

MAINE STATE LEGISLATURE

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One of the recommendations of that report was to create an alternative method for adjudicating traffic offenses.

In a former lifetime, I worked in a traffic court in a jurisdiction two-thirds the size of Maine where we had a single court. As a former reserve police officer and attorney, I've seen my share of traffic offenses. So getting to the point, Mr. Speaker, our courts have seen a gradual, if not steady, and maybe even an overflowing increase in not only the volume of cases at the district court level, but also the types of cases at the district court level.

It was one of the findings of this report that traffic offenses are a basic bread and butter type hearing or proceeding, which would be handled by an administrative form of process with a hearing officer to decide the case, and as close as Rhode Island and in New York State, they do this. With our courts being overwhelmed by the number of cases and the shortage of personnel, if you look at the statistics, they are easily four or seven of the district courts where they can't even begin to handle the volume of traffic offenses, that it is saddening to see that we're not making some effort, not only to address this overflow of cases by dealing with an expedient fashion by instituting this type of proceeding, but also that we still cling to a process where people too often are treated like cattle.

People lose respect for the process when they come in and they see themselves being just sort of ramrodded through, and I think that it's time that we address the situation, hence my bringing it to the attention of this body. This morning and in this environment of austerity, Mr. Speaker, I realize we don't have that extra million dollars a year to pay for the hiring of some additional hearing officers that could handle the volume of cases that we have in the system. But I think that for the future we really need to do this. Thank you, Mr. Speaker.

Subsequently, the Majority **Ought Not to Pass** Report was **ACCEPTED** and sent for concurrence.

Majority Report of the Committee on **TAXATION** reporting **Ought Not to Pass** on Bill "An Act To Prevent and Treat Cancer in Maine by Implementing Critical Portions of the Comprehensive Cancer Program"

(H.P. 917) (L.D. 1226)

Signed:

Senators:

TRAHAN of Lincoln
HASTINGS of Oxford
WOODBURY of Cumberland

Representatives:

KNIGHT of Livermore Falls
BENNETT of Kennebunk
BICKFORD of Auburn
BURNS of Alfred
HARMON of Palermo
WATERHOUSE of Bridgton

Minority Report of the same Committee reporting **Ought to Pass as Amended by Committee Amendment "A" (H-589)** on same Bill.

Signed:

Representatives:

BERRY of Bowdoinham
BRYANT of Windham
PILON of Saco
FLEMINGS of Bar Harbor

READ.

Representative KNIGHT of Livermore Falls moved that the House **ACCEPT** the Majority **Ought Not to Pass** Report.

The SPEAKER: The Chair recognizes the Representative from Cumberland, Representative Strang Burgess.

Representative **STRANG BURGESS**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I rise in opposition to the pending motion and would like to give you folks a little update, education, on what we call tobacco equalization tax.

Folks, this really is a tax loophole that has been in our laws for the last few years and it needs to be corrected. We have already made a public policy decision in this state to tax tobacco. We all made that, we've played around with it over the last Legislatures here. We believe that by taxing tobacco it makes it, it increases the price of it, and hopefully as we know from facts, every time we've done an increase on actual cigarettes, the smoking rates go down. So that is a well known fact across the country and we have that as a public policy in this state. However, because it's a little complicated, we have been shy to actually create the tax on all of the tobacco products besides cigarettes.

This bill has nothing to do with cigarettes. Right now, you can go to any convenience store or place where you can buy your favorite smoke and a pack of 20 cigarettes is \$6.39 or 29¢ or whatever, and right beside it you'll see a box of little cigars in exactly the same size box, usually with some pretty colorful comments and things on it, and it's like a \$1.89. So yes, you're not supposed to sell cigarettes to people under 18. If you're over 18, you should be allowed to do whatever. This is about just making the tax equal, okay?

We know that tobacco increases are the best and one of the most effective ways to reduce smoking. Equalizing this tax on other tobacco products will decrease initiation of tobacco use, especially for anybody who is under that age of 18, which of course they're not getting them now, and deter people from switching to these cheaper tobacco products. Excise tax on tobacco products is applied evenly and some people, you'll hear about that this is very complicated and unfair. Well, if we have a public policy to tax tobacco, then we should tax tobacco. So we want to tax it the same. The Minority Report has an amendment on it that says that we'll work with Revenue Services to figure out an equitable and fair way. Usually what most of the other states have, it's a combination of the weight or ounces and mils, and we would propose a combination thereof.

