

MAINE STATE LEGISLATURE

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House Legislative Record
of the
One Hundred and Eighteenth Legislature
of the
State of Maine

Volume I

First Regular Session

December 4, 1996 - March 27, 1997

First Special Session

March 27, 1997 - May 15, 1997

ONE HUNDRED AND EIGHTEENTH LEGISLATURE
FIRST REGULAR SESSION
21st Legislative Day
Wednesday, March 12, 1997

The House met according to adjournment and was called to order by the Speaker.

Prayer by Reverend David E. Avery, First Congregational Church, Eliot.

National Anthem by the Brunswick High School Symphonic Band.

Pledge of Allegiance.

Doctor of the day, Ann Hanlon, M.D., Hampden.

The Journal of yesterday was read and approved.

SENATE PAPERS

Bill "An Act to Regulate Professional Loggers" (S.P. 456) (L.D. 1430)

Bill "An Act to Amend the Laws Regarding Forest Practices" (S.P. 471) (L.D. 1473)

Came from the Senate, referred to the Committee on **Agriculture, Conservation and Forestry** and Ordered Printed.

Were referred to the Committee on **Agriculture, Conservation and Forestry** in concurrence.

Bill "An Act to Prohibit Certain Accidents from Being Used by Insurers to Increase Insurance Premiums" (S.P. 443) (L.D. 1417)

Bill "An Act to Lower Property Taxes by Requiring School Boards to Purchase Certain Insurance from the State" (S.P. 468) (L.D. 1470)

Came from the Senate, referred to the Committee on **Banking and Insurance** and Ordered Printed.

Were referred to the Committee on **Banking and Insurance** in concurrence.

Bill "An Act to License Interpreters for the Deaf and Hard-of-hearing" (S.P. 481) (L.D. 1483)

Resolve, to Establish the Sister State Program (S.P. 459) (L.D. 1431)

Resolve, to Establish Regional Service Centers (S.P. 465) (L.D. 1437)

Came from the Senate, referred to the Committee on **Business and Economic Development** and Ordered Printed.

Were referred to the Committee on **Business and Economic Development** in concurrence.

Bill "An Act to Increase the Penalty for Operating after License Suspension and under the Influence" (S.P. 466) (L.D. 1438)

Came from the Senate, referred to the Committee on **Criminal Justice** and Ordered Printed.

Was referred to the Committee on **Criminal Justice** in concurrence.

Bill "An Act Concerning Eligibility for Service on a School Board" (S.P. 442) (L.D. 1416)

Bill "An Act to Provide for Direct Reimbursement of Special Education Costs" (S.P. 451) (L.D. 1425)

Bill "An Act to Amend School Construction Laws" (S.P. 464) (L.D. 1436)

Resolve, Directing the Department of Education to Review Certain Procedures Regarding Special Education (S.P. 441) (L.D. 1415)

Came from the Senate, referred to the Committee on **Education and Cultural Affairs** and Ordered Printed.

Were referred to the Committee on **Education and Cultural Affairs** in concurrence.

Bill "An Act to Amend the Maine Apprenticeship Program" (S.P. 455) (L.D. 1429)

On motion of Representative RICHARD of Madison, the Bill was referred to the Committee on **Labor**, in non-concurrence and sent up for concurrence.

Resolve, to Encourage Nonprofit Entities to Work Together in a Community P.R.I.D.E. Program (S.P. 460) (L.D. 1432)

Came from the Senate, referred to the Committee on **Health and Human Services** and Ordered Printed.

Was referred to the Committee on **Health and Human Services** in concurrence.

Bill "An Act to Create Quality Employment and Business Ownership Opportunities for Social Assistance Recipients" (S.P. 453) (L.D. 1427)

Came from the Senate, referred to the Committee on **Health and Human Services** and the Committee on **Business and Economic Development** and Ordered Printed.

Was referred jointly to the Committee on **Health and Human Services** and the Committee on **Business and Economic Development** in concurrence.

Bill "An Act to Amend the Deer and Moose Hunting Laws" (S.P. 452) (L.D. 1426)

Bill "An Act to Increase the Number of Allocated Commercial Whitewater Rafting Trips on the Kennebec River" (S.P. 467) (L.D. 1469)

Bill "An Act to Decriminalize Various Fish and Game Violations and Enhance Collectibility of Associated Penalties" (S.P. 477) (L.D. 1479)

Came from the Senate, referred to the Committee on **Inland Fisheries and Wildlife** and Ordered Printed.

Were referred to the Committee on **Inland Fisheries and Wildlife** in concurrence.

Bill "An Act to Allow ATV Use on Public Lands Not Specifically Designated as Primitive-use Land" (EMERGENCY) (S.P. 450) (L.D. 1424)

Came from the Senate, referred to the Committee on **Inland Fisheries and Wildlife** and Ordered Printed.

On motion of Representative PAUL of Sanford, the Bill was referred to the Committee on **Agriculture, Conservation and Forestry**, in non-concurrence and sent up for concurrence.

Bill "An Act to Prohibit a Person Whose License to Operate a Motor Vehicle Has Been Suspended from Operating an All-terrain Vehicle on Roads and Highways" (S.P. 462) (L.D. 1434)

Came from the Senate, referred to the Committee on **Inland Fisheries and Wildlife** and Ordered Printed.

