

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Ninth
Legislature***

OF THE

STATE OF MAINE

Volume II

First Regular Session

May 7, 1979 to June 15, 1979

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I just want to bring these items to your attention before we have a vote.

We have heard a lot of discussion this year, about the importance of not limiting a Judge's discretion when he hears a case. Many of the criminal cases, and many of the criminal statutes that we have had, we have finally come down on the side of giving the Judge discretion, based upon the facts at the time, to make his decision without the Legislature trying to impose its supposed wisdom on the Judge.

This Bill gives Legislative sanction to a statement in Section 2 of the Amendment, and I will read it, "The section shall not limit the court by full or practical agreement of the parties or otherwise, from awarding alimony for a limited period, from awarding alimony which may not be increased regardless of subsequent events or conditions, or otherwise limiting or conditioning the alimony award in any manner on terms that the court deems just."

This second clause that I have read from awarding alimony which may not be increased regardless of subsequent events or conditions, seems to me to be putting into the statute a concept that limits the Judges discretion based upon the circumstances at the time.

That is the reason that I voted against this particular amendment coming out of committee, I do not like to be the one who divides a report 12 to 1, but these are the reasons that I voted against it, thank you very much.

The PRESIDENT: The Chair recognizes the Senator from Cumberland, Senator Clark.

Senator CLARK: Mr. President I would pose a question through the Chair to the Gentlemen from Penobscot, Senator Devoe.

The PRESIDENT: The Senator may state the question.

Senator CLARK: If in Section 2 of the Amendment under filing number H-490, alimony which may not be increased regardless of subsequent events or conditions, am I to understand that alimony may be decreased?

The PRESIDENT: The Senator from Cumberland, Senator Clark, has posed a question.

The Chair recognizes the Senator from Penobscot, Senator Devoe.

Senator DEVOE: Thank you very much, Mr. President. I would be happy to try to answer the question which the good Senator from Cumberland has posed.

Yes, the Judge may decrease alimony at the present time, this Bill would not chance that right, of the Judge in the future were this Committee Amendment "A" to be Enacted and become effective in the statutes. The Judge presently has the power to decrease alimony and he would have in the future under this Bill. He would not however have the right to increase alimony at any time in the future.

The PRESIDENT: The Chair recognizes the Senator from Knox, Senator Collins.

Senator COLLINS: Mr. President I would like to add to the answer given by the Senator from Penobscot, Senator Devoe.

The lack of authority to increase alimony in the future would only apply if the original decree said that that was to be the case. In point of fact, this statute does not really change the present options and practices that are available in divorce alimony.

The chief reason for it is to clarify the income tax treatment of the alimony. Alimony is deductible by the payer and taxable to the payee, but in order to qualify as alimony there are certain characteristics that it must bare under the tax laws.

A skillful practitioner can usually work those matters out fairly well through property settlement agreements and other measures that become embodied in a decree of the court, but there are occasions when the less skillful practitioner in the tax field runs into difficulty because of the way that he framed a decree. It is felt that this statute would help in that area.

This matter was submitted to two sources for comment before the Committee reached a de-

cision. One was the Family Practice Section of the Maine State Bar Association. The other was the group known as the Attorney's Cooperative Trust which is a group which follows legislation on behalf of lawyers. I have a letter from the Attorney's Cooperative Trust, indicating that they feel that this change in the divorce laws, would be helpful.

I do not regard it as a significant change in point of reference as to who may do what, but I do regard it as useful with respect to dealing with the Internal Revenue Service and the tax aspect of a divorce settlement. Therefore I would hope that it would be engrossed.

The Bill, as amended, Passed to be Engrossed, in concurrence.

Bill, "An Act to Amend the Stream Alteration Act." (H. P. 267) (L. D. 385)

Which were Read a Second Time and Passed to be Engrossed, as amended, in non-concurrence.

Sent down for concurrence.

Bill, "An Act to Require that Insurance Coverage for Outpatient Community Mental Health Services be Provided in Group Health Care Policies and Contracts." (H. P. 1121) (L. D. 1390)

Which was Read a Second Time.

On motion by Senator Pierce of Kennebec, the Senate voted to reconsider its action where by it Adopted Committee Amendment "A".

Senator PIERCE: Mr. President I offer Senate Amendment "B" to Committee Amendment "A" and move its Adoption.

The PRESIDENT: The Senator from Kennebec, Senator Pierce, now offers Senate Amendment "B" to Committee Amendment "A" and moves its Adoption.

Senate Amendment "B" (S-246) Read and Adopted. Committee Amendment "A" as amended, Adopted, in non-concurrence. The Bill, as amended, Passed to be Engrossed, in non-concurrence.

