

# MAINE STATE LEGISLATURE

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**LEGISLATIVE RECORD**

OF THE

***One Hundred and Ninth  
Legislature***

OF THE

STATE OF MAINE

**Volume II**

**First Regular Session**

May 7, 1979 to June 15, 1979

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August 3, 1979

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posed it on grounds that they had checked out with those tagging stations, that had replied that they did not care for the increase in fees because of the additional business that it brought them while they were tagging deer.

Since then there has been an amendment to reduce the increase from \$1.00 to 50¢. The problem with those in opposition with that is that there are still 160 of 400 tagging stations that are not business related. They are people that tag deer in their own homes, for the convenience of the hunters and it seems as if, since, probably 1931 the fee was 25¢ and it is still 25¢. We have had no objection from the hunters as far as paying 50¢ to tag a deer. So this is the reason why after checking this out that we thought that an increase to 50¢ would be reasonable. Thank you.

The Minority Ought to Pass, as amended, Report of the Committee, Accepted. The Bill Read Once. Committee Amendment "A" Read and Adopted. The Bill, as amended, tomorrow Assigned for the Second Reading.

#### Divided Report

Eight Members of the Committee on Judiciary on, Bill, "An Act to Insure that Informed Consent is Obtained before an Elective Abortion is Performed." (S. P. 484) (L. D. 1482)

Reported in Report "A" that the same Ought to Pass as amended by Committee Amendment "A" (S-182).

Signed:

Senator:

DEVOE of Penobscot

Representatives:

LAFFIN of Westbrook

SIMON of Lewiston

GRAY of Rockland

JOYCE of Portland

STETSON of Wiscasset

CARRIER of Westbrook

SILSBY of Ellsworth

Three members of the same Committee on the same subject matter reported in Report "B" that the same Ought Not to Pass.

Signed:

Sensors:

COLLINS of Knox

TRAFTON of Androscoggin

Representative:

SEWALL of Newcastle

One member of the same Committee on the same subject matter reported in Report "C" that the same Ought to Pass as amended by Committee Amendment "B" (S-183).

Signed:

Representative:

HOBBS of Saco

Which Reports were Read.

The PRESIDENT: The Chair recognizes the Senator from Knox, Senator Collins.

Senator COLLINS: Mr. President I move the Acceptance of Report "B" Ought Not to Pass, and would speak to my motion.

The PRESIDENT: The Senator has the floor.

Senator COLLINS: This bill is one more attempt to harass the medical profession. The medical profession is already governed by an informed consent statute. It was put on the books a few years ago, and it is working in a satisfactory manner.

This bill adds to what is already on the books, a lot of sociological and economic considerations. It says in effect that the physician must not only tell his patient about the nature of the operation, its probable consequences, he has to start our first by telling a woman that she is pregnant, that is the number one requirement.

When it gets down to the end of the list, it says, "that he must explain about the possible resources for her if she carries her baby to term, including economic and social resources."

Now this is obviously an effort to inhibit abortions, but it seems to me that one more it amounts to saying to the medical profession, we do not trust you; we want to hamstring you;

we want to cover you with Red Tape; we want to give every opportunity that we can to people to sue you; we want your malpractice insurance to go up; we are trying to frighten you out of doing what the law of the land says is perfectly proper and legal to do. If you think that this is for the best for the woman's health and it is her free and informed choice.

Now if that makes sense then you want to vote No, but if you think as some of us do that we are making a great mistake to harass the medical profession with this sort of foolishness, then you should vote Yes.

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

Senator DEVOE: Thank you very much, Mr. President and Members of the Senate: I have listened with great interest to the Senator from Knox presentation, I submit to you that this is not an effort on anyone's part, let alone my part to harass the medical profession.

I recall two years ago, between June 15th and July 15th we had many evening work sessions in Judiciary, and at that time we had one of the medical profession and hospital associations most effective lobbyists before our committee. The thing that we were talking about was the Pomeroy Malpractice Commission Report.

One of the things which the medical profession said to us two years ago, if you pass this law, and the law was one which would permit arbitration of medical claims, if you pass this, this will set a climate and malpractice premiums will start to go down.

