

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

Legislative Record
House of Representatives
One Hundred and Nineteenth Legislature
State of Maine

Volume I

First Regular Session

December 2, 1998 – May 12, 1999

heard is that there were at least eight public hearings. I know I went to the one in Yarmouth. I hope some of you went to the ones in your area. Before this plan was drafted, it was for public comment, those were public hearings. There were eight of them held throughout the state. I have the schedule right here in my hand. That was well before the plan was finalized. It was to receive comment from any member of the public who wished. Just for the record I wanted to set that straight. Thank you.

The SPEAKER PRO TEM: 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. 112

YEA - Baker, Belanger, Berry DP, Bouffard, Bowles, Brennan, Brooks, Bryant, Bull, Bumps, Collins, Cote, Cowger, Daigle, Davidson, Dudley, Dunlap, Duplessie, Etnier, Foster, Fuller, Gagne, Gagnon, Gooley, Hatch, Jabar, Jacobs, Jodrey, Kane, Labrecque, LaVerdiere, Lemoine, Lindahl, Madore, Mailhot, Marvin, Matthews, Mayo, McDonough, McGlocklin, McKee, McKenney, McNeil, Mitchell, Muse, Nass, Norbert, Nutting, O'Brien JA, O'Brien LL, O'Neal, O'Neil, Plowman, Powers, Quint, Richard, Richardson E, Richardson J, Samson, Savage C, Savage W, Saxl JW, Saxl MV, Schneider, Shiah, Shields, Skoglund, Stanwood, Stevens, Tessier, Thompson, Tobin D, Townsend, Tripp, Twomey, Usher, Watson, Weston, Williams, Mr. Speaker.

NAY - Ahearne, Andrews, Bagley, Berry RL, Bolduc, Bragdon, Bruno, Buck, Cameron, Campbell, Carr, Chick, Chizmar, Cianchette, Clark, Clough, Colwell, Cross, Davis, Desmond, Dugay, Duncan, Fisher, Gerry, Gillis, Glynn, Goodwin, Green, Heidrich, Honey, Jones, Joy, Kasprzak, Kneeland, Lemont, Lovett, MacDougall, Mack, Mendros, Murphy E, Murphy T, Peavey, Perkins, Perry, Pieh, Pinkham, Povich, Rines, Rosen, Sanborn, Sherman, Shorey, Sirois, Snowe-Mello, Stanley, Stedman, Sullivan, Tobin J, Tracy, Trahan, Treadwell, True, Tuttle, Volenik, Waterhouse, Wheeler EM, Wheeler GJ, Winsor.

ABSENT - Frechette, Martin, McAlevey.

Yes, 80; No, 68; Absent, 3; Excused, 0.

80 having voted in the affirmative and 68 voted in the negative, with 3 being absent, the Majority **Ought Not to Pass** Report was **ACCEPTED** and sent for concurrence.

The Speaker resumed the Chair.
The House was called to order by the Speaker.

Majority Report of the Committee on **EDUCATION AND CULTURAL AFFAIRS** reporting **Ought Not to Pass** on Bill "An Act to Establish Educational Excellence for the Towns of Mechanic Falls, Minot and Poland"

(H.P. 1360) (L.D. 1958)

Signed:

Senators:

BERUBE of Androscoggin
MURRAY of Penobscot
SMALL of Sagadahoc

Representatives:

RICHARD of Madison
WESTON of Montville
WATSON of Farmingdale

DESMOND of Mapleton
BRENNAN of Portland
ANDREWS of York
BAKER of Bangor
BELANGER of Caribou
SKOGLUND of St. George

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

Signed:

Representative:

STEDMAN of Hartland

READ.

On motion of Representative BRENNAN of Portland, the Majority **Ought Not to Pass** Report was **ACCEPTED** and sent for concurrence.

Majority Report of the Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-361)** on Bill "An Act to Prohibit the Use of Juveniles in a Tobacco Enforcement Action"

(H.P. 1429) (L.D. 2052)

Signed:

Senators:

BERUBE of Androscoggin
MITCHELL of Penobscot

Representatives:

BROOKS of Winterport
DUGAY of Cherryfield
LOVETT of Scarborough
BRAGDON of Bangor
SNOWE-MELLO of Poland
SHIELDS of Auburn

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

Signed:

Senator:

PARADIS of Aroostook

Representatives:

KANE of Saco
FULLER of Manchester
QUINT of Portland
WILLIAMS of Orono

READ.

Representative KANE of Saco moved that the House **ACCEPT** the Minority **Ought Not to Pass** Report.

The SPEAKER: The Chair recognizes the Representative from Saco, Representative Kane.

Representative KANE: Mr. Speaker, Men and Women of the House. This is "An Act to Prohibit the Use of Juveniles in a Tobacco Enforcement Action." According to the Institute of Medicine and Health and Human Services, the use of juveniles in tobacco enforcement programs is the single most effective way to enforce retailer compliance with laws with respect to sales to minors. Currently, the Maine Department of Human Services and the Attorney General have contracted with the Food and Drug Administration along with 43 other states to help enforce FDA tobacco regulations. This bill, if adopted, would end the partnership because the federal enforcement program requires the use of minors, age 15 to 17, to conduct compliance checks. We further understand that the termination of the partnership could result in a loss of close to a quarter of a million

dollars in substance abuse block funds. This would be in addition to over \$400,000 in FDA contract funds for the smoking prevention programs here in Maine.

