

MAINE STATE LEGISLATURE

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

VOLUME III

FIRST CONFIRMATION SESSION

August 21, 1987
Index

FIRST SPECIAL SESSION

October 9, 1987 to October 10, 1987
Index

SECOND SPECIAL SESSION

October 21, 1987 to November 20, 1987
Index

SECOND REGULAR SESSION

January 6, 1988 to March 24, 1988

(S-344) on Bill "An Act to Capture Sales Tax Revenues on Manufactured Housing Purchased Outside the State" (S.P. 888) (L.D. 2300).

Came from the Senate, with the report read and accepted and the Bill Passed to be Engrossed as amended by Committee Amendment "A" (S-344).

Report was read and accepted, the Bill read once.

Committee Amendment "A" (S-344) was read by the Clerk and adopted and the Bill assigned for second reading Tuesday, March 22, 1988.

Divided Report

Majority Report of the Committee on Legal Affairs on Bill "An Act to Change the Definition of Wine Coolers" (Emergency) (S.P. 803) (L.D. 2104) reporting "Ought to Pass" in New Draft (Emergency) (S.P. 959) (L.D. 2544)

Signed:

Senator:

Representatives:

DILLENBACK of Cumberland
 PERRY of Mexico
 MURPHY of Berwick
 PAUL of Sanford
 STEVENS of Sabattus
 HICHBORN of LaGrange
 TUPPER of Orrington
 MARTIN of Van Buren
 HARPER of Lincoln
 JALBERT of Lisbon

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

Signed:

Senators:

Representative:

KANY of Kennebec
 ESTES of York
 PRIEST of Brunswick

Came from the Senate with the Majority "Ought to Pass" in New Draft Report read and accepted and the New Draft passed to be engrossed.

Reports were read.

Representative Perry of Mexico moved that the House accept the Majority "Ought to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Brunswick, Representative Priest.

Representative PRIEST: Mr. Speaker, Men and Women of the House: I am always somewhat reluctant to speak on an issue where I am so clearly the minority but I think this is an important issue involving the bottle bill and I wanted to bring to your attention what I feel is a loophole in the law if this definition is enacted. This is going to cause us a lot of future problems. It is for this reason that I would ask that you vote against the Majority Report.

To understand what my concern is, you have to look at the definition which is proposed by the bill. As you recall, right now, wine coolers are covered by the returnable bottle bill. What this bill proposes is a definition of what a wine cooler is. It is important for you to understand what this definition is so you can see the difficulty with it.

The definition proposed by this bill says, "A wine cooler means a beverage which of less than eight percent alcohol content consisting of wine and three percent or more of plain, sparkling or carbonated water and fruit juice, fruit adjuncts, preservatives, coloring etcetera." What does that mean? It means that a wine cooler has got to have wine, and at least three percent sparkling water or plain water and fruit juice. Therefore, if someone adds two percent water and ups the fruit juice by one percent, that is no longer a wine cooler. That type of small reformulation of what a wine cooler is will cause the bill to fail.

I appreciate the work the committee has done, I know there was a lot of consultation made, but I think this definition is simply inadequate and will cause a lot of problems in the future. I think the matter needs to be reworked and relooked at. It is for that reason that I ask you to vote against the "Ought to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Lisbon, Representative Jalbert.

Representative JALBERT: Mr. Speaker, Ladies and Gentlemen of the House: All this bill does is to correct an error that was made when the original wine cooler bill was passed last year. Apparently there is a difference between wine coolers -- a wine cooler contains water, flavoring, juices and other additives besides the wine. But above that, you have what is called your fruit wines which has nothing but just added flavor and no water.

The problem now is, when we added the extension to conform with the new wine cooler bill, which is to take place April 1st, it was to give the storeowners and the people a chance to get ready for it. They found that in the definition of the wording, it would include your fruit wines and they are not prepared for it. That is why we have an emergency measure tacked on this bill. It does not remove anything from the wine cooler bill. Any wine coolers will still have to be returnable. But it does take what they call fruit wines -- because you have three kinds, the wine cooler, the fruit wines, and the fortified wine which you get in the liquor stores. All this does is give the small storeowners and your big markets a chance to get this program going because, as it stands now, you have different bottles of quality that look exactly alike.

I would ask that you support the Majority Report, make this an emergency measure, so they can go ahead.

