

# MAINE STATE LEGISLATURE

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**Legislative Record**  
**House of Representatives**  
**One Hundred and Twenty-First Legislature**  
**State of Maine**

**Volume II**

**First Regular Session**

May 27, 2003 – June 14, 2003

**First Special Session**

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**Second Regular Session**

January 7, 2004 - January 30, 2004

**Second Special Session**

February 3, 2004 - April 7, 2004

Pages 777-1562

Twomey, Walcott, Watson, Wheeler, Woodbury, Wotton, Mr. Speaker.

NAY - Andrews, Annis, Austin, Bennett, Berube, Bierman, Bowen, Bowles, Brown R, Bruno, Bryant-Deschenes, Campbell, Carr, Churchill J, Clark, Clough, Collins, Courtney, Cressey, Crosthwaite, Daigle, Davis, Duprey B, Glynn, Goodwin, Greeley, Heidrich, Honey, Hotham, Jackson, Jacobsen, Jodrey, Joy, Kaelin, Ledwin, Lewin, Maietta, McCormick, McKenney, McNeil, Moody, Moore, Murphy, Muse, Nutting, O'Brien J, Peavey-Haskell, Rector, Richardson E, Richardson M, Rogers, Rosen, Sherman, Shields, Snowe-Mello, Stone, Sukeforth, Sykes, Tardy, Tobin D, Tobin J, Trahan, Treadwell, Vaughan, Young.

ABSENT - Berry, Brannigan, Breault, Browne W, Curley, Fletcher, Marraché, McKee, Millett, Perry J, Sampson, Thompson, Usher.

Yes, 73; No, 65; Absent, 13; Excused, 0.

73 having voted in the affirmative and 65 voted in the negative, with 13 being absent, and accordingly **House Amendment "C" (H-543) to Committee Amendment "A" (H-372) was INDEFINITELY POSTPONED.**

Subsequently, **Committee Amendment "A" (H-372) as Amended by House Amendment "A" (H-506) and House Amendment "B" (H-539) thereto was ADOPTED.**

The Resolve was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (H-372) as Amended by House Amendment "A" (H-506) and House Amendment "B" (H-539) thereto in concurrence.**

Subsequently, the Resolve was **FINALLY PASSED**, signed by the Speaker and sent to the Senate.

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By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH.**

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### ENACTORS Acts

An Act To Protect Workers from Secondhand Smoke and To Promote Worker Safety

(S.P. 437) (L.D. 1346)  
(C. "A" S-249)

Was reported by the Committee on **Engrossed Bills** as truly and strictly engrossed.

On motion of Representative DUGAY of Cherryfield, was **SET ASIDE.**

The same Representative **REQUESTED** a roll call on **PASSAGE TO BE ENACTED.**

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 Sorrento, Representative Bierman.

Representative **BIERMAN**: Mr. Speaker, good people of the House. I would just like to lay out some facts before we vote on this. There are approximately 2,129 restaurants in the great State of Maine. At those restaurants smoking is not allowed. Right there I think the residents of this state have an option of where they can go and have something to eat and something to drink. In many of those establishments drinking is permitted. At the bars and taverns, not all bars and taverns allow smoking in their establishments, only a handful actually allow smoking. I believe that if this is a health issue for employees, they have options of where they may work. I also feel that we are tying the hands of small businesses once again and not allowing this control staying in the hands of local control in small businesses and taverns and bars. I am also concerned about the fiscal note

on this. It is going to be a one-time gain of \$243,750 to the general fund with a loss of \$48,750 in fiscal year '03 and '04 with a \$65,000 loss to the general fund every year thereafter. The continuing loss of \$65,000 over the course of 10 years is getting into the big dollar category versus a one-time gain of \$243,000. Fiscally, I don't believe this is a smart move, as well.

There have been other states that have made these bans on smoking in restaurants. Some have taken it as far as all eateries and bars and restaurants, complete smoking bans. New York is a state that comes to mind. Right now New York is having some serious problems with noise ordinances being broken because people are outside and they are making so much noise due to cigarette breaks. Bars and taverns are losing businesses because people just aren't frequenting them as much as they used to. I would hate to see us go down that same road just to revisit it later and retract what we have done.

There was a proposed ban in New Hampshire, HB 713, eatery smoking ban. That just recently failed. I would encourage the members of the House to think before we press that button. Thank you very much.

The SPEAKER: The Chair recognizes the Representative from Wiscasset, Representative Rines.

