

MAINE STATE LEGISLATURE

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Legislative Record
House of Representatives
One Hundred and Twentieth Legislature
State of Maine

Volume I

First Regular Session

December 6, 2000 – May 17, 2001

Pages 1-889

(S.P. 133) (L.D. 457) Bill "An Act to Clarify that the Sales Tax Exemption for Purchase of Manufacturing Equipment Applies Equitably" Committee on **TAXATION** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-100)**

(S.P. 189) (L.D. 661) Bill "An Act to Make An Owner Responsible for a Person's Injuries Caused by a Dog" Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-98)**

(S.P. 192) (L.D. 664) Bill "An Act to Amend the Employment Tax Increment Financing Program" Committee on **TAXATION** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-102)**

(S.P. 234) (L.D. 803) Bill "An Act to Implement the Recommendations of the Joint Standing Committee on Taxation Resulting from Its Review of Income Tax Expenditures Pursuant to the Maine Revised Statutes, Title 36, chapter 9" Committee on **TAXATION** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-101)**

(S.P. 247) (L.D. 815) Bill "An Act to Foster the Survival of Maine Small Businesses in Snowmobile and ATV Sales" Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-104)**

(S.P. 284) (L.D. 995) Bill "An Act to Change the Dates for Licensing of Agricultural Fairs and Exhibitions" Committee on **AGRICULTURE, CONSERVATION AND FORESTRY** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-99)**

(S.P. 324) (L.D. 1092) Bill "An Act to Prohibit Negative Option Sales Without a Consumer's Express Agreement" Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-106)**

(S.P. 513) (L.D. 1632) Resolve, Directing the Maine Science and Technology Foundation to Determine the Physical Condition of Information Technology Infrastructure in the State (EMERGENCY) Committee on **BUSINESS AND ECONOMIC DEVELOPMENT** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-107)**

Under suspension of the rules, Second Day Consent Calendar notification was given.

There being no objection, the Senate Papers were **PASSED TO BE ENGROSSED** or **PASSED TO BE ENGROSSED as Amended** in concurrence. **ORDERED SENT FORTHWITH.**

BILLS IN THE SECOND READING

Senate As Amended

Bill "An Act to Clarify Laws Pertaining to Nuisance Wildlife" (S.P. 168) (L.D. 587) (C. "A" S-84)

House As Amended

Bill "An Act to Define and Ensure Coverage of Basic Health Services by Health Maintenance Organizations" (H.P. 749) (L.D. 968) (C. "A" H-200)

Reported by the Committee on **Bills in the Second Reading**, read the second time, the Senate Paper was **PASSED TO BE ENGROSSED AS AMENDED** in concurrence and the House Paper was **PASSED TO BE ENGROSSED AS AMENDED** and sent for concurrence.

CONSENT CALENDAR

First Day

In accordance with House Rule 519, the following items appeared on the Consent Calendar for the First Day:

(S.P. 410) (L.D. 1354) Bill "An Act to Restrict the Use of the Term 'Maine Water' to Water From Maine" Committee on **NATURAL RESOURCES** reporting **Ought to Pass**

(H.P. 531) (L.D. 686) Resolve, Directing the Bureau of Health to Develop a Comprehensive Plan for the Detection and Treatment of Hepatitis C Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass**

(H.P. 404) (L.D. 525) Bill "An Act to Improve Access to Residential Care in Rural Maine" Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-240)**

(H.P. 419) (L.D. 540) Resolve, to Coordinate and Improve Access To Health Care for Women Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-242)**

(H.P. 465) (L.D. 593) Bill "An Act to Establish the Office of Securities within the Department of Professional and Financial Regulation" Committee on **BANKING AND INSURANCE** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-238)**

(H.P. 961) (L.D. 1274) Bill "An Act to Increase the Dedicated Wild Blueberry Tax" Committee on **TAXATION** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-243)**

(H.P. 1044) (L.D. 1401) Bill "An Act to Amend the Health Care Facility Immunization Laws" Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-241)**

(H.P. 1045) (L.D. 1402) Bill "An Act to Clarify and Update the Security Requirements for Employers Self-insured for Workers' Compensation Liabilities" Committee on **BANKING AND INSURANCE** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-246)**

(H.P. 1271) (L.D. 1729) Bill "An Act to Amend the Maine Banking Code" Committee on **BANKING AND INSURANCE** reporting **Ought to Pass as Amended by Committee Amendment "A" (H-247)**

Under suspension of the rules, Second Day Consent Calendar notification was given.

