

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Ninth
Legislature***

OF THE

STATE OF MAINE

Volume I

FIRST REGULAR SESSION

January 3, 1979 to May 4, 1979

injure, harm or jeopardize any businessman in this state, or businesswoman in this state.

The amendments which the committee added to the bill, I think make it more acceptable than it already was, and the bill, in its original form, was very acceptable to me and I think the majority of the committee. But in the spirit of compromise, we did add two or three amendments which I think you will find extremely acceptable. One of those amendments puts a limitation on the fine. It cannot be over \$500. The other amendment, part of the amendment, requires that only non-privileged information be allowed for the employee to see; privileged information will remain privileged and will not be included in the personnel file. I think some of the members of the committee had a legitimate concern about that, so we changed the wording on it.

The third amendment requires that the employee file a complaint against the employer only after the employer has not, with good cause, made the medical records available to the employee. We added the "good cause" protection in there for the employer who may not have the file, who may have lost the file, or it may have been misplaced somewhere in the system. So there is no danger whatsoever to the employer.

After we adopted the majority report yesterday, I am amazed and a bit surprised to see Representative Lewis is trying to kill this bill. I must confess that she has caught me off guard, but that will teach me to be better prepared in the future.

Assuming that this is as non-controversial a bill as it is, I hope you will allow it to go on its way.

The SPEAKER: The Chair recognizes the gentleman from Woolwich, Mr. Leonard.

Mr. LEONARD: Mr. Speaker and Members of the House: I have just one problem with this bill in that we are setting a precedent in that we are allowing now that employee to levy a fine against an employer. It seems to me that the fine has little to do with the damage incurred. I would suggest to this House that the employee has the right of suit in the event there is damage to him, financial loss because of the records not being turned over. He has at least that right of suit against the employer, and this case has little correlation. It simply doesn't make sense.

The SPEAKER: The Chair recognizes the gentleman from Farmington, Mr. Morton.

Mr. MORTON: Mr. Speaker, I would like to address a question to the gentleman from Pittsfield, Mr. Wyman. I would like to ask the gentleman, what is the need for this bill? Why was it introduced?

The SPEAKER: The gentleman from Farmington, Mr. Morton, has posed a question through the Chair to the gentleman from Pittsfield, Mr. Wyman, who may answer if he so desires.

The Chair recognizes that gentleman.

Mr. WYMAN: Mr. Speaker, in answer to that question, the answer is very simple. The need for this bill is to protect the employees' rights to review medical files. Right now, the employee has no right to see the medical file. It is completely up to the employer. There is no protection for the employee within the law. This is simply saying that if an employee wants to look at his medical file, he ought to have that right.

If you believe, Mr. Morton, that the employee should have the right to look at his medical file, or her medical file, that that is part of their unalienable rights as an employee, then you will support the bill. If you feel that the employee has no right to look at their medical records, then you will oppose the bill.

The SPEAKER: The Chair recognizes the gentleman from Farmington, Mr. Morton.

Mr. MORTON: Mr. Speaker and Members of the House: I am confused as to what the medical records are with respect to a company. We have records for such things as workmen's

compensation. These reports are required by law in our files. I don't know that I would call them a personnel record. They are all part of the requirement for doing business today, but I am not aware that any employee doesn't know about those. He is the one who gets hurt, he has to have the medical attention, he does get the medical attention, I am just really confused as to what you are talking about. I guess I don't understand.

The SPEAKER: The Chair recognizes the gentlewoman from Vassalboro, Mrs. Mitchell.

Mrs. MITCHELL: Mr. Speaker, Men and Women of the House: I am, indeed, amazed at the controversy over such a simple, straightforward bill. If Mr. Morton keeps no medical records in his place of employ, obviously the employees have no right to see medical records that do not exist.

This simply says, if you have a nursing station in your plant, you cut your finger, you go down to see the nurse and she makes certain notations, you have a right to look at your record. There is not a person in this room who feels that he should be denied access to anything written about you. Employees already have in the law the right to look at your evaluation of their character, or if you are going to fire them, a reason for this; they already have these rights. I think it must have been an oversight that medical records were left out in the first place.

I really can't understand why we are acting so serious about such an obvious kind of right. The business of the sanction, if there is no sanction, how can you enforce the law? Representative Leonard said they can go to court. Certainly we don't want to get into that position. There must be some pressure on the employer to make them comply with the law. It is a very simple bill, it is a right-to-know bill, and I think we all have a right to know what is written about us medically or about evaluations on our work habits.

I want to stress again, if you are a small employer and keep no medical records in your possession, then this bill does not even apply to you. It applies only to those employers who have nurses' stations in the plant or who would normally keep medical records. There are no new records required.

