

# MAINE STATE LEGISLATURE

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**LEGISLATIVE RECORD**  
OF THE  
**One Hundred And Seventeenth Legislature**  
OF THE  
**State Of Maine**

**VOLUME II**

**FIRST REGULAR SESSION**

**House of Representatives**  
May 24, 1995 to June 30, 1995

Nickerson, Poirier, Poulin, Rotondi, Tuttle, Tyler, Yackobitz, The Speaker.

Yes, 88; No, 45; Absent, 18; Excused, 0.

88 having voted in the affirmative and 45 voted in the negative, with 18 being absent, the motion to Recede and Concur was accepted. Ordered sent forthwith.

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

#### ENACTORS

An Act to Amend the Laws Related to Optometry (H.P. 590) (L.D. 800) (H. "A" H-558 and S. "C" S-357 to C. "A" H-534)

An Act Regarding Narcotic Dependency (S.P. 600) (L.D. 1585) (Governor's Bill) (S. "A" S-365)

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

An Act to Reduce Tobacco Use by Juveniles (S.P. 306) (L.D. 845) (S. "B" S-361 to C. "A" S-339)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed.

On motion of Representative LIBBY of Buxton was set aside.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Buxton, Representative Libby.

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

The SPEAKER PRO TEM: The Representative may pose his question.

Representative LIBBY: Thank you Mr. Speaker. My question is, does this bill including the amendment still require that tobacco sellers obtain a license from the Bureau of Alcohol, Beverages, Tobacco Sales and Lottery Operations?

The SPEAKER PRO TEM: The Representative from Buxton, Representative Libby has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Saco, Representative Nadeau.

Representative NADEAU: Mr. Speaker, Men and Women of the House: The quick answer is yes. However, what is different about this license as opposed to liquor licenses, this is a one time license. You have it for the duration of their business unless there is a reason to talk about it.

While I am on my feet, Mr. Speaker, I would like to remind this House that although unanimous reports have not really had that much weight this year, this is a unanimous report. It came out of a subcommittee, which reports to the full committee, which had at least six different work sessions. The Maine Grocers are behind this. Every other tobacco lobby that I can find are behind this. The American Lung Association is certainly behind this. The clean air, natural resources and all of those folks are behind this.

I think this is a great piece of legislation to start with. There is a provision within the bill which says that our successors in a couple of years will review this policy. If it is working terrific, they will still review it.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Buxton, Representative Libby.

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

The SPEAKER PRO TEM: The Representative may pose his question.

Representative LIBBY: Thank you Mr. Speaker. The question is, could you explain the cost to the local retailer of the license please, to the Chair of the committee?

The SPEAKER PRO TEM: The Representative from Saco, Representative Nadeau has posed a question through the Chair to the Representative from Saco, Representative Nadeau. The Chair recognizes that Representative.

Representative NADEAU: Mr. Speaker, Men and Women of the House: I am not positive that I fully understand the question. I suspect we are talking, what is the cost of the license? The cost of the license is \$25.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Buxton, Representative Libby.

Representative LIBBY: Mr. Speaker, Men and Women of the House: I think that is a sign Mr. Speaker. I move that this bill and all accompanying papers be indefinitely postponed. I would like to speak to my motion. With all due respect to the committee, who I know spent a lot of time on this, I feel, personally, that I would like to keep the cost of business as low as possible and here, I think, again, is imposing a cost to very, very small retailers.

I stopped at a real small retailer on the way to work a couple of days ago on Route 202 in Gorham. He headed me off and talked to me a little bit about the cost to his business of what we do here in Augusta. He continued to repeatedly say, "If I get one more mandate, I am going to have to close my store." The small retailer with a long tradition, but I believe him.

If we continue to pass on these licensing fees, regulations and other types of fees, I really think we are pushing small business to the brink. On that basis, I have asked for indefinite postponement of this bill and accompanying papers. I would ask you to support my motion. Thank you.