In addition to the fact that this really is about public policy, it's about public health policy and it's money that is on the table. Just to let you know, President Obama, as part of the Health Care Act, increased some of this. Some of this is a federal tax that's in there. The previous Chief Executive did the same and there is actually still a level in there, we have made an unlevelled playing field. So my number one goal is that it's a health policy issue. And okay, p.s., my secondary goal is that it would have a small tax income to the state, specifically for 2011-2012, the next fiscal year, it would generate \$3.8 million. The following year it is projected to generate about \$5.6 million. I think folks are pretty aware of what's going down on the second floor and the people in Approps are working real hard. This might be a great tool there, but I think one of the greatest things that we could do as a body is to vote against the pending motion, give it a strong support, flip this report, and show everybody that we are for public health for this state. We're seeing smoking rates tip up for the first time and this is just an area to me that really is a loophole that needs to be fixed.

You also have a handout from me showing you the wonderful New England states and where everybody is when it comes to this equalization tax. We are currently at 20 percent of the wholesale value. We are the lowest state in New England. On the back of the handout, you have a list of all of the states in the country and how they are taxing tobacco, and you will see it's a combination of different kinds of formulas. Whatever works, we'll figure that part out and it will be made equitable and fair and linked to the cigarette price, so that we tax tobacco and whatever tobacco product you get, it's taxed the same. That's fair, that's equitable, that's appropriate.

So Ladies and Gentlemen of the House, I implorably ask that you folks vote red on this motion. Let's turn this report over. Let's show people in the State of Maine that we actually are interested in a public health issue here, that this should be fixed regardless, and yes this bill began to also generate some of that money. Well, the money would all go to the General Fund. And okay, I confess. I was kind of hoping that maybe there might be a crumb of that money to go towards cancer prevention education for this state. It's a little bit of a broken record, but since I don't have any bills left, you're going to get to hear the fact that cancer is the number one killer of Maine citizens and education is critical. Early detection saves lives and costs a lot less to get it in the beginning than it does later on. So it's the classic win/win situation.

So Ladies and Gentlemen of the House, I ask you, I beg you, please follow my light, vote red, turn this over, show that we have a consistent public policy regarding tobacco. This is not about cigarettes; this is about all the other products. I'm sure you remember, I think people sort of know that we had a high rate of tobacco tax, but folks, that was a long time ago. We are now one of the lowest states. So this is just leveling the playing field. It's tobacco equalization, it's a loophole. Let's fix it. Thank you.

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

Representative **BICKFORD**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. You heard some compelling testimony from my good friend, the Representative from Cumberland. However, I'm going to disagree on some of the points.

The process and the reason for this bill, as you can see in the title, has nothing to do with getting people off tobacco use. This bill had to do with funding a program that currently doesn't have any funding. This is a program that's asking us to tax State of Maine residents \$5 million. Many of us took a pledge and that pledge was to not raise taxes. I, for one, do not plan to raise taxes.

It's been proven in other states that when they overtax other tobacco products, they lose their market share. Not only do they lose market share, but when they lose market share they lose revenue. If we really want to get people off tobacco, whether it be cigarettes or other tobacco, ban the product. We can't do that, not in Maine. We rely too heavily on those taxes. This is about money. All of our tax increases that we have on any tobacco products, whether it be cigarettes or other, are about raising revenue. Thank you.

The SPEAKER: The Chair recognizes the Representative from Gorham, Representative Sanborn.

Representative **SANBORN**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I'm not going to speak long on this. I think that our good HHS chair, Representative Strang Burgess, presented the case well. I just have to say that there were those on our committee this year who, I believe, seem to forget that we were a health policy committee, and the issue seemed to be more about money and

that was quite openly stated. It was more about profit, it was more about money. I think that our role should be about protecting the health of all Maine citizens.

This bill really is about trying to keep kids from starting smoking, trying to keep them from causing all the serious health care consequences that come from smoking. We can do this. We know that it's effective. We know that if we equalize this tax that it will benefit our kids and that's what this is really about and that's what your vote should be about. Thank you.

The SPEAKER: The Chair recognizes the Representative from Raymond, Representative McClellan.

Representative **McCLELLAN**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. First off, I don't smoke. I'm trying to think if anybody in my family or my wife's family smokes. I don't really think so.

