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House Legislative Record
of the
One Hundred and Eighteenth Legislature
of the
State of Maine

Volume I

First Regular Session

December 4, 1996 - March 27, 1997

First Special Session

March 27, 1997 - May 15, 1997

SENATE PAPERS

Divided Report

Seven Members of 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 in Report "A" that the same "**Ought Not to Pass**"

Signed:

Senator: MITCHELL of Penobscot

Representatives: BROOKS of Winterport

FULLER of Manchester

LOVETT of Scarborough

JOYNER of Hollis

BRAGDON of Bangor

SNOWE-MELLO of Poland

Three Members of the same Committee on same Bill report in Report "B" that the same "**Ought to Pass**" as amended by Committee Amendment "A" (S-198)

Signed:

Representatives: MITCHELL of Portland

KANE of Saco

QUINT of Portland

Three Members of the same Committee on same Bill report in Report "C" that the same "**Ought to Pass**" as amended by Committee Amendment "B" (S-199)

Signed:

Senators: PARADIS of Aroostook

LONGLEY of Waldo

Representative: PIEH of Bremen

Came from the Senate with Report "B" "**Ought to Pass**" as amended read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (S-198) as amended by Senate Amendment "A" (S-225) thereto.

Was read.

Representative MITCHELL of Portland moved that the House accept Report "B" "**Ought to Pass**" as amended.

The SPEAKER: The Chair recognizes the Representative from Winterport, Representative Brooks.

Representative BROOKS: Madam Speaker, Men and Women of the House. I rise today to bring your attention to some things that I have said before both in meeting of both parties and meetings in the caucus, etc., about the reaction that restaurants in my district have had to this legislation. From what I understand about this legislation, it would ban smoking in restaurants. I have, as of yesterday, received my fourth phone call from restaurants in my district and I can assure you that there aren't any more than that in eastern Waldo County. We don't have a lot of businesses, so if you want to come over and do something with us, you will have to go to lunch or dinner there. All four of those restaurants have called and asked me if I would not only vote not to ban smoking in their restaurants, but to vote in opposition to this measure.

There are two or three reasons why. One of the reasons, and in a few minutes, if you have not already received it, you should be receiving another piece of information about smoking in restaurants. You should be receiving one from the Restaurant Association, which was just brought to my attention that, I believe, in the public hearing they were neutral on this issue and they are now opposed to this. There is a very good reason for that. These are the same kinds of reasons that in my district the restaurants are pointing out to me. If we ban smoking in restaurants, of all sizes, we are going to be setting up unfair competition between the large and the small. You know what will happen there. The small ones will go out of business. The restaurants in my district serve 20, 30 or 40 people. They are mostly transients, people who are on the road. If you go to their

restaurants, even though they have a smoking area that is separate from the public area, you will immediately detect that the smoking area is larger than the other nonsmoking area. That is precisely for the reason I mentioned before and that is because they cater to their regular customers and they are smokers. They have gone to the expense of putting in a separate area. In most of the instances that I know of, doesn't interfere with the nonsmoking area.

I can cite you one restaurant that is on Interstate 95, although not in my district, who just installed a \$38,000 ventilation system and renovated the restaurant. I ask that if there is any possibility, you can think these small businesses that we may be putting out of business by banning smoking in restaurants? I think it is okay the way it is, frankly. I would ask that when you vote, that you join me. I would like to make a motion that we indefinitely postpone this Bill and all Accompanying Papers. Madam Chair, I would ask for a roll call.

Representative BROOKS of Winterport moved that the Bill and all accompanying papers be indefinitely postponed.

The same Representative requested a roll call on his motion to indefinitely postpone the Bill and all accompanying papers.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The SPEAKER: The Chair recognizes the Representative from Harpswell, Representative Etnier.

Representative ETNIER: Madam Speaker, Ladies and Gentlemen of the House. This ended up being one of the most important issues, in my personal perspective, that we are going to deal with this session certainly. I know whenever folks feel passionately about a variety of issues that come before us, from abortion to property rights, I can understand both sides of the arguments on those things. On this one, I have always had a hard time understanding the other side of the argument. In fact, I do not understand it and I think it has no validity. In fact, I find it is very misleading and deliberately so. I think this is one of the most important public health and labor issues of this session. Public health, I will get to in a second. I say labor because of the occupational health issue regarding the employees of these restaurants throughout our state who have no choice but to work eight plus, obviously, hours a day in and out of the smoking sections of a restaurant.

In terms of the public health issue around the secondhand smoke, which is really what we are talking about here, you have gotten a bunch of stuff across your desk. I apologize for that over the last three or four days. There is some from me and some from others. I just want to mention a couple of things related to the public health issue. The Environmental Protection Agency study that showed up on your desk and shows this as one of the eight Group A carcinogens that they have labeled. The other ones being, for your information, indoor radon gas, vinyl chloride, radionuclides, airborne asbestos, coke oven emissions, benzene and arsenic. The EPA has determined that secondhand tobacco smoke kills 53,000 people per year in this county. That is 37,000 people from heart disease related to this tobacco smoke, 4,000 people from lung cancer and 12,000 people from other cancers related to the secondhand tobacco smoke. If that isn't a public health issue that this state should be grappling with and grappling with in a forth right fashion, I have never seen one, ladies and gentlemen.