Representative LIBBY of Buxton moved that the Bill and all accompanying papers be indefinitely postponed.

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

Representative TRUE: Mr. Speaker, Colleagues of the House: I ask you to vote against the indefinite postponement. I was the last person to sign on this bill and that may seem strange, because I have never smoked in my life. However, we really need to do something if we possibly can to prevent the young people who should not be smoking and should not even be having access to cigarettes if we can do anything to help them, I ask you and urge you to give us this opportunity.

Secondly, I know exactly what the Representative from Buxton is talking about. However, \$25 is a very, very small part of the profit that these people are making in selling these cigarettes. It would seem to be me and I believe that is why it was listed as low as it is. I think that we ought to defeat this motion and put it to rest. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from South Berwick, Representative Farnum.

Representative FARNUM: Mr. Speaker, Men and Women of the House: Here we go again, driving more

business just a quarter of a mile from my house right into New Hampshire.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Kittery, Representative Lemont.

Representative LEMONT: Mr. Speaker, Ladies and Gentlemen of the House: I rise today in opposition to the motion on the floor. I would like to share with you a little bit of where licensing came from. We felt it was important to license the local retailer so that when someone is in violation of selling to minors, we get some justification by taking them to administrative court. Administrative court is the only place you can go if someone has a license. If you go to district court, they don't have a license and you know as well as I do, the Attorney General's priority list. Someone who is selling cigarettes to minors is going to be very low on that list and would probably never get to court.

Being a local vendor and owning a small retail store, the \$25 is well worth it. It is well worth it to stop youth from possessing, purchasing and using tobacco. Let me share just a few facts with you. In Maine alone, the rate of smoking in young people is higher than in most other states. Twenty-three percent of Maine high school seniors are already smoking. Ninety-one percent of the current smokers began smoking within the ages of 10 and 20 and most are around 18 and the legal age to purchase tobacco in Maine.

I hope you all noticed the Wall Street Journal the other day, there was a full-page ad by Philip Morris, they are super concerned about youth smoking in America. They support licensing. Thank you very much.

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

Representative MURPHY: Mr. Speaker, Ladies and Gentlemen of the House: I, too, rise against this motion of indefinite postponement. I do realize \$25 is kind of high. I personally had a feeling that we should do it every year for \$2 or \$3 a year. I had a license from another state for 20 something years and that license started out at \$2 and it did happen to go to \$5. No big deal. You sent in for your license and you got it back. If I had done something illegal, such as sold cigarettes without the New Hampshire state tax on it, there is a big black market of cigarettes out there and don't think there isn't, they could come in and take that license and jobber could sell to me. That safety net is what we need so kids cannot get cigarettes.

If you don't have a license to take, no one has any control over anything. It is not exactly as I personally would have written it, but it is better than nothing. I think we should have done it each year. I think it should have been down to \$3 to \$5 each year, but it didn't happen that way. I do support this L.D. I would like to say however though, there is not a big profit in cigarettes. You carry cigarettes because it brings people into your store. There is no big profit in cigarettes, not like beer and those things. That is where your profit is. Thank you.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Caribou, Representative Robichaud.

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

The SPEAKER PRO TEM: The Representative may pose her question.

Representative ROBICHAUD: Thank you Mr. Speaker. I would pose a question to any member of the Legal Affairs Committee. Having served on that committee last year, we did take up similar issues relating to youth and smoking. One of the big difficulties we had in our discussions was that we did not get any assurance from law enforcement officials that they were enforcing any of the measures currently on the book that would help keep our young people from having access to cigarettes. I would ask any member of the committee if they had any new assurances either from the law enforcement community or from the community that will be handling this license administratively? Will this be an effective tool above and beyond what we currently have on the books?

The SPEAKER PRO TEM: The Representative from Caribou, Representative Robichaud has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Gorham, Representative Labrecque.