It is important to keep in mind that Maine teenage and college age population is under siege when it comes to tobacco use, ranking number one and three respectfully in the country. We can ill afford to conduct business as usual when it comes to protecting our kids. They are currently in harms way with respect to access to tobacco. The concerns expressed about putting our children in harms way in this program is an exaggeration of potential risks. There was not a single incident presented to us in public hearings of any juveniles put at risk. The juveniles were always accompanied by and under the supervision of, not only one, but usually two law enforcement personnel. The juveniles are screened in advance and trained to participate and must receive parental permission from parent or guardian.

This program has had tremendous success. In 1994, 44 percent of stores checked for compliance sold to underage buyers. By 1998, only 4 percent of stores inspected sold to underage buyers. No single program has had such an impact in reducing access of youth to tobacco. Prohibiting juveniles from participating in the state program will not end inspections. It will merely be administered directly by the FDA. The state provides significant oversight and supervision that could be lost if taken over by the feds.

Please, let's continue to protect our kids from the ravages of tobacco and keep a success program working. Please support the Minority Ought to Pass Report.

The SPEAKER: The Chair recognizes the Representative from Winterport, Representative Brooks.

Representative **BROOKS**: Mr. Speaker, Ladies and Gentlemen of the House. I think it was about 25 years ago when a friend of mine in Bangor who operated a store was subjected to, what I consider to be, repeated cases of entrapment by the local police department. It was simply because the man had gone to the city council on more than one occasion and complained about some police things. They kept sending in underage people to buy liquor and the minute that they made the purchase, of course, in came the police and made the arrest. Here it is 25 years later and I don't feel any differently today about that kind of "entrapment" than I did then.

What the law allows is that anybody from the age of 15 on can be hired at the cost of \$7.50 an hour, recruited among their friends, taken some place and trained and then sent out into another county or someplace far away from their home, accompanied by adults and sent into a store to purchase cigarettes. Once that purchase is made, they are secreted away someplace and an officer comes back and nails the store owner. As far as I am concerned, that is nothing more than pure entrapment. I do disagree with my Chair, in that this, I think, does place juveniles in jeopardy. I think that we are asking them to do things that leads them into believing that that is the right thing to do.

I went to an academy, not far from my home, where I now have a connection and asked them. They said the word "narking." That is what they call it. It is ratting on your friends. I asked, what are you going to do when you find out that some of your friends may have been? They said, "Get even." I don't think this is an appropriate thing to be doing. Going into the schools or anyplace else. I did hear in Bangor that there were some people who were recruiting young people who are not

completely and fully healthy and taking them into Somerset County doing some of this. I think it is wholly inappropriate. If you think about what the law says, why can't we enforce that? The law says that order to purchase cigarettes, if the clerk of the store believes that you are anywhere between the ages of 18 and 27, they must card you. To me, it seems to be that there is a significant difference between the ages of 17 and 18. You ought to be able to tell the difference between 17 and 27.

To me, there are appropriate safeguards on the books that allow us to continue to police, if you will, the laws of the State of Maine, regarding the illegal purchases of cigarettes. I say that we ought to turn down the Minority Report and support the Majority Report. I believe that is why the majority of this committee voted in favor of this bill so that we can dispense with this kind of activity and this kind of placing juveniles at jeopardy. Please follow my light and vote against the Minority Report so that we can pass the Majority Report and prohibit this kind of behavior. I know that there are some concerns that we are jeopardizing federal funds. I have heard that before. I think that there are other ways. I happen to know, I think to a certain extent, four people who work in Washington, DC, who are there representing all of us, who we can call upon to say, please don't take our money away just because we wouldn't use kids to entrap. Thank you.

The SPEAKER: The Chair recognizes the Representative from Poland, Representative Snowe-Mello.

Representative **SNOWE-MELLO**: Mr. Speaker, Ladies and Gentlemen of the House. I rise here today to support the Majority Report. It is my strong belief that it is entirely inappropriate, under any circumstances, to knowingly put our children in harms way. Participation in sting operations opens up a child to an extended risk. Not only is the child in danger while the sting is being undertaken, they risk being sought out by a vengeful store owner or children of a store owner in search of retribution. Law enforcement officers will not be present to protect children from seeking revenge. Please remember that. They are not always around these officers. People can be very spiteful. I have talked to many of my constituents and on first blush, they say this is a great idea until I start talking to them about the possible and very real concerns that might happen to this child. People have come to me and said, my child does this. You ought to talk to them. They think it is a good idea. Excuse me, I think in this area we are the adults. We make the decisions whether they should be out there doing this or not. Children may think this is a great idea, but they don't have the wisdom that adults have. We are here to nurture and protect them. We are not here to send them into harms way, not matter how worthy you feel, or people might feel, that this is a good thing for them to be doing. It isn't. I believe there is many other ways that we could come up with to get that federal money. I really believe within my heart that this is a very dangerous situation. We should support this legislation. I think it is extremely important. Thank you.

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

Representative **LOVETT**: Mr. Speaker, Ladies and Gentlemen of the House. This is a terrible idea. To ask our children to snitch on storeowners or anyone else. It is terrible to even suggest that we would ask our children to commit a crime in order to make money. Ladies and gentlemen, I beg you to follow my light on this issue. We can't treat our youth like this.

The **SPEAKER**: The Chair recognizes the Representative from Portland, Representative Quint.

