

MAINE STATE LEGISLATURE

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

Daily Edition

First Regular Session

beginning December 3, 2014

beginning at page H-1

The House voted to **INSIST**.

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

UNFINISHED BUSINESS

The following matters, in the consideration of which the House was engaged at the time of adjournment Friday, June 19, 2015, had preference in the Orders of the Day and continued with such preference until disposed of as provided by House Rule 502.

HOUSE REPORT - **Ought to Pass as Amended by Committee Amendment "A" (H-297)** - Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** on Bill "An Act Regarding Timber Harvesting on Land Managed by the Bureau of Parks and Lands"

(H.P. 254) (L.D. 388)

TABLED - June 5, 2015 (Till Later Today) by Representative HICKMAN of Winthrop.

PENDING - **ACCEPTANCE OF COMMITTEE REPORT**.

Subsequently, on motion of Representative HICKMAN of Winthrop, the Bill and all accompanying papers were **INDEFINITELY POSTPONED**. Sent for concurrence.

SENATE DIVIDED REPORT - Majority (7) **Ought to Pass as Amended by Committee Amendment "A" (S-262)** - Minority (6) **Ought Not to Pass** - Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act To Promote Equity in Business Opportunity for Tobacco Specialty Stores"

(S.P. 295) (L.D. 821)

- In Senate, Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-262)**.

TABLED - June 17, 2015 (Till Later Today) by Representative GATTINE of Westbrook.

PENDING - **ACCEPTANCE OF EITHER REPORT**.

Subsequently, Representative GATTINE of Westbrook moved that the House **ACCEPT** the Minority **Ought Not to Pass** Report.

Representative ESPLING of New Gloucester **REQUESTED** a roll call on the motion to **ACCEPT** the Minority **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: The Chair recognizes the Representative from Chelsea, Representative Sanderson.

Representative **SANDERSON**: Thank you, Mr. Speaker, Men and Women of the House, currently Maine has one tobacco specialty store that serves beverages and food. The rest of them are not. In one particular tobacco specialty store in Bridgton, if you even brought so much as a bottle of water in there with you, you would be in violation of the law.

Tobacco specialty stores are just that. You're allowed to try the product, you're allowed to sit and smoke the product and visit. Smoking is already allowed. This bill would just allow them to serve beverages on the premises while they're sitting, while they're talking, while they're enjoying their specialty product that they're already allowed to have. Now some people may think that this is an expansion of smoking. It's not. They can already do so. And this bill also comes with other protections.

Nobody under 21 years of age is allowed to enter. Right now, if you're over 18 you can buy tobacco, but this lounge itself limits

it to 21 years of age. This allows the businesses to grow their business, while at the same time making sure, as a tobacco specialty shop, that 60 percent of the business they do is in tobacco. So they don't become a bar. They don't become another alcoholic lounge. They remain the tobacco specialty shop. I urge you to vote down the pending motion. Let these few institutions that we do have in our state serve a cup of coffee, maybe a cocktail in the afternoon, and allow them to grow their business. Thank you.

The SPEAKER: The Chair recognizes the Representative from Lincolnville, Representative Burstein.

Representative **BURSTEIN**: Thank you, Mr. Speaker, Ladies and Gentlemen of the House, I'm standing today to vote green on this issue, "An Act To Promote Equality in Business for Tobacco Specialty Stores." Ladies and Gentlemen of the House, this bill is a fox in sheep's clothing. What this bill does is an end run around our existing laws. This bill undermines LD 859 from the 123rd Legislature, which was "An Act To Restrict the Smoking Exemption for Tobacco Specialty Stores," which became public law in 2007. This law closed the loophole prospectively, stating that no tobacco specialty store could dually hold licenses for on premise food and beverage consumption unless they did so before January '07. This grandfathered existing specialty stores that already held on premise licenses. Essentially, this bill is creating new bars where smoking is allowed.

In testimony from the AG's Office, LD 821 undermines the clarity and fairness of Maine's smoke free laws. It will erode the commitment to provide a safe and smoke free work environment for all Mainers. Another problem with 821 is enforcement. There is currently no bars or restaurants that allow smoking. Allowing smoking in some, but not all makes it both confusing and hard to enforce.

We've had strong public support and history in our policies that we do not want smoking in restaurants. This bill takes our state backwards, both raising serious challenges and sending confusing messages, as well as opening a door to allowing smoking in restaurants. In 1993 our smoke free workplace law was amended to allow smoking in tobacco specialty shops at the request of the owner. The rationale was that some consumers may want to sample an expensive cigar before buying the entire box. The exception became a law, but the intention was never to justify a creation of cigar lounge. The restriction in size and percent of sales required of tobacco products were additional measures to assure that there would be no end run around the workplace smoking law. This bill is the end run. So, please vote green on this bill. Thank you, Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from York, Representative Hymanson.

