

MAINE STATE LEGISLATURE

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One Hundred and Twentieth Legislature
State of Maine

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SHIELDS of Auburn

READ.

Representative KANE of Saco moved that the House **ACCEPT** the Majority Ought to Pass as Amended Report.

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

Representative **SHIELDS**: Mr. Speaker, Men and Women of the House. This bill carries with it \$8 million in extra expenses added on to what we already have trouble funding. Thank you.

Representative COLWELL of Gardiner **REQUESTED** a roll call on the motion to **ACCEPT** the Majority Ought to Pass as Amended Report.

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

The SPEAKER: A roll call has been ordered. The pending question before the House is acceptance of the Majority Ought to Pass as Amended Report. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 217

YEA - Andrews, Annis, Ash, Belanger, Berry DP, Berry RL, Blanchette, Bliss, Bouffard, Bowles, Brannigan, Brooks, Buck, Bull, Bumps, Bunker, Canavan, Carr, Chick, Chizmar, Clark, Collins, Colwell, Cote, Cowger, Cummings, Daigle, Davis, Desmond, Dorr, Dudley, Duncan, Dunlap, Duplessie, Estes, Etnier, Fisher, Fuller, Gagne, Gerzofsky, Glynn, Goodwin, Gooley, Green, Hall, Hatch, Honey, Hutton, Jacobs, Jones, Kane, Koffman, Labrecque, LaVerdiere, Laverriere-Boucher, Ledwin, Lemoine, Lessard, Lundeen, Madore, Mailhot, Marley, Marrache, Mayo, McDonough, McGlocklin, McKee, McKenney, McLaughlin, McNeil, Mendros, Michaud, Morrison, Murphy E, Murphy T, Muse C, Nass, Norbert, Norton, Nutting, O'Brien JA, O'Brien LL, O'Neil, Paradis, Patrick, Peavey, Perkins, Perry, Pineau, Pinkham, Povich, Quint, Richard, Richardson, Rines, Rosen, Savage, Schneider, Sherman, Simpson, Skoglund, Smith, Snowe-Mello, Stanley, Sullivan, Tarazewich, Tessier, Thomas, Tobin D, Tobin J, Tracy, Trahan, Twomey, Usher, Volenik, Watson, Weston, Wheeler EM, Wheeler GJ, Young, Mr. Speaker.

NAY - Chase, Clough, Crabtree, Cressey, Duprey, Foster, Haskell, Heidrich, Jodrey, Kasprzak, MacDougall, Shields, Treadwell, Waterhouse, Winsor.

ABSENT - Bagley, Baker, Bruno, Bryant, Dugay, Hawes, Landry, Lovett, Matthews, McGowan, Michael, Mitchell, Muse K, Stedman, Tuttle.

Yes, 121; No, 15; Absent, 15; Excused, 0.

121 having voted in the affirmative and 15 voted in the negative, with 15 being absent, and accordingly the Majority Ought to Pass as Amended Report was **ACCEPTED**.

The Resolve was **READ ONCE**. Committee Amendment "A" (H-509) was **READ** by the Clerk and **ADOPTED**.

Under suspension of the rules the Resolve was given its **SECOND READING** without **REFERENCE** to the Committee on **Bills in the Second Reading**.

Under further suspension of the rules the Resolve was **PASSED TO BE ENGROSSED** as Amended by Committee Amendment "A" (H-509) and sent for concurrence.

Majority Report of the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS** reporting **Ought Not to Pass** on Bill "An Act to Deappropriate Funds for Dues of the Legislature and Governor and Out-of-State Travel by the Legislature"

(H.P. 860) (L.D. 1132)

Signed:

Senators:

GOLDTHWAIT of Hancock

CATHCART of Penobscot

Representatives:

BERRY of Livermore

MAILHOT of Lewiston

TESSIER of Fairfield

BRANNIGAN of Portland

ETNIER of Harpswell

JONES of Greenville

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A" (H-475)** on same Bill.

Signed:

Senator:

MILLS of Somerset

Representatives:

NASS of Acton

WINSOR of Norway

BELANGER of Caribou

ROSEN of Bucksport

READ.

Representative BERRY of Livermore moved that the House **ACCEPT** the Majority Ought Not to Pass Report.

On further motion of the same Representative, **TABLED** pending his motion to **ACCEPT** the Majority Ought Not to Pass Report and later today assigned.

The following items were taken up out of order by unanimous consent:

ENACTORS

Emergency Measure

An Act to Create the Healthy Maine Prescription Program

(H.P. 1334) (L.D. 1790)

(C. "A" H-520)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 121 voted in favor of the same and 0 against, and accordingly the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate.

Representative NORBERT of Portland assumed the Chair.

The House was called to order by the Speaker Pro Tem.

