

# MAINE STATE LEGISLATURE

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# LEGISLATIVE RECORD

OF THE

**One Hundred And Seventeenth Legislature**

OF THE

**State Of Maine**

**VOLUME IV**

**FIRST REGULAR SESSION**

**Senate**

May 2, 1995 to June 16, 1995

Which were **READ A SECOND TIME** and **PASSED TO BE ENGROSSED, As Amended.**

Sent down for concurrence.

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Bill "An Act to Amend the Laws Relating to Education"

S.P. 542 L.D. 1479  
(C "A" S-235)

Which was **READ A SECOND TIME.**

On motion by Senator **CARPENTER** of York, the Senate **RECONSIDERED** its action whereby it **ADOPTED** Committee Amendment "A" (S-235).

On further motion by the same Senator, Senate Amendment "A" (S-247) to Committee Amendment "A" (S-235) **READ** and **ADOPTED.**

Committee Amendment "A" (S-235) as Amended by Senate Amendment "A" (S-247) thereto, **ADOPTED.**

The Bill **PASSED TO BE ENGROSSED, As Amended.**

Sent down for concurrence.

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The Chair laid before the Senate the following Tabled and Later Today Assigned matter:

**HOUSE REPORTS** from the 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

Majority - **Ought Not to Pass.** (10 members)

Minority - **Ought to Pass as Amended by Committee Amendment "A" (H-324).** (3 members)

Tabled - earlier in the day by Senator **KIEFFER** of Aroostook.

Pending - **ACCEPTANCE OF EITHER REPORT.**

(In House, June 8, 1995, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-324).**)

(In Senate, June 12, 1995, Reports **READ.**)

Senator **PENDEXTER** of Cumberland moved that the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report in **NON-CONCURRENCE.**

**THE PRESIDENT:** The Chair recognizes the Senator from Androscoggin, Senator Cleveland.

Senator **CLEVELAND:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I would like us to take a few moments, before we act on this bill, really to look at its consequences and the alternatives available. To continue not to pass this legislation would put an enormous burden on small businesses, small variety stores with a lunch counter. An alternative is available to us and I hope that you will reject this motion so we may go to that alternative that would provide for an opportunity for small variety stores, which happen to have a lunch counter and few seats and serves eggs in the morning with a cup of coffee to a few visitors, to be able to post a sign that says that smoking is allowed within that establishment. The reason that I ask you to consider not voting for this motion is that too often here, and I think this is one more example, is that we seek to impose perfection on each individual and each business when perfection is not the best outcome, nor is it possible. Really, in a situation where we have a small variety store, and there are only a few that also have a lunch counter and few seats where patrons can come in in the early morning to have a cup of coffee and talk over the days events, meet with their friends and try to solve the problems of the world. It's a gathering place, a town meeting hall in a lot of your local communities. Within that atmosphere it is physically not possible for those folks to separate out smoking and non-smoking situations. It's usually a small one-room situation, they don't have a separate kitchen. They cook on grills right there behind the counter so they aren't able to create a realistic smoking and non-smoking section. Frankly, those who have attempted to do so, find two or three benches at the end of the counter that they call non-smoking, and the rest of them are smoking and it achieves no real purpose anyway, nor does it meet the letter of the law. Really I think that many of these small businesses can make informed decisions, and the consumers there can make their decisions as well. It's not a case as though there isn't a choice that you can't go to another variety store, if, for some reason, you are opposed to smoke or it is troublesome to you. There are lots of places to go to eat. The problem is there are those who like to come and, when they have their breakfast or their lunch, like to light up a cigarette. What happens is, when the law is enforced, they tend not to come to those establishments. Really, these small lunch counters in variety stores are a tradition in Maine. It's where people gather. It's where many of us go to campaign to meet local folks and find out what the mood and opinion of the local public is. The individuals, owners and customers, can make decisions on what is best for them.