Representative **RINES**: Mr. Speaker, May I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative **RINES**: Mr. Speaker, Men and Women of the House. Who is going to be responsible for the enforcement of this large piece of legislation? Thank you.

The SPEAKER: The Representative from Wiscasset, Representative Rines has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Saco, Representative Kane.

Representative **KANE**: Mr. Speaker, Men and Women of the House. We voted just about an hour and half ago 94 to 41 to pass this bill, after a very thorough and favorable public hearing resulting in a 12 to 1 vote. We have been down this road before with restaurants. We have voluminous testimony now back from restaurants that it was the best thing that ever could happen to their business, for their employees, themselves and for the increase of comfort level of their patrons. It is a major public health issue. I am not going to go over all the details, which you all have available in this yellow handout. There are some very significant facts that are laid out there. What I will quote is from Philip MorrisUSA.com, the Philip Morris website. They say that public health officials have concluded that secondhand smoke from cigarettes causes disease, including lung cancer, heart disease in nonsmoking adults as well as causes conditions in children, such as asthma, respiratory infections, cough, wheeze, middle ear infections and sudden infant death syndrome. In addition, public health officials have concluded that secondhand smoke can exacerbate adult asthma and cause eye, throat and nasal irritation. Secondhand smoke also is known as an environmental tobacco smoke is a combination of smoke coming from the lit end of a cigarette, plus the smoke exhaled by the person smoking. Philip Morris USA believes that the conclusions of public health officials concerning environmental tobacco smoke, also known as secondhand smoke, are sufficient to warrant measures that regulate smoking in public places. I urge you to support the 12 to 1 Majority Ought to Pass Report and to stick to the previous vote, 94 to 41 that we passed just an hour ago. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Cherryfield, Representative Dugay.

Representative **DUGAY**: Mr. Speaker, May I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative **DUGAY**: Mr. Speaker, Men and Women of the House. Preferably to the chair of the committee, I just want to know if in this particular piece of legislation if this covers all establishments in the State of Maine where people smoke or have we carved out any particular businesses, as in nonprofits or off track betting or in racetracks? I just want to have the chair confirm who we have carved out of this bill and why.

The SPEAKER: The Representative from Cherryfield, Representative Dugay has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Saco, Representative Kane.

Representative **KANE**: Mr. Speaker, Ladies and Gentlemen of the House. At the public hearing there were several representatives from off track betting who made a persuasive case for exempting six off track betting parlors, but with significant regulations attached to where customers may smoke. If you read the bill and you read the amendment, you would note that it would have to be a sealed room in which neither employees nor patrons must pass through. They may be able to participate within the sealed setting. There are six or seven of them in the State of Maine. The Senate Amendment that was attached to this bill makes it apply only to the currently licensed OTBs. It cannot extend further beyond the existing OTBs in the state. It was an attempt to respond to a sector of our business that does not generally bring in the cross section of patrons. It was a combination attempting to be responsive and at the same time to maintain consistency with our principles of protecting public places. Thank you.

The SPEAKER: The Chair recognizes the Representative from Fryeburg, Representative Muse.

Representative **MUSE**: Mr. Speaker, Ladies and Gentlemen of the House. Like many in this room, I smoked for years up until about 16 years ago. I was good for about three packs a day and four on a night when I would go out. My good wife for dad's day about 15 years ago gave me a card. When I read it, I discovered I had an expense paid trip to the hypnotist. I nodded and said, that would be nice and she said, read the next page. I discovered that it was next Tuesday at 8:00. I share that with you just to let you know that I view myself as somewhat of an expert in this field. We have talked about health concerns here. We have talked a little bit about business concerns. I can see both sides of this, but I think it is the concern of some of the bars in the State of Maine that weighs on my plate. I would just like to cite three examples of some parts of the world where we have put these bands in place.

One, would be our friends on the west coast in California in 1994 when they put their ban in place. You read about some of the increases in sales, but what you don't read about is the fact that the economy or taxable sales in the four years following rose 31 percent and 1,039 bars went out of business.

If you move a little bit toward the east and pause for a second in Ottawa, 80 days after the law went into place there were 730 jobs lost, nine businesses closed and \$16 million in revenue and a person by the name of Dan Tate who for 23 years ran an air cleaning business in Ottawa called Pure Air was out of business. Coming further east to New York there is an article today in the *Washington Post* that gives a very vivid description of the Representatives in that state scrambling to come up with amendments to address some of the concerns that they are finding after the fact.