The SPEAKER: The Chair recognizes the gentlewoman from Auburn, Mrs. Lewis.

Mrs. LEWIS: Mr. Speaker, Ladies and Gentlemen of the House: I don't quite understand the gentlewoman from Vassalboro when she says that there is no sanction now and that it is necessary. If an employer does not give a man his personnel files, he is in contempt of court, and I would suggest that that is a sanction.

The only way the employee can possibly collect this fine is through the courts. It has got to be awarded through the courts, so in either case it has to go to the courts.

The part that bothers me the very most is the part about the fine. I think we are setting a dangerous precedent. As many of you know, some state employees have had sickouts, I don't know what they call them. Are we going to start now fining people who are in violation of the law? Is it the thing we are starting now? Are we going to be fining the state employees? I would like to have that answered for me, please, and have somebody tell me we are not setting a precedent with this bill.

The SPEAKER: The Chair recognizes the gentleman from South Portland, Mr. Howe.

Mr. HOWE: Mr. Speaker, Ladies and Gentlemen of the House: I have had no previous involvement with the bill, and I hope the gentleman from Pittsfield will excuse my jumping into this thing. I can't help but feel that I should respond to the question of the gentlewoman from Auburn with respect to setting a precedent. It seems to me there are thousands upon thousands of precedents in the law for using economic incentives, fines if you will, to insure that people obey the law. So I see

hardly any precedent that we are setting here.

Insofar as Mr. Leonard's concern about levying a fine as opposed to simply letting someone sue for economic damages, I submit that particularly in the area of individual privacy, which is one of my particular concerns, damages cannot always be measured in economic terms.

As far as Mr. Morton's questions about why such a bill would be necessary, I suspect there are probably any number of businesses, particularly factories and so forth, industrial situations, where employers employ medical personnel in their facilities who may even frequently screen employees even if they haven't received a specific injury, and this whole debate brings to mind the problems of asbestos and nuclear and benzene workers who, through long periods of subjection to various types of chemicals and so forth, may begin to suffer various maladies and who, themselves, may not know it. It is possible that they may discover some dreadful medical situation. We hope they don't, but they may discover it through access to medical records kept by an employer who, in some cases, I suspect, may know about the possibility of this situation and not be informing employees.

It seems to me like a fairly basic right. My view on records, whether they are kept by an employer or state agency or anybody else, the credit bureau, is that while the physical record may be the possession of that agency, the information in it is mine because it is about me. I think it is simply a basic concept that we enable people to see the information in the file about them, no matter who is holding that file.

The SPEAKER: The Chair will order a vote. The pending question is on the motion of the gentlewoman from Auburn, Mrs. Lewis, that this bill and all its accompanying papers be indefinitely postponed. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

60 having voted in the affirmative and 65 in the negative, the motion did not prevail.

Thereupon, the Bill was passed to be engrossed as amended by Committee Amendment "A" and sent up for concurrence.

Passed to Be Enacted Emergency Measure

An Act Converting Long Island Plantation into the Town of Frenchboro (H. P. 51) (L. D. 60) (S. "A" S-13)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure and a two-thirds vote of all the members elected to the House being necessary, a total was taken. 135 voted in favor of same and none against, and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Emergency Measure

An Act to Conform the Acknowledgment Provision of the Recording Statutes to the Uniform Recognition of Acknowledgments Act (H. P. 158) (L. D. 186) (C. "A" H-32)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure and a two-thirds vote of all the members elected to the House being necessary, a total was taken. 137 voted in favor of same and none against, and accordingly the bills were passed to be engrossed.

Passed to Be Enacted

An Act to Prohibit Smoking at Public Meetings (H. P. 5) (L. D. 11) (S. "A" S-12 to C "A" H-26)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed.

The SPEAKER: The Chair recognizes the gentleman from Lincoln, Mr. MacEachern.

Mr. MACEachern: Mr. Speaker, I now move that this bill and all its accompanying

papers be indefinitely postponed.

The SPEAKER: The gentleman from Lincoln, Mr. MacEachern, moves that this Bill and all its accompanying papers be indefinitely postponed.

The Chair recognizes the gentleman from Kingfield, Mr. Dexter.

Mr. DEXTER: Mr. Speaker, Men and Women of the House: I can't believe my ears. For a moment I thought I wasn't reelected to this body. This body was known for being close to the people, the rights of the people, in this case, the right to breathe, the right to breathe unpolluted air. It is just as simple as that.

I call this bill a "Face the Truth Bill." I face the truth every morning when I shave. My mirror keeps telling me over and over, a Clark Gable or Robert Redford I will never be. I am asking you to face the truth. You will survive. I stand here as living proof.

