

MAINE STATE LEGISLATURE

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

Volume III

Second Regular Session

March 23, 2000 – May 12, 2000

Appendix
House Legislative Sentiments
Index

(S.P. 916) (L.D. 2368)
(S. "A" S-695 to C. "A" S-596)

TABLED - April 14, 2000 (Till Later Today) by Representative SAXL of Portland.

PENDING - **PASSAGE TO BE ENACTED.**

On motion of Representative TOWNSEND of Portland, the Bill and all accompanying papers were **INDEFINITELY POSTPONED** in **NON-CONCURRENCE** and sent for concurrence.

By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH.**

The following item was taken up out of order by unanimous consent:

ENACTORS

Acts

An Act to Amend the Liquor Laws to Create a New Category of License for Pool Halls and Exempt Them from the Prohibition Against Smoking

(H.P. 1807) (L.D. 2533)
(H. "C" H-1168 to C. "A" H-1004)

Reported by the Committee on **Engrossed Bills** as truly and strictly engrossed, **PASSED TO BE ENACTED**, signed by the Speaker and sent to the Senate. **ORDERED SENT FORTHWITH.**

BILLS RECALLED FROM GOVERNOR

(Pursuant to Joint Order - House Paper 1949)

An Act to Ensure that Maine Citizens Injured While Working in Foreign Countries are Provided with Workers' Compensation Benefits

(H.P. 1907) (L.D. 2652)
(C. "A" H-969)

- In House, **PASSED TO BE ENACTED** on April 4, 2000.

- In Senate, **PASSED TO BE ENACTED** on April 4, 2000.

On motion of Representative MARTIN of Eagle Lake, the House **RECONSIDERED** its action whereby the Bill was **PASSED TO BE ENACTED.**

The SPEAKER: The Chair recognizes the Representative from Eagle Lake, Representative Martin.

Representative MARTIN: Mr. Speaker, Members of the House. This bill was put in at the request of a number of citizens along the border who end up working in Canada, especially for most of them being in New Brunswick. The Province of New Brunswick has a provision in their law that does not cover people who are working there unless they are citizens of New Brunswick. Even though they are there employed by companies that might be in New Brunswick, if they were to be hurt and come back to this state, there would be no ability for them to get any benefits whatsoever or salary. I asked the Representative from Skowhegan if she would put in the bill, which she did and I cosponsored, which basically provided for retroactivity and basically it was one of those things where what is good for them ought to be good for us and visa versa. Since then the administration has been in contact with the Premier of New Brunswick and the Premier, their system works a little different than ours, it works somewhat faster, has indicated that it will be going through the new Brunswick Legislature and they will

amend the New Brunswick law to provide for coverage for our citizens who might be working in New Brunswick. So, I feel confident that they will fulfill that commitment in the session that they are about ready to embark upon. I basically, at this point, will go along with no longer having the need for the bill. We may end up having to deal with it again because it appears that the Province of New Quebec is giving us some of the same problems, but at this point I would like to thank the members of the Labor Committee who worked in getting this bill, frankly, so fast that the Governor never knew it hit his desk until it got there. I am pleased to really report to you that I believe by the time we should be back in session, the matter will have been resolved.

On further motion of the same Representative, the Bill and all accompanying papers were **INDEFINITELY POSTPONED** in **NON-CONCURRENCE** and sent for concurrence. **ORDERED SENT FORTHWITH.**

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

COMMUNICATIONS

The Following Communication: (S.C. 657)

STATE OF MAINE

OFFICE OF THE GOVERNOR

1 STATE HOUSE STATION

AUGUSTA, MAINE 04333

April 26, 2000

Dear Members of the 119th Legislature,
Enclosed please find S.P. 987, L.D. 2540, "An Act Concerning Fingerprinting and Background Checks for School Employees," which I am returning without my signature or approval.