On motion of Representative PAUL of Sanford, tabled pending reference and later today assigned.

Bill "An Act to Amend the Uniform Management of Institutional Funds Act" (S.P. 446) (L.D. 1420)

Bill "An Act to Amend the Child Support Laws Concerning Seize and Sell Orders and Reunited Families" (S.P. 454) (L.D. 1428)

Bill "An Act to Impose License Suspension and Other Sanctions on Those Who Fail to Pay Fines and Other Penalties" (S.P. 479) (L.D. 1481)

Bill "An Act to Expand the Duties of the Violations Bureau and Enhance the Enforcement of Civil Violations" (S.P. 480) (L.D. 1482)

Came from the Senate, referred to the Committee on **Judiciary** and Ordered Printed.

Were referred to the Committee on **Judiciary** in concurrence.

Bill "An Act to Modify the Work Search Requirements for Workers' Compensation Recipients" (S.P. 470) (L.D. 1472)

Bill "An Act to Provide for Limited Payment of Attorney's Fees for Injured Workers Who Prevail on Meritorious Claims" (S.P. 472) (L.D. 1474)

Bill "An Act to Require That Workers' Compensation Coverage Be Equitably Applied to the Timber Industry" (S.P. 475) (L.D. 1477)

Came from the Senate, referred to the Committee on **Labor** and Ordered Printed.

Were referred to the Committee on **Labor** in concurrence.

Resolve, to Compensate Janice Burns of South Portland as Personal Representative of the Estate of Wrendy Hayne of Augusta (S.P. 461) (L.D. 1433)

Came from the Senate, referred to the Committee on **Legal and Veterans Affairs** and Ordered Printed.

(The Committee on reference of Bills had suggested reference to the Committee on **Appropriations and Financial Affairs**)

On motion of Representative TUTTLE of Sanford, the Resolve was referred to the Committee on **Appropriations and Financial Affairs**, in non-concurrence and sent up for concurrence.

Bill "An Act to Decriminalize Various Marine Resource Violations and Enhance Collectibility of Associated Penalties" (S.P. 476) (L.D. 1478)

Came from the Senate, referred to the Committee on **Marine Resources** and Ordered Printed.

Was referred to the Committee on **Marine Resources** in concurrence.

Bill "An Act to Clarify Reimbursement by Responsible Parties to the Maine Coastal and Inland Surface Oil Clean-up Fund" (S.P. 463) (L.D. 1435)

Resolve, Regarding Legislative Review of Chapter 502: Direct Watersheds of Waterbodies Most at Risk from New Development, and Sensitive or Threatened Regions or Watersheds, a Major Substantive Rule of the Department of Environmental Protection, Bureau of Land and Water Quality (EMERGENCY) (S.P. 469) (L.D. 1471)

Came from the Senate, referred to the Committee on **Natural Resources** and Ordered Printed.

Were referred to the Committee on **Natural Resources** in concurrence.

Bill "An Act to Provide for Removal of a State Auditor Who Fails to Meet the Statutory Qualifications for the Office" (S.P. 440) (L.D. 1414)

Came from the Senate, referred to the Committee on **State and Local Government** and Ordered Printed.

Was referred to the Committee on **State and Local Government** in concurrence.

Bill "An Act to Clarify the Application of the Sales Tax on Hay, Horses and Horse Farms" (S.P. 445) (L.D. 1419)

Bill "An Act to Exempt from the Sales Tax Computers Used in Commercial Fishing" (S.P. 447) (L.D. 1421)

Came from the Senate, referred to the Committee on **Taxation** and Ordered Printed.

Were referred to the Committee on **Taxation** in concurrence.

Bill "An Act to Allow Certain Overweight Trucks to Proceed without Being Off-loaded" (S.P. 444) (L.D. 1418)

Bill "An Act to Abolish the Maine Turnpike Authority" (S.P. 448) (L.D. 1422)

Bill "An Act to Amend Certain Motor Vehicle Laws" (S.P. 473) (L.D. 1475)

Bill "An Act Making Unified and Supplemental Appropriations and Allocations for the Expenditures of State Government, Highway Funds and Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government for the Fiscal Years Ending June 30, 1998 and June 30, 1999" (EMERGENCY) (S.P. 474) (L.D. 1476) (Governor's Bill)

Bill "An Act to Decriminalize Various Traffic Violations and Enhance Collectibility of Associated Penalties" (S.P. 478) (L.D. 1480)

Came from the Senate, referred to the Committee on **Transportation** and Ordered Printed.

Were referred to the Committee on **Transportation** in concurrence.

Bill "An Act Regarding Sewer District Upgrades" (S.P. 449) (L.D. 1423)

Came from the Senate, referred to the Committee on **Utilities and Energy** and Ordered Printed.

Was referred to the Committee on **Utilities and Energy** in concurrence.

COMMUNICATIONS

The following Communication: (S.P. 457)

118TH LEGISLATURE

March 6, 1997

Senator John Jenkins

Representative Marc Vigue

Chairpersons

Joint Standing Committee on Business and Economic Development

118th Legislature

Augusta, Maine 04333

Dear Senator Jenkins and Representative Vigue:

Please be advised that Governor Angus S. King, Jr. has nominated Peter C. White for reappointment as a member of the Maine Real Estate Commission.

