

MAINE STATE LEGISLATURE

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More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The SPEAKER: A roll call has been ordered. The pending question before the House is acceptance of the Minority Ought to Pass as Amended Report. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 256

YEA - Ash, Baker, Berry RL, Bliss, Brooks, Canavan, Colwell, Cowger, Dunlap, Duplessie, Gerzofsky, Gooley, Hall, Jones, Kane, Koffman, Landry, LaVerdiere, Lemoine, Lessard, McKee, Mitchell, Norbert, O'Neil, Perry, Povich, Richardson, Savage, Tessier, Twomey, Watson.

NAY - Andrews, Annis, Belanger, Berry DP, Blanchette, Bouffard, Bowles, Brannigan, Bruno, Bryant, Buck, Bull, Bumps, Bunker, Carr, Chase, Chick, Chizmar, Clark, Clough, Collins, Cote, Crabtree, Cressey, Cummings, Daigle, Davis, Desmond, Dorr, Dudley, Dugay, Duncan, Duprey, Estes, Etnier, Fisher, Foster, Fuller, Gagne, Glynn, Goodwin, Green, Haskell, Hatch, Hawes, Heidrich, Honey, Hutton, Jacobs, Jodrey, Kasprzak, Labrecque, Laverriere-Boucher, Ledwin, Lundeen, MacDougall, Madore, Mailhot, Marley, Matthews, Mayo, McDonough, McGlocklin, McGowan, McKenney, McLaughlin, McNeil, Mendros, Michael, Michaud, Morrison, Murphy E, Murphy T, Muse C, Muse K, Nass, Norton, Nutting, O'Brien JA, O'Brien LL, Paradis, Patrick, Peavey, Perkins, Pineau, Pinkham, Quint, Richard, Rines, Rosen, Schneider, Sherman, Shields, Simpson, Skoglund, Smith, Snowe-Mello, Stanley, Sullivan, Tarazewich, Thomas, Tobin D, Tobin J, Tracy, Trahan, Treadwell, Tuttle, Usher, Volenik, Waterhouse, Weston, Wheeler EM, Wheeler GJ, Winsor, Young, Mr. Speaker.

ABSENT - Bagley, Lovett, Marrache, Stedman.

Yes, 31; No, 116; Absent, 4; Excused, 0.

31 having voted in the affirmative and 116 voted in the negative, with 4 being absent, and accordingly the Minority **Ought to Pass as Amended Report was NOT ACCEPTED.**

Subsequently, the Majority **Ought to Pass as Amended Report was ACCEPTED.**

The Bill was **READ ONCE. Committee Amendment "A" (H-588) was READ** by the Clerk and **ADOPTED.**

Under suspension of the rules the Bill was given its **SECOND READING** without **REFERENCE** to the Committee on **Bills in the Second Reading.**

Under further suspension of the rules the Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (H-588)** and sent for concurrence.

By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH.**

ORDERS

On motion of Representative GREEN of Monmouth, the following Joint Order: (H.P. 1357)

ORDERED, the Senate concurring, that the Joint Standing Committee on Taxation report out, to the House, a bill related to the suspension of property tax abatement appeals when a taxpayer is delinquent in paying property taxes.

READ and PASSED.

Sent for concurrence.

By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH.**

On motion of Representative O'NEIL of Saco, the following Joint Order: (H.P. 1358)

ORDERED, the Senate concurring, that the Joint Standing Committee on Banking and Insurance report out, to the House, a bill requiring a study and cost estimates by certain state agencies regarding the impact on the state budget of persons with mental illness and information on the cost-shifting to taxpayers of those costs from the private health insurance industry.

READ and PASSED.

Sent for concurrence. **ORDERED SENT FORTHWITH.**

REPORTS OF COMMITTEE

Divided Report

Majority Report of the Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought Not to Pass** on Bill "An Act to Discourage Sales of Tobacco to Minors"

(H.P. 953) (L.D. 1267)

Signed:

Senators:

LONGLEY of Waldo

MARTIN of Aroostook

TURNER of Cumberland

Representatives:

FULLER of Manchester

BROOKS of Winterport

DUDLEY of Portland

LAVERRIERE-BOUCHER of Biddeford

KANE of Saco

SHIELDS of Auburn

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A" (H-597)** on same Bill.