Now, I ask you when you are next home, and you go into your hospital, hopefully not because you need medical care yourself, urge you to go in and ask to speak to the hospital administrator and ask to see whether that hospital of yours has these forms available for patients. They don't, they don't at Bangor at Eastern Maine Medical Center, and I do not believe that they have them at Saint Joseph's Hospital. Now the reason that I mention this is that here we gave the medical profession two years ago, a chance to do something that in the words of one of their most effective lobbyists would be used and would create a climate by which malpractice premiums would begin to go down, they have not done it. I don't know how long it will take them to do it, but I submit to you members of this Senate that is not the real issue here, we are not doing anything to harass doctors and create a climate by which their patients will be better able to sue them. I do not think that the Senator from Knox, Senator Collins wants to abolish all laws that relate to regulation of doctors.

If as several of the speakers have already stated, virtually all doctors are doing this anyway. They are being careful with their patients, they are explaining things to their patients, how many doctors are we actually going to affect? Not many, if the other speakers are accurate. I submit to you that we are not going to affect many doctors, if they are doing these now, the can continue to do them and if a few people do not want to do it, then this bill when enacted will affect them.

Now the reasons I refer you to Senate Amendment "A" S-182 because this is the bill, and some comment has been made that the doctor must start out by telling his patient that she is pregnant. We have information that in other states, I do not believe that it is happening in Maine at the present time, but in other states, abortion clinics are so anxious to perform this service that it has happened many times that they have performed purposed abortions on people who turned out not to have been pregnant. Now it may sound odd, but it is a fact of life out side of the State of Maine. What is wrong with asking the doctors to fully explain the particular risks with her own pregnancy and the abortion technique to be performed?

When we debate this tomorrow I will have with me a statement of the American Hospital Associations principals, in which there is a

great deal of talk about how informed consent should be given, and how the principal should be practiced by doctors and hospitals alike. that patients be fully advised of what's wrong with them and that they give their informed consent to the surgical procedures.

Now let's get to paragraph D, because this although it has not created a lot of discussion so far may well before we are done with this bill cause some discussion.

I admit as the Senator from Knox, Senator Collins stated it is a little bit unusual to have in the statutes, that the doctor can be said almost to be trying to talk his patient out of having the procedure. But if we let reason prevail, we will agree that an abortion is not like having an appendix removed, it is not like having some insignificant operation or procedure performed. it is an intensely emotional and traumatic experience. You have physiological consequences, sometimes that go with abortions. that do not go with having an appendix out, or a finger amputated, or something like that. We are talking about something far more central to life. We are not talking about a routine procedure.

So as a social policy, it is unusual that in view of the seriousness we are dealing with a potential life, we are dealing with a life that has potential really, and when you are dealing with that you cannot strike that from a person's consciousness. Is it out of order that this State should say as a matter of policy that the doctor ought to spend a few minutes making the lady aware of what is about to happen? When the vote is taken, Mr. President, I request a Roll Call.

The PRESIDENT: A Roll Call has been requested.

Under the Constitution, in order for the Chair to order a Roll Call it requires the affirmative vote of at least one-fifth of those Senators present and voting.

Will all those Senators in favor of ordering a Roll Call please rise and remain standing until counted.

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

The Chair recognizes the Senator from Androscoggin, Senator Trafton.

Senator TRAFTON: Mr. President and Members of the Senate: I would urge you to accept the Ought Not to Pass Report today. Very simply because informed consent is already provided for under the law. I would refer you to Downer versus Veilleux, a Maine 1974 decision in which the Law Court recognizes that the physician and the clear duty to obtain the patient's informed consent before commencing a treatment.

I would also refer you to MRSA 24, section 2905, which was enacted in 1977 as a result of the Pomeroy Commission's recommendations and which also outlines what is necessary for a patient to recover on grounds of lack of informed consent.

Finally, I would call your attention to a Constitutional problem that could arise from singling out abortions from other surgical procedures for very special treatment with regard to informed consent and I am referring to section D on the second page of the amendment.

The United States Supreme Court on March 5 of this year, in Freeman versus Ashcroft re-affirmed by a 7 to 2 margin, a circuit court decision invalidating a Missouri statutory requirement that a woman seeking an abortion be informed by the physician of certain statutory provisions.

I feel that this bill is unnecessary. It is already covered by present law, and I feel that there are some Constitutional problems that could arise particularly with Section D.

Finally in the Third Subsection, I am very unclear as to why a 48 hour period has to expire after informed consent is obtained and I would suggest perhaps this, as the good Senator from

Knox suggested, is a form of harrassment not only to the physician but to the woman as well.

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

Senator DEVOE: Thank you, Mr. President. Mr. President, I am sure that the 48 Hours Rule, exists in the proposed statute the same way that we now have for many bills that have come out in the last few years from the Business Legislation Committee, Consumer Legislation to give people a chance to change their mind.