In terms of the issue related to labor and the occupational health of the employees of our many fine restaurants within this state, you have also received something else on your desk from the *Journal of the American Medical Association* study on involuntary smoking in the restaurant workplace. That comes up with a number of epidemiological evidences suggested that it may be a 50 percent increase in lung cancer risk among food

service workers. That is in part attributable to tobacco smoke exposure in the workplace. Elsewhere in that same article it says that public health efforts to regulate smoking in bars and restaurants can no longer focus on only protecting the patron. Food service workers must be afforded the same public health protection as other workers. To protect these workers from the hazards of environmental tobacco smoke, secondhand smoke, smoking should be prohibited in bars and restaurants. Those are pretty strong words regarding the occupation health issue.

In my humble estimation, and eating in countless restaurants throughout our state, I have spoken to others who feel the same way. Certainly, I view our current smoking, nonsmoking laws around smoking in restaurants as ineffectual and in all due respect, a joke. Having eaten in many of them myself and been subjected to incredible amounts of secondhand smoke in the nonsmoking section. I don't think what we have works. In fact, I know what we have does not work. I ask you to consider that when you vote on this. I think that is why we need to go to this next step, that I know to some of you is impalpable, but, to me, it is unconscionable not to consider these health issues and go in that direction.

There has also been information across your desk and I gather the good Representative Brooks mentioned something coming across your desk regarding the effect on business. A similar ban has been in effect in other states and certainly other towns and counties. There have been numerous studies within this country, I have some here. Quoting from Arizona, Texas, California and Massachusetts saying that the imposition of a law such as this has had no effect on the business at the restaurants within those municipalities or those states in the states that have adopted a similar ban.

I ask you to consider those things. I want you to consider the business impacts, the health impacts and in my view, there is no basis for the concern for the business impacts. I think this information is largely misleading and has no validity. I don't see any disputing the health impacts. I urge you to consider this bill carefully. I certainly urge you to oppose the Indefinite Postponement that is before you now. Thank you very much.

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

Representative LOVETT: Madam Speaker, Ladies and Gentlemen of the House. Smoking education has brought us a long way in the past few years. From 75 percent of restaurant seats set aside for smoking to almost 80 percent of those seats now dedicated to nonsmoking. Virtually 100 percent of Maine's fast food restaurants, where children are especially likely to be present, are smoke free. Seventy-seven of Maine citizens recently surveyed believe that each business should be free to determine their own smoking policy as long as that policy is clearly posted at the entrance. As you know, many, many restaurants have decided to go totally smoke free. However, other small Maine restaurants, dependent upon a larger smoking customer base for their survival, would likely be devastated as their customers would start cooking at home. They would visit less frequently or shorten their stay. Hundreds of small towns, one room Maine restaurants, would likely face very substantial losses if smoking were banned in restaurants, but permitted in lounges.

The alternative, would simply be send their customers to restaurants with lounges and result in substantial job losses. Restaurant owners know their customers and they must be free to accommodate all of them, smokers and nonsmokers, if they are to survive. The best alternative is to maintain the progress made under the current law where every restaurant must maintain a nonsmoking area, reasonably calculated to address the needs of the nonsmoking public. We will accomplish this if

you will support us in Indefinitely Postponing this bill and all its accompanying papers. Thank you.

The SPEAKER: The Chair recognizes the Representative from Saco, Representative Kane.

Representative KANE: Madam Speaker, Colleagues of the House. We all have restaurants in our area that will be affected. There is no question about it. The question is, do we not represent all of our constituents and their health and welfare. This is not an issue of just banning smoking. It is an issue of preventing the nicotine addiction of our children and controlling the public health threat to all of us, smokers and nonsmokers alike. This is not just a matter of inconveniencing smokers, it is a matter of protecting the health of all of us. This is a significant economic issue. The relatively small amount of business income and sales tax dollars that might be lost pales in comparison to the hundred of millions of public Medicaid and Medicare dollars that we are currently spending on medical care for smokers and nonsmokers affected by tobacco related pulmonary disease and the increased premiums that we all have to pay.

This morning in *USA Today* there was a small picture on the front page that noted the killer cancers that the 160,000 deaths a year from lung cancer was more than all the other cancers, colon, breast and prostate cancers combined. In the last few days we expressed concern about sending the wrong message by allowing public television to auction alcohol and voted to prohibit exposure to children by reducing its access to TV to the late night and early morning hours. The impact to exposure to nicotine that we are imposing on our children is infinitely greater, should we not pass this nicotine control measure. The tobacco industry has already publicly confessed that it has deliberately and covertly implemented an insidious strategy of hooking our innocent children and adults on nicotine. We would not even have to deal with a bill like this, had we not been manipulated by the tobacco industry into the public health threat that we are facing today. There are some here who are persuaded that we should not infringe on the right of smokers, merchants or the free market and feel impelled to protect any of our constituents' businesses that may be affected. The tobacco industry has spent \$6 billion annually to convince us of that. As the previous speaker noted, the restaurant industry in the public hearing did not take an opposition position to this. The major opposition throughout, as we know it, has been the tobacco industry itself.