I am not going to leave the fairer sex out of this. I think each and every one of them in this body is more beautiful than Liz Taylor in her prime, but every time I see one of them light up one of those weeds, all I can think of is a beautiful painting on the wall that someone has taken a paintbrush dipped in tar to and made a swipe right down across it.

You talk about rights, your rights end at my nose, just as simple as that.

I guess these attempts to kill this bill remind me of a drowning man in the middle of Moosehead Lake with not a street car in sight. On his third time down, he grasps at the air bubbles for support.

Mr. Speaker, I hope that you will explain this carefully. I lost one of my friends on this the last time on a roll call. Instead of 107, I should have had 108. I am sure that you will explain this carefully on how to vote.

The SPEAKER: The Chair recognizes the gentleman from Dixfield, Mr. Rollins.

Mr. ROLLINS: Mr. Speaker, Ladies and Gentlemen of the House: I am going to ask for a roll call on this because it is quite important to me and to my seatmate. I think we should have a roll call.

The SPEAKER: For the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. All those desiring a roll call vote will vote yes; those opposed will vote no.

A vote of the House was taken, and more than one fifth of the members present having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question is on the motion of the gentleman from Lincoln, Mr. MacEachern, that this Bill and all its accompanying papers be indefinitely postponed. All those in favor of indefinite postponement will vote yes; those opposed will vote no.

The Chair recognizes the gentleman from Lewiston, Mr. Simon.

Mr. SIMON: Mr. Speaker, I request permission to pair my vote with the gentleman from Lewiston, Mr. Jalbert. If he were here, he would be voting yes; I would be voting no.

ROLL CALL

YEA — Aloupis, Austin, Bordeaux, Brown, K. L., Brown, K. C., Chonko, Dow, Dudley, Fenlason, Garsoe, Gillis, Gould, Huber, Kane, Kelleher, Laffin, MacEachern, Masterton, McHenry, Peltier, Peterson, Reeves, J., Roope, Silsby, Smith, Soulas, Tozier.

NAY — Bachrach, Baker, Barry, Benoit, Berube, Birt, Blodgett, Boudreau, Bowden, Brannigan, Brennerman, Brodeur, Brown, A., Brown, D., Bunker, Call, Carrier, Carroll, Carter, D., Carter, F., Churchill, Cloutier, Conary, Connolly, Cox, Cunningham, Curtis, Damren, Davies, Davis, Dellert, Dexter, Di-
amond, Doukas, Drinkwater, Dutremble, D., Dutremble, L., Elias, Fillmore, Fowley, Gavett, Gowen, Gwadosky, Hanson, Hickey, Higgins, Hobbins, Howe, Hunter, Hutchings, Immonen, Jackson, Jacques, E., Jacques, P., Joyce, Kiesman, Lancaster, LaPlante, Leigh-

ton, Leonard, Lewis, Locke, Lougee, Lowe, Lund, MacBride, Mahany, Marshall, Martin, A., Masterman, Matthews, Maxwell, McKean, McMahon, McPherson, McSweeney, Michael, Mitchell, Morton, Nadeau, Nelson, A., Nelson, M., Nelson, N., Norris, Paradis, Paul, Payne, Pearson, Post, Prescott, Reeves, P., Rolde, Rollins, Sewall, Sherburne, Small, Sprowl, Stetson, Stover, Strout, Studley, Tarbell, Theriault, Tierney, Torrey, Tuttle, Twitchell, Vincent, Violette, Vose, Wentworth, Whittemore, Wood, Wyman.

ABSENT — Beaulieu, Berry, Hall, Hughes, Kany, Lizotte, Mr. Speaker.

PAIRED — Jalbert-Simon.

Yes, 27; No, 115; Absent, 6; Paired, 2.

The SPEAKER: Twenty-seven having voted in the affirmative and one hundred fifteen in the negative, with six being absent and two paired, the motion does not prevail.

Thereupon, the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

The SPEAKER: The Chair recognizes the gentleman from Brewer, Mr. Norris.

Mr. NORRIS: Mr. Speaker, having voted on the prevailing side of the enactment of this bill, I now move reconsideration and hope all 115 vote against me.

The SPEAKER: The gentleman from Brewer, Mr. Norris, having voted on the prevailing side, now moves that we reconsider our action whereby this bill was passed to be enacted. All those in favor of reconsideration will say yes; those opposed will say no.

A Viva Voce Vote being taken, the motion did not prevail.

