

MAINE STATE LEGISLATURE

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One Hundred and Twenty-Second Legislature

State of Maine

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Pages 1 - 410

Divided Report

Nine members of the Committee on **JUDICIARY** on Bill "An Act To Extend Civil Rights Protections to All People Regardless of Sexual Orientation"

S.P. 413 L.D. 1196

Reported in Report "A" that the same **Ought to Pass**.

Signed:

Senators:

HOBBS of York
BROMLEY of Cumberland
HASTINGS of Oxford

Representatives:

PELLETIER-SIMPSON of Auburn
FAIRCLOTH of Bangor
GERZOFKY of Brunswick
CANAVAN of Waterville
BRYANT of Windham
DUNN of Bangor

Three members of the same Committee on the same subject reported in Report "B" that the same **Ought to Pass as Amended by Committee Amendment "A" (S-38)**.

Signed:

Representatives:

SHERMAN of Hodgdon
BRYANT-DESCHENES of Turner
NASS of Acton

One member of the same Committee on the same subject reported in Report "C" that the same **Ought Not to Pass**.

Signed:

Representative:

CARR of Lincoln

Reports **READ**.

Senator **HOBBS** of York moved the Senate **ACCEPT** Report "A", **OUGHT TO PASS**.

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

Senator **TURNER:** Thank you, Madame President, ladies and gentlemen of the Senate. I rise in support of the motion put forth by the good Senator from York, Senator Hobbins. I'd like to start by summarizing this bill as concisely as I can. If enacted, it would prohibit discrimination in five areas; housing, public accommodations, employment, credit, and education. Within that context it does provide a carve-out for religious organizations in three of those five areas; namely employment, housing, and education.

I don't have intimate knowledge of all five of these areas, so let me just touch upon two of them. The first would be

employment. I've had the privilege to work for lots of organizations over the years. I've had the opportunity to hire people, and regrettably, I've had to fire people in the course of executing my responsibilities as a manager and as an executive. I think there is one basis only for deciding whether to hire somebody and that rests with their qualifications to do the job. Period. Your decision to fire somebody, on the other hand, would be based on their ability to execute their job responsibilities and that should be the only basis with respect to that area of our employment practices. Regrettably, in Maine that does not hold true because, based on your sexual orientation, you can be denied employment, and based on your sexual orientation, you can be fired. From my perspective, that is flat wrong. Let me say it again, flat wrong. There is no place in our society for discrimination of any type.

Let me talk about our second area, credit. At various times I've had credit authority going up to \$1 million. There are appropriate basis deciding, from a business perspective, how you should extend credit. The quality of your credit report, your capacity to pay on a go-forward basis to satisfy the tenants of a loan document, and possibly a third, the assets that you can pledge to secure whatever loan agreement is before you. From my perspective, as a former lender, those are the only basis on which you should extend credit and the only basis on which you should deny credit. Regrettably, in Maine today, as we stand or sit in this chamber, you can be denied credit on the basis of your sexual orientation. I don't think that is right. I don't think that is fair. It should not stand.

I would strongly urge all of my fellow Senators, on both sides of the aisles, to support the motion that is before us. Thank you, Madame President.

THE PRESIDENT: The Chair recognizes the Senator from Lincoln, Senator Dow.

Senator **DOW:** Thank you, Madame President, ladies and gentlemen of the Senate. I guess this issue has a lot to do with how you were brought up. I'm going to give you a little bit of history and I need my constituents to know why I'm going to support this bill passionately.

I grew up in a household where not a word of prejudice or discrimination was spoken against any group of people. I guess I'd like to start with my father and grandfather. This has to do with the American Indians. You may wonder what this has to do with the bill, but it has plenty to do with it. My grandfather, who grew up in Aroostook County and I'm sure was chummy with a lot of Maine Indians, would tell me some great stories about Indians. One of the ones I remember was the Indian chief that was standing on an ant mound in the spring, covered with ants, naked. There was a particularly good reason for all of that, and I'm not going to go into the details of that. I grew up with all kinds of stories about American Indians. Some were from my father as well as my grandfather. As we'd travel back and forth to Aroostook County, I can remember two times that he took a detour and took me into Indian Island and let me take a look around as we drove around. My father had told me many other stories about the Maine Indians and some were quite sad. I had a hard time stomaching some of them. I saw a story in the Bangor paper within the last five years that had to do with a death of some Indians because frequently some of the Indians would die from drinking canned heat. Canned heat, as the story goes, is a material you can use that has alcohol in it but it also has poison

in it. Everybody thought that if you heated it up, melted it down, and strained it through a loaf of bread that you could get the poison out. What would really happen is, if it didn't make you go blind, it would kill you. I can remember stories of Maine Indians that had died from this canned heat poisoning. I remember stories just a few years ago that came out of Aroostook County, another incident. This was always on my mind, about what it was that caused American or Maine Indians to be treated in this way that they ended up dead from this when no one else did, until I went onto Indian Island with my father. It was then that I realized what it meant to be a second-class citizen. It wasn't always a pretty picture that I saw. So my father, without saying a word, had a way of teaching me about discrimination and how discrimination and prejudice can eat at the very heart of a nation and eat at the soul of a person.