There being no objection, the House Papers were **PASSED TO BE ENGROSSED** or **PASSED TO BE ENGROSSED as Amended** and sent for concurrence. **ORDERED SENT FORTHWITH.**

REPORTS OF COMMITTEE

Divided Report

Majority Report of the Committee on **JUDICIARY** reporting **Ought Not to Pass** on Bill "An Act to Ban Partial Birth Abortion in the 3rd Trimester Except to Save the Life of the Mother" (H.P. 115) (L.D. 119)

Signed:

Senators:

RAND of Cumberland
McALEVEY of York

Representatives:

LaVERDIERE of Wilton
BULL of Freeport
JACOBS of Turner
MITCHELL of Vassalboro

MUSE of South Portland
SIMPSON of Auburn

Minority Report of the same Committee reporting **Ought to Pass** on same Bill.

Signed:

Senator:

FERGUSON of Oxford

Representatives:

MADORE of Augusta

WATERHOUSE of Bridgton

SHERMAN of Hodgdon

MENDROS of Lewiston

READ.

Representative LaVERDIERE of Wilton moved that the House **ACCEPT** the Majority **Ought Not to Pass** Report.

The SPEAKER: The Chair recognizes the Representative from Falmouth, Representative Davis.

Representative DAVIS: Mr. Speaker, Men and Women of the House. I ask for your support of LD 119, "An Act to Ban Partial-Birth Abortion in the Third Trimester Except to Save the Life of the Mother." This bill prohibits a physician from performing a partial-birth abortion during a mother's third trimester of pregnancy unless it is necessary to preserve the life of the mother. The partial-birth abortion procedure is defined in the bill and a civil penalty of up to \$5,000 is specified.

In Roe v. Wade in 1973, Justice Harry Blackman wrote the majority opinion for the Supreme Court of the United States. Justice Blackman's opinion divided pregnancy into trimesters. He wrote that in the first trimester the woman had an essentially unrestricted right to choose abortion in consultation with her physician. During the second trimester, states could regulate abortion to protect her health. He said that only in the third trimester was the state's interest in protecting the potential life of the fetus great enough to warrant severe restrictions on abortion, and even then, states must permit abortions to save the mother's life. We must conclude that Roe v. Wade invites regulation in the third trimester of pregnancy.

A few days ago, I testified before the Judiciary Committee on LD 119. The circumstances and setting of that testimony will forever be etched in my mind. On both sides of the Augusta Armory were children carrying slogans, one group with pro-life banners and the other group with pro-choice banners. I felt very bad to see children being manipulated in this way. Being a teacher, I feel that we should unite children, not divide them. There were also three armed policemen in attendance to assure an orderly procedure. I was reminded of Plato's famous story about people chained to a wall in a cave. All they could see were shadows on the walls. Their reality was distorted.

Three years ago I saw a sonogram of my unborn grandson, Gerald William John Davis, in his mother's womb at 21 weeks. It was a profound experience in my life. My grandson's facial features looked like those of his sister who was 6 years old at the time. Now Jerry is 3 years old and still looks like his sister.

Sometimes, the head and the heart are in conflict. I believe Americans have such a conflict with abortion. Surely, my friends in the 120th Legislature, we should do what Roe v. Wade invites us to do, regulate abortion in the third trimester.

Life is the most precious thing we pass on to the next generation. Please join me to take one small step for life and vote for LD 119.

Representative MATTHEWS of Winslow **REQUESTED** a division on the motion to **ACCEPT** the Majority **Ought Not to Pass** Report.

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

Representative MADORE of Augusta **REQUESTED** a roll call on the motion to **ACCEPT** the Majority **Ought Not to Pass** Report.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The SPEAKER: The Chair recognizes the Representative from Dexter, Representative Tobin.

