

MAINE STATE LEGISLATURE

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Legislative Record
House of Representatives
One Hundred and Twenty-Second Legislature
State of Maine

Volume I

First Regular Session

December 1, 2004 - March 30, 2005

First Special Session

April 4, 2005 – May 25, 2005

Pages 1-736

The House recessed until 5:30 p.m.

(After Recess)

The House was called to order by the Speaker.

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

**REPORTS OF COMMITTEE
Divided Report**

Majority Report of the Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-181)** on Bill "An Act To Require Fair and Timely MaineCare Payments to Hospitals" (S.P. 214) (L.D. 678)

Signed:

Senators:

MAYO of Sagadahoc
MARTIN of Aroostook
ROSEN of Hancock

Representatives:

PINGREE of North Haven
WALCOTT of Lewiston
GROSE of Woolwich
WEBSTER of Freeport
MILLER of Somerville
BURNS of Berwick
SHIELDS of Auburn
CAMPBELL of Newfield
GLYNN of South Portland

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "B" (S-182)** on same Bill.

Signed:

Representative:

LEWIN of Eliot

Representative SOCKALEXIS of the Penobscot Nation - of the House - supports the Majority **Ought to Pass as Amended by Committee Amendment "A" (S-181)** Report.

Came from the Senate with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-181)**.

READ.

On motion of Representative PINGREE of North Haven, the Majority **Ought to Pass as Amended** Report was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (S-181)** was **READ** by the Clerk and **ADOPTED**. The Bill was assigned for **SECOND READING** Wednesday, May 18, 2005.

Majority Report of the Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-172)** on Bill "An Act To Discourage Further the Sale of Tobacco to Minors" (S.P. 293) (L.D. 885)

Signed:

Senators:

MAYO of Sagadahoc
MARTIN of Aroostook

ROSEN of Hancock

Representatives:

PINGREE of North Haven
WALCOTT of Lewiston
GROSE of Woolwich
WEBSTER of Freeport
MILLER of Somerville
BURNS of Berwick
SHIELDS of Auburn
CAMPBELL of Newfield
LEWIN of Eliot

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

Signed:

Representative:

GLYNN of South Portland

Representative SOCKALEXIS of the Penobscot Nation - of the House - supports the Majority **Ought to Pass as Amended by Committee Amendment "A" (S-172)** Report.

Came from the Senate with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-172)**.

READ.

Representative PINGREE of North Haven moved that the House **ACCEPT** the Majority **Ought to Pass as Amended** Report.

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

Representative GLYNN: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. Mr. Speaker, members of the house I urge you to oppose the pending measure and to not adopt this piece of legislation. I urge people to take a moment and take a look at the bill we will be voting on and, most importantly, the amendment that has been offered, (S-172).

At the public hearing when it was presented - I should begin by saying that I am somebody that has supported smoking bans - I voted in favor of the smoking ban against restaurants and I am not a smoker. However, this piece of legislation does not do what it says it's going to do and it is not a good piece of legislation. It's not some of the best work that has come out of our committee. The bill purports to reduce and discourage the sale of tobacco products to minors. It fails on every single point. What the bill actually does is it puts restrictions only on tobacco specialty shops and says that if you enter a tobacco specialty shop that you have to be accompanied by an adult so kids are still going to be in tobacco shops.

What the bill says is that in order to sell tobacco products you have got to be twenty-one years of age or older, but only at one of these specialty shops. How that came to be was a mystery to me as I sat in committee. It was one of those cases where a poorly written piece of legislation comes in front of a committee and a sponsor that everyone likes comes in and negotiates a bill with the committee. Every time an exemption or a problem with the bill was raised the committee just amended the bill and they amended the bill and they amended the bill, but there was never a holistic look at what, in fact, we were doing. The Maine Merchants Association opposed the bill and I have their letter and I wanted to read to you a passage from it. It said that the "Intent of LD 885 is praise worthy, but enactment would have the effect of preventing an unsupervised seventeen year old from selling a legal product to someone of legal age. It would impose an unnecessary burden on small stores and perhaps deny employment to some needy and deserving young people. Clerks have carding responsibilities regardless of their ages and it does

not seem logical to impose the same restrictions on tobacco products as those for alcohol. Clerks do not need to determine the impairment status of buyers of tobacco products."

Simply stated what this bill says is that you can be of legal age to buy a cigarette, you can be 20 years old and able to buy cigarettes, but you can't sell them in a store. What does that really mean? What it really means is that in my district – the calabash out by the Maine Mall – it means that if you are twenty years old you can't work in the store as a cashier because you can't work unattended without another adult that is twenty-one years of age. What that means is that we are denying these folks employment opportunities. Do you think it is right and fair that because an adult – we are talking about adults; people over 18 – that can buy cigarettes can't sell those products? Do you think it is right to say that they are going to be denied employment opportunities and that they can't work in a place because these places can't afford to have several clerks working all of the shifts and there can't be another adult over 21 in the facility to sell the products. That didn't make any sense to me.

