

MAINE STATE LEGISLATURE

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Senate Legislative Record
One Hundred and Twenty-First Legislature
State of Maine

Volume II

First Regular Session (Continued)
May 21, 2003 to June 14, 2003

First Special Session
August 21, 2003 to August 22, 2003

First Confirmation Session
October 30, 2003

Second Regular Session
January 7, 2004 to January 30, 2004

Second Special Session
February 3, 2004 to March 18, 2004

Pages 715 - 1415

16 Senators having voted in the affirmative and 16 Senators having voted in the negative, with 3 Senators being absent, the motion by Senator **MARTIN** of Aroostook to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in concurrence, **FAILED**.

On motion by Senator **TREAT** of Kennebec, **TABLED** until Later in Today's Session, pending **ACCEPTANCE** of the Minority **OUGHT TO PASS AS AMENDED** Report, in **NON-CONCURRENCE**.

Out of order and under suspension of the Rules, the Senate considered the following:

REPORTS OF COMMITTEES

House

Divided Report

The Majority of the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act To Restrict Fingerprinting of Educational Personnel to New Hires"

H.P. 667 L.D. 890

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-520)**.

Signed:

Senator:
DOUGLASS of Androscoggin

Representatives:
GAGNE-FRIEL of Buckfield
DAVIS of Falmouth
FINCH of Fairfield
CUMMINGS of Portland
NORTON of Bangor
MURPHY of Kennebunk
THOMAS of Orono
FISCHER of Presque Isle

The Minority of the same Committee on the same subject reported that the same **Ought Not To Pass**.

Signed:

Senators:
MITCHELL of Penobscot
BRENNAN of Cumberland

Representatives:
LEDWIN of Holden
ANDREWS of York

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-520)**.

Reports **READ**.

Senator **DOUGLASS** of Androscoggin moved the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Douglass.

Senator **DOUGLASS:** Madame President, men and women of the Senate. This is essentially the same bill as that which we just debated. However, it comes in this form. It essentially repeals the fingerprinting law of 1996 or 1998, whichever it was. It establishes that fingerprinting will go forward from August 2003 alone on new hires, newly certified personnel, newly accrued personnel, or anyone who works in the school setting under Chapters 501 and 502 of our education laws. This is a cleaner way of looking at a problem that actually is, in many respects, history. It is the issue of those teachers who have been in our system for so many years, from the time before we could use electronic databases and so forth and so on.

I will tell you, quite frankly, that I have voted on both sides of the issue here. It seemed to me, when this was first brought to my attention when I came to this body in 1998, the issue was who was going to pay for the fingerprinting. I wasn't convinced that we really had information enough to determine whether or not it was a good idea to do fingerprinting. My experience was that as long as you had a person's name and date of birth you could get their records, particularly their record in Maine. I think that is still true. I personally think every school district should be running background checks on every person who is working closely with students in their district. However, some of the debate is over what you can do easily.

The reason I believe that the earlier law was passed was because with the electronic database it is easy to put information out there. Everything from every state in the union can come back that someone might or might not have on their record. I'm quite sure that in the majority of cases that information has been kept confidential, and we have most of our teachers working in our school systems after having been fingerprinted.

Nevertheless, this is a compromise bill. Currently 4/5 of our teachers have been fingerprinted. Although we cannot be told that anyone has been denied recertification or approval within the school setting, as in the case with bus drivers or other school personnel, it seems that this may very well have been the case. What this bill does, as a compromise, is to get rid of the database so that those people who have already been through the check now no longer have to worry that their fingerprints are out there, in some federal system, ripe for the taking if you will, as we worry about electronic issues. We have screened 4/5 of our teachers and education personnel. There is 1/5 that has yet to be done. At the time that this comes into effect, there will have been more who have been screened. In effect, we're kind of having the old law. Going forward, we are only applying the law to new hires, teachers who are asking for new certificates or certification under our laws, and personnel who need approval under the chapters that apply to public education in our state. What this bill does, in effect, is take the database out of the system. It does not reinstate those who were not recertified, and it keeps fingerprinting for those who are new applicants.

