

# MAINE STATE LEGISLATURE

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**Senate Legislative Record**  
**One Hundred and Eighteenth Legislature**  
**State of Maine**

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**Pages 1 - 980**

Bill "An Act to Amend the Tax on Pipe Tobacco and Cigars".  
H.P. 931 L.D. 1278

Tabled - February 27, 1997, by Senator **RAND** of  
Cumberland.

Pending - **REFERENCE**

(In House, February 27, 1997, referred to the Committee on  
**TAXATION** and **ORDERED PRINTED**.)

On motion by Senator **DAGGETT** of Kennebec, referred to  
the Committee on **TAXATION** and **ORDERED PRINTED**, in  
concurrence.

The Chair laid before the Senate the following Tabled and  
Later (3/4/97) Assigned matter:

Bill "An Act to Permit Municipalities to Restrict the Sale of  
Tobacco Products"  
S.P. 72 L.D. 211

Tabled - February 27, 1997, by Senator **RAND** of  
Cumberland.

Pending - motion by Senator **BENNETT** of Oxford to **ADOPT**  
Senate Amendment "A" (S-11)

(In Senate, February 27, 1997, **READ A SECOND TIME**. On  
motion by Senator **BENNETT** of Oxford, Senate Amendment "A"  
(S-11) **READ**.)

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

Senator **BENNETT:** Thank you Mr. President, fellow  
members of the Senate. I sat silent through last Tuesday's  
debate on this issue, now I rise to address this important issue. I  
rise as one who has consistently voted to diminish smoking in  
this State. I concur wholeheartedly with the intent of the bill; but,  
last week I was driven to vote no on accepting the Committee  
Report and I'll tell you why. Two years ago we established a new  
state license for the retail sale of tobacco products. That's good.  
What I object to today however, is turning over to municipalities  
the effective, regulatory authority commanded by that state  
licensing. In my opinion, we would be better served by  
consistent and top restrictions across the State than by a  
patchwork of regulations, some lax and some tough, from town  
to town. Simply put, if we at the State level choose to license a  
retail activity, we ought to regulate, at the State level, the  
activities permitted by that license. So, today I offer an  
amendment which, in my opinion, meets that concern but  
preserves the purpose of the bill. This amendment would mirror  
the provisions of our laws regulating alcohol sales, the retail  
sales of alcohol. It would replace the broad regulatory powers  
afforded municipalities in the bill with a simple choice. Either  
allow the sales of tobacco products in your town under State  
rules, or prohibit such sales completely. Like a town's choice of  
going wet or dry with alcohol, a town under this amendment  
could choose to go clear or cloudy. Under this amendment,  
towns ought to be happy because home-rule is preserved as it  
relates to the central issue of whether tobacco sales should be

allowed. Business operators ought to be happy because it  
creates no inconsistency in regulation from town to town. And I  
believe, anti-smoking advocates ought to be happy because it  
expands the battle over smoking to each community hall through  
the ultimate in pre-emption. This amendment would insure  
consistency and home-rule. I respectfully offer this amendment  
for your favorable consideration and urge its adoption. Thank  
you.

At the request of Senator **MILLS** of Somerset, supported by a  
Division of at least one-fifth of the members present and voting a  
Roll Call was ordered.

**THE PRESIDENT:** The Chair recognizes the Senator from  
Hancock, Senator Goldthwait.

Senator **GOLDTHWAIT:** Thank you Mr. President, ladies  
and gentlemen of the Senate. This amendment in no way  
satisfies my concerns about pre-emption of home-rule. Home-  
rule is not a narrow authority in which we suggest the specific  
and narrow question that a municipality may ask or may decide.  
It is a far broader authority in which the municipalities actually  
have an active role in forming the policies that they choose to at  
the local level. The suggestion has been made that we should  
pass consistent and tough regulations at the State level and I  
submit to you that this particular repeal of one or two sentences  
of statute is a very good indication of why consistent and tough  
regulations are so difficult to pass at the State or any other level.  
There's a piece of paper that came across my desk today that  
said, "Do not be strayed by the political winds". I think that's  
excellent advice. And the last thing I'd like to say on this issue is  
that according to the pre-emption language of the federal law, as  
I understand it, and I will warn you that as a non-attorney my  
understanding may be imperfect, but the letter of opinion from  
our own Attorney General says that the provision states that  
State or local governments may not regulate in areas covered by  
FD regulations in a manner which is different from, or in addition  
to, any requirement in the regulations. And I would submit that  
the amendment, as now suggested, is different from or in  
addition to those requirements and therefore, municipalities  
would not have the authority to enact such an ordinance. Thank  
you Mr. President.