REPORTS OF COMMITTEE

Divided Report

Majority Report of the Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought Not to Pass** on Bill "An Act to Prohibit the Use of Juveniles in the Enforcement of Laws Governing Tobacco Sales"

(H.P. 14) (L.D. 14)

Signed:

Senators:

MARTIN of Aroostook

LONGLEY of Waldo

TURNER of Cumberland

Representatives:

FULLER of Manchester

BROOKS of Winterport

DUDLEY of Portland

KANE of Saco

LAVERRIERE-BOUCHER of Biddeford
LOVETT of Scarborough

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A" (H-456)** on same Bill.

Signed:

Representatives:

DUGAY of Cherryfield
O'BRIEN of Augusta
SHIELDS of Auburn
NUTTING of Oakland

READ.

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

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

Representative KANE: Mr. Speaker, Men and Women of the House. I would like to lay out for your benefit this afternoon a few facts about the program. First of all, all 50 states in our country operate a routine unannounced inspection program utilizing juveniles as part of their comprehensive smoking cessation prevention program.

This bill would prohibit the operation in Maine of the current program utilizing juveniles, which is an important part of our tobacco access control strategy as recommended by the Center for Disease Control. This is a costly bill. It is the equivalent of a \$2.5 million fiscal note. If it passes, we risk the loss of \$2.5 million in federal substance abuse funding. This would lead to the elimination of all community prevention and treatment programs in our community. These are funds that are granted by the Department of Health and Human Services and administered by our department of Mental Health.

Maine has, as we all know and have heard so much about in the last several years, the highest percentage of teen smoking in the United States. Please keep in mind that as a factor that has got to dominate our thinking as we look at this issue. The highest percentage rate of teen smoking in the US. The juvenile participation program, which we will be talking about, has been extremely successful. Since 1994 we have reduced the percentage of tobacco purchases by youth from 44 percent to 7 percent. That is significantly increasing the sensitivity and the alertness of sales personnel in selling tobacco products. Most storeowners and clerks have adapted to these new ground rules.

States that have tried to replace the juvenile program with youth over 18 years old have found problems in reducing both sales and youth smoking. The trend gets reversed for whatever reason once you use youngsters who are 18 years and older, the curve goes up in terms of the access to tobacco for young people. Juveniles who participate in the program are in no danger or threat whatsoever. One hundred and fifty thousand compliance checks were performed in the United States with no known risk.

There is being circulated to you, along with some other information, I hope, a letter from our Attorney General, which further explicates that point. Juveniles are in no risk, none whatsoever. Many of you, we all do, I suspect, feel a natural resistance to the perception of manipulation or exploitation. The sad reality, men and women of the House, is that we are dealing with the most manipulative and exploitive industry of all time, the tobacco industry. We know that now. We know it each year as suits reveal more and more the exploitations of the past. They play hard ball with us and our children and we much challenge them equally in order to protect our children.

I urge your support of the 9 to 4 Majority **Ought Not to Pass** Report of the Health and Human Services Committee and let us

send a clear message to the tobacco industry that we will fight their exploitation of our youth. Thank you Mr. Speaker.

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

Representative WATERHOUSE: Mr. Speaker, Ladies and Gentlemen of the House. The use of children for squealing and state persecution, we are like the ones that we once thought. The training of youth, young people as bait for catching merchants during sting operations carries with it a strong odor of youth education and youth heroism that is Stalinist in degree, not in degree, but certainly in spirit.

Welcome to the Maine Tobacco Prevention and Control Program. That is one of the articles that I have read in the past in dealing with this issue. Being passed around to you is two articles, one from the *Portland Press Herald*, who last year and this year support the initiative to get rid of this, what I consider, with all due respect to everybody who thinks this is a good idea, as a morally wrong policy.

Can a good reason justify a bad action? That is the question we have to ask ourselves, regardless of whether 50 other states do it or not, in the past other countries, whole populations of a country have done things that I consider to be morally wrong and I consider this to be morally wrong. This is one of those issues that is not a partisan issue. It is not a conservative issue. It is not a liberal issue. When I first heard about this, it tugged at my very innards. It was vassal reaction to this policy.

We encourage minors to solicit illegal acts, whatever those good ends we are trying to get at may justify that. I don't think you can justify that. You heard the previous speaker talk about federal block grants and that is from the SENAR amendment. No where in that amendment, if you read it or in that piece of legislation, does it say that you will lose money. It gives the states great flexibility in having these unannounced random inspections. The federal government washes its hands of a mandatory requirement of these sting operations for a very good reason. They don't like the feel or the smell of it.

You head the previous speaker also talk about an increase in compliance rates. That is true. What wasn't said was the study conducted by the *New England Journal of Medicine* on sting operations showed adolescents under 18 years old reported on a small drop in their ability to purchase tobacco and no decline in its use. Another alarming aspect revealed in the study is that while tobacco use among high school students in the three towns with no enforcement programs remained roughly level, it rose in the three towns where enforcement as measured by stings, made illegal sales less frequent. The efforts, in effect, the harder government tries to force reduction in teen smoking, the more appealing the use becomes. This policy is unsavory. It should make everybody in this House squeamish. Good intentions? Certainly. Nobody wants young people to smoke. We want our merchants to comply, but this is a horrible way of doing it.

