

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred And Fifteenth Legislature

OF THE

State Of Maine

VOLUME II

FIRST REGULAR SESSION

House of Representatives
May 20, 1991 to July 10, 1991

CONLEY of Cumberland

Representatives: GEAN of Alfred
 DUPLESSIS of Old Town
 PENDLETON of Scarborough

Came from the Senate with the Minority "Ought Not to Pass" Report read and accepted.

Reports were read.

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Manning.
 Representative MANNING: Mr. Speaker, Men and Women of the House: I move that the House accept the Majority "Ought to Pass" Report.

This happens to be a bill that will be banning smoking in laundromats. We are going to have four smoking bills here today and, if somebody in this House can absolutely tell me that it is a good idea for people in this state to be able to go into a laundromat to get their clothes clean and to have right next to the laundromat, right next to where you are taking out your laundry from the washer or the dryer, somebody smoking a cigar — you are there to get your clothes clean — if that is right, then I don't know what is going to pass in this House. This is a simple measure which basically says for that period of time that you are in a laundromat, you cannot smoke. It is as simple as that. I would hope that this House would go along with it.

The SPEAKER: The Chair recognizes the Representative from Scarborough, Representative Pendleton.

Representative PENDLETON: Mr. Speaker, Men and Women of the House: I agree, tobacco smoke is not the most healthy thing, we all know that, but it seems to me, although my distinguished chair of the committee says it is a good idea to have this bill pass, I would argue that it is a bad idea. Because what we are doing is mandating a particular business, a single business, to not allow smoking. I say we should allow the business to choose for themselves. Why are we tinkering with businesses? Why not let them decide what their clients want?

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Manning.

Representative MANNING: Mr. Speaker, Ladies and Gentlemen of the House: As the Representative from Eagle Lake just stated, I am from Portland, but I would be willing to bet there are many of you people who represent small towns out there that there is only one laundromat in the whole town. In Portland, you might be able to find a place but there are other towns in this state, I would be willing to bet, that there is just one laundromat. So, what do you do? Do you go in, get your clothes cleaned and have cigarette smoke all over your clothes? I think even the smokers in this House have got to admit that that is not a good idea. If you can't stop smoking in the laundromat — I mean, it isn't as though you are going to be sitting there watching the clothes go around the washing machine, you can step outside and have a cigarette.

Remember the small towns, the small towns that you people represent and the one laundromat in that small town. That is what you ought to be looking at in this bill.

The SPEAKER: The Chair will order a vote. The pending question before the House is the motion of

Representative Manning of Portland that the House accept the Majority "Ought to Pass" Report. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

46 having voted in the affirmative and 78 in the negative, the motion did not prevail.

Subsequently, The Minority "Ought Not to Pass" Report was accepted in concurrence.

Divided Report

Majority Report of the Committee on Human Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (S-252) on Bill "An Act to Protect Citizens from the Effects of Environmental Tobacco Smoke" (S.P. 422) (L.D. 1134)

Signed:

Representatives: MANNING of Portland
 CLARK of Brunswick
 GOODRIDGE of Pittsfield
 SIMONDS of Cape Elizabeth
 WENTWORTH of Arundel
 PENDEXTER of Scarborough
 TREAT of Gardiner
 DUPLESSIS of Old Town

Minority Report of the same Committee reporting "Ought Not to Pass" on same Bill.

Signed:

Senators: BOST of Penobscot
 GILL of Cumberland
 CONLEY of Cumberland

Representatives: GEAN of Alfred
 PENDLETON of Scarborough

Came from the Senate with the Minority "Ought Not to Pass" Report read and accepted.

Reports were read.

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Manning.

Representative MANNING: Mr. Speaker, Ladies and Gentlemen of the House: I move that the House accept the Majority "Ought to Pass" Report.

I have to say before we get into this other argument today that it is a little sad not to have my seatmate here. For you veterans, you remember the arguments that my seatmate and I would have — I hope she does get better and if she is listening, I hope she does get back. I think we all wish her well.

This bill here — I am not quite sure, if you wouldn't buy the last one how you are going to buy this one, but let's try.

This bill will ban smoking in places where the majority of the public will be invited to come. I don't think that anybody in this room can honestly believe that smoking is good for you. Our health care costs in this state are climbing. Our health care costs across the country is climbing.

One of the issues that this legislature is dealing with right now and is a very serious issue — I think the two committees that are dealing with it

are doing a great job from what I understand, and that is Workers' Compensation. I think that is going to be a major issue dealing with Workers' Compensation and that is smoking in the workplace. If you don't think so, wait a few years.

For those of us on the committee, we have already heard individuals who are out on Workers' Compensation because of smoking, because of side-stream smoking. We have one individual right now at the Maine State Prison, a guard, out on Workers' Compensation because of second-stream smoking.