The SPEAKER: The Chair recognizes the Representative from Washington, Representative Allen.

Representative ALLEN: Mr. Speaker, Men and Women of the House: I would like to provide to you a little bit of historical perspective. Last year, the so-called wine cooler bill was adopted by this House and then, when the bill went down to the Senate, it was adopted there. When the lobbyists for the wine industry found out about our actions, it was a Minority Report and, as it came out of committee, it didn't look like it had a whole lot of support but, in the course of deliberations in the Senate, in an effort to thwart or kill the bill, amendments were added. The Senate adopted both of those amendments.

One changed the effective date of the bill and the other enacted a complicated definition of wine coolers. The original bill as presented and accepted by this House, not in error and not with any misunderstanding, was simply using the word "all wine coolers will be included in the bottle law." And wine coolers are usually identified in the store by the fact that they say wine cooler on the bottle. In order to complicate the matter, the lobbyists had the amendment put on in the Senate, it was adopted and it came back to us in non-concurrence. We agreed to go along with that change thinking that, at worst, the definition provided by the lobbyists would expand the wine cooler bill, not decrease or diminish its importance, so that bill was enacted.

During the Special Session last Fall, that same lobbyist came back to this legislature with an amendment to change the effective date because that wasn't appropriate. Now this session of the legislature, he is back with an emergency measure to redefine wine coolers. Now, the original intent of the the wine cooler definition was to thwart the intent of this bill. I believe that that is still

the intent of a new wine cooler definition. The bill ended up in Legal Affairs because it attempted to define a liquor and we thought that was the appropriate place for it. It began last year in Business Legislation, it was an attempt to thwart the intention of the legislation in the Senate with two amendments, one has since been changed and this is the second attempt.

I agree with the Representative that spoke against the bill that it does, in fact, thwart the efforts and the intent of this legislature by including all wine coolers under the definition of the law.

The SPEAKER: The Chair recognizes the Representative from Berwick, Representative Murphy.

Representative MURPHY: Mr. Speaker, Ladies and Gentlemen of the House: I think probably the Legal Affairs Committee has spent more time on the definition of wine coolers than any other legislation that we have had this year. My understanding of this bill is that, when we came out with putting wine coolers under the bottle bill, we meant the wine coolers where wine was mixed with fruit juices and water. What it did actually was bring under that umbrella some wines that had no other mixture but were derived from fruit juices. Therefore, I think this clarifies what a wine cooler is. It has three percent water, it has fruit juices added to it. But, if we don't pass this bill, it will also include some wines.

If we want to include wine in the bottle bill, fine, include them all, but let's not pick them out selectively.

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

Representative COLES: Mr. Speaker, Men and Women of the House: The wine cooler was passed last year with a specific purpose in mind, it was to reduce the amount of waste we generate. It is a recycling measure to reduce the amount of waste that we have to landfill or the amount of waste that we have to burn or find other means of getting rid of.

We all know of the solid waste crisis we are facing and that measure was one small step in helping us deal with it.

Another major purpose of the wine cooler bill last year was to give us a weapon in our efforts to keep out-of-state municipal trash from being dumped in Maine.

The landfill in Norridgewock this year has applied for an expansion. If it gets a permit for that expansion, that permit is going to say by law that that landfill cannot accept any waste from any municipality anywhere which has not been subjected to a strenuous recycling and waste reduction measure as Maine law subjects Maine waste. The only measure we have right now of that nature is the bottle bill. That means that any state which has a bottle bill will be able to send its waste to Maine. But, if that bottle bill includes wine coolers and no other state that now sends municipal trash to Maine has a bottle bill that includes wine coolers, then all those states will not be able to send their trash to Maine until they also amend their laws to include wine coolers.

If we pass this bill today, we are taking away that protection and we are reopening the door to out-of-state waste in Maine.

I am very surprised to see my friend from Berwick on the Majority Report because I know of her concern about this problem.

I am afraid that the lobbyists for the bottle distributors are moving to help Maine regain its

label as the trash capitol of the northeast. I urge you to defeat this measure today.

The SPEAKER: The Chair recognizes the Representative from York, Representative Rodle.

Representative ROLDE: Mr. Speaker, Ladies and Gentlemen of the House: I would like to pose several questions to the gentleman from Lisbon, Mr. Jalbert, or anyone else who is in favor of this bill.

