

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

Index

**Senate Confirmation Session
September 16, 1977**

Index

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Merrill, Minkowsky, Morrell, O'Leary, Pray, Snowe, Speers, Trotzky, Usher.

NAY — Collins, S.; Cummings, Greeley, Huber, Katz, Lovell, Pierce, Redmond, Wyman.

ABSENT — Jackson.

22 Senators having voted in the affirmative, and 9 Senators in the negative, with 1 Senator being absent, the motion to indefinitely postpone does prevail.

Sent down for concurrence.

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

Mr. SPEERS: Mr. President, I move that the Senate take from the Table Bill, "An Act to Make Additional Corrections of Errors and Inconsistencies in the Laws of Maine." (Emergency) (S. P. 590) (L. D. 1896)

The PRESIDENT: The Senator from Kennebec, Senator Speers, now moves that the Senate remove from the Tabled Later Table L. D. 1896. Is this the pleasure of the Senate? It is a vote.

The Chair recognizes the Senator from Somerset, Senator Redmond.

Mr. REDMOND: Mr. President, I now present Senate Amendment "H" (S-389) and move its adoption.

The PRESIDENT: The Senator from Somerset, Senator Redmond, now offers Senate Amendment "H" and moves its adoption. The Secretary will read Senate Amendment "H".

Senate Amendment "H" Read and Adopted.

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

Mr. HEWES: Mr. President, I appreciate the good Senator from Cumberland calling our attention to Section 123, repeal of the communication statute between the physician and patient. This was put in four years ago into the law, having been the law prior thereto.

I think it should have been a matter of substantive matter, and I appreciate the rules of evidence which are promulgated by the Supreme Judicial Court concerning this issue, but I think it should remain a statutory matter and not be taken out of the statute. I do not think it would pass if it were in bill form, and I appreciate the time is late, but I also appreciate that we have several other bills on the calendar for tonight, and for tomorrow and the next day. I have gone down to Legislative Research to get an amendment to change Section 123, if possible. It is certainly a matter of substance and should be included in this bill, in my opinion, and I would appreciate it if somebody else would table it until later in tonight's session. I do not know when you are going to adjourn. I see now it is 6:30. You are planning to adjourn right now. I take it from the way you are shaking your head.

If somebody would table this, I will go down again and hurry this amendment up and hope to have it in 15 or 20 minutes and hopefully we can dispose of that and then send it down to the House forthwith.

Thank you.

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

Mr. COLLINS: Mr. President, I think that the Senator from Cumberland, Senator Hewes, is under a misapprehension about the effect of this section.

Under the Legislation which authorized the Code of Evidence, that took effect last year, the Code of Evidence has the status of statutory law in our law. Now this meant that several items about privileged communications and other related matters that had been worked into our Statutes at different times were either duplicated or in conflict with the Code of Evidence, both having the status of law. Now this creates an inconsistency, if I ever saw one.

Now we were first alerted to this by a Bill that was presented by the Senator from Ken-

nebec, Senator Speers, that had to do with privileged communications with clergymen, and when the Bill reached the public we immediately had a response from those people who drafted the Code of Evidence, and in particular from Professor Richard Field, now retired, of Portland who was the draftsman of the Code of Evidence.

The Judiciary Committee worked with Professor Field and as a result we were able to clear the particular matter about clergymen early on, but there was still several other items in the category, and the ones that are in this particular Bill clear the removal of those, and this is one of them.

I would ask the Senate to reconsider its position on this.

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

Mr. CONLEY: Mr. President, I am not an attorney, but I do note also on Page 13, Section 81, there is also a repeal having to do with the same subject matter.

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

Mr. SPEERS: Mr. President, I can appreciate the concerns of a number of individuals with regard to this Bill, but I would point out that there are some other Amendments that other Members of this Body were planning on offering which are not ready. The other Branch of this Legislature is waiting for this Bill, and there are some Amendments, I understand, that are going to be offered elsewhere in the halls of this State House.

Therefore, I would hope that this Body could be going ahead and pass this Bill to be engrossed and send it out of these Chambers so that it may be considered elsewhere and then returned to us here.