Let me suggest to you why this is important. I bring it up because I think it has a tremendous impact and I happen to have an insight that I think perhaps many of you haven't had the experience of yet. There are only four communities, currently, in the State of Maine that are allowed to enforce this law at the local level. My home city of Auburn, Lewiston, Portland and South Portland. The rest of it is enforced by the Department of Human Services.

They are now down ten inspectors so what is happening is it is not being enforced, because there aren't inspectors to do it. Of the four communities that I mentioned to you, only one, mine, happens to have a very diligent health inspector who is vigorously enforcing this law. It's on the book, it ought to be enforced, and she is enforcing it. The situation that we are having is we have a particular variety store, called Mark's Variety. They have a lunch counter, they have been there forever. They serve some eggs in the morning and a sandwich at noontime. Folks come in and talk things over. In this particular situation they can't separate it out and they have been told that if they don't abide by the law, it's not a fine, it's not a money cost, they are not going to issue them a license to operate. They are going to shut that business down. Since they have been enforcing this law, this particular business, and I think you will find it for many variety stores once they begin to enforce this law statewide, this is a warning to you. This store has lost 50% of its business due directly to this action. No other cause. They were doing \$1.2 million worth of revenue a year. Now they are doing about \$600,000. They have had to lay off four employees to make their budget balance, and what is happening is the folks who used to come there are going to Lewiston because they are not enforcing it, or they go to Minot or Mechanic Falls or some other establishment where the law isn't being enforced. So, it's just driving customers away to another location. It's not as though individuals who come there don't have a choice. There's a restaurant right across the street, Denny's, that has no smoking. They serve all the same kinds of food and are open twenty-four hours a day seven days a week. Folks are free to use that restaurant or McDonald's or lots of other places where they have either no smoking or non-smoking. But, the particular patrons of this store come because they do have a cigarette when they eat.

Not only have they lost the lunch counter business, which has meant some money, but they have also lost thousands and thousands of dollars in casual sales. While people were in there having their breakfast they remembered they had to pick something up. If they stopped in at noontime they remembered they needed to bring a quart of milk or a loaf of bread home. They have lost tens of thousands of dollars in casual sales as well. These small businesses have survived enormous challenges. They have survived Sunday sales, where they now compete with the big stores. They have survived competition from the large supermarkets that are open late into the evening or twenty-four hours a day. Some of them have tried to have a video section and rent out some videos to make a little extra money, and they have had enormous competition from large international and national video chain stores which has undercut their business. In this particular case they have also tried to extend it to have an agency liquor store, only to be undercut, once again, by Hannaford Brothers, who has a large store in the neighborhood. Really, this is only the beginning of the iceberg. What we are saying here is let's be fair. Let individuals decide what's best. Let's not look for perfection. People have choices and options that come in and there are many exceptions that already exist in the law. Bars can currently allow smoking.

beano and bingo halls allow smoking within their establishments. Restaurants can have separate sections. Bowling alleys allow smoking within their establishment. This is one of those that ought to fit in there if we really mean that we want to support small businesses.

Local individuals can make choices on where they wish to patronize and where they wish not to. We allow restaurants to make choices, or the little bars to make choices. If they don't wish to be smoking they can do that. Individuals can choose to go some place else. If we really mean that we want to support small business, if we really want to get government out of people's lives, get the intervention out where it is not necessary, where it doesn't achieve a useful purpose, this is one where we ought to support a change to the law. If we fail to do this, we are going to drive many small, local businesses out. People who have worked very hard, the little mom and pop variety stores, people who have mortgaged their homes, who have built these businesses over years and years of hard labor are going to find that they just cannot survive with this imposition. We simply ask you to let people make a choice. They can come in and patronize it, knowing full well they have been notified in advance that there is smoking allowed in that establishment, or they can choose not to. The customers can do that as well as the owner, who can decide whether or not it is best for his customers and his business to do that. I think there will be little, or minimal impact on the individuals to do that. But it will make an enormous difference if these small variety stores with these small lunch counters are to survive. They are not going to be able to do it otherwise and I strongly urge you to reject the motion on the floor, so that we make the motion to amend Committee Amendment "A". Thank you.