Signed:

Representatives:

DUGAY of Cherryfield

LOVETT of Scarborough

O'BRIEN of Augusta

NUTTING of Oakland

READ.

Representative KANE of Saco moved that the House **ACCEPT** the Majority **Ought Not to Pass Report.**

The SPEAKER: The Chair recognizes the Representative from Auburn, Representative Shields.

Representative **SHIELDS:** Mr. Speaker, Ladies and Gentlemen of the House. I see that I was listed on this as Ought Not to Pass, but I can't recall for the life of me why I would be that way. If I was, I would certainly change my mind. This bill presented itself as something that was somewhat onerous to those with excessive penalties for those who were selling tobacco products to minors or those minors who were trying to buy tobacco products. In the discussion back and forth it became apparent that people really didn't like the part of it that said that they could take away their driver's license. People didn't like the part that said that they could fine the owner double if one of his employees sold to a minor. The amendment takes away all those things. It omits any driver's license seizure and it omits any double fines for the employer, but it does keep in tact the penalty for a minor attempting to buy tobacco. I think that is very important. I urge you to vote against the pending motion and urge you to support the amended version of this bill. Thank you.

The SPEAKER: The Chair recognizes the Representative from Augusta, Representative O'Brien.

Representative **O'BRIEN**: Mr. Speaker, Ladies and Gentlemen of the House. Now that Representative Shields stood up, I couldn't resist. I agree with him. What this bill attempted to do was to make a crime, a misdemeanor offense, out of attempts to purchase by a minor. The testimony that we heard was from convenience stores. They are very, very frustrated because the same juveniles will come in again and again and go from line to line to line attempting to purchase. They felt very strongly that they needed some help from us. What this does do, I will be very honest and candid about this, is when we got the amendment back to us for review, we noticed that by doing this, by making it a crime to attempt to purchase, it made it illegal for the so-called sting operations. That is an unintended consequence of this bill. Many will like that unintended consequence and many may not, but I just would let you know that this is in it.

The other piece of this legislation in the Minority Ought to Pass Report is the fact that, for example, a convenience store that has several stores throughout the state. If they had a violation and were found to have sold cigarettes to a minor, they wanted each case to be taken individually rather than saying, CN Brown now has five violations and really it was each individual store. That seems a pretty clear thing.

I need to make an editorial comment about this bill. I was very frustrated at the testimony. I will tell you who testified against this bill, the Bureau of Health and the American Lung Association. I was kind of struck by that and because we are hearing over and over again, we have heard it in this chamber in the last few days, about the evils of the tobacco industry, the evils of the cigarette manufacturers that they are getting our children and we must do something to protect the victims. This is what I have heard in this chamber and elsewhere. I would ask you to consider that perhaps one of the ways to meliorate the smoking epidemic of our youth is maybe hold them a little bit accountable. I believe that it would curb underage smoking if they knew that they were going to be fined. It would be a misdemeanor crime for attempting to purchase. I think that we need to hold them a little bit accountable and I think it is quite disingenuous to say that they are always the victims. Sixteen and seventeen year olds, they can make up their own mind. Thank you.

The SPEAKER: The Chair recognizes the Representative from Saco, Representative Kane.

Representative **KANE**: Mr. Speaker, Men and Women of the House. This is a convenience bill for the convenience stores. It was brought with full support of the Maine Oil Dealers Association who own the convenience stores. This is a bill that overshoots the mark. Nobody has argued more forcefully and more carefully with greater energy and effort than I have on behalf of protecting our children from tobacco. This is not protecting our children, men and women of the House. This is protecting the sellers of tobacco who need to be held responsible for their actions. This is a blame-shifting bill. It shifts the blame from the storeowners who need to be held responsible for the sale of illegal products, shifting to the minor, the purchaser. We are having a very successful effort here in Maine in our Tobacco Prevention Cessation Programs and limiting access to juveniles. This overshoots the mark. This punishes in a manner where the punishment is way beyond the crime. It is not punishing and taking away a license to a juvenile who steals tobacco. It is punishing by taking away the license of somebody who attempts to purchase, a youngster who attempts to purchase. This bill is loaded with unforeseen, intended or unintended consequences.

