

MAINE STATE LEGISLATURE

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at some of those issues between now and next November, and to come back with recommendations. There are a number of provisions of this that they were very strongly in support of, which very much clarified the authority of communities to really control their own destiny. I would say that the feedback we're getting is quite positive from both of those sides. I do know that the original Bill did raise some concerns on the school front, but I don't think that the current version does at all.

The Chair ordered a Division. 15 Senators having voted in the affirmative and 8 Senators having voted in the negative, the motion by Senator **TREAT** of Kennebec to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (S-660) **READ** and **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-660)**.

Sent down for concurrence.

The Chair laid before the Senate the following Tabled and Later Today Assigned matter:

HOUSE REPORT - from the Committee on **LEGAL AND VETERANS AFFAIRS** on Bill "An Act to Create a New Category of Liquor License and to Exempt Pool Halls, Bowling Alleys and Off-track Betting Facilities from the Prohibition Against Smoking" H.P. 1807 L.D. 2533

Report - **Ought to Pass As Amended by Committee Amendment "A" (H-1004)**

Tabled - April 10, 2000, by Senator **PINGREE** of Knox.

Pending - **ACCEPTANCE OF THE REPORT**, in concurrence

(In House, April 8, 2000, Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1004)**.)

(In Senate, April 10, 2000, Report **READ**.)

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 PRESIDENT: The Chair recognizes the Senator from Somerset, Senator Mills.

Senator **MILLS:** Mr. President and men and women of the Senate, over the last several years, the Health and Human Services Committee has put in hundreds of hours, I suspect, on reviewing the entire issue of what public places ought to be permitted to have smoking and what ought not to have. It is, I think, particularly appropriate that the Health and Human Services Committee review this important public policy issue. It

is, after all, the Human Services Committee that has the opportunity to administer a \$1.2 billion annual Medicaid budget, which the authorities tell us is, in some measure at least, driven by expenses arising from exposure to smoking, to second hand smoke, and to chewing tobacco, as well, I might add. In any case, after deliberating rather extensively on Bills that were presented to that committee in the past several years, they formulated a well-crafted law last year. As you will recall it passed, went into effect in September. It banned smoking in restaurants. It's interesting to reflect that there are, I am told, about 40,000 places of business in the State of Maine. With the passage of the restaurant smoking Bill last year, it left only a few hundred businesses in Maine where smoking is still permitted.

It seems that we've come a long way in the last decade or so. Remember 10 years ago, or thereabouts, there was such a controversy about banning smoking in airlines, and one can easily imagine that. It was banned first in domestic flights and then the FAA took the rather large step of determining that it was appropriate to ban smoking on international and transoceanic flights as well. Weighing the detriment to the public against the inconvenience to those who must smoke. In my mind, that probably was a very large step, a very controversial one. But it's one that has faded into history. One that, I think, the public has come to accept. I think no one would retreat from that measure and from the others that have been passed in the past decade. It is simply true that smoking is not permitted in any businesses in this state with very, very few exceptions. The Bill last year left a few exceptions. I have had a number of comments from restaurant owners in my district who are concerned that we left any exceptions at all. Their thought was that we should have simply gone the distance and said, look, the few hundred remaining businesses where smoking is permitted it is time, finally, that indoor smoking in public places simply be prohibited. It is 99.5% prohibited in this state and in many other jurisdictions. Why not go the extra distance and clean up the law and make one uniform standard. That way businesses can get on with the process of adjusting economically, financially, and the clientele can get on with adjusting, and we can proceed. This year, as you all know, several of these business interests came forward. They managed to obtain jurisdiction over the issue in the Legal and Veterans Affairs Committee, which does not have the history of dealing with this issue year-after-year-after-year as has the Health and Human Services Committee. As a result we have the Bill that lies before you this evening that would do essentially three things. Roll back some of the provisions in regard to the restaurant smoking ban. Number 2, ease back on the restrictions against smoking in bowling alleys, some of which have been in place since 1994. My understanding is that in bowling alleys, some of them have taken advantage of the generic exception that is allowed in our law, has been allowed for some years, and that is there's nothing wrong with setting aside a separate room for people to smoke in. The only restriction on that room is that the employees may not be required to serve any customers in that area. The major reason, the fundamental purpose of the smoking Bill, has been to avoid exposing employees, restaurant help, waiters, waitresses, exposing them to working in places where there is atmospheric smoke. So any business, and I don't think it's limited to just bowling alleys and pool halls, any business that wishes to may set aside a separate room where the only restriction is that you can't serve patrons in there. Employees may not be required to serve customers in this separate room. My understanding is that most of the bowling alleys that are doing business have accommodated themselves

by using this very reasonable alternative so that smoking is allowed indoors. It's just allowed in an indoor space that is not part of the public service area. My belief is that most of the bowling alleys have done very well to accommodate themselves in that respect.

