

Senate Legislative Record

One Hundred and Eighteenth Legislature

State of Maine

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Representatives: AHEARNE of Madawaska BUMPS of China FISK, JR. of Falmouth BAGLEY of Machias LEMKE of Westbrook GIERINGER, JR. of Portland SANBORN of Alton DUTREMBLE of Biddeford

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

Signed:

Representative: GERRY of Auburn

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-293).

Which Reports were READ.

On motion by Senator **NUTTING** of Androscoggin, the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-293)** Report **ACCEPTED**, in concurrence.

The Bill READ ONCE.

Committee Amendment "A" (H-293) **READ** and **ADOPTED**, in concurrence.

The Bill as Amended, TOMORROW ASSIGNED FOR SECOND READING.

ENACTORS

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

An Act to Regulate Body Piercing	H.P. 358 L.D. 481
• • •	(C "A" H-215)

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

An Act to Prohibit the Employment of Professional Strikebreakers H.P. 88 L.D. 113

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

Senator **BENOIT**: Thank you Mr. President. Perhaps someone would be willing to explain for my edification on this particular measure what it proposes, since in previous proceedings I have not had an opportunity to be present as the measure has moved through the chamber? **THE PRESIDENT:** The Chair recognizes the Senator from Penobscot, Senator Cathcart.

Senator **CATHCART**: Thank you Mr. President, men and women of the Senate. I will attempt to answer the good Senator, Senator Benoit's, question. Item 7-1, L.D. 113 is a bill which prohibits the employment of professional strike breakers. There are two bills before the Body. This is the one that would prohibit the companies who make a business of providing professional strike breakers to replace striking workers from continuing that practice in the State of Maine. These are professional strike breakers only that are covered by this bill. Thank you Mr. President.

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

Senator **BENOIT**: Thank you Mr. President. May I further inquire if the Attorney General's Office has issued a ruling on this measure, that if enacted it would be unconstitutional and in violation of decisional law of the United States Supreme Court?

THE PRESIDENT: The Senator from Franklin, Senator Benoit poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Somerset, Senator Mills.

Senator MILLS: Thank you Mr. President, men and women of the Senate. As I recall, there was a letter that we received two years ago from the Attorney General's Office indicating that there may be a sufficient local interest in preserving, under the police power of the State of Maine, to justify validating this bill as an exception to the pre-emption provisions of the National Labor Relations Act. I hesitate to characterize or paraphrase these words, because I don't have them in front of me, but my impression of the letter was that this bill, or this measure, would be open to attack on grounds that it is pre-empted by the National Labor Relations Act, but it was not, by any means, certain in the minds of his staff that this bill would be struck down on that basis. I might add that whether the bill itself is likely to be deemed pre-empted by the federal law is a question that depends on judicial interpretation of a precedent from the U.S. Supreme Court because back, I think in 1938, and if it is the judgment of this state that this bill represents good public policy, it is our collective judgment that this measure should be the law here within the State of Maine. We really have no way of bringing that to pass without passing it and then essentially, waiting to see whether it may be challenged, and if it is challenged whether that challenge will be successful. But if a state like ours does not pass a piece of legislation like this, if it does not speak out on the issue by presenting a complete piece of legislation and enacting it, then the courts will have no way of reviewing a precedent that was established almost 60 years ago. They'll have no way of revisiting it, no way of narrowing it, no way of reinterpreting it. So, although there may be a challenge to the validity of this statute, under the supreme and pre-empted power of Congress, it is nevertheless appropriate for members of this Body to exercise their own judgment about whether this should be the law of Maine. Thank you.

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

Senator CATHCART: Thank you Mr. President, men and women of the Senate. I have before me a letter from the Attorney General, but this letter refers to the other bill, L.D. 66, "An Act to Prohibit an Employer from Hiring Replacement Workers During a Strike", not to the piece of legislation that is before us. As I said, I'm not aware of any Attorney General's opinion or any pre-emption of this bill. All that this bill that we are now debating would do is to prohibit the recruitment or employment of professional strike breakers and define the term professional strike breaking activity, so it is only applying to those persons or organizations that have made a practice of supplying replacement workers, professional replacement workers, during labor disputes. I hope that clarifies the issue. Thank you Mr. President.

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

Senator **BUTLAND:** Mr. President, I'd like to pose a question through the Chair.

THE PRESIDENT: The Senator may pose his question.

Senator **BUTLAND:** Thank you. To anyone who may have the knowledge, the good Senator from Somerset, Senator Mills, has said that we have never passed this legislation and it would never be considered. I can't believe that no other state in the Union has passed similar legislation to this and that we don't have the results of their action. My question would be, has any other state passed legislation similar to this and what has been the response when it's been challenged? Thank you.

THE PRESIDENT: The Senator from Cumberland, Senator Butland poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Somerset, Senator Mills.

Senator MILLS: Thank you Mr. President, men and women of the Senate. I'm not sure that I can answer the good Senator's current and pending question. It's just that I must, with some embarrassment, stand up to say that I think I've misinterpreted the impact of this bill if we choose to enact it. I was informed that we already have, essentially, the substance of this law on the books now as a criminal offense. It's a Class E or Class D crime. What is new about the bill is that it gives a right of civil enforcement. In other words, a party who is aggrieved by the presence or the activities of professional strike breakers within our state would have power to go to court to get an injunction, or to obtain civil relief, and that that is the only thing new, apparently, about the measure that's currently before us. The substance of this professional strike breaking activity prohibition has apparently been on the books for 20 or 30 years and I have no idea whether it's been challenged and I certainly have no idea whether it is in effect in any other state. Thank you.

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

The Doorkeepers secured the Chamber.

The Secretary called the Roll with the following result:

ROLL CALL

- YEAS: Senators: CAREY, CATHCART, DAGGETT, FERGUSON, GOLDTHWAIT, JENKINS. LAFOUNTAIN. LONGLEY, MACKINNON, MICHAUD, MILLS, MURRAY. NUTTING, PARADIS. O'GARA, PINGREE, RAND. RUHLIN, TREAT, THE PRESIDENT - MARK W. LAWRENCE
- NAYS: Senators: ABROMSON, AMERO, BENNETT, BENOIT, BUTLAND, CASSIDY, HALL, HARRIMAN, LIBBY, MITCHELL, SMALL
- ABSENT: Senators: CLEVELAND, KILKELLY, PENDLETON

EXCUSED: Senator: KIEFFER

20 Senators having voted in the affirmative and 11 Senators having voted in the negative, with 3 Senators being absent and 1 Senator being excused, the Bill was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

On motion by Senator **PINGREE** of Knox, **ADJOURNED** until Tuesday, May 6, 1997, at 9:00 in the morning.