Representative **QUINT**: Mr. Speaker, Men and Women of the House. I just want to clarify a couple things here. We keep talking about these juveniles, ages 15 to 18, as if they are children. When we use the word children we sort of conjure in our minds that these are individuals who are perhaps still in grammar school who cannot drive, who are not employable to do other types of responsibilities and to be employed. It is not like we are encouraging them to do something. It is totally optional. They are with the permission of their parents. When these juveniles or young adults decide to do this, for whatever reason, they still have to get parental permission. For me, if that is in violation with somebody's family values with how they want their teenagers to make a living or whatever, their parents certainly can intervene on their behalf. I think that is important to remember. It is not that these teenagers are going to be able to do this without anybody else knowing, because their parents need to approve their participating in this program.

We also talked a lot about how this sting operation, and for some reason in my mind it congregates a sort of illicit drug alley, sort of dark thing that is happening, but the reality of it is, it happens during the day generally and they go into stores that all of us go into every single day. This is not in dark alleys. It is not in the middle of the night. This is not some sort of thing that we see on TV where there is this melodramatic type of sting operation that there is going to be some severe consequence of retribution. We are not talking about drug dealers here. We are talking about people who are and continue to sell cigarettes to children or young adults under the age of 18. I am not alarmed by the fact that we are using teenagers to, in fact, help us enforce this very important law.

The other sort of thing about narking that Representative Brooks referred to is, that is certainly true. My understanding is what teenagers don't want to have happen is their peers to nark on their own peers. This is not something that is occurring. It is certainly something that is happening when they are, in fact, participating in the process and revealing someone who is illegally selling cigarettes to minors. The true definition of narking is when someone rats on, if you will, one of their own peers or one of their own age group. It is not ratting on an adult who is breaking the law. So, I would ask you to support the pending motion. Thank you.

The **SPEAKER**: The Chair recognizes the Representative from Bridgton, Representative Waterhouse.

Representative **WATERHOUSE**: Mr. Speaker, Ladies and Gentlemen of the House. I am concerned with young teenagers doing this type of operation. For one thing, those young teenagers are underage, for another, they are at a very impressionable age. Two of the people that testified for the committee for this piece of legislation to stop these types of operations, one was a sheriff from Somerset County. His department refused to get involved in these types of operations because of the concern for the children. Another person who testified before the committee who I have a lot of respect for, someone who has a lot of credentials in this area, in fact, my committee, the Judiciary Committee, confirmed or voted for his appointment to the Maine Human Rights Commission. That gentleman's name is Paul Vestal. This gentleman has an awful lot of experience in the justice system and dealing with juveniles. He saw a serious problem with using young teenagers underage in this kind of operation, not the least of which was the danger,

snitching factor and the fact that some of these teenagers are being used, at some time down the road, might have a guilt feeling of what they have done. It could have an impact on them. As I said before, they are at a very impressionable age, regardless if they are teenagers or not. They are still doing something that is not looked upon as being a great thing to do.

The other comment I will make is, the Representative from Saco said that there was a study showing that this was the most effective and efficient method of getting compliance. I won't deny that. There is a lot of effective and efficient ways of doing things in government that I dare say none of us would sign onto to get an end result. The interesting thing about the affect and efficient study that was quoted was compliance. There is another study out there done by the New England Journal of Medicine. I quote from the study. "Adolescence under 18 years old reported only a small drop in the ability to purchase tobacco in no decline in its use." That is an important study that the New England Journal of Medicine did. There was no decline in its use. Another alarming aspect revealed in the study while tobacco use among high school students in the three towns with no enforcement program remain roughly equal, it rose in the towns where enforcement is measured by stings made illegal sales less frequent. It rose in the towns that had the sting operations. Where you had compliance, rates increased. Of course it would, the actual goal of stopping teenagers from smoking was reversed in the study that the New England Journal of Medicine did.

We heard talk about the loss of federal funds. I have the federal register right in front of me. The dirty little secret about the federal government's legislation language is that they allow great flexibility. Let me quote right from the statute. "The department strongly supports giving states flexibility and devising methods to use in enforcing their laws." However, because of efficiency effectiveness, they strongly recommend sting operations. Well, thanks, but no thanks. There is no mandated requirement to use juveniles, minors or whatever you want to say in these sting operations. For your information, say that the Child Welfare League of America, one of the countries oldest child advocacy groups, had great concerns with these operations and the undercover dangers to children, including possible retribution. This is one of the biggest child advocacy groups in the country. If we are looking for compliance, efficiency and effectiveness, there is a possible argument there. Of course, we haven't tried other mechanisms. It is always easy for government to take the easy way out. If we are looking for the safety and results for our children, this is a lousy way of doing it. It has no data supporting an actual reduction in tobacco use by minors. I urge you to support the Majority Ought to Pass Report and vote against the pending motion. Thank you.

The **SPEAKER**: The Chair recognizes the Representative from Lewiston, Representative Mailhot.