The Child Welfare League of America, one of the countries oldest child advocacy groups said it was concerned about the undercover dangers, you heard the previous speaker say there was no danger, but here is the largest advocacy group for children in the country saying that they were concerned about the undercover dangers of children, including possible retribution. What is next? If this seems to be successful, as some proponents say it is, do we get kids to do hardcore drug sting operations? The Child Protection Society another group of people in the country who look at children's interests were concerned about the possible vulnerability of children put into that position and what might be the long-term impact on them psychologically. What kind of message are we sending to our young people if we send them into stores to do illegal acts for

good reasons? Nobody can question there is a good reason behind it.

The federal government gives states flexibility and that is the key. There is nothing in there that says that if you do not use these operations, you will lose your money. Guess what folks, as far as I am concerned, I hope the majority of the people in this House are concerned that if we have to lose our money by doing this, let's lose it. If I had \$2 million in my pocket and that is all I had, I would send it to the federal government to get rid of this policy.

In Naples, Florida, there are two enforcement programs utilized by their police department. There are undercover police officers who pose as store employees or customers to bust minors who attempt to purchase tobacco, because, guess what, if minors try to purchase tobacco, they are breaking the law. If they attempt to create a tobacco-free zone around schools, two police officers work in the schools to check identification of individuals who are smoking and appear to be under 18 years old. If they are under 18, the tobacco is taken away and they are issued a citation. Even these are pretty draconian measures if you are against a police state, but these certainly don't put the kids in danger. They don't have kids breaking the law. The other thing about the SENAR amendment and this federal legislation is both enforcement of not smoking or youth buying tobacco is you have to be 27 years old. I should say that the retailers, if you look under 27, they have to card you. That is part of the law.

One of the pieces of paper that I handed around to you is a resolution sent out when the Town of Herman first found out about this or they were approached about it. I am going to read it. I know you have it in front of you, but I think it is important to put on the record. "Resolution, whereas the federal substance abuse and mental health services administration has mandated that all states have mandatory inspection programs by next year to catch businesses that illegally sell tobacco to children and whereas the Maine Department of Health and Welfare has agreed to implement the federal rules without offering an alternative program to satisfy the federal requirements and whereas adults in Herman have been pushing for a closer relationship between our youth and law enforcement officials and have adopted the community policing efforts wholeheartedly. Therefore, we believe it is inherently wrong to involve juveniles in police sting activities and do not want Herman youth, nor their parents, nor their guardians contacted for the purpose of involvement in sting operations. Furthermore, we understand that this could mean a loss of drug and substance abuse grants to Herman, but we know there are better alternatives." It is signed by all seven members.

This legislation was before us in the 119th and passed in this House overwhelmingly. I hope you will pass it again and do the right thing like the small Town of Herman did. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Biddeford, Representative Laverriere-Boucher.

Representative **LAVERRIERE-BOUCHER**: Mr. Speaker, Men and Women of the House. At first when this practice was brought to my attention, I was not certain I agreed with it either. However, with more information, I came to believe that the juveniles practicing in the enforcement of laws governing tobacco sales is effective and safe.

Let me share with you why it works and why we should vote Ought Not to Pass on LD 14. I was originally concerned with using kids. A youth was present at the public hearing and he shared how the program works. These youth are older teens, by the way. First, parents of these older teens need to be involved and sign for them to participate in this work. Second, these older teens have training and the youth who came to testify said he felt

well prepared. Third, they are driven by an enforcement officer to and from the stores. From what I gathered from what the youth shared, that they only do a few stores a year each. Fourth, they work in distant places from where they live so they do not know the people that they are dealing with. Fifth, they can call it off at any time if they do not feel comfortable. The youth that had testified had never felt uncomfortable in the two years that he had done this work.

These older teens are of working age and their parents agree with their choice of work. We are not talking about drug busts here. We are simply allowing 16 and 17 year olds to walk into a store and try to purchase a pack of cigarettes. If they are successful, they walk out of the store with it and an enforcement adult takes it from there. If they are unsuccessful, then nothing happens. Please vote Ought Not to Pass so we can continue keeping the sale of cigarettes down so that kids in Maine will not smoke. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from St. George, Representative Skoglund.

Representative **SKOGLUND**: Mr. Speaker, Ladies and Gentlemen of the House. First, I want to thank my good friend, Representative Waterhouse, for bringing this back before the House for consideration again this year. I want to thank Representative Waterhouse for using the word squealing his afternoon. My ears pricked up at the use of that term. I waited for him to say grunting, but he didn't. There are no similarities between this bill and the one we had the other night, I suppose, on another anti-smoking issue.

