

MAINE STATE LEGISLATURE

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Legislative Record
House of Representatives
One Hundred and Twenty-Fifth Legislature
State of Maine

Daily Edition

First Regular Session

December 1, 2010 – June 29, 2011

pages 1 - 1067

ONE HUNDRED AND TWENTY-FIFTH LEGISLATURE
FIRST REGULAR SESSION
54th Legislative Day
Thursday, June 2, 2011

The House met according to adjournment and was called to order by the Speaker.

Prayer by Pastor Doug Warren, Christ the Redeemer Presbyterian Church, Portland.
National Anthem by Kaitlin Ann McGinley, Lyman.
Pledge of Allegiance.
Doctor of the day, Richard Fein, D.O., Manchester.
The Journal of yesterday was read and approved.

COMMUNICATIONS

The Following Communication: (S.C. 410)

**MAINE SENATE
125TH LEGISLATURE
OFFICE OF THE SECRETARY**

June 1, 2011

The Honorable Heather J.R. Priest
Clerk of the House

2 State House Station
Augusta, Maine 04333

Dear Clerk Priest:

Please be advised the Senate today adhered to its previous action whereby it accepted the Minority Ought Not to Pass Report from the Committee on Taxation on Bill "An Act To Allow a Tax Credit for Tuition Paid to Private Schools" (S.P. 325) (L.D. 1092)

Sincerely,

S/Joseph G. Carleton, Jr.

Secretary of the Senate

READ and ORDERED PLACED ON FILE.

Under suspension of the rules, members were allowed to remove their jackets.

The following items were taken up out of order by unanimous consent:

UNFINISHED BUSINESS

The following matters, in the consideration of which the House was engaged at the time of adjournment yesterday, had preference in the Orders of the Day and continued with such preference until disposed of as provided by House Rule 502.

Bill "An Act Regarding the Saltwater Recreational Fishing Registry" (EMERGENCY)

(S.P. 60) (L.D. 210)

(S. "B" S-147 to C. "A" S-136)

- In Senate, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-136) AS AMENDED BY SENATE AMENDMENT "B" (S-147)** thereto.

TABLED - May 26, 2011 (Till Later Today) by Representative McKANE of Newcastle.

PENDING - **PASSAGE TO BE ENGROSSED.**

On motion of Representative McKANE of Newcastle, the rules were **SUSPENDED** for the purpose of **RECONSIDERATION.**

On further motion of the same Representative, the House **RECONSIDERED** its action whereby **Committee Amendment "A" (S-136) as Amended by Senate Amendment "B" (S-147)** thereto was **ADOPTED.**

The same Representative **PRESENTED House Amendment "A" (H-457) to Committee Amendment "A" (S-136)**, which was **READ** by the Clerk.

The **SPEAKER:** The Chair recognizes the Representative from Newcastle, Representative McKane.

Representative **McKANE:** This amendment simply exempts persons fishing for mackerel between June 15th and August 15th from the Recreational Saltwater Fishing Registry. Thank you.

Subsequently, **House Amendment "A" (H-457) to Committee Amendment "A" (S-136)** was **ADOPTED.**

Committee Amendment "A" (S-136) as Amended by House Amendment "A" (H-457) and Senate Amendment "B" (S-147) thereto was **ADOPTED.**

The Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (S-136) as Amended by House Amendment "A" (H-457) and Senate Amendment "B" (S-147)** thereto in **NON-CONCURRENCE** and sent for concurrence.

An Act To Promote Fairness in Negotiations between Health Insurance Carriers and Health Care Service Providers

(H.P. 913) (L.D. 1222)

TABLED - May 31, 2011 (Till Later Today) by Representative CURTIS of Madison.

PENDING - **RECONSIDERATION** (Returned by the Governor without his approval).

The **SPEAKER:** The Chair recognizes the Representative from Hallowell, Representative Treat.

Representative **TREAT:** Thank you, Mr. Speaker. Mr. Speaker, Men and Women of the House. I ask you that you do vote to override the veto on this legislation, LD 1222. LD 1222 was a good bill when it was unanimously endorsed by the Insurance and Financial Services Committee, it was a good bill when it was voted unanimously by the House and the other body, and it remains a good bill today.

A vote to sustain the veto will not create a single job in the State of Maine, in fact the reverse. We had compelling testimony from physical therapists and medical doctors that not passing this bill will lead to job losses as small, independent medical providers are closed and consolidated. These job losses will lead to reduced access to health care, particularly in rural areas.