A real quick story. I like horror movies, I like scary stuff, and one time when I was a kid I saw a real interesting vampire story where the vampire actually captured somebody and tied them up and just kind of fed off of them. It was just kind of like a savings account. It just kind of fed off of them and fed off of them. I thought that was kind of unique and I kind of see this. If we really want to deal with the smoking issue then let's be gutsy enough to propose that we end smoking and put a bill in saying, in the year 2028, that smoking is illegal in Maine. I'd be in on that. I just see this as just that vampire sucking off this tied up victim.

I want to say also that I'm on the Education Committee and early in the session we had some groups come to us with ideas for bills and they were good ideas for, I forget what they were. I know one was the Red Cross, I think. They were good ideas. We were struggling with money, didn't have the money, and said, how do you propose we pay for this? They said, well, the proponent of this bill had promised them money from this, and at the time, I found that pretty inappropriate, promising money that wasn't really there yet. So that really put me off on this bill and I'll be voting, I guess, with the Ought Not to Pass. Thank you, Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Kennebunk, Representative Bennett.

Representative **BENNETT**: Thank you, Mr. Speaker. Mr. Speaker, Men and Women of the House. I just wanted to defer to the good Representative from Augusta. We're looking to use tax dollars to clean it up. I heard that earlier when she was mentioning on another bill. Bruins, 2, Canucks, 2. We're trying to use the zamboni machine to clear the ice here, to clean it up at the state level. Follow my light. Thank you.

The SPEAKER: The Chair recognizes the Representative from Brewer, Representative Celli.

Representative **CELLI**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. Once again, we're looking at putting more tax on cigarettes and cigarette products. As I've stated before, whenever you tax a certain group only, that is the most unfair of all taxes. Look up the word "prejudice" in the dictionary, as I've said before, because that's what we're doing.

Also, I believe that we should make it fair; we should equalize it by bringing the tax on other tobacco products down to the tax what we have on these papers. Smoking is not illegal. Please do not tax one group of individuals over all the others. It is unfair. Thank you.

The SPEAKER: The Chair recognizes the Representative from Palermo, Representative Harmon.

Representative **HARMON**: Thank you, Mr. Speaker and Ladies and Gentlemen of the House. Mr. Speaker, may I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative **HARMON**: Thank you, Mr. Speaker. One of the issues that we talked about in Tax and I see it on the back of the handout that the good Representative from Cumberland had passed out was in regards to these little cigars. What I was told in committee, that per case it's going to be almost a \$300 tax increase. I see on the back of this sheet where there are exemptions or limits on these little types of cigars. I was just wondering, is there anywhere in the bill that that exemption takes place?

The **SPEAKER**: The Representative from Palermo, Representative Harmon, has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Cumberland, Representative Strang Burgess.

Representative **STRANG BURGESS**: Thank you, Mr. Speaker. I want to try to answer the question as best I can, but I'm not sure that I'm going to provide enough facts to the situation. You know, there probably is a pretty large percentage from that standpoint because, as I said to you, a pack of cigarettes is \$6 and some odd cents and a pack of these little cigars that is exactly the same size is about \$1.89. So it would, in theory, they would become equal to do that.

The only last point I'd like to make and I'm sure we all want to move on is that yes this bill was designed to raise some revenue to pay for a cancer plan, but please remember how this process works, folks. This bill is about taxing or raising the non-cigarette tax to the same price as the tax on cigarettes, equalizing it. It goes to Appropriations and essentially they get to do whatever they would like with it, so it isn't necessarily saying that this bill only supports the cancer plan. It's projected to raise \$3.8 million the first year, \$5 point whatever the second year, and it's up to Appropriations what they do with it at that point. Obviously, sure, a lot of people would love to get their hands on some money, but right now I know the Appropriations folks would like to get their hands on some money to use for lots of things, so that's for them to decide. Thank you very much.

The **SPEAKER**: The Chair recognizes the Representative from Auburn, Representative Bickford.

Representative **BICKFORD**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I rise for a second time just to remind people that the number one health problem in Maine is not tobacco, it's obesity. Not once has anyone proposed an excise tax on Twinkies, on pizza, on prepared frozen meals that have 1,500 calories each. But we're going to attack other tobacco products now. We need to treat people fairly. If we're going to target unhealthy behavior, let's target it all or not target any. Thank you.