The third element in this Bill is a retrenchment on the licenses for pool halls, and to permit a new licensing category, really, for pool halls where smoking would be permitted. I think it's a shame that we take these steps in retreat after having made so much progress over the past 10 years. At the risk of repeating myself, roughly 99.5% of all businesses in Maine now abide by the commonly accepted rule that indoor smoking is prohibited. It is prohibited in this chamber. If we had come to this chamber 30 years ago, or even 20 years ago, at this time of night, the place would be a blue haze. There would already be smoking scars on the new desks. The rug would have its burns in it already, after a couple of months. And you know what, we probably all would probably have just accept it. That was the environment that we lived in 20 years ago. But if you came into this chamber today, given the changed conditioning that we've all undergone in the last 20 years, and you suddenly noticed that there was a blue haze in here, and 10 or 15 of us were smoking away, and there were cigarettes going in ashtrays, we would all walk out. Because we have gotten ourselves use to the idea that clean air is great stuff. I travel occasionally, I go to Europe, walk in to some of the bars over there. You know you come home and can't wait to get to a dry cleaners. But 20 years ago I would have thought nothing about it.

We have succeeded, through public legislation, in completely changing the atmosphere in which we do business in this country. It's really remarkable. Not the most remarkable thing that ever happened in the last part of the 20th century, but one of the more remarkable things. For us, now three months, four months into the new millennium, to retreat from the gains that we made is really a shame. I think in deference to the work, the very hard work of the Health and Human Services Committee that has studied this issue year after year, we should reject the pending Bill and vote against what I believe to be the present motion, which is to adopt the Committee Report. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Daggett.

Senator **DAGGETT:** Thank you Mr. President. Members of the Senate, I appreciate the good comments of my colleague from Somerset, Senator Mills, and find myself in a somewhat awkward position standing here defending what's been referred to as a smoking Bill. This is not a smoking Bill. Smoking has been allowed in bars and taverns over time. This was not changed last year except for bars that happen to be attached to a restaurant. This Bill, which is, I might add, a unanimous committee report, allows those bars that are attached to a restaurant, but are yet separate, self-contained rooms, to allow smoking and allow minors in the restaurant, which is the way the Bill was crafted last year created, somewhat of an anomaly. It would require a bar that was attached to a restaurant, if they wished to allow minors in that restaurant, to run two sets of books, have two kitchens, two sets of bathrooms, and essentially be two separate businesses. This simply corrects that inequity as far as the restaurants are concerned.

There has been some discussion about committee of jurisdiction. I think that is kind of an interesting issue because, in fact, the Legal and Veterans Affairs Committee, in fact, is the

committee that does liquor licensing. That is precisely what the smoking ban was tied to, licensing. I think licensing is entirely within our province to look at, so I would reject that as a smokescreen. Pardon the pun. It has been mentioned that there were very few exceptions to this law. There are 12 exceptions. There are a number of exceptions. There have been exceptions. There were exceptions left in last year, somewhat interesting ones. Some of the information that's out indicates this is a repeal or partial repeal. I would submit to you it's a repeal of nothing. There is nothing in the Committee Amendment that has the work repeal. There's no repeal here. Earlier this year, there was a Bill in front of the Health and Human Services Committee that asked for that uniform standard that was mentioned earlier. If a uniform standard was what was wanted the opportunity was there, and it was rejected unanimously, rejected unanimously. So if this committee, the Health and Human Services Committee, wanted a uniform standard the opportunity was clearly there and it was rejected. This does not roll back provisions. It does not make significant changes. It addresses the licensing issues because serving liquor is attached to licensing, and we do not allow spirits, beer or wine to be served without food being served. Businesses that were called restaurants for the purposes of licensing, got brought into this. That's where the pool halls came in. They were licensed as restaurants. Somewhat interesting, a member of the committee actually said, I would never take my wife to a pool hall for dinner because pool halls are not restaurants. But when the licensing thing became somewhat confused, it was left to our committee to sort it out. It was a unanimous report and, in fact, a lot of the opposition to this began to increase, directly proportional to the time the Bill had been reported out of Committee.