No one opposed the bill at the public hearing where it was strongly supported by doctors, physical therapists, and the Maine Medical Association. The hospitals took no position and only afterwards in a letter did Anthem convey its objections. No one from the administration testified on the bill and when asked specifically if there were any concerns, the Bureau of Insurance staff said no.

LD 1222 does what 14 other states have already done: It bans coercive anticompetitive contracts between insurers and medical practices that unilaterally reduce the amount of payment for medical services after the original contract is negotiated, signed, sealed and delivered. I ask that you continue to support LD 1222 and vote to override, a vote for jobs, for access to health care, and for fair contracting practices.

The **SPEAKER:** The Chair recognizes the Representative from South Portland, Representative Eberle.

Representative **EBERLE:** Thank you, Mr. Speaker. Mr. Speaker, Men and Women of the House. Imagine that you are a small private practice health care provider. You struggle on a daily basis to support your staff, your business. You have competition from large physician-owned practices and hospitals. But you provide care for your patients that is unmatched by any other provider.

You find out that there is going to be a law that will give another unfair advantage to the insurance company. They cut your reimbursement rates by 16 percent in the past few years and continue to cut the reimbursement rate. You rally your colleagues, you try to figure out how to approach this issue, try to protect your practice. You come to Maine; you aren't seeing your patients that day. You come to Augusta. You present your testimony in a very compelling way to the committee and at the end of the day you think that you have been successful. The committee has agreed with you. The committee has unanimously endorsed your position, passed the bill. The bill passes unanimously in the House and the other body, no opposition anywhere, and you think this system is good, it works. It was hard to get our physicians out there and to support it, but in the end it was supported.

Suddenly you find out that the law, this very good bill, this very good law to protect your small business is going to be vetoed. The system has failed. Politics have come before people. Your private practice is in jeopardy and we have completely and utterly failed to protect our small businesses, health care providers, and the worst outfall from all of this, the people who lose the most are the patients, the people of the State of Maine who rely on these small private practices and we have utterly failed them if we do not overturn this veto.

The SPEAKER: The Chair recognizes the Representative from North Yarmouth, Representative Graham.

Representative **GRAHAM**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I urge you to override this veto. This is a blow to accessible, affordable health care and it will hurt primarily our friends in rural areas. I echo my good friend and colleague, Representative Eberle. This will hurt patients. My good friends and colleagues, this is not about business. This is about health care, quality, accessible, affordable health care for all Mainers, and I urge you to override this veto. Thank you, Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Gorham, Representative Sanborn.

Representative **SANBORN**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. As you've heard, LD 1222 would prohibit the use of the most favored nation clauses, the clauses that force health care providers to accept payment from the insurance carrier at the lowest reimbursement rate accepted from any other carrier.

Clearly this is an anticompetitive measure in a shrinking market of health insurance carriers. Although many act as if Maine is the only state without competition in the health insurance market, recent studies show that we are one of 24 states in which 70 percent of the market is served by two or less carriers.

I heard from the discussion of LD 1333 of the great need for increased competition in the market, thus the push to expand the market across state lines and decrease Maine's strong consumer protections. If you support this veto, you are supporting anticompetition in the health insurance market. Worse, you are forcing small independent practices out of business.

I heard from a physical therapy group that has offices in Gorham and South Portland a couple of nights ago. Michel Brunet and his wife Mary, both physical therapists, own Back in Motion, a group I often referred to in physical therapy. They said if LD 1222 does not pass, at least four physical therapy practices they are aware of will close. Michel told me Anthem has decreased his reimbursement rate by something like 16 percent two years ago and four percent again last year. This, despite the increasing costs of providing their employees health insurance, has led them to offering a health savings account and having

insurance with very high deductibles. One company, Anthem, is squeezing them on both ends.

If you are anti small business, anti competition, and against lowering the cost of health care and you like to flip-flop, support this veto. Otherwise please use some common sense and stick with your support of LD 1222. Thank you.

The SPEAKER: The Chair recognizes the Representative from Newcastle, Representative McKane.

Representative **McKANE**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I was informed by the insurers that no one is actually using the most favored nation clause at this time, and there is another bill coming that will address the issue and make some improvements. It will be carried over so we can study the issue more thoroughly. Thank you.

The SPEAKER: The Chair recognizes the Representative from Lewiston, Representative Carey.

Representative **CAREY**: Mr. Speaker, may I pose a question through the Chair?

The SPEAKER: The Representative may pose his question.

Representative **CAREY**: I guess just as in reference to the good Representative from Newcastle, what is the status of that bill and why won't that bill come out this year if it was worked by committee, if this issue was worked by committee?

