

MAINE STATE LEGISLATURE

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Senate Legislative Record
One Hundred and Eighteenth Legislature
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On motion by Senator **KILKELLY** of Lincoln, **ADOPTED**.

Sent down for concurrence.

Off Record Remarks

The Chair laid before the Senate the following Tabled and Later (4/30/97) Assigned matter:

Bill "An Act to Require the Purchaser of Tobacco Products to Produce Suitable Identification" S.P. 133 L.D. 412

Tabled - April 30, 1997, by Senator **PINGREE** of Knox.

Pending - motion by Senator **MITCHELL** of Penobscot to **ADOPT** Senate Amendment "A" (S-157) to Committee Amendment "A" (S-132)

(In Senate, April 30, 1997, Committee Amendment "A" (S-132) **READ** and **ADOPTED**. Subsequently, on motion by Senator **MITCHELL** of Penobscot, **RECONSIDERED**. On further motion by same Senator, Senate Amendment "A" (S-157) to Committee Amendment "A" (S-132) **READ**.)

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

Senator **MITCHELL:** Thank you Mr. President, women and men of the Senate. I urge you this morning to support my Senate Amendment "A", which actually adds only one line and it states, "Vending machines may be located only in areas in which minors are allowed, only when accompanied by an adult." This amendment actually conforms to the FDA regulations. What it means is that Maine does not set out and try to enact a law that is going to be more stringent than what the federal guidelines are currently asking for.

I'm asking you to support the ten vendors that we currently have in business in our state. There's two in Aroostook County, three in Penobscot, in the Bangor area, there's one each in Waterville, Augusta, Lewiston-Auburn and Scarborough. These people need to have a chance to look at how they can diversify their businesses and not be cut off immediately when there's no need of that. It also provides revenue to the small private clubs and it provides people an opportunity not to disrupt the current convenience that they have by attending these private clubs in the utilization of vending machines in those clubs. That small revenue to those clubs is important, the convenience to the older people who are smokers too. Also the factory areas, who have smoking areas, the blue collar workers that we have throughout our state, where there are only adults allowed in these lounges. It also gives them that convenience. So, I would ask you to support me on Senate Amendment "A". Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Waldo, Senator Longley.

Senator **LONGLEY:** Thank you Mr. President, colleagues in the Senate. The good Senator from Penobscot, in most ways we agree, but in terms of the vending machine, that's where we start

to differ and if I can explain my reasoning behind voting against the amendment. It's for the simple reason that, as we've heard umpteen times, we have the highest youth smoking rate in the nation. We've got to address the fact that tobacco products are available to kids and kids are getting hooked and it's costing businesses, I've heard it costs \$9,000 more per employee who smokes than the ones who don't smoke.

The long and short of it is that where those vending machines are, we could, maybe not so easily, but arguably easily just license the bartender or license the Searsport Lions Club person, who goes in and lifts the cafeteria door, and he can have a box of cigarettes behind the cafeteria counter to sell to people who are old enough to smoke. We don't want kids getting cigarettes and for that reason I'll be voting against the pending measure. I think it makes it a little bit harder for kids to get cigarettes and not that much harder for the person who wants to sell cigarettes in their establishment to find a way to get a license. They have a vending machine license, I do believe. This would just take the cigarettes out of the vending machines, put them in the hands of an adult, to make sure that those who get cigarettes are old enough to buy cigarettes. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Somerset, Senator Mills.

Senator **MILLS:** Thank you Mr. President, men and women of the Senate. We don't have too many vending machines. We have about 596 of them, I'm told. I won't venture to guess how many of them are presently located in places where minors may freely have access and how many are located in areas where minors would be more restricted. Nevertheless, it's a fairly small number, in terms of their economic impact on our state.

Several things need to be said. First of all, I don't know of anyone who carries around ten quarters in his pocket in preparation for buying a package of cigarettes. And it takes ten quarters, in my observation of these machines, to get a package of cigarettes. So you have to, if you want a package, it's late at night and what not, you'd go to the bartender and you give them a \$5 bill and he scrambles around and if he's got ten quarters, if you're lucky, you can go to the machine and get a package of cigarettes out and, fine. I have never understood why you don't just buy the cigarettes from the bartender and not bother him about the ten quarters. That way we would have face to face, a uniform policy in this state, of face to face sales, with the carding requirements that are part of both versions of this bill, and the problem would be solved. Now, by eliminating vending machines you have to ask yourself, does that mean that we're going to sell any fewer cigarettes to legitimate purchasers? No, because no one's going to drive to New Hampshire for the sake of buying a vending machine package. We would be selling as many cigarettes as we did before to legitimate purchasers. The only people who would not be able to buy cigarettes if we simply do away with these vending machines, are the kids, who actually do know how to gain entrance to these places, where vending machines are. Whether it be during the hours that the business is open or not. The studies have shown that vending machines, because there is no human being there, there's no lock on the machine ever, vending machines are one of the most frequent ways in which kids do get access to cigarettes. The sting operations that we had this past year, I'm not standing here in approval of those sting operations, I really question whether it was appropriate to use 17 year olds to go around and set up adults to violate the law, but nevertheless, the federal

