

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from electronic originals  
(may include minor formatting differences from printed original)

Senate Legislative Record

One Hundred and Twenty-Eighth Legislature

State of Maine

Daily Edition

First Regular Session  
beginning December 7, 2016

beginning at Page 1

**STATE OF MAINE  
ONE HUNDRED AND TWENTY-EIGHTH LEGISLATURE  
FIRST REGULAR SESSION  
JOURNAL OF THE SENATE**

In Senate Chamber  
Thursday  
June 22, 2017

Senate called to order by President Michael D. Thibodeau of  
Waldo County.

---

Prayer by Senator Dana L. Dow of Lincoln County.

**SENATOR DOW:** Thank you, Mr. President. As I look out on all of this, as I have this whole session, I just want every one of you to know that you each are blessed and you're blessed by a Creator who has given you your own mind, your own wisdom, and a good body with which to use it with. Let us be in the spirit of prayer.

Heavenly Father, we ask You be with us this day. We ask You to enlighten us. We ask You to be agreeable. We ask You to be in the spirit of love, where we can work together with respect for each other's talents. And we ask it all in the name of Jesus Christ, our Lord. Amen.

---

Pledge of Allegiance led by Senator Andre E. Cushing, III of  
Penobscot County.

---

Reading of the Journal of Wednesday, June 21, 2017.

---

Off Record Remarks

---

Senator **ROSEN** of Hancock requested and received leave of the Senate that members and staff be allowed to remove their jackets for the remainder of this Legislative Day.

---

Off Record Remarks

---

Senate at Ease.

The Senate was called to order by the President.

---

**ORDERS OF THE DAY**

**Unfinished Business**

The following matters in the consideration of which the Senate was engaged at the time of Adjournment had preference in the Orders of the Day and continued with such preference until disposed of as provided by Senate Rule 516.

The Chair laid before the Senate the following Tabled and Later Assigned (5/23/17) matter:

HOUSE REPORTS - from the Committee on **ENVIRONMENT AND NATURAL RESOURCES** on Bill "An Act To Prohibit the Mining of Massive Sulfide Ore Deposits under the Maine Metallic Mineral Mining Act"

H.P. 118 L.D. 160

Majority - **Ought Not to Pass** (12 members)

Minority - **Ought to Pass as Amended by Committee Amendment "A" (H-158)** (1 member)

Tabled - May 23, 2017, by Senator **SAVIELLO** of Franklin

Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report in concurrence

(In House, the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.)

On motion by Senator **CHIPMAN** of Cumberland, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

**THE PRESIDENT:** The Chair recognizes the Senator from Cumberland, Senator Chipman.

Senator **CHIPMAN:** Thank you, Mr. President. Men and women of the Senate, this bill is different than the bill we passed a few weeks ago. The mining bill we passed a few weeks ago had some really strong protections, which I also supported. This bill would ban mining in Maine, which I also support. I sponsored similar legislation in the past and when I served on the Environment and Natural Resources Committee this issue plagued us for a number of years, and from all the information I gathered and learned through that process is that there is no such thing as a completely safe mine. There's no way to guarantee that there won't be destruction, problems, pollution of ground water through a mining operation, and while I support the protections and all of the financial assurance that the bill we passed a few weeks provides, if the ground water is contaminated, I'm not sure what any amount of money can do to fix that. We have a great environment in Maine. I've lived in Maine my whole life and one of the reasons I've stayed living here is that we have a really great environment that's very clean. Clean drinking water. I love the state and I'd like the state to stay that way and I'm concerned that any mining that's allowed, even with all the protections, could cause some problems, could cause some things that could not be reversed. So, therefore, I support a ban on mining. I don't think we need mining in the state, and I hope you'll join me in opposing this pending motion. Thank you.

**THE PRESIDENT:** The pending question before the Senate is Acceptance of the Ought Not to Pass Report. If you are in favor of accepting that report you will be voting yes. If you are opposed you will be voting no. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

**ROLL CALL (#369)**

YEAS: Senators: BRAKEY, BREEN, CARPENTER, CARSON, COLLINS, CUSHING, CYRWAY, DAVIS, DESCHAMBAULT, DIAMOND, DILL, DOW, GRATWICK, HAMPER, HILL, JACKSON, KATZ, KEIM, LANGLEY, LIBBY, MAKER, MASON, ROSEN, SAVIELLO, VITELLI, VOLK, WHITTEMORE, WOODSOME, PRESIDENT THIBODEAU

NAYS: Senators: BELLOWS, CHENETTE, CHIPMAN, DION, MILLETT, MIRAMANT

29 Senators having voted in the affirmative and 6 Senators having voted in the negative, the motion by Senator **SAVIELLO** of Franklin to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in concurrence, **PREVAILED**.

The Chair laid before the Senate the following Tabled and Later Assigned (5/30/17) matter:

SENATE REPORTS - from the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act To Reduce Youth Access to Tobacco Products"

S.P. 391 L.D. 1170

Report "A" - **Ought to Pass as Amended by Committee Amendment "A" (S-146)** (8 members)

Report "B" - **Ought Not to Pass** (4 members)

Report "C" - **Ought to Pass as Amended by Committee Amendment "B" (S-147)** (1 member)

Tabled - May 30, 2017, by Senator **BRAKEY** of Androscoggin

Pending - motion by same Senator to **ACCEPT** Report "B" **OUGHT NOT TO PASS**

On motion by Senator **JACKSON** of Aroostook, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

**THE PRESIDENT:** The Chair recognizes the Senator from Aroostook, Senator Carpenter.

Senator **CARPENTER:** Thank you, Mr. President. This is one of those bills that come along every session, where we have a real chance to make a difference. When I came down here after last

November's election there were two sort of cardinal things that I wanted to try to do. One is to do anything I could to make sure that more people turned out to vote in our elections and, two, is anything I could do to prevent people from smoking or to help people to quit smoking. I was a 2-pack a day smoker for 32 years and started when I was about 20 years of age in college and if I had not stopped, now going on 18 years ago, I would be dead today. Ironically enough, when I first came to the Legislature, right out of - I was fairly new out of the service, fairly new back from Vietnam, there was a bill before the Legislature to raise the drinking age - to lower the drinking age, I'm sorry, from 21 down to 18, and, of course, I got all caught up in the argument of, 'Well, if you're old enough to go off to war and be drafted and die, then you are old enough to drink.' I voted to lower the drinking age, which in retrospect, was a mistake. Today's military - the cost to the military - the cost to the budget of the United States is estimated to be well over \$1 billion to treat smoking related medical issues in the military. Today's military is not a draft military. It's an all-volunteer military. Nevertheless, the smokers that are on active duty, they estimate right now, 175,000 active duty military will die of smoking related causes.

Now, this is going to be a hassle for the store owners and there's an issue about if you live near New Hampshire. I understand all of that, but if we can prevent - if we can take an action here today that prevents one death, one death, and the deaths from smoking are not quick and easy. They are painful. They are awful. I just ask you, as you vote today, to answer this one question for yourself: do you know of anybody who's been smoking for any period of time, over the age of 21, who does not wish that they had never started? Now, I know there are a lot of negatives in that, but just think about it. Have you ever spoken to anybody over the age of 21 who said, 'Boy, I'm really glad I started when I was 16'? Thank you, Mr. President.

**THE PRESIDENT:** The Chair recognizes the Senator from Androscoggin, Senator Brakey.

Senator **BRAKEY:** Thank you, Mr. President. I rise in support of the pending Ought Not to Pass motion on L.D. 1170, which seeks to make the purchase of and sale of tobacco products illegal for adults between the ages of 18 and 21. Now, I'm sure that those supporting this legislation truly believe the creation of this new government regulation and prohibition on Maine people will work out for the best. I have no doubt this bill, like so many other items of legislation that come before this Body, comes with very good intentions. Yet, as the common saying goes, the road to Hell is paved with good intentions. Let me first clarify something about this bill. Despite its misleading title, the only group of people this legislation seeks to restrict are adults. At the age of 18 you are legally an adult, as you have reached the legal age of majority, and at the legal age of majority you are recognized by law to be an adult, capable of managing your own affairs and responsible for any legal obligations created by your actions. At the age of majority you obtain legal control over your own person, your own decisions, and your own actions. You can vote. You can enlist. You can fight our wars. You have legal liability for your actions and you can even be sued in court. In short, you can make your own decisions about your own life and how you live it.

I'll say, as one of the younger members of this Body, I will say that the narrative that sometimes exists that younger adults are children, as even the title of this bill suggests, incapable of making the same decisions for themselves, decisions that all

other adult Maine people are allowed to make for themselves without the help of nanny government, frankly, is somewhat insulting. Of course, I understand the impulse. It is simple human nature to watch on with anxiety as any individual steps into his or her full adult rights for the first time. We know that with rights comes responsibilities and we wonder how might those we love, inexperienced with these new freedoms, how might they harm themselves, not knowing the value of the responsibilities that come with those freedoms. This anxiety and this concern from this question is certainly understandable. I can't fault anyone for that. But our answer should never be the employment of a nanny state government to curtail the freedoms of other adults. The longer we employ such a nanny state to infantilize our citizens, not trusting them with their full adult rights to make their own decisions, the more we create dependency and hinder individuals from developing the sense of personal responsibility we ultimately hope to see.

Mr. President, I will be as clear as I possibly can. I detest smoking. I don't smoke. I think it is distasteful. I think it is certainly hazardous. I discourage smoking with all of my friends and loved ones. I am even at times known to be very annoyingly persistent about it, and you can ask, you can ask people. Anyone who may be listening in right now, who may be considering picking up the habit, I can simply say this: don't do it. It's stupid. It's disgusting and it's unmistakably bad for you, and I will use every breath I can to discourage my loved ones and the people of Maine from picking up the habit of smoking. In a free society, it is completely within our rights to use the peaceful force of persuasion in this manner but, where the force of persuasion fails us, we have no right to resort to utilizing the coercive force of government to compel and limit the freedoms of adult citizens whose only crime is making a personal life choice we may happen to disagree with.

Now some will say, 'We aren't seeking to limit anyone's freedoms. We're just requiring people to make good decisions for themselves.' I think begs the question: if you only have the freedom to make good decisions, do you, in fact, have any freedom at all? Who gets to decide what is a good decision? The individual or the government? Proponents of this bill will tell us all about the health hazards of smoking. Those hazards are real. I completely agree with that, and if we were kings claiming ownership over the Maine people as our subjects and charged with dictating their affairs, then perhaps this information might be relevant today as we make our decision. Perhaps we would even seek to be benevolent tyrants, dictating the lives of our subjects for their own good. But, Mr. President, we are not kings and the Maine people are not our subjects. We live in a free nation. In our Constitution the people charge us with the task of protecting their God-given rights, including the right of self-determination. We fought a revolution for this principle, to overthrow the rule of kings so that people could - so that we, the people, could rule ourselves. We echo these fundamental principles in our founding documents, in our national anthem, and even in the pledge of allegiance we all spoke this morning. Simply put, regardless of our own personal views on the matter, and my personal view is smoking is a terrible decision, but regardless of our own personal views on this matter, we, in government, simply have no right to prohibit adult citizens from making their own choices in their own personal lives. This is true in regards to so many issues and is also true with the personal choice of tobacco use. To do so would violate the fundamental rights of Maine people, as well as violate our duty as Legislators to protect those rights. I sincerely

hope that our duty to protect the natural rights of Maine people will carry enough weight in this Body to defeat this legislation today. That said, I also somewhat humbly recognize that not everyone in this Body shares my perspective on the limited scope of government's authority.

