

# MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

*One Hundred and Sixth*

*Legislature*

OF THE

STATE OF MAINE

1973

KENNEBEC JOURNAL  
AUGUSTA, MAINE

**SENATE**

Monday, March 26, 1973

Senate called to order by the President.

Prayer by The Honorable Elden H. Shute Jr., of Farmington.

Reading of the Journal of yesterday.

**Papers from the House**  
**Non-concurrent Matter**

Bill, "An Act to Establish the Maine Telecommunications Commission." (S. P. 440) (L. D. 1505)

In the Senate March 12, 1973, referred to the Committee on State Government.

Comes from the House, referred to the Committee on Public Utilities, in non-concurrence.

Thereupon, on motion by Mrs. Cummings of Penobscot, the Senate voted to Recede and Concur.

**Non-concurrent Matter**

Bill, "An Act Relating to Hospital Reports." (S. P. 75) (L. D. 192)

In the Senate March 19, 1973, the Minority Ought Not to Pass report Read and Accepted.

Comes from the House, the Bill Passed to be Engrossed as Amended by Committee Amendment "A" (S-38), in non-concurrence.

Mr. Tanous of Penobscot moved that the Senate Adhere.

Mr. Berry of Cumberland then moved that the Senate Recede and Concur.

The PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator Tanous.

Mr. TANOUS: Mr. President and Members of the Senate: If you will recall, we sufficiently debated this bill last week and we killed it. So I hope you would vote against my good friend from Cumberland, Senator Berry, vote against his motion to recede and concur, and then join me on my motion to adhere and kill this bill sufficiently so that it won't revive itself.

It is the bill that I mentioned to you which deals with incident reports in hospitals where people have a right to know in matters of incidents occurring to either themselves as a patient or their

loved ones, and I would certainly hope that you recall the debate that we had on this bill last week and go along with killing it. I urge you to vote against the motion to recede and concur and join me on my motion to adhere. Thank you.

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

Mr. BERRY: Mr. President and Members of the Senate: I too am reluctant to refresh the memory of the Senate once again on this bill but, considering that Senator Tanous from Penobscot has mentioned a few points, I feel it is my duty to perhaps present some of the facts on the other side.

You will recall that I made the allegation during the debate that I consider this what we know in this legislature as a "trial lawyers' bill". Subsequently, I have had the opportunity to read some of the reports of activities at the hearing on the bill, and the Senator from Penobscot, Senator Tanous, is reported as having said that he was surprised that the Trial Lawyers Association was not at the hearing on the bill, so I think my concern has been verified by Senator Tanous of Penobscot.

You will recall that I feel there will be expenses passed on to the client here that makes this somewhat of a consumers' bill. I think that the issue has been clouded additionally in that we are talking in the bill, if you will read it very, very carefully, only upon investigations taken by the hospital to correct situations that have developed in the past. If an incident happens, the hospital wants to know what can be done to change it and, therefore, this bill will permit such investigations to be privileged information just for the hospital files.

Now, this should not be confused with incidents where a person goes to court to sue a hospital. Such information on those incidents is available under court order and always will be.

So I think this, very briefly, Mr. President and Members of the Senate, is what is involved here. I hope you will vote to recede and concur, and I would request a roll call.

The PRESIDENT: A roll call has been requested.

The Chair recognizes the Senator from York, Senator Roberts.

Mr. ROBERTS: Mr. President and Members of the Senate: I rise to concur with Senator Tanous. This bill, in my opinion, goes much further than it needs to to protect the hospital inasmuch as if any sort of an accident happens in the hospital, we'll say, after somebody has been operated on and while they are still under drugs, or while they are unconscious recovering from an operation, and they fall out of bed or they in some way break a leg by getting it tangled up with the rails that are put up for their protection, where the rails are not properly put in, or any of those things that you can imagine, the person realizes as the next thing that he has a broken leg.

All right, when he gets out of the hospital, or at some point, he asks the hospital for a report on his physical condition. They give him a report as to what happened as far as what the operation was. The report will show that he had a broken leg, the various casts that were put on, and the various treatments he received for the broken leg. However, there will be nothing whatsoever in this report to indicate to him or give him the slightest idea of how this broken leg came about; whether or not it was entirely by his thrashing around maybe in the hospital bed, or whether somebody was negligent somewhere along the way and he fell out of bed, or how this accident happened, and in order to get this information, as I understand it, he will need to go not only to a lawyer but he will need to go to a lawyer to bring suit in order to then file a motion with the court in order to be able to have either depositions or interrogatories to find out from the hospital what happened. And that is, as Senator Tanous said, going to be expensive for him. Now, it may be his fault completely, but certainly, it seems to me, he doesn't need to have to go to all this expense and all this trouble to find out what happened.