Representative TOBIN: Mr. Speaker, Ladies and Gentlemen of the House. A couple of years ago we voted on this bill and the House voted in favor to pass the ban on partial-birth abortion. I will be brief, but I have two reasons why I want you to vote against the pending motion. First of all is a philosophical reason. If you studied philosophy, man is made up of three different substances, his ability to reason, his ability to show emotion and his appetite. I want to speak just briefly about the third one about our appetite, government's appetite. Our appetite is for control. I believe if there were two ants running across the floor to reach a cupcake, we would introduce legislation to measure the length of their legs to make sure that one wouldn't go faster than the other. We have an unquenchable thirst for total control. We don't have total control. This morning we saw a gavel go in every which direction. I am sure the intent wasn't to break it. We have no control. This ban on partial-birth abortion is reality. It is life. We do not have total control. There are four great philosophical conflicts, man v. man, pretty easy to understand. Man v. beast, easy to understand. Man v. nature, we would like to be able to control the weather, we can't control the weather. The final one is man v. himself. This is a prime example of man v. himself. We are our own worst enemies. The other reason is medical. December 27th, I had fairly serious surgery. Being very honest, I was scared, very scared. I said to my surgeon, what are the chances of my having cancer? He said, "Jim, 20 years ago, you would have had one chance of three with this surgical procedure that you would have cancer. Today, Jim, we know that 999 times out of 1,000, whether you have cancer or not before we operate? Thank God, I didn't have it.

There is no medical reason outside of the saving of the mother for partial-birth abortion. Today with modern medicine they usually know within the first 90 days if there is a problem with that child. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Durham, Representative Schneider.

Representative SCHNEIDER: Mr. Speaker, Men and Women of the House. It pains me to speak in opposition to LD 119, because it was a bill that was introduced by a good friend of mine, the Representative from Falmouth, Representative Davis. I feel that I must and I must urge you to vote for the pending motion and against this bill. This bill is unnecessary. It is unconstitutional and it is undesirable. It is unnecessary because current law already prohibits abortions after viability except to preserve the life or the health of the mother. It enforces that prohibition with criminal penalties. LD 119 does the same except that it provides no health exception for the mother. It is unconstitutional after the US Supreme Court ruled in June 2000 in a case essentially to LD 119 was in violation of the United States Constitution. I have a lot of personal regard and respect for the United States Constitution. I would not want to enact a law that is obviously in violation of it.

It is undesirable, as we have seen just this last fall in the referendum, 56 percent of the people of Maine voted against a similar ban and this has been turned down by the people of Maine several times already. Ladies and gentlemen, I urge you to vote for the pending motion and against this bill. Thank you very much.

The **SPEAKER**: The Chair recognizes the Representative from Bridgton, Representative Waterhouse.

Representative **WATERHOUSE**: Mr. Speaker, Ladies and Gentlemen of the House. The points just mentioned by the good Representative from Durham are compelling, but they are not convincing to me, anyway, and I hope to a lot of people here. The first one is the health exception and if you look at the health exception and this argument that has been put forward in this and all abortion issues. For all practical purposes with the health exception, there is no exception. It could be anything from emotional, how the person is feeling that day or whatever. This is one of the big arguments made for not having a health exception in there. There is no restriction on abortion when you do that. The other one is the citizen's referendum issue and I talked to a great many people in my district after the vote on that issue. A lot of them considered that language confusing to say the least. When I explained to them what the process or procedure was and what the reason was for having this restriction on partial-birth abortion, a lot of the very same people who voted against that ban in the referendum said that if they had had it explained to them the way I did and other people have since then, they would have voted differently.

The final one is the Supreme Court decision. As my good friend, the Representative from Winslow has said and many people in this body have said before on other issues, policy issues that I don't necessarily agree with them as far as the policy goes, the one that comes to mind is the strikebreaker replacement bill. How many times have we had that bill before this body and all the information we received on it said that it is unconstitutional, but again and again we see the same policy issue addressed because even though I disagree with the Representative from Winslow, he feels very strongly and emotionally and so does a lot of people in this body that the Supreme Court has got it wrong. We keep coming back with this law through legislation. We are a separate branch of government and we feel as through we should take a stand on this issue just as the Representative from Winslow and others take a stand on the strikebreaker replacement issue. We want to keep putting this up for public forum and public debate because we consider it the right thing to do. Let's put it up there until the Supreme Court gets it right. I feel just as strongly on this issue that we should have this debate. We should take these votes and bodies such as this to a separate branch of government and send the message to the Supreme Court or any court to take the position that this is unconstitutional saying that the people want this to happen. They want to restrict this type of barbaric procedure and let's send a message.

