

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD
OF THE
One Hundred And Seventeenth Legislature
OF THE
State Of Maine

VOLUME II

FIRST REGULAR SESSION

House of Representatives
May 24, 1995 to June 30, 1995

Amendment "A" (H-393) thereto in non-concurrence and sent up for concurrence.

The following item was taken up out of order by unanimous consent:

An Act Protecting a Citizen's Right of Petition under the Constitution (H.P. 576) (L.D. 781) (C. "A" H-300)

TABLED - June 6, 1995 (Till Later Today) by Representative JACQUES of Waterville.

PENDING - Passage to be Enacted.

Subsequently, the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

The following item was taken up out of order by unanimous consent:

HOUSE DIVIDED REPORT - Majority (10) "Ought Not to Pass" - Minority (3) "Ought to Pass" as amended by Committee Amendment "A" (H-324) - Committee on Human Resources on Bill "An Act to Allow Smoking in One-room Establishments with Lunch Counters That Post Smoking Signs" (H.P. 984) (L.D. 1392)

TABLED - June 1, 1995 (Till Later Today) by Representative JACQUES of Waterville.

PENDING - Acceptance of either Report.

Representative FITZPATRICK of Durham moved that the House accept the Majority "Ought Not to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Durham, Representative Fitzpatrick.

Representative FITZPATRICK: Mr. Speaker, Ladies and Gentlemen of the House: The majority of the committee felt that L.D. 1392, while well intended, would begin the erosion of the smoking policy recently adopted by the legislature. While I sympathize with the Auburn establishment that effectively pleaded its case before the committee, I would suggest to you that the remedy to their declining restaurant business is not to be found in this bill.

We heard that the Auburn business had experienced a significant decline in business in the past year. It was apparent to the majority of the committee that the uneven enforcement of the smoking law was the primary cause of this decline. Simply they need to enforce the law and they seem to enforce the law in Lewiston, but not in Auburn. I would suggest to you, men and women of the House, that the solution to this problem is not to roll back Maine's smoking laws, but the solution is simply to enforce the law. While tobacco smoking has long been recognized as a major cause of death and disease, in recent years it has been proven that non-smokers are also at risk for some of these same diseases as a result of their exposure to smoke exhaled by smokers and smoke given off by cigarettes.

Environmental tobacco smoke is a human lung carcinogen in the same category as asbestos and benzene. It increases the risk of infections, such as bronchitis, pneumonia and is a true risk factor for new cases of asthma in children. It increases the frequency of episodes and the severity of symptoms in asthmatic children. There are 86,000 people in Maine who are severely effected by tobacco smoke in one way or the other. For these people, one room restaurants will be virtually inaccessible where smoking is permitted.

Studies have shown that healthy non-smokers are at risk for serious health effects as a result of chronic exposure to environmental tobacco smoke. While this factor is important for the restaurant going public, it is more important for restaurant employees. This bill will not protect these employees, it will obviously increase their exposure to environmental tobacco smoke.

The 10 to 3 majority on this report heard from the Division of Health Engineering that L.D. 1392 will be difficult to enforce. DHS is involved in the inspection of restaurants, however they do not license and inspect many other establishments, such as convenience stores that would fall under this definition and would have lunch counters. I ask you to consider the advantages of a safe work environment and increased access to public places for those with respiratory difficulty. I urge you to vote against this bill, which would increase the risk to many Maine citizens to lung cancer and many other illnesses. I urge you to oppose L.D. 1392 and accept the 10 to 3, Majority "Ought Not to Pass" Report. Thank you.

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

Representative WINGLASS: Mr. Speaker, Ladies and Gentlemen of the House: I am rising today to urge you to vote against the "Ought Not to Pass" motion. The House Chair has correctly indicated that it had quite a lot of bipartisan support for the move that has been advanced for your consideration. On the other hand, I think that it is important, really imperative, that you give some additional consideration to this whole matter, because today we find ourselves in position to accomplish something significant.