So I hope you'll take the time to understand exactly what the Bill does. It repeals nothing. It allows those restaurants, those businesses, that happen to have a bar attached to their restaurant, an appropriate license. It allows the pool halls to have appropriate licensing. It doesn't mandate any smoking anywhere. Every business in this state has the right to be non-smoking if they so choose. So I hope you will support this Unanimous Committee Report.

THE PRESIDENT: The Chair recognizes the Senator from York, Senator Libby.

Senator **LIBBY:** Thank you Mr. President. Women and men of the Senate, I just rise briefly to explain to you some of the testimony that took place in this public hearing. I was there for the testimony as a co-sponsor of one of two Bills that pretty much did the same thing. The original Bill that I had signed onto only pertained to pool halls. The reason for this is because the pool halls in various parts of the state have come under a great deal of financial strain because of the new smoking ban. In my district there's a very large pool hall in the town of Limington, just over the line from Standish. It's located really close to the high school. If you go to that pool hall on any afternoon after school's over, what you'll find is a really tremendously clean operation, just as clean as the building that we're sitting in now. You'll see young teenagers go into the pool hall, with their parents, to play some rounds of pool. It's really a tremendous opportunity to get these kids off the streets. I voted for the smoking ban last year. I think that people are concerned about the health effects of the smoking ban, are rightly concerned about that. I have no qualm with that. But, to put these pool halls out of business, I think, is going a little bit beyond what we really need to do in order to

appropriately effect public policy. What has happened to the pool halls is that, and they all came to the committee and testified, basically they were being bled to death and put out of business. 30%, 40%, 45% of their business being taken away from them because they couldn't have smokers in at the same time as the young people. What this does is, it still allows smoking and it allows young people. But if you look at the last line of the summary, it says "under this amendment pool halls are exempt from the ban on smoking as long as minors are prohibited from the premises," so it allows them to set up "either or" that they need to set up.

I hope that you'll give that some thought because it's really important for these pool hall owners. They came from all over the state. They testified one-after-another-after-another. There were two that came that had already gone out of business. One in Westbrook, that I went to as a kid. I felt really bad that the guy couldn't stay in business. But he couldn't because if 30% of your business is young people, and 30% or 40% or 50% of your business is smokers, and the rest are somewhere else, what are you going to give up here. It really has an incredible impact. We had some amendments last year that really, and I believe they were from the Senator from Cumberland, Senator Harriman, predicted that this would happen and sure enough it did. Unfortunately, those amendments didn't pass, but it was close. Now that we've seen the impact, this Bill that's in front of us now gives us a chance to right the wrongs before it's too late. Especially in my district. We've got a couple of tremendous establishments for kids. It gets them off the streets, which is what we need to do. These kids need something to do. Pool is like golf or anything else. Any kind of activity is a tremendous amount of fun, and I don't think we ought to be taking that away from these kids. So, thanks a lot.

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

Senator **PARADIS:** Thank you Mr. President. Men and women of the Senate, make no bones about this. This is a health issue and that's why the Health and Human Services Committee came at it from that angle. One person everyday dies from smoking related disease, even when they're not smokers. From being exposed, and usually at work. The restaurant employees are the ones that came to testify last year in droves because they were reading about their friends, or they were seeing their friends, die from second hand smoke. It is a classic carcinogen. It is the most toxic form of cancer causing chemicals. As you know from the statistics we've heard all year, this state is number one in the country for heart disease, lung cancer, chronic lung disease such as emphysema, asthma, and then, of course, in our babies low birth weight, childhood ear infections etc., etc., etc. So our committee always approached it from the health perspective. This very piece of legislation you are looking at is what the Restaurant Association fought very vociferously against because it would not be a level playing field. We have not heard from our restaurants because it has been working well. Their revenues are up at least 5%. Pool halls' revenues are also up according to our revenue service. I urge you to vote against this report so that next year, if people really want, we can take the time and look at this before we change something that has worked so well. The reason the Bureau of Health was at the hearings from the very beginning was to point out that we, indeed, had not overlooked these issues, but that we very much cared about these issues. But we were busy with that \$1.2 billion Medicaid budget. That is