This was of course true when I went into teaching. When I went to teach in the middle 1970's I was fortunate because we were coming into the period of Title 9. Title 9 was an equal rights amendment that guaranteed women equal access to sports in the schools. It has had a dramatic effect on equality in the school system. It is just another example where we've had to come a long way from the old days. I don't think any of us were around when the right to vote for women was brought in. I know I wasn't. It sure has had a great effect. When I look back at my father's Senate picture from the 59th Legislature, he was Senator number 32 from Lincoln County and sat right over where the good Senator from Sagadahoc, Senator Mayo, does for eight years, there is something missing from that picture. Senator Mitchell is missing. Senator Schneider is missing. Senator Savage and Senator Weston and especially you, Madame President, is missing. There are no women in that picture. Not only do we need to take and pass discrimination laws, but also it takes a long time to realize the effects of them as we progress as a nation. We certainly just can't discount the role that women have played in society and in this Senate and in the House. I guess that is lesson number two as I grew up.

The third big lesson that we all grew up with was the discrimination of African Americans. We grew up in a time of turmoil; when Blacks were discriminated against; when they were second-class citizens; when they, like the American Indians, had their own Trail of Tears in history that they had to follow. I'm sad to say that we haven't come as far as we need to on that area either. I point to my own industry, the furniture industry. When I sit as president of my furniture company, I don't have a single African American salesman that comes through the door. We've got a long way to go. When I go to High Point, the big national furniture show, I don't see many African Americans that are owners of companies. Not many salesmen. Oh I see them, they are serving food still and shining shoes. That is the truth. It upsets me because discrimination and prejudice eats away at the heart of the nation and of the state. While we pass these laws, it still takes a while for society to come along and embrace these ideas.

I guess the biggest influence on my life, at least in my later years, is my religious beliefs. Many of you know, of course, I own a furniture store. Many of you know I was a schoolteacher. Most of you don't know I went to seminary for a while. I didn't finish it. I'm not a minister. I'm a teacher. I use those skills to teach in bible studies. I went to Gordon-Conwell Theological Seminary, criticized by the liberals because it is too conservative and criticized by the conservatives because it's too scholarly and they teach us to think too much. At Gordon-Conwell I guess I learned

to think about biblical issues and what it really means. I owe a great debt to a particular professor, Dr. Gordon Phee, Professor of New Testament at Gordon-Conwell. I learned, going through the years there and afterwards, that discrimination and prejudice eats at the heart of a nation. It eats at the heart of individuals. I think of the story of Zacchaeus. I think most of you know the story of Zacchaeus in the bible. He was that sawed-off runt of a tax collector that lived in the town. He had to climb the tree in order to see Christ. You can be sure that he was discriminated against every day because he collected the taxes for the Romans and they protected him. So you can be sure not a week went by when he was told to repent, repent, repent. All of that good will repentance didn't do him any good, but Christ came along and accepted him the way he was and invited him to dinner. It changed his heart. Total acceptance changed him. That is true with anything we do in life. Acceptance has a way of changing the heart. The money changes in the temple in Jerusalem. A most misunderstood story, the temple was designed in concentric circles and you could enter certain circles but you kept getting more discriminating as you got closer to the inner chambers. It just so happened that these money changer tables were set up in the court of the gentiles, the one place in the temple where anyone could go; men, women, Jews, Roman soldiers, gentiles. This was the one place in the temple that was open to all and Christ was disgusted at it because it had been contaminated. In the one area that was free of discrimination and prejudice, he carried out his Godly anger just at that, just to remind us, all of us, that we are all free to go to God and there are no exceptions. This had had a big effect on my life. When people ask me why I'm going to support this bill, it is for those reasons. The bible tells me so. The bible teaches against prejudice and discrimination. If we want to discriminate against women again, we might as well rip the entire Gospel of Luke completely out of the book. If we want to build up walls, we want to rip out the Book of Ephesians. If you come into church you will find me reading that book quite often. That book has to do with breaking down walls. The wall that is mentioned there at the time was the biggest wall in history, it was the wall of division between Jews and Gentiles. What Paul says in that book is that God has destroyed that wall and that His means of destruction is to be the church. A church of peace, full of love and grace, lacking in discrimination and prejudice.