Representative **MAILHOT**: Mr. Speaker, Ladies and Gentlemen of the House. I would just like to make a few comments of a handout this morning that appeared on my desk. It says here, according to the Institutes of Medicine and Health and Human Services, the use of youth is the most effective way to enforce retail compliance. The next line says, that we know of no other effective way to enforce this law. If we are to believe these two statements, I don't know where this state is really going. The other statement that I would like to read to you is youth are well supervised and trained to avoid any question of entrapment. It should probably read well used and trained to do

the work of law enforcement officers. The third item that I would like to talk about was under the heading of what Maine stands to lose if the bill passes. The first line says, \$407,000 contract with FDA. The second line says, it may lose up to 40 percent of the substance abuse prevention block grant or \$2 million if compliance does not continue. Shame on those that would write and send this to our desks. Shame on those from the federal government that would dare say that we would lose these funds if we don't use our youths in these instances. I would really like to see a vote of nay on this motion on the Minority Ought Not to Pass Report and see us vote to prohibit the use of youths in the tobacco enforcement action. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Gray, Representative Foster.

Representative FOSTER: Mr. Speaker, Ladies and Gentlemen of the House. Having been in the position to raise four sons, it has been my experience that they certainly need guidance beyond the age of 15. I think we only have to look to the west, Littleton, Colorado, where a couple of boys didn't have the proper guidance. I really have some reservations about what we are doing in Maine. I think if we are at the point where we have to use teenagers to get some federal money to enforce a law, we are in deep, deep trouble. This particular bill needs to wind up on the trash heap of disasters, in my opinion.

The SPEAKER: The Chair recognizes the Representative from Waldoboro, Representative Trahan.

Representative TRAHAN: Mr. Speaker, Men and Women of the House. Doing research for a recent bill, I came across a section of a judge's testimony that fits this incident very well. I would like to read it to you. It says exactly what I want to say. "Perhaps the most serious danger in the decision today is that if the police are permitted routinely to engage in such behavior, it will gradually become less offensive to us all. As Justice Brandice once observed, our government is the potent, omnipresent teacher, for good or for ill. It teaches the whole people by its example. Crime is contagious. If the government becomes a law breaker, it breeds contempt for law. Judge Stevens, Supreme Judicial Court." Thank you.

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

Representative TRUE: Mr. Speaker, Ladies and Gentlemen of the House. I was not going to speak to this. I would like the good Representative from Lewiston in the words that he said. At one time I was the guardian, the parent, for over 160 young people. In 40 years I tried to get them to understand four things, respect, honor, what a principle was and their self worth. What are we doing if we pass this today? Wouldn't it be nice if we turned it around and say we will take the money that we are spending on this to try to teach our youth some of the other simplistic and more meaningful attributes. I am reminded of a Japanese saying. "The reputation of the country, a country that may have been here 1,000 years, may be determined by the conduct of one hour." Think about that and think about what we are teaching if we do vote Ought Not to Pass. Thank you.

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

Representative PERKINS: Mr. Speaker, Ladies and Gentlemen of the House. I did plan to speak on this, briefly. I don't think there should be any excuse to use juveniles for this type of thing, whether it is cigarettes, alcohol or any other department that might want to use juveniles, whether there is block grant money or not. Just go to your town landfill on

Saturday and through this out to your constituents, using juveniles for this. I think you will get an earful. I am sure it is effective. We have heard that. I have a little proposal. What if we use somebody who is 21 years old, but looks 17. You might say that wouldn't hold up in court because the person is really not 17. I submit we have all kinds of precedents already. The courts in the State of Maine have prosecuted violations where the actual object of the crime did not exist. For example, we use decoy deer. We use decoy partridges. The wardens set them up. There is no deer. Somebody shoots at that dummy deer. There is no deer, but they always lose in court because it looks like a deer. I say this would solve the problem. Thank you.

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

Representative COTE: Mr. Speaker, Men and Women of the House. I rise today to ask your vote on Ought Not to Pass on this bill. I speak personally on this bill due to the fact that I have a 13 year old. It would be a cold day, that I actually would allow my son to operate in this manner, after I raised him not to lie, but to abide by the law. By him doing this, he would be breaking the law, which I taught him not to. I taught him to respect the law. I teach other minors his age to respect the law. As lawmakers, we are here to enforce it and to make them, not to get here and teach our juveniles to break them and then we wonder why there are so many juveniles in detention centers. It is because of situations like this. Our law enforcement officers using them as bait. They are not bait. They are like you and me. I know all of you out here who have children would not like to see your children used as bait. I know I won't allow my son to be used as bait. In two more years he will be 15, which is the age limit that these officers use these children. I urge you to vote with our lights on Ought Not to Pass on this bill. Let's protect our juveniles from situations like this.

Representative COTE of Lewiston REQUESTED a roll call on the motion to ACCEPT the Minority Ought Not to Pass Report.

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 Rockport, Representative Powers.

Representative POWERS: Mr. Speaker, Ladies and Gentlemen of the House. I am very glad that the Representative from Lewiston, Representative Cote, has made it clear what his preference for his sons behavior at age 15 would be. As I hope you remembered having been told earlier in this debate, Representative Cote, and all guardians of his son will have that permission and that control. No one's child will be able to participate in these operations without parents or guardians permission. I wanted to recount two circumstances that I am familiar with to explain why I support the Minority Ought Not to Pass Report. I think that the use of 15 to 17 year old juveniles to participate in identifying where the storeowners are who are selling cigarettes to minors are.