My first question is, since it was my understanding that wine coolers were added to the bottle bill because they cause litter, I guess my first question would be, does a bottle that has fruit and wine in it also cause litter?

Secondly, since he said that this was an emergency for storeowners, is his intention to cover this area of anti-litter in the next legislature by putting in a bill to include it?

The SPEAKER: Representative Rolde of York has posed two questions to Representative Jalbert of Lisbon who may respond if he so desires.

The Chair recognizes that Representative.

Representative JALBERT: Mr. Speaker, Men and Women of the House: In response to the request from the gentleman from York, the original intent of the bottle bill to include wine coolers was strictly to be limited to wine coolers as we all know it. It was not the intention of anyone to include other wines, any other alcoholic liquor to be in this thing. If there is to be any legislation presented to do away with all bottles, whether it be whiskey, vodka or whatever it is, that should be separate legislation. I have no objection if somebody wants to present that kind of legislative bill in the future. But what they did here, inadvertently someone worded the bill in such a way that it does include wine which goes way up to fortified wine. Time is short. You people have to conform.

I am just saying, how would they be able to implement this come April 1st, if they don't actually know what the bottles are that have to be returned. If anybody feels afterwards they can come back in some subsequent session and correct or include anything else, if somebody wants to include baby bottles, baby food, whiskey bottles, everything, that is their privilege. But at this time, all we are doing is giving a definite definition as to what is meant by wine coolers so that the storeowners, when somebody does come in and buys either a bottle of wine cooler or a bottle of fruit juice, what they call table wines, they will be able to distinguish between the two and know which one has to be returned. As it stands now, they are not ready for it and they don't know what to do. I would hope you would vote for the Majority Report.

The SPEAKER: The Chair recognizes the Representative from Rockland, Representative Melendy.

Representative MELENDY: Mr. Speaker, Ladies and Gentlemen of the House: I voted last year to include the wine coolers and yet I have the same concerns that the majority of the people on this bill are saying that they don't want to include all the wines and thereby hurt one industry by saying, more and more of you have got to bring in all these extra bottles.

I also have a real concern with what Representative Priest has just told us in terms of the percentages that defines whether something is a wine cooler or not. Could we not put an amendment on this bill that would change it so that if you are really dealing with the wines in the wine stores saying everything under 16 percent or everything under 12 percent is considered at least a wine cooler. Maybe that is the way to go instead of the

minimum the way Representative Priest has explained his concerns with the bill.

The SPEAKER: The Chair recognizes the Representative from Brunswick, Representative Priest.

Representative PRIEST: Mr. Speaker, Men and Women of the House: In fact, that suggestion was made in committee and the committee rejected it. But I think that is not a bad suggestion. In fact, this bill could be reworked but I think it needs to be reworked more than can be done with a simple House Amendment. My concern is that the existing definition, as the bill proposes, can be gotten around very easily and that, I think, can do harm to the bottle bill and increase the litter problem.

Mr. Speaker, I request a division.

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

Representative ANTHONY: Mr. Speaker, I request permission to pose a question.

My question is, if we defeat this bill, where does it leave things? That is to say, how do people that sell things that we might call wine coolers, how do they know whether they are covered by the provisions of what was passed last session?

The SPEAKER: Representative Anthony of South Portland has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from Lisbon, Representative Jalbert.

Representative JALBERT: Mr. Speaker, Men and Women of the House: In response to the Representative from South Portland, no one knows where they are going to stand, that is why we have an emergency clause on it.

The SPEAKER: The Chair recognizes the Representative from Washington, Representative Allen.

Representative ALLEN: Mr. Speaker, Ladies and Gentlemen of the House: I have a slightly different answer to that same question. When the wine manufacturers came back to the Business Legislation Committee in the Fall asking us to change -- no, they didn't want to change it, it was the storeowners that wanted to change the effective date from October back to April so that they would be ready for it prior to the influx of the summer season. The wine manufacturers know, believe me, having spoken to both of the lobbyists that represent those out-of-state corporations, they know, in fact, what bottles come under this bill. They have it clear in their mind. If they didn't, they wouldn't be asking you to change the definition.

They will be providing storeowners in the State of Maine and people who sell to storeowners temporary stickers to put on bottles and then, after that time, those bottles will be labeled just as your soda cans or soda bottles or beer bottles are now labeled with labels that are already affixed to those bottles by the time they get to the distributors and by the time they get to the store.

They know full-well exactly the letter of the law. They are prepared to implement it as of April 1st. They don't want to, they want to exclude some of those wines that are now included under the definition that was given to us by a lobbyist from the wine industry. Everyone is fully aware of the impact of this law and who is in charge of implementing it come April 1st.

The SPEAKER: The Chair recognizes the Representative from Easton, Representative Mahany.

Representative MAHANY: Mr. Speaker, Ladies and Gentlemen of the House: As the prime sponsor of this bill, those of you who supported the bottle bill in its form last year, I would like to call your

attention to the fact that there is a loophole as Representative Priest said, a loophole in this present piece of legislation before us. By specifying the percentage of water, for example, it could be adjusted, it seems to me, very easily in such a way as to circumvent the original intent of the bottle bill legislation. That possibility is something that we need to seriously consider. If we are going to pass a bottle bill, we ought to pass one that is without loopholes, it seems to me.

I appeal to each and every one of you who favored the bottle bill last year and who voted for it to take the possibility of that circumvention of the law seriously and to vote against this motion of "Ought to Pass."

If by doing that, we have to collect a few more bottles, then so be it. It would be far better that that happen than have the law circumvented and have no bottles being collected, no wine cooler bottles. I see that as a serious possibility.

Once again, I appeal to you who supported this legislation last year to vote against the pending motion.

Representative Rolde of York requested a roll call vote.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is the motion of Representative Perry of Mexico, that the House accept the Majority "Ought to Pass" Report. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 211

YEA - Anderson, Bailey, Begley, Bickford, Bost, Bott, Bragg, Brown, Callahan, Carter, Chonko, Clark, H.; Cote, Curran, Davis, Dellert, Dexter, Duffy, Dutremble, L.; Farnum, Farren, Foss, Garland, Gurney, Hale, Harper, Hepburn, Hichborn, Hickey, Higgins, Holloway, Jackson, Jalbert, Ketover, Lapointe, Lawrence, Lebowitz, Lisnik, Look, Lord, MacBride, Martin, H.; Matthews, K.; McGowan, McPherson, McSweeney, Moholland, Murphy, E.; Murphy, T.; Nicholson, Norton, O'Gara, Paradis, E.; Paradis, P.; Paul, Perry, Racine, Rand, Reed, Richard, Ridley, Rotondi, Ruhlin, Salisbury, Seavey, Sheltra, Sherburne, Small, Smith, Soucy, Stevens, A.; Stevens, P.; Strout, B.; Tammaro, Tardy, Taylor, Telow, Vose, Walker, Warren, Webster, M.; Wentworth, Weymouth, Whitcomb, Zirkilton.

NAY - Allen, Anthony, Baker, Boutilier, Carroll, Clark, M.; Coles, Daggett, Dore, Foster, Glidden, Gould, R. A.; Greenlaw, Gwadosky, Handy, Hoglund, Holt, Hussey, Jacques, Joseph, Kilkelly, Lacroix, Macomber, Mahany, Manning, Marsano, Mayo, McHenry, Melendy, Michaud, Mills, Mitchell, Nadeau, G. R.; Nutting, Oliver, Paradis, J.; Parent, Priest, Reeves, Rolde, Rydell, Scarpino, Simpson, Strout, D.; Swazey, Thistle, Tracy.

ABSENT - Aliberti, Armstrong, Cashman, Conley, Crowley, Diamond, Erwin, P.; Hanley, Hillock, Kimball, Nadeau, G. G.; Pines, Pouliot, Rice, Stanley, Tupper, Willey, The Speaker.

Yes, 85; No, 47; Absent, 18; Vacant, 1; Paired, 0; Excused, 0.

85 having voted in the affirmative, 47 in the negative, with 18 being absent and one vacant, the Majority "Ought to Pass" Report was accepted, the New

Draft read once and assigned for second reading Tuesday, March 22, 1988.