So I believe that not only do I stand on good firm ground from my upbringing with my family; teaching in school; seeing the rights of women develop, and we're not there yet; and seeing the changes that have come in African Americans, and we've got a long way to go on that. I am going to vote yes for this bill but there needs to be one asterisk beside my name. There should be a footnote somewhere that says that 'Senator Wilmot S. Dow, Senator #32 from Lincoln County of the 56th, 57th, 58th, and 59th Legislature votes yes on this bill.' Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Cowger.

Senator COWGER: Thank you, Madame President and colleagues of the Senate. It's difficult to follow such passionate and eloquent testimony but I'd like to say a few words on this bill as well. I hope you will join me in supporting the pending motion.

I believe this is legislation that is good for the State of Maine. It's good for our businesses and it's very good for our individuals. It's good for the State of Maine because it reflects our proud history and heritage of tolerance in our history. It's good for

Maine because our logo, our state seal, has the word 'Dirigo' on it that says 'To Lead'. In this case, as you can see by the handout that I've passed around, we are not leading. We are, in fact, following. I think that is unfortunate. I think it's far past due time that we join the rest of our neighbors in New England and beyond in this country and all our neighbors in Canada that surround us in passing anti-discrimination laws based on sexual orientation. I believe it is good for business because our economy in this state is based largely on tourism. We don't need to send a message to the rest of the country that we're a state that will discriminate based on someone's real or even perceived sexual orientation. It's time that Maine stepped up to the plate and welcomed everyone into our state and be proud of this as part of our business philosophy.

I also believe it is good for individuals. As a gay man myself, I know personally the need for this bill. I've known people who have been fired from their jobs just because of their sexual orientation. That's hard to believe, but this perfectly legal under current Maine law. The good Senator from Cumberland, Senator Turner, stated it well. Nobody should be fired from their jobs because they are gay or Lesbian or even perceived to be gay or Lesbian.

I've known visitors to our state and we've heard stories before the Judiciary Committee, where people have been denied overnight accommodations because of their perceived or real sexual orientation. People have also been denied apartments in the State of Maine in this regard. It's time to put that practice to an end.

Finally, regarding education. It's sad to know that some youth in our state have actually committed suicide because they have not felt comfortable in coming to grips with their sexual orientation. Our students need to feel secure when they are getting an education that they can be who they are and feel comfortable with that and be supported with that. I'm excited that this is the first time that this legislation has included provisions for education.

The time has come to adopt this legislation. We've tried before. I think we have broad support now. We need to take our responsibilities seriously. We don't need to send this out to the voters. We need to take action to move Maine ahead and do it now. I urge my colleagues on both sides of the aisle, both physically and philosophically since I'm over here, to join me in voting for the pending motion and let's have a strong vote on this motion before we send it down to the other body. Thank you, Madame President.

On motion by Senator **PLOWMAN** of Penobscot, supported by a Division of one-fifth of the members present and voting, a Roll Call was ordered.

THE PRESIDENT: The Chair recognizes the Senator from York, Senator Hobbins.

Senator **HOBBINS:** Thank you, Madame President and members of the Senate. I want to thank all of those who have spoken today so eloquently about this very important piece of legislation. Last Wednesday was about the 12th or 13th time there has been a public hearing on similar pieces of legislation or issues that relate to discrimination. Last week's work session and last week's public hearing were different than before. We saw individuals come forward courageously and explain in emotional terms how their lives have been discriminated against because of

their sexual orientation. These weren't just abstract examples. These were individuals who looked us in the eye, who explained to all of us how the lack of a piece of legislation and a law has meant hardship to them and to their families. We received some of the strongest testimony last week and I think it comes down to a simple question. The bill really is based on two questions and where you stand depends on how you answer these two questions. First, do you believe there is discrimination in Maine based on sexual orientation in the areas of employment, housing, or public accommodations? The second question is if this discrimination exists, do you think the State of Maine should make it illegal, just like discrimination on race, religion, gender, and mental and physical disability is illegal, by including sexual orientation in the Maine Human Rights Act? If you answered yes to these questions, you should support the Majority Report of the Judiciary Committee on L.D. 1196. This law is a matter of fairness. Thank you.