We are here assembled with the opportunity to release one of the bonds which currently ensnare our citizens. Today we are, again, confronting a freedom issue, the freedom of choice. The bill before us is about individuals. Maine men and women who seek the freedom of choice. We have business men and women filled with entrepreneurial spirit and spunk. They are risk takers who put their hearts, souls and capital into their business. These are Mainers who provide crucial employment opportunities to their fellow citizens. Now we have the opportunity to recognize that some Maine business people need help and indeed plead for help. Today, we, the members of this body can deliver.

If you reject the motion and instead vote for the minority position, you will allow the business owners the choice of offering their customers food service in a smoking permitted environment. Potential customers will be alerted to the smoking stipulation by prominent sign placement, thus protecting them from unwanted exposure. I believe this bill has much in common with the seat belt bill that we have been discussing from time to time here in the last couple of weeks and I hope you feel that way too. Let us join together to demonstrate to our fellow citizens, even with this very narrow expression, that, yes, the 117th Maine House of Representatives believes that Maine men and women are capable of responsible individual decision making. Thank you.

Representative CHASE of China requested a roll call on the motion to accept the Majority "Ought Not to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Penobscot, Representative Perkins.

Representative PERKINS: Mr. Speaker, Men and Women of the House: I had to clean my glasses three times when I first saw this bill. I couldn't believe it. I was so excited. This is one of the most important bills to come before us, no, I am serious. We have lost the ability to distinguish between private and public in this society. If it is open for people to come in, we call it public, no matter how small it is.

This bill distinguishes between a large business and a small business. A small business is not public, it is a private business. The reason we got into all this regulation, health inspections and all these things are predicated on certain things. They are predicated on the fact that this business is large enough to have a differential bargaining power when you go to knock on the door for a job. That is one of the ways we distinguish a large business that we call a public business. For example, a paper mill, that is getting so large that I will even concede that goes more toward the public than private.

We are talking about small eating places here and I for a long time thought that I should be able to start a restaurant and say, smoking only. I don't like smoking. I can't stand the smell of it, especially when I am eating, but this is a choice bill. It is a freedom bill. It is an excellent bill and I hope you will vote to "Ought Not to Pass".

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

Representative DORE: Mr. Speaker, Ladies and Gentlemen of the House: I am the sponsor of this bill, in case you don't know that fact. I realize that might be shocking to some of you, but as my constituent, indeed it is more than my constituent, it is my neighbor, who typically works toils from 6 in the morning to 11 at night in his variety store. I put this bill in for him.

I noticed the good Representative Fitzpatrick must have said four times that it was 10 to 3 report. He must have said five times that it was an Auburn bill. Let me tell you why this is not an Auburn bill, because if this bill doesn't make it and this guy gets buried financially and he is being buried financially by the current statute, then every time I walk into any store in Maine and I see smoking, I am going to call DHS. Soon it is going to be a Waterville problem, Bangor problem and it is going to be a Portland problem and yes, Representative Hartnett, a Freeport problem. I am going to make sure this law gets uniformly enforced so that you can all have people who lose their shirts, because that is what happened to that guy in this district.

Let me tell you why this bill is necessary. Currently when they passed the smoking law and I was part of it a few years ago, this is how we passed it, exception for bowling alleys, exception for beano halls, exception for smoking in the smoking section in the restaurants, if they have a smoking section. I have a guy in Auburn and he has a little variety store with a one line lunch counter and four booths across from the lunch counter. There is no room for a separate exit and entrance. He had a 1.2 million dollar business. It now generates \$600,000 a year. Did all this money get lost, because he doesn't allow smoking anymore?

