

MAINE STATE LEGISLATURE

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

VOLUME II

FIRST REGULAR SESSION

May 26, 1987 to June 30, 1987

Index

The Chair laid before the Senate the Tabled and Specially Assigned matter:
 Bill "An Act Concerning the Maine Railroad Excise Tax"

H.P. 531 L.D. 715
 (C "A" H-140)

Tabled - May 26, 1987, by Senator CLARK of Cumberland.

Pending - FURTHER CONSIDERATION

(In House, May 18, 1987, the Majority OUGHT NOT TO PASS Report READ and ACCEPTED.)

(In Senate, May 21, 1987, the Minority OUGHT TO PASS AS AMENDED Report READ and ACCEPTED and the Bill PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-140) in NON-CONCURRENCE.)

(In House, May 26, 1987, that Body INSISTED.)

On motion by Senator CLARK of Cumberland, Tabled until Later in Today's Session, pending FURTHER CONSIDERATION.

Out of order and under suspension of the Rules, the Senate considered the following:

COMMITTEE REPORTS
 Senate

Committee of Conference

The Committee of Conference on the disagreeing action between the two branches of the Legislature, on Bill "An Act Concerning Proof of Insurance on School Buses"

H.P. 863 L.D. 1164

Have had the same under consideration and ask leave to report that the Senate Recede from acceptance of the Majority Ought Not to Pass Report and Concur with the acceptance of the Minority Ought to Pass as Amended by Committee Amendment "A" (H-130) and Pass the Bill to be Engrossed as Amended by Committee Amendment "A" (H-130), in concurrence

Signed on the part of the Senate:

Senator DOW of Kennebec
 Senator THERIAULT of Arostook
 Senator CAHILL of Sagadahoc

Signed on the part of the House:

Representative CLARK of Millinocket
 Representative MOHOLLAND of Princeton
 Representative STROUT of Corinth

Which Report was READ and ACCEPTED.

The Senate RECEDED from ACCEPTANCE of the Majority OUGHT NOT TO PASS Report.

CONCURRED with ACCEPTANCE of the Minority OUGHT TO PASS AS AMENDED Report and the Bill was PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-130), in concurrence.

Sent down for concurrence.

On motion by Senator DUTREMBLE of York, RECESSED until 11:00 this morning.

After Recess

Senate called to order by the President.

ORDERS OF THE DAY

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

Bill "An Act to Extend Maine's Bottle Bill"

H.P. 662 L.D. 895

Tabled - May 27, 1987 by Senator BALDACCI of Penobscot.

Pending - Motion of Senator KANY of Kennebec, to INDEFINITELY POSTPONE SENATE AMENDMENT "A" (S-89)

(In Senate, May 27, 1987, Senate Amendment "E" (S-94) READ and ADOPTED. Senate Amendment "C" (S-91) READ and ADOPTED. Senate Amendment "A" (S-89) READ.)

(In House, May 21, 1987, PASSED TO BE ENGROSSED.)

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Baldacci.

Senator BALDACCI: Thank you, Mr. President, men and women of the Senate. I appreciate the time between and the opportunity to get some clarification on this particular issue. What the problem was is there was no definition either in the Federal or State statutes. It was an area in which we were venturing into where there was no definition whatsoever of wine cooler, so nobody had anything to cling on to. What was being included in the original Bill was much broader as far as table wines than what the intention was of a wine cooler or a wine spritzer, or whatever you'd like to call it. The proposed amendment, I have discussed with the good Senator from Androscoggin, Senator Whitmore, and we are now agree on the proposed amendment which basically would set up perimeters for what in fact, would be a so called wine cooler.

I think it is appropriate. I have just talked with the Bureau of Alcoholic Beverages and they say it is fine with them. They said the argument about re-formulating beverages such as coke or whatever, to get around the Bottle Bill was quote [Insane] unquote.

That they would not re-formulate and that the alcoholic content, not only if they tried to increase it, would they have to pay more for the gross cost, but they would also get taxed on percentage of alcohol too, so they would be increasing their tax liability, so they would not be going above that particular limit.