Now, if there are certain things, and there are bound to be, such as hospital procedure in operations that cause staph infections, I am sure that those can be discussed and taken care of by the hospital without having to be put into such a report that they would be called upon to have protection for. I don't see any need for this protection for the ordinary incident that happens in the hospital.

I am afraid if you do pass this, then the average person who does have something happen to him in the hospital is going to have to bring suit, whether he has any grounds or not, in order to find out what happened to him. It seems to me this is entirely unnecessary and I hope you will go along with Senator Tanous's motion.

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

Mr. BRENNAN: Mr. President and Members of the Senate: Frankly, I am really bewildered by the remarks of my good friend, the distinguished Senator from Cumberland, Senator Berry. I think some people in this body feel that if they characterize something as a trial lawyers' bill it is naughty and bad. I think that is merely a red herring of the first order.

This bill is simply designed to block evidence, to hide the truth, and that is what it is designed and aimed at. I think in a law suit, as we discussed previously, we ought to try to get as much evidence as possible before a jury so an honest judgment can be made. I think the arguments made by Senator Tanous are very well taken, and I would urge the Senate to vote against the motion to recede and concur.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Speers.

Mr. SPEERS: Mr. President and Members of the Senate: I would certainly concur with my good friend and colleague, the Senator from Penobscot, Senator Tanous, and I am a bit confused as to some of the allegations made on this bill that the evidence would even be admissible should there be a suit brought against the hospital

for an incident that may have occurred in the hospital.

I shall quote from the bill that if a hospital makes such reports investigating this particular incident, that these reports "shall not be admissible in the courts of this state for any purpose and shall not be discoverable by means of discovery proceedings in any action brought in connection with the event or incident." Now, that clearly states that these reports are not to be used in any court of law, nor even in any discovery proceedings, for an injured individual to find out whether or not a hospital was negligent or whether or not any of the employees of the hospital were negligent in treating that particular individual.

I certainly hope that we vote against the motion to recede and concur and then go on to kill this bill finally.

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

Mr. RICHARDSON: Mr. President and Members of the Senate: The Senator from Kennebec, Senator Speers, is absolutely correct. This bill does not set out one class of hospital report as being discoverable only by bringing a suit. It is what I tried to indicate last week in the debate. The good Senator from Penobscot, Senator Tanous, is very substantially wide of the mark in his whole argument about your having to bring a suit.

In deference to the Senator from York, Senator Roberts, I would point out that this bill has absolutely nothing to do with requiring the maintenance of an action in order to have these introspective reports made available to the general public. As I attempted unsuccessfully to persuade you last week, this bill has nothing to do with the standard hospital record which is available to any one of you after you have been hospitalized. You simply send in a request "Please send me a copy of my report concerning my entire hospitalization", and you will get it.

The only thing that this bill would grant privileged status to would be after an incident has occurred and when the hospital is

in good faith attempting to see to it that an incident like that does not happen again, and I use the example of staphylococcus infection, which is a constant nightmare to all health care providers in the State of Maine in institutional settings where surgery is done. It would permit them to conduct that analysis.

Now, needless to say, this piece of legislation is not one that I intend to bleed and die over, but I would suggest to you that the arguments that are being made against this bill, the hide the evidence nonsense, and the very amusing business of one of my fellow Senators using my note pad to send notes around to all of you last week talking about the hide the evidence bill, it is all amusing and I am sure it is done in the spirit of fair play and bipartisanship, but I still want to indicate that I do hope that you won't be hoodwinked by this phony argument about having to bring a suit and this is a consumers' bill; pity the poor people that are going to have to bring a suit. That is absolutely absurd in respect to this legislation.

I hope you will recede and concur. If you don't recede and concur, you might consider joining a committee of conference. If the Senator from York has any concern about the breadth of this bill, I am willing to limit it or to make more clear what the limitation is, to provide for its disclosure only under a court order, or whatever might be appropriate. But I have been told by the opponents that they are not going to accept anything in this area; that they want to go the other route. So, a happy Monday to all of you, and thank you, Mr. President.

The PRESIDENT: Is the Senate ready for the question? The pending question before the Senate is the motion of the Senator from Cumberland, Senator Berry, that the Senate recede and concur with the House on Bill, "An Act Relating to Hospital Reports." A roll call has been requested. Under the Constitution, in order for the Chair to order a roll call, it requires the affirmative vote of at least one-fifth of those Senators

present and voting. Will all those Senators in favor of ordering a roll call please rise and remain standing until counted.

Obviously more than one-fifth having arisen, a roll call is ordered. The pending motion before the Senate is the motion of the Senator from Cumberland, Senator Berry, that the Senate recede and concur with the House on Bill, "An Act Relating to Hospital Reports." A "Yes" vote will be in favor of receding and concurring; a "No" vote will be opposed.

The Secretary will call the roll.

#### ROLL CALL

YEAS: Senators Berry, Cox, Cummings, Greeley, Joly, Minkowsky, Peabody, Richardson, and Sewall.