Much of the reaction that we get from restaurants is not to avoid dealing with the issue, but rather to provide a level playing field by which all restaurants are playing by the same rules. Most restaurants are not averse to implementing this kind of nonsmoking policy provided that everybody else has to play by the same ground rules. The fear among most restaurants and what prohibits them from voluntarily moving in this direction is that they are afraid of losing business to other places who don't comply by the same rules. We are talking about the rights of business. We are talking about the rights of smokers. What about the rights of taxpayers who have and are currently paying the cost of the health care threat to Medicare, Medicaid and our increased premiums for insurance? What about the rights of our children whose addiction to nicotine is re-enforced by the message that we are currently sending that smoking and nicotine is acceptable routine adult behavior? Make no mistake about it, my colleagues, the acceptance of smoking in restaurants does just that.

Ladies and gentlemen of the House, we are giving a powerful message to our children by our vote on this issue. Which message do you want to give? Please support smokefree restaurants and vote against the motion to Indefinitely Postpone.

The SPEAKER: The Chair recognizes the Representative from Old Town, Representative Dunlap.

Representative DUNLAP: Madam Speaker, Men and Women of the House. I think I could say with a fair amount of certainty that any effort to reasonably limit the amount of secondhand smoke that our citizens are exposed to would be a very noble effort, a great cause. I have worked in the food service industry now going on 12 years making good use of two college degrees. That is the humanities for you. In my ten years in various restaurants, I have worked in a fair number. I have worked in coastal towns, restaurants inland, institutional food service, catering and currently, I am a bartender in a restaurant. I run a bar in Pat's Pizza in Orono, which has three large dining rooms and I run one of them. In that restaurant, you have one whole room that has 75 to 80 seats, all nonsmoking. In another room, 75 to 80 seats, all smoking and then you have my room, which is about 85 seats, which is half smoking and half nonsmoking. That is where the bar is.

Under this law, they would all have to be nonsmoking. This restaurant has been in operation since 1931 and has been run by the same man all those years. He is there until 4 in the morning every night with me cashing out. He is 87 years old. I don't think I ever see him without a cigar in his mouth. It is not always lit. I think, perhaps, Representative Cross can appreciate that phenomenon of the unlit cigar. When I worked on the coast, there was two kisses of death for any restaurant. That was, if they didn't have air conditioning, they were as good as closed. If they didn't have any provision for smokers, they might last two seasons. I suppose the argument of about having the level playing field, all nonsmoking is very attractive.

There is a sheet going around with my name on it. I know this information well. In Toronto when they banned smoking in 2,700 restaurants, sales dropped off 50 percent. So much for the level playing field. Again, in an effort to limit people's smoking is really truly a noble effort, but I don't think the way to do it is to mandate what they can do and where they can do it, especially when there is already a choice. A restaurant currently has a choice now to either be smoking or nonsmoking. I think that is where we get into the problem of the definition of what your property is and what it isn't. Of course when you are dealing with the public it is always a little different.

When my parents came to Maine, they had a pottery, there is a large barn right next to their front door. The lawyer said that they better tear that down. My father said, why? Somebody might get in there and get hurt and you will get sued. Under the law, that is considered an attractive nuisance. We had to tear down a nice old barn to prevent the possibility of getting sued. When you are dealing with the public, there is always a slightly different set of issues at hand, especially if it is your own house. If it is your own house, you say you can smoke or you can't smoke. Still underlying all that, someone like Pat Farnsworth, my boss, I love the man, he has had that restaurant for all these years and he has always had some provision for nonsmokers or smokers. He has always tried to accommodate everyone. Representative Brooks eluded to a restaurant that just spent many thousands of dollars installing a ventilation system so they could accommodate people of both sides of that particular health issue.

I don't think the restaurants are handling this irresponsibly. They are not saying they want everybody to smoke in our restaurants. No, of course not. I think when it is your restaurant, you would like to be able to say what can go on there and what cannot go there. If you choose to not have smoking, that should be your choice. If you choose to allow some form of smoking, then that should also be your choice. I think there is also an element out there, ladies and gentlemen, that they really don't want to have smoking in their restaurants, but the restaurant up the road has it and they don't want to compete with that. They

are saying that they want to get a bill through to ban it everywhere, so we can have our "level playing field."

I agree that the efforts to limit smoking, I reiterate this is the third time, is a noble effort. I don't think this really addresses the issue in a way that we can really feel comfortable with in our constituencies. It doesn't really give our citizens the freedom of choice that they really need. It certainly does not protect our restaurant owners and as it was mentioned before, every town has a series of restaurants in it. If you don't want to be in a smoking environment, then go to a smokefree restaurant. If we are going to mandate what a restaurant can provide for an environment, then why don't we just go all the way and mandate what they have on the menu. Let's say, you have to have a salt free item. You have to have a low fat item and while you are at it, red sauce, white sauce and brown sauce. That is what you have to put on your menu. I don't think that is right. I don't think this is right and that is why I am supporting this motion. I hope you will too. Thank you.

The SPEAKER: The Chair recognizes the Representative from Manchester, Representative Fuller.