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

Senator **PLOWMAN:** Thank you, Madame President. This issue has been before the voters three times in the last four or five years and they have made their decision consistently, the same one. I think this bill really needs to go back out to the public. I'd also like to comment on how this bill was handled. I don't think I've seen a bill fast track through this place quite as quickly unless it was an emergency bill. I remember my first term, we stayed here all day our first day for a Governor's bill to help with an economic problem. Nobody wants to use the word 'special', but it sure got treated that way. The hearing was heard on March 23rd. The work session was held March 24th. It's on your calendar March 28th. It needed no revisions. I don't see many bills like that come through my committee. I don't think that you can sit here and tell the people of the State of Maine that it didn't get preferential treatment. When a bill gets preferential treatment people want to know why. We're not known for acting fast. Why are we suddenly? So I'd like to send this back out to the voters and we will have an opportunity to vote on that later. I also wanted to go on the record stating the concerns that I have heard about how this bill was handled. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Oxford, Senator Hastings.

Senator **HASTINGS:** Madame President, ladies and gentlemen of the Senate, I just briefly want to follow up with some of the things that have been said. Having sat through the Judiciary hearing on this, I understand that it was fast tracked. Sometimes the politics of this goes over my head, being new like this, but if there were politics involved, I don't know. I am still struck with the point that was ultimately made at the hearing, and at the work session that followed, that most people have given great thought to this and probably their minds are well made up. The one thing that occurred to me during our work session was, and I think it's a short hand that it's almost a mistake to make, some members of the committee would speak of this as extending rights. I think we have to be very clear about that because if I thought this was a bill about extending rights over and above those rights enjoyed by other members of the state, I would think much differently about this. This bill is not about creating a right for the benefit of anybody. It is solely about discrimination. It's solely about

whether or not you believe, or we believe, that this grouping, which is based on sexual orientation, is entitled to protection from discrimination, not that this group is entitled to any new or different rights than any of us now enjoy. Once I made that thought process the vote, to me, became simple because I do believe this is a portion of our society that is entitled to protection from discrimination in the basic functions of our lives. I do urge all of you to support this bill as proposed. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Franklin, Senator Woodcock.

Senator **WOODCOCK:** Thank you, Madame President, ladies and gentlemen of the Senate. This is a very passionate issue for everybody. I will be opposing the motion today and always have opposed this particular attempt for a variety of reasons.

I'm very concerned about the process that took place for this bill to be presented before us today, as has been stated already. I think the people of Maine have quite clearly rendered their decision two times already regarding this issue.

I'm certain they will have a chance to render it again if it goes through. There is a portion in the wording of this bill that particularly concerns me. It has to do with the perception of expression of gender identity. I'm not exactly sure what that means. I'm a male. I'm always going to be one. I'm the father of four children. I've been a teacher for 26 years. I did a little coaching in my time.

I've had plenty of experience in the field of religion. I appreciate the good Senator from Lincoln, Senator Dow's speech this morning where he identified his prior service with the church and his attendance in a seminary. I'm not sure that it is very well known about me that I was also on the steps of a seminary. I chose not to enter that day, at the Andover-Newton Theological Seminary, for very personal reasons. I sometimes have regretted that decision but it was a decision that was made. I've heard the bible quoted a great deal today. There are, obviously, many interpretations of that particular book as well as interpretations of the guidance from other faiths.

It is impossible for me to separate myself from my upbringing, from my teachings of members of my family. At no time during those discussions do I remember the term 'discrimination' coming up. For us, it was a matter of our core belief. Gender identity, and the expression thereof, is a very troubling expression to me in this particular bill. I'm concerned about it. I'm concerned about it for the field of education, frankly. In my 26 years in the profession I have taught with people who come from the Gay community. Some of them were fairly open about it. I have had students who were members of the Gay community. There were quite open about it, some of them. At no time did I ever feel, as a human being, that if their job was in jeopardy, if their concerns about being Gay created a situation for the student whereby they might be considering an act that I would feel very uncomfortable with, did I feel that they didn't have recourse for their being gay. I still feel very strongly about that.

This bill, for me, is not necessary. The passions that you are going to hear about today, and I'm sure many of us in this chamber will feel, are honest passions. The good Senator from Cumberland, Senator Turner, and I came in this legislature together. I don't use the word 'friend' very often, but Karl is a friend of mine. He is going to remain a friend of mine. As we stand here today and hear these words of passion, let us not consider that those words of passion come from anything else

other than a Senator. The human side of it we must be very cautious about. My opposition to this motion and this bill remains. Thank you, Madame President.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Gagnon.

