

# MAINE STATE LEGISLATURE

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

**Volume 2**

**First Special Session (Continued)**  
**May 20, 1997 to June 20, 1997**

**First Confirmation Session**  
**October 6, 1997**

**Second Regular Session**  
**January 7, 1998 to March 24, 1998**

**Pages 981 - 1977**

The Chair laid before the Senate the following Tabled and Later (5/22/97) Assigned matter:

SENATE REPORTS - from the Committee on **JUDICIARY** on Bill "An Act to Recover Economic Loss Attributable to Tobacco Use" S.P. 119 L.D. 398

Majority - **Ought Not to Pass** (11 members)

Minority - **Ought to Pass as Amended by Committee Amendment "A" (S-293)** (2 members)

Tabled - May 22, 1997, by Senator **LONGLEY** of Waldo.

Pending - motion by same Senator to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report

(In Senate, May 22, 1997, Reports **READ**.)

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

Senator **MILLS:** Mr. President, men and women of the Senate. This bill deserves at least a short explanation. The thrust of the bill is that it would require the five manufacturers of cigarettes and tobacco products in this country to compensate for future illnesses and losses, medical expenses, that are caused by exposure to their products after the end of this calendar year. The bill is a little bit similar to a bill that was passed in Florida and another that was passed, I believe, in Massachusetts except that this bill is entirely prospective in its impact. It says regardless of what the rules have been with regard to responsibility for creating medical expenses through tobacco exposure, henceforth beginning 1/1/98 the responsibility for reimbursing Medicaid, Blue Cross, other health insurers, the uncompensated care accounts of 42 hospitals, other entities which sustain a direct and statistically provable medical expense loss because of smoking-related illnesses, those entities will be able to send the bill to tobacco manufacturers in proportion to their market share as it exists in the state of Maine. Most of the data, the statistics, and the information that is necessary to send such a bill is regularly accumulated. The Center for Disease Control nationally has been accumulating such statistics since at least the early 1960's. There's no great mystery about what illnesses are affected by exposure to tobacco on a statistical basis and on the extent to which tobacco has that impact on things like lung cancer, heart disease and other such illnesses which are very commonly associated with tobacco exposure. The bill, as originally drafted, and the one that was presented to the Legislature two years ago included not only medical expenses but also disability losses and the Committee on Judiciary, in its wisdom, the people that reported out this bill elected to take out the disability portion, perhaps because it was more difficult to aggregate those figures and to assemble them in a responsible way and instead focused the bill entirely on uncompensated medical care. Now this is medical care expense that the rest of us as a society are currently bearing. We, either through health insurance or through uncompensated charity care administered by hospitals, the rest of us are essentially paying for the medical expenses that are incurred by people who run the unusual risk or the unusual risks that are associated with consumption of tobacco products. The neat thing about the bill is that it presents a

commercially-responsible solution to what is fundamentally an economic and commercial problem. And that is, how do we, as a society, allocate the costs associated with tobacco exposure and tobacco use? Many of us in recent weeks have seen statistics about the level to which people who smoke regularly run up medical bills that greatly exceed those who do not and the, I can't remember the exact figures, but the smokers who belong to health insurance plans typically run up two and three times as much by way of medical expense as those who do not smoke. It is one of the single most substantial aggravating factors in examining and revealing health costs. So this would put this commercial and economic burden right where it belongs. It would build it into the product itself and it would be the responsibility of those who manufacture the product to see to it that these expenses, these aggregatable and provable expenses be put together and paid by the very industry that is responsible for creating them. It is, in my view, a commercial response to a commercial problem. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Franklin, Senator Benoit.

Senator **BENOIT:** Thank you Mr. President, may it please the Senate. The good Senator from Somerset, Senator Mills, in his opening sentence said that this bill deserves a short explanation. He's right, it does. But it also deserves a short shrift in this Legislature, given its problems, and I urge you to vote against the pending motion and, ladies and gentlemen of the Senate, believe it or not there's something bigger than tobacco. I know we've had a lot of bills this session about tobacco and you'd kind of think that it's dominated the session quite a bit, but there's something bigger still and it's the refusal to dismantle our judicial procedures, procedures that we have to assure fairness, just because we have an alleged tobacco health-cost debate going on. There are three areas, Mr. President, that bother me about this legislation. First, it does away or dismantles the concept of causation and that, to me, is the most serious flaw in the legislation. Virtually it extinguishes the concept as we know it. Historically causation has been the link, the nexus between human action and legal responsibility for that action. It has been a fundamental foundation stone in our law and our legal system. And when I saw that foundation stone mentioned, I thought about something - a passage in the Bible. I know I've been talking about the Bible of late and if my wife were here to hear me she'd probably correct me and tell you that I don't really read the Bible that much and she'd be right. But I do remember as a child a statement in the Bible, the Lord said to Peter, "On this rock I build my church." And I realize that there's a difference between a church and a court of law, but I'll tell you from my perspective it's pretty darned close. If we start dismantling the court system, in my view we're starting to tinker with something that's pretty special. The entire body of Maine law is founded upon the concept of assignment of responsibility for the consequences to those who cause the problem. And, Mr. President, this bill intends to abandon the law of evidence as we know it.

One of the most disturbing aspects of the Bill is that it proposes to substitute for admissible evidence scientific samplings and statistical surveys and our legal system as you know it, Mr. President, has spent a better part of many, many years developing a set of evidentiary rules for a fair process that allows the introduction of reliable forms of evidence. We ought not to abandon it, even for tobacco if that's the subject matter. And I think that we are really over the line, Mr. President, in this

legislative process - are getting over the line into the judicial process. By sweeping away the fundamental assumptions of our law, not just of tort liability, but almost every other kind of liability, the bill seeks to litigate here in the Legislature those issues that ought to be litigated in court. With all due respect, the Legislature ought to be writing public policy, which it does best, rather than trying to determine the outcome of a lawsuit. Mr. President, this bill deserves the same result that it got two years ago, quietly put away. Let's walk the high road and put this bill down. Thank you Mr. President.

On motion by Senator **JENKINS** of Androscoggin, **ADJOURNED** until Wednesday, May 28, 1997, at 9:00 in the morning.

The Chair ordered a Division. 7 Senators having voted in the affirmative and 20 Senators having voted in the negative, the motion by Senator **LONGLEY** of Waldo to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED** Report, **FAILED**.

The Majority **OUGHT NOT TO PASS** Report **ACCEPTED**.

Sent down for concurrence.

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Under suspension of the Rules, all matters thus acted upon were ordered sent down forthwith for concurrence.

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

#### COMMUNICATIONS

The Following Communication: S.C. 327

**STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
AUGUSTA, MAINE 04333**

May 27, 1997

Honorable Joy J. O'Brien  
Secretary of the Senate  
118th Legislature  
Augusta, Maine 04333

Dear Madam Secretary:

The House voted today to adhere to its former action whereby it indefinitely Postponed Bill "An Act to Amend the Maine Workers' Compensation Act of 1992 as It Relates to Compensation for Total Incapacity" (H.P. 257) (L.D. 321)

Sincerely,

S/Joseph W. Mayo  
Clerk of the House

Which was **READ** and **ORDERED PLACED ON FILE**.

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Senate at Ease

Senate called to order by the President.