I was brought up and taught that it was wicked to tempt people into doing evil. If it is wicked for an individual to entice someone else to do evil, why isn't it even more wicked for a government agency to set up people to commit crimes? You say what kind of message are we giving to our young people? I think when we use young people as secret police when we deliberately set up people who are otherwise law abiding citizens, the message they give to me is, we cannot trust our government to be 100 percent truthful. If they will set up a person to commit a crime, say this is important, the ends justify the means. Why aren't those people just as temperamentally well suited to alter evidence to give unnecessary convictions? This attitude, this atmosphere, where the ends justify the means, to me is very dangerous and very telling and very destructive to the integrity of our law enforcement officials and for the integrity of this House. If we can't be trusted, who can be?

The good Representative from Saco, Representative Kane, said that we are no longer slowing down the number of teens who are smoking. When people are on a crusade and see that they no longer can progress by normal means of education and persuasion and good example, the next step is to resort to force. More and more resort to force and that is what this is. It is using unscrupulous means as if we didn't have enough criminals already, we have got to encourage the creation of more. Don't tell me there is not fanaticism involved here.

I have been informed of an inmate, I believe, in Windham whose girlfriend, wife, fiancé smuggled in tobacco to him. Because he was caught in possession of tobacco, he is in the Super Max for possession of tobacco confined in a cell 23 hours a day for possession of tobacco. Don't tell me that is not fanaticism and extremism. They will say that that is contraband. No, that is contraband. I knew a fellow in my district who was incarcerated in the Down East Correctional Facility. He is an addicted smoker, a person with mental problems and addiction problems. When he went back to the facility, he smuggled in tobacco. He was given more time for smuggling in that tobacco, than he had received in his original sentence. Don't tell me there is not fanaticism involved here. It is fanaticism. It is undermining

the integrity of the law and our young people are getting the message that we are giving them that the law is not to be trusted. They are out to set you up. They are out to get you. I hope that you will support the good Representative Waterhouse and stop this abominable practice of using children as little secret police. Thank you.

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

Representative KANE: Mr. Speaker, Ladies and Gentlemen of the House. Listening to my good friend from St. George, I was almost persuaded myself that I had been led astray by the fanaticism of the age and that we are criminalizing our children and criminalizing store vendors. Let's make no mistake about it, ladies and gentlemen, this is not about trust. This is not about criminals. This is civil violation if at all. There is nothing about criminalizing here. What would be criminal in my judgment, ladies and gentlemen, is if we did not protect our kids who are getting hooked. The highest rate of teen smoking in the country are our kids. They are getting hooked now and they are going to pay the price and we are going to pay the price. Every state in the country has adopted this practice. This is not criminal. This is not fanaticism. This is commonsense. This is protecting our kids from the devastating affects of tobacco. These rules and regulations and systems that are in place utilizing juveniles are not setting up either the storekeepers to commit crimes or setting up the kids. It is merely carrying out our responsibility to protect our kids. I urge us not to refrain the issue from what it really is, the life and death and health of our kids to trust, distortion, setting up our kids. Thank you.

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

Representative SNOWE-MELLO: Mr. Speaker, Ladies and Gentlemen of the House. I can't believe what I just heard. That amazes me. That truly amazes me. I do not believe that we should be employing children to do undercover jobs in the State of Maine and that is what this is. There are no two ways about it. These are undercover jobs. In my opinion, two wrongs do not make a right. Doing this type of operation is similar and I am going to say this and it is going to seem very harsh, but I am part English and part German and it is a part of history I am not very proud of. Doing this type of operation is similar to what Hitler did with the youth in Germany. Yes, it is. When he turned the children to spy on their parents. Also, in Afghanistan children are used as spies to work for the Communist Party. Did you know that when Hitler first took office the first thing he did was to ban smoking? Ladies and gentlemen, do you know why he did that? He did that because it was a way to control his people. You may say that this response to what I am saying is this statement is harsh and extreme. Remember that it is a draconian solution that far exceeds the nature of the problem. Ladies and gentlemen of the House, is this a part of history that you want to repeat?

So often we say that when we want to pass a bill, I have said it too, well, the rest of the country does it. Guess what? This is one time that I don't want Maine to be like the rest of the country. They say that kids enjoy doing this. Since when do children really know what is best for them? I don't think they do in this instance. I truly cannot understand why a parent would allow their children to do this for a job? It is unbelievable. This program is not a mandate by the federal government as was mentioned before by Representative Waterhouse. He said that the SENAR amendment leaves it to the state to determine how to catch illegal sales. Truly, do you really believe that the end justifies the means in this matter? I certainly do not. I hope you agree with me.

I believe that this operation is contradicting what our state has strived to do in our efforts to protect and nurture our children. We have been working in the House going on five years, everything that we have done on the Health and Human Services Committee was to protect our children our children from harm and to keep them healthy. What is wrong with our society when we strive to steal the innocence away from our children? I really believe that is what we are doing here. Let us do the right thing for our children and vote yes for LD 14 and oppose the pending motion. Let us say no to the money. That is all this is, is money issue. I am starting to believe the old saying that money is the route to all evil. I really think in many cases it is. Please think before you cast your vote and cast your vote for keeping our children safe. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Portland, Representative Dudley.