You buy a set of Encyclopedias, you have 48 or 72 hours to change your mind if you signed the contract at home.

If this State can say that it is so important to protect the consumer, from buying a set of encyclopedias or signing a siding contract, why should it balk at giving a woman 48 hours to perhaps change her mind. I am not saying that she is going to change her mind, but why can't we give her the same chance that you give somebody who decides to have siding put on their house, or to get a set of encyclopedias. Thank you very much, Mr. President.

The PRESIDENT: Is the Senate ready for the question?

The Chair recognizes the Senator from Cumberland, Senator Clark.

Senator CLARK: Thank you Mr. President. I request Leave of the Senate to pair my vote with the gentleman from Oxford, Senator Sutton, who if he were here would be voting No and I would be voting Yes.

The PRESIDENT: The Senator from Cumberland, Senator Clark, requests Leave of the Senate to pair her vote with the Senator from Oxford, Senator Sutton, who if he were here would be voting No and the Senator from Cumberland, Senator Clark would be voting Yes.

Is it the pleasure of the Senate to grant this leave?

It is a vote.

The Chair recognizes the Senator from Kennebec, Senator Pierce.

Senator PIERCE: Mr. President, I request Leave of the Senate to pair my vote with the Senator from Sagadahoc, Senator Chapman who if he were here would be voting Yes and I would be voting No.

The PRESIDENT: The Senator from Kennebec, Senator Pierce requests Leave of the Senate to pair his vote with the Senator from Sagadahoc, Senator Chapman, who if he were here would be voting Yes and the Senator from Kennebec, Senator Pierce would be voting No.

Is this the pleasure of the Senate?

It is a vote.

The pending question before the Senate is the Motion by the Senator from Knox, Senator Collins, that the Senate Accept the Ought Not to Pass Report "B" of the Committee.

A Yes vote will be in favor of Accepting the Ought Not to Pass Report "B".

A No vote will be opposed.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

#### ROLL CALL

YEA—Collins, Emerson, Huber, Lovell, Narian, Perkins, Trafton, Troitzky.

NAY—Ault, Carpenter, Conley, Danton, Devoe, Farley, Gill, Hichens, Katz, McBrearty, Minkowsky, O'Leary, Pray, Redmond, Shute, Silverman, Teague, Usher.

ABSENT—Cote, Martin.

PAIRED—Clark-Sutton; Chapman-Pierce

A Roll Call was had.

8 Senators having voted in the affirmative, and 18 Senators in the negative, with 4 Senators pairing their votes, and 2 Senators being absent, the Motion to Accept the Ought Not to Pass Report "B" does not prevail.

The Ought to Pass, as amended, Report "A" of the Committee, Accepted, and the Bill Read Once. Committee Amendment "A" Read and Adopted. The Bill, as amended, Tomorrow Assigned for Second Reading.

#### Second Readers

The Committee on Bills in the Second Reading reported the following:

#### House

Bill, "An Act Protecting Security Deposits." (H. P. 1378) (L. D. 1603)

Bill, "An Act Concerning State Highways and Parking on State Controlled Property." (H. P. 1109) (L. D. 1372)

Which were Passed to be Engrossed, in concurrence.

#### House — As Amended

Bill, "An Act Authorizing the Issuing of Ex-Parte Orders by the Courts and Complaint Justices to Allow Humane Agents and Other Authorized Officers to take Possession of Neglected, Mistreated or Injured Animals." (H. P. 292) (L. D. 389)

Bill, "An Act to Amend the Maine Veterinary Practice Act of 1975" (H. P. 291) (L. D. 388)

Bill, "An Act to Allow the Board of Environmental Protection to Regulate Activities Affecting Sand Dunes under the Alteration of Coastal Wetlands Program." (H. P. 1163) (L. D. 1468)

Bill, "An Act to Permit Juveniles in the Custody of the Department of Mental Health and Corrections to Receive Services from the Department of Human Services." (H. P. 560) (L. D. 707)

Bill, "An Act to Require Payment of Taxes on Timberland Repossessed by the Maine Guarantee Authority." (H. P. 1104) (L. D. 1319)

Bill, "An Act Relating to Gifts in Contemplation of Death." (H. P. 1145) (L. D. 1407)

Which were Read a Second Time and Passed to be Engrossed, as amended, in concurrence.