Representative FULLER: Madam Speaker, Ladies and Gentlemen of the House. I, too, am one of the people who support the ban on smoking in restaurants. I hope that everybody listened carefully to Representative Kane's comments about the harm that smoking does to people, both who smoke and those who are subjected to secondhand smoke. It is a serious public health problem. However, I would also note that studies have shown that banning smoking in restaurants has not hurt the business. Smokers are not going to stay home and cook if they cannot smoke. More than 100 cities have passed smokefree restaurant legislation. Restaurants and cities with smokefree restaurant laws did not lose any more, in fact, they had a slight gain. Fifty-six percent of people would be more likely to go to a smokefree restaurant than one that allows smoking. However, you will notice the report that came out. I am on the "Ought Not to Pass" side of that report. Everybody knows that I have been involved in health care. My husband died from smoking. I need to explain why I am on the "Ought Not to Pass" side of that report.

Both amendments that came out with that report would have required no smoking areas in lounges, bars and drinking areas attached to restaurants. As much as I think that is a very noble idea also, I think it is very unrealistic. I am not exactly a stay at home and I have been to a number of places in bars and lounges where it would be impossible for them to set aside a no smoking area. I spoke to the owner of Slaters Restaurant in Hallowell, which many of you are familiar with, she lives in my district. She would suffer seriously if we required a no smoking area in her lounge area or ban smoking entirely. However, she does support banning smoking in her restaurant. She frankly admitted she would like to see us pass that law. I urge that you vote against the motion to Indefinitely Postpone. Thank you.

The SPEAKER: The Chair recognizes the Representative from Raymond, Representative Bruno.

Representative BRUNO: Madam Speaker, Men and Women of the House. It has already been stated that if we put a ban on restaurants, we will now put all restaurants on equal footing. I think that is a very important thing to remember. Representative Dunlap from Old Town said that if you ban smoking in restaurants, then you might as well go all the way. Let's remember that we already banned smoking in workplaces. How can we say that a restaurant is not a workplace? Our waiters and waitresses are some of the hardest working people in the state, yet, we will subject them to secondhand smoke, but everybody else who works in an office, we will not do that to. To

me, that doesn't make sense. A restaurant is a workplace like any other workplace.

Fast food restaurants in this state have banned smoking. Has anyone tried to get into a McDonalds or a Burger King on a Saturday afternoon at noon time? You can't get in. That is smokefree. Anyone who is afraid of business dropping off because smoking will be banned, I don't think it is a relative argument. One thing that we are very near the top on in this state is children's asthma. I work in a pharmacy where I see kids as young as two years old coming in to get their inhalers. It is not something we can be proud of. We need to do something about that statistic. We lead the nation in children's smoking and asthma. Are those things we can be proud of as a state? I don't think they are. I think this stopping smoking in restaurants puts everyone on an equal footing. It leads us one step closer to a better public health policy in this state. Thank you.

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

Representative MITCHELL: Madam Speaker, Men and Women of the House. Just to be absolutely clear. We are not talking about banning smoking in any place but restaurants right now. We are talking about what the other body had the courage to pass. I want to talk about this piece of legislation that we are considering. Representative Dunlap effectively mocked the idea of the level playing field. I wish he or anyone else could have been in our committee room and seen the restaurant owners who were very nervous, but came and said they need this ban. This is the only way that we can do this without being put out of business. We need this level playing field. As far as losing business, the National Restaurant Association says that 56 percent of people would be more likely to go to a smokefree restaurant than one that allows smoking. Back to the issues of waitstaff, waiters and waitresses have a 50 percent higher lung cancer risk than other professions. I got a lot of calls on this too. I am sure we all have. I talked to the owner of Pat's Pizza and I had gotten so many calls and I finally said, who told you to call me? He said, I got a call from Florida and they said I needed to call you and tell you this. I wonder what Florida knows about our legislation? The other body had the courage to make this historic vote today. They represent the same people. I hope that this body will have the courage to do the same.

The SPEAKER: The Chair recognizes the Representative from Rumford, Representative Cameron.

Representative CAMERON: Madam Speaker, Ladies and Gentlemen of the House. You have heard today that this is a large restaurant versus a small restaurant issue. I fail to understand that. You heard that the small restaurants would be put out of business. You heard Representative Mitchell say that there were restaurant owners who gave testimony and were very nervous because they were there. I had restaurant owners contact me in my district who were more than nervous, they just plain didn't dare to come testify. They asked, please pass the bill. They said that we tried it and we were boycotted because there was an alternative. We had to give in and put smoking back in. We have a small restaurant and we cannot isolate people from the restaurant. As far as it being an economic burden, they also told me that they found people coming into their restaurant as a place to get in out of the cold to sit and smoke and have a cup of coffee. They really weren't purchasing meals, it is a small restaurant and it was really a financial burden on them, quite honestly. They also said that they had a particular problem with a group of young people, not that the young people were doing anything wrong, but after school it was a place to get in where it was warm. About 20 of them would come in and sit around the table and drink coffee and smoke. It is not up to the restaurant owner to be put in a position to police

the children that are smoking. They are all underage smokers, but it wasn't up to the restaurant owner to police them. They were taking up valuable sales space. I don't want you to take that wrong. I don't want you to think that is a negative shot at children, but when we are providing a place for them and we are also sending the message that it is okay to smoke. We need not to do that.