Representative LABRECQUE: Mr. Speaker, Ladies and Gentlemen of the House: To answer Representative Robichaud's question, one of the reasons why we wanted to put licensing in place was to put a place where it would get attention. Obviously if you have to go through district court, which is going to have a higher priority, a juvenile who has purchased cigarettes illegally or a theft or that type of thing?

If I may continue, I would also draw to your attention in the bill the word Synar Act. This is one piece of legislation that we need to put in place to help us come in compliance with the Synar Act, which gives this state 40 million dollars in grant money to help with drugs, drug information and drug education and this will fall under that. This is a piece of legislation with all of its components that falls within the restrictions of that act. If we do not come into compliance, we will begin to lose portions of that grant money, up to 40 percent. I urge you to defeat the present motion.

Representative LIBBY of Buxton moved that the Bill and all accompanying papers be indefinitely postponed.

Representative MITCHELL of Vassalboro requested a roll call on the motion to indefinitely postpone the Bill and all accompanying papers.

The SPEAKER PRO TEM: 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 members present and voting. All 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 Chair recognizes the Representative from Crystal, Representative Joy.

Representative JOY: Mr. Speaker, Ladies and Gentlemen of the House: Just a point of clarification, I think people are locked in on \$25. I would like to point out that in the amendment that replaces the bill, it says the fee for a one-time retail tobacco license was set by the department at the actual cost of processing the application and issuing the license, up to, but not exceeding \$25. I think the license may be considerably less than the \$25. Thank you.

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

Representative ROWE: Mr. Speaker, Men and Women of the House: I would like to apologize for not

rising earlier. I had a file on my desk and I apparently had an amendment in on this bill. That is what it was about and I didn't realize it. I didn't intend to hold the action up. I did want to say that I really appreciate the work that the Legal Affairs Committee did on L.D. 845. I think it is a great bill.

I testified at the public hearing. I have two children and both of them have experimented with tobacco products. I am proud to say that they are not using them today, at least not to my knowledge. They both acquired these at stores. The question was about licensing, is it going to do any good? In my testimony, I don't have it now, but I presented facts where several cities around the country have licensing and I believe there is a handful of states. Statistics do show that the use of tobacco products by minors had decreased when there is licensing for the very reasons you have heard. The store owners will work with the clerks and educate them about how to recognize young people and how to ask for identification.

I know this will do good. It is a good bill. There was a couple of things which I wish had been done, but it was a unanimous committee report. I applaud the committee and I strongly urge you to vote against the pending motion. Thank you.

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

Representative POVICH: Mr. Speaker, Ladies and Gentlemen of the House: I have a question I would like to ask.

The SPEAKER PRO TEM: The Representative may pose his question.

Representative POVICH: Mr. Speaker, Ladies and Gentlemen of the House: Under this bill, could a municipality pass a law banning the sales of tobacco products?

The SPEAKER PRO TEM: The Representative from Ellsworth, Representative Povich has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Saco, Representative Nadeau.

Representative NADEAU: Thank you Mr. Speaker. The answer is no. There is no preemption language in this bill. That would have been considered by many a "deal breaker" and it did not happen.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Freeport, Representative Hartnett.

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

The SPEAKER PRO TEM: The Representative may pose his question.

Representative HARTNETT: Mr. Speaker, Ladies and Gentlemen of the House: I am curious as to how this license would be applied to vending machines and the operators thereof?

The SPEAKER PRO TEM: The Representative from Freeport, Representative Hartnett has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Saco, Representative Nadeau.

Representative NADEAU: Mr. Speaker, Ladies and Gentlemen of the House: The answer to the question just posed is vending machines have no additional requirements than they had last year. They are still required to be in a conspicuous place, within visual eye shot of the employees. Vending machines that contain tobacco products must contain only tobacco

products. That is the same thing that was last year or the year before that.

As far as the signs, there is going to be, I believe, three-eighths of an inch sign which will say, this operation is not for the consumption of young folks. There are no requirements that weren't in existence last year.

