Senate. I was very, very proud that two of our Senators made the announcement on the floor of the Senate this

morning, while our students from all over the State who have been working diligently on alerting the state to the problems, the health problems with smoking, were in the room when those announcements were made and I couldn't be any prouder. I remember when our schools were starting to become smoke-free and after each teacher was walking away from the nicotine habit.

I urge your support for this amendment. This states any attempts at reasonably accommodating the wait staff. It's a small step. We, here in these halls, work very, very hard to compromise and this is a compromise that we arrived at to bring all the parties together, and always remembering that second hand smoke is a class A carcinogen. This is a small, small step for us to take this morning. It's not going to be onerous because of it's permissibility, in terms of stating that this needs to be reasonable at accommodating their employees. Thank you very much.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Oxford, Senator Bennett.

Senator **BENNETT:** Thank you Madam President, fellow members of the Senate. I am reminded, listening to the debate today, about the old notion of a camel as a horse created by a committee and, in my view, sometimes compromise is worse than either of the two alternatives. This is one of the cases where I believe that to be so. I believe this is not a happy medium. I believe this is poorly conceived. A tremendous burden on businesses and on individuals. I just cannot imagine this bill, as being suggested, working in any way in this state. This bill does not ask, as has been suggested, lounge owners to separate their lounges into non-smoking or smoking, it tells them to. It requires them to and I don't see how it's going to work. I supported report "B" because I think that we need to send a clear message on this, and the fairness and the equity involved with this legislation can only be achieved if everybody is playing under the same rules. I know all of you have lounges and pubs in your districts and they are vastly different, the way they are organized, the way they are managed, the hours they keep, the clientele they serve. There is no way that this legislation, this amendment, can properly serve, through this micro-management in any equitable way, that vast array of differences across the state. I urge you to defeat this motion. Thank you.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Oxford, Senator Ferguson.

Senator **FERGUSON:** Thank you very much Madam President, fellow members of the Senate. I did vote to support report "B" and, even the original bill I would have supported that if that would have been before us but this is, in my judgment, too restrictive. It would be too hard to administer by the businesses and I would urge you all to vote against the pending motion. Thank you very much.

**THE PRESIDENT PRO TEM:** The Chair recognizes the Senator from Penobscot, Senator Cathcart.

Senator **CATHCART:** Men and women of the Senate. I urge you also to vote against this amendment, as one who would support prohibiting smoking in restaurants and as a former restaurant owner myself. I voted for the previous amendment but I don't see where this prohibits smoking anywhere. Instead I just see that it really places the burden on the restaurant owner to



give the wait staff their choice of which section to work in. Having been in the position of that restaurant owner, I can tell you that it's just not always possible to honor those requests and it just seems like it totally got in the way from the original intent of the bill. Thank you Madam President.

The Chair ordered a Division.

On motion by Senator **AMERO** of Cumberland, supported by a Division of at least one-fifth of the members present and voting, a Roll Call was ordered.

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:

**ROLL CALL**

**YEAS:** Senators: CLEVELAND, LAWRENCE, LONGLEY, PARADIS, RAND, TREAT, THE PRESIDENT PRO TEM - CHELLIE PINGREE

**NAYS:** Senators: ABROMSON, AMERO, BENNETT, BENOIT, BUTLAND, CAREY, CASSIDY, CATHCART, DAGGETT, FERGUSON, GOLDTHWAIT, HALL, JENKINS, KILKELLY, LAFOUNTAIN, LIBBY, MACKINNON, MICHAUD, MILLS, MITCHELL, MURRAY, NUTTING, O'GARA, PENDLETON, RUHLIN, SMALL

**ABSENT:** Senator: HARRIMAN

**EXCUSED:** Senator: KIEFFER

7 Senators having voted in the affirmative and 26 Senators having voted in the negative, with 1 Senator being absent and 1 Senator being excused, the motion by Senator **LONGLEY** of Waldo to **ACCEPT** Report "C", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (S-199)**, **FAILED**.

Senator **LAWRENCE** of York moved the Senate **RECONSIDER** whereby it **FAILED** to **ACCEPT** Report "B", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-198)**.

The same Senator moved to **TABLE** until Later in Today's Session, pending motion by same Senator to **RECONSIDER** whereby the Senate **FAILED** to **ACCEPT** Report "B", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-198)**.

At the request of Senator **BENNETT** of Oxford a Division was had. 22 Senators having voted in the affirmative and 9 Senators having voted in the negative, the motion by Senator **LAWRENCE** of York to **TABLE** until Later in Today's Session, pending motion by same Senator to **RECONSIDER** whereby the Senate **FAILED** to **ACCEPT** Report "B", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-198)**, **PREVAILED**.

Senate at Ease

Senate called to order by the President Pro Tem.

The President Pro Tem requested the Sergeant-at-Arms escort the Senator from York, Senator **LAWRENCE** to the Rostrum where he resumed his duties as President.

The Sergeant-at-Arms escorted the Senator from Knox, Senator **PINGREE** to her seat on the floor.

Senate called to order by the President.

Out of order and under suspension of the Rules, the Senate considered the following:

**COMMITTEE REPORTS**

**House**

**Ought to Pass As Amended**

The Committee on **BANKING AND INSURANCE** on Bill "An Act to Amend the Continuing Care Retirement Community Laws to Repeal Certain Exemptions and Place Other Requirements on Providers and Developers of Continuing Care Retirement Communities" H.P. 827 L.D. 1132

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-426)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-426)**.

Which Report was **READ** and **ACCEPTED**, in concurrence.

The Bill **READ ONCE**.

Committee Amendment "A" (H-426) **READ** and **ADOPTED**, in concurrence.

The Bill as Amended, **TOMORROW ASSIGNED FOR SECOND READING**.

The Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** on Bill "An Act to Amend the Professional Service Corporation Act As It Relates to Eye Care Providers" H.P. 1301 L.D. 1844

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-437)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-437)**.

Which Report was **READ** and **ACCEPTED**, in concurrence.