The SPEAKER: The Chair would suggest that we are not here to discuss bills that may be coming later on. The Chair recognizes the Representative from Warren, Representative Richardson.

Representative **RICHARDSON**: Thank you, Mr. Speaker. Mr. Speaker, Men and Women of the House. I just want to add one thing to Representative McKane's comments in that the person who testified the most at our hearing that we had has in fact endorsed our new legislation that will be proposed. I think that is an important step forward and I just wanted to let everybody know that that was in fact the case.

The SPEAKER: The Chair recognizes the Representative from Hallowell, Representative Treat.

Representative **TREAT**: Thank you, Mr. Speaker. Since apparently the rule against talking about something that is unrelated to this has been waived by implication, I would just say that we have an opportunity now by not sustaining this veto to take action today. That is a lot better, since we all seem to agree on the policy, than taking action sometime next year when we don't even know whether that will happen.

The SPEAKER: The Chair recognizes the Representative from Bangor, Representative Goode.

Representative **GOODE**: Thank you, Mr. Speaker. Mr. Speaker, Men and Women of the House. When we voted on this bill or when we passed this bill under the hammer, it was a good bill. It is still a good bill today. I think that this policy is a no-brainer. It is good for small businesses. It is good for small providers like physical therapists. This is really, policy-wise, a choice between small providers and small businesses or large insurance companies.

I would just like to point out that the CEO of Anthem, Angela Braly, in 2009, got a 51 percent increase, receiving a salary of \$13.1 million and I doubt that many of the small businesses and small providers in our state saw increases like that in 2009 or are seeing increases like that today.

In our committee, again no one from the administration put forward any concerns. When the Governor decided to veto this bill, he definitely didn't call me, and I haven't heard of anybody in this body that he called to let know that he was going to veto this bill. I just feel like that's a little odd and I feel like on numerous occasions in this body this session, we have rushed forward with

bills when we could have held over until next year and for a policy, like this one, that seems to be a slam dunk, it seems weird that we would delay this one when, again, numerous times we have rushed forward with public hearings and bills that maybe we were not prepared for. I think it is odd that on something that we were already unanimous on we would change our mind, so I urge you to override the veto. Thank you.

The SPEAKER: The Chair would remind members when they are referencing the Chief Executive on the second floor that they refer to him as the Chief Executive.

The Chair reminded members when they are referencing the Chief Executive that they refer to him as the Chief Executive.

The SPEAKER: The Chair recognizes the Representative from Hallowell, Representative Treat. Having spoken twice now requests unanimous consent to address the House a third time. Is there objection? Chair hears no objection, the Representative may proceed.

Representative TREAT: Thank you, Mr. Speaker. I am actually not asking to speak again. I wish to request a roll call if that isn't automatically part of a veto vote.

The SPEAKER: The Chair would inform the Members that a roll call is in order by virtue of the fact that it is a veto. The Constitution.

The Chair recognizes the Representative from South Portland, Representative Eberle.

Representative EBERLE: Thank you, Mr. Speaker. Mr. Speaker, Men and Women of the House. You are that small provider, you are still struggling to keep your business afloat and provide the best possible care for your patients who depend on you, and you are hearing today that we have a measure in front of us that could immediately be implemented and you are being told to wait. You are being told to wait and try to keep your business afloat, but we already have a measure in front of us that is going to help you. That is not acceptable. Thank you, Mr. Speaker.

Representative HARLOW of Portland REQUESTED that the Clerk READ the Committee Report.

The Clerk READ the Committee Report in its entirety.

The SPEAKER: The Chair recognizes the Representative from Westbrook, Representative Driscoll.

Representative DRISCOLL: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I find it sadly ironic that as our sign that was installed down around Kittery on the Turnpike, "Maine Open for Business," has been removed and probably rightly so with respect to this upholding if you decide to the Governor's veto. Certainly over this session we have seen some of his quick, reckless types of initiatives such as this that do nothing to support small business in this state. I would encourage you to vote to override the Reconsideration. Thank you very much.

The SPEAKER: The Chair recognizes the Representative from Standish, Representative Shaw.

Representative SHAW: Thank you very much, Mr. Speaker. Mr. Speaker, Men and Women of the House. I have a slightly different angle on this. I would suggest that we overturn the veto and pass the bill right now, and the new bill, from what we understand that's coming, adds just a very small piece. If we override the veto, the floor debate will be much less when we can only debate the very small piece that we might consider should that bill arise.

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Hinck.