One, the children of a deceased state trooper. Both the trooper, his widow and their children are friends of mine. These children admired their dad enormously and still speak of him with great admiration. One of the things that they are most keenly interested in is the enforcement of the law. Seeing that what is right is taken care of and what is wrong is attended to also. They are very, very impressionable. They were in the presence of their father also. It bothers them terribly that there are stores that will sell cigarettes to underage youngsters. I would not be surprised if anyone of those four children becomes a law

enforcement officer out of the impression that their father made on them. It was a positive impression. If in seeking to try that job out, there mother said, it is fine if you wish to participate in one of these, what you are now calling stings, it would not be for me to say not to do that. I think that it is a positive environment in which to check out that desire.

The other story ties in with this because I, as an educator and a parent, have never wanted to place children in harms way. I want to recount to you what an adult who has participated in many of these operations has told me the procedure is. The young person is attended only by a law enforcement officer and another adult. Those two adults stay out of the store. The young person goes into the store and has nothing on him or her but \$5. There is no wallet, no card, no keys to jingle, nothing. That young person does nothing, but request a pack of cigarettes. They do not try to confuse the order by getting a Pepsi, gum and asking for cigarettes at the same time. May I please have a pack of whatever. When that is turned over and paid for, the young person leaves the store and walks directly to the vehicle and hands over that pack of cigarettes to the law enforcement officer. It is then wrapped and identified. The young person and those two adults leave the premises. It is then subsequent to that at the end of a store day that the law enforcement officer returns to the store owner to place a charge of having sold to a minor. I consider it highly controlled. I consider it safe.

Frankly, I am baffled as to what the alternative might be. The logic is not available to me as to how we can check to see if a store owner is selling to a person who is under 18 years of age if we do not present an under 18 age youngster in that store and do it in as safely and controlled a manner as possible. That is why I support this Minority Ought Not to Pass Report. Thank you.

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

Representative **POVICH**: Mr. Speaker, Men and Women of the House. I count three convenience storeowners in this body. I am one of them. You might appreciate hearing from one of us and maybe you wouldn't. I want to talk about this insidious practice of compliance checks.

First of all, rarely do I line up on the same side as the good Representative from Bridgton, Representative Waterhouse, but today I do and today I must. I urge this body to reject the pending motion and to support the legislation. To me, there is something very offensive and intrusive in the practice of employing minors, collaborating with the Bureau of Health to purchase cigarettes. Call it entrapment if you want. The storeowners are used to it. For too many years, as Representative Brooks had remarked, the stores were held hostage by the Bureau of Liquor Enforcement who sent in minors at the busiest times to purchase alcohol. The director has, thank goodness, discontinued this practice.

Just last week I received a letter from the FDA announcing that my store passed a recent compliance check. I should have been happy, but boy was I mad. I was very relieved that we passed the test, but I would have liked to have known who came in. I would have had a series of questions in my mind that needed satisfaction. Including, how old did this person look? Quite often someone who is 17 years old looks like they are 27 years old. In America, the accused has the constitutional right to confront their accuser except, of course, in this instance. This event happened in March. Just last week I had learned that we

had passed. I instruct my employees to enforce the laws. They are motivated to enforce the law not because I am going to get a stiff fine and possibly lose my tobacco license, but they are going to get a fine as well. They don't want to disobey the law. We try hard to obey the law. We operate under 29 separate licenses, including a tobacco license. Small grocery stores in Maine represent an essential social and business fabric in our state. My store is 102 years old. Next year we will be operating into our third century doing business for the people of Ellsworth and the greater Ellsworth area. A lot of you people have visited me in my store and I appreciate that. We do this not because we disobey the law, but by obeying the law. The criminal justice system in Maine has all the tools it needs to enforce this law. They don't need to employ our young people.

I urge you to do something that will benefit our mom and pop stores in Maine. I urge you to vote against the pending motion. I thank you very much.

The SPEAKER: The Chair recognizes the Representative from Augusta, Representative O'Brien.

Representative **O'BRIEN**: Mr. Speaker, Ladies and Gentlemen of the House. I merely want to ask a question. What message are we sending to our children, they are children, very impressionable children, that because a program is effective because it works, that it is okay to break the law and be paid. I certainly don't want to send the message to my children or to any other children in the State of Maine. Thank you very much.

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

Representative **PERRY**: Mr. Speaker, Ladies and Gentlemen of the House. If it weren't 4:30 and a full calendar in front of us, I would tell you all the reasons it is a bad idea to send minors into stores, but I will tell you just a few. It addresses a portion of the problem, but not a very big portion. It does not address the issue of adults coming in and buying cigarettes and providing them to minors. That goes on all the time. All these kids have friends who are at least 18. An 18 year old kid will come into my store and buy three, four or five packs of cigarettes, different brands, I get a pretty good idea of what he is going to do with them. It is not illegal. You slap him with a \$500 fine for doing it a time or two and you will probably think twice. I am constantly shooing kids away from around my store for harassing customers and asking them to buy cigarettes. It doesn't address that issue.

I wasn't going to discuss this story, but I will in response to some things that I have heard. A friend of mine got fined for selling cigarettes to a minor. He sells the busiest store in Bangor. It is a deli. At lunch hour you can barely get in. You get a new cashier on duty and in the middle of the rush hour, she sold cigarettes to a minor. She thought she had carded the girl. It was the one in front of her. She made the mistake and sold it. The officer who was with the minor, who wasn't an officer, but was a contractor, came into the store and wanted to speak to the owner. He told him what the situation was. He said, "Write the ticket, do whatever you have to do. We are in our lunch hour. I am busy and have a store to run." His response was, "I am running this store now. I will pull your license off the wall to sell cigarettes." My friend said, "Do what you have to do, I have customers to wait on. Well, who do you work for? The man said, "I work for the Attorney General." This was not true. He is a private contractor. It was one big mess.