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

Mr. HEWES: Mr. President, I do not wish to delay this unduly, and I would think if it were tabled until later in Today's Session, 20 minutes or so, it could be handled then.

In reply to the Senator from Knox, Senator Collins, I thank him for his comments. It was my understanding in talking with Professor Field when he and Peter Murray were talking about drafting the proposed Rules of Evidence that Statutes would, in case of conflict between the Rules of Evidence and the Statutes, the Statutes would have priority, and I do not think that the Rules of Evidence would have priority over the Statutes. It might be that the Professor does not want this particular Statute, but I think if this Statute is in the law, the one that we are talking about, Section 123, that the Statute would have priority.

I still feel it is a matter of substance, and I do not think it should be here, and I if could move the indefinite postponement of Section 123 now, I would do so, but because of our procedure that requires a printed Amendment before you, I would request that somebody table this until later in Today's Session.

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

Mr. COLLINS: Mr. President, the enabling Legislation which permitted the Code of Evidence be drafted and to be adopted, to be presented to this Legislature before it became law, specifically provided that when there was any conflict between existing Statute and the new Code of Evidence, that the Code of Evidence would be the over-riding Body of Law.

Now if the Senator gets into Court and finds a conflict and has to ask a Judge to rule on it, I think the Judge is going to rule the way that I am telling you the law is. Now if you want to have persisting in the Statute something which is not longer No. 1 in priority in the rule of law, why you do what you are suggesting, but it seems to me that Professor Field's team and what this Legislature has done in its system is a

very orderly way and we are just trying to get the house cleaned up.

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

Mr. MANGAN: Mr. President and Members of the Senate, being on the Judiciary Committee, and also being a criminal lawyer, I want to assure the Senator from the County of Cumberland that I would not let the Committee wipe out any loopholes that I could use in Court, and I want to guarantee him that the privilege is still retained in the law.

Which Bill was Passed to be engrossed, as amended.

Sent down forthwith for concurrence.

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

Mr. SPEERS: Mr. President, I move that the Senate take from the Unassigned Table Bill, "An Act Requiring the Public Utilities Commission to Order a Community of Interest Study upon Petition by 10% of the Service Customers in a Telephone Exchange and to Promulgate Rules and Regulations Relating to the Establishment of Extended Area Service." (H. P. 650) (L. D. 794)

Tabled — May 13, 1977 by Senator Speers of Kennebec

Pending — Passage to be Engrossed

The PRESIDENT: The Senator from Kennebec, Senator Speers, now moves that the Senate take from the Unassigned Table L. D. 794. Is this the pleasure of the Senate? It is a vote.

The pending question before the Senate is passage to be engrossed.

The Chair recognizes the Senator from Penobscot, Senator Cummings.

Mrs. CUMMINGS: Mr. President, I would like to move the passage of this to be engrossed.

L. D. 794 is relative to the telephone service between two different telephone exchanges. According to the bill, a petition filed with the PUC and signed by ten percent of the service customers in one exchange for extended telephone service into another exchange will create a community of interest study or a feasibility study.

We discussed this some when it first came on the floor. Just to refresh your memories, the feasibility study will be conducted by the utilities, and if this study is positive then the users in one exchange could call users in a neighboring exchange on a fixed flat rate determined by the cost of providing service. Right now in some communities it is impossible to call someone who is actually in your same community without having it be a toll call, and this would take care of that situation.

Which bill was passed to be Engrossed, as amended, in non-concurrence.

Sent down forthwith for concurrence.

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

Mr. SPEERS: Mr. President, I move that the Senate take from the Unassigned Table Bill, "An Act to Encourage Conservation by Means of Reform of Utility Rate Designs." (H. P. 1553) (L. D. 1774)

Tabled — May 23, 1977 by Senator Speers of Kennebec.

Pending — Passage to be Engrossed.

The PRESIDENT: The Senator from Kennebec, Senator Speers, now moves that the Senate remove from the Unassigned Table L. D. 1774. Is this the pleasure of the Senate? It is a vote.

Which Bill was Passed to be Engrossed, as amended, in non-concurrence.

Sent down forthwith for concurrence.

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

Mr. SPEERS: Mr. President, I move that the