We have heard about how, many times, that Maine has the highest rate of teenage smoking. It is not an issue that we should be proud of. We certainly shouldn't be helping provide the atmosphere and the message that says its okay. I think it is a level playing field issue. If we have a situation where you can't smoke in any restaurants, then there is nobody to boycott. Smokers aren't going to stop eating. It may happen for a week or two or a month, but they are not going to stop eating, they are going to continue to go out and eat. What will also happen, I believe, is people who suffer from lung problems, will also be able to go out and eat. The reality is if you have a smoking and nonsmoking section of a restaurant, where my good friend Representative Bruno is sitting in the smoking section and I am sitting in the nonsmoking section and we are as close as we are now, nobody has figured out how to train the smoke. It still filters into the areas. I don't care what the laws say and I don't care how much you hear about, we have separate areas, at adjacent tables, the smoke is not smart enough to know where not to go.

I would submit to you that it is an elderly issue. The elderly of our state are more apt to have lung and respiratory problems. It is an issue for them when they go and they are subjected to this kind of environment. It is a selfish issue with me. I will be perfectly honest. I don't like sitting in a restaurant where I have to rub my eyes and feel that burning in my throat all the time. I go there to enjoy eating. As you can all tell, I enjoy eating very much. To give you an example of what this restaurant owner was talking about, they had a patron who smokes and came in and occupied a table for seven hours and smoked steadily for seven hours, one cigarette after another and occupied that table. That restaurant owner didn't make any money. Those tables represent money. The waitress didn't make any money bringing coffee. It is not an issue, I believe, that the restaurant owners are going to be hurt financially. I believe that they are going to benefit.

We heard that restaurants in Toronto banned smoking and there was a 50 percent drop in the attendance. I think we need to keep in mind that the culture about smoking in Canada is entirely different than the culture in the United States. In Canada, they still smoke on planes. There are virtually no areas that are no smoking in Canada. The only other issue that I wanted to mention to you is in the facility that I work, most of you know that I work for Mead Paper in Rumford, all the things that we hear about the bad environment, one of the things that our mill manager did six months ago, it took him 18 months to negotiate it, but he banned smoking in that facility. Not in the mill, not on the property, not in your vehicle, nowhere, not even on our forest lands. You say it is unenforceable. To some degree maybe it is, but the message is what is really important. The message to our young people and the message to the employees of the cost financially and the cost to your health. I, for one, think that message is a very powerful one. I don't want my children or my grandchildren, I am happy to say that none of my family smokes, I don't want them to have to be exposed to it when they go out to a restaurant to enjoy the evening. Thank you very much.

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

Representative TOWNSEND: Madam Speaker, Men and Women of the House. I, too, rise to encourage you to defeat the

pending motion and to respond as others have to the argument that this ban would unfairly target small restaurants. I want to remind you that two of the first two restaurants to ban smoking in Maine were the Miss Portland Diner and Moody's Diner. At the time when the Miss Portland Diner made this decision, it was newsworthy. It was so unbelievable. There is a small one room restaurant where we would have thought that the clientele went because they had the opportunity to smoke. There has been no decline in business there. You still have to stand in line on a weekend morning. As far as I know, Moody's Diner remains an icon in Maine. Moody's Diner made that decision for a very real and personal reason. A longtime employee of that restaurant, a waitress, died of lung cancer. The doctors who treated her said that her lungs were as black as any smoker's. It is very much a case of workplace safety, men and women of the House. Unfortunately, still many of the people who wait tables in this state are low income women who do so because they have no other choice. I see no reason why, they in particular, should be subjected to poisons. We now know that tobacco is poison. I find the argument about a low salt menu to be simply noncredible. Secondhand smoke is an established poison marketed by a cynical and manipulative industry, which has made money by producing a product, which we now know, they have known for years, is both addictive and deadly. Thank you.

The SPEAKER: The Chair recognizes the Representative from Boothbay, Representative Honey.

Representative HONEY: Madam Speaker, Ladies and Gentlemen of the House. I want to preface my remarks by saying that I have been a nonsmoker all my life and so has my wife. However, I want to point out some real glaring problems with this legislation. This bill and the amendment (S-198) has not been addressed by some here. They hint around the edges of this problem. My wife has a large restaurant in Boothbay Harbor which has a smoking and nonsmoking section. Her business will survive and prosper if this legislation is passed. Believe me, she will make money if this legislation comes down the way it is written. I will point out to you how.

She has an establishment that has smoking and nonsmoking, but she also has a lounge attached to it that can be completely separate from her business. However, there are many restaurants in Boothbay Harbor, if you people have been there in the summertime, small places that also serve meals and liquor do not have the opportunity to have a facility that is completely separate. My wife's business and two or three others on that Boothbay peninsula will prosper. The smaller business cannot and will not, there is no way they can do this, separate their lounge from their business so the big boys will survive and the little guys will go out of business. She could support all these other restaurants in the area I live and probably throughout Maine would support a total ban, but this way, the big guys will do all right this way. Believe me, they have lounges that you can shut the door. My wife and businesses similar to this will serve meals in that lounge. They will accommodate their patrons and people that smoke, can eat in the lounge and smoke their cigarettes, and they will do fine. Her competitors next door will be out of business. I thank you.

The SPEAKER: The Chair recognizes the Representative from Saco, Representative O'Neil.