The bill was opposed by the Maine Lung Association. It was also opposed by the Bureau of Health. Ladies and gentlemen of the House, it was also opposed by our Attorney General. It was opposed by our Secretary of State. This is not a bill that will work and fit in with our overall tobacco cessation prevention strategies. I urge your support for the Majority Ought Not to Pass Report.

The SPEAKER: The Chair recognizes the Representative from Durham, Representative Schneider.

Representative **SCHNEIDER**: Mr. Speaker, Ladies and Gentlemen of the House. I wasn't going to speak because the good Representative from Auburn and Augusta did such a good job of presenting the arguments for this bill. The inaccuracies presented by the speaker from Saco require me to correct a couple of things. First of all, this bill, in its present form, has nothing to do with suspending licenses. That portion was taken out in the amendment. All this bill does is it sets up a civil violation of attempting to purchase cigarettes by an underage person, a minor. I defy anyone in this chamber to tell me how the owner or the operator of a small convenience store is anyhow at fault when a young person walks into the store and attempts to purchase cigarettes. Ladies and gentlemen, all this bill does is it sets up a civil violation for attempting to purchase cigarettes. It is designed to keep young people away from cigarettes. It is not designed to protect storeowners in any way. I ask you to vote against the pending motion, please, and vote for the passage of the bill. Thank you.

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

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

The SPEAKER: The Representative may pose his question.

Representative **POVICH**: Mr. Speaker, Men and Women of the House. To anyone who cares to answer, is it currently a violation of any sort for an underage person to attempt to purchase alcohol?

The SPEAKER: 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 Winterport, Representative Brooks.

Representative **BROOKS**: Mr. Speaker, Ladies and Gentlemen of the House. I guess the simplest way to sum this up is we don't need it. We absolutely don't need it. There is already a law on the books that says that it is illegally for minors to possess tobacco products. I agree with my good friend, Representative Saco, that this is simply shifting responsibility and that is all this is. With all due respect to my friend, the Representative from Durham, I frankly can't support anything that is going to further jeopardize the younger generation. It is already illegal for them to possess. Why don't we let this work? Why don't we allow the programs that we have in place to continue to have successes so that we can build on a good prevention program. We need to follow the current motion of Ought Not to Pass.

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

Representative **POVICH**: Mr. Speaker, Men and Women of the House. As you know, I sometimes during the week work in a convenience store. I own one, although I haven't been there for a while. I was there for a minute. I don't support this bill. I support the pending motion. There are penalties or sanctions for people who are under age 18 to possess tobacco products. There are sanctions for me to sell them. As an owner I am sanctioned if I sell them. My clerks have a fine if they sell them. I know that from personal experience because I was fined and my clerk was fined for selling to someone who was under 18.

We won't talk about compliance checks, because that is another issue and not germane to this issue. I do support the Majority Ought Not to Pass Report because the main provision here is enforcement of existing law. You hear this from the Criminal Justice Committee a lot. Let's enforce the laws we have. I don't take that lightly. It is serious. We have many, many law enforcement officials out there. You have the police, you have the Sheriff, liquor enforcement and State Police. Any one of those law enforcement organizations have the right, and should be urged, to write a ticket for any juvenile who is smoking cigarettes and they do. You read in your local newspapers that now the learning curve on the bar is up high and that now kids are being pinched for possessing and smoking cigarettes. The bill is unneeded. Let the record show that it is coming from someone that probably might find more comfort if it did pass. Please support the Ought Not to Pass report.

The SPEAKER: The Chair recognizes the Representative from Bangor, Representative Perry.

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

The SPEAKER: The Representative may pose his question.

Representative PERRY: Mr. Speaker, Men and Women of the House. My question is, to anyone who can answer it, how does this bill shift responsibility where the storeowners already face up to \$10,000 fine and loss of license to sell cigarettes? How does this bill shift the burden of responsibility?

The SPEAKER: The Representative from Bangor, Representative Perry has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Portland, Representative Dudley.

Representative DUDLEY: Mr. Speaker, Men and Women of the House. I apologize to the Representative from Bangor, Representative Perry, I didn't rise to answer his question. I did rise to tell the House that when I asked the proponents of this bill whether or not they had any evidence if threats of fines or any evidence at all that actually would have the desired impact, whether it would prevent kids from trying to purchase tobacco products? The answer was, no, they have no evidence that shows that these penalties will actually produce the desired outcome.