A quote from the New York Night Life Association. "This is the grossest political miscalculation the city mayor has ever made." Bubbles Lounge, just eight blocks from the World Trade

Center, sales have dropped 48 percent. Forty-eight percent is a relatively substantial number in my book. I think we have to look for a short time, at least, at the effect that this is going to have. I would remind the body that just a few weeks ago we passed a law that banned smoking in beano halls. We stepped back for a minute and said that we have to think about this in the case of the tribal halls. We made an exception. That exception was to address the effect it was going to have on business.

Ladies and gentlemen, I would think we have an opportunity today to make that same kind of an exception. We need to think about the people that are running these little bars. I think that we can all stand here and say that smoking isn't evil and that it ought to be banned. I think we ought to perhaps think just a little bit about the people who continue to smoke who send substantial amounts of revenue to this body. I think that maybe we ought to give them one last spot, one last bastion of relief, one last area where they can enjoy a freshly poured cognac and maybe a sweet Dominican cigar. Thank you Mr. Speaker.

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

Representative **KANE**: Mr. Speaker, Men and Women of the House. I agree that we should be concerned about small business. Many of the arguments being made today about the impact on the small businesses were made when we were debating the ban on restaurants. The mom-and-pop rural restaurants would not survive. They did survive. They have not gone over. People's behavior has adapted. In part of our testimony we received a letter from the owner of Dimillos Floating Restaurant. I want to quote what he said. "As some of you may recall, I stood before this committee five years ago and opposed the bill that ultimately made all Maine restaurants smoke free. I believed then that this policy would be nothing but a burden on the owners, leading many to suffer economically. I am pleased to tell you today that I was wrong in that regard. Not only did I misjudge the level of enjoyment my customers would take in the change to clean air, but I misjudged how important it was to my staff. I saw fewer missed days of work, fewer days of working despite colds and flu, better moral and some of my smoking employees were actually able to quit after many failed attempts in the past. My restaurant was cleaner and my customers could smell the salt air and fresh food rather than persistent stale smoke of the past. As is the story across Maine, my business not only didn't suffer, but, in fact, improved with the new law in place. As is the story across Maine, my business will continue to flourish. So much was the improvement that I decided to make my bar smoke free as well. I have never regretted it for a moment and the story remains the same, healthy workers and an increase in sales."

The word we heard from many of the small bar owners was, please don't do it incrementally. Have a ban where this creates a level playing field. Many bar owners want to go smoke free, but they are afraid if they go smoke free and the bar down the street or across the street doesn't go smoke free, they are afraid of losing customers. Their plea to us is make a level playing field. Make it a level playing field and let us all operate in a cleaner, healthier smoke free environment. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Madison, Representative Ketterer.

Representative **KETTERER**: Mr. Speaker, May I pose a question through the Chair?

The SPEAKER: The Representative may pose her question.

Representative **KETTERER**: Mr. Speaker, Men and Women of the House. The summary on this bill it seems to me, and I haven't really heard anybody talk about this yet, that this bill would eliminate any existing exemptions that are now in place. It

repeals the provision in public places laws that permits public places to have a designated public smoking area. I am not sure if I am interpreting that correctly. I would like somebody to tell me if that is true or not, other than the off track betting, I know the amendment includes that.

The SPEAKER: The Representative from Madison, Representative Ketterer has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Cherryfield, Representative Dugay.

Representative **DUGAY**: Mr. Speaker, Ladies and Gentlemen of the House. Following up the chairman of the Health and Human Services Committee, my chair who I have a great deal of respect for, when he talks about leveling the playing field, can you imagine for those of you who have visited the other part of Augusta where Jonathans is at, as an example, I just visited there last week for the very first time.

If you go to Jonathans after this bill passes, you are not going to be able to smoke. It is going to affect Jonathan's business. It is going to affect his business by as much as 30 percent. I can go across the street to the Elks Club, that is a nonprofit and go in there and have a drink and have a cigarette and they will be exempt from this particular piece of legislation. How that levels the playing field for the small business owner of the State of Maine, I am not too sure? I have been on this committee for five years. Two years ago we had a bill that we had to have off campus and over 500 people came there to testify against the bill. They were the ones in the Elks Club, the legion halls and the VFWs. We were so intimidated by the number of people that came to testify against the bill, we not only heard the bill, but about an hour later we worked the bill. We voted unanimous Ought Not to Pass. The problem was there was so many people there that we figured out that we were really walking down the wrong road. I think we are today. I don't think the bar owners have a lobbyist. I don't think the bar owners can get up here in large numbers and testify against the bills like we would want them to do. I actually missed the public hearing on this particular bill, but when I looked at it, I couldn't see that there was 25 or 30 employees of restaurants or bars coming in to say please pass this legislation because it affects my health.