The guys that go down there to complain about the government over coffee, instead of going to Shop'N Save which is in his back yard, and buying a quart of milk. They go into Mac's Variety and buy the quart

of milk and then they sit there and have their coffee. He is not making it on the coffee. He is making it on the quart of milk. If they can't go to Mac's Variety and sit and a lunch counter and complain about what foolishness we are engaged in up here, they are going to Shop'N Save to buy the quart of milk or anything else. They want a smoke free meal, well guess who is across the street from him. Denny's Restaurant, 24 hours a day smoke free. They went to Mac's Variety to have a cup of coffee and a cigarette and moan about us.

When we took that away, they went to somebody's kitchen, but they also went over to Lewiston to a store where a local police officer sits at the lunch counter, that ought to tell you something about the enforcement of this law in Lewiston. He sits at the counter having a butt with everybody. They also went to Turner and Mechanic Falls. I have the names of those places. There will be no smoking in those places if we can't pass this law to save this man's business, because we are going to uniformly enforce this across the state.

Let me tell you the interesting thing that happened with this bill. The Department of Human Services came down to complain about it and said it was a terrible idea and said their problem was they couldn't enforce the law uniformly because they had an arrangement. What their arrangement is, is in four communities in this state, we have our own health officer. Auburn has the good fortune to be one of those communities with our own health officer. Auburn has the law enforced by a very vigorous health office and so does Portland, South Portland and Lewiston. In Lewiston you can see how seriously the health officer enforces it, because the local cop is having a cigarette at the lunch counter at the variety store that got all the business that went away from Mac. Yes, I will make sure they don't allow smoking there as of next week. If we can't get anything, we are not going to get anything anywhere.

The next thing that the Department of Human Services had to say that I found so fascinating at this public hearing was that they couldn't enforce the law uniformly because we had removed nine workers from the Department of Human Services. Their staff got cut in half. Is there a plan in the future to double their staff? No, there is not. Is there going to be uniformity in enforcing this law across this state in the near future? No, there is not. This guy is just out of luck after running his store for 15 years and he has serious financial problems and they happened, not when we opened Shop'N Save, not when we gave Shop'N Save the liquor licenses, not when Denny's opened up across the street. His problem happened exactly when we said you can't have smoking in a place that serves food. What have we done with this bill? We simply said if it is a variety store and it has a lunch counter, recognized at that lunch counter business generates a lot of cash flow through that store.

The man said I don't want to hurt anybody who has any problems with breathing, they won't let me put in a special fan. I haven't got the floor space to separate out where I serve food out of. All he wants is to be able to put a big sign in his store front that says, smoking allowed on this premise. Guess what, if you are allergic to smoking, you can go to Denny's across the street. You can go to Shop'N Save and buy any of the groceries that you could get in that variety store. There is nothing that they offer

at Macs that isn't offered in places nearby with better parking and lower prices. We are killing him because when we passed this law and said, lets exempt the bowling alleys, because we don't want to kill them and the guy has smoking and beer when people have their bowling clubs meet. Lets exempt the beano halls, because they are supplying the money to half the churches in the state and we don't want to dry up the money in the churches. Nobody thought to those small variety stores that don't have the liquor or the smoking section.

You know something else Representative Fitzpatrick was quick to bring up, employees. Do beano halls have employees? Yes, they do. Do restaurants with smoking sections have employees? Yes, they do. This committee just wanted to send an anti-smoking message out. This law cannot be consistently enforced. There is no future plan to enforce it consistently and the only way that I can save this man's business is to suggest that variety stores that have a lunch counter ought to have an exemption from this law about no smoking, provided that they are allowed to put up smoking is allowed in this establishment sign. I think that is a very modest change and I am not the only business you will be saving. I will find out where the other stores are where people are disregarding the law. If we don't save my business, I will make sure everybody else goes down the tubes with us. Thank you very much.

The SPEAKER: The Chair recognizes the Representative from Rumford, Representative Cameron.