Pursuant to Title 32, MRSA Section 13062, this nomination will require review by the Joint Standing Committee on Business and Economic Development and confirmation by the Senate.

Sincerely,
S/Mark W. Lawrence
President of the Senate
S/Elizabeth H. Mitchell
Speaker of the House

Came from the Senate, read and referred to the Committee on **Business and Economic Development**.

Was read and referred to the Committee on **Business and Economic Development** in concurrence.

The following Communication: (S.P. 458)

118TH LEGISLATURE

March 6, 1997

Senator John Jenkins
Representative Marc Vigue
Chairpersons
Joint Standing Committee on Business and Economic Development
118th Legislature
Augusta, Maine 04333

Dear Senator Jenkins and Representative Vigue:

Please be advised that Governor Angus S. King, Jr. has nominated Richard J. McGoldrick for reappointment and R.P. Field Rider for appointment as members of the Finance Authority of Maine.

Pursuant to Title 10, MRSA Section 965, these nominations will require review by the Joint Standing Committee on Business and Economic Development and confirmation by the Senate.

Sincerely,
S/Mark W. Lawrence
President of the Senate
S/Elizabeth H. Mitchell
Speaker of the House

Came from the Senate, read and referred to the Committee on **Business and Economic Development**.

Was read and referred to the Committee on **Business and Economic Development** in concurrence.

PETITIONS, BILLS AND RESOLVES REQUIRING REFERENCE

The following Bills and Resolves were received and upon the recommendation of the Committee on Reference of Bills were referred to the following Committees, Ordered Printed and Sent up for Concurrence:

Bill "An Act to Prohibit the Use of Harmful Additives in Gasoline" (H.P. 1061) (L.D. 1499) (Presented by Representative VEDRAL of Buxton) (Cosponsored by Representatives: BERRY of Belmont, LOVETT of Scarborough, MacDOUGALL of North Berwick, SKOGLUND of St. George)

Reference to the Committee on **Health and Human Services** suggested.

On motion of Representative MITCHELL of Portland, the Bill was referred to the Committee on **Natural Resources**, ordered printed and sent up for concurrence.

Bill "An Act to Increase Access to and Affordability of Mental Health Services" (H.P. 1062) (L.D. 1500) (Presented by Representative MITCHELL of Portland) (Cosponsored by Senator PARADIS of Aroostook and Representatives: LEMAIRE of Lewiston, MAYO of Bath, TOWNSEND of Portland)

Reference to the Committee on **Health and Human Services** suggested.

On motion of Representative MITCHELL of Portland, the Bill was referred to the Committee on **Banking and Insurance**, ordered printed and sent up for concurrence.

Judiciary

Bill "An Act to Enable Victims to Benefit from the Profits from Crimes" (H.P. 1064) (L.D. 1502) (Presented by Representative CLUKEY of Houlton) (Cosponsored by Representatives: O'NEAL of Limestone, WHEELER of Bridgewater, WHEELER of Eliot)

Labor

Bill "An Act to Require Step-pay Increases in Wages in Expired Collective Bargaining Agreements" (H.P. 1060) (L.D. 1498) (Presented by Representative COWGER of Hallowell) (Cosponsored by Senator TREAT of Kennebec and Representatives: BULL of Freeport, COLWELL of Gardiner, GREEN of Monmouth, JONES of Greenville, MAYO of Bath, SHIAH of Bowdoinham, STANLEY of Medway, Senator: DAGGETT of Kennebec)

Marine Resources

Bill "An Act to Amend the Lobster Laws and to Study the Feasibility of Basing Categories of Lobster and Crab Fishing Licenses on the Percentage of Income Derived from Commercial Lobster Fishing" (H.P. 1063) (L.D. 1501) (Presented by Representative ETNIER of Harpswell) (Cosponsored by Representatives: BIGL of Bucksport, LEMONT of Kittery)

Natural Resources

Bill "An Act to Amend the Site Location of Development Laws" (EMERGENCY) (H.P. 1065) (L.D. 1503) (Presented by Representative SHIAH of Bowdoinham) (Cosponsored by Representatives: BULL of Freeport, COWGER of Hallowell, McKEE of Wayne, MERES of Norridgewock, ROWE of Portland, Senator: TREAT of Kennebec)

REPORTS OF COMMITTEES

Divided Report

Majority Report of the Committee on **Legal and Veterans Affairs** reporting "**Ought Not to Pass**" on Bill "An Act to Amend the Law Regarding the Sale of Alcohol on Golf Courses" (H.P. 467) (L.D. 638)

Signed:

Senators: DAGGETT of Kennebec
CAREY of Kennebec

Representatives: TUTTLE of Sanford
GAMACHE of Lewiston
CHIZMAR of Lisbon
FISHER of Brewer
GAGNE of Buckfield
TESSIER of Fairfield
TRUE of Fryeburg

LABRECQUE of Gorham
BIGL of Bucksport

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

Signed:

Senator: FERGUSON of Oxford

Representative: BELANGER of Wallagrass

Was read.

On motion of Representative TUTTLE of Sanford, tabled pending acceptance of either Report and specially assigned for Thursday, March 13, 1997.