So I'll close with one final, and perhaps more practically grounded argument: what results do we expect to see from the passage of this legislation? And I truly intend this as a serious question. Do we honestly believe those adults between the ages of 18 and 21, who would have previously used tobacco products, will no longer have access to those products simply because we tell them they are not allowed to legally purchase them or might we expect, like so many other products that fall under government prohibition, tobacco products will become available once again for adults between the ages of 18 to 21, but this time in an underground black market? Mr. President, all philosophy aside, I am truly concerned that the creation of this new prohibition will give black market drug dealers in Maine a new product to sell. It would create, in fact, a new gateway drug because, as we can all imagine, cigarettes will not be the only substance the drug dealers would be pedaling. Black market cigarettes would become the new hook to lure in new clients, but it won't be long until some of those drug dealers succeed in upselling these new clients to harder, more addictive substances, perpetuating our own drug crisis in the State. The road to Hell is paved with good intentions. Mr. President, despite good intentions, this legislation would do serious harm. It would violate the autonomy and the liberties of Maine adults. It would push Maine adults into the illegal black market and it would empower and give more business to drug dealers. I sincerely hope that my colleagues in this Chamber accept the pending Ought Not to Pass motion and I urge us to reject this legislation. Thank you very much, Mr. President.

**THE PRESIDENT:** The Chair recognizes the Senator from Piscataquis, Senator Davis.

Senator **DAVIS:** Thank you, Mr. President. Good morning, colleagues in the Maine State Senate. I rise in opposition to the pending motion. I do want to say, though, that the good Senator from Androscoggin and I agree on one thing. Smoking is a terrible habit. No question. I want to tell you why I oppose this bill and I will do my best to articulate my thoughts the best I can, Mr. President. When I was approached by the American Cancer Society to do this I thought about it for quite a while before I agreed to do it. Some of the reasons were just articulated. I gave it a lot of thought because, you see, I am extremely bias against tobacco and tobacco products and I will get into that a little bit. But if we can consider all the physical problems, the pain and suffering, by both victims of tobacco use, family, friends, etcetera, all the lost wages, all the lost productivity, all the damage to the economy, then I think you can see why perhaps I oppose this. This isn't about, certainly we will be happy to have this happen and it may happen in a few different instances, but this isn't about so much people quitting smoking. It's more about peer pressure. Let me tell you a little bit about how I come to dislike tobacco so much and how peer pressure affected me in my life. In 1968, I came home from Fort Jackson, South Carolina. I'd been on active duty there. Was there the night Martin Luther King was killed. Interesting times, to say the least. I was smoking 2 to 3 packages of cigarettes a day. I didn't fool around with it. It was Marlboros. When I really wanted to feel like a big deal I went to

the Camels and the Lucky Strikes. Two a.m. in the morning I'd wake up and I would reach out for my Marlboros. Two a.m. in the morning. I had to quit. There was no question. I knew that if I was going to have a life I had to kick this terrible habit and, with the help of the good Lord, I was able to.

Now you might ask how did a young man, as myself, get into such a - get himself into such a habit? How did this all happen? Well, first at home, my Dad smoked heavy. My brother smoked heavy. Dad smoked Camels and my brother smoked Winstons. I remember walking by my Dad's bedroom in the morning. He'd be sitting on the edge of the bed. He started smoking when he was 16 and he was smoking at least 2 packs to 3 packs a day when I walked by the door of his room. He had tobacco and nicotine stains right up his arm. He'd be sitting on the edge of his bed, coughing until he had no more breath. Coughing, and then he would just make a very strange noise as he was attempting to cough. He couldn't cough. He couldn't. My brother and my Dad both died from the complications of lung cancer, both of them. My Mom died of breathing disorders related to second-hand smoke. These are the people that nurtured me and brought me up and people that I looked up to and I lost them to smoking.

When I went to high school it was the cool thing to do. You want to be like the big guys, so you smoked. They all smoke. It must be alright. If you don't smoke, what kind of an idiot are you. You need to smoke, or at least most of the guys that I wanted to be like smoked. They - we used to go out back of the gymnasium early in the morning. It was kind of cornered off. If you got caught smoking in the parking lot, or anywhere near it, you usually had a chance to see what the inside of the Principal's office looked like. But other than that, if you stayed out back you were alright. After school, of course, they couldn't control you once you was off school grounds, and we all smoked on the way home, and this was - happened every day. This is what happened.

After high school, I was in the service and at that time, I believe it's a little different now - excuse me, Mr. President - at that time smoking was greatly encouraged. Our K-rations that came when we were out in the field had 4 cigarettes in them. Little packs, 4 cigarettes in each one. A smoke break every hour - every hour - and the Sergeant would say, 'Smoke 'em if you've got 'em.' That's what the rules was, and I see some of my friends chuckling. I'm sure they remember those days. Of course, we had them. Twenty-two cents a pack when I left South Carolina. Twenty-two cents a pack. Budweiser was 99¢ a six-pack at the same time. The Px had trouble keeping both in stock. The short and long of being in the service, you really weren't a man if you didn't smoke. That was the bottom line. Well, I came home, as I said, in '68 and I went back to school. I smoked on the way to school. I smoked on the way home from school. I smoked during school. I smoked and smoked and finally I decided that I had to get rid of it, so I went to a pipe. I smoked a pipe and I was smoking 2 packages of that a day and then I realized that if I didn't want to die, probably before I got to be 30, I'd better get rid of this habit, and I did and, as I said, the good Lord helped me and I was able to do it. When I did quit I was having trouble breathing. I was having all kinds of issues, and I quit and I was spending far too much money - money I didn't have. It wasn't 22¢ a pack back here. It was considerably more. For 6 months, I was so addicted to these darned things, I could chew the heads right off - right off nails. It was just horrible. It was a hankering for it. It was just unbelievable. Had to have it. My gosh, you would shake and your nerves would be upset and you'd reach out and sass

your good friend like this guy, and it was awful. I don't understand. I haven't smoked for 50 years and I'm sassing. I don't understand that.

The opponents will say that if a person is old enough to shoot a rifle or vote or join the Army or whatever then they can make their own decisions. Well, I gave you the things about peer pressure and it's peer pressure that controls people smoking. I believe that, especially when they're young. When they're in high school, they want to be like the other boys, and the other girls, and they pick it up. It's peer pressure. The peer group in the service, most of the kids going in now days are 18 and there aren't many 15 year olds for them to impress and the peer pressure, I believe, as far as 15 and 16 and 17 year olds isn't there. Maybe a few 17 year olds, but not many. I have no problem with them making their own decisions. My good friend's absolutely right. They should be able to make their own decisions as long as other people aren't learning this habit from them. Don't underestimate - don't underestimate - peer pressure and what it can do to young people, and the influence that comes from older people when young people are looking up to them. I think probably, Mr. President, you get the idea that I don't care much for smoking and tobacco. Again, colleagues, I will say this is not an attempt, directly, to make people quit. This is an attempt to try to control the peer pressure are young people are suffering. Thank you very much and I ask that you follow my light and I believe a roll call has been ordered, Mr. President. Thank you.

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

Senator **CYRWAY:** Thank you, Mr. President. Ladies and gentlemen of the Senate, I'm very fortunate. I never smoked, never even tried one. But I was a year old when I lost my grandfather. He smoked 4 packs of cigarettes a day and died at 47 years old. We don't really have an age in our society where you're free to do whatever you want. We have a range of ages depending on the activities and the risks. You need to be 16 to drive, 18 to vote, 19 to play for the Boston Celtics or another NBA team. You have to be 21 to join the Maine State Police or purchase alcohol or enter Oxford Casino or Hollywood Casino. Many car rental companies won't rent to you until you're even older. For anyone in this Chamber who has ambitions to running for the U.S. Congress, you have to be 25. My point is it's not the case that we have a single age of adulthood and we can say you've reached that age and the world is your oyster and everything is open to you. We lose 400,000 people every year to tobacco smoking. Four hundred thousand. That's one-third of what the population of this State is every year. It's the number one cause of death in this nation. Let's do something about it. It takes an average of 15 years off a lifetime of a person that smokes all their lives. An average 1 pack a day smoker costs about \$3,000 a year and in a two person family, where the husband and wife both smoke, that's \$6,000 a year. If you're a 2 pack person, double that. I call this not a health plan but this is a death plan. You know, I've been fighting drug abuse and whatever. I never used drugs, illegal drugs. I don't drink. I just feel that I've seen so much out there in law enforcement I felt I had to do something. I want to help people and I guess I'm a part of the pavement. I hope I can make that road a little bit smoother by getting it done and I think this is the time to try to get this done. You know, why not try to help these people from making mistakes, and this is a situation where the 18, 19, 20 year olds,

they're still in high school, some of them, and they're giving cigarettes, after they buy it, to the younger individuals, and most kids start smoking before they're 18. This is why it's an important piece here and this is just part of the puzzle, but I appreciate anybody that can vote to kill this Ought Not to Pass. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Androscoggin, Senator Libby.

Senator **LIBBY:** Thank you, Mr. President. Men and women of the Senate, I rise in opposition to the motion before us. I think there's probably one or two members in this Chamber who are presently struggling with quitting tobacco addiction, and I'm one of them. I started when I was 18 years old and I succumbed to peer pressure over a couple of months. A portion of my circle of friends had picked up the dirty habit and thought it was a good idea to get the rest of us to at least try it, and I tried it and I liked it and I had forgotten about DARE class in elementary school and I had forgotten about my parents struggling with addiction for years and years and I had forgotten everything I knew about the health effects of smoking because I tried it and I liked it and I got hooked. For 15 years of my life, almost half of my life, I've been addicted to tobacco and I'd love to agree with my good colleague from across the Androscoggin River, Senator Brakey, that it's a personal choice. But it was a personal choice when I started. Each subsequent day I was grappling with a deadly addiction. If the law in the State of Maine had been the same as the law for purchasing alcohol I may not have been such a stupid young person to start at 18 years old. I could have had a chance to let my brain develop a little more; my self-confidence to develop a little more; to be able to say no to that terrible, disgusting, awful habit. Tobacco products are not like any other legal product on the market. These products cause disease and premature death when you use them as directed. Effective policies are needed to protect everyone, especially younger people, from developing a lifelong deadly addiction. Keep in mind the brain is still developing during this time, including areas responsible for decision making, for impulse control, for sensation seeking, and for susceptibility to peer pressure. Age 21 laws are used to help prevent other risky behaviors, such as alcohol consumption and gambling. I did a quick calculation. I've spent \$33,000 on cigarettes; \$33,000. Of course a good portion of that did go to the Maine Treasury, so we're all thankful for that. Mr. President, men and women of the Senate, it's high time we followed the path that's being struck by other states and other cities in this country and tried to help save a few young people from starting this deadly, deadly habit. Thank you, Mr. President.

**THE PRESIDENT:** The Chair recognizes the Senator from Aroostook, Senator Carpenter.

Senator **CARPENTER:** Mr. President, thank you. Sorry I have to rise again, but I agree with all that my colleagues have said in the anti-smoking cause, but those of you who have never smoked can't appreciate what Senator Davis and Senator Libby have said in terms of how difficult it is. There was a day when I had an office on the 6<sup>th</sup> floor of the State Office Building. In those days, before we remodeled the Cross Building, there was a loading dock. I stood out there at 10 below zero because I had to have that smoke - you could smoke in those days out away from the buildings. It is so hard, it is so hard to kick. I've seen studies, I've seen research that suggests that it is as hard as any other drug.