Representative CAMERON: Mr. Speaker, Ladies and Gentlemen of the House: To say the least, that is a hard act to follow, but I agree with her. We often don't agree on issues, but this time I certainly do agree. I find myself in a little bit of a dilemma, because if there is anything that I hate in this world, it is smoke. I hate the smell of cigarettes. I hate the smell of the smoke. I hate to walk through a door outside the building and everybody is smoking and I have to breath it. That is one thing I really dislike.

On the other hand, I don't think we can point to a single law that we have ever passed, an anti-smoking law never stopped anybody from smoking. The only thing that stopped people from smoking is education. The money we spend on educating people of the ills of smoking is money well spent. It seems to be not working very well. A lot of cases we still see a lot of young people smoking, but this is a business, ladies and gentlemen, and we say that we want to be perceived as pro-business. I am a big boy. I can make a choice whether or not to go into that store. If I know smoking goes on in that store and I don't want to eat in that store, I don't have to go in there.

I will tell you that there are restaurants that I have gone to, that the law is being enforced in and there was a no smoking section here and a smoking section there. Ladies and gentlemen, that is a joke. The smoke doesn't know that it can't travel into the no smoking section. Everyone of you in this room, I'm sure, has experienced the smoke filtering over into their area. The whole thing to me is a joke. It doesn't work and if this gentlemen believes that he is willing to give up anybody coming into his store that doesn't want to breath smoke. If he believes that will make his business survive, who are we to stand here and say that we know better about his business. We know better what will make him

successful. We know better what is for the people that come into his store.

No, I don't like smoking. No, I don't like the smell of smoke. I can go across the street to Denny's, if I happen to be in Auburn. There are small businesses in my community and I am sure most of the rest of you that have small businesses in your communities have somebody that is in the same situation. We are all adults folks. We can make our own decisions. We can read. I don't see anything wrong with this gentlemen putting a sign in his window that says, this is a smoking restaurant. He might as well say it is infested with some disease, because a lot of people won't go in there. He is willing to take that chance. He believes it will make him more money. I don't think we have any right to tell him that we know more about his business than he does. This is what it amounts to.

The issue about no smoking in public buildings is great. They are not putting anybody out of business. I believe that the good Representative from Auburn may carry out that threat to the rest of communities and that is not the only reason why I support this. I think she is right. I think we do have to give people the credit that they are able to make decisions for themselves. I think this is a small step in that direction. I don't see that we are endangering the public health that much either. Thank you. I urge you to vote against the pending motion.

The SPEAKER: The Chair recognizes the Representative from South Portland, Representative Johnson.

Representative JOHNSON: Mr. Speaker, Men and Women of the House: Some of my best friends are smokers and I feel sorry for them when they have to go outside in the rain and snow. They stand out there freezing, going from one foot to the other. I don't smoke. I was part of that terrible movement to make it a law that you cannot smoke in restaurants last year. I will follow my good Representative on the committee, Representative Winglass on this one. I will support the Minority Report. I was much taken and much persuaded by the owner of Mac's Variety Store who told his story of the loss of funds. I saw the consequences of a good intention, I still believe in being able to go to a restaurant or on airplanes and be able to sit in a smoke free zone.

On the other hand, if I am one of those poor people who cannot help but go out and drag this awful stuff into my lungs and I am looking at some of you right now that are just like that, I would like to give you now the opportunity to drive anywhere in the State of Maine and see a sign, Smoking Allowed, Coffee 5 Cents. Thank you.

The SPEAKER: The Chair recognizes the Representative from Hampden, Representative Plowman.

Representative PLOWMAN: Mr. Speaker, Men and Women of the House: I can't tell you how heartened I am by this display of concern for the small business owner. I am going to be supporting Representative Winglass and I hope we are on a roll to be looking for other things that we have done to small business that we can undo and give them some relief. Thank you.

The SPEAKER: The Chair recognizes the Representative from South Berwick, Representative Farnum.

Representative FARNUM: Mr. Speaker, Men and Women of the House: I have known Mac's Variety Store in

Auburn ever since its existence. I have never been offended. I don't smoke, but I am talking about the border towns and how we are again going to be helping New Hampshire. Please think before you vote. Thank you.