Representative O'NEIL: Madam Speaker, Colleagues of the House. We are being asked to Indefinitely Postpone this bill and all its papers and in so doing we are being asked to leave the law the way it is. I will submit to you that by leaving the law the way it is, we all get smoked. When we broke a couple of weeks ago, my wife and kids went down to Texas and I was kind of lonely one night and I decided I would try a new restaurant out in town. I knew the chef. I knew he had been successful in other places

and I decided to try him out. I wasn't much unlike the transient people in Maine that provide so much of the revenue for restaurants in Maine. Not being one who eats out an awful lot, with two kids I tend to like to cook, I don't go to restaurants all that often. Those that I do go to, I probably don't go back to all that soon. I tried this restaurant out and they asked me immediately if I wanted smoking or nonsmoking. The place wasn't busy, I said nonsmoking as I always do, what happened was they set me 30 feet adjacent to the lounge, just like Representative Cameron and Bruno mentioned, but the smoke made its way to me as I spent \$30 on a meal. I got smoked.

If we are going to look at this in terms of business and a business that is important to Maine, then I submit to you that we ought to be telling those people, the transients, who have one shot at walking into a restaurant. They don't say they go into this place because it is nonsmoking. They go and they go in. If we are going to do it that way, we take all the gray out of it for them. Ban smoking, period. You put the public health issues that Representative Kane so ably talked about, put those aside. They are grave issues. To my way of thinking, it is about time that we, in Maine, stood up and declared that smoking and dining, heck, smoking and living, are incompatible in Maine. Thank you.

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

Representative BRAGDON: Madam Speaker, Ladies and Gentlemen of the House. Several things have been said that are very disturbing to me. First of all, it was mentioned that several restaurants in this state that have gone smokefree and have been very successful after they have gone smokefree and I would applaud them for that. However, I think it is the businesses decision to decide who they want to serve and who their clientele should be. I don't tell a Chuckie Cheese restaurant that they can only serve people over 65 and I don't think it is right to tell some of these little diners in small communities that they have to serve only nonsmokers. It really disturbs me that people are talking about their health rights, but we don't think of the rights of smokers to go out and have a meal and enjoy it. They live here in Maine, like we do, and I think they have the right to go and eat where they will be served and if they want to smoke, let them. The last time I checked this was a free society. I would urge you to support Indefinite Postponement.

The SPEAKER: The Chair recognizes the Representative from Winterport, Representative Brooks.

Representative BROOKS: Madam Speaker, Ladies and Gentlemen of the House. I will be very, very brief my second time up to speak about this. Just a couple of things that I want to cover that I forgot to cover before when I spoke. When I talked to the restaurants in my district who wanted this ban not to exist, I did ask them about their waitstaff. I was informed by them and I can't say they are average or normal or whatever, but they did say that if any of the waitstaff were not able to or did not want to work in the areas where smoking was allowed, that they would abide by their wishes. They would be allowed not to work in there. In small restaurants, they have only one person on duty and I realize that and they do have to wait on people who are smoking.

Some of the other questions that came up about choice. Fifteen years ago, I guess that maybe the overriding issue that I heard was the health issue. Fifteen years ago, I decided on my own, by the way, this is probably 15 years and 75 pounds ago, to quit smoking. I am not going to stand here and tell you that I made the wrong decision. I haven't picked up a cigarette since. I did it because the place where I worked, they were going to ban smoking. I said they weren't going to tell me I can't smoke, so I quit on my own. I felt very good about that and I still do. When I

go out at night, I do that a lot too, I make a choice as to where I am going to go eat. The first question that I am asked when I go into a restaurant is smoking or nonsmoking. Obviously, I pick nonsmoking. There are occasions when I take members of my family out, I have a mother-in-law who does have respiratory problems who cannot be around smoke, we will drive from Winterport to eat at either Bangor or Belfast to find a restaurant that has no smoking. We want to make that choice.

I believe that when we are talking about that choice, we are talking about a health question. We are talking about health issues, but we make the choice. We are not forcing that choice on anyone else. Health issues are as much a concern to me as to any other member of this House. In a couple of days, as a matter of fact, we are going to be looking at some issues involving taxation and cigarettes and all that. I am absolutely certain that we are going to be talking about health and health questions. As far as I am concerned, if we do decide to raise the tax and we do make a connection, the connection to me is very important, between the tax and health, then I say that we should do it. If we can make a connection here that doesn't destroy small businesses and doesn't prevent them from having smoking areas, then I would go along with this bill too.

I would agree with one of my dear friends who sits right in front of me, Representative Wheeler, who just told me a few minutes ago that he contacted a restaurant in his district and the restaurant in his district said that at first he didn't have a whole lot of problems with the ban, until he remembered he was a border community restaurant and that what might happen is that people would go across the border to New Hampshire where there were no ban. He is now very concerned about this. He is opposed to a ban. Those are the issues that I wanted to cover again. There are, I am sure, many more that we could cover and we could all stand here and talk a whole lot. I think we have covered an awful lot of them. I hope that you will support me in Indefinitely Postponing this bill and all accompanying papers. Thank you.