If this state wants to deal with the issues of health care, this is one of the major ways of dealing with it. Smoking is one of the major causes of what puts people in doctor's offices and in hospitals. We as a society have got to decide if we are going to continue paying our health care costs or are we going to try to put a decrease to the increase? This is one of the ways that (hopefully) down the road, we will have a control on our health care costs.

If you are interested in dealing with the health insurance problem in this state and in this country, then you ought to be looking at this bill very seriously. You can't go back to the constituents that you have and say you did something about health insurance and not recognize that one of the major reasons people enter hospitals and go to doctors is because of smoking. I don't mean because they themselves smoke. There is an enormous amount of information out there now dealing with second-stream smoking.

Currently in the EPA in Washington, there is another report that is not getting out to the public that the EPA has done saying how bad the second-stream smoke is to people who don't smoke and what will happen to that person.

This issue is an important issue if you really and seriously, for those who have come up here and tried to address the health insurance problem in this state, this is one of the ways you can deal with it because you can't look at it one way, you have to look at it globally. You have to look at it as to what is the reason people go into hospitals? What is the reason our health insurance costs have risen? One of the reasons is because of smoking. It is as plain and simple as that.

This will protect the almost 65 to 70 percent of this state who now do not smoke. I know we are going to hear about the rights of smokers, but I would remind you that the rights of smokers does not go to the point where I, as an individual who does not smoke, has to inhale the second-stream smoking.

I would hope that this House would take a hard look at this, especially if you are concerned about Workers' Compensation, on both sides of the aisle, and your concerned about health insurance on both sides of the aisle, then you ought to be taking a look at this because you can't tell Banking and Insurance to do one thing and continue to have the state allow smoking everywhere. It is just not going to work that way folks because people are going to continue to get sick. It is plain and simple. Every fact out there shows it. The only people who deny it is the tobacco companies of this country who are getting richer as people are getting poorer because they are dying.

The SPEAKER: The Chair recognizes the Representative from Scarborough, Representative Pendleton.

Representative PENDLETON: Mr. Speaker, Men and Women of the House: The Representative from Portland brought up some very good issues and this is a very serious situation but I would remind you that this particular bill is quite far-reaching. It would infringe upon business and personal choices. It would infringe upon a persons right and I would urge you to vote against the pending motion.

I would request a roll call.

The SPEAKER: The Chair recognizes the Representative from Scarborough, Representative Pendexter.

Representative PENDEXTER: Mr. Speaker, Men and Women of the House: The Foundation for Blood Research which is located in Scarborough did a study relative to environmental tobacco smoke exposure during infancy. Physicians from the greater Portland area participated in this study. When nicotine is metabolized in the body, a biochemical called Creatinine is released and it can be measured in the blood, saliva, and urine. The study collected information about household smoking habits from 518 mothers when they made their first well-child visit with a six to eight week old infant. A urine sample was collected from the infant, the Creatinine concentration was measured and the measurements was correlated with data provided by the mother. Of the infants who were not exposed to household tobacco smoke, the median urine Creatinine level was 1.6 u.g.'s per liter. Among infants with environmental tobacco exposure from only one household member smoking and that member not being the mother, the Creatinine level was 8.9. Among infants with exposure from mothers who were smoking but they were the only member in the household smoking so it was just one household member but it was the mother who smoked, the median level was 28. Among infants where both mother and other household members smoked, the Creatinine level was as high as 43 so we have gone from a range of 1.6 to 43, depending on how much environmental tobacco smoke was in the environment.

I believe this study clearly documents the issue on environmental tobacco smoke where in this case were non-smokers of six to eight week old infants. Finding a by-product of nicotine in diapers that increases with increased exposure should be enough to convince you all that environmental tobacco smoke does affect others in a harmful way. It is sound, public health policy to provide smoke-free environment in public places and I encourage you to support the Majority "Ought to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Penobscot Nation, Representative Attean.

Representative ATTEAN: Mr. Speaker, Men and Women of the House: I am sure it comes as no surprise that I rise today in opposition to this amendment. Many of you know that I am a smoker and, for the Record, I will say it again, I am a smoker. That does not make me a bad person, my children love me, my grandchildren adore me, even my cat tolerates me and again. I say these words in jest, not just to relax you, but hopefully to relax myself because I know what a battle I face. But make no mistake, the words that follow are deadly serious.

I couldn't agree more with Representative Pendleton from Scarborough that this is, indeed, a far-reaching, broad and sweeping piece of legislation. I will explain that further but I hope that the words I speak will, not only dismay you but

shock you and perhaps educate you. I hope my words will open your eyes and make you realize what an ill-conceived piece of legislation this is. In order to achieve a perfect world and smoke-free environment, this Committee Amendment is treading on some very, very serious rights. I will spell that one right out now flat so you will understand where I am coming from and that is freedom of religion.