absolutely obscene to expect the taxpayers of this state to be footing the bill for something that many, many cases could have been easily avoided. Because now we are more sophisticated, we have the information to better protect our people. 77% of our adults in this state are non-smokers. That's why you're showing the numbers of people eating out are going up. They are not going to be exposed to second hand smoke. I urge your voting no on this motion.

THE PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Small.

Senator **SMALL:** Thank you Mr. President. Men and women of the Senate, I suppose I should start off by saying that I did spend two summers waitressing, and I hope that won't, in any way, flavor your thoughts on my testimony. But I do want to talk about what this will mean, specifically, to the restaurants in my town, my town of Bath. I have two restaurants that are almost side-by-side. They are old time restaurants. They did not go out of the city, but chose to stay in the city and refurbish buildings that are in the city, which are double level. They have a basement and they have an upstairs. Both of those restaurants have a bar downstairs and a restaurant upstairs. Always had it that way. Then we passed the smoking ban that precluded smoking in a restaurant. They had the option, as did every other restaurant, to stay a restaurant or to become a lounge, in which case they allow smoking in the entire building. Don't be fooled that by passing this restaurant smoking ban, that we made restaurants necessarily smoke free. I've gone into a number of what I thought were restaurants only to learn afterwards, when I was in a cloud of smoke, that they became a lounge so that they could allow smoking, not just in one area, but in the whole restaurant. So I was a little surprised by that. But the two restaurants in my community, one chose to become a lounge and he has the smoking downstairs in his bar. But upstairs in his restaurant, he chose to have that smoke free. So, one would say, well, that's great. That allows patrons to come in and have a smoke free environment while they eat their dinner and then if they want to go down into the bar they can go downstairs and choose the smokier atmosphere. The only problem is adults can go into that restaurant, but minors cannot because it is a lounge, even though it is smoke free upstairs. So, my daughter, when she goes to the senior prom this year, will not be able to eat in that restaurant unless I go along with her, and she has already ruled that option out, as did her boyfriend. But all the other students in my community now have to find another option of going to one of the favorite restaurants in our community because they opted to keep their lounge a smoking lounge. Understand, there are separate entrances. They don't have to pass through the lounge. They go into the restaurant and the restaurant is smoke free, but they cannot go in without an adult. This legislation would allow them to have the upstairs accessible to minors because it is a smoke free restaurant and would not have the affects of the smoke.

Now the other restaurant down the street did just the opposite because they have a lot of after school students that come in the upstairs part. It's a deli with a very nice lounge downstairs. They went entirely smoke free because they wanted to be able to have the students come in the afternoon. Their so-called restaurant revenues are up, I believe, 12%. But in the downstairs part, the bar, they're losing \$100 a day in loss revenues. Now these aren't people who decided to stay home because his bar is smoke free. These are people who have

walked down the street to another bar that opted, because they are just a bar anyway, to have smoking. So what he did was lose his business to other bars. So there wasn't a level playing field that we talked about where some restaurants don't have smoking and others do. He lost his clientele to a smoking bar and will continue to lose those clientele. So he now has an option. Perhaps the only way to save that business will be to turn the entire business into a smoking one, which, again, will rule the children out from the upstairs. Perhaps he'll have smoking in the upstairs since he's going to have to put it in the downstairs. I don't know, but he certainly is not going to be able to continue losing \$100 a day. It was a significant portion of his profits, a gist of his livelihood, and so he's just managing to scrape by.

So what this amendment would do, would allow him to have the downstairs part, which is a bar, to be smoking like all the other bars in our community are. The other gentlemen could continue having his downstairs bar be smoking and the upstairs restaurant. Nobody has to go through the bar to get to those, they have a separate entrance, and he would be able to have minors come in and enjoy a meal in a smoke free environment. Maybe this wasn't an unintentional consequence, but it certainly was when I voted for the legislation last time. I really regret that I almost put one business out of business, and that I forced a number of young people to seek alternatives, either elsewhere in Bath or out-of-town. I hope that we can correct this, go ahead and support the unanimous Committee Report. I was going to ask for an emergency clause so that we could do it by prom time, but I guess I would be pushing my luck. I would be happy if you would just support the unanimous Committee Report. Thank you.