Sent down for concurrence.

Senate

Bill, "An Act to Revise the Inland Fisheries and Wildlife Laws." (S. P. 573) (L. D. 1637)

Which was Read a Second Time and Passed to be Engrossed.

Sent down for concurrence.

Senate — As Amended

Bill, "An Act Authorizing the Maine Bureau of Rehabilitation to Provide for Sheltered Workshop Employment for Severely Handicapped Residents of the State of Maine." (S. P. 361) (L. D. 1108)

Which was Read a Second Time and Passed to be Engrossed, as amended.

Sent down for concurrence.

Enactors

The Committee on Engrossed Bills reported as truly and strictly engrossed the following:
An Act to Provide Reimbursement for Snow Removal on Accepted Ways. (S. P. 311) (L. D. 906)

An Act to Authorize the Provision of Services to Developmentally Disabled Children. (S. P. 377) (L. D. 1157)

An Act Concerning Retirement for State Prison Employees. (H. P. 1138) (L. D. 1404)

On motion by Senator Huber of Cumberland, placed on the Special Appropriations Table, pending Enactment.

An Act Relating to State Participation in General Assistance Programs. (H. P. 1356) (L. D. 1592)

An Act to Comply with the Federal Air Quality Standards in the Areas where the Air Quality does not Presently Meet the Federal Standards. (S. P. 425) (L. D. 1316)

An Act Concerning Setting of Electric Rates by the Public Utilities Commission. (H. P. 913)

(L. D. 1118)

An Act to Conform State Statutes to the Federal Food Stamp Program. (S. P. 561) (L. D. 1619)

An Act Authorizing the State Museum Bureau to Procure a Replica of "The Maine Lobsterman." (S. P. 565) (L. D. 1625)

An Act to Provide for a Method of Arranging Voluntary Meetings Between Adoptees and Adoptive Parents and Natural Parents. (H. P. 1190) (L. D. 1431)

Which were Passed to be Enacted and having been signed by the President, were by the Secretary presented to the Governor for his approval.

An Act Concerning Persons Exposed to Diethylstilbestrol. (H. P. 499) (L. D. 635)

On motion by Senator Pierce of Kennebec, Tabled until later in today's session, pending Enactment.

An Act to Correct Certain Obsolete References in Title 30 of the Maine Revised Statutes. (S. P. 307) (L. D. 903)

On motion by Senator Pray of Penobscot, Tabled, until later in today's session, pending Enactment.

Emergency

An Act Relating to the Purchase of Railroad Rights of Way. (H. P. 1042) (L. D. 1275)

On motion by Senator Redmond of Somerset, Tabled, until later in today's session, pending Enactment.

Orders of the Day

The President laid before the Senate the First Tabled and specially assigned matter:

HOUSE REPORTS — from the Committee on Taxation — Bill, "An Act Relating to Withdrawal Penalties under the Tree Growth Tax Law." (H. P. 1003) (L. D. 1237) Majority Report — Ought Not to Pass; Minority Report — Ought to Pass as Amended by Committee Amendment "A" (H-476)

Tabled—May 24, 1979 by Senator Katz of Kennebec.

Pending—Acceptance of Either Report.
The PRESIDENT: The Chair recognizes the Senator from Somerset, Senator Teague.

Senator TEAGUE: 8 members of the Taxation Committee signed the Ought Not to Pass Report. Since that time the House has added an Amendment H-485. This amendment has straightened out the Bill, so I now move that we accept the Minority Report.

The PRESIDENT: The Senator from Somerset, Senator Teague has moved that the Senate Accept the Minority Ought to Pass, as amended, Report of the Committee.

The Minority Ought to Pass, as amended, Report of the Committee, Accepted, in concurrence. The Bill Read Once. Committee Amendment "A" Read. House Amendment "A" Read and Adopted. Committee Amendment "A" as amended, Adopted, in concurrence. The Bill, as amended, Tomorrow Assigned for Second Reading.

The President laid before the Senate the Second Tabled and specially assigned matter:
Bill, "An Act to Prohibit Drinking in Public Under the Criminal Code." (H. P. 562) (L. D. 709)

Tabled—May 29, 1979 by Senator Katz of Kennebec.

Pending—Passage to be Engrossed.
On motion by Senator Katz of Kennebec, Tabled, until later in today's session, pending Passage to be Engrossed.

The President laid before the Senate the Third Tabled and specially assigned matter:

Bill, "An Act Concerning the Accountancy Statutes." (S. P. 175) (L. D. 367)

Tabled—May 29, 1979 by Senator Chapman of Sagadahoc.