This bill repeals the existing law requiring all school employees, both current and future, to undergo background checks for criminal history, based on fingerprints, at the time of licensing or renewal by the Department of Education. The bill requires background checks only for new applicants for licensure or new employees after August 15, 2000. The bill exempts all current school employees from background checks, unless the school employee subsequently seeks employment in a different school district. For individuals who are employed in schools as of August 15, 2000, who subsequently change employer, each local school board in the state would determine whether this subclass of new employees would also be subject to background checks, based on fingerprints.

As you know, Maine has recently been recognized for having the finest K-12 educational system in America. A central reason for this success is a spectacularly dedicated, experienced and capable teaching faculty and staff. As a parent who has had children in Maine's public schools for over 25 years (the total will be 38 years when Molly finishes high school), I can attest to this fact without reservation.

Let there be no doubt that the overwhelming majority of these extraordinary educators are of outstanding and unblemished character. Unfortunately, tragic experience has also taught us that in any group of 50,000 individuals, there are likely to be a small minority who pose a threat to society, in this case, to the very children entrusted to their care. The law which this veto leaves intact is in no way an accusation or indictment of any individual or group; it is instead a simple recognition of our responsibility to take cognizance of an unfortunate, but compelling statistical fact.

The damage that even a handful of the wrong people can do to children is immeasurable and the victims of such damage will be scarred for life.

The existing law requiring background checks for all school employees is a sensible safeguard to protect our children from individuals with proven criminal convictions. The Department of Education has long had rules prohibiting individuals with dangerous convictions from working in our schools. Criminal history records checks, based on fingerprinting, provide the only systematic, consistent, and accurate means to enforce this prohibition. Importantly, the law sends a strong message that should deter individuals with serious convictions from seeking or continuing employment in Maine schools.

The existing law is a carefully crafted measure that was studied extensively by all stakeholders prior to enactment by the Legislature in 1997. The process for conducting background checks is designed to be constitutional, to be consistent, to ensure confidentiality of all criminal records, and to be narrowly tailored to focus on recent, serious criminal convictions which show that an individual poses a threat to children.

All stakeholders endorsed this sensible precaution when it was presented in 1997. A number of groups representing educators, parents, school boards, advocates for victims of sexual assault, and citizens continue to strongly support this safeguard for students.

Maine's adoption of a background check requirement for school employees makes Maine's practice consistent with the national standard. Thirty-four other states require background checks using fingerprints. Twenty-one of those states, like Maine, require checks for all school employees without an exemption for current employees.

The background check is a device for prevention, not accusation, and is a uniformly applied requirement for all school employees. Many other professions require background checks. Until 1972, all Maine school children were fingerprinted for safety reasons. Numerous other Maine residents have been fingerprinted, including more than 150,000 who were printed incidental to military service. Mary and I were fingerprinted in 1994 as part of the adoption process -- and I did not view this in any way as an accusation, but rather as a reasonable precaution where a child's life and welfare was at stake.

The approach in L.D. 2540 is an unacceptable substitute for existing law. L.D. 2540 would exempt more than 47,000 current employees from background checks. Thus, the bill would only ensure that a fraction of school employees -- the new hires -- would have clean records -- and it would take over 30 years to provide that assurance for all employees. It strikes me as disingenuous at best that those who oppose this process on the grounds of principle seem prepared to impose the process they find so objectionable on others, but not themselves.

L.D. 2540 is laden with ambiguities about which employees would be covered and when background checks would be conducted. With regard to the narrow circumstances under which current school employees may be screened if they change employers, the bill creates a patchwork of protection to be determined by each local school board -- and imposes the cost of these background checks on local school districts.

I cannot support an approach which reduces the existing safeguard to such inconsistency and incompleteness. More than 16,000 school employees have already been fingerprinted. It is a mistake to alter a sensible policy in mid-course and waste considerable resources already invested in protecting children.

There is broad consensus that if the State mandates background checks for school employees, the State -- and not the employee -- should pay the cost of the checks. In addition, it is necessary to make adjustments to the timeframes for fingerprinting and running criminal history records checks on several categories of school employees and contractors in order to successfully implement the existing law. I stand ready to work with the Legislature to resolve both of these concerns, but in a form that is not coupled with the poor public policy of exempting current school employees.