CONSENT CALENDAR

First Day

In accordance with House Rule 519, the following items appeared on the Consent Calendar for the First Day:

(S.P. 249) (L.D. 818) Bill "An Act to Amend the Small Claims Court Laws" Committee on **Judiciary** reporting "**Ought to Pass**"

(S.P. 207) (L.D. 666) Bill "An Act to Amend the Maine Consumer Credit Code to Permit Reverse Mortgages" Committee on **Banking and Insurance** reporting "**Ought to Pass**" as amended by Committee Amendment "A" (S-12)

There being no objections, the above items were ordered to appear on the Consent Calendar of Thursday, March 13, 1997 under the listing of Second Day.

CONSENT CALENDAR

Second Day

In accordance with House Rule 519, the following items appeared on the Consent Calendar for the Second Day:

(S.P. 147) (L.D. 426) Bill "An Act to Amend the Employee Leasing Company Registration Process"

(S.P. 165) (L.D. 494) Bill "An Act to Change the Time for Appointment of a Visitor or Guardian Ad Litem after Appointment of a Temporary Conservator or Guardian"

(H.P. 176) (L.D. 231) Bill "An Act to Classify Vehicular Homicide as a Class A Crime"

(H.P. 227) (L.D. 291) Bill "An Act Concerning Defendants' Ability to Attack Orders of Restitution"

(H.P. 720) (L.D. 984) Resolve, to Name the New Bridge over the Fore River in Portland

No objections having been noted at the end of the Second Legislative Day, the Senate Papers were Passed to be Engrossed in concurrence and the House Papers were Passed to be Engrossed and sent up for concurrence.

BILLS IN THE SECOND READING

Bill "An Act to Clarify the Territory Included within Lake Arrowhead Community, Incorporated" (H.P. 168) (L.D. 223)

As Amended

Bill "An Act to Amend the Fee Schedule for Probate Filings" (S.P. 138) (L.D. 417) (S. "A" S-13)

Were reported by the Committee on **Bills in the Second Reading**, read the second time, the House Paper was Passed to be Engrossed and sent up for concurrence and the Senate Paper was Passed to be Engrossed as Amended in concurrence.

ENACTORS

An Act Concerning Service Relating to the Disclosure of Financial Records (H.P. 403) (L.D. 548)

Was reported by the Committee on **Engrossed Bills** as truly and strictly engrossed, passed to be enacted, signed by the Speaker and sent to the Senate.

By unanimous consent, all matters having been acted upon were ordered sent forthwith.

TABLED AND TODAY ASSIGNED

The Chair laid before the House the following items which were Tabled and Today Assigned:

Bill "An Act to Require Consent of a Legal Guardian for the Provision of Prescription Contraception to a Minor" (H.P. 1011) (L.D. 1403)

(Committee on **Judiciary** suggested)

TABLED - March 11, 1997 by Representative THOMPSON of Naples.

PENDING - Reference.

On motion of Representative THOMPSON of Naples, the Bill was referred to the Committee on **Health and Human Services**, ordered printed and sent up for concurrence.

JOINT ORDER - Relative to amending Joint Rule 208 - Requirements for Drafting (H.P. 1059)

- In House, Read on March 11, 1997.

TABLED - March 11, 1997 by Representative KONTOS of Windham.

PENDING - Passage.

Subsequently, was passed and sent up for concurrence.

Bill "An Act to Permit Municipalities to Restrict the Sale of Tobacco Products" (S.P. 72) (L.D. 211)

TABLED - March 11, 1997 by Representative KONTOS of Windham.

PENDING - Passage to be Engrossed.

Representative BUCK of Yarmouth, presented House Amendment "B" (H-4) which was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Yarmouth, Representative Buck.

Representative BUCK: Madam Speaker, Ladies and Gentlemen of the House. The amendment that I am presenting to you this morning simply requires that if a municipality intends to consider an ordinance regulation regarding the sale or use of tobacco that is more restrictive than state law, it must provide notice to each tobacco licensee. The purpose of this amendment is simply because if the existing proposal passes, my concern is that the licensees in these various towns that would be affected, I want to guarantee that they would have some sort of written notice that whatever town official or whatever body in that town is going to enact an ordinance that the licensees are notified of the pending proposal. Thank you.

Representative AHEARNE of Madawaska moved that House Amendment "B" (H-4) be indefinitely postponed.

The SPEAKER: The Chair recognizes the Representative from Madawaska, Representative Ahearne.

Representative AHEARNE: Madam Speaker, Ladies and Gentlemen of the House. It is a very simple issue and 12 out of 13 members of the Committee agreed that this issue is not about being for or against tobacco. The bottom line is municipal home rule. It is the feeling of the committee that we should not violate a constitutional guarantee of home rule. No exception should be

given to any industry or for that matter, a retail product, to circumvent municipal home rule. It is that simple, ladies and gentlemen. I ask you for your support of the pending motion. Madam Speaker, I request a roll call.

The same Representative requested a roll call on the motion to indefinitely postpone House Amendment "B" (H-4).

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The SPEAKER: The Chair recognizes the Representative from Lewiston, Representative Gamache.