Looking at the legislation I was like okay, we are going to discourage the sale of tobacco products to minors. How does adults allowing children to go into tobacco stores accompanied by adults, how does that provision help to discourage tobacco sales to minors. Well, if you're a minor you can't buy tobacco products and if you go into one of these stores and can't buy something then you are going to be asked to leave. What possibly could this legislation have in it that is going to help discourage the sale of tobacco to minors? For these reasons I would urge you to vote against this piece of legislation because it fails all of the tests. The first test is whether it will stop underage smoking? No, it's not going to. The second question is if it is going to hurt business? Yes it is, it is going to reduce the available pool of people able to sell these products and what is it going to do to general folks out there. Well that sets up another one of those double standards that I never explain to people in my district – these paradoxes that you can be twenty years old and you can buy tobacco products for years, you can be a smoker, but you can't work in a tobacco store and sell these products unattended without somebody over 21 present. It is just another standard for those kids who are 18-21.

There are all kinds of good ways to discourage young people from smoking. There are all kinds of good ways to ban smoking in public places. These are all things that I have supported. Legislation like this I can't support and I urge you to vote against it and Mr. Speaker when the vote is taken I request the yeas and nays.

Representative GLYNN of South Portland **REQUESTED** a roll call on the motion to **ACCEPT** the Majority **Ought to Pass as Amended Report**.

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

The **SPEAKER**: The Chair recognizes the Representative from North Haven, Representative Pingree.

Representative **PINGREE**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I have the greatest respect for my good colleague from South Portland but I stand to disagree and urge people to accept the Majority Ought to Pass as Amended Report, which was the overwhelming report of the Health and Human Services Committee. We spent a lot of time on this bill, talking through it with those who were in favor and those who were opposed. The good member of the other body from Cumberland brought it to us and has worked hard on a number of different tobacco provisions and I think this is a pretty simple bill. It does really two major things. One, it prohibits minors from entering tobacco specialty stores and the Committee

Amendment says that you can come in if you are accompanied by a parent or a legal guardian.

There is no reason for a minor to be in a tobacco specialty store. Tobacco specialty stores are one of the few places in the State of Maine, in addition to off track betting facilities and a few others, where people can smoke. So, there is often smoking going on in tobacco specialty stores. It is also one of the other places where tobacco is not behind a counter; it is out. So, to let people under the age of which they can buy tobacco to go into a place where people are smoking and tobacco products are out and could be stolen or the fumes could be ingested really doesn't make sense. We obviously thought that the bill that was a little bit onerous in saying that a parent traveling with their child who is running in there to pick something up would have to leave the kid in the parking lot, that obviously didn't make sense so we did amend the bill.

The good member of the other body who brought the bill forward testified that there was a tobacco specialty shop of which he was familiar in the Maine Mall area of South Portland and the owner not only follows the law that we are considering today, but has also places signs saying you must be age 21 to enter. This business owner felt that this law would actually enhance his ability to control people that come into his store. The other section of the law aligns the law to the liquor selling provisions, which say that you must have a manager in a store who is at least 21 years of age to be there because, as we have seen with our tobacco enforcement, young people often have a hard time saying no to other young people.

Really, those are the two main provisions of the bill and the bill also does redirect some revenue from fines paid to youth access law violations so that we can make sure that this law is enforced, primarily by the AG's office. I think this is a good piece of legislation and it received bipartisan support from our committee and I think it is another step forward in reducing youth access and I urge this body to support it.

The **SPEAKER**: The Chair recognizes the Representative from Lewiston, Representative Walcott.

Representative **WALCOTT**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I would simply agree with both the good Representative from South Portland, Representative Glynn and the good Representative from North Haven, Representative Pingree and say that the committee did work very hard and in a very bipartisan way on this bill and I would ask if the clerk could please read the report of the committee.

Representative **WALCOTT** of Lewiston **REQUESTED** that the Clerk **READ** the Committee Report.

The Clerk **READ** the Committee Report in its entirety.

The **SPEAKER**: The Chair recognizes the Representative from Portland, Representative Glynn.

Representative **GLYNN**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. As you heard that still does not change the fact that the bill does not, in fact, do anything to discourage the sale of tobacco to minors. We received no testimony at the public hearing that minors who are unable to buy these products were in fact in tobacco shops and because even if they went in they can't buy anything. What are they going to do if they walk in? These are small, very small, establishments. Secondly, again we heard no reasoning why somebody can be over the age to buy cigarettes – they can be 18 years old, 19 years old, 20 years old, however, they can't work as a clerk in a store, but they can work as a clerk in a service store someplace else and they can sell cigarettes they just can't in the specialty tobacco stores. Lastly, this is not going to keep kids out of these establishments. They can still come in the

establishments under this law so on all of those points the legislation fails.

Probably what I found most offensive about this legislation was when I said, what if these specialty stores just decide these regulations are just too difficult? What if are their options? The response that I received from our committee analyst was that they had the ability to change their designation and instead of being known as a tobacco specialty shop they can apply as a variety store and then they don't have to follow any of the rules and regulations that we are talking about and debating today. In fact what it does is target the perception that a tobacco specialty store is a bad thing and that we ought to put up barriers to them doing business. I urge your defeat of this.