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

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

The SPEAKER PRO TEM: The Representative may pose his question.

Representative WATERHOUSE: Thank you Mr. Speaker. I would like to know of anybody who could answer, what is the present penalty or fine for selling cigarettes to minors? How is that enforced? How will that be enforced under this law? How many violations presently are listed per year for this offense?

The SPEAKER PRO TEM: The Representative from Bridgton, Representative Waterhouse has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Saco, Representative Nadeau.

Representative NADEAU: Mr. Speaker, Men and Women of the House: Mr. Speaker, that was a series of questions. The answer as best as I can remember the questions is currently there is no real data that explains exactly how many violations there were and how many arrests were made. Quite frankly the answer to that is it is ridiculously stupid right now.

Right now it is illegal for a young person to buy tobacco products, but it is not illegal for them to have them. A couple weeks ago, when school was still in session, you could go by Cony High School and see at least 50 people congregated, smoking cigarettes and an officer can go by and there is not a darn thing they can do about it. There is no logical carry through on the whole legal aspect. There is no consistency there. That is one of the big things that this bill did. It does have consistency. As far as those numbers and those stats, we don't have that at this present time.

Part of the bill will require that the Department of Human Services shall provide to the committee having jurisdiction in this area, those facts. My successors, as I said before, will evaluate whether or not this vehicle is working. If it is, terrific. If not, they will change it.

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

Representative MURPHY: Mr. Speaker, Ladies and Gentlemen of the House: I would like to answer a couple of those questions and one in particular. What will this do to stop selling to minors? Right now, if I had a business in Maine and I sell cigarettes to a minor, which is against the law and I get caught, they can give me a big fine. There is no jail sentence to it. That is all they can do.

If I have a license, they can come in and I can get fined, but I can also lose that license. When I lose that license, no jobber in this state can sell me cigarettes. Actually you are putting me out of the business of selling cigarettes. I am going to take it a little more seriously than I am if I don't have to have a license. That is where the license makes a big difference, in my opinion. You have to have it in order for the jobbers to sell to you.

There is nothing in the law now that says that jobbers do not have to sell to me, if I get caught selling to a minor. Under a license, they can take that license and the jobbers can't sell to you. Thank you.

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

Representative WINN: Mr. Speaker, Ladies and Gentlemen of the House: I think we are suffering from a case of faulty logic here. I am sure it is the first time ever that we have suffered from a faulty case of logic. I want to point out that first of all, I am one of the most probusiness people you could ever ask for.

Second of all, if a \$25 on time licensing fee would break that business, they are going to go down anyway. Let's be real about this. I think what our focus really needs to be on is the children. I have been a smoker for 20 years. I have tried time and time and time and time again to stop, but I can't stop. I would have given anything if back then when I was in high school, sneaking around behind my parent's back, buying cigarettes at the local store, if it would have been a whole lot more difficult for me to start this habit.

I think what we also need to do is bear in mind that nicotine is one of the worst drugs we have. It is worse than morphine. It is harder to break. It is harder to kick than heroin. We are talking about a heavy duty drug here and there is no problem with licensing the selling of such a toxic drug. Let's get real here.

In closing, I would like to say that I think, on behalf of Representatives Mona Walker Hale and Priscilla Attean, that they would really appreciate it if we could wind this up quickly and ignore Representative Libby's motion and pass this bill.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Buxton, Representative Libby.

Representative LIBBY: Mr. Speaker, Men and Women of the House: I would just like to point this out to you that earlier this year I submitted a bill in front of Transportation. It was a bill which would stop the department from raising the cost of signs that small businesses put out on the roadside that give directions to the business.

The SPEAKER PRO TEM: For what purpose does the Representative rise?

Representative NADEAU: Mr. Speaker, I seriously question where this line of argument is going. If it has anything to do with Transportation, I would submit that it is probably not germane to this discussion.