NAYS: Senators Aldrich, Anderson, Brennan, Cianchette, Clifford, Conley, Cyr, Danton, Fortier, Graffam, Hichens, Huber, Katz, Kelley, Marcotte, Morrell, Olfene, Roberts, Schulten, Shute, Speers, Tanous, and President MacLeod.

ABSENT: Senator Wyman.

A roll call was had. Nine Senators having voted in the affirmative, and twenty-three Senators having voted in the negative, with one Senator absent, the motion did not prevail.

Thereupon, the Senate voted to Adhere.

#### Joint Order

WHEREAS, an excise tax is levied annually for the privilege of operating a motor vehicle upon the public ways; and

WHEREAS, existing law provides computation of such tax based upon the maker's list price without mention of accessories; and

WHEREAS, in the absence of law some municipalities compute such tax including accessories while others do not; and

WHEREAS, it is desirable and in the public interest to evaluate this practice for possibilities of uniformity; now, therefore, be it

ORDERED, the Senate concurring, that the Legislative Research Committee be authorized and directed to study the present excise tax structure of the State as it relates to motor vehicles to

determine the feasibility of establishing a uniform method by which municipalities can compute the motor vehicle excise tax; and be it further

ORDERED, that the Bureau of Taxation be authorized to provide such technical advice and other assistance to the Committee as the Committee deems necessary to carry out the purposes of this Order; and be it further

ORDERED, that the Committee report the results of its findings along with any necessary legislation to the next regular session of the Legislature; and be it further

ORDERED, upon passage in concurrence, that a copy of this Order be transmitted forthwith to said bureau as notice of the pending interim study. (H. P. 878)

Comes from the House, Read and Passed.

Which was Read.

On motion by Mr. Berry of Cumberland, placed on the Special Legislative Research Table.

#### House Papers

Bills and Resolution today received from the House requiring Reference to Committees were acted upon in concurrence.

#### Communications

STATE OF MAINE  
House of Representatives  
Augusta, Maine 04330

March 22, 1973

Hon. Harry N. Starbranch  
Secretary of the Senate  
106th Legislature  
Dear Mr. Secretary:

The House today voted to Adhere to its action whereby it Indefinitely Postponed, in non-concurrence, on March 20, Bill "An Act Relating to Educational Research" (S. P. 99) (L. D. 244)

Respectfully,

Signed:

E. LOUISE LINCOLN  
Clerk

House of Representatives

Which was Read and Ordered  
Placed on File.

**Senate Papers  
Appropriations and Financial  
Affairs**

Mrs. Cummings of Penobscot presented Bill, "An Act Appropriating Funds to Continue Emergency Employment Act Services at Bangor State Hospital." (S. P. 504)

Which was referred to the Committee on Appropriations and Financial Affairs and Ordered Printed.

Sent down for concurrence.

**Health and Institutional Services**

Mr. Brennan of Cumberland presented Bill, "An Act to Expand the Authority of Pharmacists to Dispense Drugs by Their Generic Names." (S. P. 505)

The same Senator presented Bill, "An Act Relating to the Advertising of Drug Prices." (S. P. 506)

Which were referred to the Committee on Health and Institutional Services and Ordered Printed.

Sent down for concurrence.

**Judiciary**

Mr. Brennan of Cumberland presented Bill, "An Act Creating Definite Sentencing Limitation to Juvenile Offenses." (S. P. 495)

The same Senator presented Bill, "An Act Relating to Qualifications for Jury Service of 18-year-old Voters." (S. P. 496)

Mr. Kelley of Aroostook presented Bill, "An Act Relating to Investigation where Custody of Children are Involved in a Divorce Action." (S. P. 497)

Mr. Brennan of Cumberland presented Bill, "An Act Relating to Possession of Firearms by Persons Convicted of Criminal Offenses." (S. P. 507)

Which were referred to the Committee on Judiciary and Ordered Printed.

Sent down for concurrence.

**Public Utilities**

Mr. Kelley of Aroostook presented Bill, "An Act Relating to Appeals from Decisions of the Public Utilities Commission." (S. P. 498)

The same Senator presented Bill, "An Act Relating to Complaints against Public Utilities." (S. P. 499)

Which were referred to the Committee on Public Utilities and Ordered Printed.

Sent down for concurrence.

**State Government**

Mr. Brennan of Cumberland presented Bill, "An Act to Establish Title to Islands in Maine's Coastal Waters and to Create the Maine Coastal Island Registry." (S. P. 500)

Mr. Kelley of Aroostook presented Bill, "An Act to Redistribute Certain Statutory Powers now Vested in the Executive Council." (S. P. 501)

Mr. Huber of Knox presented Resolution, Proposing an Amendment to the Constitution Providing for the Election of the Members of Executive Council. (S. P. 508)

Mr. Brennan of Cumberland presented Bill, "An Act Creating a Polygraph Examiners Act." (S. P. 509)

Which were referred to the Committee on State Government and Ordered Printed.