The SPEAKER: The Chair recognizes the Representative from Newfield, Representative Campbell.

Representative **CAMPBELL**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. The one thing that Representative Glynn failed to mention when he said that all you have to do is change to a variety store was that if you change to a variety store you couldn't smoke in the variety store. You can smoke in a tobacco store.

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

ROLL CALL NO. 152

YEA - Adams, Ash, Babbidge, Beaudette, Blanchard, Blanchette, Brannigan, Brautigam, Bryant, Burns, Cain, Campbell, Canavan, Clark, Craven, Crosby, Cummings, Driscoll, Duchesne, Dudley, Dunn, Duplessie, Eberle, Faircloth, Finch, Fisher, Flood, Gerzofsky, Grose, Hanley S, Harlow, Hogan, Hutton, Jackson, Jennings, Koffman, Lerman, Lewin, Lundeen, Makas, Marley, Marraché, Mazurek, Merrill, Miller, Mills, Moody, Norton, Paradis, Patrick, Pelletier-Simpson, Percy, Perry, Pilon, Pineau, Pingree, Piotti, Rines, Rosen, Sampson, Saviello, Schatz, Shields, Smith N, Smith W, Thompson, Valentino, Walcott, Watson, Webster, Wheeler, Woodbury, Mr. Speaker.

NAY - Annis, Austin, Bishop, Bowen, Bowles, Brown R, Browne W, Carr, Cebra, Churchill, Clough, Collins, Cressey, Crosthwaite, Curley, Curtis, Daigle, Davis G, Davis K, Dugay, Duprey, Eder, Edgecomb, Emery, Fitts, Fletcher, Glynn, Hall, Hamper, Hanley B, Hotham, Jacobsen, Jodrey, Joy, Lansley, Lindell, Marean, McCormick, McFadden, McKane, McKenney, McLeod, Moulton, Muse, Nass, Nutting, Ott, Pinkham, Plummer, Rector, Richardson D, Richardson E, Richardson M, Richardson W, Robinson, Seavey, Sherman, Sykes, Tardy, Thomas, Trahan, Vaughan.

ABSENT - Barstow, Berube, Bierman, Bliss, Bryant-Deschenes, Farrington, Fischer, Goldman, Greeley, Kaelin, Millett, Moore G, O'Brien, Stedman, Tuttle, Twomey.

Yes, 73; No, 62; Absent, 16; Excused, 0.

73 having voted in the affirmative and 62 voted in the negative, with 16 being absent, and accordingly the Majority **Ought to Pass as Amended Report was ACCEPTED.**

The Bill was **READ ONCE. Committee Amendment "A" (S-172) was READ** by the Clerk and **ADOPTED.** The Bill was assigned for **SECOND READING** Wednesday, May 18, 2005.

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

**REPORTS OF COMMITTEE
Divided Report**

Majority Report of the Committee on **INLAND FISHERIES AND WILDLIFE** reporting **Ought Not to Pass** on Bill "An Act To Provide Hunters 70 Years of Age or Older with Antlerless Deer Permits"

(H.P. 39) (L.D. 43)

Signed:

Senators:

BRYANT of Oxford
WOODCOCK of Franklin

Representatives:

WATSON of Bath
LUNDEEN of Mars Hill
WHEELER of Kittery
CEBRA of Naples
MOODY of Manchester
TRAHAN of Waldoboro
RICHARDSON of Greenville
RICHARDSON of Carmel
BRYANT of Windham

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

Signed:

Representative:

JACKSON of Fort Kent

READ.

On motion of Representative WATSON of Bath, the Majority **Ought Not to Pass Report was ACCEPTED** and sent for concurrence. **ORDERED SENT FORTHWITH.**

The Chair laid before the House the following item which was **TABLED** earlier in today's session:

An Act To Expand the Items That May Be Sold by Malt Liquor and Wine Licensees

(H.P. 728) (L.D. 1075)
(C. "A" H-313)

Which was **TABLED** by Representative PATRICK of Rumford pending **PASSAGE TO BE ENACTED.**

Subsequently, the Bill was **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate. **ORDERED SENT FORTHWITH.**

The Chair laid before the House the following item which was **TABLED** earlier in today's session:

An Act Regarding the Voting Place

(S.P. 121) (L.D. 374)
(C. "A" S-150)

Which was **TABLED** by Representative CUMMINGS of Portland pending **PASSAGE TO BE ENACTED.**

Representative TARDY of Newport **REQUESTED** a roll call on **PASSAGE TO BE ENACTED.**

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

The SPEAKER: The Chair recognizes the Representative from Appleton, Representative Merrill.

Representative **MERRILL**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I spent quite a bit of time trying to decide whether I was going to oppose this bill. This bill did come out of committee unanimously and I think great respect should be paid to bills that come out of a committee unanimously. Furthermore, I would like to call your attention to the original title of this bill. The original title of this bill was "An Act to Create a Protected Zone Around the Voting Place". That's kind of an amazing title. It is almost as good as bill that we had