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

Senator **GOLDTHWAIT:** Thank you Mr. President. Ladies and Gentlemen of the Senate, we could probably take a break now and just run the video from last years debate on this issue because the arguments haven't changed a bit. There are no new reasons to allow smoking in public places and there are no new reasons to ban smoking in public places. I have a ton of restaurants on the island where I live. I think the statistic is that we've got 25% of all the restaurants in the State of Maine. They asked me three things when we were discussing this originally. They said, we want the ban to happen, we want you to do it, and we want a level playing field. This Bill begins to erode the progress that we made last year. Some people say that the business should be able to decide whether they are a smoking establishment or not. I don't agree. Second hand smoke is an extremely dangerous chemical and affects a lot of people besides the smoker. We all know that now. One of the provisions in this Bill would be to allow smoking in pool halls when unaccompanied minors under 18 are not present.

I don't know about you, but I've had the misfortune of having to stay in a smoking motel room because there weren't any more non-smoking rooms left. How does that go, "the song is gone but the melody lingers on." It is quite obvious that the smoke is not gone when the smoker is. It's a very uncomfortable situation when you've got to be exposed to the smoke in the carpets, the bed clothing, and the curtains for a night. Some people say that this hurts business. I don't agree. We have a lot of data that suggests that, far from injuring businesses, business in the prime industry related to this issue are up, including a 4 ½% increase in restaurant business in the State of Maine in the last quarter of '99

versus '98. If you buy this argument, that we're hurting businesses by the smoking ban, what are you going to say next year when we are back in the midst of one of the biggest points of debate from the last time around about the small convenience stores with lunch counters. We were predicting doom and disaster for those businesses.

I am sure that if we remove this portion of the smoking ban that they will all be back next year saying it's hurting my business too, you should make an exemption for us. I don't think that's healthy for the people of Maine. We're going to be back at the beginning if we do this bit-by-bit. If we chip away at these protections year after year after year. We'll be starting all over again. Smoking is bad for you. There is no dispute about that. Second hand smoke is bad for you. There is no dispute about that. Asthma is rampant in the State of Maine. It's at epidemic proportions. It's a debilitating disease that causes lost work time. It causes lost school time. About \$18 million in Maine's medicaid costs are directly attributable to tobacco related diseases. Maine has taken a strong stand on smoke exposure. Don't lose your courage now. Don't back away from this. It's the right thing to do, and I would encourage you to vote against the pending motion.

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

Senator **FERGUSON:** Thank you very much Mr. President. Ladies and gentlemen of the Senate, I'd like to make a couple of corrections to comments by previous speakers. In regard to the Health and Human Services Committee having jurisdiction over tobacco products, it seems to me that the Legal and Veterans Affairs Committee, historically, has taken care of this topic. I just wanted to point that out. I know when I was chair of that committee in the 117th, we had several tobacco issues that were before the committee. In regard to this Bill, as far as lounges and restaurants are concerned, I can't see for the life of me where we're weakening it in any manner. We are not eroding the progress that we've made. What we are doing though, we're allowing people to smoke in pool halls. People who are over 21. We do give an option to the owners whether they want to allow smoking or not allow smoking. Now when minors are present, smoking is not allowed. We have defined pool halls, and they have to have at least 6 pool hall tables and derive 50% of its gross income from the sale of games of pool or rentals of pool tables. Essentially that's all we've done here. There was plenty of evidence presented to the committee that these people that own pool halls have lost a tremendous amount of business. We thought it was a reasonable approach. In that particular area, I will admit, we have gone backwards a little. But what I'd like to see, I'd like to see that we prohibit smoking in all public facilities. Then we would really have a level playing field. But, in the interim, where we do allow smoking in lounges, now it seems to me that this is a reasonable solution to a problem that has occurred. It is a unanimous Committee Report, and I would hope that the Senate would go along with that. The arguments have been laid out pretty good by preceding speakers and I'm not going to dwell upon it. But it is a unanimous Committee Report and I would hope that you would support that. I thank you very much. I'll sit down at this point.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Douglass.

