

MAINE STATE LEGISLATURE

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R.O.S.

L.D. 886

DATE: 5.25.05

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HEALTH AND HUMAN SERVICES

Reported by:

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STATE OF MAINE
SENATE
122ND LEGISLATURE
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to S.P. 294, L.D. 886, Bill, "An Act To Promote Parity in the Laws Governing Smoking in the Workplace"

Amend the bill by inserting after section 2 the following:

'Sec. 3. 22 MRSA §1580-A, sub-§2, ¶¶A-1 and C-1 are enacted to read:

A-1. "Club" means a reputable group of individuals, including a veterans' service organization chartered under 36 United States Code, Subtitle II, Part B (2004), incorporated and operating in a bona fide manner solely for purposes of a recreational, social, patriotic or fraternal nature and not for pecuniary gain.

C-1. "Member" means a person who, whether as a charter member or admitted in accordance with applicable bylaws, is a bona fide member of a club and who maintains membership in good standing by payment of dues in a bona fide manner in accordance with bylaws and whose name and address are entered on the list of members. A person who does not have full membership privileges may not be considered a bona fide member.'

Further amend the bill in section 3 in subsection 3 in the first blocked paragraph in the first line (page 1, line 31 in L.D.) by striking out the following: "workplace" and inserting in its place the following: 'business facility'

COMMITTEE AMENDMENT

R. of S.

2 Further amend the bill in section 3 by striking out all of
4 subsection 4 (page 1, lines 39 to 43 in L.D.) and inserting in
its place the following:

6 **'4. Violations.** ~~Failure to establish, post or supervise~~
8 ~~the implementation of a policy~~ Any violation of this section is a
civil violation for which a fine of not more than \$100 may be
10 adjudged, except that a fine of not more than \$1,500 may be
adjudged for each violation of this section in cases in which the
12 employer has engaged in a pattern of conduct that demonstrates a
lack of good faith in complying with the requirements of this
14 section. The Bureau of Health shall have has authority to
enforce provisions of this section.'

16 Further amend the bill by striking out all of sections 4 and
18 5 and inserting in their place the following:

20 **'Sec. 4. 22 MRSA §1580-A, sub-§4-A** is enacted to read:

22 4-A. Injunctive relief. The Attorney General may bring an
action to enforce this section in District Court or Superior
24 Court and may seek injunctive relief, including a preliminary or
final injunction and fines, penalties and equitable relief, and
26 may seek to prevent or restrain violations of this section by any
person.

28 **Sec. 5. 22 MRSA §1580-A, sub-§7,** as enacted by PL 1985, c.
30 126, is amended to read:

32 **7. Application.** This section does not apply to any a
business facility ~~where~~ that is a veterans' service organization
34 chartered under 36 United States Code, Subtitle II, Part B (2004)
that is not open to the public or to any other club that was not
36 open to the public and that was in operation prior to January 1,
2004, if policies concerning smoking have been mutually agreed
38 upon by the employer and all the employees, and the veterans'
service organization or the club:

40 A. Has written procedures ensuring that only the employer
and employees, members and invited guests accompanied by a
42 member are allowed entry to the premises; and

44 B. Demonstrates by a written secret ballot vote taken at
least once every 3 years that a majority of the members have
46 voted to allow smoking. The date of the vote must be
announced to all members at least 14 days prior to the
48 vote. All ballots cast in the vote must be kept on file for
at least 3 years and made available to the Bureau of Health
50 upon request.'

R. 018

2 Further amend the bill by relettering or renumbering any
nonconsecutive Part letter or section number to read
4 consecutively.

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SUMMARY

This amendment allows for fines of up to \$1,500 for each
10 violation of the workplace smoking laws in cases where the
employer has engaged in a pattern of conduct that demonstrates a
12 lack of good faith in complying with those laws, and allows the
Attorney General to seek injunctive relief, including a
14 preliminary or final injunction and fines, penalties and
equitable relief, or to seek to prevent or restrain violations of
16 those laws.

The amendment also limits the "opt-out" provision under
18 current workplace smoking laws to federally chartered veterans'
service organizations and to private clubs in existence prior to
20 January 1, 2004. The amendment retains provisions in current law
that require the mutual agreement of the employer and all the
22 employees to allow smoking in those facilities, but adds the
requirements that they also have a written procedure ensuring
24 that only the employer and employees, members and invited guests
accompanied by a member are allowed entry and that they
26 demonstrate, by a written secret ballot vote taken at least once
every 3 years, that a majority of the membership has voted to
28 allow smoking.

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FISCAL NOTE REQUIRED
(See attached)



122nd MAINE LEGISLATURE

LD 886

LR 1131(02)

An Act To Promote Parity in the Laws Governing Smoking in the Workplace

Fiscal Note for Bill as Amended by Committee Amendment "A"

Committee: Health and Human Services

Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund
Minor revenue increase - General Fund

Correctional and Judicial Impact Statements

Increases the range of fines to \$1,500 for violations under the Workplace Smoking Act
The collection of additional fines may increase General fund revenue by minor amounts
This bill may increase the number of civil suits filed in the court system.

Fiscal Detail and Notes

Any additional costs regarding enforcement against certain employers can be absorbed by the Department of the Attorney General utilizing existing budgeted resources.