government said that we should do that and we did it but the remarkable thing is, how many, many, many, I think the predominant number of violations came from kids who were quite successful at getting cigarettes from vending machines and they did so quite freely, which confirms completely with national studies that have shown that it is one of the most frequent ways in which kids buy cigarettes. So the situation is this, if we ban vending machines, people who are legitimate purchasers would buy just as many as ever, probably more conveniently because they can go right up with a \$5 bill and they can get a package from the bartender instead of through the machine, and it will cut off one of the important avenues by which children are purchasing the product. A couple of side benefits, just to tweak your interest in this issue, for some reason it always costs more to buy the cigarettes through a vending machine, \$2.50 typically. If you're buying them over a counter it's usually \$2 or under, so the legitimate purchaser will actually be paying less for the same product and I suggest you would be buying it more conveniently then through the machine, where you have to have the change in your pocket.

Another little point, we don't charge sales tax, we have a general exemption from the sales tax for vending machine sales. There are 77 paragraphs of exemptions in our sales tax law, I think this is number 34. It came along some years ago. It's a convenience exemption. Now, it's not a complete exemption because the person that owns the vending machines, as I recall, must pay the sales tax from the wholesaler but the retail price, the increment, the mark up in the like, the retail price of the cigarette package is not taxable on sales tax. Now, if we do away with vending machines, not only would the cigarettes cost less to a legitimate purchaser but ironically, the state will gain revenue from collecting sales tax on what remains of the price of the cigarettes, the difference between wholesale and retail, we will be picking up that differential. So, this bill, in its original form, should have a positive fiscal note, I don't know that it does, but it should and it's not insignificant, it's in, I think, the tens or \$20,000 or more possibly, per annum. In any case, it's not a big issue but there are hundreds of these out there. I suggest to you that by simply transferring the mode in which these products are sold, it will have no measurable impact on the economy of this state and I see no reason to adopt this amendment. Thank you.

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

Senator **LAFOUNTAIN:** Thank you Mr. President. May I pose a question through the chair?

THE PRESIDENT: The Senator may pose his question.

Senator **LAFOUNTAIN:** Thank you. This question's for anyone who could answer it. The proponents of the amendment argue that vending machines should be allowed in places such as bars or private clubs where minors are not allowed. Based upon the language in the amendment, would a factory owner be allowed to place a vending machine in a break room, provided that a notice was on the door saying no minors are allowed?

THE PRESIDENT: The Senator from York, Senator LaFountain poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Penobscot, Senator Mitchell.

Senator **MITCHELL:** Thank you Mr. President. In answer to your question, yes, they would be allowed and that was part of my original comments, to the fact that this does allow some of our factories and businesses who do have private lounges for their adult, over age 18, employees that they would have the convenience of having a vending machine on premise. I would like to respond to the good Senators from Waldo and Somerset County on their remarks.

First of all, this amendment that I'm proposing is conforming with the FDA regulation which goes into effect in August of 1997 and it also means that by us not allowing vending machines in these private clubs and private locations where adults only are admitted, that these locations would have to purchase cigarette licenses as another small expense, and also I would bring to your attention that many of these locations, for example any lounges at locations of employment, do not have bars and they do not have attendants or bartenders, and some of your private clubs that are gaming rooms don't always have their bars open at times that their members are in attendance and that would like the convenience of using a vending machine. Talking about most machines, yes, that are in areas where young teenagers are available to access that location, yes, they do purge the vending machines and they utilize them but we're talking about adult only locations that the federal FDA regulations are addressing and I'm addressing.

We're talking about parental guidance and I believe our parents do have a responsibility to monitor children when they're in those locations. And if they're strictly prohibited we need to be stricter, if we're not enforcing existing laws, that's a work around. I agree, there are minimal machines, so that means that the tax laws on these small amounts of machines that we have left is going to be a minimal tax loss. Also, I would say to you that by stricter enforcement of these laws it still is enabling, again, all our private clubs to continue functioning the way they are today and it is again, a protection of the ten vendors that are currently still in business in our state. So, in addressing these concerns, I hope you will, again, support my amendment "A" to conform with the FDA regulations in August of this year. Thank you very much. I would remind, I did request the yeas and nays on that last motion. Thank you.

On motion by Senator **MITCHELL** of Penobscot, 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 York, Senator Libby.