I think it accomplishes a compromise that I recommend to you. It provides that we will have background checks for every

person who works in a school beginning in August. At that time, we will have already screened virtually everyone who is in our current system. The issue of who is in our system now and have they been screened will have been answered, and who goes forward subject to this provision is also answered. We also eliminate the database for those who are new. It is a compromise. If you are passionate about one side or the other, this may not appeal to you. That is exactly why I think it is the right thing to do. I hope you will vote in favor.

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Sawyer.

Senator **SAWYER:** Thank you, Madame President, ladies and gentlemen of the Senate. I can't pass up this opportunity to stick my oar in the water on the topic before us. I suppose we each bring our own life experiences to this discussion, particularly those of us that were not here when the bill was passed nor sitting in on the Education Committee's discussions. In my own life experiences, I've had, I think, two experiences that provide me with some guidance. The first is that for 27 years, because I was in the transportation industry, I needed to provide a Department of Transportation drug test even though for most of those 27 years I was navigating a desk around my office. The DOT requires it and every employee in my company had to pass that test. Secondly, I would show you, but I understand the rules say I can't, in my briefcase is an application to the U.S. Coastguard, which now not only requires a drug test, but also requires my submitting fingerprints. What do I get from that? One of the things I get from that is that I know the license holder working beside me has dramatically decreased the opportunity to injure either themselves or me in the process. I will be voting in favor of continuing the existing law. I would just indicate one of life's embarrassing experiences. You have not lived until you've provided a witnessed drug test under the Department of Transportation. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Brennan.

Senator **BRENNAN:** Thank you, Madame President, men and women of the Senate. I feel fairly confident that I have it right this time. I'm going to encourage you to oppose the pending motion to accept the majority Ought to Pass report and instead accept the minority Ought Not to Pass report. The Senator from Androscoggin, Senator Douglass, mentioned that this was cleaner way of looking at the issue. She may be right, and this is a cleaner way of looking at the issue, but it certainly is not a more fair way of looking at the issue. As was pointed out, the overwhelming majority, in fact 80%, of school personnel have already been fingerprinted and had background checks done. There are only about 3,500 to 4,000 remaining people that have not been fingerprinted or had that type of background check done. I think it is unfair to all those people that have been subject to current law to then excuse the remaining few from fingerprinting and from the type of background check that we've had for the last three years.

Secondly, I'd like to point out that when the law was passed in 2000 it was specifically written into the law that the database and fingerprinting could only be used for background checks for school personnel. It could not be used in any other way for any other purpose or for any other type of criminal activity or pursuit.

We made it very clear that those fingerprints remain in that database specifically for doing the background checks.

Lastly, and probably the least compelling of the argument that I would make here, the public has shown broad and strong support for this public policy. I don't ever ask anybody or encourage anybody to vote based on opinion poll or simply what the public might say in a survey. I would remind members of this chamber that this issue, while it might be contentious here and it may be contentious with some members of school personnel, is not a contentious issue with the public.

I think one last point is that the other issue that good Senator from Franklin, Senator Woodcock, has made is that fingerprinting somehow injects an element of criminal behavior on those school personnel or those in the teaching profession. If this bill were to pass and people were to vote for this bill, what they would be basically saying is that it is okay just to fingerprint those new people that are coming into the system. All the things that were said about fingerprinting doesn't apply to them, it only applies to the policy that we've had for the last four years. Again, I think that is unfair and I think it is incongruent with the policy that we have tried to put forward in the last three years. Thank you and I hope you will join me in opposing the pending motion.

THE PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Mayo.

Senator **MAYO:** Thank you, Madame President, ladies and gentlemen of the Senate. Excuse my voice, I'm in the process of losing it. Some in this body might be happy at that point.

I had a similar bill to the one that we have before us tonight, L.D. 890. It had one different twist to it in that I, at that point, was supportive of doing. Something to aid and assist those men and women who left teaching because of their strong feelings on that issue. I think there are very few school systems in this state that did not experience that at least once during this, what I consider to be, unfortunate experience. I was here in the other body when this bill was passed. I have had the experience in the past of debating the good Senator from Cumberland, Senator Brennan, on this issue. While he and I tend to agree on a number of things, fingerprinting has not been one of them. The good Senator from Waldo, Senator Weston, made a comment which I think applies to the issue that we have in front of us with the Ought to Pass as Amended report. She said that she lived in a 'fishbowl' with her husband being a teacher, and then a principal, and the fact that she substituted was known by everybody in the community, and most likely, the county. I would agree with her in that regard. But we do not have the same knowledge of those people who are new and coming into the system. That is why this evening I shall be supporting the majority Ought to Pass as Amended because I feel that new people coming in, be they from another school system in the state or from out of state, need this to take place. I feel very comfortable supporting that. I would hope that you would join me in supporting L.D. 890 as amended. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Strimling.