The SPEAKER: The Chair recognizes the Representative from Wilton, Representative Heesch.

Representative HEESCHEN: Mr. Speaker, Members of the House: I have little sympathy for the Maine Restaurant Association with regard to this bill. Six years ago, I presented a bill which would have dealt with the smoking and no smoking issue through positive ventilation. The Restaurant Association, at that time, said it is too hard for us, we can't do that. I agree with the Representative from Rumford that smoke doesn't read the sign saying, No Smoking. My intent was to create smoke free zones, not no smoking zones, so that the majority of the population that doesn't smoke, may actually have a smoke free meal. It was bounced to DHS for a rule making and they tried to define what smoking policies should be.

The Maine Restaurant Association said, we would rather have you ban smoking in all restaurants. DHS rulemaking essentially did propose that, unless you have a separate ventilated room. Then the Restaurant Association came in and said this is terrible for us. We can't accept this. We got nothing out of that and we have seen a number of other exemptions created here. I don't think we should create yet another exemption allowing smoking spaces. I would like to see the "Ought Not to Pass" accepted so that the Representative from Auburn, Representative Dore would actually make sure that the smoking law is enforced. I think that would be great.

The reason that I had proposed the bill dealing with ventilation is because I know that you have to have air movement in the right way in order to remove the smoke from the space. You can't just put in a smoke eater and think it is going to do it. It will not. I also recognize that there are a lot of people who really do need a hit of nicotine with their caffeine and sucrose in the morning and that would have allowed that to continue. However, the Restaurant Association simply aren't willing to do the ventilation to make this work and allow everybody free access. The Representative from Rumford mentioned that there are a lot of restaurants that he doesn't go to. I would say that for myself, there are about 99 percent of the restaurants in the state, I cannot eat in. The smoke doesn't read the signs.

I think that what we are counting on and why the advocates of allowing the smoking are not dealing with ventilation. They are counting on the nonsmoker to be more willing to put up with a bit of smoke occasionally to go into that convenience store to buy something while the smoke is permeating the whole space, and to be less vocal about their displeasure than smokers are. I believe we should stick with our law and see that we can enforce it. I urge you to accept the "Ought Not to Pass" motion.

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

Representative DORE: Mr. Speaker, Ladies and Gentlemen of the House: I hope you defeat the "Ought Not to Pass" proposal. The committee had the opportunity to deal with ventilation. My constituent came to the committee and said that he had offered to put in any kind of fan anybody wants. I mean there is

no fan that costs more than \$600,000 a year in lost business.

There is a Minority Report here because everyone was afraid of opening the door even a little bit. Nobody has this constituent but me. I don't like to think what I said before was a threat, but I am aggravated enough for my constituent that I will at least make sure the businesses in Androscoggin County will be enforced because I am around that county. As for the rest of you, if I happen to wander into your part of the state. Ok, it is not fair. I either need 10 cosponsors next time or this guy needs a break. I think this is a pretty reasonable break. He can keep his business. He can keep working from 6 in the morning to 11 at night. His lawn might not be mowed as much, but I will have a happier neighbor. Thank you.

The SPEAKER: The Chair recognizes the Representative from Gardiner, Representative Treat.

Representative TREAT: Mr. Speaker, Men and Women of the House: I guess I have a question about this bill. It is to committee members who perhaps can answer it. My understanding is if we defeat this motion before us, we are talking about up to perhaps nine tables in a so called variety store. That strikes me as an awful lot of tables. I have small diners in my community that would not be covered by this exemption. They have done what it takes. In some cases simply banning smoking and in others having a no smoking section in their six table establishments. It seems to me that it is setting some kind of double standard here just because you are selling potato chips on the side. You can have smoking in your small restaurant, otherwise you can't. You have to at least have a no smoking area.