Senator **GAGNON:** Thank you, Madame President, men and women of the Senate. I don't think I'm particular qualified to speak on the bible or its readings. I don't think I'm particularly qualified with any experiences I may have had or friends of mine may have had having to do with discrimination in this state. I have a little bit of experience in terms of process. I just wanted to speak a little bit because that was brought up earlier in debate. In fact, I harp on process quite a bit in this body, much to the chagrin of the President and other leaders at times. I am somewhat of a process wonk and I can assure you and I can assure the people of Maine that this bill went through the appropriate process. Fast track. We don't have a fast track process here. The bill was introduced. The Chief Executive had announced his plans to present this bill. It received considerable play in the press right up through when the bill was referred. The committee accepted the bill. They announced their public hearing. It received a two-week notice like any other bill. The work session was well attended. It was announced well in advance. The process moved forward as it would with any other bill. Was it set up as a priority in the committee? We do that every day in committees. Setting priorities. Today it is appearing on the printed calendar. It's not a supplement today. It is on the printed calendar that was printed last evening. It's an old game. If you can't attack the merits of an issue then you attack the process. There are no flaws in the process of this bill. We, in fact, had a public hearing on a bill on which the public came and spoke at length on a bill that we never even referred to the committee. It sat on the table here in the Senate while people were debating it down in committee. I had a problem with that process, but that has happened. That did not happen with this bill. The process was sound. It is exactly what our rules called for and it's here today for us to vote on. Let's stick with the merits of the bill. Thank you, Madame President.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from York, Senator Hobbins to Accept Report "A", Ought to Pass. 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 (#28)

YEAS: **Senators: BARTLETT, BRENNAN, BROMLEY, BRYANT, COWGER, DAMON, DIAMOND, DOW, GAGNON, HASTINGS, HOBBS, MARTIN, MAYO, MILLS, MITCHELL, NUTTING, PERRY, RAYE, ROSEN, ROTUNDO, SCHNEIDER, STRIMLING, SULLIVAN, TURNER, THE PRESIDENT - BETH G. EDMONDS**

NAYS: Senators: ANDREWS, CLUKEY, COURTNEY, DAVIS, NASS, PLOWMAN, SAVAGE, SNOW-MELLO, WESTON, WOODCOCK

25 Senators having voted in the affirmative and 10 Senators having voted in the negative, the motion by Senator **HOBBINS** of York to **ACCEPT** Report "A", **OUGHT TO PASS, PREVAILED.**

READ ONCE.

ASSIGNED FOR SECOND READING NEXT LEGISLATIVE DAY.

SECOND READERS

The Committee on **Bills in the Second Reading** reported the following:

House

Bill "An Act To Amend the Process for Review of Hearing Officer Decisions by the Workers' Compensation Board"
H.P. 245 L.D. 322

Bill "An Act To Require Agricultural Representation on the Maine Tourism Commission"
H.P. 493 L.D. 673

Bill "An Act To Codify Unallocated Law Regarding the Maine State Retirement System"
H.P. 672 L.D. 962

READ A SECOND TIME and PASSED TO BE ENGROSSED, in concurrence.

House As Amended

Bill "An Act To Require Advance Notice for Decreases in Wage or Salary Levels"
H.P. 196 L.D. 257
(C "A" H-30)

Bill "An Act To Revise the Salary Range of Certain Public Utilities Commission Employees"
H.P. 476 L.D. 656
(C "A" H-25)

READ A SECOND TIME and PASSED TO BE ENGROSSED AS AMENDED, in concurrence.

Senate as Amended

Bill "An Act Limiting Recovery of Disability Benefits Subject to Offsets"
S.P. 132 L.D. 408
(C "A" S-23)

Bill "An Act To Clarify the Superintendent of Insurance's Authority To Assess Civil Penalties"

S.P. 133 L.D. 409
(C "A" S-22)

Bill "An Act To Prohibit Certain Uses of a Financial Institution's Name"

S.P. 151 L.D. 464
(C "A" S-24)

READ A SECOND TIME and PASSED TO BE ENGROSSED AS AMENDED.

Sent down for concurrence.

All matters thus acted upon were ordered sent down forthwith for concurrence.

ENACTORS

The Committee on **Engrossed Bills** reported as truly and strictly engrossed the following:

Emergency Measure

An Act To Make Additional Allocations from the Highway Fund and Other Funds for the Expenditures of State Government and To Change Certain Provisions of State Law Necessary to the Proper Operations of State Government for the Fiscal Year Ending June 30, 2005

H.P. 533 L.D. 738
(C "A" H-46)

This being an Emergency Measure and having received the affirmative vote of 35 Members of the Senate, with no Senators having voted in the negative, and 35 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Act

An Act To Redefine the Boundaries of the Fairfield Sanctuary
S.P. 50 L.D. 144

PASSED TO BE ENACTED and having been signed by the President was presented by the Secretary to the Governor for his approval.

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