Representative GAMACHE: Madam Speaker, Members of the House. Home rule indeed. I remember how we treated liquor back in the good old days of home rule where several dry communities contributed to the windfall of the occasional wet one. It is a little late in the game to start opposing this matter, but I have come to that point. It occurs to me that it is conceivable that some of us smokers will have to move away from our districts to take care of our desires. That is probably not very important. The important thing is that it will hurt a lot of small businesses in communities throughout the state, particularly the mom-and-pop, for whom I have a very sentimental feeling. Some of our smaller communities rely very heavily on these small family businesses for their groceries, as well as their cigarettes and, of course, their lottery tickets. It seems to me from the letters that I have received and phone calls that we are threatening to put a lot of these small businesses out of business. We are losing, in the process, numerous important jobs throughout the state. I think we should reconsider and defeat this thing. Thank you.

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

Representative ROWE: Madam Speaker, Men and Women of the House. I rise to encourage you to support the pending motion to indefinitely postpone this amendment. I don't question the intent of the amendment, but one implication is it might trigger the state mandate rule. I think there may be a concern there that this is an effort to acquire a higher voting threshold. That is my concern on this. I would suggest that public notice laws are quite ample and that when a municipal body is deciding to enact a new ordinance, it must advertise that in the paper. I know the industry associations read those papers and they will notify their members and all the shop owners. I, for one minute, don't question the intent of this, but I just suggest to you that when you vote, to think about that. I encourage you strongly to vote in favor of the pending motion. Thank you.

The SPEAKER: The Chair recognizes the Representative from Westbrook, Representative Lemke.

Representative LEMKE: Thank you Madam Speaker. The issue here is very clear. The City of Westbrook already has an ordinance on the books relative to this. As the existing law is, we are grandfathered. We are the only community in the state that has this. What we are talking about is every community or whatever, that you have the option one way or the other to pass similar or different legislation. It is simply a home-rule bill. That is the way State and Local Government Committee viewed it overwhelmingly. If you are in favor of home rule, support Representative Ahearn. If you have a concern about a mandate, which I have and I know Representative Rowe has and you look at the language of that amendment, then oppose this motion. I think it is a simple home-rule issue and I urge you to support the committee on this. Thank you.

The SPEAKER: The Chair recognizes the Representative from Old Town, Representative Dunlap.

Representative DUNLAP: Madam Speaker, Men and Women of the House. I don't believe the issue necessarily is home rule. Jurisdiction, I don't have a problem with towns

having jurisdiction over their communities. However, I think it is the purpose and duty of this body, the other body and state government as a whole to mandate the laws of the state and make them uniform and cogent for our citizens. I think what you are opening here is an entire Pandora's box of different regulations and confusion. You are giving a large advantage to large chains that have stores throughout the state that if they can't sell tobacco in Lewiston, they can sell it across the river in Auburn. It is really going to affect the sick mom-and-pop stores that may depend greatly on their livelihood for nonessential items, such as alcohol and smoking products. They can't compete for staples with a large chain supermarket. I think it is slothful off our duty to push this off onto the municipalities.

If we want to outlaw tobacco, then outlaw tobacco. If you want to remedy teen smoking, then remedy teen smoking. Don't say that we are going to make it a municipality duty in the guise of some sort of home rule because we don't want to take charge of the problems of teen smoking or any other tobacco related control substance problem. I don't think that is necessarily the issue of home rule. It is imperatively the duty of us, this body, to make the rules of the state and make them uniformed for the good sense of all the people. Thank you.

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

Representative TOWNSEND: Thank you Madam Speaker. I could not disagree more strongly with Representative Dunlap. It is not the responsibility of the State of Maine to set laws for each municipality. Certainly each municipality is capable of setting its own. Furthermore, if small businesses would be affected, the best place for them to make their case is in their town meetings or in their small communities. If they are, indeed, the backbone of that community, they will win. The best place for these decisions to be made is locally. Absolutely not, should it be made in Augusta.

The SPEAKER: The Chair recognizes the Representative from Buxton, Representative Vedral.

Representative VEDRAL: Madam Speaker, Men and Women of the House. My only comment is to read a letter from a gentleman who is 100 miles away from my district. I am not doing this for a constituent. It is from Tom Oliver, owner of Joe's Smoke Shop in Waterville. The letter says, "I own Joe's Smoke Shop in Waterville, Maine. The store has been a landmark here since 1920. I employ three people. I am married and have one child in middle school and one child in high school. I bought the store after taking early retirement from a national steel company in 1990. This is now my livelihood and supports my wife and family, my home mortgage and my business and building mortgage. My profit, at years end, for the last couple of years has been down to about \$3,000 to \$4,000. In the event that the cigarette manufacturers eliminate the display allowance of about \$10,000 a year because of FDA rules, state laws or local municipality ordinances restricting or banning such displays, this store will be out of business. I will be out of a job, as will my three clerks and welfare looms. I really feel I shouldn't have to write this note as I firmly believe that my displays are covered by the First Amendment rights. However, this is not a universal feeling, I know, especially when it reportedly affects young people's buying habits. I urge you to vote against this bill, especially with regards to restrictions on displays in the state. I wish you could see the issue from my point of view, as someone trying to make a living in fully supporting the law with regard to selling to minors and burdened with selling mostly a product manufactured by companies who have shot themselves in the foot so many times that it is a wonder they are still standing. Thank you. Tom Oliver, owner. Joe's Smoke Shop in Waterville."