The **SPEAKER**: The Chair recognizes the Representative from Mexico, Representative Briggs.

Representative **BRIGGS**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. Morally I rise in opposition of this bill. I lost both of my parents to lung cancer due to them being chain smokers for all of their adult lives, starting at early teenagers. This bill is to help educate the people of the State of Maine of what smoking does to them, and if this is another way to receive revenue to help that purpose, I can't help but support this measure. God knows we've tried to do this for alcohol. We know how devastating alcohol is and how much it destroys thousands and thousands and thousands of families, including mine, dealing with this type of issue with alcoholism as well.

I feel that this is a very important component with educating the State of Maine and if it helps somebody else, if it deters them and says I'm finally going to quit because it costs too much, it could save their life. It could save their life. So in all moral,

ethically, for me, this is the right thing to do. Thank you, Mr. Speaker.

The **SPEAKER**: The Chair recognizes the Representative from Veazie, Representative Parker.

Representative **PARKER**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I lost my father to lung cancer. I lost my sister to heart failure, which was a result of her smoking. I'm opposed to increasing any more taxes on tobacco. That may seem strange, but we are addicting ourselves as a state to the revenue, and if we ever try to ban smoking to benefit the people, there's going to be such a fiscal impact that anything we try to pass for legislation will fail. We have to be cognizant of the fact that we have to solve this problem, but we can't do it by taxing it because we're becoming addicted to the taxes. As a result, we will never reach the end goal we'd like to accomplish. Thank you.

The **SPEAKER**: The Chair recognizes the Representative from Bowdoinham, Representative Berry.

Representative **BERRY**: Thank you, Mr. Speaker. Mr. Speaker, Men and Women of the House. I rise simply to remind the body that cancer is the leading killer of Maine people and that each day nearly 24 Mainers are diagnosed with cancer, on average. Each day nine die from the disease.

This bill is an effort to solve a loophole, to close a loophole in existing law where small cigars and loose tobacco are taxed at a different rate, at a lower rate than cigarettes. That difference, that loophole, has had a very damaging effect on our youth.

The Maine Public Health Association testified as follows: To combat the declining sale of cigarettes nationwide, the tobacco industry is introducing new generations of tobacco products at a rapid pace in an effort to keep people hooked. Whether it is smokeless products advertised to be used everywhere smoking is prohibited or flavored little cigars packaged in brightly colored crayon-like boxes, these products are attracting a new generation of tobacco users in a significant way. Youth are disproportionate users of these tobacco products. They smoke little cigars and cigarettes at a rate of 15 percent. More than 8 percent of kids say they use smokeless tobacco, with teen boys reporting use at a rate of more than 15 percent. Adult use of these products is a mere fraction of underage rates.

This bill does raise revenue in closing the loophole and helping to deter, as our tobacco taxes have done in the past, new youth smoking. It uses that money, \$2 million a year or so, to help fund cancer prevention and research. I think we can all agree that that's a very appropriate use. This Legislature ultimately would have to decide exactly how that money would be used down in Room 228 and up here. I think we can all think of better ways to use it than to encourage our young people to take up a new form of tobacco habit other than cigarettes.

Over 200 years ago, Adam Smith, widely cited as the father of modern free market economics, author of *The Wealth of Nations*, said this: "Sugar, rum, and tobacco are commodities which are no where necessities of life, which are become objects of almost universal consumption, and which are therefore extremely proper subjects of taxation."

Mr. Speaker, Adam Smith had it right, the good Representative who brought this bill to the Taxation Committee had it right, and I would encourage my colleagues to vote against the pending motion. Thank you.

The **SPEAKER**: The Chair recognizes the Representative from Alfred, Representative Burns.

Representative **BURNS**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I rise in support of the pending motion. Somewhere in a distant pasture on the border of Maine and New Hampshire there is a fence holding in

the cash cow.

As the good Representative from Bowdoinham mentioned, the loophole that's been created, well, the loophole has been created through state greed and state spending, and how can we go back and fund this and how can we go back and fund that.

I tell you, I probably might be wrong but I don't think I am, that you could walk into any kindergarten class in this state, stand in front of that classroom and ask the question, who in this classroom thinks smoking or tobacco products are good for you? I don't think you'll see one hand go up. The education is there. Our children know smoking and tobacco products are bad for you. The adults know smoking and tobacco products are bad for you. Those of us above the age of 18 have a choice.