Representative **HYMANSON**: Thank you, Mr. Speaker. Thank you, Men and Women of the House, I wanted to bring your attention to a sentence in this bill and I will be voting green for the Ought Not to Pass. I don't know if you know the children's book, If You Give a Mouse a Cookie. You know, it starts off, "If you give a mouse a cookie," and then the mouse wants something more and something more and something more. Well, this is that something more and something more.

So, if you want to go back to the time of bars, smoke-filled bars, with food and with drinks, then this is the way to do it. But, I think that's counter to the direction that we've been going from a public health point of view. So, I just want to bring your attention to the line in the bill that says, "A cigarette lounge may not prepare food on premises for sale." So, it can bring in food that's not prepared and people who have food can bring it in. So, this is food in a lounge, smoking cigars, and drinking. Thank you.

The SPEAKER: The Chair recognizes the Representative from Scarborough, Representative Vachon.

Representative **VACHON**: Thank you, Mr. Speaker, Ladies and Gentlemen of the House, life's simple pleasures: enjoying some time among friends having simple conversation. People that like cigars would just like to socialize with a beverage with a friend. It is not an expansion of smoking. It's just allowing them to compete with local businesses in New Hampshire that do the same thing. So I urge you to vote in support of this. Thank you.

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

Representative **HOBBINS**: Thank you, Mr. Speaker and Women and Men of the House, many of you probably would think that this isn't a bill that I would get up and speak on. And quite frankly, six months ago or so, I probably wouldn't have thought that same thing either. Having said that, I had an opportunity at the urging of several of my constituents to, even though to go to a specialty shop, a cigar lounge, that's located in Saco.

Unfortunately, during this process, which was highly publicized in my area, a very, very fine person, good citizen, had some very negative things said about him because of his attempt to secure a location for his business. And, ironically, so I did my due diligence and part of the problem was that he was turned in to the Attorney General's Office and to the Department of Health and Human Services. One of the reasons was, is because he has a child who, ironically, a picture of this child was basically it was sent to the Department of Human Services and to the Attorney General's Office saying that this particular young child, which is his child by the way, was in the smoking establishment, which ironically wasn't the case at all. It was in a Mexican restaurant. It had nothing to do with his business. The other irony is, is that there's nothing wrong under present law, because of having a family member, whether they're of age or not, be involved. But that wasn't the case in this situation.

Now, I have to tell you, having visited the, and not partaking, but having visited this establishment, I found it to be extremely clean. Those individuals who were there weren't just those who maybe smoked cigarettes. There were those who went across all social economic demographics in my hometown, from a doctor to a lawyer to a banker to a mill worker to a law enforcement officer. I can name you numerous individuals who I saw in the two times I visited this parlor. Now, I know there's a lot of talk about that this is opening the door and I know that the stakeholders are in the hallway in numbers. Ironically, the irony of the whole matter is, is that this particular situation was brought about because the individuals who run these establishments couldn't even sell and consume a bottle of water on their locations.

So, this was an attempt by my constituent and someone who's a business person who has now a location prominently in the City of Saco who's a good-coppered citizen in the City of Saco and he is one of the individuals behind this piece of legislation. Now, interestingly enough, that there's been talk that cigarette sales would be allowed and permitted in the cigar lounge. That's not the case. Neither cigarette sales nor smoking of cigarettes will be permitted in the cigar lounge.

Vaping. Now, we've been talking about vaping and we have done an incredible job, I think, this session of addressing that particular issue. My good colleague and the Majority Leader sponsored that bill, Representative McCabe, that it's gone through the process of passing. Well, this bill, if passed, would also not allow vaping, e-cigarettes, in the form that this bill will take and be allowed to go forward with. No one under 21 will be allowed in a cigar lounge. That's not the case now, ironically, with tobacco specialty stores. No less than 60 percent of cigar lounge revenue. It must come from sales of tobacco, or tobacco-

related products. Tobacco-related products does not mean cigarettes, does not mean vapes. It does not mean those individual tobacco-related activities.

Also, there is a built-in safeguard for new establishments becoming primarily drinking establishments that would allow smoking. That is in the bill. It also ensures that all cigars smoked in the cigar lounge are purchased in Maine. And again, something we don't talk about, but as you know most of the successful health related programs are funded, ironically, from the tobacco settlement tax and the Fund for a Healthy Maine, and revenue derived from non-cigarettes in the State of Maine amount to around \$10 million in revenue.