As current law stands now, you are allowed to have smoking in a one room restaurant, you simply have to have a no smoking section. That is my understanding, perhaps I have that confused and someone can correct me. I believe that is current law and it seems to me that if we defeat the current motion that will be basically discriminating against other restaurants that are trying to abide by our current law and that doesn't seem fair to me representing a number of those establishments within my district.

The SPEAKER: The Chair recognizes the Representative from Durham, Representative Fitzpatrick.

Representative FITZPATRICK: Mr. Speaker, Ladies and Gentlemen of the House: Let me respond to the good Representative's question. If you turn to the amendment in front of you related to Committee Amendment "A" on L.D. 1392, it talks about seating of no more than 36 persons. I will tell you, men and women of the House, I come from a town where there is a small variety store that has a very small eating in capacity, like a lot of our small towns do.

This amendment and this before would really open up the door to fairly large restaurants, 36 persons. We are not talking about idealistic little lunch counters in the country. We are talking about variety store/restaurants that may happen to sell milk, cheese, butter and bread, but also has the capacity of serving 36 people. That puts them in competition with restaurants that have the same capacity in their own towns. On this level this bill is handily unfair, but more importantly for me, I guess, is it really opens the door big time, statewide for smoking. This is not a small business issue.

The other thing that I would say to some of the comments that have been made by the good Representative from Auburn, the Human Resources Committee did spend a fair amount of time with the owner of Mac's Variety trying to figure out what we could do for him in terms of air exchanging machines, as well as petitioning off part of his restaurant. That was a good part of the public hearing and there was tremendous sympathy, I think, for all 10 people who found themselves on the "Ought Not to Pass" Report to try to help this individual out.

I am telling you if you go ahead and defeat this motion, you are opening up smoking in establishments all over the State of Maine that go far beyond the definition of small variety store businesses. Thank you.

The SPEAKER: The Chair recognizes the Representative from Gardiner, Representative Treat.

Representative TREAT: May I pose a further question through the Chair?

The SPEAKER: The Representative may pose her question.

Representative TREAT: Is there a definition of variety store in the bill, because, I guess, my concern is that someone who has one of these small restaurants that is not currently a "variety store" might be able to put in a refrigerator with some milk and call themselves a variety store. Is there some control over that?

The SPEAKER: The Representative from Gardiner, Representative Treat has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Auburn, Representative Dore.

Representative DORE: Mr. Speaker, Ladies and Gentlemen of the House: I am not aware of a definition of variety store. I am getting a little irritated at the continuous reference to occasionally sell a quart of milk. Let me tell you what is sold in this variety store, video rentals, newspapers, magazines, candy, groceries, papers, cards, toiletry products, toothbrushes, toothpaste, shaving equipment, cigarettes and just about anything else. Everything that isn't furniture is sold in this variety store. I think like most variety stores that have a little lunch counter, they sell everything. If we don't have a definition of variety store in the law and anyone wants to tack on a friendly amendment that lists 30 things that must be sold in a variety store, I would be happy to vote for that amendment.

The SPEAKER: The Chair recognizes the Representative from Ellsworth, Representative Povich.

Representative POVICH: Mr. Speaker, Ladies and Gentlemen of the House: To answer Representative Treat's question of a variety store or convenience store would be typically licensed by the Department of Agriculture and probably would have 51 percent more grocery store mix, food, produce and dry goods. Thank you.

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

Representative GERRY: Mr. Speaker, Men and Women of the House: I ask you to vote against this measure and vote in favor of Susan Dore and Representative Winglass. As you know, I, too, am from Auburn and you must be thankful that there are only three of us. This business is located in my district so I am very familiar with this situation. It is only one of maybe a handful of variety type little stores in Auburn.