I just don't think minors should be used in law enforcement. They should be in school or they should be doing something else, not out working in sting operations. Thank you.

The SPEAKER: The Chair recognizes the Representative from Bridgton, Representative Waterhouse.

Representative **WATERHOUSE**: Mr. Speaker, Ladies and Gentlemen of the House. I just wanted to address something that was commented on by a person who I respect very much, the Representative from Rockport. She actually made my case for me, really. When I first got up to speak, I talked about the impressionist of youth. The good Representative made my case. I don't know about you ladies and gentlemen, but I would do almost anything to please my father. She talked about the one case where the father was involved. They think they are doing a good thing. They are, in a way, because they are trying to keep their peers from smoking tobacco. I have always taken the position that the best way to keep teenagers from doing something you don't want them to do, is apply peer pressure. This goes way beyond that.

The second case that the Representative talked about when she talked about the process. Sure the process works wonderfully until something happens, but the main point about the second case with the process when she talked about the juvenile coming out of the store with a pack of cigarettes. They broke the law. She asks, what could we do differently? Well, there is all sorts of things. I am not in the law enforcement agency, but one of the people who spoke at the hearing was a sheriff and he had a list of possible alternatives. I am sure that our very inventive departments collaborating together can come up with a method. One of the methods that the sheriff from Somerset County mentioned was to set up a county by county line where people can report these violations and as in any investigation when evidence is gathered, a successful conclusion can result. They can do surveillance, so forth and so on.

There are all kinds of alternative methods that we can use to get at the problem. I revert back to my original testimony at the beginning when I talked about the study. If our aim is to stop teenagers from smoking, this is not the policy that we should be doing. If we just want to go after people who are selling this stuff, let's do it through stricter penalties and not using juveniles. The report I cited from the New England Journal of Medicine said the youths with these sting operations has not reduced.

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

Representative **BRAGDON**: Mr. Speaker, Ladies and Gentlemen of the House. I have heard a lot of discussion today about what is the current law in regard to sales of tobacco. What I would like to do is read to you the current statute that the last Legislature passed. "Sales to minors - prohibited. A person may not sell, furnish, give away or offer to sell a tobacco product to any person under 18 years of age. Tobacco products may not be sold at retail to any person under 27 years of age unless the seller first verifies that persons age, by means of reliable photographic identification that contains the persons date of birth. For violation of this section, there is a fine to the person who sells between \$50 and \$1,500 and to the employer of that person from \$50 to \$1,500." It is just as illegal to sell to somebody underage as it is to sell to somebody 27 years or younger without looking at a photo ID. I dare say, we can enforce the law by using adults who go in and are under 27 years of age, there are a lot of law enforcement officers who fall

in this category, if they don't get ID when they go to buy tobacco, that store is in violation to the exact same extent as if they had sold to a minor. I urge you to vote against the pending motion and to support the Minority Report.

The SPEAKER: The Chair recognizes the Representative from Standish, Representative Mack.

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

The SPEAKER: The Representative may pose his question.

Representative **MACK**: Mr. Speaker, Right Honorable Men and Women of the House. I want to make sure I understand everything before I vote. Under current law, this program is in effect. These kids are running the sting operations, being used on a contract basis to entrap and go into the stores and buy tobacco. What this bill seeks to do is to disallow that so that these kids cannot be used in this manner. A yes vote would be for the Ought Not to Pass motion, which would mean that the kids can continue to be used on these sting operations. A no vote would be for the bill, against the Ought Not to Pass, and the kids cannot be used in these entrapment mechanisms. Could someone tell me if I understand things correctly?

The SPEAKER: The Representative from Standish, Representative Mack has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Winterport, Representative Brooks.

Representative **BROOKS**: Mr. Speaker, Ladies and Gentlemen of the House. In response to the question, follow my light. I didn't mean it to be funny, Mr. Speaker. Vote against the Minority Report, so that we can vote on the Majority Report. We need to bring the Majority Report to the floor so that we can vote on it. We need to dispense with the Minority Report if that is, in fact, what the Representative from Standish wishes to do.

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

Representative **PLOWMAN**: Mr. Speaker, Men and Women of the House. One of my constituents owns a hotel. This program has been in effect in various modes for several years now. The first part of these stings were against vending machines. Not only did the contractor encourage these children to buy from vending machines, but they took them into a hotel and showed them how to sneak past the front desk, told them where the maids room was, sent them into property that was not theirs to send someone to, trespassing and encouraging them to buy from the vending machine that was meant for adults only in a restricted area. They weren't supposed to be there. They were minors. They were taught not only how to break the law, but how to break several laws and were imbedded by the police officers. If that is how we are running this program, I have a real problem. I have a real problem with whoever these contractors are. I have a problem with juveniles being used. I have a problem when someone says we know of no other effective way. Try harder. Vote no.

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

Representative **MENDROS**: Mr. Speaker, Ladies and Gentlemen of the House. My seat mate, the good Representative from Bangor, Representative Bragdon, hit the nail on the head. This can be done another way as he pointed out with the law. It is pure and simple. This is exploitation of children. We pay a child \$7.50 to do this. Why? The reason why my seat mate wouldn't do it is he wouldn't do it for \$7.50 an hour. We can exploit children. They are willing to do it for \$7.50

an hour. A law enforcement agent who is under that age group would walk in to do it. They are getting a lot more than \$7.50 an hour. We are exploiting our children. We are putting our children in harms way.