Obviously, this isn't the appropriate thing for many people to be proud of. They'll feel kind of dirty sponsoring something like this, or voting for it. But I don't. Quite frankly, I think that this has its place within and it's not a foot in the door. If I hadn't purposely gone to this place, I might have a different opinion. So I hope you at least will consider the arguments. I have and I feel comfortable with my vote even though, you know, I was hypnotized for smoking 39 years ago, have not had a cigarette. The last time I even touched a cigar was my son's graduation along with a bunch of other parents—men and women I might add, which I didn't inhale. You've heard that line before, I'm sure. But again, I just hope that we take a realistic look at this and not just jump on the bandwagon that this is an evil thing and a foot in the door. It's not. Thank you.

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

Representative **CHENETTE**: Thank you, Mr. Speaker, like my colleague from Saco, I also rise on behalf of a constituent. I want to start off by saying I care about tobacco prevention. Back in middle school I used to be a part of a thing call SWAT—Students Working Against Tobacco. My mother smoked and it was quite a journey, to say the least, to get her to stop smoking. Repeated efforts to emphasize the fact I wanted her to see my grandchildren grow up really got her motivated. And I actually just taped a video for the Touched by Tobacco Campaign. I care about this issue.

But I do see a difference between that argument and the bill that's before us and what allies are talking about. And the allies that are in the hallway, I've mentioned this a few times, we need to focus on prevention. Before people make the conscientious choice to go into an establishment like a tobacco specialty store, let's get them from even stepping foot into that establishment. You have a bill you want to tackle that issue? I'd be the first one to sign up to cosponsor. That's not what's before us.

This is a pro-business, commonsense oriented bill for those that are making the choice, the conscientious choice themselves, to go into the establishment. No one's forcing them to do that, number one. It's not encouraging smoking. In fact, it prevents a lot of that smoking activities from actually taking place within the establishment. It's not a gateway to something else. And we're going to come back next session if there's any issues; we can address them. But there's not going to be. This expands a service within an existing establishment so you can offer beverages like water, Mr. Speaker. That's not a stretch. So I would urge people to vote "no" on the current motion.

The SPEAKER: The Chair recognizes the Representative from Westbrook, Representative Gattine.

Representative **GATTINE**: Thank you, Mr. Speaker. Mr. Speaker, one of my least favorite expressions is "slippery slope," and I promised I would never, ever use it in a floor speech, so I won't break that promise today, but I am concerned about this bill. Just want to make a couple points really clear. Some of them have been made already.

We keep thinking about, we keep talking about this as a place where people smoke. Really, what we're creating here is a place where alcohol is served. This isn't about water. One of the requirements to be one of these cigar lounges is that they have a liquor license, and as we also heard, they're also allowed to serve food so long as it is not prepared on premises; that's what the current statute reads.

So again, we are creating a place where people are allowed to drink. Drinking is promoted. A liquor license is required. People are allowed to eat. And people are allowed to smoke. We took care of this problem in Maine years ago when we banned smoking in bars and restaurants. What we're doing here is creating places that are going to compete with all the other bars and restaurants in Maine where smoking is not currently allowed.

The other thing I want to point out that I don't think has been pointed out yet is that there's nothing in this bill, no funding for enforcement. DHHS does not plan on putting any additional inspectors to monitor these activities. The requirement that 60 percent of the revenue come from the sale of tobacco products is similar to the law in New Hampshire. And recently in New Hampshire the state went out and did random audits and they found that every single place that they audited was in violation of that 60 percent requirement. So I think there's a lot of concerns here. I agree with the words from my committee members from York and from Lincolnville. I hope people will support the Ought Not to Pass Report. Let's not open up this door. I think in Maine we fought long and hard to keep public places safe from smoke, whether it's from tobacco or cigarettes or pipes. And I think we need to continue that here today. Thank you, Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Chelsea, Representative Sanderson.

Representative **SANDERSON**: Thank you, Mr. Speaker, Men and Women of the House, I apologize for rising twice. I've been listening to the points being made on this bill, as everybody as chimed in a little bit. But I think what we need to do is I think we need to clarify the intent for why an individual is frequenting the establishment.

When people go to a bar, they don't go to a bar with an intent to have a place to smoke. They go, they want to have fun, they want to dance, they want to have an alcoholic beverage or not, or spend time with friends. When people go to a restaurant, they don't go with the intent to smoke. They go with the intent to have a nice dinner out with their family, maybe enjoy a few cocktails with over some hors d'oeuvres, spend some time with friends. Now, when people go to a cigar lounge, however, they do go with the intent to have a premium cigar. They go with the intent to smoke.