If I walk by Senator Libby today, and he was smoking a cigarette, the smell is so seductive to this day, and I've been off for 18 years, and I know, I know, that if I had one cigarette today I would be back to a pack a day habit within a matter of several days. I'm very fortunate, and this is a story, you all tease me for my stories, but I have to tell you this story because it's to those who wish to quit, and it's absolutely true. In 1999 I tried everything. I got Wellbutrin. I had patches. Take the patch off, have my cigarette, and put the patch back on. Kind of defeated the purpose. Tried everything. I never got 24 hours. I never got a full day. In November of '99 I went to tuck my 13 year old daughter into bed and I said, 'Honey, what do you want for Christmas?' and she started to cry. She said, 'The only thing I want is for you to quit smoking.' I dropped cigarettes Christmas Eve '99. I've not had a cigarette since. So it can happen, and you just hit that right moment. I'm saying that, I'm looking at these youngsters down here because they have friends back in their school who are smoking today, and maybe this won't prevent a lot of people from picking up the habit but some people are going to say, 'It's illegal, I can't buy them.' I think I would have back in those days if the age had been 21. I don't think I would have broken the law and bought cigarettes. So I really hope that you can support the - I'm sorry, oppose the pending motion. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Androscoggin, Senator Brakey.

Senator **BRAKEY:** Thank you, Mr. President. I apologize for rising a second time, especially because I know I've taken up plenty of time already the first time I rose, so I'll try to keep my comments briefer now that I rise again. You know, Ronald Regan once said, I know not everyone here is a fan of Ronald Regan but I certainly am. He said, 'Government exists to protect us from each other. Where government has gone beyond its limits is in deciding to protect us from ourselves.' That's very important to me when I think about how I'm going to vote on this legislation, but I want to contest one thing that a member of - my colleague from Androscoggin County brought up. He said that tobacco is the only substance that causes disease when you use as directed. Well, I certainly agree that it does cause disease when used and over-used. I could not say that is the only legal substance that does so. In fact, the leading cause of death in America right now is heart disease. A big contributing factor to heart disease is refined sugar and yet - if I'm to follow that logic and that principle, perhaps in the next session we should be considering legislation to ban Big Gulp sodas for adults 18 - 21. Where does it end? We could take this - if we are not the safeguards of the people's liberties, if we are here to dictate how people live their lives and what their personal health choices should be, I can't imagine that it ends here. There's no reason why we should not continue on to ban Big Gulp sodas, to ban sugary snacks. There's no reason we should not ban all the other substances that we, in government, deem are not healthy for the people and we should not prescribe a - maybe we should even go on to dictate how many vegetables a day people should be eating. I don't think that's the path I want to go down. I don't think that's the path we are charged to go down. I think passing this legislation today does a disservice to what our responsibility is in State government, as the protector of the people's liberties, and I sincerely hope you will reject this legislation today. Thank you.

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

Senator **GRATWICK:** Thank you very much, Mr. President. Ladies and gentlemen of the Senate, I wish to give you just a brief historical overview. I'm sure that not many people these days would agree, but in case you don't know, smoking is good for you. Smoking is a wonderful thing to do. It brings families together. You can all do it together and it aces your health. This is the advertisement in the 1930s. In the 1940s it began to be some evidence that smoking may not be quite so good for you. The '50s made progress into the legislation, in the late '50s cancer associations, in '64 there was legislation that began to ban it in different places. This is an incremental step. We've been at this now for 70 years in this country. Is it ever going to be perfect? The answer is no. I view this as being another important step in terms of public health and something we really should support at this time. It's a very limited restriction and I think we can be proud that we've done our part in this long, historical march to decrease the effect of this particular weed in our society. Thank you.

**THE PRESIDENT:** The pending question before the Senate is the Report "B" Ought Not to Pass Report. A roll call has been ordered. If you are in favor of accepting Report "B" Ought Not to Pass you will be voting yes. If you are opposed you will be voting no. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

**ROLL CALL (#370)**

YEAS: Senators: BRAKEY, CUSHING, KEIM, MASON

NAYS: Senators: BELLOWS, BREEN, CARPENTER, CARSON, CHENETTE, CHIPMAN, COLLINS, CYRWAY, DAVIS, DESCHAMBAULT, DIAMOND, DILL, DION, DOW, GRATWICK, HAMPER, HILL, JACKSON, KATZ, LANGLEY, LIBBY, MAKER, MILLETT, MIRAMANT, ROSEN, SAVIELLO, VITELLI, VOLK, WHITTEMORE, WOODSOME, PRESIDENT THIBODEAU

4 Senators having voted in the affirmative and 31 Senators having voted in the negative, the motion by Senator **BRAKEY** of Androscoggin to **ACCEPT** Report "B" **OUGHT NOT TO PASS** **FAILED**.

Report "A" **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-146) ACCEPTED**.

Bill **READ ONCE**.

Committee Amendment "A" (S-146) **READ**.

On motion by Senator **DAVIS** of Piscataquis, Senate Amendment "B" (S-306) to Committee Amendment "A" (S-146) **READ**.

**THE PRESIDENT:** The Chair recognizes the Senator from Piscataquis, Senator Davis.

Senator **DAVIS:** Thank you, Mr. President. Ladies and gentlemen of the Senate, this amendment moves the date to July 1<sup>st</sup> of 2018. Anyone born prior to that date can purchase cigarettes or tobacco products. The purpose of it is to reduce the loss of revenue that State is going to have. The fiscal note was \$2 million. Moving this out changes that; the first year there is no loss of revenue and they say the second year the loss of revenue will be \$106,000 to the State and \$111 to the communities. I respectfully suggest, it's my belief, there will be no loss of revenue. Thank you.

On motion by Senator **DAVIS** of Piscataquis, Senate Amendment "B" (S-306) to Committee Amendment "A" (S-146) **ADOPTED**.

Committee Amendment "A" (S-146) as Amended by Senate Amendment "B" (S-306) thereto, **ADOPTED**.

---

Senate at Ease.

The Senate was called to order by the President.

---

Under suspension of the Rules, Bill **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-146) AS AMENDED BY SENATE AMENDMENT "B" (S-306)** thereto.

Ordered sent down forthwith for concurrence.

---

The Chair laid before the Senate the following Tabled and Later Assigned (6/1/17) matter:

RESOLUTION, Proposing an Amendment to the Constitution of Maine To Explicitly Protect against Sex Discrimination  
H.P. 153 L.D. 197

Tabled - June 1, 2017, by Senator **CUSHING** of Penobscot

Pending - **FINAL PASSAGE** in **NON-CONCURRENCE**

(In House, **FAILED FINAL PASSAGE**.)

On motion by Senator **HAMPER** of Oxford, placed on the **SPECIAL APPROPRIATIONS TABLE** pending **ENACTMENT** in **NON-CONCURRENCE**.

---

Off Record Remarks

---



The Chair laid before the Senate the following Tabled and Later Assigned (6/5/17) matter:

SENATE REPORTS - from the Committee on **STATE AND LOCAL GOVERNMENT** on Bill "An Act To Establish the Maine Buy America and Build Maine Act"

S.P. 311 L.D. 956

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-171)** (7 members)

Minority - **Ought to Pass as Amended by Committee Amendment "B" (S-172)** (5 members)

Tabled - June 5, 2017, by Senator **DAVIS** of Piscataquis

Pending - motion by same Senator to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (S-172)** Report

Senator **DAVIS** of Piscataquis requested and received leave of the Senate to withdraw his motion to **ACCEPT** the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "B" (S-172)** Report.

On motion by same Senator, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-171)** Report **ACCEPTED**.

Bill **READ ONCE**.

Committee Amendment "A" (S-171) **READ** and **ADOPTED**.

Under suspension of the Rules, Bill **READ A SECOND TIME**.

On motion by Senator **CUSHING** of Penobscot, Senate Amendment "B" (S-305) **READ**.

On motion by Senator **JACKSON** of Aroostook, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

**THE PRESIDENT:** The Chair recognizes the Senator from Aroostook, Senator Jackson.

Senator **JACKSON:** Thank you, Mr. President. Mr. President, ladies and gentlemen of the Senate, I rise to talk about this bill. I think that the report that we moved, Ought to Pass, is a good thing for the people in the State of Maine. Actually it's going to give preference to Maine companies throughout this state, as far as State contracts go. It's going to make sure that people that we represent from Fort Kent all the way to Kittery have a fair shot at getting contracts and the best thing about it is that it won't cost a nickel more than anyone that's bidding for a contract outside of this state or outside of this country. The reason why I am against the pending motion is that the way that I read this, and certainly the way that I'm sure it will play out, the amendment says that public agencies would be authorized but not required to issue these contracts to in-state contractors. That's basically the way we are right now. Anyone in this state can apply for a contract, can be the lowest bidder, they can be somewhere in between, but in the end there's nothing that says that our good, hardworking

taxpayers in this state are going to get these contracts. I believe that the way that the original bill is worded it's a good faith effort to say that you must give preference to Maine companies. You don't have to pay them more, but you have to give them preference. You know, this whole debate in this whole country about making America great again, buy American, hire American is with the original bill. It is definitely not with this amendment. There is no one that you can go back to and say that we did something to help you get the contract in this state if we adopt this amendment today. It basically keep the status quo where some people will get the contracts and others won't and people that are taxpayers to this state will continue to be frustrated by the fact that sometimes they were actually the lowest bid and still weren't able to get these sought after contracts. So let's make no mistake about it. If we pass the amendment today none of us should go home feeling good because we've done nothing. We've just put something forward that is not going to help one person in this state garner a contract. So I would strongly suggest that you vote against the pending motion and let's do something to actually put Maine people to work and make sure that we do something that we can really say that we made America great again by making sure that Maine contractors get preference, not a higher cost contract, but get preference for jobs that they should be getting now already.

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

Senator **CUSHING:** Thank you, Mr. President. Mr. President, ladies and gentlemen of the Senate, I respect the intent of my colleague from Aroostook County. He's proud, as I am, of living in Maine. Proud of the many companies and industries from small producers like my friends, that used to be neighbors in Hampden, that own Newport Industrial Fabrication or one of the preeminent ship builders in this country, Bath Iron Works. They're good, solid Maine companies, Mr. President, and they provide good jobs. The concern I have was when I got a little education from the folks in the Revisor's Office. When we create a bill, or a law, we instruct State government, or we instruct those who operate in the State of Maine, to do thus and such, to do something. We can't just advise them through a bill, Mr. President. That is why I wanted to embrace the intent of the good Senator's action here without doing harm, and I think that may sound strange when we talk about promoting Maine businesses and Maine companies, but you have to remember that one of the significant parts of our economy here is that we export things. We export products and we export services. Sometimes they are our neighbors next door in Canada or New Hampshire. Some of them feel just as proud of their states and their Provinces as we do and when we remove from the free enterprise system the level playing field of competitiveness by giving somebody a leg up based upon where they physically may be located, we create some animus towards our state and the people who may work here. In the course of that, Mr. President, we may cause them to retaliate. This is a version of a trade war, in my opinion, when we start to insist that we give preference to people because, even if it isn't on price or quality, it's another advantage that does not level the playing field. I look at my friends in Newport Industrial Fabrication. They have 50 or 60 employees now. Good, hard working people. Many of them they get from the trade schools, so these people don't have to go and get a costly college degree in order to go to work in Newport, Maine. They're proud to be a

preeminent designer of structural steel, and you know where that goes, Mr. President? A lot of that structural steel that they are producing, competing against companies in Europe because of the uniqueness of their skill-set, competing against Canadian companies, that's going to places like New York City, Washington D.C., and recently they did the steel for a walking trail in Boston. I would really be disappointed, Mr. President, to find the State of Massachusetts, who I believe has a lower tax rate than we do right now, Mr. President, competing with Maine companies on an uneven playing field because they would say, 'We need to give preference to Maine structural steel companies.' Mr. President, while I want to promote those of my friends and neighbors who do good work in our state and are proud Mainers who have created some amazing industries and businesses over the years, I do not want to do harm to them and that is why I respectfully ask the Body to consider this to send a message of what we desire for our Maine companies without inflicting any potential harm in the future. That's why I ask you to follow my light on the pending motion. Thank you, Mr. President.

**THE PRESIDENT:** The Chair recognizes the Senator from Aroostook, Senator Jackson.

Senator **JACKSON:** Thank you, Mr. President. Mr. President, ladies and gentlemen of the Senate, I'd just like to say that it's probably been well over ten years that I was on State and Local Government. First time that I saw a bill come forward that gave a preference to Maine companies, I think at the time, said that it would give a 5% preference. Since then, or even at that time, I think there were multiple bills and the people said that that wasn't a good thing to do because it raised the cost of projects for Maine State taxpayers. The difference today is that this bill doesn't raise the cost because all you're doing is saying lowest possible bid goes to Maine contractor. But I offer some counterpoints to my good friend from Hampden, Senator Cushing, during that time one of the things that we heard was about how this would be an unfair advantage to companies outside of Maine. What I found since that time, which is probably over 10 years, is since then 27 other states have enacted some type of preference for in-state contractors. So we are already at a disadvantage with our Maine contractors compared to other states. Over half the states in the country are doing some type of preference, and that doesn't even talk to Canada, who I beg any of you to try and get any contract or job any place in Canada. As far as my belief, Canada does a great job protecting their people, but we still trade with them all the time, even though they consistently tell Americans that you can't get work here. So, again, I just want to make sure that, you know, we're not confused or anything about this. If we want to help Maine people get contracts in the State of Maine, not just construction contracts but clerical contracts, different things that are highly sought after by people that are paying our taxes, the thing to do would be to reject the pending motion and let's go forward with the bill that we all just did support.

**THE PRESIDENT:** The pending question before the Senate is Acceptance of Senate Amendment "B" to Committee Amendment "A". I stand corrected. It's Adoption of Senate Amendment "B" to the bill. If you are in favor of accepting, or adopting, Senate Amendment "B" you will be voting yes. If you are opposed you will be voting no. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

#### ROLL CALL (#371)

**YEAS:** Senators: BRAKEY, COLLINS, CUSHING, DAVIS, DOW, HAMPER, HILL, KATZ, KEIM, LANGLEY, MAKER, MASON, ROSEN, VOLK, WHITTEMORE, WOODSOME, PRESIDENT THIBODEAU

**NAYS:** Senators: BELLOWS, BREEN, CARPENTER, CARSON, CHENETTE, CHIPMAN, CYRWAY, DESCHAMBAULT, DIAMOND, DILL, DION, GRATWICK, JACKSON, LIBBY, MILLETT, MIRAMANT, SAVIELLO, VITELLI

17 Senators having voted in the affirmative and 18 Senators having voted in the negative, the motion by Senator **CUSHING** of Penobscot to **ADOPT** Senate Amendment "B" (S-305) **FAILED**.

---

**RECESSED** until the sound of the bell.

After Recess the Senate was called to order by the President.

---

On motion by Senator **SAVIELLO** of Franklin, Senate Amendment "A" (S-291) **READ**.

---

Senate at Ease.

The Senate was called to order by the President.

---

On motion by Senator **SAVIELLO** of Franklin, Senate Amendment "A" (S-291) **ADOPTED**.

**PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-171) AND SENATE AMENDMENT "A" (S-291).**

Ordered sent down forthwith for concurrence.

---

The Chair laid before the Senate the following Tabled and Later Assigned (6/14/17) matter:

HOUSE REPORTS - from the Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** on Bill "An Act To Prohibit the Privatization of State Correctional Facilities and the State's Forensic Hospitals"

H.P. 893 L.D. 1296

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-486)** (8 members)

Minority - **Ought Not to Pass** (5 members)

Tabled - June 14, 2017, by Senator **ROSEN** of Hancock

Pending - **ACCEPTANCE OF EITHER REPORT**

(In House, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-486).**)

On motion by Senator **KATZ** of Kennebec, Bill and accompanying papers **COMMITTED** to the Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY** in **NON-CONCURRENCE**.

Sent down for concurrence.

---

Out of order and under suspension of the Rules, the Senate considered the following:

#### **PAPERS FROM THE HOUSE**

##### **House Paper**

Bill "An Act To Clarify Licensing Provisions for the Manufacture and Sale of Liquor" (EMERGENCY)

H.P. 1133 L.D. 1642

Comes from the House, **REFERRED** to the Committee on **VETERANS AND LEGAL AFFAIRS** and ordered printed.

On motion by Senator **CUSHING** of Penobscot, **REFERRED** to the Committee on **VETERANS AND LEGAL AFFAIRS** and ordered printed, in concurrence.

---

This matter was ordered sent down forthwith for concurrence.

---

Off Record Remarks

---

**RECESSED** until the sound of the bell.

After Recess the Senate was called to order by the President.

---

Off Record Remarks

---

Out of order and under suspension of the Rules, the Senate considered the following:

#### **PAPERS FROM THE HOUSE**

##### **Non-Concurrent Matter**

SENATE REPORTS - from the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act Regarding Possession of a Firearm on School Property"

S.P. 327 L.D. 988

Majority - **Ought Not to Pass** (9 members)

Minority - **Ought to Pass as Amended by Committee Amendment "A" (S-174)** (4 members)

In Senate, June 21, 2017, on motion by Senator **LANGLEY** of Hancock, Bill and accompanying papers **COMMITTED** to the Committee on **CRIMINAL JUSTICE AND PUBLIC SAFETY**.

Comes from the House, Bill and accompanying papers **COMMITTED** to the Committee on **EDUCATION AND CULTURAL AFFAIRS** in **NON-CONCURRENCE**.

On motion by Senator **LANGLEY** of Hancock, the Senate **INSISTED**.

Ordered sent down forthwith for concurrence.

---

Out of order and under suspension of the Rules, the Senate considered the following:

#### **REPORTS OF COMMITTEES**

##### **House**

##### **Divided Report**

The Majority of the Committee on **JUDICIARY** on Bill "An Act To Provide an Exemption from Road Association Payments for Landowners Whose Primary Access Is Not over the Road"

H.P. 381 L.D. 537

Reported that the same **Ought Not to Pass**.

Signed:

Senator:

HILL of York

Representatives:

MOONEN of Portland

BABBIDGE of Kennebunk

BAILEY of Saco

CARDONE of Bangor

McCREIGHT of Harpswell

RECKITT of South Portland

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "A" (H-531)**.

Signed:

Senators:

KEIM of Oxford  
WHITTEMORE of Somerset

Representatives:

BRADSTREET of Vassalboro  
GUERIN of Glenburn  
JOHANSEN of Monticello  
SHERMAN of Hodgdon

Comes from the House with the Majority **OUGHT NOT TO PASS**  
Report **READ** and **ACCEPTED**.

Reports **READ**.

On motion by Senator **KEIM** of Oxford, the Minority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-531)** Report **ACCEPTED**, in **NON-CONCURRENCE**.

Bill **READ ONCE**.

Committee Amendment "A" (H-531) **READ** and **ADOPTED**.

Under suspension of the Rules, Bill **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED**, in **NON-CONCURRENCE**.

Ordered sent down forthwith for concurrence.

---

Out of order and under suspension of the Rules, the Senate considered the following:

#### **ENACTORS**

The Committee on **Engrossed Bills** reported as truly and strictly engrossed the following:

#### **Pursuant to Constitution Public Land**

Resolve, Authorizing Certain Land Transactions by the  
Department of Agriculture, Conservation and Forestry, Bureau of  
Parks and Lands

H.P. 1128 L.D. 1635  
(C "A" H-521)

In accordance with the provisions of Article IX, Section 23 of the Constitution, passage requires the affirmative vote of two-thirds of the entire elected Membership of the Senate. 35 Senators having voted in the affirmative and no Senator having voted in the negative, and 35 being more than two-thirds of the entire elected Membership of the Senate, this Resolve was **FINALLY PASSED** and, having been signed by the President, was presented by the Secretary to the Governor for his approval.

Ordered sent down forthwith.

---

#### **Acts**

An Act To Provide Consistency with Regard to Jury Duty  
Exemption

S.P. 26 L.D. 46  
(C "A" S-46)

An Act To Increase the Penalty for Allowing Wildlife in Captivity  
To Escape in Violation of a Permit Requirement

S.P. 91 L.D. 305  
(C "B" S-284)

An Act To Restore the Tip Credit to Maine's Minimum Wage Law

S.P. 235 L.D. 673  
(H "A" H-518 to C "A" S-209)

An Act To Amend the Archives and Records Management Law

S.P. 549 L.D. 1567  
(C "A" S-285)

**PASSED TO BE ENACTED** and, having been signed by the President, were presented by the Secretary to the Governor for his approval.

Ordered sent down forthwith.

---

An Act To Remove Certain Restrictions Imposed on Retired State  
Employees Who Return to Work as Educators

H.P. 970 L.D. 1396  
(C "A" H-522)

On motion by Senator **HAMPER** of Oxford, placed on the **SPECIAL APPROPRIATIONS TABLE** pending **ENACTMENT** in concurrence.

---

An Act To Address Severe and Ongoing Shortfalls in the Funding  
of Direct Care Workers in Long-term Care Settings and To  
Establish the Commission To Study Long-term Care Workforce  
Issues

S.P. 512 L.D. 1466  
(H "B" H-529 to C "A" S-186)

On motion by Senator **HAMPER** of Oxford, placed on the **SPECIAL APPROPRIATIONS TABLE** pending **ENACTMENT** in concurrence.

---

Out of order and under suspension of the Rules, the Senate considered the following:

#### **PAPERS FROM THE HOUSE**

#### **Non-Concurrent Matter**

SENATE REPORTS - from the Committee on **LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT** on Bill "An Act To Protect Worker Wages and Benefits" S.P. 35 L.D. 86

Majority - **Ought to Pass** (7 members)

Minority - **Ought Not to Pass** (6 members)

In Senate, May 17, 2017, on motion by Senator **VOLK** of Cumberland, the Majority **OUGHT TO PASS** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY SENATE AMENDMENT "A" (S-100)**.

Comes from the House, Bill and accompanying papers **INDEFINITELY POSTPONED** in **NON-CONCURRENCE**.

On motion by Senator **VOLK** of Cumberland, the Senate **RECEDED** and **CONCURRED**.

---

All matters thus acted upon were ordered sent down forthwith for concurrence.

---

Out of order and under suspension of the Rules, the Senate considered the following:

## REPORTS OF COMMITTEES

### House

#### Divided Report

The Majority of the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act To Improve Care Provided to Forensic Patients" (EMERGENCY)

H.P. 120 L.D. 162

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-482)**.

Signed:

Senator:

CHIPMAN of Cumberland

Representatives:

HYMANSON of York  
DENNO of Cumberland  
HAMANN of South Portland  
MADIGAN of Waterville  
PARKER of South Berwick  
PERRY of Calais

The Minority of the same Committee on the same subject reported that the same **Ought Not To Pass**.

Signed:

Senators:

BRAKEY of Androscoggin  
HAMPER of Oxford

Representatives:

CHACE of Durham  
HEAD of Bethel  
MALABY of Hancock  
SANDERSON of Chelsea

Comes from the House 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" (H-482)**.

Reports **READ**.

Senator **BRAKEY** of Androscoggin moved the Senate **ACCEPT** the Minority **OUGHT NOT TO PASS** Report, in **NON-CONCURRENCE**.

On motion by Senator **CHIPMAN** of Cumberland, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

**THE PRESIDENT:** The Chair recognizes the Senator from Cumberland, Senator Chipman.

Senator **CHIPMAN**: Thank you, Mr. President. Men and women of the Senate, we've heard a lot of talk over the last several months about the need for a forensic step-down facility here in the State and this bill will establish exactly that, and it also establishes that it will be in Augusta, in the Capitol area, which I think is the best location in the State for such a facility to be located. This bill further authorizes DHHS to set up this facility. It should be 21 beds. Provides the facility must be licensed and requires that the Department adopt rules that apply specifically to the licensure of the facility, including the admission, discharge, and standards of the facility, a staffing model, security, patient's access to treatment, and patient's rights protections. It further requires the Department provisionally adopt rules to implement the licensure of the facility no later than January 12<sup>th</sup> of next year. It creates an advisory committee to participate in and guide the planning process for the facility and report to the Joint Standing Committee on Health and Human Services. It authorizes the committee to report out a bill based on the advisory committee's report and it further requires the Department to report to the committee on the progress of creating the facility and developing rules. Finally, Mr. President, this bill provides that the transfer of any forensic patients into the facility must be approved by a court of appropriate jurisdiction. I think this is an important bill to pass and I hope you will join me in opposing this motion so we can move on to adopt the Ought to Pass as Amended Report. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Androscoggin, Senator Brakey.

Senator **BRAKEY**: Thank you, Mr. President. I rise in support of the Ought Not to Pass Report before us. I guess I'll just - well, I'll give a brief reason for why we should reject this report today, which is that we are already in the process, the Department is

already in the process of moving forward and creating a forensic unit, and this - so this legislation is both unnecessary and it would also throw hurdles in the way that would slow down the process to getting to having this forensic mental health unit. This is something that has been a long time coming, that many of us on the Health and Human Services Committee have been asking for progress moving forward on this for a long time. In fact, the very slow progress that has been taken over the last several years has resulted in a situation where, potentially, we could be - we could be on the hook for a lot of money, the federal government. So any, any new additional obstacles we're going to throw in the way to getting this done in a timely manner, I don't think is appropriate. That's what this legislation would do. So for the sake of getting this project completed as quickly as possible, both for the sake of the taxpayers and also for the sake of those in need of these services, I encourage us to reject - to accept the Ought Not to Pass Report and reject this legislation. Thank you very much.

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

Senator **KATZ:** Thank you, Mr. President. Men and women of the Senate, I rise in opposition to the pending motion. I think we all agree that we need this kind of step-down facility, as it relates to the Riverview facility, and although there have been a number of proposals from the Administration over the last few years, none of them were for a step-down facility with respect to Riverview until this year. So this is not something specifically, which has been on our agenda for a number of years. The real question to me, Mr. President, is when a new facility gets built, whether it's a forensic step-down facility or a prison or any other State institution, who ought to make the decision on where that gets built? Should it be the Chief Executive or should it be the Legislature? This bill makes it very clear that, at least with respect that this step-down facility, it's a Legislative decision and the committee's gone through the process and has determined that this facility ought to exist here in Augusta. It happens to be my district, but half of my constituents would rather see it in Bangor, probably. But it belongs in Augusta because these are people who are coming from Riverview into this step-down facility, maybe going back to Riverview because they need more acute care, and they have it, literally, on the same campus makes sense. This is a long, twisted history of how we got here and, yes, there has been far too much delay, and it's an example of what happens, I think, when all of us, for some reason, don't believe we're on the same team. So I hope that people will vote in opposition to the pending motion. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Cumberland, Senator Carson.

Senator **CARSON:** Thank you, Mr. President. May I pose a question through the Chair?

**THE PRESIDENT:** The Senator may proceed.

Senator **CARSON:** Thank you, Mr. President. In light of the comments by the good Senator from Androscoggin, Senator Brakey, I'm wondering if he could tell us where the Administration currently plans, as he suggested, to build the step-down facility? Thank you.

**THE PRESIDENT:** The Senator from Cumberland, Senator Carson, has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Senator from Androscoggin, Senator Brakey.

Senator **BRAKEY:** I believe the Administration currently plans to build the step-down facility in Bangor.

**THE PRESIDENT:** The pending question before the Senate is Acceptance of the Ought Not to Pass Report. If you are in favor of accepting that report you will be voting yes. If you are opposed you will be voting no. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

### ROLL CALL (#372)

**YEAS:** Senators: BRAKEY, COLLINS, CUSHING, CYRWAY, DAVIS, HAMPER, KEIM, LANGLEY, MASON, SAVIELLO, VOLK, WHITEMORE, PRESIDENT THIBODEAU

**NAYS:** Senators: BELLOWS, BREEN, CARPENTER, CARSON, CHENETTE, CHIPMAN, DESCHAMBAULT, DIAMOND, DILL, DION, DOW, GRATWICK, HILL, JACKSON, KATZ, LIBBY, MAKER, MILLETT, MIRAMANT, ROSEN, VITELLI, WOODSOME

13 Senators having voted in the affirmative and 22 Senators having voted in the negative, the motion by Senator **BRAKEY** of Androscoggin to **ACCEPT** the Minority **OUGHT NOT TO PASS** Report, in **NON-CONCURRENCE, FAILED**.

The Majority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED**, in concurrence.

Bill **READ ONCE**.

Committee Amendment "A" (H-482) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, Bill **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED**, in concurrence.

Out of order and under suspension of the Rules, the Senate considered the following:

### PAPERS FROM THE HOUSE

#### Non-Concurrent Matter

HOUSE REPORTS - from the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act To Provide Traffic Safety Education in Schools"

H.P. 793 L.D. 1130

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-469)** (9 members)

Minority - **Ought Not to Pass** (4 members)

In Senate, June 13, 2017, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-469)** in concurrence.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-469) AS AMENDED BY HOUSE AMENDMENT "A" (H-537)** thereto in **NON-CONCURRENCE**.

Senator **LANGLEY** of Hancock moved the Senate **INSIST**.

Senator **MILLETT** of Cumberland moved the Senate **RECEDE** and **CONCUR**.

On motion by Senator **MASON** of Androscoggin, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

**THE PRESIDENT:** The Chair recognizes the Senator from Cumberland, Senator Millett.

Senator **MILLETT**: Thank you, Mr. President. Mr. President, ladies and gentlemen of the Senate, we have before us a new and improved version of An Act to Provide Traffic Safety Education in Schools. This bill passed strongly - with a strong vote in the Senate. It's coming back to us with a less, smaller, that's right, small fiscal note and a requirement that these don't start until after 4<sup>th</sup> grade. I'm puzzled by some folk's desire to not respect that. So I hope you will support me in the Recede and Concur. Thank you.

**THE PRESIDENT:** The pending question before the Senate is the motion to Recede and Concur. A roll call has been ordered. If you are in favor of Receding and Concurring you will be voting yes. If you are opposed you will be voting no. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

**ROLL CALL (#373)**

YEAS: Senators: BELLOWS, BREEN, CARPENTER, CARSON, CHENETTE, CHIPMAN, DESCHAMBAULT, DIAMOND, DILL, DION, GRATWICK, HILL, JACKSON, KATZ, LIBBY, MAKER, MILLETT, MIRAMANT, VITELLI

NAYS: Senators: BRAKEY, COLLINS, CUSHING, CYRWAY, DAVIS, DOW, HAMPER, KEIM, LANGLEY, MASON, ROSEN, SAVIELLO, VOLK, WHITEMORE, WOODSOME, PRESIDENT THIBODEAU

19 Senators having voted in the affirmative and 16 Senators having voted in the negative, the motion by Senator **MILLETT** of Cumberland to **RECEDE** and **CONCUR PREVAILED**.

Out of order and under suspension of the Rules, the Senate considered the following:

**COMMUNICATIONS**

The Following Communication: H.C. 277

**STATE OF MAINE  
CLERK'S OFFICE  
2 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0002**

June 22, 2017

The Honorable Heather J.R. Priest  
Secretary of the Senate  
128th Maine Legislature  
Augusta, Maine 04333

Dear Secretary Priest:

House Paper 1101, Legislative Document 1598, "An Act To Allow the Commercial Growth and Sale of Water Spinach in the State," having been returned by the Governor, together with objections to the same, pursuant to Article IV, Part Third, Section 2 of the Constitution of the State of Maine, after reconsideration, the House proceeded to vote on the question: "Shall this Bill become a law notwithstanding the objections of the Governor?"

92 voted in favor and 53 against, and accordingly it was the vote of the House that the Bill not become a law and the veto was sustained.

House Paper 786, Legislative Document 1122, "An Act To Amend the Campaign Reports and Finances Law and the Maine Clean Election Act," having been returned by the Governor, together with objections to the same, pursuant to Article IV, Part Third, Section 2 of the Constitution of the State of Maine, after reconsideration, the House proceeded to vote on the question: "Shall this Bill become a law notwithstanding the objections of the Governor?"

79 voted in favor and 65 against, and accordingly it was the vote of the House that the Bill not become a law and the veto was sustained.

Sincerely,

S/Robert B. Hunt  
Clerk of the House

**READ** and with accompanying papers **ORDERED PLACED ON FILE**.

The Following Communication: H.C. 276

**STATE OF MAINE  
CLERK'S OFFICE  
2 STATE HOUSE STATION  
AUGUSTA, MAINE 04333-0002**

June 22, 2017

The Honorable Heather J.R. Priest  
Secretary of the Senate  
128th Maine Legislature  
Augusta, Maine 04333

Dear Secretary Priest:

The House voted today to insist on its former action whereby it accepted

- the Majority Ought to Pass as Amended Report of the Committee on State and Local Government on Bill "An Act To Protect Taxpayers in the Privatization of State Services" (S.P. 407) (L.D. 1213) and Passage to be Engrossed as Amended by Committee Amendment "A" (S-289);
- the Majority Ought to Pass as Amended Report of the Committee on Education and Cultural Affairs on Bill "An Act To Improve the Quality of Teachers" (S.P. 263) (L.D. 818) and Passage to be Engrossed as Amended by Committee Amendment "A" (S-203).

Sincerely,

S/Robert B. Hunt  
Clerk of the House

**READ** and with accompanying papers **ORDERED PLACED ON FILE.**

All matters thus acted upon were ordered sent down forthwith for concurrence.

Senate at Ease.

The Senate was called to order by the President.

**ORDERS OF THE DAY**

The Chair laid before the Senate the following Tabled and Later Assigned (6/21/17) matter:

JOINT ORDER - Joint Study Order, To Establish the Task Force on Health Care Coverage for All of Maine  
S.P. 592

Tabled - June 21, 2017, by Senator **CUSHING** of Penobscot

Pending - **PASSAGE** (Roll Call Ordered)

Senate at Ease.

The Senate was called to order by the President.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

**ROLL CALL (#374)**

YEAS: Senators: BELLOWS, BREEN, CARPENTER, CARSON, CHENETTE, CHIPMAN, DESCHAMBAULT, DIAMOND, DILL, DION, GRATWICK, HILL, JACKSON, KATZ, LIBBY, MILLETT, MIRAMANT, SAVIELLO, VITELLI, WHITEMORE

NAYS: Senators: BRAKEY, COLLINS, CUSHING, CYRWAY, DAVIS, DOW, HAMPER, KEIM, LANGLEY, MAKER, MASON, ROSEN, VOLK, WOODSOME, PRESIDENT THIBODEAU

20 Senators having voted in the affirmative and 15 Senators having voted in the negative, **PASSED.**

Ordered sent down forthwith for concurrence.

The Chair laid before the Senate the following Tabled and Later Assigned (5/31/17) matter:

SENATE REPORTS - from the Committee on **LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT** on Bill "An Act Regarding Generic Drug Pricing"  
S.P. 432 L.D. 1280

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-153)** (11 members)

Minority - **Ought Not to Pass** (2 members)

Tabled - May 31, 2017, by Senator **VOLK** of Cumberland

Pending - **ACCEPTANCE OF EITHER REPORT**

Senator **VOLK** of Cumberland moved the Senate **ACCEPT** the Minority **OUGHT NOT TO PASS** Report.

On motion by Senator **BELLOWS** of Kennebec, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.



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

Senator **BELLOWS:** Thank you, Mr. President. Ladies and gentlemen of the Senate, I rise in opposition to the pending motion. I think we can all agree that prescription drug costs are too high. Indeed, they are skyrocketing faster than wages, inflation, or overall healthcare spending. As State Legislators, our options are limited, but the bill before us offers us a unique opportunity, and it is based on existing federal law and, indeed, consistent and congruent with federal law. In order to understand the underlying bill, we need to understand the underlying federal law. In 1984, Congress passed a very important bill addressing patent protection for brand named drug companies and generic competition. The Hatch-Waxman Act did two things. It extended patent protections for the brand named companies in recognition that they had a lot invested in research and development and, this is important, they made it simpler and more efficient for generic companies to start developing the generic versions of the drugs in recognition of the fact that it was in the public interest to bring generic competition to the market as soon as possible to bring down the cost of lifesaving drugs for the American people. So what that Act required under the FDA rules and guidelines is a process. The first step, the critical first step, is to obtain samples of the brand named drug made by the brand named company for generic companies to test whether the generic version is equivalent or bio-similar. That is what L.D. 1280 is about. You can't bring any generic drugs to market, ever, if generic companies cannot get the samples to perform research and testing. Unfortunately, Congressional action in 2007 complicated things. Congress passed the FDA Amendments Act which did two things. It created a restricted distribution system for certain drugs that needed stricter guidelines for safety reasons and the purpose was to protect patients who received the drugs as end-users in retail commercial settings. Drugs like those that might be off-limits to pregnant women and that the doctors who prescribed them needed to be aware of that and screen for them. The law made very clear in the legislative history that these restrictions do not apply to the equivalency testing, the research and development done by generic companies. Unfortunately, that is exactly what brand named companies are doing, refusing to sell samples to generic companies for research, citing the 2007 law. Unfortunately, although the law was clear about what should happen, Congress, not contemplating this might be abused, failed to write in penalties. So even though the FTC has sided with the generic companies, even though the FDA has sided with generic companies, there has not yet been a fix. L.D. 1280 solves the problem by requiring that brand companies comply with federal law or risk sanctions on their Maine license to distribute products in the state. That's what the law does. We can increase access to generic drugs and lower prescription drug costs in the long-term if we help to make sure that those drugs are available for research and development. Thank you.

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

Senator **GRATWICK:** Thank you very much, Mr. President. Ladies and gentlemen of the Senate, I just wish to give two background pieces of information as we discuss what I think is going to be a complicated legal question. First is, just for your

information, generics are safe. We have lots of generics out there, 80% or 90% of the market out there is generics. I basically prescribed generics whenever I could because it does go through the same testing and I think we need not really have worry about the generics. Second, I would recommend you view all pharmaceutical companies with a certain jaundice, a certain askance, because they have this very difficult role where they are trying to, one, come up with good products, new products. They are trying to do good. The second part in conflict with that, there's always a dynamic tension. They are out there to make money. So there's always going to be that conflict, whether it's a generic or whether it's a brand named product.

As we approach this, I think you have to realize that generics are like any other medicine and each of us is genetically different and you may do well on Penicillin and it may cause me an anaphylactic reaction. So our individual differences are very strong in this situation.

There are a number of different stories you could tell about how generic manufacturers have done a very good job at trying to be very careful and there is one very famous tale of a generic manufacturer who actually made a better medicine than the initial brand medicine, but it was a mirror image. In other words, when you get these complex organic molecules, they look one way and then are seen as formless the other way. It turned out it was a much purer, much better product but because it was just a mirror image, and everybody thought it was going to be great, it had a different side effect profile and caused a particular syndrome. Even though you're making a very good medicine, we're still biologically varied individuals in this way.

There is a very famous story that I told earlier in our caucus about Digitalis Digoxin, which is a heart pill, and the generic one was really not as good in this instance, but they corrected their pattern and so the generic eventually got so it was as good as the brand named product.

My opinion is that we should be careful of all drugs and you should take care whenever you're getting any drug. I don't care who's made it. You should be worried.

This bill, to my way of thinking, is helpful inasmuch as it's going to allow people to test a medicine with sufficient quantities. If I started a generic company, I'm going to need not just 100 or 1,000 pills, I'm going to need, you know, 5,000 or 10,000 pills so I can really do cross double blinded studies to see whether they have biologic equivalence to assure that my new medicine is as good as the old one and the manufacturer needs to be able to give these people who are going to be running those tests adequate numbers of pills. I think that the safety testing is going to be the same. The FDA regards this very carefully. I think we're all aware that the manufacturing plants for a lot of these medicines are abroad and, whether it's generic or brand named, they have to have very good standards for both the whole issue of patent infringement and whether you're really affecting the process of the initial company is something I'll debate over the supper table. The fact is, the pharmaceutical industry is not doing badly at all and they still have their patent protection for anywhere from 10 to 18 years. Therefore, I urge folks to vote against the current motion. Thank you.

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

Senator **CHENETTE:** Thank you, Mr. President. I rise in opposition to the pending motion and in support of the bill before

us. Some people are asking: why should Maine be the state to pass L.D. 1280, the bill before us? After all, Congress has been trying to do this for four years with bipartisan effort led by U.S. Senator Susan Collins. The answer to that is that the feds cannot get it done. Between the money, the politics, and the gridlock, big pharma continues to hold the American people, including those of us in Maine, hostage. So I come to this question of: why Maine? Because we have a history of bipartisan healthcare reforms that have led the nation. In the 1990s Maine passed guaranteed issue and guaranteed renewal. These are the two major components of the Affordable Care Act, and we did it 30 years before the federal government. What that meant for Mainers was that if you had a pre-existing condition, like a bad heart or arthritis, the insurance company still had to cover you. In 2010 Maine passed Public Law 90. We created a high-risk insurance pool that the federal government is using right now as a model across the country. This year we passed a Right to Shop bill so that consumers can take control over their healthcare costs by shopping for lower costs beyond the network of providers offered by their insurance companies. So, again, why Maine? Well, we are always on the forefront of innovative solutions and, most importantly, because it's the right thing to do to bring lower cost prescription drugs to Mainers, generics which saved our constituents over a billion dollars last year alone. On top of that, the cherry on top of this opportunity, is to loosen the grip of big pharma. So I urge this Body to vote down the pending motion in support of the underlying bill.

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

Senator **DESCHAMBAULT:** Thank you, Mr. President. Ladies and gentlemen of the Senate, I rise in support of the motion Ought Not to Pass; and the title of this bill is "An Act Regarding Generic Drug Pricing," emphasis on "pricing". I'll briefly tell you that I am not a big health person in terms of understanding all of this, so a couple of weeks ago, I always speak with my pharmacist on any pharmacy bill, and I gave him what little that bill was. He said there's not enough there to even comment. Since then the amendment came up. I am not going to bore you with everything I've written because I would like to let the public know that what I had written is what I was able to Google and get information. Something tells me something's not right here, that five minutes before we go into session we have received no fewer than eight handouts, totaling over 18 pages, about this one subject; and we're ready to vote on this. The State of Maine and the federal government doesn't get along. I will, however, skip a lot that's in here because it's already highlighted, whoever did this – Maine's Attorney General – and that's why I did this. When I Googled, I found this out. Maine's Attorney General joined 19 other State Attorney Generals in filing a federal lawsuit against a number of generic drug makers alleging that they entered into numerous - and I'll emphasize alleging - conspiracies to artificially inflate, manipulate prices, and reduce competition in the United States for two drugs, at least, an antibiotic and an oral diabetes medication. In July of 2014 the State of Connecticut initiated the investigation for reasons behind suspicious pricing increases of certain generic pharmaceuticals. The investigation is still ongoing. So why this bill? A number of additional generic drug investigations uncovered evidence of a broad, well- coordinated, long-running series of conspiracies to fix drugs. In 2015 generic drug sales in the United States were estimated almost at \$75

billion. Currently, the generic pharmaceutical industry accounts for approximately 88% of all prescriptions written in the United States.

Well, this gave me reason to pause and educate myself a little bit more. The bill amends the Maine Pharmacy Act. You may have read the bill. It's not long. It'll take you two minutes. It talks about persons seeking to develop an application. I thought: who's this person? The more you read, you find out it's not a person; it's a company. The bill further states that a manufacturer or wholesaler shall make the drug distributed in this state available for this state for conducting testing. I understand that. They do that with all drugs - and shall make the drug available for sale at a fair market price without any restriction. Fair market price for whom?

So I chanced to speak with Attorney General Mills and inquired further as to the pending lawsuits since she joined with the other 19 states. She offered to send me her view in writing and that's why I'm surprised at all these things today when I gave you my list two days ago. So I will read it so that the public knows this, too. Janet Mills, our Attorney General, says: "You've asked me for my views on L.D. 1280. In addition to serious constitutional issues the bill raises, here are my brief thoughts. This is not a consumer bill. The bill guarantees a low price for drug companies, not for consumers. Fair market price in the bill refers to the price paid by drug companies who buy drug samples from the manufacturers and not to the price paid by the consumer." Make no mistake about that. "Nothing in the bill requires that these lower prices be passed on to consumers instead of company profits." All you have to do is read the article about Epipens and you'll know. "Nothing in the bill provides for lower prices for consumers or for the State government and nothing in the bill or the amendment provides additional revenues for the State. Generic drug companies are profit-making entities who are subject of a special report of the U.S. Senate Committee on Aging, which was issued just last December, which concluded that generic drug companies are gouging consumers and harming patients, taxpayers, and the national health system. Maine, currently, and 19 other states are suing Mylan and other generic companies in inflating and manipulating drug prices. Please, the bill that benefits only the same big drug companies who jacked up the price of Epipens and other drugs and who have gained huge profits from gouging customers, do not support this bill."

That's basically all I have to say. I cannot understand how the State of Maine can be effective in enforcing any of that kind of generic bill when the federal government has more clout than we do. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Lincoln, Senator Dow.

Senator **DOW:** Thank you, Mr. President. I thank all the previous speakers for all of the special information and statistics and everything. My father had a favorite expression which simplifies the whole process for me. My father would say, "Let's you and him fight." That's what this bill is asking us to do – to let you, the State of Maine, fight him while the other party sits on the sidelines and watches the whole thing. By the way, the State of Maine gets to pay the entire bill for the process. So let's you and him fight. It was never a favorite solution to me, so that's how I've narrowed this bill down and I'm going to vote against this bill and for the motion.

**THE PRESIDENT:** The Chair recognizes the Senator from Aroostook, Senator Jackson.

Senator **JACKSON:** Thank you, Mr. President. I really appreciate that. Ladies and gentlemen of the Senate, this legislation, I think, really when you boil it down, it's a lot simpler than a lot of people are making it out to be. There is already, currently, a law. The FDA says that brand named manufacturers have to provide enough of the drug at a fair price to generics so they can come up with a bio-equivalent replication of that. That's the FDA law. They have to do that currently. Well, one of the things that I think we all know is that sometimes, quite often in Congress, money and power influence a lot. You can name off a lot of things. Wall Street reform. Health insurance reform. I definitely think that big pharma has an awful lot of pull in D.C. So even though the law says that you have to give that, because the Senator from Kennebec, Senator Bellows, mentioned there isn't any penalty for that, they are able to get around it by saying that there are safety concerns. So that's why we have the law here today. I think it's been talked about already that Maine has been out front on a lot of different things, not just in healthcare. Earlier on this session we passed a food sovereignty law, first in the nation. I think that those things are things that I think we all get elected on – making sure that consumers have a representative to push for the issues that are important to them.

A long time ago before I ever even dreamt of being in this Body, I can remember a State Senator organizing bus trips into Canada. For myself, living on the Canadian border, I've seen, way back when, seniors, poor people, even working class people, stuck by the extreme cost of prescription drugs and were actually getting on buses to go into Canada to get the same medications at half, 60%, of the money that they buy them over here. That still goes on today. People go to Canada all the time to buy the very same prescription drugs, made in the very same factories, coming out of Canada at an extremely lower price. They argue that those drugs aren't safe. In this Chamber, many of you that were here in the 126th, we passed a law, first in the nation, a CanRx bill that allowed importation out of Canada. Actually it allowed importation out of tier-one countries because the FDA, the same company, the same agency we're talking about today, said that Canada, Australia, New Zealand, and Great Britain had as good, if not better, safety standards than the United States of America. That's their classification, tier one – those tier-one countries that the State of Maine allowed to be imported into Maine at extremely lower costs. What happened? Pharma said those drugs aren't safe, even though the FDA said they were as good, if not better. Pharma filed a lawsuit and had it overturned here in Maine on safety. I believe the next year we had the bill that came here. I wasn't here. Personal importation – personal importation is in the FDA guidelines. It's not a statute, but it's actually a written rule in the FDA guidelines that you can personally import. What did pharma say? That's not safe. The law didn't pass.

Here we are today with a law that is in FDA statutes. It says that they have to provide these drugs at a cost that's fair to the brand name company, but they don't do it. We're trying to force that to happen here in the State of Maine. Why? Because one company having all of the monopoly on a drug is always going to want more money and try to keep as much money as it can. I think this is very simple. I mean, today we can either vote to lower prescription drugs, at least the opportunity to lower prescription drugs, or we can continue to let pharma have a monopoly on these issues. I went to D.C. a couple of years ago and sat down

with Senator Collins, and Senator Collins has always given anyone that came to D.C. the opportunity, the chance, to talk to her. I sat down with her and I talked to her about federal legislation that was going to allow importation from Canada. The Senator looked me in the eye and very clearly said, "Troy, we couldn't pass this when the Democrats controlled the Senate. We're never going to pass it now." That, to me, was extremely honest from someone that didn't have to be, but the fact of the matter was that she was very clearly articulating to me that there's almost no way that Congress is ever going to do anything to upset what pharma has built. So I think it's incumbent on the states to do this all across this country.

We would be first in the nation. No doubt about it. But the legislation that was an 11-2 report actually has put language in there that if the Attorney General has to defend this, which I 100% believe she will, then she can recoup money when, and I believe, she'll win the case.

Ladies and gentlemen, even if we know going in that she's going to lose, this issue is so big for so many people in this country that I think taking the fight on is better than sitting on our hands and doing nothing.

When I worked for Bernie Sanders - and people can laugh and criticize what a socialist guy he was. I don't care. But the one thing that I found from that campaign, more than anything, is that people all across this State, all across this country, Republicans, Democrats, and Greens, were drawn to that man because of this issue, lowering prescription drugs. When he lost, many people told me, "I liked him; he was a lot like Trump." This is an issue that it shouldn't matter what party you're in because it's going to help all of our people. So, ladies and gentlemen, I know what the issue is. This is unsafe. We shouldn't do this. It's going to be a big deal for the Attorney General. It's always safety and a big deal for the Attorney General. Why don't we just do something that we all know in the end is going to help all of our people, regardless of what their political affiliation is and what socio-economic class they come from.

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

Senator **KATZ:** Thank you, Mr. President. Men and women of the Senate, I rise in support of the pending motion. I agree with almost everything that the good Senator from Aroostook just said. He started off by saying that the system in Washington is terribly dysfunctional and that the large drug companies have a stranglehold on our national Congress. I couldn't agree more. I'm not quite sure how to fix that, but I couldn't agree more. Secondly, I agree that we should be doing everything that we can to lower our drug prices for our citizens, but I come down in favor of the pending motion because of a couple of questions I have, Mr. President. The first question is: we have an Attorney General who is telling us, in no uncertain terms, that she believes that this bill runs afoul of federal preemption rules – and that's the concept that says when Congress has expressed a desire to take over the entire field of law in a particular area, as she says they have here, she's indicating that she has little doubt that this bill would be preempted by federal law – why would we want to ignore that advice of our own lawyer? My second question – I think there's been allusions to it already – why are we here? Why is this bill being brought here in the State of Maine primarily by a company that actually has manufacturing plants in seven other states in the country? Why aren't they bringing this suit in a state where they

have actual presence, where they employ people, where they pay taxes? Why are they doing it here in Maine? They're doing it here in Maine; I think we all know, because we're a cheap date. I don't know why they're not doing it in West Virginia or Texas or North Carolina or Pennsylvania or Vermont or the other places they have a presence. You know, in talking with the Attorney General about this case, I asked her the question: assuming you don't have the horsepower in your office - they only have four people in the Consumer Protection Division - you're going to have to hire outside counsel to represent the State in this inevitable lawsuit. How much is it going to cost? The figures ran north of half a million dollars in terms of litigation fees because, make no mistake about it, this is going to start in federal trial court; but it's going to end up in the first circuit and after that somebody's going to ask that the Supreme Court do a certiorari, and who knows if they would or not. That's \$600,000 for one side. By the way, if we lose it, the State of Maine could be on the hook for the other side's attorney's fees as well.

Senator Jackson brought forth the CanRx bill a few years back. I believe in that bill and I voted for that bill. We passed it. I thought it was the right thing to do. In many ways I think this bill might be the right thing to do. But we ended up spending hundreds of thousands of dollars of taxpayer money defending a case where we had been warned, just as we are warned here, that we're going to lose the case. Why are we going to do that? Everybody in this Chamber has different priorities for spending. Thirty-five people, 35 different sets of priorities. Is yours providing more money for direct care workers? Is it more money for K-12 education? Is it maybe more money for the wait list or to help with student debt? I'll bet there's not one person in here whose spending priority is to help representatives of a \$94 billion industry, which is the generic drug industry, fight their battle for them. That's exactly what we would be doing here. Our first job is to be prudent stewards of taxpayer money, Mr. President; and I think that committing ourselves to a half a million dollars more of litigation, where we are essentially carrying the water for a private company, and maybe the risk of double that if we lose, isn't great public policy and I hope that folks will consider supporting the pending motion. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Cumberland, Senator Dion.

Senator **DION:** Thank you, Mr. President. Ladies and gentlemen of the House, it's been a long journey – did I say House? I've betrayed my first affection, Mr. President.

**THE PRESIDENT:** Senator, I want you to know that it was your colleagues that called you out on that and not I.

Senator **DION:** But it's your Chamber and I just want to extend my apologies.

Nonetheless, some weeks ago I was approached by both sides of this question, those who would advocate for a decision one way or the other. I took all their material and I began reading. It's one of my unfortunate addictions. I'll actually read the material and then I'll start doing some research. Before I tell you about that I want to harken back to my first year in law school. The very first case they gave us happened in Aroostook County. A woman was injured, struck by a golf ball. Suit was brought against the golf course and the railroad because the ball had struck the railroad tie and struck her and there was an injury. We

were all excited. At least I was. I spent hours developing an argument about the responsibility of a landowner, the responsibility of the railroad company, and what would proper notice be, and what should compensation look like. I felt I was pretty smart. Then I found out that the Maine law court said it wasn't about any of those things. It was about the golf ball. It was the nature of the golf ball that when it was struck, no one could predict where it would go, and the principle that came out of that is that we assume risk. We make decisions every day in certain circumstances where we accept the possibility of a negative outcome. Once you understood that principle, you could apply it to other facts and make some kind of legal determination.

That's always the promise of a lawsuit that the Senator from Kennebec referred to. It's one thing to pay for litigation, but if one side or the other prevails, some principle of law comes out of that and it may come back as a benefit or it may come back to haunt you. My good sister Senator from Kennebec outlined a cogent argument about the benefits of generics, just as my leader did. It's seductive. I would subscribe to it. I think it's our interest to drive the cost of pharmaceuticals down. But the evidence seems to say that both sides of this equation bear some scrutiny. That's the objective report of what I could see in the facts. There was a lot of energy today, Mr. President, speaking about this refusal that everything's safe and everything should move forward. I could have stopped there; but then I started to say: why did this decision occur? Why does it happen? Why are they allowed to say no if that's the case? I was disturbed when the first summary for this bill came out because the summary actually uses the word "excuses" in quotation marks, which to my mind was a bit of a subjective conclusion, not necessarily the objective report we normally get following a bill. So I searched why did these excuses occur?

Now, those of you who have had the pain of listening to me in a debate know for the most part I try to act without notes or a script. I figure if you've got a good argument, like my good friend from Waldo County did today – right? – you don't need a script. But the issue of refusal to deal is bigger than pharmaceuticals and we've allowed ourselves to be distracted by the fact, Mr. President, that it's just about the cost of drugs.

Let me just read this to you from the Supreme Court, not from the FDA, not from the FTC: "In the absence of any purpose to create or maintain a monopoly, the Sherman Antitrust Act does not restrict the long recognized right of a manufacturer engaged in an entirely private business to freely exercise his own independent discretion as to the parties with whom he will deal." That's a judge's long-winded talk for the simple principle that you have no legal duty to deal with a competitor. It's that clear. Alright. We may not like it. We may not appreciate the consequence of that principle. But to do so is to upend our understanding of a free market business enterprise, that they do have the right to refuse to deal with another business entity and, more so in this case, the right to refuse to deal with a competitor.

Now, there was some reference to the Hatch-Waxman Act. The reason I refer to the Sherman Antitrust Act, Mr. President, is they were dealing with electric power generation cases as their guidepost to try to sort out the pharmaceutical question. You would agree, Mr. President, that there are no easy, clear, or quick answers when it comes to policy decisions or legal conclusions about how electrons move and how they're paid for, but that's what they reached to. They had to go to utility law. Why did they go to utility law? Because they said, "Look, if the government can trespass on the decisions of a private business, then there has to

be a grand bargain that you grant them a monopoly in exchange for the regulation of the cost, the production, and the distribution of their products; and if you're unwilling to do that, then withdraw." At the lower courts, Mr. President – yes, the generics have been to federal court in many districts in this country. What have they asked the court? To declare that a monopoly exists. In each case the generics have been thrown back because the evidence does not sustain their claim that there is a monopoly. Yes, we may not like big pharma. That's subjective.

Objectively speaking, they do not constitute a monopoly as anticipated by the Congress and the Congress in the Hatch-Waxman Act twice affirmatively rejected any language, Mr. President, that would compel private business to do what the proponents in opposition to this motion would suggest. So the question is not about generics. The question is: do we choose today to subscribe to the idea that we can dictate to private business entities how they should behave just because they currently do not satisfy a social policy that some of us in this Chamber subscribe to? The question isn't at the FDA, Mr. President. The question is whether or not we want to change antitrust law.

Now, I'll close with this: my wife came in a couple of times when I was reading, you know, in that purple twilight before the sun actually comes because I really wanted to find out because there is so much hype about this bill on both sides. Everything's at another level. I was trying to figure out why this was occurring and that's what I've discovered. There is some hard work to be done and sometimes this might not be the proper venue. Maybe it does have to occur in a court or in Congress; but I will say this: there are thousands of pages of things I didn't read. I tried to figure out the highlights with the controlling cases. I want to say that because here it is in our bill, "without any restriction that delays access." There is the core of it. Alright. If you're representing the generics, this is the missile. Here's what frightens me, ladies and gentlemen of the Senate, I don't know what those words mean. Those words will have to be litigated, but I do have a suspicion that these words would allow them to argue that they can evade all current federal regulation to get to their ultimate goal. If I was representing them, that's exactly what I'd want to see in the language. So those few words trump federal court law and federal regulation and the intent of Congress. Trust me. No, don't trust me. I'll trust myself, Mr. President, that I don't think that those words reflect the public interest, but the goals of private interest. Thank you for your time.

**THE PRESIDENT:** The Chair recognizes the Senator from Aroostook, Senator Jackson.

Senator **JACKSON:** Thank you, Mr. President. Ladies and gentlemen of the Senate, I'll just quickly say that my good friend and colleague from Cumberland is a tough, tough act to follow. I wouldn't just say that on this bill. It's the first time I've had the opportunity to serve with him and I've been extremely impressed with many, many of his floor debates and his knowledge of the law that I honestly do not have. But I am curious as to when you bring up the idea of the Sherman Act and the monopoly. My understanding of the Sherman Act was that it didn't end at the borders of the United States. The Sherman Act went over to competitors that were in Canada, were in Australia. If there was a free market system and if you were monopolizing it back in the United States, then that could be a violation of the Sherman Act. I don't think we have a free market system here. What we have is

one big giant that is able to say time and time again that you can't import any medication from any other country because of a violation of safety. That seems to fly in the face of the Sherman Act: but I still believe, wholeheartedly, that we will be able to get lower prescription drugs by allowing generics to get the required amount that they need to do the testing and then there won't be one person that has a drug that helps with all of our people. There will be at least two companies. To me, that competition is what is supposed to be happening, not what was described with the Sherman Act.

**THE PRESIDENT:** The Chair recognizes the Senator from Cumberland, Senator Dion.

Senator **DION:** Thank you, Mr. President. I just want to respond for a moment to the good Senator from Aroostook. Thank you for the compliments. I'm not sure they are deserved.

I will say this: I won't speak directly to the Sherman Act. I limited my inquiry to how it applied to this case, but, as an editorial footnote, I'll allow myself that latitude right now. I think the cost of drugs in the United States is a consequence of how our system is built and what our regulations say about insurance companies and our inability, through Medicaid and Medicare, to do bulk bidding and purchases. Those are what we should address and those are the platforms that I think might achieve the ends that we search for in terms of lower drugs. I'm only here to say today that this piece of legislation is not an appropriate vehicle to achieve that end. Thank you, Mr. President, for your allowing me to speak.

**THE PRESIDENT:** The pending question before the Senate is the motion by the Senator from Cumberland, Senator Volk, to Accept the Minority Ought Not to Pass Report. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

#### ROLL CALL (#375)

**YEAS:** Senators: COLLINS, CUSHING, CYRWAY, DESCHAMBAULT, DIAMOND, DION, DOW, HAMPER, HILL, KATZ, KEIM, MAKER, ROSEN, VOLK, WOODSOME, PRESIDENT THIBODEAU

**NAYS:** Senators: BELLOWS, BRAKEY, BREEN, CARPENTER, CARSON, CHENETTE, CHIPMAN, DAVIS, DILL, GRATWICK, JACKSON, LANGLEY, LIBBY, MASON, MILLETT, MIRAMANT, SAVIELLO, VITELLI, WHITTEMORE

16 Senators having voted in the affirmative and 19 Senators having voted in the negative, the motion by Senator **VOLK** of Cumberland to Accept the Minority Ought Not to Pass Report **FAILED**.

The Majority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED**.

**BILL READ ONCE.**

Committee Amendment "A" (S-153) **READ.**

---

Senate at Ease.

The Senate was called to order by the President.

---

On motion by Senator **SAVIELLO** of Franklin, Senate Amendment "A" (S-295) to Committee Amendment "A" (S-153) **READ.**

**THE PRESIDENT:** The Chair recognizes the Senator from Cumberland, Senator Volk.

Senator **VOLK:** Thank you, Mr. President. Mr. President, my understanding of this amendment is that it would establish a fund for the donation. Apparently, these corporations might be interested in helping us with our legal fees. I think that this is extraordinarily unrealistic of an expectation and completely unnecessary. So I will be asking for a roll call and opposing the pending motion.

**THE PRESIDENT:** The Chair recognizes the Senator from Franklin, Senator Saviello.

Senator **SAVIELLO:** Thank you, Mr. President. So everybody knows, I asked this question of those that were bringing this information to us; and I asked if they would do that and they said yes. That's why I put the amendment in. One of the complaints is that if we have to defend it, how do we fund it. They've offered to do this and I've given them a mechanism to help out.

**THE PRESIDENT:** The Chair recognizes the Senator from Aroostook, Senator Carpenter.

Senator **CARPENTER:** Thank you, Mr. President. Question through the Chair. We're considering Senate Amendment under filing number 295; am I correct?

**THE PRESIDENT:** That's correct.

Senator **CARPENTER:** Thank you, Mr. President. Ladies and gentlemen of the Senate, this authorizes – and I apologize to Senator Saviello, I have not had a chance to talk to him about this – would allow the Attorney General to accept private funds to defend the constitutionality of this. I'm not aware of ever having seen something like this before. It seems to me to be a very bad precedent to have the Attorney General's Office start to take private money to defend Maine statute and I would ask you to vote against the adoption of the amendment. Thank you.

**THE PRESIDENT:** The Chair recognizes the Senator from Cumberland, Senator Volk.

Senator **VOLK:** I wish to pose a question through the Chair, please.

**THE PRESIDENT:** The Senator may proceed.

Senator **VOLK:** Sure. I was just wondering – we're dealing with a major corporation employing 35,000 people worldwide. So I'm wondering if there was a vote by their Board or whether the Senator from Franklin got approval directly from the CEO, which was paid \$98 million a couple of years ago.

**THE PRESIDENT:** The Senator from Cumberland, Senator Volk, has posed a question through the Chair to anybody who cares to respond. The Chair recognizes the Senator from Franklin, Senator Saviello.

Senator **SAVIELLO:** I believe if one read the amendment, it's open to anybody, whether they make a dollar or \$98 gazillion. Thank you very much, Mr. President.

**THE PRESIDENT:** The Chair now recognizes the Senator from Kennebec, Senator Katz.

Senator **KATZ:** Thank you, Mr. President. Men and women of the Senate, I intend to vote against the pending amendment. The difficulty with it is if the Attorney General is suing a company in an unrelated case and is now arguably accepting money from the company that she is suing to help fund legal fees, it seems that that places her and the State of Maine in a very unhealthy conflict of interest.

**THE PRESIDENT:** The Chair recognizes the Senator from Franklin, Senator Saviello.

Senator **SAVIELLO:** Thank you, Mr. President. Ladies and gentlemen of the Senate, that's making the assumption that the only ones that want to contribute are that particular item. There may be others that may be interested. Thank you very much, Mr. President.

**THE PRESIDENT:** The Chair recognizes the Senator from Aroostook, Senator Jackson.

Senator **JACKSON:** Thank you, Mr. President. Ladies and gentlemen of the Senate, I'm not sure about who may or may not put money into this; but I, for one, Senator Saviello, would certainly donate for this worthwhile cause.

On motion by Senator **VOLK** of Cumberland, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

**THE PRESIDENT:** The pending question before the Senate is Adoption of Senate Amendment "A" (S-295) to Committee Amendment "A" (S-153). If you are in favor of accepting that report you will be voting yes. If you are opposed you will be voting no. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

**ROLL CALL (#376)**

YEAS: Senators: BRAKEY, CHENETTE, CHIPMAN, CYRWAY, DAVIS, JACKSON, LANGLEY, MIRAMANT, SAVIELLO, WHITTEMORE, PRESIDENT THIBODEAU

NAYS: Senators: BELLOWS, BREEN, CARPENTER, CARSON, COLLINS, CUSHING, DESCHAMBAULT, DIAMOND, DILL, DION, DOW, GRATWICK, HAMPER, HILL, KATZ, KEIM, LIBBY, MAKER, MASON, MILLETT, ROSEN, VITELLI, VOLK, WOODSOME

11 Senators having voted in the affirmative and 24 Senators having voted in the negative, the motion by Senator **SAVIELLO** of Franklin to **ADOPT** Senate Amendment "A" (S-295) to Committee Amendment "A" (S-153) **FAILED**.

On motion by Senator **JACKSON** of Aroostook, Senate Amendment "B" (S-297) to Committee Amendment "A" (S-153) **READ**.

**THE PRESIDENT:** The Chair recognizes the Senator from Aroostook, Senator Jackson.

Senator **JACKSON:** Thank you, Mr. President. Ladies and gentlemen of the Senate, in discussion with my good friend and colleague from Cumberland, Senator Dion, some of the concern that was brought up was what would happen, as far as liability went, with the brand named manufacturer handing off the drug to the generic. I believe wholeheartedly that because the generic company has to require – do all the same safety standards that the brand name does under FDA, I believe that concern is already taken care of, but in the spirit of trying to fix as many concerns as possible, I offered this amendment that provides that a manufacturer or wholesaler is not liable for injuries alleged to have been caused by the failure to include adequate safety warnings on a product's label or defect in the product's design. I, again, truly believe the FDA requirements have every safety requirement so that there is no concern here; but to make sure that some people felt more – felt better about the legislation, I offer this amendment and hope you will support it.

On motion by Senator **JACKSON** of Aroostook, Senate Amendment "B" (S-297) to Committee Amendment "A" (S-153) **ADOPTED**.

On further motion by same Senator, Senate Amendment "D" (S-309) to Committee Amendment "A" (S-153) **READ**.

**THE PRESIDENT:** The Chair recognizes the Senator from Aroostook, Senator Jackson.

Senator **JACKSON:** Thank you, Mr. President. Ladies and gentlemen of the Senate, again trying to take as many concerns away as possible, I offer this amendment that actually uses language that is in another drug bill that is making its way through the system. There seemed to be some concern over the fact that reasonable drug costs might not be defensible, so in this amendment we used wholesale acquisition costs and we also put

controls in there that the price charged to the customers of the drug obtained pursuant to this requirement is no more than the wholesale acquisition cost. So some of the debate that we had about people in Maine not actually being able to benefit from the lower drug costs, I believe, this amendment captures.

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

Senator **KATZ:** Thank you, Mr. President. Men and women of the Senate, a question through the Chair, if I could.

**THE PRESIDENT:** The Senator may proceed.

Senator **KATZ:** I just don't understand this amendment. Are we talking about the price of an eventually-developed generic drug? Are we talking about the samples that the generic company receives from the patent holder? What transactions is this supposed to apply to? I don't mean to put the good Senator on the spot, but it's a rather significant paragraph here, and I, for one, have no idea what it means. Thank you, Mr. President.

**THE PRESIDENT:** The Chair recognizes the Senator from Aroostook, Senator Jackson.

Senator **JACKSON:** We are talking about when the generic drug company purchases the brand name for the testing. The original bill that we just passed had reasonable market costs. There seemed to be some concern from the Attorney General's Office that that would be hard to quantify and so what we're using here is wholesale acquisition cost. When the generic buys the samples, the price is the wholesale acquisition cost.

On motion by Senator **JACKSON** of Aroostook, Senate Amendment "D" (S-309) to Committee Amendment "A" (S-153) **ADOPTED**.

Committee Amendment "A" (S-153) as Amended by Senate Amendments "B" (S-297) and "D" (S-309) thereto, **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-153) AS AMENDED BY SENATE AMENDMENTS "B" (S-297) AND "D" (S-309)** thereto.

Ordered sent down forthwith for concurrence.

---

Senate at Ease.

The Senate was called to order by the President.

---

Off Record Remarks

---

Senator **DIAMOND** of Cumberland was granted unanimous consent to address the Senate on the Record.

Senator **DIAMOND**: Thank you, Mr. President. Ladies and gentlemen, I just wanted to share this special moment. Eighteen years ago a young immigrant came to this country. He couldn't speak a word of English and he had no friends and he had no family. Four years later he met my daughter and they fell in love and got married and I would say, with a great deal of joy, that today, after all this time, he was sworn in and naturalized and became a United States citizen. We're very, very proud of he and his family. Thank you.

**THE PRESIDENT**: Congratulations, Senator Diamond.

---

Off Record Remarks

---

All matters thus acted upon, with the exception of those matters being held, were ordered sent down forthwith for concurrence.

---

**ADJOURNED** until Friday, June 23, 2017 at 10:00 in the morning.