Sent down for concurrence.

**Taxation**

Mr. Morrell of Cumberland presented Bill, "An Act Relating to Net Asset Limitation Under the Elderly Householders Tax Relief Act." (S. P. 502)

Which was referred to the Committee on Taxation and Ordered Printed.

Sent down for concurrence.

**Veterans and Retirement**

Mr. Schulten of Sagadahoc presented Resolve, Providing a Deceased Member of the Maine State Retirement System with a Minimum of 10 Years Creditable Service. (S. P. 503)

Which was referred to the Committee on Veterans and Retirement and Ordered Printed.

Sent down for concurrence.

# **Committee Reports House**

## **Leave to Withdraw**

The Committee on Taxation on Bill, "An Act to Allow Sales Tax Exemption for Veterans Organizations for Capital Improvements." (H. P. 806) (L. D. 1062)

Reported that the same be granted Leave to Withdraw.

Comes from the House, the report Read and Accepted.

Which report was Read and Accepted in concurrence.

## **Ought to Pass**

The Committee on Natural Resources on Bill, "An Act to Revise the Law Prohibiting the Location of Dumps within 300 Feet of Classified Bodies of Water." (H. P. 643) (L. D. 859)

Reported that the same Ought to Pass.

The Committee on Health and Institutional Services on Bill, "An Act Requiring Constructed Public Buildings Be Made Accessible to the Physically Handicapped." (H. P. 505) (L. D. 657)

Reported that the same Ought to Pass.

Come from the House the Bills Passed to be Engrossed.

Which reports were Read and Accepted in concurrence, the Bills Read Once and Tomorrow Assigned for Second Reading.

The Committee on County Government on Bill, "An Act Authorizing Use of County Funds for Child and Family Services in Piscataquis County." (H. P. 381) (L. D. 510)

Reported that the same Ought to Pass.

Comes from the House, the Bill Passed to be Engrossed as Amended by House Amendment "A" (H-124).

Which report was Read and Accepted in concurrence and the Bill Read Once. House Amendment "A" was Read and Adopted in concurrence and the Bill, as Amended, Tomorrow Assigned for Second Reading.

The Committee on Appropriations and Financial Affairs on Bill, "An Act Appropriating Funds for

a Local Government Center." (H. P. 766) (L. D. 999)

Reported that the same Ought to Pass.

Comes from the House, the Bill Recommitted to the Committee on Appropriations and Financial Affairs.

Thereupon, the Ought to Pass Report of the Committee was Accepted in non-concurrence, the Bill Read Once and Tomorrow Assigned for Second Reading.

## **Ought to Pass in New Draft**

The Committee on Natural Resources on Bill, "An Act Relating to Protection of the Public Water Supply." (H. P. 463) (L. D. 638)

Reported that the same Ought to Pass in New Draft under Same Title (H. P. 1191) (L. D. 1457)

Comes from the House, the Bill in New Draft Passed to be Engrossed.

Which report was Read and Accepted in concurrence, the Bill in New Draft, Read Once and Tomorrow Assigned for Second Reading.

## **Divided Report**

The Majority of the Committee on Taxation on Bill, "An Act Relating to Taxation of Farmland." (H. P. 773) (L. D. 1007)

Reported that the same Ought Not to Pass.

Signed:

Senators:

COX of Penobscot  
FORTIER of Oxford

Representatives:

SUSI of Pittsfield  
IMMONEN of Paris  
COTTRELL of Portland  
DOW of West Gardiner  
DRIGOTAS of Auburn  
MORTON of Farmington  
MERRILL

of Bowdoinham  
DAM of Showhegan

The Minority of the same Committee on the same subject matter reported that the same Ought to Pass.

Signed:

Senator:

WYMAN of Washington



Representatives:

FINEMORE

of Bridgewater  
MAXWELL of Jay

Comes from the House, the  
Minority report Read and Accepted  
and the Bill Passed to be  
Engrossed.

Which reports were Read.

Mr. Fortier of Oxford then  
moved that the Majority Ought Not  
to Pass Report of the Committee  
be Accepted.

Thereupon, on motion by Mr.  
Hichens of York, tabled and  
Tomorrow Assigned, pending the  
motion by Mr. Fortier of Oxford  
that the Majority Ought Not to  
Pass Report of the Committee be  
Accepted.

#### **Divided Report**

The Majority of the Committee  
on Business Legislation on Bill,  
"An Act Repealing Date for  
Application as a Public Account-  
tant." (H. P. 582) (L. D. 776)

Reported that the same Ought  
to Pass.