I think we have to think about the revenue short fall we have right now. It is a billion dollars. I think we have to figure out the revenue that we are going to lose from 30 percent of revenue lost for bar room owners in the next two years in the State of Maine. I think we had better look at this from a business perspective. I think if we do then we will be doing the right thing. I think there is a chance for bars to perhaps become nonsmoking on their own. If they want to become nonsmoking on their own, let's give them a 20 or 25 percent rebate on their taxes. Let's give them the incentive to become nonsmoking. The bar rooms that want to remain smoking should be able to remain smoking.

As I finish, there are only two things that I would really like to ban in bar rooms. I have spent a fair amount of time in bar rooms. I will say I have. There are only two things that I would like to see banned. Number one, a band playing Proud Mary. Number two, to make sure that Josh Tardy could never sing in a bar room ever again. Thank you very much.

The SPEAKER: The Chair recognizes the Representative from Biddeford, Representative Laverriere-Boucher.

Representative **LAVERRIERE-BOUCHER**: Mr. Speaker, Men and Women of the House. Just a point of clarification, the Elks Club, a person cannot just walk in and have a drink there. They have to be either invited or a member. It is not as easy as just finding a private club. You have to be a member or be invited as a guest. Thank you.

The SPEAKER: The Chair recognizes the Representative from Saco, Representative Kane. Having spoken twice now requests unanimous consent to address the House a third time. Is there objection? Chair hears no objection, the Representative may proceed.

Representative **KANE**: Mr. Speaker, Men and Women of the House. It will be my final time. We have been talking for the past month or more about health care. It is dominating the legislative agenda this session, whether it is prescription drugs or, more importantly now, the Dirigo Plan. All of that is in response to what we have all acknowledged to be a major crisis in health care. We hear it from all sectors. We hear it from small business who say that the cost of the health care premiums are driving them out of business. We don't have to stretch very far to see the logical connection between the cost of health care today and the kinds of circumstances in our environment that are contributing to the problems in health care and the costs. As the Philip Morris website disclosed, the health care officials, the CDC all acknowledge the major causes of our increasing costs in health care is respiratory, cardiovascular, cancer, all of these major problems are connected to tobacco. We have made tremendous progress in Maine. We have a right to be very, very proud of our track record, particularly as witnessed by the ban of smoking in restaurants. We continue to move incrementally. This is another incremental move with a view to improve the quality of health care for the people whose health care we have to pay for. Please, as we press that button, look not only at the human benefits of this, but the economic benefits of this for our state. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Newport, Representative Tardy.

Representative **TARDY**: Mr. Speaker, Men and Women of the House, Representative Dugay. I rise today in opposition to this bill. I do think it is appropriate to clarify my position. I understand and agree with the educational efforts of the many, many groups that have educated the public and encouraged people to choose a smoke free environment and a smoke free lifestyle. I don't want to be redundant and reiterate the big policy issues on both sides of this debate. I do want to enlighten this body on the small picture and how it can affect the small business.

Several years ago I made what I sometimes think a regrettable decision to get into commercial real estate. As part of that endeavor, I became a hotel owner. It is in the small town of Pittsfield, Maine. As part of this motel, one of my tenants is a small little pub. It is the only pub in town with the exception of an Elks Lodge. I am a member of the Elks Lodge. Most of the patrons in my tenant's bar are smokers. All of the employees are. Several months ago in anticipation of this bill I asked my good friend, the bar owner and manager, how this type of bill is going to affect him and his bar and his employees. His response was very predictable, in my estimation. He said basically that you are going to have to take the keys. I am not going to be able to pay the rent. Thirty percent is what it is projected it is going to affect. It is going to affect Jonathans. I suggest to you that 30 percent for the little business that is in the little town and the little piece of the economy that I am a part of that, is the whole game. Thirty percent equals 100 percent. It is going to shut that business down. Those patrons are going to go to the Elks Lodge. In the little community of Pittsfield, Maine, many of the same patrons that come into Casey's Place go to the Elks Lodge. It is all part of the same population.

I oppose this bill because I think it is over reaching by government. I oppose this bill because of the small picture. It is going to put my tenant out of business and it is going to adversely

affect my real estate venture. I can get through that. I can go on to more regrettable business ventures and life will go on. For that little piece of the economic pie, that will be gone. Thirty percent is 100 percent of the ballgame. Thank you Mr. Speaker.