REPORTS OF COMMITTEES

Unanimous Ought Not to Pass

Representative PERRY from the Committee on Legal Affairs on RESOLVE, Authorizing Barry B. Tweedie to Bring Suit Against the State and the Town of Durham (H.P. 1715) (L.D. 2354) reporting "Ought Not to Pass"

Representative BOST from the Committee on Education on Bill "An Act Concerning Liability for the Cost of Out-of-State Education for Special Needs Students" (H.P. 1561) (L.D. 2128) reporting "Ought Not to Pass"

Were placed in the Legislative Files without further action pursuant to Joint Rule 15 and sent up for concurrence.

Refer to the Committee on Business Legislation

Representative CARROLL from the Committee on State and Local Government on Bill "An Act to Establish a System of Corporate Governance to Protect Employees and the Public from Corporate Lawbreakers and to Improve Compliance with Existing Civil and Criminal Laws" (H.P. 1790) (L.D. 2451) reporting that it be referred to the Committee on Business Legislation.

Report was read and accepted and the bill referred to the Committee on Business Legislation and sent up for concurrence.

Refer to the Committee on Aging,

Retirement and Veterans

Representative CARROLL from the Committee on State and Local Government on Bill "An Act to Make Changes in the Administration of the Maine State Retirement System" (H.P. 1764) (L.D. 2417) reporting that it be referred to the Committee on Aging, Retirement and Veterans.

Report was read and accepted and the bill referred to the Committee on Aging, Retirement and Veterans and sent up for concurrence.

Ought to Pass in New Draft

Representative HALE from the Committee on Labor on Bill "An Act Relating to Employment of Minors" (H.P. 1697) (L.D. 2330) reporting "Ought to Pass" in New Draft (Emergency) (H.P. 1868) (L.D. 2557)

Report was read and accepted, the New Draft read once and assigned for second reading Tuesday, March 22, 1988.

Divided Report

Later Today Assigned

Majority Report of the Committee on Taxation reporting "Ought Not to Pass" on Bill "An Act to Impose a Tax on Capital Gains from Speculative Land Sales" (H.P. 1689) (L.D. 2318)

Signed:

Senators: TWITCHELL of Oxford
DOW of Kennebec

Representatives: SEWALL of Lincoln
CASHMAN of Old Town
SWAZEY of Bucksport
NADEAU of Saco
DUFFY of Bangor
DORE of Auburn
JACKSON of Harrison
ZIRNKILTON of Mount Desert

SEAVEY of Kennebunkport
WHITCOMB of Waldo

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

Signed:

Representative: MAYO of Thomaston
Reports were read.

Representative Nadeau of Saco moved that the House accept the Majority "Ought Not to Pass" Report.

On motion of the same Representative, tabled pending his motion and later today assigned.

Divided Report

Majority Report of the Committee on Marine Resources reporting "Ought Not to Pass" on Bill "An Act Concerning the Volunteer Marine Patrol Program" (H.P. 1465) (L.D. 1976)

Signed:

Senator: ESTES of York
Representatives: HOLT of Bath
MITCHELL of Freeport
SCARPINO of St. George
CROWLEY of Stockton Springs
KETOVER of Portland
COLES of Harpswell
RUHLIN of Brewer

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

Signed:

Senators: TUTTLE of York
CAHILL of Sagadahoc
Representatives: LOOK of Jonesboro
RICE of Stonington
SALSBURY of Bar Harbor

Reports were read.

On motion of Representative Mitchell of Freeport, the House accepted the Majority "Ought Not to Pass" Report. Sent up for concurrence.

Divided Report

Majority Report of the Committee on Business Legislation reporting "Ought Not to Pass" on Bill "An Act Concerning the Display of Dealer Markup Stickers by New Car Dealers" (H.P. 1708) (L.D. 2345)

Signed:

Senators: BALDACCI of Penobscot
WHITMORE of Androscoggin
Representatives: REED of Falmouth
TELOW of Lewiston
HILLOCK of Gorham
STEVENS of Sabattus
LEBOWITZ of Bangor
SHELTRA of Biddeford

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

Signed:

Senator: BRANNIGAN of Cumberland
Representatives: ALIBERTI of Lewiston
ALLEN of Washington
RACINE of Biddeford

Reports were read.

On motion of Representative Allen of Washington, the House accepted the Minority "Ought to Pass" Report, the bill read once.

Under suspension of the rules the Bill was read a second time, passed to be engrossed, and sent up for concurrence.

By unanimous consent, was ordered sent forthwith to the Senate.

CONSENT CALENDAR