An Act to Increase the Mileage Reimbursement of Jurors (H. P. 124) (L. D. 131) (C. "A" H-31)

An Act to Increase Mileage Reimbursements of Witnesses (H. P. 125) (L. D. 135) (C. "A" H-30)

An Act to Amend the Laws Relating to the Maine Historic Preservation Commission (H. P. 194) (L. D. 243)

An Act Concerning Prisoner Participation in Public Works Projects (H. P. 213) (L. D. 261)

Were 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.

Finally Passed

RESOLVE, to Authorize the County of Cumberland to pay \$1,069.72 to Stanley E. Payson of Scarborough and Shirley M. Jodrie of Portland (H. P. 19) (L. D. 36) (C. "A" H-33)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed, finally passed, signed by the Speaker and sent to the Senate.

Orders of the Day

The Chair laid before the House the first tabled and today assigned matter:

HOUSE REPORT — "Ought to Pass" As Amended by Committee Amendment "A" (H-38) — Committee on Education on Bill, "An Act to Dissolve Membership of the Towns of Hope and Appleton from the Community School District" (Emergency) (H. P. 97) (L. D. 124) Tabled—February 26, 1979 by Mr. Sprowl of Hope.

Pending—Acceptance of Committee Report. Thereupon, the Report was accepted and the Bill read once.

Committee Amendment "A" (H-38) was read by the Clerk and adopted and the Bill assigned for second reading tomorrow.

The Chair laid before the House the second tabled and today assigned matter:

HOUSE REPORT — "Ought to Pass" — Committee on Agriculture on Bill, "An Act to Increase from 3¢ to 5¢ Per Inhabitant the Amount Appropriated Annually for the State

Stipend Fund for Agricultural Societies" (H. P. 118) (L. D. 128)

Tabled—February 27, 1979 by Mrs. Berube of Lewiston.

Pending—Acceptance of Committee Report.

The SPEAKER: The Chair recognizes the gentleman from South Portland, Ms. Benoit.

Ms. BENOIT: Mr. Speaker, I would like to pose a question to the Chair. I believe there should be a fiscal note attached to this and I haven't seen it yet.

The SPEAKER: In reference to the question posed by the gentleman from South Portland, Ms. Benoit, the Chair would advise the gentleman and members of the House that there is, in fact, a fiscal note that is required for this bill. It is a loss of revenue to the state of some \$22,000 for each year of the biennium.

The Chair understands that the gentleman from Winslow, Mr. Carter, has an amendment which will solve the problem dealing with the fiscal note.

The SPEAKER: The Chair recognizes the gentleman from South Portland, Ms. Benoit.

Ms. BENOIT: Mr. Speaker, Men and Women of the House: At the risk of irritating a lot of people who support county fairs, I would move the indefinite postponement of this bill and all its accompanying papers.

For the benefit of those of you who may not know too much about this, I would like to explain a little about it. I wouldn't know anything about it either if I did not serve on the Audit and Review Committee. We just did a sunset review of this stipend fund for agricultural societies.

I believe that an increase of \$22,000 may appear to only be a drop in the bucket out of the total budget, but if you add all these little drops up, eventually, we have a bucket full. I believe that we are in a time of tight budgeting, inflation, we are trying to spread around the resources that we have to those needs that truly need to be fulfilled. I do not believe that this is one of those needs.

We already divide three cents per inhabitant in the State of Maine. We take in three cents per inhabitant and then it is distributed to the county fairs. That already is a sizable sum of money and I believe, and I may be corrected, that it is \$318,000. That is the total that is distributed to county fairs. I don't believe that we need to distribute another \$22,000.

The SPEAKER: The Chair recognizes the gentleman from Winslow, Mr. Carter.

Mr. CARTER: Mr. Speaker, Ladies and Gentlemen of the House: I would hope that you would vote against the motion to indefinitely postpone, and I will try to explain to you briefly why I sponsored this bill.

As many of you know, there are two types of fairs in the state. Some are parimutuel and some are non-parimutuel. The amount currently raised by this bill, which is used strictly for stipend fund, is not \$318,000. The \$318,000 consists of both facility stipends and premium stipends.

The three cents per inhabitant of the State of Maine has not been changed, I believe, since the late fifties, and in view of the fact that inflation, the cost of food is rising so rapidly, many of the people of the state are returning back to the basics of the old days, gardening, trying to provide for themselves, and the fairs are very important in promoting this type of activity by running contests and rewarding the exhibitors in the form of a premium, which is a token amount.

I believe that not granting this increase probably will not stop the fairs from going. However, if we pass this bill this morning, we are not saying that we are granting the fairs an additional \$22,000 which, incidentally, comes out of the racing purse or racing revenues for the state. What we are saying is that we will let this bill follow its course and take its chances with the other bills on the Appropriation Table and if, at that time, it merits passage, then it