Representative HINCK: Thank you, Mr. Speaker. Mr. Speaker, Men and Women of the House. I won't address the merits of the bill that we passed here unanimously. I understand

them to be a proud moment for the body. It was a good vote. Instead I am going to address the procedural posture. It is a little bit momentous actually, the first veto of a Governor.

I'm not sure I was in the body for the first veto of the last Governor, but I was here for an early veto by the last Governor and the veto was of a bill that I had supported. For those members who weren't here, it was a bill related to gambling, then, as now, not the easiest subject for this body. There was discussion in our caucus, I don't mind saying, about the need to sustain the veto of a Governor from the same party. It left me shaking my head a little bit because, as I saw it, we are a separate body. It is an important part of the scheme of how this government is set up.

Now I was a naïve freshman. I went ahead and voted to override the veto and I was told in the days that followed that I was now on a list that the Governor had. That worried me for a little while, half an hour or so, and I am still standing. I survived it and it actually felt good. I'd do it again.

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Russell.

Representative RUSSELL: Thank you, Mr. Speaker. I think I'm already on that list. May I pose a question through the Chair to the members of the body?

The SPEAKER: The Representative may pose her question.

Representative RUSSELL: Thank you, Mr. Speaker. If this were to not be overridden, if this veto was not overridden, would there be small businesses that are on the verge of going out of business that might end up going out of business were we not to take action this year? Thank you, Mr. Speaker.

The SPEAKER: The Representative from Portland, Representative Russell, has posed a question through the Chair to anyone who may care to respond. The Chair recognizes the Representative from Falmouth, Representative Nelson.

Representative NELSON: Thank you, Mr. Speaker. Men and Women of the House, when I consider how I am going to vote on a bill I look often to the Committee Report that comes to me. This Committee Report came unanimously. I assume that the committee considered and carefully evaluated the legislation in front of us and concluded that it was a good bill.

I also have a physical therapy, Casco Bay Physical Therapy, in my town. They are very concerned. This bill is a good bill for them. It will help them to stay in business. They are very legitimately concerned that they will have to close their doors and go out of business if this bill is not passed. I urge you to override the veto. Thank you, Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Scarborough, Representative Sirocki.

Representative SIROCKI: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I have a few things to say. One is I have spoken at length with a constituent of mine who asked that this bill be presented. As I understand it, these clauses have been in place for quite some time. There is a situation in Michigan that is being investigated by the Department of Justice right now.

I support the Chief Executive for his decision to veto this bill, to give us time to get this right. I think there may be more information forthcoming and it is probably the right and duty of the Executive to veto this bill. That's why we have the checks and balances with the three branches of government. I appreciate your time. Thank you.

The SPEAKER: The Chair recognizes the Representative from South Portland, Representative Morrison.

Representative MORRISON: Thank you, Mr. Speaker. Good morning, Ladies and Gentlemen of the House. We can all agree, I believe, in this body that this is a great bill. We all agreed to

that when we voted on this. But it is unfortunate now that when this position we are in, that it has become partisan, and this particular piece of legislation, I believe it is about the citizens of Maine, not about partisan politics. That is exactly what this has become. I would encourage all members here to vote with their constituents and vote for small business and do the right thing for Maine people, not about partisan politics. Thank you, Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Newcastle, Representative McKane.

Representative **McKANE**: Thank you, Mr. Speaker. In answer to the question from the Representative from Portland, it is very unlikely that any small businesses will be going out of business as it is to my understanding that no insurers are using the most favored nation clause, never have and don't intend to. But we will look at this issue more deeply over the next year.

The SPEAKER: A roll call has been ordered. The pending question before the House is the question, 'Shall this Bill become a law notwithstanding the objections of the Governor?' All those in favor will vote yes, those opposed will vote no.

After reconsideration, the House proceeded to vote on the question, 'Shall this Bill become a law notwithstanding the objections of the Governor?' A roll call was taken.

ROLL CALL NO. 104V

YEA - Beaudoin, Beavers, Beck, Beliveau, Berry, Blodgett, Boland, Bolduc, Briggs, Bryant, Cain, Carey, Casavant, Chapman, Chipman, Clark H, Clarke, Cornell du Houx, Dill J, Driscoll, Duchesne, Eberle, Eves, Flemings, Gilbert, Goode, Graham, Hanley, Harlow, Haskell, Hayes, Herbig, Hinck, Hogan, Hunt, Innes Walsh, Kaenrath, Kent, Kruger, Kumiega, Lajoie, Longstaff, Lovejoy, MacDonald, Maloney, Martin, Mazurek, McCabe, Morrison, Nelson, O'Brien, Peoples, Peterson, Pilon, Priest, Rankin, Rochelo, Rotundo, Russell, Sanborn, Shaw, Stevens, Stuckey, Theriault, Treat, Tuttle, Valentino, Wagner R, Webster, Welsh.