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

Representative **COWGER**: Mr. Speaker, Colleagues of the House. I have had an opportunity to consult with the Director of the Bureau of Health regarding private clubs like Elks Clubs. I don't think that any business is going to be lost to these Elks Clubs. I don't think that bars are going to lose any business at all. Let me just remind you what the current law is on private clubs. Private clubs are required to be smoke free today, under current law, unless two conditions are met. As the good Representative from Biddeford said, if it is members only and there are no paid employees on staff. Only during those occasions that therefore there wouldn't be anybody coming from outside, would there be smoking allowed in a private club under current law today. I don't believe these are going to be competing any way whatsoever with our private bars and restaurants. Thank you.

The SPEAKER: The Chair recognizes the Representative from Skowhegan, Representative Richardson.

Representative **RICHARDSON**: Mr. Speaker, Ladies and Gentlemen of the House. All of this testimony that we have had probably is true. Probably smoke hurts people. I was a smoker for a while. I gave it up. I chose to give it up. I am getting a lot of e-mail from people who feel that they are being disenfranchised. The appeal from them is, we are citizens too. We want to have a choice. It seems to me that we just must impose our will on everybody. We can't let people make their own decisions as to whether they want to smoke or not smoke and where they want to smoke and not smoke. We have done a pretty good job of eliminating it against the will of a lot of people. Is it so important that everybody is made to quit smoking? Is it so important that we have to have our way and make this happen? Do you know that you are gradually chipping away at our individual freedoms? Doesn't this mean anything to anybody? It means a lot to me to see us standing here or sitting here and absolutely imposing our will against the will of a lot of people that would like to have the freedom to do and enjoy their life. This is what we are all about in this country. It is the pursuit of happiness. We don't have to acquire it, but we like to pursue it. These bills that we are doing are gradually eroding the ability to pursue the happiness that we would like to enjoy among some people.

Not all of us care. I don't like smoking. I don't do it anymore. I don't go places where I know that smoking is going to be. I don't care if somebody else wants to, if they can do it. As far as people losing business, they probably won't lose business. If they do, what have we gained by doing this? Let's think in terms of what we are doing to individual choice. The worse thing about government is pulling things away from people that they enjoy doing. I suggest that we stop doing it.

The SPEAKER: The Chair recognizes the Representative from Phippsburg, Representative Percy.

Representative **PERCY**: Mr. Speaker, Ladies and Gentlemen of the House. I would like to speak from the profession of being an entertainer. No one has said anything about that. I have heard from many performers throughout the state who support this bill wholeheartedly because we are tired of working in an environment that is not safe and healthy. Don't forget, many performers don't have health insurance so they follow that path of working in an environment where you can get cancer and then they don't have the money, the funds, the insurance to help them

if they come down with cancer. I strongly support this bill as do many of my fellow musicians and other performers. Thank you.

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

Representative **LANDRY**: Mr. Speaker, Ladies and Gentlemen of the House. I just wanted to throw in my two cents here and remind the body that I am a cancer survivor. I know what I went through in the past 10 years fighting cancer. I wouldn't want to see anyone else go through it. I have been a professional musician in my lifetime for some 22 years. I played in a lot of smoke filled bars, as recently as a few weeks ago. I can tell you that it is a problem for musicians. Most of the musicians develop cancer from secondhand smoke, which has been proven to happen, and they don't have insurance. Yes, being objective about this as we should be, I guess, about anything we look at, being objective you have to consider, are we, in fact, chipping away at the rights of some of the citizens that smoke and enjoy smoking. I think you will find that if you talk to anyone that smokes and has smoked for a long time and you asked them if you could quit without gaining 60 pounds or without becoming an incredibly irate person or start tasting food again, would you do so if it were made possible? A lot of them would say that yes, they would. If you spoke to a lot of the workers in bars, I don't care whether it is the VFW Club or Dimillos or anybody, where smoking is allowed and they don't smoke, they will tell you it is tough going to work under those conditions and I don't think we are really chipping away at people's rights as much as we are kind of steering them in the right direction toward a healthier lifestyle.

This year we are looking at health reform and finding ways to improve preventative medicine. Here is a shot right here at preventative medicine. If you clean up the environment, you are going to be performing preventative medicine of sorts by getting that away from the people that are breathing it just like we did with asbestos and just like we did with Agent Orange, ironically enough. I would ask that when we consider all these things that we look at the whole picture, not just the money end of it, the business aspect end of it, but from the point of view that we were sent here to do and that is to look after the well being of the people who live in this great state. Thank you.