The SPEAKER: The Chair recognizes the Representative from Woolwich, Representative Peavey.

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

The SPEAKER: The Representative may pose her question.

Representative PEAVEY: Mr. Speaker, Men and Women of the House. My question has to do with enforcement, right now if a juvenile has been stopped for possession of tobacco products, it is generally by the police or if on school grounds, it could be a school official. I wonder if this bill passed if a juvenile is attempting to purchase cigarettes and there is no policeman in the store, are we making the storeowners do what? How is the enforcement going to actually happen here?

The SPEAKER: The Representative from Woolwich, Representative Peavey has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Durham, Representative Schneider.

Representative SCHNEIDER: Mr. Speaker, Men and Women of the House. In answer to the good Representative's question, it would be enforced just like any other civil offense or crime is enforced. It would be enforced through the gathering of evidence. That evidence could be testimony or physical evidence and that would be put together to create a case.

The Chair ordered a division on the motion to ACCEPT the Majority Ought Not to Pass Report.

Representative WATERHOUSE of Bridgton REQUESTED a roll call on the motion to ACCEPT the Majority Ought Not to Pass Report.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The SPEAKER: A roll call has been ordered. The pending question before the House is acceptance of the Majority Ought Not to Pass Report. All those in favor will vote yes, those opposed will vote no.

ROLL CALL NO. 257

YEA - Ash, Baker, Berry RL, Bliss, Bouffard, Brannigan, Brooks, Bryant, Bull, Bunker, Canavan, Chick, Clark, Colwell, Cote, Cowger, Cummings, Dorr, Dudley, Dunlap, Duplessie, Estes, Etnier, Fuller, Gagne, Gerzofsky, Green, Hall, Hatch, Hawes, Hutton, Jacobs, Jones, Kane, Koffman, Landry, LaVerdiere, Laverriere-Boucher, Lemoine, Lessard, Lundeen, Mailhot, Matthews, McDonough, McGlocklin, McGowan, McKee, McLaughlin, Michaud, Mitchell, Norbert, Norton, O'Brien LL, O'Neil, Paradis, Patrick, Peavey, Pineau, Povich, Quint, Richard, Richardson, Savage, Simpson, Skoglund, Smith, Stanley, Sullivan, Tarazewich, Tessier, Thomas, Tracy, Trahan, Twomey, Usher, Volenik, Watson, Mr. Speaker.

NAY - Andrews, Annis, Belanger, Berry DP, Bowles, Bruno, Buck, Bumps, Carr, Chase, Chizmar, Clough, Collins, Crabtree, Cressey, Daigle, Davis, Desmond, Dugay, Duncan, Duprey, Fisher, Foster, Glynn, Goodwin, Gooley, Haskell, Heidrich, Honey, Jodrey, Kasprzak, Labrecque, Ledwin, MacDougall, Madore, Marley, Mayo, McKenney, McNeil, Mendros, Michael, Morrison, Murphy E, Murphy T, Muse C, Muse K, Nass, Nutting, O'Brien JA, Perkins, Perry, Pinkham, Rines, Rosen, Schneider, Sherman, Shields, Snowe-Mello, Tobin D, Tobin J, Treadwell, Tuttle, Waterhouse, Weston, Wheeler EM, Wheeler GJ, Winsor, Young.

ABSENT - Bagley, Blanchette, Lovett, Marrassche, Stedman.

Yes, 78; No, 68; Absent, 5; Excused, 0.

78 having voted in the affirmative and 68 voted in the negative, with 5 being absent, and accordingly the Majority Ought Not to Pass Report was ACCEPTED and sent for concurrence.

By unanimous consent, all matters having been acted upon were ORDERED SENT FORTHWITH.

The House recessed until the Sound of the Bell.

(After Recess)

The House was called to order by the Speaker.

CONSENT CALENDAR

First Day

In accordance with House Rule 519, the following items appeared on the Consent Calendar for the First Day:

(H.P. 957) (L.D. 1271) Bill "An Act Regarding the Budget for the Maine Turnpike Authority for 2002" Committee on TRANSPORTATION reporting Ought to Pass as Amended by Committee Amendment "A" (H-598)