The SPEAKER: The Chair recognizes the Representative from Dover-Foxcroft, Representative Cross.

Representative CROSS: Thank you Madam Speaker. Again, maybe I am missing the boat here, but I thought this indefinite postponement was on the amendment.

The SPEAKER: The Representative is correct. The body is reminded that your debate should be directed toward the pending motion, which is indefinite postponement of House Amendment "B." The Representative is absolutely correct.

Representative CROSS: Thank you. The referendum in itself only suggests that the towns, if they are going to have more severe regulations about the cigarette advertisement and that kind of thing, that they give those people in business in that town a 30-day notice. That is all this amendment is all about. The indefinite postponement was for this amendment. It has nothing to do with the bill. Please, when you vote, remember you are voting for whether you are going to have towns notify the people that are in business that they are going to have a meeting to restrict them further. Thank you very much.

The SPEAKER: A roll call has been ordered. The pending question before the House is the motion to Indefinitely Postpone House Amendment "B" (H-4). All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 10

YEA - Ahearn, Bagley, Berry RL, Bolduc, Brennan, Bruno, Bull, Bumps, Bunker, Cameron, Chartrand, Clark, Colwell, Cowger, Davidson, Desmond, Driscoll, Dutremble, Etnier, Farnsworth, Frechette, Fuller, Gagne, Gagnon, Gieringer, Goodwin, Green, Hatch, Jabar, Jones KW, Jones SL, Kane, Kontos, Lemke, Mayo, McElroy, McKee, Mitchell JE, Morgan, Muse, O'Neal, O'Neil, Paul, Pieh, Povich, Powers, Quint, Richard, Rowe, Saxl JW, Saxl MV, Shiah, Sirois, Stanley, Stevens, Thompson, Townsend, Tuttle, Usher, Vigue, Volenik, Watson, Wright, Madam Speaker.

NAY - Baker JL, Barth, Belanger DJ, Belanger IG, Berry DP, Bigl, Bodwell, Bouffard, Bragdon, Brooks, Buck, Carleton, Chick, Chizmar, Cianchette, Clukey, Cross, Dexter, Donnelly, Dunlap, Fisher, Fisk, Foster, Gamache, Gerry, Gooley, Honey, Jones SA, Joy, Joyce, Joyner, Kasprzak, Kerr, Kneeland, Lane, LaVerdiere, Layton, Lemaire, Lemont, Lindahl, Lovett, MacDougall, Mack, Madore, Mailhot, Marvin, McAlevey, Meres, Murphy, Nass, Nickerson, O'Brien, Ott, Peavey, Pendleton, Perry, Pinkham RG, Pinkham WD, Plowman, Poulin, Rines, Samson, Savage, Shannon, Skoglund, Snowe-Mello, Spear, Stedman, Taylor, Tessier, Tobin, Treadwell, True, Underwood, Vedral, Waterhouse, Wheeler EM, Wheeler GJ, Winglass, Winn, Winsor.

ABSENT - Baker CL, Campbell, Labrecque, Perkins, Sanborn, Tripp.

Yes, 64; No, 81; Absent, 6; Excused, 0.

64 having voted in the affirmative and 81 voted in the negative, with 6 being absent, the motion to indefinitely postpone House Amendment "B" (H-4) did not prevail.

Subsequently, House Amendment "B" (H-4) was adopted.

The SPEAKER: The Chair recognizes the Representative from Bethel, Representative Barth.

Representative BARTH: Madam Speaker, Ladies and Gentlemen of the House. I urge that you defeat this bill with your vote today. As you know, I live in Bethel, which is one of the border towns with our sister state, New Hampshire. We, in Bethel, are already faced with the disparities between New Hampshire and Maine. Particularly, the 6-percent sales tax difference and the liquor prices that are just within 20 miles of our town. What I am afraid will happen with the passage of this bill is that we will begin pitting Maine towns against each other. That, for example, in Winslow, you might have a more restrictive

advertising ban on cigarettes in small stores that would put those stores at a disadvantage and to the advantage of say, similar stores in Waterville. I think you can go all around the state and find similar situations where you would be pitting virtually small business people in towns against other similar small business people in other towns.

Lastly, in order to sell cigarettes you are licensed. My feeling is if the state is going to require that you have a license, then the state has every right to determine the conditions of that license, which would include, of course, limits on displays for cigarette advertising, so forth and so on in those towns. I urge that this bill be defeated. Thank you.

The SPEAKER: The Chair recognizes the Representative from Waterville, Representative Gagnon.

Representative GAGNON: Madam Speaker, Men and Women of the House. There has been a lot of discussion about the Waterville area and basically about Joe's Smoke Shop, which is an institution in this city. There is another institution in the City of Waterville that is known as the Waterville City Council. It is a deliberate body, much like this one is, and they do take all aspects of the community into consideration, including the well being of the businesses on Main Street. This is an opportunity for the city and the Town of Winslow, which is another organization which has some history to it. I think that it is an opportunity to allow the city council, which I proudly serve on, to take this issue up at the local level. I would encourage you to pass this.

The SPEAKER: The Chair recognizes the Representative from China, Representative Bumps.