I refer to this yellow sheet that the good Representative from Lewiston, Representative Mailhot, referred to. One thing that makes me very angry about this sheet is concerns about the use of juveniles. There is nothing on here that talks about safety of those juveniles, potential retribution. That is my concern, the safety of these juveniles. If it is not your concern, vote yes. If you are concerned about the safety, this doesn't respond to that, I urge you to vote no.

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

Representative **MUSE**: Mr. Speaker, Men and Women of the House. I am absolutely opposed to this piece of legislation. Back in the early '70s we heard the entire law enforcement community up in arms. They couldn't do their jobs because a law had just been passed dealing with Miranda warnings. They were furious they wouldn't be able to do their jobs. They wouldn't be able to do a thing. They were able to do their thing. They are able to do their jobs. They will be able to do their jobs just fine without utilizing our most precious resource that we have, our children. I think it is shameful. I don't believe we should be bringing children into this arena at all. I believe the police and the law enforcement community will find ways to deal with this perfectly without using our children and I would urge everybody to vote that way. Thank you.

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

Representative **SCHNEIDER**: Mr. Speaker, Ladies and Gentlemen of the House. I urge you to vote against the pending motion and stop this horrible practice of using children to enforce these laws. The federal SINAR regulations require inspections of merchants to be conducted, but they do not require the use of children to do those inspections or children to do undercover operations in the stores. In fact, the federal regulations say over and over and over again that we must not require states to use children. They go on to say that this is the most effective way. What the federal government wants is the states to own this program that uses children to conduct these inspections. If anything goes wrong with it, it is the state's responsibility and not the federal governments. The practice is exploitative and it places children unnecessarily in danger. It exploits kids by paying them to try to violate the law and by paying them to entice merchants to violate the law. What kind of a message is that sending to our children? What kind of psychological costs are our children going to pay down the road, who knows how long when they begin to think about this a little more deeply. It certainly puts children in danger by putting them in undercover law enforcement. I was a drug prosecutor for a number of years and I can tell you there is always danger in an undercover operation. That danger sometimes comes from the most unexpected sources. There are other ways to inspect merchants. Surveillance is certainly one of them. One way to do this program might be to send in young looking adults, find out where they can buy cigarettes and then conduct surveillance and find out where our young people are able to purchase cigarettes. I urge you to use your red button and vote against the pending motion. Thank you very much.

The SPEAKER: The Chair recognizes the Representative from Manchester, Representative Fuller.

Representative **FULLER**: Mr. Speaker, Ladies and Gentlemen of the House. You will note that I am on the Minority Report on this bill serving on the Health and Human Services Committee. I would remind you that youth smoking in the State of Maine is a very serious problem. We are one of the highest rates in the country for youth smoking. We are the highest state in the country for young adults who smoke. These young adults mostly start as teenagers. I have a real problem with what I see as a put down on law enforcement as a legitimate occupation and way to earn a living. We have kids working in all other fields as teenagers. Law enforcement is another field. They are not forced to do it. It is purely on a voluntary basis. Why should they not be paid for helping with law enforcement. I would remind you that it is the stores who sell these cigarettes to a young person between the ages of 15 and 17, that they will sell them the cigarettes no questions asked. They are the ones who are breaking the law. Why are we not concerned about the stores who are breaking the law. Most stores are now doing a good job as in Representative Povich's store and probably for the convenience stores for the other people in this House. However, using underage buyers levels the playing field by holding the stores that sell to juveniles accountable. This is what it is all about. They should not be selling cigarettes to juveniles. I understand they will get them some other way. Anything we can do to create a barrier to access cigarettes has to be working to reduce smoking among our young people. If stores were doing what they should be doing, then what is the problem. They are not going to get caught. Nobody is going to use entrapment. No store is found to be non-compliant and have used the word entrapment when brought to the courts. I would also point out that most of the cases that did occur, 96 percent, were settled by negotiating consent orders in 1997. In 1998, 99 percent were settled through negotiated consent orders. The fact of the matter is, the retailers did have to change their attitudes and how they were doing business. I would urge that you support the Minority Ought Not to Pass Report. Thank you.

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

Representative **BUCK**: Mr. Speaker, Ladies and Gentlemen of the House. I would like to respond to the Representative from Manchester in the fact that it is a put down when we hire these youngsters to break the law. I think that is the point right there. It is not that they are working in law enforcement, it is that we are actually having to break the law when they attempt to work in this sting. We heard some statistics bantered about here earlier in this debate about the effect of this program. It was pointed out that in 1994, we only had 44 percent compliance of stores not selling tobacco products. The speakers indicated that it was due to the success of this program that compliance now exists. I would point out that at that same time the tobacco companies, themselves, now I realize no one wants to talk about tobacco companies in a positive way because after all that is the reason we are having this debate anyway. For whatever reason, the tobacco companies themselves instituted programs throughout the nation, particularly in Maine and some New England states, to discourage the sale of tobacco to youth. I suspect that if that survey were refined enough, you would find that probably the efforts of the tobacco company themselves were probably just as effective as this sting operation.