NAY - Ayotte, Beaulieu, Bennett, Bickford, Black, Burns DC, Burns DR, Cebra, Chase, Clark T, Cotta, Crafts, Cray, Curtis, Damon, Davis, Dow, Dunphy, Edgcomb, Espling, Fitts, Fitzpatrick, Flood, Fossel, Foster, Fredette, Gifford, Gillway, Guerin, Hamper, Harmon, Harvell, Johnson D, Johnson P, Keschl, Knapp, Knight, Libby, Long, Maker, Malaby, McClellan, McFadden, McKane, Morissette, Moulton, Nass, Newendyke, O'Connor, Olsen, Parker, Parry, Picchiotti, Plummer, Prescott, Richardson D, Richardson W, Rioux, Rosen, Sanderson, Sarty, Sirocki, Strang Burgess, Tilton, Timberlake, Turner, Volk, Waterhouse, Weaver, Willette A, Willette M, Winsor, Wood, Mr. Speaker.

ABSENT - Celli, Crockett, Cushing, Dion, Luchini, Wintle.

Yes, 70; No, 74; Absent, 6; Vacant, 1; Excused, 0.

70 having voted in the affirmative and 74 voted in the negative, 1 vacancy with 6 being absent, and accordingly the Veto was sustained.

HOUSE REPORT - **Ought to Pass as Amended by Committee Amendment "A" (H-393)** - Committee on **VETERANS AND LEGAL AFFAIRS** on Bill "An Act Regarding Special Taste-testing Festivals" (EMERGENCY)

(H.P. 479) (L.D. 649)

TABLED - June 1, 2011 (Till Later Today) by Representative FITTS of Pittsfield.

PENDING - **ACCEPTANCE OF COMMITTEE REPORT.**

Subsequently, the Unanimous Committee Report was **ACCEPTED.**

The Bill was **READ ONCE.** **Committee Amendment "A" (H-393)** was **READ** by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Lewiston, Representative Carey.

Representative **CAREY**: Thank you, Mr. Speaker. I would like to pose a question through the Chair to the Representative from Pittsfield, Representative Fitts.

The SPEAKER: The Chair would ask the Representative to defer until the Clerk reads House Amendment "A." The Clerk will read House Amendment "A."

Representative **FITTS** of Pittsfield **PRESENTED House Amendment "A" (H-462) to Committee Amendment "A" (H-393)**, which was **READ** by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Pittsfield, Representative Fitts.

Representative **FITTS**: Thank you, Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. Hopefully I can answer the question before he poses it. This amendment – or I will back up – this bill was brought forward because of some issues within our wine and beverage tasting laws regarding festivals and an event that is planned for June 9th in Portland called the Italian Heritage Festival.

In that regard, the promoters of this festival are going to have wine representatives from Italy in Portland as part of an economic development and trade tour to promote importation of new wines that are not yet available in our system. So the amendment to the Committee Amendment corrects a problem that was discovered within the Committee Amendment after discussions with the Department of Public Safety and addresses who can pour at this event. The people within this amendment that will be allowed to pour are going to have to be sales representatives of the manufacturer. As sales representatives, they will have registered with the department and bought a sales representative license.

So with that, this corrects what is an oversight or what was left out of the amendment and timing is of the essence for this bill because, as I said, the event is on June 9th. There are people with plane tickets ready to come to the United States that will arrive and, without this amendment, will not be able to do what they thought they were going to be able to do when they arrived. That is in essence the nature of this amendment. Thank you, Mr. Speaker.

On motion of Representative **CURTIS** of Madison, **TABLED** pending **ADOPTION of House Amendment "A" (H-462) to Committee Amendment "A" (H-393)** and later today assigned.

REPORTS OF COMMITTEE

Divided Reports

Majority Report of the Committee on **HEALTH AND HUMAN SERVICES** reporting **Ought Not to Pass** on Bill "An Act To Allow the Use of Electronic Benefits Transfer Funds at Farmers' Markets"

(S.P. 227) (L.D. 735)

Signed:

Senators:

McCORMICK of Kennebec

FARNHAM of Penobscot

Representatives:

STRANG BURGESS of Cumberland

FOSSEL of Alna

MALABY of Hancock

O'CONNOR of Berwick

SANDERSON of Chelsea