It is true that it is the biggest variety little store in my district, but basically from going around in my district, all these little variety stores are welcoming this bill to have a chance to not get nailed by the cops for accidentally letting somebody smoke on their premises. The smoking law goes more and more across the town. The bigger restaurants are starting to close all their smoking areas and making it all non-smoking. Eventually we are not going to have a place for smokers to go. It is very important to allow a store owner the opportunity to decide for himself, whether or not he allows smoking in his place. I believe it is one of his constitutional rights and our rights too.

If I would like to go into a store sit at the bar, watch TV and talk with the store keeper or whatever on any given evening, I believe it is a very fundamental right to be able to go into a place and do this and talk with other people. In some instances, it is the only chance that people get to associate with other people. Around Mac's Variety, I have three older generation apartment houses. They like to go over there and sit with the rest of them and have their coffee and some may welcome the chance to smoke. I am asking you please to vote against this "Ought Not to Pass" so we can accept the "Ought to Pass". Thank you.

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

Representative TOWNSEND: Mr. Speaker, Men and Women of the House: I just can't resist the opportunity to beat this dead horse. I want to confess that I am one of the former members of the committee who wrote this bill. It isn't very often that we get thanked for passing legislation, but I have repeatedly been thanked for that legislation. I think the thing we have to keep in mind is that smoke is poison. The other is that this bill is unevenly enforced. It is not true that it is enforced by the cops. It is enforced by DHS.

I think that is a problem and it should be more evenly enforced and I will give you a list of a few places that I would like to have called about. When we passed the legislation, people who spoke to us about it said whatever you do make it fair for everyone so I don't have to be in competition with the guy down the street. Make it the same for everybody and that is what we tried to do. I am truly sorry that beano halls and all these other places got exemptions. I was opposed to all those exemptions. People overwhelmingly said make it the same for everybody. This is where I think we come to the final issue is that it may sound strange coming from me, but I think there is an urban/rural issue here.

I live in Portland now, when I was pregnant and didn't want to around smoke, I could skip past the Penny Wise where they let people smoke and I could go right on down to Ocean Avenue Variety. I grew up in Canaan and in Canaan there weren't two stores, so if I wanted to get a movie rental, milk or beer, we had to go to one place. It was known as Graydens then. We didn't have two places. The next place was Skowhegan and that was 12 miles away. The people from Canaan who had asthma would have to walk into Graydens to get their quart of milk. I think that that is an issue to consider here.

Finally, I just want to say that lets not dilute ourselves that any smoking issue is just ever limited to one particular establishment or one particular situation. This is the nose under the tent and it is

a slippery slope. I think we ought to have a level playing field and make the rules the same for everybody. Please vote to accept the Majority "Ought Not to Pass" Report. Thank you.

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 members present and voting. All 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 Chair recognizes the Representative from Durham, Representative Fitzpatrick.

Representative FITZPATRICK: Thank you Mr. Speaker, Men and Women of the House: I just want to reiterate what the good Representative from Portland said. In our public hearing we had one establishment come forth and that was Mac's in Auburn. This is not a bill where we had a large group or even particularly the association. It was, quite frankly, Mac's Variety. Really, keep that in mind that what you are doing is looking and creating an environment where we roll back a significant portion of the smoking law to fix one situation which is really an enforcement problem. Thank you.

The SPEAKER: The Chair recognizes the Representative from South Berwick, Representative Farnum.

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

The SPEAKER: The Representative may pose his question.

Representative FARNUM: If a person is caught smoking and this law does not pass, are the police going to come in and haul him off to jail? Is there going to be a court trial or what is going to happen?

The SPEAKER: The Representative from South Berwick, Representative Farnum has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Kossuth Township, Representative Bunker.

Representative BUNKER: Mr. Speaker, Ladies and Gentlemen of the House: In response to that question and the way the current law is, it is a civil infraction. It is basically a very minor issue that is handled with a fine and it is through the District Attorney's Office, which is busy doing a lot of other things. We had spoke to the new Attorney General in front of our committee early on and he had indicated that he had put some assets into enforcing the no smoking provisions. Needless to say after we queried him on how well he is doing on murder investigations and how well he is doing on a lot of the other things that he is delegated to do. It became very clear that very little of his enforcement could be going into this area. I would also say that I own a restaurant and I can't comply with the law as it exists today. Thank you very much.