The SPEAKER: The Chair recognizes the Representative from Wells, Representative Collins.

Representative **COLLINS**: Mr. Speaker, Ladies and Gentlemen of the House. We have all discussed the evils of smoking. I used to be a smoker. I quit 10 years ago. If we all feel that smoking is so bad for us, maybe we should put an amendment to this bill and ban smoking completely in Maine. If you think we have a budget problem now, let me read this figure to you. Total budget for fiscal year ending 6/30/03, total income for cigarette and tobacco packs, \$105 million. Can we really think it is so bad when we spend that money freely here in the state? I think we ought to think this thing through. One hundred and five million dollars is a lot of money. We should just ban it. We will ban smoking and tobacco sales entirely. We can be the first in the nation to ban it, but you are going to have to suffer the consequences. With this legislation you are also going to suffer some consequences. Thank you.

The SPEAKER: The Chair recognizes the Representative from Biddeford, Representative Laverriere-Boucher.

Representative **LAVERRIERE-BOUCHER**: Mr. Speaker, Men and Women of the House. I hear a lot about loss of business and percentages. From what I have read and I have heard from restaurants, they also thought they would lose a lot of business. However, what I have heard is that they have not lost business, in fact, the businesses have gotten better. I just

wanted to make that point so we don't forget that. There were people afraid when we made this ruling for restaurants and they are better off today financially with business than they were prior. Thank you.

The SPEAKER: The Chair recognizes the Representative from Auburn, Representative Shields.

Representative **SHIELDS**: Mr. Speaker, Ladies and Gentlemen of the House. We have a lot of freedoms in this country. You are free to kill yourself if that is what you want to do, but you are not free to take others with you. I just remind you that this bill is about the protection of other people, not yourself. You are still free to smoke if that is what you want to do, but we need to protect the employees of all these facilities. Thank you.

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

Representative **DUNLAP**: Mr. Speaker, Ladies and Gentlemen of the House. We have had a couple of references today to the prior action of the Legislature that prohibited smoking in restaurants. I would like to direct your attention back to that debate when we were told in good faith not to worry because people will still have a place to go and smoke because we are going to exempt the bars and lounges. When you talk about how there has been this level playing field and the restaurants all thought they were all going out of business because this wasn't going to be a good thing. It has proven otherwise. I can tell you, and maybe if you think about it, you will notice that there is probably a few small restaurants in your area that were there then, but aren't there now. It is not because of an economic disadvantage. Obviously you couldn't smoke in any restaurants so there was no economic advantage. I know of several small restaurants in my immediate geographic area that closed, not because of an economic disadvantage, but because the owners themselves just simply were disgusted that they could not run the type of restaurant and kinder to the type of clientele they wanted to. They figured if they couldn't run their own business, then to heck with it. They weren't going to run their business. They closed up shop. Sold them and they became other things or something like that.

The issue of worker's health. I discussed this when we did the restaurant smoking ban too. I just find it absolutely hilarious that we are suddenly so concerned about restaurant workers. I can stand here and tell you how many fights I have broken up in a bar. I have been bartending for many years. I have been in food service since I was in college at one level or the other. They are dangerous places to work. I have dealt with fire fighters coming in with their hoses and putting out fires in our bar, believe it or not. There have been many fights. I have been abused by customers. I have been threatened by customers. I have dealt with angry cooks and weight staff and dealt with more health hazards than I care to recount. Never once did I ever consider smoking to be anywhere in the top 10.

It is really about whether or not people who don't like smoking don't want to see smoking anywhere. That is really what it is about. I just wish we would be honest about that. As far as the health of restaurant workers, there are a lot of other things you could do long before a smoking ban to make their health situations better. Better working hours would be nice. Better pay would be nice. I can speak to that quite personally and forcefully. The fact of the matter is if you want to get to worker's health, there are a lot of other areas that have already been addressed through our workplace safety laws that I don't think an issue of someone smoking or being exposed to smoke is really going to address. For those restaurant workers who smoke, they are just going to go out to the back dock and smoke. For those who are going to be exposed to secondhand smoke, if the bar they work

at is now their worse enemy and we ban smoking in bars, then we are going to be looking at something else. We have already discussed prohibiting smoking in people's homes, for example.

I don't think this is really going to do much to enhance worker safety in the workplace, at home or anywhere else. I don't believe this is going to accomplish anything other than make it a little bit harder for those small businesses to run the type of business they want for people who want to choose to go to the type of venue they want to to have that venue available to them.