Senator **DOUGLASS**: Mr. President. Women and men of the Senate, I was hoping that I could refrain from speaking on this matter, but I really can't. I hope I never have to vote for a measure that connects smoking to a license. I hope I never have to allow someone to do something that is so extremely bad for their health. We, in Maine, have the worst incidence of young people smoking. We have the worst incidence of adults who smoke. It's a terrible habit. It's an addiction. It's an addiction I can remember, I may have given this example when I spoke on this matter before, but I can remember as a young girl seeing the man, who is our farmer, smoking through his tracheotomy because he was addicted and no longer had the use of his mouth. I urge you to vote against allowing smoking in any new category of restaurant or public place where pool, or bowling, or betting is allowed. I can only imagine that if someone desperately wants to continue this addiction, they will put in a pool hall just to be able to effectuate allowing smoking. That's the wrong direction to go for our state. We need to spend a lot of time and attention to helping people who have become addicted, get off. We need to send the message to our young people that the state is not encouraging smoking. For that reason, I hope you will accept or vote against the report. I believe that the Majority Report is Ought to Pass, and I hope you will vote against that report.

THE PRESIDENT: The pending question before the Senate is **ACCEPTANCE of the OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1004)** Report, in concurrence. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#374)

YEAS: Senators: AMERO, BENNETT, CAREY, CASSIDY, DAGGETT, DAVIS, FERGUSON, HARRIMAN, KILKELLY, KONTOS, LIBBY, MICHAUD, MITCHELL, O'GARA, PENDLETON, SMALL

NAYS: Senators: ABROMSON, BERUBE, DOUGLASS, GOLDTHWAIT, LAFOUNTAIN, LONGLEY, MILLS, MURRAY, NUTTING, PARADIS, PINGREE, RAND, RUHLIN, TREAT, THE PRESIDENT - MARK W. LAWRENCE

ABSENT: Senators: BENOIT, CATHCART, KIEFFER, MACKINNON

16 Senators having voted in the affirmative and 15 Senators having voted in the negative, with 4 Senators being absent, the **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1004)** Report, **ACCEPTED**, in concurrence.

READ ONCE.

Committee Amendment "A" (H-1004) **READ.**

On motion by Senator **MILLS** of Somerset, Senate Amendment "A" (S-669) to Committee Amendment "A" (H-1004) **READ.**

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

Senator **MILLS**: Mr. President. Senate Amendment "A" would remove from the provisions of the Bill those newly created exceptions for restaurants and lounges. It would leave in place the provisions for bowling alleys and pool halls but would eliminate the changes to the law in regard to restaurants and lounges. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Daggett.

Senator **DAGGETT**: Thank you Mr. President. Men and women of the Senate, I hope that you will oppose the amendment that's in front of us. I haven't read through it, but I'm assuming that the good Senator from Somerset, Senator Mills, has represented it accurately. I find it somewhat ironic that the amendment in front of you deals with the particular section of the Bill that, in fact, doesn't substantively change anything. As previous testimony has indicated, the only change really has to do with the pool halls. So I hope that you will oppose the amendment that is in front of you.

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

Senator **MILLS**: Mr. President and men and women of the Senate, the reason why the restaurant provisions contained in the Committee Amendment is a roll back of current law is that it would permit a single license facility to require its employees to work in a smoking environment. It would require waitresses and waiters to serve patrons in the area where smoking is permitted. There are no ventilation provisions in the law that would require the space to be separately ventilated. It simply says there has to be a door between the smoking area and the non-smoking area, a door that might be open or not. It, essentially, contains no safeguards. It just says if you build a separate room, if you're rich enough, and if you're big enough, and if your restaurant has enough revenue to justify creating two different dining rooms, well, we'll let you permit smoking. On the other hand, if you're too small, or not rich enough to do that, if you're one of the poorer restaurants, or if you're just struggling to get by then you don't have that choice with that option. This is the very provision that was stoutly resisted by the Maine Restaurant Association 3 years ago when a Bill that would have done something like this was under consideration before the Health and Human Services Committee. Now this is truly a roll back of present law. The amendment presented to you here, the Senate Amendment that's on the floor now, would remove that provision from the committee's Bill. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Small.

