

MAINE STATE LEGISLATURE

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House of Representatives
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State of Maine

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Pages 609-1214

(H.P. 1263) (L.D. 1774)
(C. "A" H-717)

TABLED - March 17, 2010 (Till Later Today) by Representative BERRY of Bowdoinham.

PENDING - **PASSAGE TO BE ENGROSSED.**

The SPEAKER: The Chair recognizes the Representative from Belfast, Representative Giles.

Representative GILES: Thank you, Madam Speaker. I am just going to speak briefly on this. I will be supporting the pending motion; however, there was considerable debate and presentation in our committee that I just want to go on to the record with, that being that there was several wine distributors in the State of Maine that feel they are going to be adversely impacted by this legislation. I understand that the bottle bill is far-reaching, it is complex. I will not try to go through in my few minutes here and try to explain the whole thing, but it does put some added burden on to a small business group that I would highly recommend that our committee, in the 125th, take a very close look at this issue and try to resolve it for the wine distributors in this state. Thank you.

Subsequently, the Bill was **PASSED TO BE ENGROSSED as Amended** and sent for concurrence.

HOUSE DIVIDED REPORT - Majority (12) **Ought to Pass as Amended by Committee Amendment "A" (H-732)** - Minority (1) **Ought Not to Pass** - Committee on JUDICIARY on Bill "An Act To Amend the Rights and Liabilities of the Supervisory Physician of a Physician Assistant"

(H.P. 1112) (L.D. 1574)

TABLED - March 18, 2010 (Till Later Today) by Representative PRIEST of Brunswick.

PENDING - Motion of same Representative to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report.

Subsequently, the Majority **Ought to Pass as Amended** Report was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (H-732)** was **READ** by the Clerk.

Representative PRIEST of Brunswick **PRESENTED House Amendment "A" (H-755)** to **Committee Amendment "A" (H-732)**, which was **READ** by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Brunswick, Representative Priest.

Representative PRIEST: Thank you, Madam Speaker. Madam Speaker, Men and Women of the House. This bill concerns the immunities of a physician who supervises a physician's assistant, who was on active service with the Maine National Guard. There were some concerns expressed by some about the breadth of the immunity granted. This amendment narrows that, the breadth of that immunity, and satisfies, as I understand it, the objections to those who were concerned about the bill. We've also run it by the National Guard and they still think that the bill is good for them and provides the immunity they need. Therefore, I would urge your Adoption of this House Amendment. Thank you.

Subsequently, **House Amendment "A" (H-755)** to **Committee Amendment "A" (H-732)** was **ADOPTED**.

Committee Amendment "A" (H-732) as **Amended by House Amendment "A" (H-755)** thereto was **ADOPTED**.

The Bill was assigned for **SECOND READING** Tuesday, March 23, 2010.

HOUSE DIVIDED REPORT - Majority (8) **Ought Not to Pass** - Minority (5) **Ought to Pass as Amended by Committee**

Amendment "A" (H-733) - Committee on JUDICIARY on Bill "An Act To Establish a Duty To Report Serious Injuries"

(H.P. 1235) (L.D. 1738)

TABLED - March 18, 2010 (Till Later Today) by Representative PRIEST of Brunswick.

PENDING - Motion of same Representative to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report.

The SPEAKER: The Chair recognizes the Representative from Brunswick, Representative Priest.

Representative PRIEST: Thank you, Madam Speaker. Madam Speaker, Men and Women of the House. This bill is "An Act To Establish a Duty To Report Serious Injuries". It was given an Ought Not to Pass by 9 out of the 14 members of our committee, five members felt that it ought to be Ought to Pass as Amended by Committee Amendment "A". The bill will require any adult who observes a serious injury to immediately report it to law enforcement or to medical personnel.

This bill responds to the law court case of the estate of Joshua Cilley and Jennifer Lane, which was a 2009 law court case. The law court in that case found the following. It said the duty proposed by the estate stands in direct opposition to the principle that a person does not have an affirmative duty to warn another person in peril. Although Cilley's family did ask the Maine Legislature to enact a law imposing criminal sanctions and creating civil liability for persons who observed that another has received a serious injury and then fails to immediately report and request first aid for that person, the Legislature did not enact that law. So this bill has already been once before the Legislature, it's been rejected. This bill itself is a second bite at the apple.

In the Cilley case, the law court declined to impose bystander liability. It recognized that we impose a duty to later report an injury where there is a special legal relationship, such as a parent or a child or an employer and an employee, or where a dangerous situation was created by someone, such as a person who has injured another person while they were hunting. That person has a legal duty to give notice of the hunting injury to law enforcement. With a bystander witness, there is no special legal relationship, nor is there a dangerous situation created by the person with the duty to report the injury. This is simply a bystander.

The majority of the Judiciary Committee felt that the bill attempts to turn what is obviously a moral obligation to report a serious injury into a legal duty to report a serious injury. Creating a legal duty, however, has very serious problems. As the law court said, if such a liability could exist, it would be difficult if not impossible to fix any limit to it. What if a bystander claimed to not actually see a serious injury? What if the bystander was one of 50 people who observed a serious injury? What if the bystander was 50 to 100 feet or 500 feet away from the injury? Does that bystander have to report the injury or not? Quite often, the only way to resolve that would be to have a lawsuit involving all of those possible bystanders. Imposing a duty on a bystander to report a serious injury would involve almost every possible witness to a serious injury with a potential lawsuit. Actual witnesses would be very reluctant to come forward as they too could be involved in a lawsuit merely by observing the injury and being accused of failing to report it correctly.

We had testimony by the Maine Association of Insurance Companies, who told the committee that it would be expensive to provide insurance for such bystander witnesses because the cost of defending said suits would be huge given the enormous amount of new courses of action in parties. Moreover, the incredibly intensive effort to present extra testimony or with the extent of further harm in injury from such an action, a delay would be expensive and lengthy, thereby further clogging the court