Senator **STRIMLING:** Thank you, Madame President. I just had a couple of questions that I'd like to pose.

THE PRESIDENT: The Senator may pose his question.

Senator **STRIMLING**: Thank you. I was looking through the bill. The Senator from Androscoggin, Senator Douglass, was saying that in the bill it somewhere gets rid of everybody's previous records. I couldn't find that and was wondering if somebody could just direct me to that.

THE PRESIDENT: The Senator from Cumberland, Senator Strimling poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Androscoggin, Senator Douglass.

Senator **DOUGLASS**: Madame President, section 15 of the bill, L.D. 890, pertains to the removal of applicants' fingerprints from the state repository. As we amended it, I believe the words used in the amendment are removed and/or deleted. It is in section 15.

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Mitchell.

Senator **MITCHELL**: Thank you, Madame President, men and women of the Senate. I rise to ask you to please vote against the majority Ought to Pass as Amended report. I'd like to state my reasons for you, and the facts that really are essentially what we should be considering. The good Senator from Androscoggin, Senator Douglass, mentioned that her amendment removes the database. Let's think about that for a minute. The main reason that we passed this fingerprinting in 1997 was so that we, as the good Senator from Cumberland, Senator Brennan, mentioned, would be one of the 40 states who have fingerprinting that enables us to have access to the FBI files and the national records of fingerprinting for people coming into this state. If we remove that database, that means that we no longer can verify with the national records. We would have to go to each individual state to actually verify if that person had been convicted or what his fingerprinting records were.

Fingerprinting new hires in the State of Maine and not keeping the old database means that it would only pertain to information in Maine. It would also mean that we would not only not have that database available, but it also means that background checks do not provide you with the same information as what you get from the fingerprinting. It would mean that if the person that you currently had hired and have on your payroll decides to leave the State of Maine and they have a record but you have taken their fingerprinting file out, when they go to another state, there is no record where that person has been convicted in the State of Maine as a pedophile or of child abuse. What we are doing is taking away our investment in 1997. The fact is that by the time this law is enacted, you've only got less than 20% of the people in the State of Maine who have not been fingerprinted. Why, with the investment that was made in sound judgment, would we disregard this at this point? Once again, the State of Maine would be criticized, nationally, with the attitude of don't depend on Maine because they change their laws and don't always stick to what they decide originally.

We have a Commissioner that is very competent. She does an excellent job. We pay our commissioners good money to do their work. We have to have trust in the people we hire to do their work. If the Commissioner comes before the committee with information stating that we do not, or should not, change the existing law because of the information that she has before her, that should be a signal to us. Perhaps this is why our good Governor changed his position, and the Portland Press Herald

quoted that. We need to be looking at what we are doing and if we are consistent with following through with the laws that we have enacted in this body. Do we want to make changes that will only affect less than 20% of the teachers and throw away all those files that we have worked earnestly and have spent a lot of money for? We have corrected the mistakes we made, as we often times do with a law initially.

I would say that we have to put our pride in our back pockets of the people in the profession who are resistant to putting their fingers on an ink pad. Think about what the Senator from Waldo, Senator Weston, has said to us about how proud she is to have been fingerprinted because she can face any parent and they know that she has not been convicted of a crime. I would ask you to please support defeating the majority Ought to Pass as Amended report so we can go on and pass the minority Ought Not to Pass report. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Strimling.

Senator **STRIMLING**: Thank you, Madame President. Thank you to the Senator from Androscoggin, Senator Douglass, for pointing out the place in the bill. I did find it.

My second question is, because I haven't been here for the whole debate and I was reading the bill, if they find something in somebody's history, does it automatically exclude them under certain circumstances or are they allowed to take a look at the situation? Perhaps the person has turned their life around and things have changed.

THE PRESIDENT: The Senator from Cumberland, Senator Strimling poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Androscoggin, Senator Douglass.