Signed:

Senator:

MARCOTTE of York

Representatives:

O'BRIEN of Portland  
CLARK of Freeport  
TIERNEY of Durham  
TRASK of Milo  
MADDOX of Vinalhaven  
JACKSON of Yarmouth

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

Signed:

Senator:

COX of Penobscot  
KATZ of Kennebec

Representatives:

DESHAIES of Westbrook  
DONAGHY of Lubec  
HAMBLIN of Gorham  
BOUDREAU of Portland

Comes from the House, Bill and  
Reports Indefinitely Postponed.

Which reports were Read.

Thereupon, on motion by Mr.  
Katz of Kennebec, the Minority  
Ought Not to Pass Report of the  
Committee was Accepted.

#### **Divided Report**

The Majority of the Committee  
on Business Legislation on Bill,

"An Act Relating to Definition of  
Real Estate Broker." (H. P. 390)  
(L. D. 519)

Reported that the same Ought  
Not to Pass.

Signed:

Senators:

COX of Penobscot  
KATZ of Kennebec  
MARCOTTE of York

Representatives:

TIERNEY of Durham  
O'BRIEN of Portland  
BOUDREAU of Portland  
CLARK of Freeport  
JACKSON of Yarmouth  
HAMBLIN of Gorham  
MADDOX of Vinalhaven  
TRASK of Milo

The Minority of the same  
Committee on the same subject  
matter reported that the same  
Ought to Pass.

Signed:

Representatives:

DONAGHY of Lubec  
DESHAIES of Westbrook

Comes from the House, the  
Majority report Read and  
Accepted.

Which reports were Read.

Thereupon, the Majority Ought  
Not to Pass Report of the Commit-  
tee was Accepted in concurrence.

#### **Divided Report**

The Majority of the Committee  
on Business Legislation on Bill,  
"An Act Prohibiting the Use of the  
Name Accountant Unless Register-  
ed as a Public Accountant." (H. P.  
143) (L. D. 176)

Reported that the same Ought  
to Pass in New Draft under New  
Title: An Act Restricting the Use  
of the Name Accountant Unless  
Registered as a Public Account-  
tant" (H. P. 1171) (L. D. 1410).

Signed:

Senators:

COX of Penobscot  
KATZ of Kennebec  
MARCOTTE of York

Representatives:

HAMBLIN of Gorham  
MADDOX of Vinalhaven  
O'BRIEN of Portland  
DESHAIES of Westbrook  
BOUDREAU of Portland

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

Signed:

Representatives:

JACKSON of Yarmouth

CLARK of Freeport

TIERNEY of Durham

DONAGHY of Lubec

Comes from the House, the Majority report Read and Accepted and the Bill, in New Draft, Indefinitely Postponed.

Which reports were Read, and the Majority Ought to Pass in New Draft Report of the Committee Accepted in non-concurrence, the Bill in New Draft Read Once, and Tomorrow Assigned for Second Reading.

#### Divided Report

The Majority of the Committee on Labor on Bill, "An Act Eliminating Waiting Period under Employment Security Law." (H. P. 560) (L. D. 739)

Reported that the same Ought Not to Pass.

Signed:

Sensors:

TANOUS of Penobscot

HUBER of Knox

Representatives:

BROWN of Augusta

FARLEY of Biddeford

BINNETTE of Old Town

GARSOE of Cumberland

ROLLINS of Dixfield

FLYNN of South Portland

McNALLY of Ellsworth

The Minority of the same Committee on the same subject matter reported that the same Ought to Pass.

Signed:

Sensor:

KELLEY of Aroostook

Representatives:

CHONKO of Topsham

HOBBINS of Saco

McHENRY of Madawaska

Comes from the House, Recommitted to the Committee on Labor.

Which reports were Read.

Thereupon, on motion by Mr. Tanous of Penobscot, the Majority Ought Not to Pass Report of the Committee was Accepted in non-concurrence.

Sent down for concurrence.

#### Senate

The following Ought Not to Pass report shall be placed in the

legislative files without further action pursuant to Rule 17-A of the Joint Rules:

Resolve, Providing Funds to Repair Dam on Outlet of Branch Pond, Kennebec County. (S. P. 366) (L. D. 1080)

#### Leave to Withdraw, Covered by Other Legislation

Mr. Conley for the Committee on Appropriations and Financial Affairs on Bill, "An Act Appropriating Funds to Renew Senior Citizens Program." (S. P. 179) (L. D. 487)

Reported that the same be granted Leave to Withdraw, Covered by Other Legislation.

Which report was Read and Accepted.

Sent down for concurrence.

#### Ought to Pass

Mr. Hichens for the Committee on Agriculture on Bill, "An Act Pertaining to Unlicensed Dogs." (S. P. 345) (L. D. 1044)

Reported that the same Ought to Pass.

Mr. Sewall for the Committee on Appropriations and Financial Affairs on Resolve, Enabling Certain Conveyances by Governor and Council to Safeguard the Mortgage Insurance Fund of the Maine Industrial Building Authority. (S. P. 411) (L. D. 1256)

Reported that the same Ought to Pass.