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

**Senator PENDEXTER:** Thank you Mr. President, Men and Women of the Senate. I rise to disagree with the good Senator from Androscoggin. This is not a matter of small business or a matter of choice, this is a matter of public health. We do offer choices to our residents in the state, and I hope this legislature will continue to provide that choice, and that is entire legislatures, and I hope we will continue to support that choice, have said that in public places we will provide a smoke-free atmosphere. As much as I am against the whole smoking issue, those of you who know me well know that this is one of my hot buttons. I can go on and on and on on this issue, however, this is all about providing people who smoke, they can do whatever they want within the privacy of their homes. They made that decision to smoke, so be it for them. I will not judge people who smoke, however, when we are talking about public places, it's a totally different issue. I just want to correct a few things that the good Senator stated. When we talk about variety stores, we call them variety stores for a reason, because they all vary. One variety store certainly doesn't equal another variety store, and in the amendment that is presented in the other report, variety store is not defined. I know a variety store that has a pharmacy in it. As rural as we are in this state, some people

don't have any choices, that is the only variety store they can go to within twenty or thirty miles of their residence. In this particular pharmacy this is where they have their prescriptions filled. I find it ironic that people with respiratory problems, probably in some scenarios if this bill passes, will have to stand at the pharmaceutical counter and wait for their prescriptions for their inhalers, or whatever, and inhale tobacco smoke. It just doesn't make sense and I feel that if we vote against the ought not to pass motion, we will be moving backwards and this is not the way we should be going.

The penalty is merely, and I have a summary of the bill in front of me, a \$100 fine. There is no way, that I can see, that a business can be closed if they refuse to comply with this law. So, I think the community of Auburn is perhaps overstating the law. I don't see anywhere where that should happen. I just want to remind, while I'm on my feet, that those of us who have chosen not to smoke, when we are in the presence of what we call environmental tobacco smoke are, indeed, smoking. It's been proven, scientifically, that the same substances, and there are only about 4,000 of them, and they are considered poisonous gas, they are considered cancer producing agents, that those same substances that a smoker inhales at the end of a cigarette, are also the same substances that we all inhale when we are breathing in tobacco smoke. This is always the basis of my whole argument and why I adamantly oppose the choice issue when it comes to environmental tobacco smoke in public places, because there is no choice if you have to go into a smoke-filled place. I feel that when it is a public place we, as a legislature, certainly have a right to say that that place should be smoke-free in the name of public health.

You have on your desks the Moody's Diner article. I only use it to show you the scerio with Dotty Moody, who never smoked a cigarette in her life, and yet after waiting on tables and working in a smoke-filled atmosphere for thirty years had lungs that were as black as any smokers. Another example I always like to share is the Foundation for Blood Research, which is a research lab in Scarborough, who did a research study on infants. In fact, the office I work in participated in the project where we would send off wet diapers from the two-month visit. It was basically a study to see if infants were affected with tobacco smoke. To make a long story short, when you inhale tobacco smoke it has been found that you excrete, in your urine, a by-product of nicotine. So, they did a study on infants, and it was proven, they were able to find, by-products of nicotine in babies diapers. It was all related to the amount of tobacco smoke in the home. If there was just one parent, the presence of that substance was not as much as if there were two parents smoking. So, I say to you, I don't know what else I need to say other than if we can find nicotine by-products in the diapers of our babies, I don't know what else I have to say to you to convince you that we are all smoking, we are all exposed to environmental tobacco smoke. So, I hope that you will stick with the decisions that we have made in the past. As you continue to, in public places, maintain the fact that we do need to have that choice, and that choice is that we should all be able to breathe in smoke-free air. I ask you to support the motion on the floor. Thank you.