I would hope that we could go along with the amendment that has been proposed and vote against the motion to Indefinitely Postpone. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Kany.

Senator KANY: Mr. President and members of the Senate. I hope that you do go along with the Indefinite Postponement motion. It just seems that it is entirely possible that the manufacturers would choose to have more than 7% alcohol volume, consequently they would avoid the Returnable Bottle Bill. The Senate has gone on Record as being strongly in favor of adding wine cooler containers to the Returnable Bottle Bill law. I urge you to defeat the amendment before you.

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

Senator WHITMORE: Thank you, Mr. President, men and women of the Senate. If you really take a look at the Bill that was passed, L.D. 895, and the definition within that Bill, beverage is defined as any beverage made with table wine, period. We placed a call to the Liquor Commission. Anything that had a table wine in it, we're talking about, and I hate to use names for fear of advertising purposes, but the use of Boone's Farm, any Lambrusco, a Reunite product, any of those that are flavored wines that are currently being sold by the Liquor Commission through the liquor stores, would fall under this act.

If you change it, per the amendment, and I do now support the amendment, following discussions during the recess that we had, the amendment will solve that problem. I am afraid that if we don't amend it, we're going to wrap more into this than we had intended to. Therefore, I would urge you to defeat the pending motion and vote in favor of the amendment.

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Pearson.

Senator PEARSON: Mr. President, men and women of the Senate. I truly am confused as to how I am going to vote. I really have not made up my mind. I don't drink very much, myself, I don't think I have been in

a liquor store for 15 years. I don't really know exactly what it is that is sold in liquor stores as far as wine is concerned. I did make a call yesterday to find out when you had sufficient alcoholic content and they said it was 15%. They said 15% is what they sell in a liquor store.

I did go to a store yesterday to read some labels on wine coolers. It is, as Senator Baldacci indicated, 5%, 6% was the average. I saw nothing that was above that.

My problem and one that I find myself in, and I am sincere, I don't know exactly what to do about this, is the span between 7% and 15%. The question was posed of what would happen if they reconstituted the amount of alcohol in a wine cooler and it did go over 7% and the retort was that they were not going to do that, it is too expensive. It would cost them more to do that than it would be worth. There is a part of me that says that is probably right. For this State, they probably would not do that. But, I do remember that before I came into the Legislature, there was a law that was introduced as far as boat taxes were concerned, if you had a motor that was under 10 horse power, you did not have to register your boat. The next year, Evinrude and Johnson came out with a 9.9 horse power motor and started to sell them. When we realized that was what was happening, it was almost 10 horse power, we had to change the boat registration law to cover all boats that had motors on them.

So, they did change before of that and I wonder if the wine industry would change to, for instance, 7.1% alcohol content in order to escape the definition. I don't think it is likely and maybe we could change the law, if they did, in the future. I don't think it is impossible for them to do that because other people have done those sort of things, as I have just told you, such as the outboard motor industry.

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

Senator WHITMORE: Thank you, Mr. President, men and women of the Senate. I appreciate the comments from the Senator from Penobscot, Senator Pearson, and I guess I do not share the same concerns because the decisions that are made here today are not etched in granite. If, in fact, the companies try to circumvent the law by changing the alcohol content, we can come back in another session and correct that problem very quickly. So, I do not have any problem. Initially, I came out and the Committee came out as Majority Ought Not to Pass on that Bill, and having lost that battle, it is now my intention and I agree with the good Senator from Penobscot, Senator Baldacci, it is not my intent to kill the Bill. It is also not my intent to pass a Bill, because we are dealing in unchartered waters, is going to rake everything else in along with it. I think, if we're after wine coolers, I do not have any problem with that. I fought the battle and I lost and I am not afraid to raise my white flag.

Neither am I prepared to sit back and just drag everything along with the Bill that was intended for just wine coolers. Let's pass the Bill and bring the wine coolers in and this will be one more step in the right direction, I guess, in cleaning up the litter. I don't have any problem with that. If we leave it the way it initially was passed, I think we have a problem. Again, I urge you to defeat the pending motion. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Kany.