Representative BUMPS: Madam Speaker, Men and Women of the House. First, I would ask that all of my colleagues here in this body this morning remember that this bill, as it is written, has nothing, absolutely nothing, to do with the sale of tobacco products. This bill affects product placement and the display of tobacco products. So to suggest that one community will be pitted against another in competing for tobacco products sales is simply untrue. I want to also reinforce the statement made by the Representative from Madawaska. I completely concur with the fact that this issue is one of home rule. I want to remind everyone that the reason that the tobacco industry, at least the reason that was suggested before our committee, is opposed to this legislation is a matter of inconvenience.

We were told in the State and Local Government Committee that it would be difficult for companies that owned stores in more than one location to comply with various ordinances. However, I would submit to you this morning that companies that own businesses in several communities already comply with local ordinances with respect to location, building size, parking permissions or restrictions, sign types and sizes and a host of other issues. Inconvenience alone is not a sound or justifiable reason to preempt the clear and constitutional right of municipalities to exercise home rule. I urge you to join me in supporting this bill. Thank you.

The SPEAKER: The Chair recognizes the Representative from Bangor, Representative Perry.

Representative PERRY: Madam Speaker, Men and Women of the House. Now that we have amended this bill, it is time to kill it. This is not an antismoking bill. I will be the first to support any bill that would help reduce the people in Maine smoking, the kids smoking and keeping kids from buying cigarettes, be it higher prices on taxes or age limits. I will support any legislation to keep kids from smoking. This is not a smoking bill. It is a business bill. It is actually an antibusiness bill. I own two convenience stores in Bangor and in two weeks, I am going to own one. I am selling one because it is getting too hard to compete. These contracts are not to expose children to

cigarettes, it is one company, Philip Morris, against R.J. Reynolds trying to gain a share of a shrinking market. They pay substantial money that the store owners need to survive. If Bangor has a strict regulation on cigarette sales, people are going to drive to Veazie or Orono and it is the people in Bangor that are going to suffer. Just like all the communities along the border in New Hampshire. People cross over where the better deals are. It is going to be community against community and it is an antibusiness bill. That is the only issue that I see in it. Thank you.

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

Representative MITCHELL: Thank you Madam Speaker. I have to respectfully disagree. I believe this bill is about tobacco in a number of ways. It is also about local control, but it involves tobacco because the tobacco industry clearly recognizes that preemptions is their best tactic against tobacco control. State preemption of local laws is a key tobacco industry strategy. In fact, I have a quote here from a former tobacco industry lobbyist who says, "We could never win at the local level." The tobacco institutes and the tobacco companies first priority has always been to preempt the field. The health advocates can't compete with me on a state level. They never could. Please don't be confused by the rhetoric, this is about one thing and one thing only. Should the State Legislature continue to allow the principle of municipal home rule to be violated over a pack of cigarettes? I think not.

Representative AHEARNE of Madawaska requested the Clerk to read the Committee Report.

The Clerk read the Committee Report in its entirety.

Representative AHEARNE of Madawaska requested a roll call on passage to be engrossed as amended by House Amendment "B" (H-4).

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The SPEAKER: The Chair recognizes the Representative from Yarmouth, Representative Buck.

Representative BUCK: Madam Speaker, Ladies and Gentlemen of the House. There are two points that I would like to make. In 1995, we passed a law for tobacco education through the Department of Human Services. The law has only been in effect two years, but DHS confirms that the compliance rate in terms of not selling tobacco to minors is 80 percent. That has only happened in two years. The point I am trying to make here is I am not sure that this particular proposal is necessary. As a matter of fact, in the State of Massachusetts in 1993, a similar proposal was enacted and since that time Massachusetts has seen a 28-percent increase in the number of minors who smoke. The point I am trying to make here is if these figures are correct, then obviously the proposal we have before us today is not going to have any effect on minors smoking. Thank you.

The SPEAKER: The Chair recognizes the Representative from Westbrook, Representative Lemke.

Representative LEMKE: Thank you Madam Speaker. Just one point, I don't want to get lost in all of this. This bill does not make any town do anything on the issue of tobacco sales. It allows you to make that choice on the local level. Thank you.

The SPEAKER: The Chair recognizes the Representative from Harpswell, Representative Etnier.

Representative ETNIER: Madam Speaker, Ladies and Gentlemen of the House. This Saturday I am going to the town meeting in Harpswell. I guess it is kind of silly to tell folks there that I voted this week that they should not have the ability to make this decision at a future town meeting regarding the display of tobacco products. To imply that they are not capable and that they should not be able to make this decision at the local level

would be an insult, I feel, to the people of my district and also to the fine people of this state to imply that. These decisions are best made at the local level where our constituents shop and where their children shop. Thank you.

The SPEAKER: The Chair recognizes the Representative from Glenburn, Representative Winn.

Representative WINN: Madam Speaker, Ladies and Gentlemen of the House. I have a hard time understanding the law here regarding this home-rule issue. First of all, I think teenage smoking is a very serious issue and should be addressed at the state level. Second of all and most importantly, I don't think any of us here would dream of saying, let the home rule decide whether or not and what age people are going to drink alcohol. Should we really let municipalities decide which age people are going to be allowed to drive? Should we really allow different municipalities to have separate laws on drunk driving? Should we really allow each municipality to have a different rule on who should wear seat belts? I don't think so. Thank you very much.