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

Representative MITCHELL: Madam Speaker, Men and Women of the House. I will respond very briefly. We heard that we are infringing on smoker's rights to go out to eat. I would ask, are they so addicted to this substance, that they can't wait an hour for a cigarette? A person with an asthma problem said that they can leave their cigarettes outside. We can't leave our lungs outside.

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

Representative QUINT: Madam Speaker, Men and Women of the House. Several years ago when the federal government was thinking about restricting smoking on all domestic flights and airlines across the country, several of the same arguments were being used. It is a free country. People should have a choice to smoke when they travel and when they choose to travel because they can do that in their car. There was also arguments about the level playing field and it wasn't going to work. One of the arguments for it was the federal government said it needed to be a level playing field in order for it to work. We also heard arguments about how it was going to affect tourism and how Europeans and people from other parts around the world would not travel in this country or use our air carriers because they couldn't smoke in them. Those arguments were very similar and were used and I think many of the tourist statistics would show you and prove that the tourist industry in the United States had not decreased because smoking is banned on all domestic airline travel in this country, in fact, it is up over the last five years. Thank you.

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

Representative SAXL: Madam Speaker, Men and Women of the House. I rise to ask you to Indefinitely Postpone this bill and its various papers. My issue is the issue of choice and one of tolerance. Cigarettes and tobacco are not illegal substances. People are well aware of the consequences of their use. There has been education materials and people's rate of smoking has changed dramatically. However, there are people and I am one of them, who continue to smoke and when they go out for a meal in the evening want to be able to use the substance, which as I said, is a perfectly legal one. It is my belief and I hold this belief strongly, that I should not be deprived of using a perfectly legal substance when I go out to a restaurant. There are restaurants which ban smoking and I think that is their right and I don't have to go there if it is unpleasant for me, but likewise, I also deserve a place where I can enjoy a meal. I would ask you to Indefinitely Postpone this and let the individual restaurants make that choice about whether he or she wants to provide for the majority of you or the minority of me. In a democracy, the rights of the minority are very important. I would suggest that I would like you to help me support those rights.

The SPEAKER: The Chair recognizes the Representative from Poland, Representative Snowe-Mello.

Representative SNOWE-MELLO: Madam Speaker, Men and Women of the House. I rise today to ask you to vote to Indefinitely Postpone this piece of legislation. Why, may you ask? The reason being is that, once again, we would be attempting to micromanage our state's businesses. I am sorry. I cannot and will not tell business owners what to do in his or her establishment. This person has put their hard work, their monetary investments and time into making his or her establishment work. Did we help him out in any way to do this? No, we didn't. I really feel and I think that this would be, once again, the state stepping on the private sector's toes. I believe that the state is fine and dandy if we can continue to keep the ban on facilities that are owned by the state. I think that is okay. I have heard that from many people as I have been asking them what they felt about this. They said, public facilities okay, but private, no, it is not okay. Please don't do this. Please do vote to Indefinitely Postpone this piece of legislation. Thank you.

The SPEAKER: The Chair recognizes the Representative from Freeport, Representative Bull.

Representative BULL: Madam Speaker, Men and Women of the House. Very, very briefly, we keep on hearing about smoker's rights in here. What about my right as a nonsmoker to be able to eat in a restaurant of my choosing, wherever I want, and not have to inhale secondhand smoke? Please vote against the motion to Indefinitely Postpone.

The SPEAKER: The Chair recognizes the Representative from Bridgton, Representative Waterhouse.

Representative WATERHOUSE: Madam Speaker, Ladies and Gentlemen of the House. I want to go on record completely agreeing with Representative Saxl. Also, I would like to add a brief caviat about people with asthma. We constantly hear how smoking is real bad for people with asthma, but people in their family who have asthma know that is not necessarily true. My mother had asthma. I could remember using the inhaler for her because she was crippled and couldn't use her hands. She was in a wheelchair. I would have to push it down for her while she inhaled. She also, every once in a while, got together with a lot of members of our family and played some kind of a game late at night with cards. I used to, as a little boy, stack up something they called money. Everybody smoked there, my grandfather, my grandmother, my father, but my mother didn't smoke. Smoking never bothered her. Driving behind cars on the

highway when everything that came out of the pipe was straight out. It never bothered her. She never had an asthma problem. She had severe asthma. The only time she had a real problem with asthma was during the pollen season. When you say asthma, people with asthma, you have to be specific to people with asthma who are bothered by smoke, not just people with asthma. Thank you.

The SPEAKER: The Chair recognizes the Representative from Livermore, Representative Berry.

Representative BERRY: Madam Speaker, Men and Women of the House. I had planned to leave this debate to the experts. I appreciate the comments of Representative Bruno, originally. I had been reserving my remarks. I do have a son with asthma. He has had trouble with asthma since he was a baby. I can remember my wife staying in a hospital bed in the oxygen tent with him. I was a little bit long to fit in there with him myself. She got that duty. It concerns me that because we are going to say that smoking didn't affect one person with asthma, but it is not going to affect another. People with asthma, asthma can be triggered by a number of things. It can be pollen. Pollen is a very common one. My son generally seems to be with exercise. He is allergic to red dyes, which is extremely odd. Everything for children has red dye in it. As it relates to smoking, we try to protect the environment he is in. The restaurants have. It is fairly decent to go in a restaurant these days with the reduced smoke over what was there. My father smokes and when he comes over he smokes outside. We don't have to ask anybody to do that when they come. They recognize that there is somebody in the house that could have a problem. We are not going to take a chance with that.