**THE PRESIDENT:** The pending question before the Senate  
is the motion by the Senator from Oxford, Senator Bennett that  
the Senate Adopt Senate Amendment "A" (S-11).

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result.

#### ROLL CALL

YEAS: Senators: **BENNETT, BENOIT, BUTLAND,**  
**FERGUSON, LIBBY**

**NAYS:** Senators: ABROMSON, AMERO, CAREY, CASSIDY, CATHCART, CLEVELAND, DAGGETT, GOLDTHWAIT, HALL, HARRIMAN, JENKINS, KIEFFER, KILKELLY, LAFOUNTAIN, LONGLEY, MACKINNON, MILLS, MITCHELL, MURRAY, NUTTING, O'GARA, PARADIS, PENDLETON, PINGREE, RAND, RUHLIN, SMALL, TREAT, THE PRESIDENT-MARK W. LAWRENCE

**ABSENT:** Senator: MICHAUD

5 Senators having voted in the affirmative and 29 Senators having voted in the negative, with 1 Senator being absent, the motion by Senator **BENNETT** of Oxford to **ADOPT** Senate Amendment "A" (S-11), **FAILED**.

**THE PRESIDENT:** The Chair recognizes the Senator from York, Senator Libby.

Senator **LIBBY:** Thank you Mr. President, men and women of the Senate. I rise to oppose the measure and my reasoning has not changed too much since the last time that we debated this issue, but, I'd like to add just a few further comments to what I have explained to you before. First of all, I want to truly get across to this Body my complete condition and belief that controlling supply does not necessarily change the demand for any given product. Even in the economists logic is divided, so you may disagree with that and I would understand that. But, in my opinion, if you put more restrictions on the supply of tobacco, whether it be here at the State level or at the local level, you're not going to change the demand for the products. In order to change the demand for the product, if you want to lower the demand for the product, you're going to have to change the penalty for the use of the product. If you increase the penalty for the use of the product and also increase the penalty for providing the product to the user, those two issues, you will be successful if your goal is to reduce their level of smoking, especially among young people, you will be successful at doing that. And those are measures that I would favor. Making stores the bad guy in all of this, and that to me is what this legislation does, it is saying to the retail stores, the mom and pop stores, "Look, you're allowing the product to get into the hands of young people". Making them the bad guy in all of this is not the answer to our problems, it will not solve our problems. It instead, is one more nail in the coffin of mom and pop grocery stores around the State. Secondly is the whole issue of enforcement. We cannot enforce four hundred or five hundred different laws in the State of Maine if the towns are to go ahead and enact new provisions. And that's what I'm afraid of here; What we're going to get involved with is running around trying to enforce a problem at the retail level and not focusing in on the problem, the problem of young people smoking or using tobacco products. We need to focus on the problem, and I think we need to do that in a steadfast manner. We just have to talk about the user. So, it comes down again, to me, to be a question of personal responsibility, what will the implications of this bill be. Well, if we take the route of personal responsibility, we vote against this particular bill. If we do not, I think what you're going to see is a number of things, you're going to see first of all, people finding other ways to get the product, whether it be to cross the border into New Hampshire, or whether it be the increase in a black market for the product, or whether older folks are approached for

the product. Again, like I said, I think the penalties for those kinds of issues should be increased, if that is our social objective. So to me, I think what we've seen even in the past week, is stricter federal laws, we're making progress. Penalizing the stores won't do that, so I hope you'll join me in voting against the pending motion. Thank you.

The Chair ordered a Division. 27 Senators having voted in the affirmative and 4 Senators having voted in the negative, the Bill was **PASSED TO BE ENGROSSED**.

Sent down for concurrence.

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On motion by Senator **LIBBY** of York, **ADJOURNED**, until Wednesday, March 5, 1997, at 10:00 in the morning.