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

Senator **BEGLEY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. It is always a pleasure to be able to stand up as a liberal and propose legislation on freedom of choice. The idea of the previous bill that was passed dealing with smoking in public places would have some credibility to it had it said across the board, there will be no smoking in public places. It did not do that. There are any number of reasons why it didn't, and I cannot explain that to all of you because some of you voted for it and some voted against it. But, it did not close off smoking in public places. It had exceptions. The idea, again, of a person running a business, and wishing to have some choice of how he runs his business, and being able to publicize what is going to be allowed inside his business, puts him at risk to be successful or unsuccessful. He should have that choice. I applaud Moody's Diner. I did two years ago on this floor, when they, before the law was passed, came out with a choice and said we will not allow smoking in our establishment. Certainly, I am sorry of the fact that Dot Moody died of lung cancer. I knew her and I knew her children and of course anything as sad as that certainly is touching. But, at the same time, remember that Moody's closed off by choice. The fact of this family member being caught in that certainly attributed to some of their decision, no argument, but at the same time it was a choice.

The people today are asking, once again, to give the small businessman the same choice that you gave to the restaurants, that you gave to the barrooms, and that you gave to some establishments, such as bowling allies and so forth. Again, the individual should have the right to run his business the way he wants.

**THE PRESIDENT:** The Chair recognizes the Senator from Androscoggin, Senator Cleveland.

Senator **CLEVELAND:** Thank you Mr. President, Men and Women of the Senate. This is really not a question about whether smoking is good for you or bad for you. We know the health risks of smoking. We know that everyone should stop smoking. As a matter of fact, if we really wanted to reduce cost and expenses, and save people's lives, we should make it illegal for people to smoke altogether. So, this isn't a question of whether smoking is good or bad. It's obvious that it's bad, and it's obvious that we ought to provide as many opportunities in legitimate public places, where there is not a choice to go someplace else, that individuals are not continually exposed to this. What we are talking about here are little mom and pop stores. They have a little lunch counter because they are trying to supplement their income because they don't sell enough Pepsi and bread and Twinkies to make it, so they try something else to go with it. Many of their patrons are addicted to smoking. They love to come in and socialize and they love to have a cigarette. Having that cup of coffee is not the same for them if they don't have the cigarette. I wish they didn't smoke. My mother has been smoking for fifty years and I have been trying to get her to stop. She has tried diligently and she

can't. There are lots of other people that way too, who frequent these kinds of businesses. If it's perfection that we are looking for, and what we are trying to do is save everyone, then why don't we tell bowling alleys that you can't smoke in there. Because there are other people who are going to bowl who may not want to breathe that smoke. We don't. Why don't we tell people who go to bingo halls, and if you have ever been to one there's more smoke coming out of there than a smokestack of an industrial plant, that you ought not to allow that because there are lots of folks in there who may not want to breathe it. We don't do that. If we are really concerned about people's health then let's tell the bars that they can't allow smoking. Or, if you ever go to a restaurant, I have been to several of them that have a smoking and a non-smoking section divided by a planter. I'm sure that planter is sucking up a lot of the smoke, but it's not getting all of it. It comes over to my table, but I recognize that and I make a choice as to whether I want to sit there or not. I decide. If I'm an employee of a bar, I work in an atmosphere where there may be some smoking. If I'm an employee of a restaurant, I have to wait on the tables where they smoke as well as the tables where they don't smoke. So if what we really want to do is say we want to protect everyone then let's do it, and let's intervene in everybody's lives, and let's tell everybody how to run their business and run their lives, and let's tell all adults what kind of choices they can make or can't make. We are talking about little variety stores. Only the ones with the lunch counter that has a few seats and serves some scrambled eggs and a cheeseburger once in a while. There are only a handful of them around the state, and I suggest to you there are darn few places in this state where there isn't a choice between going to someplace to get whatever it is you wanted to go into that variety store for, and someplace else you could go where you felt it wasn't abusive with smoke. You could choose that as a customer. That's all we are saying to do. I think it's about time that we listen to the needs of individuals and allow them some opportunity and give them the credit they deserve to make decisions. They are not all helpless children. We don't have to make decisions for every single one of them as long as there is opportunity where they can make a decision to go to another place. I strongly urge you, please don't turn a deaf ear, a blind eye, and a cold heart to these people who are struggling to make a living, and the customers who wish to patronize them and wish to be able to have a cigarette with their cup of coffee. If we really are intently interested in helping the small business person, here is a very small thing we can do, and I suggest to you, without taking one tiny step backwards towards our position that smoking isn't appropriate, that people ought to quit, and that they ought to have choices where choices are necessary and they will have one. They will go to the establishments where they can buy their bread and have a cup of coffee and a plate of eggs where they don't have smoking. Just allow those folks who are in business an opportunity to stay in business.