I know you are wondering how I can equate freedom of religion and an anti-smoking bill. I hope that I will be able to educate you on that.

When this bill went to public hearing, I testified against the bill. I stated that I had a number of objections to the bill as originally drafted but that I would address only two of my concerns in detail. One of my concerns was the infringement of religious freedom. I spoke about the religious rituals such as burning incense, palms, sweet grass and peace pipes.

Because of who I am and the people I represent, unfortunately, the focus of the media and the committee went immediately to the peace pipe issue. If I had been thinking a little more clearly, I could have included in that list, candles, matches, wood, a few other things.

If you have the Committee Amendment in front of you and if you don't, let me read it to you. The bill defines public place. Public place means any place not open to the sky and to which the public is invited or allowed. A private residence is not a public place. The bill does exclude private homes and, in my opinion, and I will leave it to your judgment to decide whether or not that definition of public place includes a church or a temple or a synagogue.

The bill further goes on to define smoking. Smoking includes carrying or having in one's possession a lighted cigarette, cigar, pipe, or other objects giving off smoke or containing any substance giving off smoke. Again, I leave it to your judgment to decide for yourself whether or not any substance giving off smoke is incense, votive candles, birthday candles, peace pipes, sweet grass or any substance giving off smoke.

My particular objection to this bill was addressed in a further Committee Amendment. Unfortunately, the language that is contained in this bill, I term, as highly insulting to the people that I represent.

I am gratified that the committee heard my concerns and did take steps to address them; however, the result is simply unacceptable.

Please let me quote the words of Speaker Martin in a recent Kennebec Journal article, which did a story on the two Indian Representatives in the Maine House and the efforts in some other states to do the same. Speaker Martin was kind enough to say, if you want to know what an American Indian thinks, ask one. Unfortunately, I was not asked about this language and, as a result, my people are being held up to public ridicule and scorn.

The Amendment — please let me just read the language here, on Page 2, Section C, line 31 — "Smoking may be permitted in any area when undertaken as part of the religious ceremony or as part of a cultural activity by a defined group such as a Native Americans." I will speak to the term "defined group" later. What this Amendment does is lump all religious ceremonies and cultural activities together and defines the use of any substance giving off smoke

as smoking. If this bill were to pass into law, the burning of incense would now be known as smoking. The burning of candles would now be known as smoking.

You have heard the term "smoking" in various conversations as a threat to the public health. I seriously doubt whether the burning of incense or even the Native American traditional practice of smoking a peace pipe is simply smoking and a threat to the public health. I am not disputing those scientific facts, I am disputing the language of this bill.

By using the term "Native American" and holding my people up as an example and labeling their most sacred religious objects and ceremonies as simply smoking is too degrading and too demeaning. My people have faced 500 years of a forced assimilation, acculturation and termination. We don't need another onerous label such as this.

I hope that you understand simply why I am so nervous but I have very deep emotions about this, not because of the whole issue of smoking, but at the result of the language used in this bill. I find the fact that I have to get up and defend my people's religious and traditional practices in terms of anti-smoking bill is simply incomprehensible, it is ludicrous, how did we get here, what insensitivity has been displayed by words such as this? I don't feel it necessary to explain all of my people's culture and religious practices but just remember that tobacco has always been held sacred in my culture and the smoking of the peace pipe and the burning of tobacco in our ceremonies is more than just a good smoke. Tobacco has played an integral part of our history. We burn it as a method of giving thanks to the Great Spirit who gave us, not only tobacco, but everything else that sustains us.

I spoke earlier about the words "defined group." In my opinion, that language leaves wide open who or what may define what a religious and cultural group is. Who is to say that they are not Native Americans? Anyone born in this country can claim to be Native Americans. Does this Amendment give the state the right to define who a person they claim to be? Does this Amendment imply that the state will keep a list of all religions in this state or all cultural groups in the state? My people, under the terms of both federal and state law, have the only right to define what a Penobscot Indian is. The state does not have that right.

Ladies and gentlemen, as I mentioned before — yes, I am a smoker but I would hope that the words I said to you just now will not be discounted because of that fact. I would hope that you would realize just how far-reaching and broad this bill is.

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Manning.

Representative MANNING: Mr. Speaker, Men and Women of the House: The good Representative who just spoke approached me after the bill was printed and told me about what she just explained to you. I apologize to her and to the Indian Nations of this state if we have offended them. We thought we had tried to deal with their problem that she brought to us on the day of the public hearing. I also offered to come up with language that would satisfy her.

I would hope that maybe the Majority or Assistant Majority Leader would table this so the good Representative would have time to come up with an amendment that would not offend her and the people that she represents.

The SPEAKER: The Chair recognizes the Representative from the Penobscot Nation, Representative Attean.