Mr. Conley for the Committee on Appropriations and Financial Affairs on Bill, "An Act Relating to Payments to Hospitals." (S. P. 308) (L. D. 970)

Reported that the same Ought to Pass.

Mr. Morrell for the Committee on Appropriations and Financial Affairs on Resolve, Providing Funds for Abilities and Goodwill, Inc. (S. P. 426) (L. D. 1286)

Reported that the same Ought to Pass.

Which reports were Read and Accepted, the Bills and Resolves Read Once and Tomorrow Assigned for Second Reading.

#### Divided Report

The Majority of the Committee on Judiciary on Bill, "An Act Relating to Penalty for Operation

of Motor Vehicle under the Influence of Intoxicating Liquor." (S. P. 251) (L. D. 702)

Reported that the same Ought to Pass.

Signed:

Senators:

TANOUS of Penobscot  
SPEERS of Kennebec  
BRENNAN of Cumberland

Representatives:

BAKER of Orrington  
WHEELER of Portland  
DUNLEAVY

of Presque Isle  
GAUTHIER of Sanford  
PERKINS

of South Portland  
WHITE of Guilford  
McKERNAN of Bangor  
HENLEY of Norway  
KILROY of Portland

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

Signed:

Representative:

CARRIER of Westbrook

Which reports were Read.

Thereupon, the Majority Ought to Pass Report of the Committee was Accepted, the Bill Read Once and Tomorrow Assigned for Second Reading.

#### Divided Report

The Majority of the Committee on Health and Institutional Services on Resolve, Relating to Immediate Payment of Boarding Home Funds. (S. P. 339) (L. D. 1038)

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (S-44).

Signed:

Senators:

HICHENS of York  
GREELEY of Waldo  
MINKOWSKY  
of Androscoggin

Representatives:

BERRY of Madison  
DYAR of Strong  
LEWIS of Bristol  
McCORMICK of Union  
GOODWIN  
of South Berwick  
MORIN  
of Old Orchard Beach  
WHITZELL of Gardiner

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

Signed:

Representatives:

LaPOINTE of Portland  
SOULAS of Bangor  
SANTORO of Portland

Which reports were Read, the Majority Ought to Pass as Amended Report of the Committee Accepted and the Bill Read Once.

Committee Amendment "A" was Read and Adopted and the Bill, as Amended, Tomorrow Assigned for Second Reading.

#### Second Readers

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

#### House

Bill, "An Act Providing for Temporary License as Insurance Adjuster." (H. P. 778) (L. D. 1010)

Bill, "An Act Defining Life Agent under Insurance Laws." (H. P. 690) (L. D. 897)

Bill, "An Act Repealing Notice Provision for Multiple Licensing of Life and Health Insurance Agents." (H. P. 1198) (L. D. 1484)

Bill, "An Act to Authorize Alternate School Directors at School Administrative District No. 72." (H. P. 769) (L. D. 1003)

Which were Read a Second Time and Passed to be Engrossed in concurrence.

#### House — As Amended

Bill, "An Act Providing for Mandatory Retirement for Teachers." (H. P. 834) (L. D. 1093)

Bill, "An Act Regarding the Membership of School Committees and Boards of School Directors." (H. P. 1163) (L. D. 1375)

Bill, "An Act Changing the Names of Certain State Institutions." (H. P. 362) (L. D. 477)

Bill, "An Act Increasing Number of Trustees of Belfast Water District." (H. P. 410) (L. D. 559)

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

#### Senate

Bill, "An Act to Include Operators of Industrial Wastewater

Treatment Plants in the Operator Certification Program." (S. P. 478) (L. D. 1534)

Bill, "An Act to Revise the Election Laws." (S. P. 493) (L. D. 1535)  
(See Action later in today's session.)

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

Sent down for concurrence.

#### **Senate — As Amended**

Bill, "An Act Relating to Inspection and Licensing of Residential Facilities for the Care, Treatment or Rehabilitation of Drug or Alcohol Users." (S. P. 256) (L. D. 753)

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

Sent down for concurrence.

Bill, "An Act to Specify the Date for Closing of Open Burning Dumps in Maine." (S. P. 288) (L. D. 835)

(On motion of Mr. Cyr of Aroostook, tabled and Tomorrow Assigned, pending Passage to be Engrossed.)

#### **Enactors**

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

An Act Relating to Animal Welfare. (S. P. 42) (L. D. 98)

(On motion by Mr. Sewall of Penobscot, placed on the Special Appropriations Table.)

An Act to Clarify Certain Provisions of the Maine State Retirement Law. (S. P. 76) (L. D. 193)

An Act Relating to Registration and Enrollment of Voters. (S. P. 238) (L. D. 689)

An Act Appropriating Funds to Educate and Rehabilitate Persons Handicapped by Deafness. (S. P. 445) (L. D. 1377)

(On motion by Mr. Sewall of Penobscot, placed on the Special Appropriations Table.)