Senator KANY: Mr. President and members of the Senate. I guess I should share with you why I was

alerted to this amendment. Ken McLeod, whom I really enjoy, as we all do, with his wonderful sense of humor and integrity, came to the Legal Affairs Committee last week while we were hearing a bill which would create major changes in our current alcohol law, and he came before the Committee with a definition of wine cooler. I said something to the effect that we will be debating wine coolers as we attempt to expand the Returnable Bottle Bill. Ken said "Oh, I am taking care of that in the Senate." Then he laughed, of course. I thought to myself, we had better watch for any amendments to come forth with this Bill, which would create a new definition of wine coolers, in which it could be a very tight definition. So that is why I looked very carefully at this. It appears to me that wine coolers are really a developing favored beverage. It is very likely that the recipe and the proportion of various ingredients will change. You heard from the good Senator from Penobscot, Senator Pearson, that he had done some research to find the current content of the volume of alcohol in wine coolers. You can see that it is fairly close to the 7%. So it is entirely possible, in fact even likely, that they might increase the alcohol content, at least a little bit, to get it above 7%, which would be defined in this particular amendment. Not only that, but the amendment talks about having more than 15% added ingredients like natural blending materials, fruit juices, etc. You could also see where that particular amount may change. I do urge you to go along with the pending motion and defeat this amendment.

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Baldacci.

Senator BALDACCI: Mr. President, men and women of the Senate. I take tremendous offense in the fact that Senator Whitmore from Androscoggin and Senator Baldacci from Penobscot could not think on their own two feet and require somebody else to come in and all of a sudden come in and pull their strings like a little puppet. The fact of the matter is Senator Whitmore from Androscoggin and myself, alone in a room with the Bureau of Alcoholic Beverages, discussed this issue. We thought about it, we talked about it amongst ourselves and we thought this would be a good idea. We fought the Bill in Committee, we fought the Bill on the floor and we lost. The Legislature wants to do it. I resent the implication that somehow there is ulterior motive, some black shadow in the hall way, out on the floor that wants to some how rain on your party. Well, the fact of the matter is, that we're trying to make the law work. So, you want to do wine coolers. We're the Committee that dealt with the issue, we're familiar with it and we have come up with a definition. I think, and I take tremendous offense to be challenged on technical amendments that are more defined on something that has never, ever been defined in Federal of State statutes, this is the first state in the Nation and we want to do it right. That, I submit to you, may not be perfect.

We may have to come back and make amendments to it. There is no question. But, right now, it is going to serve us very well in the foreseeable future. Thank you, Mr. President.

THE PRESIDENT: The pending question before the Senate is the motion of Senator KANY of Kennebec to INDEFINITELY POSTPONE Senate Amendment "A" (S-89).

The Chair will order a Division.

Will all those Senator in favor of the motion of Senator KANY of Kennebec, to INDEFINITELY POSTPONE Senate Amendment "A" (S-89), please rise in their places and remain standing until counted.

Will all those opposed please rise in their places and remain standing until counted.

3 Senators having voted in the affirmative and 29 Senators having voted in the negative, the motion of Senator KANY of Kennebec to INDEFINITELY POSTPONE Senate Amendment "A" (S-89), FAILED.

On motion by Senator BALDACCI of Penobscot, Senate Amendment "A" (S-89) ADOPTED.

On motion by Senator WEBSTER of Franklin, the Senate RECONSIDERED whereby it ADOPTED Senate Amendment "C" (S-91).

Senator TWITCHELL of Oxford requested a Division.

THE PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Webster.

Senator WEBSTER: Mr. President and members of the Senate. I would like to your attention what this amendment did. I was a little disappointed that it passed so quickly without debate. This body can decide through a division what they want to do and what this amendment does. Simply, we are going to be with the adoption of Senate Amendment "C", and what we have already done, and I hope you reconsider so we can defeat this, we are going to require that wine coolers have a 2 1/2 cent returnable charge. Currently, Maine law says only 2 cents. It seems to me that we have dealt with this issue before. I was here in the last session and we debated as to whether we should be increasing the handling fee at that time on returnable bottles. Now, we are talking about giving wine coolers an additional charge, different than any other returnable container. I would argue that everyone should be treated equally and it makes sense that if we are going to have a charge of 2 1/2 cents, then it should be uniform. I would suggest that you should support my motion to reconsider and then we can vote to defeat the amendment, as presented. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Oxford, Senator Twitchell.