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

**Senator PENDEXTER:** Thank you Mr. President, Men and Women of the Senate. When this bill was presented to us in Committee, it was in the scenario that this was an enforcement issue, that Auburn is having a problem because the law is being enforced versus the city across the river that wasn't being enforced. So, if we are going to start changing legislation around here because of laws not being enforced, then I guess we have a lot of laws to get rid of. In the hearing, this particular business was the only business that came forth and made the claim that this law was negatively affecting their business. As has already been mentioned, the Senator from Androscoggin has already mentioned several other scenarios that have affected this particular business' bottom line. I find it amusing that all of a sudden it's just because of the smoking law. You know, 75% of the people in this state don't smoke. It's interesting to me that we have to continue to fight over and over and over again for a small percentage of people who smoke. Eighty-five thousand Maine citizens are handicapped with respiratory problems, and those people use variety stores, and those people have to go into these places. I think it would be criminal to post a big sign in the door and say smoking is allowed here. It is just totally taking the wrong road. Restaurants and bars and taverns are governed by a totally different statute. I didn't create that statute, if I had it my way, there would be no smoking in any public places. But, I have also been involved for five years in the Human Resources Committee and we have had these debates over and over and over. Sometimes we have to pass laws and we have to compromise with what we pass. I guess the argument with lounges and bars is that at least kids don't go there. People have to be 21 years old to go there, and if you want to go and inhale tobacco smoke, well you're an adult, you go figure it out. However, we should be concerned that the bars and taverns are workplaces and it's only a matter of time, men and women of the Senate, before we have some very serious workers' comp claims from people working in those smoke-filled atmospheres. But that's a debate for another day. Restaurants do offer options. Restaurants do have problems if they have a one-room scenario. However, there are still restaurants in the state that do a very good job of separating smoking from non-smoking, and there again I would venture to say to you, people who have respiratory problems, people who have kids, probably will go to those restaurants who do a good job of separating the smoking and the non-smoking. There is a choice. We don't have to go to that smoke-filled restaurant if we don't want to. So, let's not confuse the issue. Bars and taverns and restaurants are governed by a totally different statute.

You know, those of you who stood up and talked about auto emissions and clean air and all those scenarios, I would venture to say the Senator from Androscoggin was a big supporter of auto emissions, let me just share with you one statistic. Environmental tobacco smoke causes thirty times as many lung cancer deaths as all regulated air pollutants combined. So, if we really want to be serious about clean air, then we must support the motion on the floor and I hope you will support me. Thank you.