The SPEAKER: The Chair recognizes the Representative from Auburn, Representative Dore. 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 DORE: Thank you Mr. Speaker. I do apologize for getting up again, but I feel like I have to clarify one other thing for Representative

Farnum. The man who runs the variety store in Auburn has lost cash business. That is his problem and if the way the law is going to be enforced in Auburn is that the health officer is going to shut him down. She came in to tell him that. There is no amount of fine that he can pay. If he allows smoking in his store, she is going to close the store down.

He used to have many employees. He is down to about five or six. He is working as the cook, manager/everything. This law has truly devastated his business. It is more important than his business. It is actually true that he was the only one to show up. He could name several other people from other businesses who couldn't show up, they couldn't make arrangements on time. He made arrangements because he is my constituent and I called him as soon as this bill was scheduled, it was about three days notice for this hearing. That is not the fault of anybody on the Human Resources Committee, but I don't want anyone to think he is the only person out there who has this problem. Thank you.

The SPEAKER: A roll call has been ordered. The pending question before the House is acceptance of the Majority "Ought Not to Pass" Report. All those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 140

YEA - Adams, Benedikt, Berry, Brennan, Chase, Desmond, Donnelly, Etnier, Fitzpatrick, Gates, Gieringer, Gooley, Heeschen, Heino, Hichborn, Joyner, Keane, Kneeland, LaFountain, Lindahl, Lovett, Luther, Marvin, Mayo, McElroy, Meres, Mitchell JE; Morrison, Ott, Pinkham, Richardson, Rosebush, Rowe, Samson, Shiah, Sirois, Stevens, Thompson, Townsend, Treat, Tyler, Volenik, Watson, Whitcomb.

NAY - Ahearne, Aikman, Ault, Bailey, Barth, Bigl, Birney, Buck, Bunker, Cameron, Campbell, Carleton, Chartrand, Chick, Chizmar, Clark, Cloutier, Clukey, Cross, Daggett, Damren, Davidson, DiPietro, Dore, Driscoll, Dunn, Farnum, Fisher, Gamache, Gerry, Gould, Green, Greenlaw, Guerrette, Hartnett, Hatch, Jacques, Johnson, Jones, K.; Jones, S.; Joseph, Joyce, Kerr, Kilkelly, Kontos, Labrecque, Lane, Layton, Lemaire, Lemke, Libby JD; Libby JL; Look, Lumbra, Madore, Marshall, Martin, McAlevey, Mitchell EH; Murphy, Nass, Nickerson, O'Gara, O'Neal, Paul, Peavey, Pendleton, Perkins, Plowman, Poirier, Poulin, Pouliot, Povich, Reed, G.; Reed, W.; Rice, Ricker, Robichaud, Savage, Saxl, J.; Saxl, M.; Simoneau, Spear, Stedman, Stone, Strout, Taylor, Tripp, True, Tufts, Tuttle, Underwood, Waterhouse, Wheeler, Winglass, Winn, Winsor.

ABSENT - Bouffard, Dexter, Joy, Lemont, Nadeau, Rotondi, Truman, Vigue, Yackobitz, The Speaker.

Yes, 44; No, 97; Absent, 10; Excused, 0.

44 having voted in the affirmative and 97 voted in the negative, with 10 being absent, the Majority "Ought Not to Pass" Report was not accepted.

Subsequently, the Minority "Ought to Pass" Report was accepted. The Bill was read once. Committee Amendment "A" (H-324) was read by the Clerk and adopted. The Bill was assigned for second reading Thursday, June 8, 1995.

The following item was taken up out of order by unanimous consent:

**REPORTS OF COMMITTEES
Divided Report**