Bill, "An Act to Make the Attorney General's Explanations of Proposed Constitutional Amendments and Statewide Referenda more Available to the Voters." (H. P. 183) (L. D. 235)

Which was Read a Second Time, and Passed to be Engrossed, as amended, in non-concurrence.

Sent down for concurrence.

Bill, "An Act to Establish a Marijuana Therapeutic Research Program." (H. P. 523) (L. D. 665)

Which was Read a Second Time.

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

Senator GILL: Mr. President, I would move Indefinite Postponement of this bill and all its accompanying papers and I'd like to speak to my motion.

The PRESIDENT: The Senator has the floor.

Senator GILL: This morning I spent about an hour on the telephone with the people from Washington at the Federal Drug Administration in the Drug Enforcement Agency.

I stated what we in Maine had before us in this Legislation. They told me that there was no need for this State or any other State to put in any Legislation because there was already Federal Law on the books. I asked if they would go through the protocol that a physician has to go through to become a researcher in this therapeutic program and to become a Therapeutic Agent, and they went through the protocol for me. They wanted to make the point that the bill is unnecessary.

The protocol that a physician has to go through is that they have to fill out a form from the Drug Enforcement Administration. The form is Form Number 225, which they have to mail into the Drug Enforcement Agency. It would take about a half an hour for the physician to fill out. At the same time they would send a report to the Drug Enforcement and Federal Drug Administration and it would go through their training, their past experience, their past background.

They are required by law to respond within 30 days to anyone sending in for a Researcher or

as a Therapeutic Agent. If all the information sent is all O.K. and all the procedures in their background is sufficient then within 30 days the physician would be given the opportunity to enter into an agreement with the Government to handle marijuana for a patient.

If there is some problem within 30 days, the problem could be corrected because an investigator would get back to the physician within that 30 day period. They assured me that there were quite a few States that had pending Legislation and the language in the Legislation is in conflict with the Federal Law. So I would ask that this bill and all its accompanying papers be Indefinitely Postponed.

The PRESIDENT: Is the Senate ready for the question?

The Chair recognizes the Senator from Aroostook, Senator Carpenter.

Senator CARPENTER: Mr. President, I would oppose the pending motion and I would just say that I think the rather complicated formula that was just read to us by the Senator from Cumberland, Senator Gill, gives us all the more reason why it would be a much better idea if we're going to go in this direction, and I hope we do, if the State itself were to get in touch with the Federal Agencies in order to get the product, in order to refine it and take care of it.

I was aware that there was a way to do it through the Federal Government. It is a very complicated way, a very complicated way and I don't think that your doctor, your average doctor, back home who might like to participate in this program has readily accessible the number of the Food and Drug Administration, that he can pick and find out this. I don't know where he would turn and get the information.

I have in front of me a list of States that passed this bill, New Mexico, Louisiana, Illinois, Washington, Texas, California, Iowa, the last 3 are presently under its acts of consideration. It's very interesting, all of the votes on this bill, once the facts are known, it appears to me a very non-controversial issue. The votes are just over-whelmingly in favor of it. New Mexico, not exactly the bastion of liberalism, the bill passed under the hammer. There wasn't even a recorded vote on it, Louisiana, 34 to 4, another very conservative State.

Presently Nevada, New Jersey, Massachusetts, and Michigan are considering similar pieces of legislation. So I think this bill was adequately debated the other day. I went home this weekend and talked to a lot of my people. I talked to some doctors, I talked to some physicians, I talked to clergy people, Clergymen. I didn't find a great ground swell of anger out there that the Maine Legislature was contemplating doing this and I didn't find the misconceptions that were talked about in here the other day.

The headline in the Bangor Daily News Saturday read "Medical Marijuana O.K.'d" or something to that effect. I didn't find the misconception that we were legalizing marijuana. So I would just ask that you do stand by your vote of the other day and defeat the pending motion. Mr. President, when the vote is taken, I would request the Yeas and Nays. Thank you.

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

Senator GILL: I'm going to be very brief. It's a long day. All the proponents of this bill talked about getting the marijuana to the people because it would make them more comfortable. I've been assured that all Federal Rules and Regulations have to be met. The State Law would only create another level of review. Expeditious handling of this marijuana to the patient would not be what the proponents wanted.

The States that have put in a bill, New Mexico, for instance, they did have a budget. The budget was in the neighborhood of \$40,000 to \$50,000. On this particular bill, there is no fiscal note. I would urge adoption of my motion and I would ask for a Roll Call.