We find it so easy in our hearts, just like some of the bills we talked about yesterday, if I don't like it, I'm going to create legislation to kill it, ban it or tax it. Is that really what we've come to? Cars crash every day, it's a tragic thing. People die in car accidents. Well, I'm going to put in a bill to ban driving or I'm just going to double the tax on the sales of a car to cover costs. We've got to stop doing this. We've got to start letting people have choice. Whether those choices are healthy or unhealthy, pretty much people know that. So please follow my light and vote this bill down and continue to give people choice. Thank you, Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Biddeford, Representative Beaudoin.

Representative **BEAUDOIN**: Thank you, Mr. Speaker. Mr. Speaker, Members of the House. I'm not going to talk about others. I'm going to talk about myself. Years ago we didn't know what would happen to you when you smoked. In my day, everybody smoked. Movie stars, everyone did. If you didn't, you were the oddball. Of course, like my specialist for the lungs said lately, "And of course, Paulette, you had to be chic and follow the others." Yes, I did. But in the process I ruined my lungs. That was 10 years ago. I stopped smoking 32 years ago, but the damage was done, and as I'm getting older it's getting worse, the problem is getting worse, so it never stops. When I see someone pick up a cigarette I could scream and tell them how awful because of what's going to happen to you. I wish nobody did. I wish they'd stop.

The cigarette industry is going further. They're making cigarettes now that are very attractive to kids. They're like a candy. I think that's sick and I cannot understand why our government doesn't stop this. I'm sorry. Money is the root of all evil and as far as smoking is concerned, it is still. The cigarette industry is very strong and I wish something could be done about it. But there is one thing we can do here and I think bringing up the price, I always say the higher it goes, maybe, just maybe it will stop even two kids from stopping and not starting, or even grownups, for that matter. I wish people didn't. I wish in my day we knew what it would do to you, but we didn't. But today you do know that it's going to ruin your life. That's it. Thank you, Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Brewer, Representative Celli.

Representative **CELLI**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I apologize for getting up and taking up time a second time, but we need to make sure, on the record, we are giving people the facts.

According to the Maine Department of Human Services, the leading causes of death in Maine for adults greater than 24 years of age are the same as for the rest of the country: Cardiovascular disease including stroke, diabetes, chronic disease. According to the Center of Disease Control and Prevention, Maine had the fourth highest percent of people in the

nation who died from these diseases. It is estimated that three-quarters of Maine people die from these chronic illnesses, which are among the most preventable through proper eating and nutritious food. Once again, we did not tax whoopie pies. We made it a state dessert. Thank you.

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

A vote of the House was taken. 67 voted in favor of the same and 55 against, and accordingly the Majority **Ought Not to Pass** Report was **ACCEPTED** and sent for concurrence.

Eight Members of the Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** report in Report "A" **Ought to Pass as Amended by Committee Amendment "A" (H-582)** on Bill "An Act To Legalize the Sale, Possession and Use of Fireworks" (EMERGENCY)

(H.P. 71) (L.D. 83)

Signed:

Senators:

MASON of Androscoggin
WHITTEMORE of Somerset

Representatives:

PLUMMER of Windham
BURNS of Whiting
HANLEY of Gardiner
LONG of Sherman
MORISSETTE of Winslow
SANDERSON of Chelsea

Four Members of the same Committee report in Report "B" **Ought Not to Pass** on same Bill.

Signed:

Senator:

GERZOFISKY of Cumberland

Representatives:

CLARKE of Bath
HASKELL of Portland
LAJOIE of Lewiston

One Member of the same Committee reports in Report "C" **Ought to Pass as Amended by Committee Amendment "B" (H-583)** on same Bill.

Signed:

Representative:

BLODGETT of Augusta

READ.

Representative PLUMMER of Windham moved that the House **ACCEPT** Report "A" **Ought to Pass as Amended**.

On motion of Representative CURTIS of Madison, **TABLED** pending the motion of Representative PLUMMER of Windham to **ACCEPT** Report "A" **Ought to Pass as Amended** and later today assigned.

Committee of Conference

Report of the Committee of Conference on the disagreeing action of the two branches of the Legislature on Bill "An Act Regarding the Attendance of Attorneys at Pupil Evaluation Team Meetings"

(H.P. 822) (L.D. 1110)

has had the same under consideration, and asks leave to report: