

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Eighth
Legislature***

OF THE

STATE OF MAINE

Volume II

May 26, 1977 to July 25, 1977

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**Senate Confirmation Session
September 16, 1977**

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be a gesture of accepting them and then, of course, as the time comes when they are able to become citizens, then they would be considered either as the citizens of the State of Maine and pay that license, or else they would be considered non-residents. This has a time limit to it so that by the time they can become citizens then this would no longer hold true.

Senate Amendment "A" Adopted.
On Motion of Mt. Huber of Cumberland,
Tabled for One Legislative Day pending passage to be engrossed.

Enactors

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

"An Act Creating the Maine Development Foundation." (H. P. 1012) (L. D. 1243)

On Motion of Mr. Huber of Cumberland; placed on Special Appropriation Table Pending Enactment.

"An Act to Promote the Sale of More Hunting License to Nonresidents Hunting Deer or Bear." (H. P. 1662) (L. D. 1858)

"An Act Amending the Maine Automobile Insurance Cancellation Control Act." (S. P. 118) (L. D. 277)

"An Act Providing for the Practice of Architecture through a Corporation or a Partnership." (S. P. 137) (L. D. 378)

"An Act to Clarify Physician Certification of Patient Deaths in Maine Nursing Homes." (S. P. 408) (L. D. 1416)

"An Act Concerning the Powers of Plantations under Land Use Regulation and Zoning Statutes." (S. P. 546) (L. D. 1881)

"An Act Granting Implied Powers to the Public Utilities Commission." (H. P. 295) (L. D. 352)

"An Act to Provide for 4-Year Terms of Office for Representatives, Governors and Lieutenant Governors of the Passamaquoddy Tribe of Indians." (H. P. 870) (L. D. 1063)

Which were Passed to be Enacted and having been signed by the President, were by the Secretary presented to the Governor for his approval.

"An Act Relating to Motor Vehicle Fees Collected by the Public Utilities Commission." (S. P. 92) (L. D. 216)

On Motion of Mr. Carpenter of Aroostook,
Tabled until later in today's session. Pending enactment.

"An Act Prohibiting the Dissemination of Obscene Matter to Minors." (S. P. 533) (L. D. 1861)

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Merrill.

Mr. MERRILL: Mr. President and Members of the Senate: I just want to draw the Senate's attention to the fact that this is a Bill which has been debated here before which pertains to the selling of obscene matters to minors. It is not the Bill that pertains to the covering of the items in the store, and I think that it is an unworkable Bill and, therefore, I suppose not threatening to anyone in the sense of ultimate disposition, but I continue to believe that it is a Bill that is not going to accomplish the purpose which it sets out to accomplish, and I would simply ask for a Division when the vote is taken.

The PRESIDENT: A Division has been requested.

Will all those Senators in favor of the passage of L. D. 1861 to be enacted, please rise in their places to be counted.

The Chair recognizes the Senator from York, Senator Hichens.

Mr. HICHENS: Mr. President, I request a Roll Call.

The PRESIDENT: A Roll Call has been requested. In order for the Chair to order a Roll Call, it must be the expressed desire of one-fifth of those Senators present and voting. Will all

those Senators present in favor of a Roll Call, please rise in their places to be counted.

Obviously, more than one-fifth having arisen, a Roll Call is ordered.

The pending question before the Senate is Enactment of L. D. 1861.

A yes vote will be in favor of Enactment. A nay vote will be opposed.

The doorkeepers will secure the Chamber.
The Secretary will Call the Roll.

ROLL CALL

YEA — Carpenter, Chapman, Collins, D.; Collins, S.; Conley, Cummings, Curtis, Danton, Farley, Greeley, Hichens, Huber, Jackson, Katz, Levine, Lovell, Mangan, McNally, Minkowsky, Morrell, O'Leary, Pierce, Redmond, Snowe, Speers, Trotzky, Usher, Wyman.
NAY — Merrill, Pray.

ABSENT — Hewes, Martin.

28 Senators having voted in the affirmative, and 2 Senators in the negative, with 2 Senators being absent, this Bill was Passed to be Enacted, and having been signed by the President, was by the Secretary presented to the Governor for his approval.

"An Act to Provide for Local Registration of all Motor Vehicles." (H. P. 847) (L. D. 1038)

The PRESIDENT: The Chair recognizes the Senator from Oxford, Senator O'Leary.

Mr. O'LEARY: Mr. President, would you please have the Secretary read the Committee Report?

The PRESIDENT: The Secretary will read the Committee report.

Committee Report Read.

The PRESIDENT: The Chair recognizes the Senator from Oxford, Senator O'Leary.

Mr. O'LEARY: Mr. President, I was not in the Chamber when this Bill was debated, and I was not here to vote on it for its first two readings. However, I know there is a problem with it, and I know that the small towns cannot handle this local registration.

Therefore, I Move the indefinite postponement of this Bill and all its accompanying papers.

This Bill puts a burden on some of these towns, which I know they cannot perform when it comes to titles for new vehicles. I have had a problem within the last few weeks with a title, and I know just what kind of a problem it is, so I know they cannot handle it at the local level.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Conley.

Mr. CONLEY: Mr. President and Members of the Senate: This Bill was debated at some length. The Secretary of State, it is my understanding, has withdrawn all of his objections to this bill.

This bill is simply enabling legislation that allows communities to get into the position of distributing license plates, and it seems to me to make good sense, and although we adopted a new program a couple of years back dealing with the stickers themselves that go on the plates whereby the community picks up an additional dollar for the work that it does at the time that it puts out the excise tax, and when they make out the excise tax they can also buy the sticker for the plate at the same time and the community then picks up an extra dollar. No community has to become involved in this program at all. It is strictly and simply enabling Legislation to allow communities to do it if they so wish.

The PRESIDENT: Is the Senate ready for the question?

The pending question before the Senate is the motion by the Senator from Oxford, Senator O'Leary, that this Bill, L. D. 1038, "An Act to Provide for Local Registration of all Motor Vehicles, be Indefinitely Postponed."

A viva voce vote being had,
The motion to indefinitely postpone does not prevail.

On Motion of Mr. Greeley of Waldo,
Placed on Special Highway Appropriations Table, pending enactment.

An Act Relating to Reporting of Data of Abortions Performed by an Attending Physician. (H. P. 1628) (L. D. 1831)

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Trotzky.

Mr. TROTZKY: Mr. President and Members of the Senate, I read this Legislation, L. D. 1831, and something bothers me on the end of the Legislation. It states very clearly, and I want you to listen to the wording here, "A physician who reports data on an abortion pursuant to this Section shall be immune from any criminal liability for that abortion under Title 17, Section 51."

Now, what we are saying here in this law is there is a presumption of criminal liability under Title 17, Section 51. — Presumption. If you are saying a physician will not be criminally liable under that Section, you are assuming that that Section is valid, and yet the District Court, the United States District Court in the District of Maine, three judges stated very clearly that the above mentioned abortion statute of the State of Maine is declared to be unconstitutional and void in its entirety, and that it is wholly unenforceable, and yet we are putting this on the Books today.

Now I am not an attorney, but to me this appears to be bad Legislative practice, and just directly the Legislature states it does not recognize that decision of the Courts. When we came into the Senate here each of us took an oath swearing to uphold the Constitution of the United States and of this State, and consequently I believe that this is poor Legislation and directly confronting the District Court decision.

Consequently, I would request a Division on Enactment, Mr. President.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Merrill.

Mr. MERRILL: Mr. President and Members of the Senate, just in way of clarification, I do not think passage of this Bill in any way suggests that the Maine Legislature thinks that what the District Court of the United States has said is unenforceable is enforceable, and although I was not in on the drafting of this Bill or this Amendment by the Judiciary Committee, I would assume that it is there simply as a safeguard measure so that if this reporting procedure were set up and the Supreme Court of the United States were to change its position, and the law which is presently on the Books were to become enforceable again, in part or in whole, that then the doctors who are meeting this other requirement, this filing requirement, would not be in a position of having to expose themselves to criminal liability.

So, I do not see that there is a major problem here. It is a rather unusual thing to have in the statute, but it certainly is not the statement by the Maine Legislature that it disagrees with the District Court.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Huber.

Mr. HUBER: Mr. President and Members of the Senate, I simply would like to repeat that this Legislation would be unnecessary duplication of reporting already required under existing statutes, reporting of information which is largely useless.

For those who are totally anti-abortion, I would also like to point out that this Legislation contains the one explicit statement that abortion is legal in Maine.

The PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Mangan.

Mr. MANGAN: Mr. President, I have spoken on this one previously in debate. Again it is my basic impression that information on abortions performed in the State of Maine are necessary, including those of miscarriages, for the providing of medical information which we do not have today. There is nothing specifically relating to abortion that is being reported by doctors. This is an area where we are grossly lacking. It is needed for medical study in research later on, and further insofar as the honorable Senator from the County of Penobscot, Senator Trotzky's statements that he was sworn to uphold the Constitution of both the United States and the State of Maine, this is precisely what he is doing if he is voting for this Bill, because it says that anyone who is reporting, as they should under this law, will not be violating the Constitution by having committed some sort of a crime.

The PRESIDENT: Is the Senate ready for the question?

The pending question before the Senate is Enactment of L. D. 1831 an Act Relating to Reporting of Data of Abortions Performed by an Attending Physician.

A Division has been requested.

Will all those Senators in favor of the Enactment of L. D. 1831, please rise in their places to be counted.

Will all those Senators opposed to the Enactment of L. D. 1831, please rise in their places to be counted.

18 Senators having voted in the affirmative, and 8 Senators in the negative, this Bill is Passed to be Enacted, and will be signed by the President and presented by the Secretary to the Governor for his approval.

Emergency

"An Act to Allocate Moneys for the Administrative Expenses of the Bureau of Alcoholic Beverages, Department of Finance and Administration and the State Liquor Commission for the Fiscal Years Ending June 30, 1978 and June 30, 1979." (S. P. 104) (L. D. 233)

Emergency

"An Act to Define and Regulate the Operation of Mopeds." (H. P. 174) (L. D. 212)

These being emergency measures and having received the affirmative votes of 26 members of the Senate, were Passed to be Enacted and having been signed by the President, were by the Secretary presented to the Governor for his approval.

Emergency

RESOLVE, Authorizing Health Insurance Coverage for Fifteen Retired State Troopers. (S. P. 262) (L. D. 822)

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

Mr. CARPENTER: Mr. President and Ladies and Gentlemen of the Senate: Before we vote on this emergency L. D. 822, I would just like to make a couple of statements on the record. As you probably remember, this is the Bill that I accepted Leave to Withdraw earlier in the Session, and we resurrected it about a week and a half ago here.

I just want to make it very clear on the record, for possible future reference, that this Bill is not the intention of this Legislature that this shall be construed to be a precedent for other retired State employees other than the 15 that are specifically mentioned in this Bill, or specifically referred to in this Bill. This is a case of what the Legislature feels to be an injustice where 15 quite elderly people were initially accepted back into the health plan and then rejected, and were left basically with no health insurance coverage. Now they, some of them, have been picked up on a variety of different programs, none of which are probably adequate for their advanced years, and this Bill has been gone over and approved by Commis-

sioner O'Sullivan in the Finance and Administration Department, and I just want to make it very clear that this not opening the door or should not be construed as precedent setting for other retired State employees, and I hope that you will vote for Enactment. Thank you.

This being an emergency measure and having received the affirmative votes of 23 members of the Senate, was Finally Passed and having been signed by the President, was by the Secretary presented to the Governor for his approval.

Bond Issue

"An Act to Authorize a Bond Issue in the Amount of \$10,000,000 for Energy Conservation Improvements for State-owned Buildings and Public School Buildings." (H. P. 166) (L. D. 1856)

On motion of Mr. Huber of Cumberland.

Placed on Special Appropriations Table pending Enactment.

Orders of The Day

The President laid before the Senate:

House Report — from the Committee on Judiciary — Bill, "An Act Relating to Irreconcilable Marital Differences as Grounds for Divorce and Mental Illness as an Impediment to Divorce." (H. P. 1367) (L. D. 1596) Ought to Pass as Amended by Committee Amendment "A" (H-658)

Tabled — June 20, 1977 by Senator Huber of Cumberland

Pending — Motion of Senator Farley of York to Indefinitely Postpone Bill and Papers

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Curtis.

Mr. CURTIS: Mr. President, I oppose the pending Motion for indefinite postponement of this Bill, and the reason is because we were presented with some testimony at the public hearing so significant that I think we ought to review very carefully and then decide to amend those laws which provide for grounds for divorce in the State of Maine.

The entire Bill is located now in the Amendment which is Filing No. H-658 and the key language, the whole language really, provides for this new ground for divorce, Mental illness requiring confinement in a Mental Institution for at least seven consecutive years prior to the commencement of the action. Now those of us who have been in the Legislature for a few terms will recall that this Bill has been here before, and has been sponsored usually from the same section of the State, and as you might guess, there are probably very few people in the State of Maine who will be directly affected. As I understand it, the best estimate is about 10 people.

I would like to read to you from a letter that was written by one of those people, Mrs. Ethel L. Chapman from West Bethel, Maine. It says, "I am writing in hopes a Bill I am interested in will be presented. It is about a divorce from the mentally ill that have been in the State Hospital for a period of time and cannot be released from there. My husband has been there 18 years. I know it is not his fault, but no one else is to blame either. And 18 years is a long time. I feel sorry for him, as I would anybody, but I would like to have a chance to have a life of my own. As things are, it does not help anybody. It is like sacrificing one life for another."

I think the heart of this piece of Legislation is included in that letter, and it is a Bill which comes from the Judiciary Committee with a recommendation that it ought to pass as amended. The new provision for divorce is extremely strict. After all, it provides that the grounds would be available only for somebody who has been required to be confined in a mental institution for at least seven consecutive years without a break.

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

Mr. KATZ: Mr. President, this is not a new piece of Legislation. It has been before us many times before, but let me suggest to the Senate that this year it is a little different than it ever has been before.

When I first came into the Legislature we used to warehouse our people across the river in the Augusta Mental Health Institute. We used to call it, we went from the insane asylum to the Augusta Mental Health Institute, with a couple of other names in between, but now we treat our people. We do not cure them. We treat them, and they go back out into the community and they function. They function as human beings. They function as fathers and mothers, and husbands and wives, and maybe they can only function successfully for three months or six months at a time before they have to go back in for future treatment. This Bill deals with a very, very small group of people. They are people who are in there for seven consecutive years, and with the new approach to mental health treatment we are talking about people who just cannot function under ordinary human relationships.

It occurs to me I have voted against the Bill way back when we used to warehouse people, but because I think it is a different ball game today and our approach to mental health treatment is so completely different, I think this is a Bill that the Senate should support at this time.

The PRESIDENT: The Chair recognizes the Senator from York, Senator Hichens.

Mr. HICHENS: Mr. President, I rise to support the Motion to indefinitely postpone this Bill.

I certainly sympathize with these 10 or 12 people who are so directly involved, but those are one of the things that come to us in life. Fortunately, I have not had to put up with it, or I do not think our Senators or maybe most of our Legislators have had to put up with it, and we know that the marriage vows have been drastically changed, drastically abused, but I believe everyone of us when we took that vow said that we would live in sickness or in health. This is a sickness, just as much as a physical sickness, and I know of people who have been burdened with a marriage where the partner has been crippled, hopelessly crippled in the home, have never been a marital partner as far as marriage is concerned, but yet the people involved have never thought of having a divorce on that account, and I believe that same stands on this case, and again as I sympathize with these 10 people, or more as it may be, I feel that this law is unnecessary and very discriminatory.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Cummings.

Mrs. CUMMINGS: Mr. President, I disagree with the previous speaker to the extent that I feel that his ideas and reactions to the marriage vows are, of course, the way they were intended to be, but I do not think that we should legislate one person's philosophy, one person's point of view for everyone else to live according to. They can make their own decisions.

In this particular instance, I think it is too bad to deprive children of the possibility of a new parent, and I think in this particular instance we are condemning a person to live alone and try to raise children alone, which is extremely difficult, and I would like to see this passed.

The PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Mangan.

Mr. MANGAN: Mr. President and Members of the Senate: Everybody has their own frame of reference as far as marriages are concerned. I have mine. I think mine primarily agree with the Honorable Senator from the County of York, Senator Hichens.

However, I am an attorney, and I have done several divorces, and I feel that I cannot impose my moral backgrounds on those of others, and I have had the situation as an attorney where a