As another Representative stated, we could be considered part of the transient population. We like to travel the summer throughout Maine. It is nice to go into a restaurant. It would be nice if they were all smokefree, not adjacent to a smoking area, count on good ventilation or having the doors and windows open. I hadn't planned on debating this issue, but I appreciate your time. Thank you.

The SPEAKER: The Chair recognizes the Representative from Hallowell, Representative Cowger.

Representative COWGER: Madam Speaker, Men and Women of the House. I am a small business owner of an eating and lodging establishment that is smokefree. The previous owners of my business allowed smoking throughout the establishment, both in the eating areas and the lodging rooms. I bought my business at a real estate foreclosure auction from the federal government. Maybe this gives you some indication of how the previous owners were in the business. My business, I have owned for five years now, has grown every year to a point where it is self-sustaining even without a legislative salary. I urge you to vote against the pending motion.

The SPEAKER: The Chair recognizes the Representative from North Berwick, Representative MacDougall.

Representative MACDOUGALL: Madam Speaker, Ladies and Gentlemen of the House. I am a recovering smoker and I have not smoked for over 10 years. That was a choice I made. It was a difficult process as any can tell you. I have listened to the debate today and tried to remain open minded through it all. I honestly didn't know how I was going to vote. I would ask that you would support the Indefinite Postponement and its accompanying papers. I do live on a border town with New Hampshire. Part of my district I share with Representative Wright. There are several restaurants there that are literally a stones throw away from New Hampshire. I think it is a matter here, just like I did 10 years ago, determined that I would not smoke. When my wife and I and family go out to eat, we choose those places where we won't be inundated with smoke. We don't

go to the ones that do. I think businesses should be allowed to make that choice based on what the market tells them they can do. My good colleague from Hallowell, has made a business decision to have a nonsmoking establishment and that is working very well for him. The point is, that was his choice. I would just submit to you, ladies and gentlemen, that the New Hampshire border is a very real matter. My previous colleague that I replaced, Representative Farnum, I think, would concur. Thank you for listening.

The SPEAKER: A roll call has been ordered. The pending question before the House is to Indefinitely Postpone the Bill and all Accompanying Papers. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 200

YEA - Ahearn, Barth, Belanger DJ, Berry DP, Bigl, Bouffard, Bragdon, Brooks, Bumps, Bunker, Campbell, Carleton, Chartrand, Chick, Chizmar, Cianchette, Clark, Clukey, Cross, Davidson, Driscoll, Dunlap, Farnsworth, Fisher, Fisk, Foster, Gamache, Gerry, Gieringer, Goodwin, Hatch, Honey, Jones SL, Jones SA, Joy, Joyce, Joyner, Kasprzak, Kerr, Kneeland, Kontos, Labrecque, Lane, Layton, Lemaire, Lindahl, Lovett, MacDougall, Mack, Madore, Mailhot, Marvin, McAlevey, Murphy, Nass, O'Brien, O'Neal, Ott, Paul, Peavey, Pendleton, Perkins, Perry, Pinkham RG, Pinkham WD, Poulin, Povich, Rines, Savage, Saxl JW, Shannon, Skoglund, Snowe-Mello, Stanley, Stedman, Taylor, Tobin, Treadwell, True, Tuttle, Underwood, Vedral, Waterhouse, Wheeler EM, Wheeler GJ, Winglass, Winn, Winsor.

NAY - Bagley, Baker JL, Belanger IG, Berry RL, Bolduc, Brennan, Bruno, Bull, Cameron, Colwell, Cowger, Desmond, Dexter, Donnelly, Dutremble, Etnier, Frechette, Fuller, Gagne, Gagnon, Gooley, Green, Jabar, Jones KW, Kane, LaVerdiere, Lemont, Mayo, McElroy, McKee, Meres, Mitchell JE, Morgan, Muse, O'Neil, Pieh, Powers, Quint, Richard, Rowe, Sanborn, Saxl MV, Shiah, Sirois, Spear, Stevens, Thompson, Townsend, Tripp, Usher, Vigue, Volenik, Watson, Wright, Madam Speaker.

ABSENT - Baker CL, Bodwell, Buck, Lemke, Nickerson, Plowman, Samson, Tessier.

Yes, 88; No, 55; Absent, 8; Excused, 0.

88 having voted in the affirmative and 55 voted in the negative, with 8 being absent, the Bill and all accompanying papers were indefinitely postponed in non-concurrence and sent up for concurrence.

Divided Report

Majority Report of the Committee on **Health and Human Services** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (S-219) on Bill "An Act to Establish the Maine Compassionate Use Act" (S.P. 319) (L.D. 1059)

Signed:

Senators: PARADIS of Aroostook

LONGLEY of Waldo

MITCHELL of Penobscot

Representatives: MITCHELL of Portland

BROOKS of Winterport

FULLER of Manchester

KANE of Saco

PIEH of Bremen

QUINT of Portland

LOVETT of Scarborough

JOYNER of Hollis

SNOWE-MELLO of Poland

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

Signed: