

# MAINE STATE LEGISLATURE

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Senate Legislative Record  
One Hundred and Twenty-Second Legislature

State of Maine

Daily Edition

Second Regular Session  
January 4, 2006 to May 24, 2006

Pages 1382 - 2139

**READ ONCE.**

**ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.**

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**Ought to Pass Pursuant to Resolve**

The Committee on **UTILITIES AND ENERGY** on Bill "An Act Regarding Energy Efficiency Standards for Residential Rental Properties"

H.P. 1468 L.D. 2074

Reported that the same **Ought to Pass**, pursuant to Resolve 2005, chapter 109, section 4.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED**.

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

**READ ONCE.**

**ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.**

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**Ought to Pass**

The Committee on **JUDICIARY** on Bill "An Act To Give Superior Court Clerks and Deputy Clerks the Authority To Issue Process for the Arrest of Persons Charged with Crimes" (EMERGENCY)

H.P. 1404 L.D. 2002

Reported that the same **Ought to Pass**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED**.

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

**READ ONCE.**

**ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.**

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**Ought to Pass As Amended**

The Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act To Amend the Law Regarding Smoking in Private Clubs" (EMERGENCY)

H.P. 1342 L.D. 1901

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-830)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-830)**.

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

On motion by Senator **TURNER** of Cumberland, the Senate **RECONSIDERED** whereby it **ACCEPTED** the **OUGHT TO PASS AS AMENDED** Report, in concurrence.

**THE PRESIDENT:** The Chair recognizes the Senator from Cumberland, Senator Turner.

Senator **TURNER:** Good morning, Madame President, and thank you. Ladies and gentlemen of the Senate, we're considering 5-4 on our calendar today and before we progress any further there are things I would like to put into the record with respect to this L.D.

It deals with the mechanics of how private clubs can decide to allow smoking or not, and in effect, relaxes the rules that are currently in Maine law. That really should not be our focus when we consider this bill that is before us. It's really a matter of health. In fact, I could go so far as to say that the committee of jurisdiction, in this the Committee of Health and Human Services, left off the first letter in the word of their committee assignment because they did not consider the health aspects of this bill that is before us.

Some of you know of Superman. He was indestructible. Only Kryptonite could bring him down. We had a real-life Superman in Christopher Reeve. In his life, injury from a horse riding accident brought him to his bed and crippled him for the rest of his life. Some of you may not know that Superman was also married. His wife, Dana Reeve, died a month or so ago at age 44 of lung cancer, having never smoked. In the formative years of her life as a young professional, she was a lounge singer and got to sing at length in lounges filled with second hand smoke.

It is interesting, when you think about second hand smoke, that there are a host of chemicals, some of which are toxic, some of which are carcinogens, and others that cause respiratory ailments. Here are some of my favorites: second hand smoke contains ammonia, which is also something you can find in floor cleaners; it contains arsenic, something found in poisons; it contains acetone, for those of you who do your fingernails, it's found in nail polish remover; my favorite, formaldehyde, which is typically found in embalming fluid. For those who are smoking, they are halfway to the embalmer's office while they are still breathing.

Part of the issue that the committee wrestled with is were private clubs also sweeping up veteran's service organizations. Veterans came before the committee and made their point that they were being put upon by the restrictions in respect to smoking. They were too restrictive and they could not overcome those barriers. It is an interesting thing when you consider veterans as we cycle in and focus on those private clubs. Some 81% of Maine's veterans do not smoke. If you were to go to a veteran's club you'd find almost no one younger than Vietnam veterans frequenting these clubs. I believe that is because smoking is the dominant venue. Think about the veterans who have served our country in the first Gulf War. The overwhelming malady they brought back with them was problems with their lungs due to irritants that they incurred during that brief but very

successful Gulf War. If you are interested in doing things for veterans, my suggestion is that you provide them with a smoke-free venue in which to enjoy the camaraderie of their friends in arms.

When you look at other jurisdictions around the country or around the world there are eight states, including two in New England, Rhode Island and Vermont, who do not allow smoking in private clubs if the employers have employees. This law would only apply, as all of our smoking bans have applied, in venues in which there are employees. If you are a club with no employees this law is not germane to you nor is the current law that is on the books. If you go to our north half or more of the provinces of Canada, they also have similar bans prohibiting smoking in private clubs. Most recently Great Britain, including Scotland, England, and Ireland, now prohibit smoking in private clubs. I believe you will find the common thread there, as well, is that it is an effort to protect workers.

This bill is a step backwards for us. I think that's a mistake. Some of you, and perhaps all of you, are aware that our state is the first to get all A's for the way we have dealt with smoking eradication and the use of our tobacco settlement money to further the eradication of smoking. I think this bill is a significant mistake and I want to be on record as being opposed to it. Thank you very much, Madame President.

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

Senator **MAYO:** Thank you, Madame President, ladies and gentlemen of the Senate. Not to prolong this debate a great deal, I do feel that it is necessary to bring before this body the fact that what we are debating this morning is an 11 - 2 report of the Health and Human Services Committee, Ought to Pass as Amended.

**THE PRESIDENT:** The member will refer to this bill, which is a unanimous report.

Senator **MAYO:** Madame President, we are discussing L.D. 1901?

**THE PRESIDENT:** Yes.

Senator **MAYO:** As amended? Thank you, Madame President. There was a question about the previous legislation that was enacted by the committee that was sponsored by the good Senator from Cumberland, Senator Turner, a year ago as to whether or not that piece of legislation is, in fact, legal. The issue around its legality is that in the voting on that particular issue of smoking or non-smoking in clubs and the people who did not vote. If there were 1,000 members in the organization, the veteran's organization, and the ballots were sent out, the notices were done, everything was legal, but only 500 were returned and 250 said they were in favor of smoking, 250 said they were opposed to smoking, 500 did not vote, the 500 that did not vote were counted as no votes. In other words, somebody who did not vote had a vote that was counted in that particular process. That fact has called the entire matter into question as to its legality at this point. The amended version that you have in front of you today allows smoking in clubs if a majority of all valid ballots cast by members and received by the club are in favor of smoking. There is a 30-day notice that this is going to be taking place.

Absentee ballots and notification to the Maine Center for Disease Control and Prevention have to be made. The amendment provides for a transition for qualifying clubs that have satisfied the current law and may have voted under the current law. The amendment directs the Maine Center for Disease Control and Prevention to adopt rules and designates these rules as Major Substantive, which means they have to come back before the committee of jurisdiction, the Committee of Health and Human Services. While I, in all honesty, cannot say that this is not a change in what we currently have, I do feel that L.D. 1901 as amended by House Amendment H-830, is now a legal entity and there will not be a question as to its legality. I would urge this body to support the 11 - 2 report of the committee. Thank you.

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

Senator **ROSEN:** Thank you, Madame President and members of the Senate. Just to add something further to the information that was offered to you from the Chair of Health and Human Services, the Senator from Sagadahoc, Senator Mayo. As he pointed out, this bill addresses the voting mechanism that resulted from the exemption that was passed last session. I'm sure you all recall that the Legislature granted an exemption to the private clubs to allow the veteran's organizations and the other private clubs to have their members vote as to whether or not they would allow smoking. That voting mechanism that was passed last session was very problematic. That is certainly not news to many of you. I'm sure you heard the problems that were associated with that process of voting. As the good Chair of the Committee said, the law that was passed last year required participation of all members of these clubs. All registered members, some of who had not attended or been active for years, some who could not be tracked down. It was an impractical and nearly impossible voting mechanism. What this bill does is simply corrects and amends the voting mechanism. As the Chair has indicated, it requires 30 days notice to all members and it allows a majority vote. That was the key issue. The groups that came before Health and Human Services, particularly the veteran's groups, made it very clear that they supported the exemption that was passed last session but they wanted a voting mechanism that was fair, a voting mechanism that recognized the right of the majority to make a decision, and a voting mechanism that allowed for absentee ballots. That is what this bill corrects. That is what this bill provides. It does not deal with the exemption. I hope you support the committee report.

**THE PRESIDENT:** The Chair recognizes the Senator from Lincoln, Senator Dow.

Senator **DOW:** Thank you, Madame President, ladies and gentlemen of the Senate. This bill does correct some deficiencies but I'm more worried about employees in any organization of any kind that have to work in a smoking environment. Therefore, I am going to oppose anything that would allow smoking anywhere to become easier to do. Employees do not have a right to vote. Employees only have the ability to resign if they don't like their job or take the risk of being fired if they voice opposition to working in a smoking environment. Therefore, I am going to oppose this bill. Thank you.

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

Senator **MAYO:** Thank you, Madame President, ladies and gentlemen of the Senate. I rise to apologize for one statement that I made. With two bills dealing with the same subject on today's calendar, I mixed the votes on those two. This was a unanimous report, the bill that we are currently dealing with, not 11 - 2 as I referred to it. I apologize if it caused any problem.

**THE PRESIDENT:** The Chair recognizes the Senator from Cumberland, Senator Bromley.

Senator **BROMLEY:** Thank you, Madame President. Permission to pose a question through the Chair?

**THE PRESIDENT:** The Senator may pose her question.

Senator **BROMLEY:** Thank you, Madame President. In my multi-tasking at my desk I was tuned into the debate late. My question is, is it true that private clubs already have the capacity to have smoking in their premises and does this particular bill go just to the voting procedure and that nothing we do today with this bill would limit smoking in clubs? Is that correct?

**THE PRESIDENT:** The Senator from Cumberland, Senator Bromley poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Hancock, Senator Rosen.

Senator **ROSEN:** Thank you, Madame President. In response to the question, the exemption that is on the books remains on the books. This bill is to correct deficiencies in the voting mechanism. If the legislature defeats this bill then we will revert back to the existing voting mechanism that was passed last year, which is highly problematic.

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

Senator **SCHNEIDER:** Thank you, Madame President. I request permission to ask a question through the Chair.

**THE PRESIDENT:** The Senator may pose her question.

Senator **SCHNEIDER:** Thank you, Madame President. Is it true that currently, due to the problems with the current law, we are not protecting employees at all, even by the vote, because there is a stay? Is that correct?

**THE PRESIDENT:** The Senator from Penobscot, Senator Schneider poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Sagadahoc, Senator Mayo.

Senator **MAYO:** Thank you, Madame President. The answer is yes, there is a stay on the current legislation that was passed a year ago because of the question as to the legality of voting. In other words, the current law is not being enforced.

**THE PRESIDENT:** The Chair recognizes the Senator from Cumberland, Senator Turner.

Senator **TURNER:** Thank you, Madame President, ladies and gentlemen of the Senate. It is interesting that the focus drifts over to the voting mechanism and the real issue, as I tried to outline for you when I first spoke, is that it is a matter of health. I can, however, fail to fall into the trap of talking about electioneering, so I will mention a few things to you. The current standard, as it exists in law, is a majority of all the members. That's a higher standard than some. If you are in a corporation and you hold a voting matter before your shareholders it's a majority of all the registered shareholders who make the decision, not just those who vote. This may be out on a tangent a little bit, I want to ask you to think back to the 1850's when this country was embroiled in a decision to expand or not allow the expansion of slavery in territories that were not states of the United States. A powerful U.S. Senator by the name of Stephen Douglas, otherwise known as the Little Giant, was successful in getting something called the Kansas-Nebraska Act passed. A majority of those voting in a territory could decide to extend slavery or not. Not all the people in the territory were allowed to vote. Those who were slaves did not have the option of having a franchise to weigh in on a decision that affected their lives. They have a very low standard; a standard lower than this body or the other chamber has for itself. I think when it comes to health matters the standard for voting should be a higher standard and we should keep the standard that is currently in law in place because it is, as it always should be, a matter of health and for protection of employees. Thank you, Madame President.

Report **ACCEPTED**, in concurrence.

**READ ONCE.**

Committee Amendment "A" (H-830) **READ** and **ADOPTED**, in concurrence.

**ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.**

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Off Record Remarks

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The Committee on **JUDICIARY** on Bill "An Act To Amend the Laws Relating to Corporations, Limited Partnerships, Limited Liability Companies and Limited Liability Partnerships"  
H.P. 1314 L.D. 1874

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-831).**

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-831).**

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

**READ ONCE.**