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

Senator **GOLDTHWAIT**: Thank you Mr. President, Ladies and Gentlemen of the Senate. One of our greatest weaknesses, I think, in government, but also one of the nicest things about us is our great reluctance to do anything that will injure any single person. It seems to me that this debate is really representative of that schizophrenia, if you will. In this case it is one variety store, and by the way, when I first envisioned this lunch counter I was thinking of six or maybe eight stools, but the amendment takes this exemption up to a facility with as many as thirty-five seats. Thinking about whether it was true that this place could be going out of business simply because they were not going to be allowed to continue to smoke there, it seems to me that the track record of places that have been notorious for smoking has been that their business has improved rather than the reverse. So, it is a bit difficult for me to understand or accept that in this case this store is virtually going out of business because of that. The most disturbing thing to me about this bill is that all the arguments made on behalf of allowing smoking at this particular variety store could be applied equally to any other business of any size in the State of Maine. Why isn't it an individual choice of that business. If they want to take the risk of having non-smoking customers not go there, why shouldn't that be up to them? That, to me, makes this a real step backwards from the efforts that we have made to prevent various types of respiratory disease, or to make it easier for people with those respiratory diseases to get out and go about their business. Because my concern here is that passage of this law would only add fuel to the fires of other businesses who may choose to offer their customers the opportunity to smoke, I am going to oppose this bill, and I hope you will do the same. Thank you.

**THE PRESIDENT**: The Chair recognizes the Senator from Androscoggin, Senator Cleveland.

Senator **CLEVELAND**: Thank you Mr. President. It may be hard to realize the economic impact on some of these small businesses, but I tell you it's true. I have had the opportunity to be privy to this individual's balance sheet, and this is not something that has happened because Denny's moved in, or Shop 'n Save is a block away, or that Sunday sales have come in. All of those things have occurred and this business has been able, through hard work and diligence and customer service, to maintain a relatively even revenue of about \$1.2 million. But when this law went into effect and our health officer decided to vigorously enforce it, as she should because it is on the books, that's the incident that made the difference. Not any of the others, but that particular incident. I suggest to you that you think about every little variety store with a lunch counter in your area. Is this what they want for their business? Do you suspect they would tell you there would be no economic impact on their business? I suggest that that is not the case at all. The difference here is that we are talking about an establishment that is not unique in service or the product they provide. It's not like many other buildings or public services that people go to. Whatever they have in a variety store, I can assure you, you will find anyplace else. They don't have

any unique products or a unique service or unique food. You can have lots of choices to go and get those services and products. These individuals recognize that with this imposition, one of the revenue makers for them will go away because many of the folks simply will not come there anymore because it simply is not pleasurable for them to have breakfast or lunch and know that they can't smoke.

Once again, if we are really interested in people's health and lives, then we will extend it to all and enforce this law everywhere and provide the funds to do it. But we are not going to do that, are we? I won't see one amendment to provide ten more enforcement officers to protect those people so they won't die from ambient smoke. We will have an unequal enforcement and many small businesses that will be enforced by local folks will go out of business. Mr. President, when the vote is taken, I request the yeas and nays.

On motion by Senator **CLEVELAND** of Androscoggin, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

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The President noted the absence of Senator **McCORMICK** of Kennebec, and excused her from today's Roll Call votes.

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**THE PRESIDENT**: The pending question before the Senate is the motion by Senator **PENDEXTER** of Cumberland that the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report in **NON-CONCURRENCE**.

A vote of Yes will be in favor of **ACCEPTANCE**.

A vote of No will be opposed.

Is the Senate ready for the question?

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

**ROLL CALL**

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| <b>YEAS:</b>   | <b>Senators:</b> | <b>AMERO, BENOIT, BERUBE, BUSTIN, ESTY, FAIRCLOTH, FERGUSON, GOLDTHWAIT, HALL, HANLEY, HARRIMAN, HATHAWAY, KIEFFER, LAWRENCE, LONGLEY, MICHAUD, MILLS, O'DEA, PARADIS, PENDEXTER, PINGREE, RAND, SMALL, and the PRESIDENT, Senator BUTLAND</b> |
| <b>NAYS:</b>   | <b>Senators:</b> | <b>BEGLEY, CAREY, CARPENTER, CASSIDY, CLEVELAND, STEVENS</b>   |
| <b>ABSENT:</b> | <b>Senators:</b> | <b>ABROMSON, CIANCHETTE, LORD, RUHLIN</b>  |