Representative ATTEAN: Mr. Speaker, Ladies and Gentlemen of the House: I did, indeed, approach Representative Manning. When this Amendment crossed our desks last Thursday, I took it with me into the retiring room to read it and it is, indeed, a fortunate thing that I did because when I read the language contained in this Amendment, I literally hit the roof. If you go into the retiring room, you will see the dent in the ceiling I made. It took me a while to calm down enough so that I could approach the good Representative from Portland, Representative Manning, and tell him that I consider this language highly insulting. He did, indeed, offer to prepare an amendment. As I thought about it, I decided that it was too late to prepare such an amendment, that the damage had already been done, the damage that could have been avoided had anyone using Native Americans as an example had only asked what a Native American thinks.

The committee analyst on this bill came to me a few weeks ago and asked my advice on other language contained in this bill, not the Native American issue. All of this could have been avoided. The damage has been done, it is too late for an amendment.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is the motion of the Representative from Portland, Representative Manning, that the House accept the Majority "Ought to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Thomaston, Representative Mayo.

Representative MAYO: Mr. Speaker, pursuant to House Rule 7, I request permission to pair my vote with the Representative from Sanford, Representative Hale. If she were present and voting, she would be voting nay; I would be voting yea.

The SPEAKER: The pending question before the House is the motion of the Representative from Portland, Representative Manning, that the House accept the Majority "Ought to Pass" Report. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 107

YEA - Adams, Anthony, Ault, Bennett, Cathcart, Clark, M.; Duplessis, Goodridge, Handy, Hanley, Heesch, Heino, Hepburn, Holt, Lawrence, Lemke, Lipman, Manning, Marsh, Melendy, Mitchell, J.; Morrison, Nadeau, Norton, Nutting, O'Dea, Oliver, Paradis, J.; Paradis, P.; Parent, Pendexter, Pfeiffer, Pines, Richardson, Rydell, Simonds, Spear, Stevens, P.; Stevenson, Tracy, Treat, Tupper, Wentworth, Whitcomb.

NAY - Aikman, Aliberti, Anderson, Bailey, H.; Bailey, R.; Barth, Bell, Boutilier, Cahill, M.; Carleton, Carroll, D.; Carroll, J.; Chonko, Clark, H.; Coles, Constantine, Cote, Crowley, Daggett, DiPietro, Donnelly, Dore, Duffy, Dutremble, L.; Erwin, Farnsworth, Farnum, Farren, Foss, Garland,

Gean, Gould, R. A.; Graham, Gray, Greenlaw, Gurney, Gwadosky, Hastings, Hichborn, Hichens, Hoglund, Hussey, Jacques, Jalbert, Joseph, Kerr, Ketover, Ketterer, Kilkelly, Kontos, Kutasi, LaPointe, Larrivee, Lebowitz, Libby, Look, Lord, Luther, MacBride, Macomber, Mahany, Marsano, Martin, H.; McHenry, Merrill, Michaud, Mitchell, E.; Murphy, Nash, O'Gara, Ott, Paul, Pendleton, Plourde, Poulin, Pouliot, Powers, Rand, Reed, G.; Reed, W.; Richards, Ricker, Rotondi, Ruhlin, Saint Onge, Salisbury, Savage, Sheltra, Simpson, Skoglund, Small, Stevens, A.; Strout, Swazey, Tamaro, Tardy, Townsend, Vigue, Waterman, The Speaker.

ABSENT - Bowers, Butland, Cashman, McKeen, Pineau.

PAIRED - Hale, Mayo.

Yes, 44; No, 100; Absent, 5; Paired, 2; Excused, 0.

44 having voted in the affirmative and 100 in the negative with 5 being absent and 2 paired, the motion did not prevail.

Subsequently, the Minority "Ought Not to Pass" Report was accepted in concurrence.

Divided Report

Later Today Assigned

Majority Report of the Committee on State and Local Government reporting "Ought Not to Pass" on Bill "An Act to Create a State Municipalities Investment Pool" (S.P. 516) (L.D. 1377)

Signed:

Senators: EMERSON of Penobscot
BERUBE of Androscoggin

Representatives: KERR of Old Orchard Beach
NASH of Camden
LOOK of Jonesboro
SAVAGE of Union
GRAY of Sedgwick
WATERMAN of Buxton
JOSEPH of Waterville

Minority Report of the same Committee reporting "Ought to Pass" on same Bill.

Signed:

Senator: BUSTIN of Kennebec

Representatives: HEESCHEN of Wilton
LARRIVEE of Gorham
KILKELLY of Wiscasset

Came from the Senate with the Bill and accompanying papers recommitted to the Committee on State and Local Government.

Reports were read.

Representative Joseph of Waterville moved that the House accept the Majority "Ought Not To Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Gorham, Representative Larrivee.