An Act to Increase Fees of Deputy Sheriffs. (H. P. 297) (L. D. 399)

An Act Relating to Costs of Administration of Food Stamp Program. (H. P. 165) (L. D. 207)

(On motion by Mr. Sewall of Penobscot, placed on the Special Appropriations Table.)

An Act Relating to Tribal Elections, Governor and Council of the Penobscot Tribe of Indians. (H. P. 243) (L. D. 325)

An Act Increasing Borrowing Capacity of Town of Old Orchard Beach School District. (H. P. 520) (L. D. 685)

An Act Relating to Compensation of Election Commissioners and Clerks of the Indian Voting Districts. (H. P. 613) (L. D. 811)

An Act Relating to Definition of Dependent under Group Life Insurance Policies. (H. P. 534) (L. D. 716)

An Act Relating to Health Insurance Policy Reserves. (H. P. 535) (L. D. 717)

An Act Relating to Disclosure of Vital Records. (H. P. 539) (L. D. 721)

An Act to Permit County Commissioners to Contract with Municipalities for Use of Public Dumps and to Assess Costs of Public Dumps. (H. P. 1162) (L. D. 1374)

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

#### **Emergency**

An Act to Increase Borrowing Capacity of Brewer High School District. (H. P. 466) (L. D. 614)

This being an emergency measure and having received the affirmative votes of 29 members of the Senate, with 1 Senator voting in the negative, was Passed to be Enacted and, having been signed by the President, was by the Secretary presented to the Governor for his approval.

#### **Orders of the Day**

The President laid before the Senate the first tabled and today assigned matter:

House Reports — from the Committee on Education — Bill, "An Act Prohibiting Corporal Punishment of Pupils." (H. P. 669) (L. D. 874). Majority Report — Ought Not to Pass; Minority Report — Ought to Pass in New Draft. (H. P. 1199) (L. D. 1485)

Tabled — March 21, 1973 by Senator Speers of Kennebec.

Pending — Motion of Senator Minkowsky of Androscoggin to Indefinitely Postpone Bill and Reports.

(In House — Indefinitely Postponed)

The PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Minkowsky.

Mr. MINKOWSKY: Mr. President and Members of the Senate: I sincerely hope that the Senate does stand by the ruling of the other body and that we indefinitely postpone this bill.

I have jotted down what I consider, from my own personal point of view and what I interpreted from the committee hearing, are valid reasons why this bill should be indefinitely postponed. One, I believe it is going to hamstring the professional teacher from performing her duties properly. Two, I believe it leaves the professional teacher defenseless from a legal suit. Three, it will leave his or her class in chaos without proper discipline. Four, it will curtail productivity of the teacher if she does not have the explicit right to maintain the proper decorum in his or her class. Now, insofar as the new draft is concerned, which is actually a suggested model law, it has not proven itself to be effective, it can be misconstrued, and it is very loosely worded. I sincerely hope we do abide by the majority of the other body in voting that this bill be indefinitely postponed.

The PRESIDENT: Is it now the pleasure of the Senate that this bill be indefinitely postponed in concurrence?

The motion prevailed.

The President laid before the Senate the second tabled and today assigned matter:

Bill, "An Act Relating to Fees for Forest Lands and Wild Lands Posted Against Trespass." (H. P. 58) (L. D. 70)

Tabled — March 22, 1973 by Senator Brennan of Cumberland.

Pending — Motion of Senator Berry of Cumberland to Adhere.

(In Senate Majority Ought Not to Pass Report Accepted)

(In House Passed to be Engrossed as Amended)

Thereupon, on motion by Mr. Berry of Cumberland, retabled and Tomorrow Assigned, pending the motion by that same Senator that the Senate Adhere.

The President laid before the Senate the third tabled and today assigned matter:

Bill, "An Act Relating to Purchase of Back Service Credits for Local Participating Districts and Individual Employees under Maine State Retirement System." (S. P. 183) (L. D. 491)

Tabled — March 22, 1973 by Senator Berry of Cumberland.

Pending — Enactment.

Thereupon, the Bill was Passed to be Enacted and, having been signed by the President, was by the Secretary presented to the Governor for his approval.

The President laid before the Senate the fourth tabled and today assigned matter:

Bill, "An Act Authorizing a Deficiency Appropriation to the Department of the Attorney General for the Present Fiscal Year." (S. P. 267) (L. D. 825)

Tabled — March 22, 1973 by Senator Sewall of Penobscot.

Pending — Enactment.

This being an emergency measure and having received the affirmative votes of 31 members of the Senate was Passed to be Enacted and, having been signed by the President, was by the Secretary presented to the Governor for his approval.

### Reconsidered Matters

On motion by Mr. Shute of Franklin, the Senate voted to reconsider its previous action whereby Bill, "An Act to Revise the Election Laws", (S. P. 493) (L. D. 1535), was Passed to be Engrossed.