The SPEAKER PRO TEM: The Chair understands that, but the Representative does have the floor and there is no real reason why he shouldn't keep it. The Chair apologizes.

The Chair recognizes the Representative from Buxton, Representative Libby.

Representative LIBBY: Thank you Mr. Speaker. I am making a connection with the cost. The cost of those signs were to be raised from \$5 to \$25 per sign per year. If there is one thing I have noticed about the hearings that we have on issues like the one we are looking at here today, it is that the small mom-and-pop grocery stores are hardly ever represented. These are important businesses. On occasion sure they come up and they have representation. They have a lobby here and there and these are important businesses. The small businesses

are just barely surviving. Sometimes they are one-and-two-person operations with just enough money for them to get by. We are looking at not just this one cost. There are a variety of costs that are all imposed on them by the state. I know you understand that.

Without taking any further of your time, ok, if this happens to pass there is a lot of good parts of this bill. I will be fighting like heck to make sure this licensing fee isn't more than \$5. We have enough fees. Want to license them and that is going to help with enforcement, well fine. I can tell you right now that the laws that we have currently are not being enforced and that is part of the problem. I think you know that. Thank you Mr. Speaker.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Brewer, Representative Fisher.

Representative FISHER: Mr. Speaker, Men and Women of the House: I have tried to stay off my feet all year long. This is a unanimous committee report. The American Lung Association supports it. Many kids were here supporting it. Tobacco people are supporting it. Storekeepers are supporting it. Let's vote on it.

The SPEAKER PRO TEM: A roll call has been ordered. The pending question before the House is that this bill and all accompanying papers be indefinitely postponed. All those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 268

YEA - Greenlaw, Joyce, Libby JD; Marshall, Nass, Rosebush, Underwood, Waterhouse.

NAY - Adams, Ahearne, Aikman, Ault, Bailey, Benedikt, Berry, Bigl, Bouffard, Brennan, Buck, Bunker, Cameron, Campbell, Carleton, Chartrand, Chase, Chick, Chizmar, Clark, Clukey, Cross, Daggett, Damren, Davidson, Desmond, Dore, Driscoll, Dunn, Etnier, Fisher, Gamache, Gates, Gerry, Gieringer, Gooley, Gould, Green, Guerrette, Hartnett, Hatch, Heeschen, Heino, Hichborn, Jacques, Johnson, Jones, K.; Jones, S.; Joy, Joyner, Kilkelly, Kneeland, Kontos, Labrecque, Lane, Layton, Lemaire, Lemont, Libby JL; Lindahl, Look, Lovett, Lumbra, Luther, Madore, Martin, Mayo, McAlevey, McElroy, Meres, Mitchell EH; Mitchell JE; Murphy, Nadeau, O'Gara, O'Neal, Paul, Peavey, Pendleton, Perkins, Pinkham, Plowman, Povich, Reed, G.; Reed, W.; Rice, Richardson, Ricker, Robichaud, Rowe, Samson, Savage, Saxl, J.; Saxl, M.; Shiah, Sirois, Spear, Stedman, Stevens, Stone, Strout, Taylor, Thompson, Treat, Tripp, True, Truman, Tufts, Vigue, Volenik, Watson, Wheeler, Whitcomb, Winn, Winsor, The Speaker.

ABSENT - Barth, Birney, Cloutier, Dexter, DiPietro, Donnelly, Farnum, Fitzpatrick, Joseph, Keane, Kerr, LaFountain, Lemke, Marvin, Morrison, Nickerson, Ott, Poirier, Poulin, Pouliot, Rotondi, Simoneau, Townsend, Tuttle, Tyler, Winglass, Yackobitz.

Yes, 8; No, 116; Absent, 27; Excused, 0.

8 having voted in the affirmative and 116 voted in the negative, with 27 being absent, the motion to indefinitely postpone the Bill and all accompanying papers was not accepted.

Subsequently, the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

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