So, saying this would erode into somebody trying to just circumnavigate the laws and all of a sudden have a smoking bar, I think is a bit disingenuous. This is to allow folks who already frequent a cigar lounge with the intent to smoke a premium cigar to have a refreshment with it. Thank you.

The SPEAKER: The Chair recognizes the Representative from Dresden, Representative Pierce.

Representative **PIERCE**: Thank you, Mr. Speaker, Ladies and Gentlemen of the House, I'm a cigar smoker. When I travel, I go to Alexandria for the Atlantic States Marine Fishing Commission meetings. There's a cigar lounge there. I know nobody in Alexandria. I go there because (A.) there's no families there; I can go enjoy a cigar and a bourbon. These are entrepreneurs that have this.

In Maine, you're going to a cigar bar to have a cigar. There's no preconceived notion that you're doing anything else. You sit in a nice puff chair and have a bourbon as a weary traveler in

the State of Maine. We talk about helping our entrepreneurs in this state. Please support LD 821.

The SPEAKER: The Chair recognizes the Representative from Farmington, Representative Buckland.

Representative **BUCKLAND**: Thank you, Mr. Speaker and Friends and Colleagues in the House, I just want to rise and say that I do agree with my good colleague across the aisle, Representative Gattine, when he says we took care of the smoking in restaurants problem a long time ago. But we took care of that problem for the people who wanted to go to restaurants and not smoke. This merely takes care of the issue of people who want to go and smoke a fine cigar and have a beverage. Thank you.

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

ROLL CALL NO. 325

YEA - Alley, Babbage, Bates, Beavers, Beck, Beebe-Center, Blume, Brooks, Bryant, Burstein, Chace, Chapman, Chipman, Cooper, Crafts, Daughtry, Devin, Dion, Doore, Duchesne, Dunphy M, Edgecomb, Farnsworth, Fecteau, Fowle, Frey, Gattine, Gideon, Gilbert, Gillway, Golden, Goode, Guerin, Hamann, Hanington, Harlow, Herbig, Hilliard, Hogan, Hubbell, Hymanson, Jorgensen, Kinney M, Kornfield, Kruger, Kumiega, Lajoie, Longstaff, Luchini, Martin J, Martin R, Mastraccio, McCabe, McCreight, McElwee, McLean, Melaragno, Monaghan, Moonen, Morrison, Nadeau, Pouliot, Powers, Rotundo, Russell, Rykerson, Saucier, Schneck, Shaw, Stanley, Stuckey, Sukeforth, Tepler, Tipping-Spitz, Tucker, Tuell, Wallace, Ward, Warren, Welsh, Mr. Speaker.

NAY - Austin, Battle, Bickford, Black, Buckland, Campbell J, Chenette, Corey, Dillingham, Dunphy L, Espling, Evangelos, Farrin, Foley, Fredette, Gerrish, Ginzler, Grant, Greenwood, Grohman, Hanley, Hawke, Head, Herrick, Hickman, Higgins, Hobart, Hobbins, Kinney J, Lockman, Long, Lyford, Maker, Marean, McClellan, Nutting, O'Connor, Parry, Peterson, Picchiotti, Pickett, Pierce J, Prescott, Reed, Sanderson, Sawicki, Seavey, Sherman, Short, Sirocki, Skolfield, Stearns, Stetkis, Theriault, Timberlake, Timmons, Turner, Vachon, Verow, Wadsworth, White, Winsor, Wood.

ABSENT - Campbell R, Davitt, DeChant, Malaby, Noon, Pierce T, Sanborn.

Yes, 81; No, 63; Absent, 7; Excused, 0.

81 having voted in the affirmative and 63 voted in the negative, with 7 being absent, and accordingly the Minority **Ought Not to Pass** Report was **ACCEPTED** in **NON-CONCURRENCE** and sent for concurrence.

Resolve, Reauthorizing the Balance of the 2009 Bond Issue for an Offshore Wind Energy Demonstration Project (EMERGENCY)

(S.P. 546) (L.D. 1445)

(C. "A" S-291)

TABLED - June 19, 2015 (Till Later Today) by Representative GIDEON of Freeport.

PENDING - **FINAL PASSAGE**. (Roll Call Ordered)

This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken.

The SPEAKER: A roll call having been previously ordered, the pending question before the House is Final Passage. All those in favor will vote yes, those opposed will vote no.