Senator **LIBBY:** Thank you Mr. President, men and women of the Senate. I rise today to discuss some of the, I think, the good points of the amendment in the proposal from the Senator from Penobscot, Senator Mitchell. It seems to me that in private areas where minors are not allowed, there is no opportunity, or very little opportunity, for children to access cigarettes. For that reason, it seems like a very well thought out, well reasoned amendment. So, my question is, to those who are going to vote against this, are you really going after the kids or are you going after the adults? Are you really going after children or are you trying to do something about the adults? If so, then come on out and say it.

The second thing I'd like to point out regarding this bill is that, you know, we looked at regulating vending machines on scratch tickets here in the State of Maine and if you can't see the

hypocrisy in that vote when you compare it to this one, something's wrong. I don't think we ought to be having those vending machines available where kids can get to them and I said that during the debate. I think you know what I'm talking about. They shouldn't have access, they're gambling if they can't have access to cigarettes. I was at the Shop N' Save recently and I saw kids playing with those vending machines. So, the vending machines that are out in the open and the kids that can have access to those regarding, you know, the cigarettes. All right, I'll go along with it. I'm a firm believer that changing supply isn't going to change demand anyway. These kids are going to be able to get a hold of cigarettes in a different manner but that's my own opinion and I'll just have a different opinion about the supply side and I respect that. But I'm telling you about the ultimate hypocrisy of voting one way on behalf of the state, the state that puts out those vending machines for gambling and then voting another way for cigarettes, cigarettes that are put out by private companies.

We better start thinking about some of the decisions that we're making in this Body because this is serious business. We, in my opinion, voted to keep those vending machines for the scratch tickets out there just so we could sell more of them, just so we could take in more state revenue. Now we've got this same bill in front of us which is about to be amended, I hope, that goes completely counter to that philosophy. I understand that each decision that we make in here is an individual decision and if they're separate, but gosh darn it all, this is pretty close. I hope we'll think about that. There's a well reasoned amendment. She's done a good job in putting this together. I tell you that kids can have access to these areas, so I think it's fair and let's give her some support. Thank you very much.

THE PRESIDENT: The Chair recognizes the Senator from Somerset, Senator Mills.

Senator MILLS: Thank you Mr. President, men and women of the Senate. Just a quick note. The biggest single problem, and I failed to mention this in my earlier presentation, is we have adopted a policy in this state that is implemented by this law, in either version that you choose to examine, that simply says that this product should be sold in face to face sales and I may well agree with Senator Libby from York on the sale of lottery tickets and other things, and I certainly agree with his perceptions about the effectiveness of vending machine presentations. That's exactly why the cigarette industry would like to preserve these machines as much as possible because they are effective in marketing the product.

I suggest to you that there are very few places in Maine where people under 21 are not allowed. The only place I can really think of where there's an actual prohibition against entrance are the porn shops and I'm not even sure you're checked if you go in there, I haven't been in one lately so I can't tell you but in any case there are very, very few indoor places, a couple of places in Maine, where kids are absolutely prohibited from being, even the law on bars and lounges simply says they must be accompanied upon entrance. When is the last time anybody checked that sort of thing? The biggest problem is that there is no one there as the plunger is being pulled, there is no human being there, and if there's a violation or a series, or a pattern of violations, who is blamed for that? Now, in a face to face sale, the clerk and his status are on the line and you have someone to take to task. Someone who can be trained. Someone who could know the difference between right and

wrong. Not with vending machines. And that's the problem with it.

If we do away with them and it prevents even nine kids a year from perpetuating a habit, it would save one life per year. And actually, it's three, I think it's one third of all kids who are addicted to cigarettes, out of those kids, one out of three will die from some complication arising from the addiction. It's one in nine people who will die from the epidemic that we have in this state. Thank you.

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

Senator CAREY: Thank you Mr. President. Mr. President, I would like to pose a question to the Senator from Cumberland, Senator Rand, if I may and then resume my control of the floor?

THE PRESIDENT: The Senator may pose his question.

Senator CAREY: Thank you Mr. President. To someone from Cumberland County, especially in the Portland area, could you tell me what the use of cigarettes is there, with juveniles for instance, has it gone down, is it up or where is it?

THE PRESIDENT: The Senator from Kennebec, Senator Carey poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Cumberland, Senator Rand.

Senator RAND: Thank you Mr. President. I wish I had known in advance that I would be asked this information because I do know that it is available. I'm not really prepared at this moment but I will say that we are, in Portland, enforcing the public smoking ordinance for people who are under age and it certainly has been effective in stopping smoking around the schools, and we haven't had a higher rate of truancy. So, apparently, if they are continuing to smoke, the young people in my city, they are, at least, putting it off until after school hours and they're getting away from the vicinity of the school. As I said, we are enforcing that. I couldn't tell you overall rates Senator. If you wish I can check on that.