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

Representative TOWNSEND: Madam Speaker, Men and Women of the House. I do apologize. I was too hasty to speak last time. Since then I have heard arguments which must be answered. This law would not allow a municipality to reduce the legal age for smoking. That proposal is not before you. It is quite certainly an issue related to juvenile smoking. Never forget that the bulk of smokers in the United States die each year and that those smokers must be replaced and the best replacement is young smokers. It is important to hook them early, get them hooked and keep them hooked, because that is how the tobacco industry makes money.

Yes, to the mom-and-pop stores, having displays out front is a very viable and important source of revenue. The reason it is an important source of revenue is that the tobacco industry pays big bucks to have cheap cigarettes out where they can be shoplifted by underage smokers, so that they will get hooked early and keep the money coming into the tobacco industry coffers. Nothing in this bill would address any law about at what age you may begin to smoke. This bill would allow each community, Bethel, Madawaska, Canaan, St. Albans, any community to decide for itself what its own ordinance would be. I think that is entirely appropriate and certainly if the residents of that community feel that they don't support such a move, they will defeat it. Let's let them make that decision for themselves. Thank you.

The SPEAKER: The Chair recognizes the Representative from Fryeburg, Representative True.

Representative TRUE: Thank you Madam Speaker. As someone had said, this particular bill is difficult to understand. It is multifaceted. I am amazed to hear so many people who are supporting home rule. I cannot imagine this group doing that after sitting here five years. If you think of all the times when we have micromanaged what our people want to do individually in our towns, I hope you think of that.

Secondly, Madam Speaker, it seems to me that there is a federal law that has just been introduced to look over the ID of people 27. I read somewhere, I believe, that it also had to do with where the vendors could display cigarettes and things of that nature. If we pass this, where do we stand if that is true and that is the federal law? I would like to have someone answer that if they possibly could. Being a nonsmoker, I have tried in my lifetime to legislate moral values, we don't seem to be doing too good of a job. I think we ought to stay out of it.

The SPEAKER: The Representative from Fryeburg, Representative True has posed a question through the Chair to anyone who may care to respond.

A roll call has been ordered. The pending question before the House is Passage to be Engrossed. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 11

YEA - Ahearne, Bagley, Baker JL, Belanger IG, Berry DP, Berry RL, Bolduc, Bouffard, Bragdon, Brennan, Brooks, Bruno, Bull, Bumps, Bunker, Cameron, Carleton, Chartrand, Cianchette, Clark, Clukey, Colwell, Cowger, Cross, Davidson, Desmond, Dexter, Donnelly, Driscoll, Dutremble, Etnier, Fisk, Frechette, Fuller, Gagne, Gagnon, Gerry, Gieringer, Goodwin, Green, Hatch, Honey, Jabar, Jones KW, Jones SL, Kane, Kasprzak, Kerr, Kneeland, LaVerdiere, Lemke, Lindahl, Lovett, Mailhot, Mayo, McElroy, McKee, Mitchell JE, Murphy, Muse, O'Brien, O'Neal, O'Neil, Paul, Peavey, Pieh, Pinkham RG, Povich, Powers, Quint, Richard, Rowe, Samson, Saxl MV, Shiah, Sirois, Stanley, Stevens, Thompson, Townsend, Tuttle, Usher, Vigue, Volenik, Watson, Wheeler GJ, Winglass, Wright, Madam Speaker.

NAY - Barth, Belanger DJ, Bigl, Bodwell, Buck, Chick, Chizmar, Dunlap, Farnsworth, Fisher, Foster, Gamache, Gooley, Jones SA, Joy, Joyce, Joyner, Kontos, Lane, Layton, Lemaire, Lemont, MacDougall, Mack, Madore, Marvin, McAlevey, Meres, Morgan, Nass, Nickerson, Ott, Pendleton, Perry, Pinkham WD, Plowman, Poulin, Rines, Savage, Saxl JW, Shannon, Skoglund,

Snowe-Mello, Spear, Stedman, Taylor, Tessier, Tobin, Treadwell, True, Underwood, Vedral, Waterhouse, Wheeler EM, Winn, Winsor.

ABSENT - Baker CL, Campbell, Labrecque, Perkins, Sanborn, Tripp.

Yes, 89; No, 56; Absent, 6; Excused, 0.

89 having voted in the affirmative and 56 voted in the negative, with 6 being absent, the Bill was passed to be engrossed as amended by House Amendment "B" (H-4), and sent up for concurrence.

The Chair laid before the House the following item which was tabled earlier in today's session:

Bill "An Act to Prohibit a Person Whose License to Operate a Motor Vehicle Has Been Suspended from Operating an All-terrain Vehicle on Roads and Highways" (S.P. 462) (L.D. 1434) which was tabled by Representative PAUL of Sanford pending reference.

On motion of Representative PAUL of Sanford, the Bill was referred to the Committee on **Criminal Justice**, ordered printed and sent up for concurrence.

On motion of Representative GAGNE of Buckfield, the House adjourned at 11:40 a.m., until 10:00 a.m., Thursday, March 13, 1997.