Representative DUDLEY: Mr. Speaker, Men and Women of the House. The Representative from St. George, Representative Skoglund, mentioned that these storeowners are otherwise law abiding. That quote reminds me of something that a former mayor of the nations capitol used to say regarding the rates of crime there, which were actually pretty good if you don't take into account the murders.

I must agree that there is a matter of evil to be discussed here today. Tobacco related disease will kill approximately 400,000 Americans this year. It killed as many last year and the year before that. More Americans die from a tobacco related disease than they do from AIDS, alcohol, cocaine, heroin, homicide, suicide, car crashes and fires combined. Seven Maine people die every day from tobacco related disease.

Since our concerns here today are about children and the safety of our kids, let's talk about them in particular. Over one-third of Maine's young adults are tobacco addicted. The vast majority of them began smoking while under age 18. In fact, most people addicted to tobacco began smoking prior to age 18. One-third of these same young adults will eventually die an early death from a disease caused by their tobacco addictions. Their children will be 75 percent more likely to become tobacco addicted. Tobacco companies are using our children to guarantee profits from lifetime good customers. Knowing this as we do, why shouldn't we try to protect them? Is it immoral to allow volunteer high school age kids who have parental consent to help police against the evil of tobacco related disease? Of course it isn't. It is positively engaging young people in civic life and it is saving lives. The fact is that these random, unannounced inspections are part of a multi-pronged effort recommended by the Centers for Disease Control, the strategy includes media campaigns, school and community interventions, the creation of smoke-free environments and tobacco law enforcement. This strategy works. Since 1997, tobacco consumption in Maine is down 17 percent and tobacco addiction rates among high schoolers are down by 27 percent.

Regarding the SENAR amendment, which is the origin of the federal requirement for tobacco enforcement, the SENAR amendment doesn't say, the Representative from Bridgton is correct, that we must use minors in tobacco enforcement. What it does say is that if our tobacco buy rates among that population goes above 20 percent, then we are going to lose 40 percent of our funding from the federal government, which is \$2.5 million.

It is interesting to point out that prior to 1997, prior to initiating this program, that tobacco buy rate among this population was over 40 percent, twice that of the SENAR amendment requirement. Thank you Mr. Speaker.

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

Representative **MENDROS**: Mr. Speaker, Ladies and Gentlemen of the House. I would ask for members to think what would happen to a set of parents who would take their minor child, have them perform illegal activities, put those children at risk so that they can make a profit? I think another section of the Department of Human Services would probably be paying those parents a visit. We are saying it is okay for us to do it for our purposes. I passed around a yellow sheet of paper and I will read from it. The section of law that talks about selling to minors, a person may not sell, furnish, give away or offer to sell, furnish or give away tobacco products to any person under 18 years of age. It goes on, tobacco products may not be sold at retail to any person under 27 years of age unless the seller first verifies that person's age by means of reliable photographic identification containing a date of birth.

This sting that we are doing can be done by people over 18. There is no need to exploit children. The law is the same whether you sell to a 26 year old without asking for an ID or a four year old without asking for an ID. It is the same law. It is the same violation. I think that is why it was written that way, so we don't need to exploit children. That is what we are doing. We are exploiting them and putting them at risk and there is no need to do it. As a matter a fact, if you use somebody older, they are less likely to be carded so you are going to be even more efficient.

As far as the safety issue goes, I will tell you a little story about safety and trying to stop crime. One of my roommates in college, his girlfriend had the opportunity to be safe and stop crime in a sting type of operation. She worked at the Big Apple about a dozen years ago. They knew that someone was going to come in and rob the store. They had a police officer who would be around keeping an eye on the place. She agreed to work. She was 19. She wasn't a minor, but she agreed to work late that evening knowing someone was going to come in and rob the place, knowing that there would be a law enforcement officer nearby. You may have heard of her, her name was Melissa Roy. She was stabbed to death by that person while the police officer had gone over to Burger King to get a soda. That is how safe people are when they are engaged in sting operations.

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from Kossuth Township, Representative Bunker.

Representative **BUNKER**: Mr. Speaker, Men and Women of the House. It has been quite a long debate up to this point and quite honestly I am trying to figure out where some of these comments are coming from in the relating of stuff to Hitler and the sting operations where robberies are involved. Ladies and gentlemen, we have been doing this for six or eight years now. Has anybody come out of the woodwork other than the person that gave that cigarette to a child? We are talking about adults violating the law. You guys turn it all around that we are going to protect our children and that this whole issue is about protecting our babies and our children and our minors from doing something that is immoral. I think that is a bunch of crap. It is just crazy here folks. You know, these children, I don't know what kind of school you attend, it must be some kind of fantasy school, because there is not a child out there above the age of 10 or 12 that can't point you to the right store to buy cigarettes. If you don't think that those kids need to be involved in helping us to control and to deter this, you are talking to the wrong people. Watch the commercials on TV, the ones where the kids say, mommy, daddy, you have to tell me. You really have to talk to me. You have to tell me this is wrong. Ladies and gentlemen, the neat part about this is the children are involved. There are

select groups of kids that volunteer. They say that they want to be part of the cure. They want to help. They want to be able to go and buy these cigarettes to stop these guys because they know who they are.