Senator **SMALL**: Thank you Mr. President. I'd like to pose a question through the Chair.

THE PRESIDENT: The Senator may pose her question.

Senator **SMALL**: Thank you Mr. President. My question is, don't the restaurants now have that option to simply change from a restaurant to a lounge and expose those very same employees to that smoke that we're concerned about should this happen?

THE PRESIDENT: The Senator from Sagadahoc, Senator Small poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Somerset, Senator Mills.

Senator **MILLS**: They do, but they have to pay the extra fee that is associated with being a lounge, number one. Number two, minors are not permitted in the space, and it has to be really a free standing licensed facility. The Committee Amendment would allow one licensed facility to have it both ways without any particular penalty. Mr. President, while I'm up may I request a roll call on this amendment?

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

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

Senator **FERGUSON**: Thank you very much Mr. President. For the life of me, once again, I can't see why this would impact the folks. You have a smoke free restaurant. You have a licensed to operate a restaurant that's smoke free and if you have a lounge that allows smoking, in my judgment, the employees aren't going to be exposed any more one way or the other. For that reason I would hope that you would vote against the pending amendment. In regard to testimony that we heard at the committee, there was a gentleman, I believe Senator Small's constituent, who came in. He has over 100 employees and out of 106 employees, 100 of them smoke. They'll be standing outside in January and February in the cold weather, smoking. So, you know, there's not too much evidence that we didn't hear in the committee that employees were being impacted by people that had a lounge and there was smoking going on there. At least there wasn't any evidence before our committee. So I would hope you would vote against the pending amendment. Thank you.

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

Senator **GOLDTHWAIT**: Mr. President. Ladies and gentlemen of the Senate, one of the impacts, unless this amendment is supported, will be that smaller restaurants, who don't have the opportunity to create a separate room for smoking, will not be able to take advantage of this exemption and will once again unlevel this playing field. Although it wasn't perfect in the last go-round, we tried very hard to make it level. Now we're going to make an exception that allows some restaurants to have a provision for smoking and others, by virtue of not being big enough for a separate enclosed area, not. So this amendment, as I see it, is an improvement on a bad Bill. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Daggett.

Senator **DAGGETT**: Thank you Mr. President. Members of the Senate, I just want to remind people there is nothing that I know

of that's happening that allows restaurants to allow people in restaurants to smoke. I continue to hear that and I just want to clarify. This is about bars and smoking in bars, not smoking in restaurants. Again, I hope you'll oppose the amendment. As the good Senator from Sagadahoc mentioned earlier, the option still stays with the business as far as whether the employees are exposed to the smoking by virtue of the license that they choose. This at least allows them to have a minimalist amount of smoking as opposed to the way the licensing situation was done previously. So I encourage you to oppose the pending motion.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Somerset, Senator Mills to Adopt Senate Amendment "A" (S-669) to Committee Amendment "A" (H-1004). A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#375)

YEAS: Senators: ABROMSON, AMERO, BERUBE, CAREY, CATHCART, DAVIS, DOUGLASS, GOLDTHWAIT, LAFOUNTAIN, LONGLEY, MICHAUD, MILLS, MURRAY, NUTTING, O'GARA, PARADIS, PINGREE, RAND, RUHLIN, TREAT, THE PRESIDENT - MARK W. LAWRENCE

NAYS: Senators: BENNETT, CASSIDY, DAGGETT, FERGUSON, HARRIMAN, KILKELLY, KONTOS, LIBBY, MITCHELL, PENDLETON, SMALL

ABSENT: Senators: BENOIT, KIEFFER, MACKINNON

21 Senators having voted in the affirmative and 11 Senators having voted in the negative, with 3 Senators being absent, the motion by Senator **MILLS** of Somerset to **ADOPT** Senate Amendment "A" (S-669) to Committee Amendment "A" (H-1004), **PREVAILED**.

On motion by Senator **GOLDTHWAIT** of Hancock, 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 opened the vote.