Thereupon, on further motion by the same Senator, tabled and Specially Assigned for March 28, 1973, pending Passage to be Engrossed.

Mr. Katz of Kennebec then moved that the Senate reconsider its previous action whereby Bill, "An Act Prohibiting Corporal

Punishment of Pupils," (H. P. 669) (L. D. 874) was indefinitely postponed.

The Chair recognizes the Senator from Androscoggin, Senator Minkowsky.

Mr. MINKOWSKY: Mr. President, I would request a division on the reconsideration motion.

The PRESIDENT: A division has been requested.

The Chair recognizes the Senator from Kennebec, Senator Katz.

Mr. KATZ: Mr. President and Members of the Senate: Gosh, I stepped outside for twelve seconds and I heard that fast gavel and my heart sank. I think this is too interesting to go by without pointing out to the Senate what we are voting on today.

The little woodshed is pretty well established in American tradition, but what this bill does is take up the question of whether corporal punishment of Maine pupils has any place as a punishment vehicle in today's society. It doesn't say that the teacher can't lay harsh hands on the kid, but it says that he can't lay harsh hands on the kid to punish him. If two kids are brawling, or one is trying to commit mayhem on the teacher himself, the teacher reserves the right to act and act forcibly, but the question is whether or not corporal punishment is proper in our classroom.

It was a fascinating hearing and most of the committee had the feeling that corporal punishment should be retained, and you heard the Senator from Androscoggin this morning tell you that he felt that the abilities of the teacher to act would be completely nullified if this bill passes. Well, that may be so, but I say balderdash with respect to a professional teacher. I just can't believe that a professional teacher uses the threat of corporal punishment as a prime method of keeping order in the classroom. So I ask you to consider this bill, and not let it go by.

You can listen to all the words of wisdom of the psychiatrists and the old teachers, but when the vote is taken now it is purely and simply going to come down to your personal interpretation as to

whether we have moved away from the time when you have to be able to bash the kid across the face or across the rear end with the hickory stick in order to keep mayhem out of the classroom. And it is your personal interpretation that is going to let you vote on this. My interpretation is that we have moved away from it and we don't need this any more. I call to your attention the fact that corporal punishment is only used in the classroom where the teacher is bigger than the pupil. So I ask for your support in reconsideration in dealing with the motion.

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

Mr. BERRY: Mr. President and Members of the Senate: I just would like to make the observation that there was no fast gavel involved here. I think that probably with the Senator from Kennebec outside the hall he might not have been in the position I was to observe it. I think the matter was treated, as it usually is by our presiding officer, quite fairly.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Katz.

Mr. KATZ: Mr. President and Members of the Senate: I used the word only to describe my feeling as I stood out in the corridor, and in no respect as criticism of the President, who I am confident looked at my empty chair with dismay before he gaveled it down.

The PRESIDENT: Is the Senate ready for the question? The pending question before the Senate is the motion of the Senator from Kennebec, Senator Katz, that the Senate reconsider its action whereby it indefinitely postponed in concurrence Bill, "An Act Prohibiting Corporal Punishment of Pupils." A division has been requested. As many Senators as are in favor of the motion to reconsider will please rise and remain standing until counted. Those opposed will please rise and remain standing until counted.

A division was had. Eight Senators having voted in the affirmative, and twenty-three Senators having voted in the

negative, the motion to reconsider did not prevail.

Mr. Hichens of York was granted unanimous consent to address the Senate:

Mr. HICHENS: Mr. President and Members of the Senate: A few years ago there was a movie entitled "A Funny Thing Happened on the Way to the Forum." Last Thursday a funny thing happened on the way to adjournment, to my discomfort.

An order printed on the previous day's calendar and tabled for Thursday was ready to be acted on. Feeling that an explanation was necessary regarding that order, I informed the sponsor that I would talk on the issue. Permission was so granted and, as you well remember, I made my speech and moved passage of the order. Immediate actions, as you recall, transpired and following a brief recess several speeches were made. During those speeches I became convinced that the order was not proper and that an LD with procedural hearings would be the best way in which to correct the present law. I decided to go along

with the motion to indefinitely postpone the order. Unfortunately I did not voice my change of mind, and members of this body agreeing with my original motion, or perhaps unwilling to see me stand alone, watched me vote against my own motion but stood for it themselves. Needless to say, I was properly chided for my actions. I also received several telephone calls the following morning regarding my about-face. To add to my dilemma, the Portland Press Herald mistakenly printed that I was the sponsor of the order.

I feel it necessary this morning to stand here and apologize to my loyal Senators for my change of mind without proper explanation. I also would state that I have an LD already printed that should correct the problem now existing and, if not satisfactory in its present form, can be amended for the betterment of all concerned.

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(Off Record Remarks)

On motion by Mr. Sewall of Penobscot,

Adjourned until ten o'clock tomorrow morning.