Senator **DOUGLASS**: Madame President, women and men of the Senate, I may not have the definitive answer for that because I'm not sure that we posed that precise question or in that fashion to the Commissioner. I would like to relate to the body what we've learned. The Commissioner and three people in the department are privy to this information and it is kept very confidential. When a problematic conviction comes forward and to their attention through this process, they notify the individual. The individual does have some appeal rights. Different convictions are applicable to different positions. Obviously, operating under the influence of alcohol is something that is appropriate to be considered for those who would be drivers. It's not considered for those who are teachers, unless it seems to be a component of another aspect that relates to behavior with children. I know I asked the question of whether convictions of assault, that might have occurred as a plea bargain down from a sexual assault would be inquired into by the commissioner. I believe the answer was positive. They do look at the circumstances, if they are requested to do so, or are alerted to it by the nature of the conviction, or requested by the individual whose certificate is at issue. There is a procedure in place for appeals and for putting this in context. I think the question was about rehabilitation. I guess that is addressed in this law through the fact that if the conviction is more than five years old it is not to be considered.

THE PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Brennan.

Senator **BRENNAN:** Thank you, Madame President, men and women of the Senate. Let me just answer very specifically the good Senator from Cumberland, Senator Strimling. If the conviction is for child abuse and exploitation, the consequence is the license would be denied for five years without a hearing if the conviction is within five years. For other felonies, the license may be denied with a hearing if the discharge is within the past three years. For misdemeanors, the license may be denied with a hearing if the discharge is within the past three years, and conviction is relevant to the job or if children are placed in harms way. The legislation is very specific, and very clear. It does not allow the department to go a fishing expedition, looking at a broad array of convictions and determining whether or not an applicant would have their license denied. In fact, it's very narrow and very clear. The look back that they have is limited also.

On motion by Senator **GAGNON** of Kennebec, supported by a Division of at least one-fifth of the members present and voting, a Roll Call was ordered.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Androscoggin, Senator Douglass to Accept the Majority Ought to Pass as Amended Report. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#122)

YEAS: Senators: BROMLEY, BRYANT, CATHCART, DOUGLASS, EDMONDS, GAGNON, HALL, HATCH, MAYO, NASS, TREAT, THE PRESIDENT - BEVERLY C. DAGGETT

NAYS: Senators: BENNETT, BLAIS, BRENNAN, CARPENTER, DAMON, DAVIS, GILMAN, KNEELAND, LEMONT, MARTIN, MITCHELL, PENDLETON, ROTUNDO, SAVAGE, SAWYER, STANLEY, STRIMLING, WESTON, WOODCOCK, YOUNGBLOOD

ABSENT: Senators: LAFOUNTAIN, SHOREY, TURNER

12 Senators having voted in the affirmative and 20 Senators having voted in the negative, with 3 Senators being absent, the motion by Senator **DOUGLASS** of Androscoggin to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **FAILED**.

The Minority **OUGHT NOT TO PASS** Report **ACCEPTED**, in **NON-CONCURRENCE**.

Sent down for concurrence.

The Chair laid before the Senate the following Tabled and Later (5/20/03) Assigned matter:

SENATE REPORTS - from the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act To Protect Against Unfair Prescription Drug Practices"

S.P. 194 L.D. 554

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-204)** (7 members)

Minority - **Ought Not to Pass** (6 members)

Tabled - May 20, 2003, by Senator **BRENNAN** of Cumberland

Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report

(In Senate, May 20, 2003, Reports **READ**.)

On motion by Senator **BRENNAN** of Cumberland, the Majority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED**.

READ ONCE.

Committee Amendment "A" (S-204) **READ** and **ADOPTED**.

Senator **WESTON** of Waldo **OBJECTED** to **SUSPENSION OF THE RULES** for the purpose of giving this Bill its **SECOND READING** at this time by title only.

Pursuant to Senate Rule 510, **ASSIGNED FOR SECOND READING AT 7:50 IN THE EVENING.**

Out of order and under suspension of the Rules, the Senate considered the following:

REPORTS OF COMMITTEES

House

Ought to Pass

The Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act To Amend the Educators for Maine Program" H.P. 985 L.D. 1340

Reported that the same **Ought to Pass**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED**.

Report **READ** and **ACCEPTED**, in concurrence.

Under suspension of the Rules, **READ TWICE** and **PASSED TO BE ENGROSSED**, in concurrence.

ORDERS OF THE DAY