ROLL CALL (#376)

YEAS: Senators: ABROMSON, AMERO, BENNETT, BERUBE, DAGGETT, DAVIS, FERGUSON, KILKELLY, KONTOS, LIBBY, LONGLEY, MILLS, MITCHELL, MURRAY, O'GARA, PENDLETON, RUHLIN, THE PRESIDENT - MARK W. LAWRENCE

NAYS: Senators: CAREY, CASSIDY, CATHCART, DOUGLASS, GOLDTHWAIT, HARRIMAN, LAFOUNTAIN, MICHAUD, NUTTING, PARADIS, PINGREE, RAND, SMALL, TREAT

ABSENT: Senators: BENOIT, KIEFFER, MACKINNON

18 Senators having voted in the affirmative and 14 Senators having voted in the negative, with 3 Senators being absent, Committee Amendment "A" (H-1004) as Amended by Senate Amendment "A" (S-669) thereto, **ADOPTED**, in **NON-CONCURRENCE**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-1004) AS AMENDED BY SENATE AMENDMENT "A" (S-669)** thereto, in **NON-CONCURRENCE**.

(See action later today.)

Senate at Ease.

Senate called to order by the President.

Senator **LONGLEY** of Waldo was granted unanimous consent to address the Senate on the Record.

Senator **LONGLEY**: Thank you Mr. President. Like my colleague from Androscoggin earlier in the day, I misunderstood and voted the wrong way and would like to know if I can change my vote.

THE PRESIDENT: The Chair would answer in the negative but the Senator may state on the record how she would have voted if she had voted correctly.

Senator **LONGLEY**: On the record, I would have voted against the Bill as amended.

The Chair laid before the Senate the following Tabled and Later (3/14/00) Assigned matter:

HOUSE REPORTS - from the Committee on **INLAND FISHERIES AND WILDLIFE** on Bill "An Act to Clarify the Authority of Maine Game Wardens to Stop Motor Vehicles"
H.P. 1627 L.D. 2274

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-800)** (10 members)

Minority - **Ought Not to Pass** (3 members)

Tabled - March 14, 2000, by Senator **PINGREE** of Knox.

Pending - **ACCEPTANCE OF EITHER REPORT**

(In House, March 9, 2000, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-800) AS AMENDED BY HOUSE AMENDMENT "C" (H-852)** thereto.)

(In Senate, March 14, 2000, Reports **READ**.)

Senator **KILKELLY** of Lincoln moved the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence.

At the request of Senator **RAND** of Cumberland a Division was had. 28 Senators having voted in the affirmative and no Senators having voted in the negative, the motion by Senator **KILKELLY** of Lincoln to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (H-800) **READ**.

House Amendment "C" (H-852) to Committee Amendment "A" (H-800) **READ**.

Senator **KILKELLY** of Lincoln moved House Amendment "C" (H-852) to Committee Amendment "A" (H-800) be **INDEFINITELY POSTPONED**, in **NON-CONCURRENCE**.

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator **Ruhlin**.

Senator **RUHLIN**: Thank you Mr. President. Ladies and gentlemen of the Senate, I voted to allow this particular Bill to come this far. I don't want it to go much further without giving you some warnings. Fly some red flags if I may. This particular Bill is a very dangerous Bill that, indeed, threatens our Fourth Amendment rights. I think you should be aware of that. This is the time to discuss that, here and now. This Bill proposes to give game wardens the ability to stop vehicles, using their discretion in an arbitrary manner that flies in the face of the Constitution. I'm not going to spend a lot of time at this point going into it. But the courts have clearly stated that a law enforcement officer, when stopping someone, must have a constrained sense of discretion. They must, in fact, be random. Making a predetermined; and I'm going to emphasize predetermined, mathematical or random method. You may set up a roadblock and stop every car, that's what that says. Or you may predetermine and stop every other car or every 5th car or every 10th car. But that officer doing that cannot use discretion as such. There's a reason for that. Because he may decide that he doesn't like the way you've got your hair cut today or he may decide that he just doesn't like this or that about you. That officer may decide, as you're going down through a woods road and you're wearing an orange hat, that you've been hunting. I'm just going to stop that person. You can't do that. That's allowing what they call unconstrained discretion and the courts have been very, very loud about that, very distinct.

The point I want to make to you tonight is that, I for one, and I'm sure every member of the Fish and Wildlife Committee, I'm sure every member of this Senate, want to see our fish and game laws in the state thoroughly and completely enforced. To do that