The is another problem here as well. Those of us who are opposed to this part of the law are still in favor of discouraging young people from smoking. I can tell you as Representative

Povich can because he and I both own little mom and pop stores, that the issue is not young people coming in and attempting to buy cigarettes, the issue is they get their friends and their parents to come in and purchase tobacco products for them. I would suspect that if a survey were taken of that, you would find that probably 90 percent of the tobacco possessed by the youth in this state is either from an older friend that purchased the tobacco or a family member. If you really want to address the problem, you should think about how you are going to resolve that issue itself.

The other issue is we have had a great deal of discussion on the store owner that we are going after. Nobody wants to talk about the youngster that is in possession of the tobacco itself. There is a law. It is a civil violation that if anyone under 18 possesses tobacco, there is a fine of anywhere from \$100 to \$300. I have a question to anyone who can answer. How many people in the last year were arrested for the possession of tobacco?

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

ROLL CALL NO. 113

YEA - Baker, Berry RL, Bolduc, Brennan, Bull, Colwell, Cowger, Davidson, Dudley, Dunlap, Duplessie, Fuller, Gagne, Gagnon, Hatch, Kane, Lindahl, McGlocklin, McKee, Norbert, O'Brien LL, Pieh, Powers, Quint, Sanborn, Saxl MV, Townsend, Watson, Williams, Mr. Speaker.

NAY - Ahearne, Andrews, Bagley, Belanger, Berry DP, Bowles, Bragdon, Brooks, Bruno, Bryant, Buck, Bumps, Cameron, Campbell, Carr, Chick, Chizmar, Cianchette, Clark, Clough, Collins, Cote, Cross, Daigle, Davis, Desmond, Dugay, Duncan, Etnier, Fisher, Foster, Gerry, Gillis, Glynn, Goodwin, Gooley, Green, Heidrich, Honey, Jabar, Jacobs, Jodrey, Jones, Joy, Kasprzak, Kneeland, Labrecque, LaVerdiere, Lemoine, Lemont, Lovett, MacDougall, Mack, Madore, Mailhot, Marvin, Matthews, Mayo, McDonough, McKenney, McNeil, Mendros, Mitchell, Murphy E, Murphy T, Muse, Nass, Nutting, O'Brien JA, O'Neal, Peavey, Perkins, Perry, Pinkham, Plowman, Povich, Richard, Richardson E, Richardson J, Rines, Rosen, Samson, Savage C, Savage W, Saxl JW, Schneider, Sherman, Shiah, Shorey, Sirois, Skoglund, Snowe-Mello, Stanley, Stanwood, Stedman, Stevens, Sullivan, Tessier, Thompson, Tobin D, Tobin J, Tracy, Trahan, Treadwell, Tripp, True, Tuttle, Twomey, Usher, Volenik, Waterhouse, Weston, Wheeler EM, Wheeler GJ, Winsor.

ABSENT - Bouffard, Frechette, Martin, McAlevey, O'Neil, Shields.

Yes, 30; No, 115; Absent, 6; Excused, 0.

30 having voted in the affirmative and 115 voted in the negative, with 6 being absent, the Minority Ought Not to Pass Report was **NOT ACCEPTED**.

Subsequently, the Majority Ought to Pass as Amended Report was **ACCEPTED**.

The Bill was **READ ONCE**. Committee Amendment "A" (H-361) was **READ** by the Clerk and **ADOPTED**. The Bill was assigned for **SECOND READING** Wednesday, May 5, 1999.

By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH**.

Seven Members of the Committee on **LABOR** report in Report "A" **Ought to Pass as Amended by Committee Amendment "A" (H-354)** on Bill "An Act to Treat All Employees Equitably with Respect to Leaves of Absence for Legislative Service"

(H.P. 235) (L.D. 339)

Signed:

Senator:

DOUGLASS of Androscoggin

Representatives:

HATCH of Skowhegan

MUSE of South Portland

GOODWIN of Pembroke

FRECHETTE of Biddeford

MATTHEWS of Winslow

SAMSON of Jay

Four Members of the same Committee report in Report "B" **Ought to Pass as Amended by Committee Amendment "B" (H-355)** on same Bill.

Signed:

Senator:

MILLS of Somerset

Representatives:

DAVIS of Falmouth

MacDOUGALL of North Berwick

TREADWELL of Carmel

One Member of the same Committee reports in Report "C" **Ought to Pass as Amended by Committee Amendment "C" (H-356)** on same Bill.

Signed:

Representative:

MACK of Standish

One Member of the same Committee reports in Report "D" **Ought Not to Pass** on same Bill.

Signed:

Senator:

LaFOUNTAIN of York

Representative HATCH of Skowhegan moved that the House **ACCEPT** Report "A" **Ought to Pass as Amended**.

On further motion of the same Representative, **TABLED** pending her motion to **ACCEPT** Report "A" **Ought to Pass as Amended** and later today assigned.

Majority Report of the Committee on **LABOR** reporting **Ought Not to Pass** on Bill "An Act to Provide an Option for Employers to Pay Employees Biweekly"

(H.P. 307) (L.D. 423)

Signed:

Senators:

DOUGLASS of Androscoggin

MILLS of Somerset

LaFOUNTAIN of York

Representatives:

MUSE of South Portland

GOODWIN of Pembroke

FRECHETTE of Biddeford

MATTHEWS of Winslow

SAMSON of Jay

HATCH of Skowhegan