The SPEAKER: The Chair recognizes the Representative from Cherryfield, Representative Dugay.

Representative **DUGAY**: Mr. Speaker, Ladies and Gentlemen of the House. If you ran a small business in the State of Maine now, if you have been in business for the last eight or nine years, it is tough to run a small business in the State of Maine. If you have 10 employees or less, every single day you are going to wonder if you have enough cash flow to stay in business. You are getting letters in the mail that your multi-peril insurance is going to be cancelled or perhaps rewritten. If it is going to be rewritten, you are probably not going to be able to afford the premium. It is tough to be in business in the State of Maine.

I look at this green sheet that was passed around. It says support Maine businesses. This is from SAFE, Smoke Free Air for Everyone. It says support Maine businesses. Owners of smoking venues increasingly run the risk of liability for secondhand smoke related employee illness. You know what, small businesses in Maine increasingly run the risk of being in business. If you are going to take 30 percent of the revenue from the barroom owners in the State of Maine, we are running the risk of putting them out of business. That is the bottom line. When you are trying to find out if you can make payroll, you are trying to figure out if you can pay the 941 payroll deposit, the workers' compensation, stock for a big weekend and all of a sudden you are going to lose 30 percent of your revenue. Oh, we are going to level the playing field. It is all going to work out. When is it going to work out? In a year, year and a half, two years. You can go out of business in small business in two months. There is no time for this level playing field to take affect. Remember you are going to Jonathans and you are going to sit down and you are going to have a drink and you are not going to smoke. That is a guy who is in a for profit business. We are now exempting the nonprofits. We are exempting them because they have a very powerful lobby. If we had not carved that group out, they would have been at that committee in droves. The reason they were not here is because we carved it out. You are going to go over to the Elks Club, sit down, in a nonprofit building, and you are going to compete with that guy that is across the road who is in business for profit. He is going to take a 30 percent hit. He is going to have to lay off people. This is a terrible idea. I urge you to not support this 12 to 1 report. Thank you very much Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Frenchville, Representative Paradis.

Representative **PARADIS**: Mr. Speaker, Ladies and Gentlemen of the House. I will be very brief. There is a survey that was taken in Boston a few weeks ago. They imposed a ban over there. The reporter went around and surveyed the tavern owners. Ninety-five percent positive in favor of it. We hear the same arguments. Those of you have been lucky enough to dine at Rosett's Diner in Frenchville, she was questioned about that when we went through that debate. Her response was very accurate. She said, "For every smoker that I lose, I will gain two nonsmokers who can't come because of health reasons. Those smokers will be back too." She was right.

Why is that when the choices between the almighty dollar and profit and people's health, the odds always seem to be stacked in favor of the dollar? Our constituents demand that we exercise a little courage. Let' show it today and vote for LD 1346. Thank you.

The SPEAKER: The Chair recognizes the Representative from Auburn, Representative Simpson.

Representative **SIMPSON**: Mr. Speaker, Men and Women of the House. I will make this brief, just to respond to my good friend from Old Town. When this body was debating banning smoking in restaurants, I was a restaurant worker. I still am. I was very thankful as was my coworkers. Someone was doing something to protect our health. I had to work in smoke filled environment the entire time I was pregnant. There was a concern for my health, but at the same time I needed to pay my bills. I think this is one small thing we can do for restaurant and bar workers to make their work environment more healthy. We can't give them benefits because most people who work in bars don't have them, but we can do something to lessen the health risk of going to work. I urge you to vote for the pending motion. Thank you.

The SPEAKER: The Chair recognizes the Representative from Fryeburg, Representative Muse.

Representative **MUSE**: Mr. Speaker, Men and Women of the House. I will be brief as well. I just wanted to respond to some of the statistics that were thrown out by my friend from Biddeford. Speculation and guesstimates are not the same as facts. I would like to cite a study that was done by Fabrezo and McLaughlin of New York City following their ban. "Reading across the Bronx the question was posed, according to their records on 300 restaurants since the smoking ban went into affect in April, have your sales increased, decreased or stayed the same?" The decrease number on average was 67 percent. I would like to add also that I was on the bus last week that took Representative Dugay out to Jonathans. It was not my first trip. We did, in fact, have a very interesting discussion with Shawn, the man that owns the bar. I found that he had a great deal to say, but more pointed was the waitress who stopped by and talked to us. I would like to quote her. She said to us all, "You guys on the hill better just leave us alone. I am down here. I sling beers and chicken wings to feed two kids and I need every penny that I make." I think she should be entitled to that. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Westbrook, Representative Duplessie.