Senator TWITCHELL: Thank you, Mr. President and members of the Senate. All this amendment does is establish a handling fee of 1/2 cent on all wine cooler containers. In the year of 1986, we sold approximately 200,000 cases and in 1987 we anticipate maybe selling over 300,000 cases. I have been in the grocery business for a long time and I have handled returnable bottles and cans and I want to tell you it is a mess. Not only do you have dirty cans and bottles but you have other peoples' garbage. I had never had an ant, a roach or a mouse in my store until I started taking returnable bottles. Then I had to hire an exterminator to come and he came once every month and I had to sign a contract for 6 months and he sprays my store. It is costly. This 1/2 cent is not going to kill anybody. It takes time to separate these bottles. It is a messy job. You have to hire a part-time kid, in some cases. You may have to add on to your store. Space is cramped and you may have to add on a little bit to your building. I just don't think that 1/2 cent is going to kill anybody. I hope you will vote against the good Senator from Franklin, Senator Webster's motion. Thank you.

THE PRESIDENT: The pending question before the Senate is the motion of Senator WEBSTER of Franklin to RECONSIDER whereby Senate Amendment "C" (S-91) was ADOPTED.

A Division has been requested.

Will all those Senators in favor of the motion of Senator WEBSTER of Franklin, to RECONSIDER ADOPTION of Senate Amendment "C" (S-91), please rise in their places and remain standing until counted.

Will all those opposed please rise in their places and remain standing until counted.

21 Senators having voted in the affirmative and 13 Senators having voted in the negative, the motion by Senator WEBSTER of Franklin to RECONSIDER whereby Senate Amendment "C" (S-91) was ADOPTED, PREVAILED.

THE PRESIDENT: The pending question before the Senate is the motion of Senator TWITCHELL of Oxford to ADOPT Senate Amendment "C" (S-91).

Senator WEBSTER of Franklin requested a Division.

Will all those Senators in favor of ADOPTION of Senate Amendment "C" (S-91), please rise in their places and remain standing until counted.

Will those opposed please rise in their places and remain standing until counted.

16 Senators having voted in the affirmative and 19 Senators having voted in the negative, the motion of Senator TWITCHELL of Oxford to ADOPT Senate Amendment "C" (S-91), FAILED.

Which was PASSED TO BE ENGROSSED, as Amended in NON-CONCURRENCE.

Sent down for concurrence.

Senate at Ease

Senate called to order by the President.

On motion by Senator TUTTLE of York, RECESSED until 4:45 this afternoon.

After Recess

Senate called to order by the President.

Out of order and under suspension of the Rules, the Senate considered the following:

PAPERS FROM THE HOUSE

Non-concurrent Matter

Resolve, Creating a Watershed District Commission
S.P. 261 L.D. 742
(C "A" S-65)

In Senate, May 15, 1987, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-65).

Comes from the House PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-65) AS AMENDED BY HOUSE AMENDMENT "A" (H-180), thereto in NON-CONCURRENCE.

On motion by Senator CLARK of Cumberland, Tabled until Later in Today's Session, pending FURTHER CONSIDERATION.

Non-concurrent Matter

Bill "An Act to Require Candidates Requesting Ballot Inspection to Pay for this Service"

H.P. 792 L.D. 1064

(C "A" H-147)

In Senate, May 21, 1987, PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-147), in concurrence.

Comes from the House PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-147) AS AMENDED BY HOUSE AMENDMENT "A" (H-179), thereto in NON-CONCURRENCE.

The Senate RECEDED and CONCURRED.

Non-concurrent Matter

Bill "An Act to Simplify Fees for Certified Copies of Divorce Reports"

S.P. 464 L.D. 1421

In Senate, May 21, 1987, PASSED TO BE ENGROSSED.

Comes from the House PASSED TO BE ENGROSSED AS AMENDED BY HOUSE AMENDMENT "A" (H-177) in NON-CONCURRENCE.