You bring up the laws. The yellow sheet on the desk here, the reason why the second section about the 27 had to be added is because a 17-year-old young lady looks like she is 22 and the guy that sold the cigarettes says, but I thought she was 18. It is the old rape argument, ladies and gentlemen. Well, I thought she was 18 and then you get off. You go through a trial. It is just one layer on top of the other. What they have done is they melded two pieces. One, they should be under 18. It is very solid, it is a pinch there whether it is criminal or civil. The other thing is they shouldn't have any kind of argument to say well I thought she was 22 or he was 23. He looked older. He had a mustache. The two pieces are melded together for a good reason. It was very, very difficult to enforce tobacco products. For us to be sitting here with the debate way over to the left and way over to the right, our kids are a heck of lot smarter than you and I give them credit for. I think those kids that want to be involved to help stop the adults. The only ones complaining about this bill that has been in effect for six to eight years is the adults that got caught. Ladies and gentlemen, those adults ought to know better and these kids ought to be able to work hand in hand with our adults to stop adults that should know better. Thank you.

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

Representative **PERRY**: Mr. Speaker, Ladies and Gentlemen of the House. I just wanted to rise for just a second and tell you why this program doesn't work. I wasn't going to speak, but after listening to my good friend from Portland, Representative Dudley, I agreed with almost everything he said. That is why I thought it was important that I speak about how terrible tobacco and addiction and when kids get addicted. That is absolutely true. That is why we need enforcement that works. As my good friend from Kossuth Township said, this has been around six or eight years. Everyone is on to it. We went through the procedures a little while ago. They take them to an area where they don't know anyone. Okay, if you are a merchant and you want to make a profit by selling to minors only sell cigarettes to the kids you know. They only travel in pairs. They have someone buying and they have a witness. They only sell cigarettes to kids who come in by themselves. If you ask them if they are 18, they have to tell you no. If you ask them and you know they are lying, so what, sell them the cigarettes. If people want to break the law and make money by selling to minors, they are going to do it. Everyone is on to their system. One store gets checked and they call all the other stores in the neighborhood. They are on to it. I see kids everywhere, obviously under age, smoking cigarettes. Why not bust the kids? Hit them in the pocketbook. Then ask them where they did they buy the cigarettes and take them back and set them up where the problem is. These random checks, they are easy. It is not a lot of work. They drive around. They send them in and 99 percent of the people comply. They bust a few people. It is not working anymore. It is time to move on. Thank you.

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

Representative **WATERHOUSE**: Mr. Speaker, Ladies and Gentlemen of the House. Very briefly, the Representative from Kossuth Township, he talked about this lobbying around for quite awhile. Not too long ago there was a law on the books for 40 years in the State of Maine and it actually had to do with one of the towns that I represent in a lawsuit. The Maine Supreme Court with one descending vote found it to be constitutional and

it went all the way to the Supreme Court and the Supreme Court said it was unconstitutional and in violation of the interstate commerce laws. So much for laws being around for a long time being worth anything. There are a lot of things that have happened in our past when we have had laws that were around for quite a long time that we knew to be wrong. We got rid of them. Nobody is arguing these programs don't work. In as far as mentioning other countries or Germany or anything like that, I think the point was trying to be made that this is very efficient. Nobody is questioning whether it is efficient. The point being, I don't want to put words in other people's mouths that use Germany, they had efficient measures too. This is just plain wrong. We talked earlier about statistics and we mentioned children. We are always using children to push and pass issues, but the point is children don't die from tobacco use. If they have a problem, it comes about when they become adults. If this is so serious that we warrant this kind of policy, which I think is atrocious, let's do the honest thing. For those of you who think it is that serious, I have heard people say that tobacco is worse than heroin and more addicting than heroin, guess what, heroin is illegal. Let's, for those of you who want to take this position with the health issue and so forth, do the honest thing, come up here and put in legislation to outlaw the sale of tobacco. Don't tell me prohibition doesn't work. We have it on the books now. We have it for heroin, marijuana, crack and so on and so forth. This is the easy way out. Under the SENAR amendment, they give us alternatives, but guess what? This is the most effective, the most efficient. There is money involved. Mr. Speaker, I ask for the yeas and nays.

Representative WATERHOUSE of Bridgton **REQUESTED** a roll call on the motion to **ACCEPT** the Majority 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 PRO TEM**: The Chair recognizes the Representative from Turner, Representative Jacobs.

Representative **JACOBS**: Mr. Speaker, Ladies and Gentlemen of the House. Very quickly, it is not very often that I am going to vote probably with the Representative from Bridgton, but this is one of them that I am going to. It is because I have been sitting here trying to put it into words why this doesn't sit right, right here. I feel that it is morally wrong to use underage children to catch people doing something wrong, plus pay them for it. I don't know about you, but I have tried to teach my children to be honest, straightforward and never deviate. You are up front. You do what is right no matter what. This is the deviousness about this that I can't swallow. I will be voting against the Ought Not to Pass. Thank you.