Off Record Remarks

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

Senator GOLDTHWAIT: Thank you Mr. President, ladies and gentlemen of the Senate. I cannot give you Portland's specific statistics but I can tell you that in the State of Maine today about 25% of the adult population smokes. Maine has the highest smoking rate among young adults, age 18 to 30, in the country, at 32%, and in 1995 nearly half of our high school seniors had already smoked. We consistently have one of the highest youth smoking rates in the country. Thank you.

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

Senator **CAREY**: I thank the gentlelady from Hancock, Senator Goldthwait for her answer. It was not statewide figures that I was looking for. It was particularly Portland, because Portland, over the last several years, has received from the substance abuse people \$271,450 and those figures are a year and a half behind schedule, so that we may very well be talking \$400,000 or \$500,000 in Portland and if all it has accomplished is to keep students from smoking on the school grounds, we did it for nothing in Waterville. So, that's not a real big problem.

I'd like to bring you back to a little history of what's happened. Many years ago John Martin, a fellow from Eagle Lake, was able to get passed a one cent tax increase on cigarettes for catastrophic illness. Two years later Bonnie Post, who came from Owls Head, another citizen who became a legislator, put a five cent increase through the legislature but she removed it from the catastrophic illness area and it went on to become the substance abuse money. The federal government, about six years ago, put up \$4.1 million in the State of Maine for substance abuse, including particularly, cigarettes, not necessarily alcohol. A couple of years ago, to my knowledge, the state lost \$885,000 of that money because they weren't making what was called by then, the federal government, a good faith effort to really earn the \$4.1 million they had been given over time. And now, I understand, there's an effort to take \$1.2 million away from the state because they really haven't done enough.

I have to tell you that to the store owners in my area, they have made an effort to clear space and put vending machines in full view of the clerk at the register. I would point out to you that the most important and most valuable space in a store is, in fact, the counter around the cash register. For the little stores you're going to make a monstrous effect on their income and some of them are barely making it now with the larger supermarkets not too far away from them.

So I would hope that you could support the amendment that the Senator from Penobscot, Senator Mitchell, has proposed. It's certainly going to save a lot of people, and not necessarily those who are smoking. When I go in through the stores I particularly look for a sign on the door about the ID that's needed and if you want to buy something you've got to prove that you're of age to be able to buy it. So, that campaign is working very well at this time. Thank you Mr. President.

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:

ROLL CALL

YEAS: Senators: ABROMSON, AMERO, BENNETT, BENOIT, BUTLAND, CAREY, CATHCART, DAGGETT, FERGUSON, HALL, HARRIMAN, LIBBY, MACKINNON, MICHAUD, MITCHELL, MURRAY, O'GARA, PENDLETON, SMALL

NAYS: Senators: GOLDTHWAIT, JENKINS, KILKELLY, LAFOUNTAIN, LONGLEY, MILLS, NUTTING, PARADIS, PINGREE, RAND, RUHLIN, TREAT, THE PRESIDENT - MARK W. LAWRENCE

ABSENT: Senators: CASSIDY, CLEVELAND

EXCUSED: Senator: KIEFFER

Senator **LONGLEY** of Waldo requested and received leave of the Senate to change her vote from YEA to NAY.

Senator **NUTTING** of Androscoggin requested and received leave of the Senate to change his vote from YEA to NAY.

19 Senators having voted in the affirmative and 13 Senators having voted in the negative, with 2 Senators being absent and 1 Senator being excused, the motion by Senator **MITCHELL** of Penobscot to **ADOPT** Senate Amendment "A" (S-157) to Committee Amendment "A" (S-132), **PREVAILED**.

Committee Amendment "A" (S-132) As Amended by Senate Amendment "A" (S-157) thereto, **ADOPTED**.

Which was, under suspension of the Rules, **READ A SECOND TIME**.

Off Record Remarks

At the request of Senator **RAND** of Cumberland a Division was had. 22 Senators having voted in the affirmative and 6 Senators having voted in the negative, the Bill was **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-132) AS AMENDED BY SENATE AMENDMENT "A" (S-157)** thereto.

Sent down for concurrence.

Off Record Remarks

The Chair laid before the Senate the following Tabled and Later (5/1/97) Assigned matter:

HOUSE REPORTS - from the Committee on **TAXATION** on **RESOLUTION**, Proposing an Amendment to the Constitution of Maine to Require a Vote of 3/5 of Each House of the Legislature to Enact or Increase a Tax or License Fee. H.P. 357 L.D. 480

Majority - Ought Not to Pass (8 members)

Minority - Ought to Pass as Amended by Committee Amendment "A" (H-221) (5 members)

Tabled - May 1, 1997, by Senator **AMERO** of Cumberland.

Pending - motion by Senator **RUHLIN** of Penobscot to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report in **NON-CONCURRENCE**

(In House, April 30, 1997, the Minority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Resolution **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-221)**.)

(In Senate, May 1, 1997, Reports **READ**.)