The most compelling argument to me, and the ultimate reason I cannot sign this bill, is the stark fact that if we take this step and effectively exempt almost 50,000 people from this sensible and non-intrusive requirement, some day two, five, or ten years from now, we will awaken to news of a horrendous case which could have been prevented -- and all of us who supported this proposal -- including me if I sign it -- will bear a full measure of responsibility. This I cannot and will not do.

I want to end this message with a somewhat unusual plea directed to those dedicated, skilled, and conscientious educators who believe that compliance with this law requires such a compromise of their principles that they feel compelled to leave their honorable and vitally important profession. Please rethink this position -- you are not being accused and you are not being subjected to a process any different from that applied to tens of thousands of your fellow citizens. To those of us who place our children into your care each day, this is neither a brand nor an accusation, and it will only become so through your own words and actions. Our children need principled leaders, teachers, and mentors, but in this case, the principle being asserted simply does not rise to a level which would justify leaving the students to whom you have given so much.

For the reasons outlined above, I believe that background checks as a safeguard for children should be required in a fair and consistent manner for all school employees. I am in firm opposition to L.D. 2540 and I respectfully urge you to sustain my veto.

Sincerely,
S/Angus S. King, Jr.
Governor

Came from the Senate **READ** and **ORDERED PLACED ON FILE**.

READ and **ORDERED PLACED ON FILE** in concurrence.

The accompanying Bill "An Act Concerning Fingerprinting and Background Checks for School Employees"(S.P. 987) (L.D. 2540) (S. "A" S-735 to C. "B" S-692)

In Senate April 26, 2000, this Bill, having been returned by the Governor, together with his objections to the same, pursuant to the provisions of the Constitution of the State of Maine, after reconsideration, the Senate proceeded to vote on the question: 'Shall this Bill become a law notwithstanding the objections of the Governor?'

21 voted in favor and 5 against, and accordingly it was the vote of the Senate that the Bill become a law, notwithstanding the objections of the Governor, since two-thirds of the members of the Senate so voted.

S/Joy J. O'Brien
Secretary of the Senate

The **SPEAKER**: The Chair recognizes the Representative from Kennebunk, Representative Murphy.

Representative **MURPHY**: Mr. Speaker, Men and Women of the House. The four times that we have debated this bill, I think

the members of the House, those that have remained in the chamber learned that for those of us in teaching and some of us were on both sides of this issue that it was a very personal issue. I hope that through that debate that when you listened to us, you realized that those of us that serve in that teaching profession who have that unique opportunity to work with young people find that they touch our lives every day. I would thank you for your votes in the past. Thank you.

The SPEAKER: The Chair recognizes the Representative from Waldoboro, Representative Trahan.

Representative **TRAHAN**: Mr. Speaker, Ladies and Gentlemen of the House. I apologize for my previous action. I feel it is necessary to get up for just a moment and speak for those people that I have avoided speaking to earlier. We have debated this issue extensively and I really don't want to get into the technical parts of the debate any longer, but I do think that something needs to be said for those people that are out there that have stood on their principles and have said that they cannot accept this in good conscience. As Americans we sometimes become spoiled with what our forefathers gave us, our freedoms and the ability to say no when our government tells us we must do something. For those people that had the courage to make that kind of commitment in today's world, I believe that is quite scarce for someone to stand on their principles and be willing to give up their livelihood. For them, I say that this great debate has been worth it and I stand today and say that I am very sorry that our education system has taken this kind of damaging debate. I think that our future will show that the direction that we are going today will be harmful and there will be a day when we sorely regret what we have done. Thank you.