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

Representative **FULLER**: Mr. Speaker, Ladies and Gentlemen of the House. I realize this debate has gone on for a long time and I will try to be brief. However, I just need to speak up on behalf of this issue because I would be proud to have my kids helping to enforce our tobacco laws against youth buying tobacco. The random unannounced program, which we have in Maine is run by the Attorney General's Office is one of the most effective programs that we have to combat youth smoking. It is not an abuse of young people. They are not at risk. Rather it teaches them valuable civic lessons. It is part of our law enforcement process. The youth have their parent's permission. They are trained to work with other adults and law enforcement officers and they need to be, when they try to buy tobacco products, underage or they will not be able to find the people selling the product to an underage person guilty. Checking an ID

card and actually selling tobacco to a minor are two different issues.

The program is not a threat to any storeowner or operator who complies with our state laws. We are talking about morally wrong things. Is it morally wrong for people to sell tobacco to minors? It is wrong for letting our kids get hooked on tobacco, which they can do very, very quickly. Let me also point out that compliance inspections are not secret. All licensees were notified in writing, at least twice by the state and once by the Food and Drug Administration, that compliance investigations were ongoing and that underage individuals would participate and of the penalties sought for violations. There is extensive training of all of the participants. They are not there to entice a sale, but rather to find out if retailers inclined to be lax and sell tobacco without checking the age of the buyer. If we are attempting to encourage sales, I would suggest that we are doing a very poor job as evidenced by Maine's very low rate of sales.

Third, it was suggested that these compliance checks are inherently dangerous. They are not. I would also point out again in 1994 or 1995, 44 percent of Maine stores were selling tobacco to underage buyers. Last year this figure had been reduced to only 6 percent. The use of youth in enforcing tobacco sales is very effective and although the SENAR amendment does not require the use of youth, they specifically, the Substance Abuse and Mental Health Services Administration of the Department of Health and Human Services have stated that the use of minors under the age of 18 to attempt to purchase tobacco products is recommended as the most reliable method for states to estimate retailer non-compliance rates with a state use tobacco access law.

Again, I would be proud to have my children participate in this program and now my grandchildren if they wanted to do this work, I would be proud to have them doing it. Thank you.

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from Baileyville, Representative Morrison.

Representative **MORRISON**: Mr. Speaker, Ladies and Gentlemen of the House. I guess I would have to say ditto to Representative Skoglund and Representative Waterhouse on what they said. Just a couple of remarks I would like to add. I think it was reassuring to know that we are only going to use older teens. I heard that. I am not sure why we aren't using 10, 11 or 12 years old. I understand these pre-teens are getting involved in smoking. Why not stop the problem where it starts? Let's get 11 or 12 year olds involved. Let's put them undercover, not just use the upper teens, whatever those figures are, 15, 16, 17 or 18. I am not sure what the upper teen limit was supposed to be. I would probably consider myself anti-Mainer or anti-American because I certainly wouldn't have let my kids get involved in this. The police come up and said, can we use your boys or girls to go undercover? I would say no as a parent. I suppose I should respect those that are out there doing their duty and letting their kids get involved in this type of thing. It is convenient. It is expedient, but it is wrong. I heard it is a civic's lesson. I dealt with kids in school. I have been a school person and we did deal with civics in school. This didn't happen to be part of it. We have to add another chapter to our civic's book I guess. One last thought, I wonder if there are other crimes out there that we could get our kids involved with and really get out there and help us solve? We could use them for alcohol use or abuse. I think we really ought to get our kids involved. They could really help solve a lot of our criminal problems in this country. I say it is wrong and we shouldn't allow it. Thank you.

The **SPEAKER PRO TEM**: The Chair recognizes the Representative from Livermore, Representative Berry.

Representative **BERRY**: Mr. Speaker, Men and Women of the House. I don't have any divided reports on my own

committee, so I had to get involved in some other way. I just want to start by saying that I certainly appreciate and respect the opinions and people's beliefs and why they might support this legislation. I would also say that I do disagree. I think it is misleading when we try to use examples of what dangers we might be putting these young adults in. It is no more dangerous to walk into the local corner store to buy cigarettes than it is to go in and buy a cola or a candy bar. They are not in any more danger down at your local corner market. It is probably more dangerous for them to be mowing lawns.

The young people that I have seen in my community, on the one hand, we have got more teen smoking than I have ever seen. I was surprised to go on a trip with a senior class a couple of years ago and see how many that have taken up smoking at that age. I am also surprised and encouraged by the teenagers in school programs where students are becoming involved in the communities. They are volunteering. I have students that have come onto the fire department before. I know that I have a niece that has worked by going on to the schools and has been involved in the education campaigns to help stop smoking and to get merchants to not display cigarette advertising the way they may have. If my son came to me and said I would like to be involved in this program, what do you think? I would say that if you are willing to do that and go out and help discourage the sales of cigarettes to minors, I would support that. I would support his actions. He has been bullied in the schools and I have tried to teach him to stand up for himself, stand up for his rights, not by fighting back, but by other means in stopping the negative behavior.