Representative **DUPLESSIE**: Mr. Speaker, Ladies and Gentlemen of the House. I really hate to belabor this. We all know the dangers of secondhand smoke. Nationally at least 38,000 people die each year as a result of secondhand smoke. Maine citizens are struggling with the cost of health care. All of us in this body are working on health care reform, trying to help out Maine citizens. Many people are uninsured, especially young adults. People aged 19 to 24 are least likely to have health insurance, but are often the ones that work in the hospitality industry that are exposed to secondhand smoke. In an eight-hour work shift the average nonsmoking bar employee may inhale secondhand smoke equivalent to 16 cigarettes a day. Even someone that does not smoke cigarettes themselves, this amount of smoke may cause short or long-term health affects that we will all pay for. Controlling health problems, becoming a healthier population, is a key in controlling our health care costs. Yes, we have a moral obligation to protect employees from a hazardous environment where they work. Thank you. I encourage you to vote for enactment of this bill. Thank you.

The SPEAKER: A roll call has been ordered. The pending question before the House is Enactment. All those in favor will vote yes, those opposed will vote no.

**ROLL CALL NO. 214**

YEA - Adams, Andrews, Annis, Barstow, Berry, Berube, Bliss, Bowles, Breault, Brown R, Browne W, Bruno, Bryant-Deschenes, Bull, Campbell, Canavan, Churchill E, Churchill J, Cowger, Craven, Crosthwaite, Cummings, Daigle, Davis, Dudley, Duplessie, Earle, Eder, Faircloth, Finch, Fischer, Gagne-Friel, Gerzofsky, Greeley, Grose, Hotham, Hutton, Jackson, Jacobsen, Jodrey, Kaelin, Kane, Koffman, Landry, Laverriere-Boucher, Ledwin, Lemoine, Lerman, Lessard, Lewin, Lundeen, Mailhot, Marley, Marraché, McCormick, McKenney, McLaughlin, McNeil, Mills J, Mills S, Moody, Murphy, Norbert, Norton, O'Brien J, O'Brien L, O'Neil, Paradis, Patrick, Percy, Perry A, Perry J, Pineau, Pingree, Piotti, Rector, Richardson E, Richardson J, Rosen, Saviello, Shields, Simpson, Smith N, Smith W, Stone, Sullivan, Suslovic, Sykes, Tobin D, Twomey, Walcott, Wheeler, Woodbury, Wotton, Mr. Speaker.

NAY - Ash, Austin, Bennett, Bierman, Blanchette, Bowen, Carr, Clark, Clough, Collins, Courtney, Cressey, Dugay, Dunlap, Duprey B, Duprey G, Glynn, Goodwin, Hatch, Heidrich, Honey, Jennings, Joy, Ketterer, Maietta, Makas, McGlocklin, McGowan, Moore, Muse, Nutting, Peavey-Haskell, Pellon, Richardson M, Rines, Rogers, Sherman, Snowe-Mello, Sukeforth, Tardy, Thomas, Tobin J, Trahan, Treadwell, Vaughan, Watson, Young.

ABSENT - Brannigan, Bunker, Curley, Fletcher, McKee, Millett, Sampson, Thompson, Usher.

Yes, 95; No, 47; Absent, 9; Excused, 0.

95 having voted in the affirmative and 47 voted in the negative, with 9 being absent, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate. **ORDERED SENT FORTHWITH.**

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Reference was made to Bill "An Act To Control County Jail Health Care Expenses"

(H.P. 585) (L.D. 808)

In reference to the action of the House on June 2, 2003, whereby it Insisted and Joined in a Committee of Conference, the Chair appointed the following members on the part of the House as Conferees:

Representative BUNKER of Kossuth Township  
 Representative LESSARD of Topsham  
 Representative GREELEY of Levant

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**SENATE PAPERS**  
**Non-Concurrent Matter**

Bill "An Act To Provide Collective Bargaining Rights to Certain Forest Products Workers"

(H.P. 972) (L.D. 1318)

Majority (8) **OUGHT TO PASS AS AMENDED** Report of the Committee on **LABOR READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A"** (H-440) in the House on May 23, 2003.

Came from the Senate with the Reports **READ** and the Bill and accompanying papers **COMMITTED** to the Committee on **LABOR** in **NON-CONCURRENCE.**

On motion of Representative SMITH of Van Buren, the House voted to **RECEDE AND CONCUR. ORDERED SENT FORTHWITH.**

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