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

Representative **MENDROS**: Mr. Speaker, Ladies and Gentlemen of the House. We have heard a lot about this. I will try to say something that we haven't heard before. As I have said many times, this will protect no one and let me tell you why. If the fingerprinting does find somebody, which I don't think it will, no one will know that that person has a record. They just won't be rehired. They won't get their license renewed. They will leave. We take this teacher who supposedly has a record, that I don't think exists, but if they do, there is no provision for anything to be done for that person to be labeled a child molester. They will merely be let go. That teacher with a 20-year history will go to a daycare center and say that they don't feel like teaching anymore, no one will know why they were let go, it will be swept under the rug and that daycare center will say they will hire you and that person will still have access to kids. We will have protected no one. This law protects nobody.

The SPEAKER: A roll call has been ordered. The pending question before the House is shall this bill "An Act Concerning Fingerprinting and Background Checks for School Employees" become 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. 674V

YEA - Berry DP, Berry RL, Bryant, Buck, Carr, Chick, Chizmar, Clark, Collins, Colwell, Cowger, Davis, Dugay, Duplessie, Fisher, Fuller, Gagne, Gillis, Goodwin, Green, Hatch, Jacobs, Kasprzak, Lindahl, Lovett, MacDougall, Madore, Mayo,

McDonough, McNeil, Mendros, Mitchell, Murphy T, Nass, O'Brien LL, Peavey, Perkins, Pinkham, Povich, Powers, Richardson E, Samson, Sanborn, Saxl JW, Sherman, Shiah, Skoglund, Snowe-Mello, Stanwood, Sullivan, Tessier, Tobin D, Tobin J, Tracy, Trahan, Treadwell, Twomey, Waterhouse, Wheeler EM, Williams.

NAY - Ahearne, Andrews, Bagley, Baker, Belanger, Bolduc, Bouffard, Bowles, Brennan, Bruno, Bull, Bumps, Cameron, Clough, Cote, Cross, Daigle, Desmond, Dudley, Duncan, Dunlap, Etnier, Foster, Gerry, Glynn, Gooley, Heidrich, Honey, Jodrey, Kneeland, Labrecque, LaVerdiere, Lemoine, Lemont, Mack, Mailhot, Martin, Marvin, McAlevey, McGlocklin, McKee, McKenney, Murphy E, Muse, Norbert, Nutting, O'Brien JA, Richard, Richardson J, Rines, Rosen, Savage W, Saxl MV, Schneider, Shields, Stanley, Thompson, Townsend, Tripp, True, Tuttle, Usher, Weston, Wheeler GJ, Winsor, Mr. Speaker.

ABSENT - Bragdon, Brooks, Campbell, Cianchette, Davidson, Frechette, Gagnon, Jabar, Jones, Joy, Kane, Matthews, O'Neal, O'Neil, Perry, Pieh, Plowman, Quint, Savage C, Shorey, Sirois, Stedman, Stevens, Volenik, Watson.

Yes, 60; No, 66; Absent, 25; Excused, 0.

60 having voted in the affirmative and 66 voted in the negative, with 25 being absent, and accordingly the Veto was **SUSTAINED. ORDERED SENT FORTHWITH.**

REPORTS OF COMMITTEE

Divided Report

Majority Report of the Committees on **JUDICIARY** and **BUSINESS AND ECONOMIC DEVELOPMENT** reporting **Ought to Pass as Amended by Committee Amendment "A" (S-740)** on Bill "An Act to Establish Requirements for the Removal of Directors of Certain Maine Business Corporations before the Expiration of Their Established Terms" (EMERGENCY) (S.P. 1089) (L.D. 2693)

Signed:

Senators:

TREAT of Kennebec
KONTOS of Cumberland

Representatives:

THOMPSON of Naples
BULL of Freeport
LaVERDIERE of Wilton
JACOBS of Turner
MITCHELL of Vassalboro
MADORE of Augusta
SCHNEIDER of Durham
MENDROS of Lewiston
CLOUGH of Scarborough
O'NEAL of Limestone
USHER of Westbrook
BOLDUC of Auburn
TRIPP of Topsham

Minority Report of the same Committee reporting **Ought Not to Pass** on same Bill.

Signed:

Representatives:

NORBERT of Portland
WATERHOUSE of Bridgton
MARVIN of Cape Elizabeth
BOWLES of Sanford