I think the word fanaticism was mentioned earlier. I think the fanaticism has come from the tobacco companies over the years in their marketing and sales. The government has been involved in spreading the use of tobacco through the military since way back distributing cigarettes to the troops. We are doing it and I think that we should continue to allow young people to be involved in changing the way we do things. All they are checking on is a simple act of are they being asked for an ID when they buy cigarettes. I don't see where that is so dangerous in our own community markets and stores. Thank you Mr. Speaker.

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

Representative **SCHNEIDER**: Mr. Speaker, Men and Women of the House. I just have to say a couple of words about this. I urge you to turn on your red light by pressing your red button to stop this exploitative and dangerous program. It is exploitative. It uses our children as undercover enforcers. It causes children to break the law. It teaches children situational ethics. It shows them that sometimes it is right to do wrong. That is a difficult concept even for adults to grasp. It is dangerous. I was drug prosecutor for a number of years. I conducted hundreds of undercover buys using cooperating individuals. I can tell you that it is dangerous for people to operate as undercover enforcers. Despite all the precautions that we took in the Attorney General's Office to protect our cooperating individuals, I have had cooperating individuals threatened. I have had cooperating individuals who have been actually injured as a result of their having worked as undercover enforcers just like this program has children doing. I ask you, are we justified in sacrificing Maine's children to fight cigarette smoking? I would like each person in this chamber to ask yourself to consider whether you, as a representative of the people of Maine, want to be complicit in a program that exploits and exposes children to danger in this way? I urge you to vote red and stop this program. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from the Penobscot Nation, Representative Loring.

Representative **LORING**: Mr. Speaker, Men and Women of the House. I generally don't agree with Representative Waterhouse, although he is a good friend. However, in this situation from the Penobscot Nation's perspective, in our culture we respect our elders. We plan ahead for our children seven generations so we can protect our children. To me, there is something inherently wrong with using your children in such a manner. I cannot fathom a tribal council ever deliberating such a program for their children. I tell you that if I could vote, I would vote against this Ought Not to Pass motion. I would vote with Representative Waterhouse. 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. 218

YEA - Berry RL, Bliss, Brannigan, Brooks, Bull, Bunker, Colwell, Cowger, Cummings, Dorr, Dudley, Dunlap, Estes, Etnier, Fuller, Gagne, Kane, Laverriere-Boucher, Lemoine, Lessard, Lovett, Lundeen, Mailhot, Marley, Marrache, McDonough, McKee, McLaughlin, Michaud, Norbert, Norton, O'Neil, Patrick, Quint, Richardson, Simpson, Tessier, Thomas, Volenik, Watson, Mr. Speaker.

NAY - Andrews, Annis, Ash, Belanger, Berry DP, Blanchette, Bowles, Bruno, Bryant, Buck, Bumps, Canavan, Carr, Chase, Chick, Chizmar, Clark, Clough, Collins, Cote, Crabtree, Cressey, Daigle, Davis, Desmond, Duncan, Duplessie, Duprey, Fisher, Foster, Gerzofsky, Glynn, Goodwin, Gooley, Hall, Haskell, Hatch, Heidrich, Honey, Hutton, Jacobs, Jodrey, Jones, Kasprzak, Koffman, Labrecque, LaVerdiere, Ledwin, MacDougall, Madore, Mayo, McGlocklin, McGowan, McKenney, McNeil, Mendros, Michael, Morrison, Murphy E, Murphy T, Muse C, Nass, Nutting, O'Brien JA, O'Brien LL, Paradis, Peavey, Perkins, Perry, Pineau, Pinkham, Povich, Richard, Rines, Rosen, Savage, Schneider, Sherman, Shields, Skoglund, Smith, Snowe-Mello, Stanley, Sullivan, Tarazewich, Tobin D, Tobin J, Tracy, Trahan, Treadwell, Twomey, Usher, Waterhouse, Weston, Wheeler EM, Wheeler GJ, Winsor, Young.

ABSENT - Bagley, Baker, Bouffard, Dugay, Green, Hawes, Landry, Matthews, Mitchell, Muse K, Stedman, Tuttle.

Yes, 41; No, 98; Absent, 12; Excused, 0.

41 having voted in the affirmative and 98 voted in the negative, with 12 being absent, and accordingly the Majority **Ought Not to Pass Report was NOT ACCEPTED.**

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

The Bill was **READ ONCE. Committee Amendment "A" (H-456) was READ** by the Clerk and **ADOPTED.**

Under suspension of the rules the Bill was given its **SECOND READING** without **REFERENCE** to the Committee on **Bills in the Second Reading.**

Under further suspension of the rules the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (H-456)** and sent for concurrence.

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

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