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

ROLL CALL NO. 75

YEA - Berry RL, Blanchette, Bliss, Bruno, Bryant, Bull, Canavan, Chizmar, Colwell, Cowger, Crabtree, Cummings, Daigle, Dorr, Dudley, Dunlap, Duplessie, Estes, Etnier, Fisher, Fuller, Gagne, Gerzofsky, Gooley, Green, Hall, Hatch, Hawes, Hutton, Jacobs, Jodrey, Jones, Kane, Koffman, Labrecque, LaVerdiere, Laverriere-Boucher, Ledwin, Lessard, Lovett, Mailhot, Marley, Mayo, McDonough, McGlocklin, McKee, McLaughlin, Mitchell, Muse C, Muse K, Norbert, Norton, Nutting, O'Brien LL, O'Neil, Peavey, Povich, Quint, Richardson, Rines, Rosen, Savage, Schneider, Simpson, Skoglund, Smith, Sullivan, Tarazewich, Tessier, Thomas, Tobin D, Tracy, Twomey, Volenik, Watson, Wheeler GJ, Mr. Speaker.

NAY - Andrews, Annis, Belanger, Berry DP, Bouffard, Bowles, Buck, Bumps, Carr, Chase, Chick, Clark, Clough, Collins, Cote, Cressey, Davis, Desmond, Duncan, Duprey, Foster, Glynn, Haskell, Heidrich, Honey, Kasprzak, Lemoine, Lundeen, MacDougall, Madore, Matthews, McKenney, McNeil, Mendros, Michael, Michaud, Morrison, Murphy T, Nass, O'Brien JA, Paradis, Patrick, Perkins, Perry, Pineau, Pinkham, Richard, Sherman, Shields, Snowe-Mello, Stanley, Tobin J, Trahan, Treadwell, Tuttle, Usher, Waterhouse, Weston, Wheeler EM, Winsor, Young.

ABSENT - Ash, Bagley, Baker, Brannigan, Brooks, Bunker, Dugay, Goodwin, Landry, Marrache, McGowan, Murphy E, Stedman.

Yes, 77; No, 61; Absent, 13; Excused, 0.

77 having voted in the affirmative and 61 voted in the negative, with 13 being absent, and accordingly the Majority **Ought Not to Pass** Report was **ACCEPTED** and sent for concurrence.

Majority Report of the Committee on **JUDICIARY** reporting **Ought Not to Pass** on Bill "An Act to Preserve the Life and Health of Women"

(S.P. 366) (L.D. 1204)

Signed:

Senators:

RAND of Cumberland
McALEVEY of York
FERGUSON of Oxford

Representatives:

LaVERDIERE of Wilton
BULL of Freeport
JACOBS of Turner
MITCHELL of Vassalboro
MUSE of South Portland
SIMPSON of Auburn
SHERMAN of Hodgdon

Minority Report of the same Committee reporting **Ought to Pass** on same Bill.

Signed:

Representatives:

MADORE of Augusta
WATERHOUSE of Bridgton
MENDROS of Lewiston

Came from the Senate with the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.

READ.

Representative LaVERDIERE of Wilton moved that the House **ACCEPT** the Majority **Ought Not to Pass** Report.

Representative KASPRZAK of Newport **REQUESTED** a roll call on the motion to **ACCEPT** the Majority **Ought Not to Pass** Report.

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

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

ROLL CALL NO. 76

YEA - Belanger, Berry RL, Blanchette, Bliss, Bruno, Bryant, Bull, Canavan, Chizmar, Collins, Colwell, Cowger, Crabtree, Cummings, Daigle, Dorr, Dudley, Dunlap, Duplessie, Estes, Etnier, Fisher, Fuller, Gagne, Gerzofsky, Gooley, Green, Hall, Hatch, Hawes, Heidrich, Honey, Hutton, Jacobs, Jodrey, Jones, Kane, Koffman, Labrecque, LaVerdiere, Laverriere-Boucher,