

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

1st Special Session

OF THE

*One Hundred and Sixth
Legislature*

OF THE

STATE OF MAINE

1974

Kennebec Journal
Augusta, Maine

SENATE

Thursday, February 28, 1974

Called to order by the President.

Prayer by the Rev. Cecil A. Jones of Gardiner:

Shall we pray. Our Heavenly Father, we are thankful for the help, wisdom and strength received in the past from Thee. Help us that we might want to receive your help today so that our decisions might be pleasing to you. We want our lives to be used today in a positive way. Bless our service this day, we pray, in Jesus' name. Amen.

Reading of the Journal of yesterday.

The PRESIDENT: The official delegation to the funeral of Colonel Parker Hennessey this afternoon will be Senators:

GREELEY of Waldo

SHUTE of Franklin

CIANCHETTE of Somerset.

Papers from the House Non-concurrent Matter

Bill, "An Act Relating to Hospitalization of the Mentally Ill." (S. P. 908) (L. D. 2512)

In the Senate February 25, 1974, Passed to be Engrossed as Amended by Senate Amendment "A" and House Amendment "A" (H-711).

On motion by Mr. Tanous of Penobscot, the Senate voted to Recede and Concur.

Joint Resolution State of Maine

In the year of our Lord one thousand nine hundred and seventy-four

In Memoriam

WHEREAS, the Legislature has learned with much sorrow of the death on February 25, 1974 of Mrs. Helena C. Rogers of Lewiston; and

WHEREAS, this grand lady faithfully served as Claims Deputy for the Maine Employment Security Commission for 24 years, in the office of the Clerk of the House during the 102nd Legislature and had the distinction of being the first woman to serve as a State Liquor Commissioner in the country; and

WHEREAS, in private life Mrs. Rogers was a proud wife, mother and grandmother of 80 years who had been preceded in death by her husband, Joseph, in 1941; and

WHEREAS, this gracious lady will long be remembered as one of the State's finest citizens whose years of dedicated public service are most significant; now, therefore, be it

RESOLVED: That we, the Members of the One Hundred and Sixth Legislature of the State of Maine, assembled this 27th day of February in Special Legislative Session, tender this expression of sorrow and sense of loss on the passing of the late Helena C. Rogers and in so doing we include the sentiments of all who knew and admired her throughout the Legislature and the several state departments; and be it further

RESOLVED: That a suitable copy of this Resolution be immediately forwarded to the bereaved family in token of our deep sympathy. (H. P. 1988)

Comes from the House, Read and Adopted.

Which was Read and Adopted, in concurrence.

Communications

February 27, 1974

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

Today the House voted to adhere to its action on H. P. 1678 L. D. 2071, RESOLUTION, Proposing an Amendment to the Constitution to Provide for Annual Sessions of the Legislature and to Limit the Matters Which May be Considered in the Second Regular Session; to Provide for Single Member Districts in the House of Representatives; to Provide for Reduction of the Number of Representatives and Reapportionment of the House of Representatives and the Senate in 1983; to Establish an Apportionment Commission to Plan for all Reapportionments of the House of Representatives and Senate; to Abolish the Executive Council and Reassign Certain Constitutional Powers to a Legislative Council; and to Provide that

Oaths and Subscriptions of Office of the Governor, Representatives and Senators Shall be Taken Before the Chief Justice of the Supreme Judicial Court.

Respectfully,

E. Louise Lincoln, Clerk
House of Representatives

Which was Read and Ordered Placed on File.

Answer of the Justices

To the Honorable Senate of the State of Maine:

In compliance with the provisions of Section 3 of Article VI of the Constitution of Maine, we, the undersigned Justices of the Supreme Judicial Court, have the honor to submit the following answer to the question propounded on February 6, 1974.

QUESTION: Do the provisions of Legislative Document No. 2296, an Act now pending before the 106th Legislature (Exhibit A) unconstitutionally impinge upon an employer's right to a trial by jury as declared by Article I, Section 20 of the Constitution of Maine?

ANSWER: We answer in the negative.

Article I, Sec. 20, of the Constitution of Maine provides:

"In all civil suits, and in all controversies concerning property, the party shall have a right to a trial by jury, except in cases where it has heretofore been otherwise practiced: the party claiming the right may be heard by himself and his counsel, or either, at his election."

The Maine Workmen's Compensation Law was enacted by P. L. 1915, c. 295, approved April 1, 1915.

It was embodied in the Revised Statutes of 1916, Chapter 50, sections 1 to 48, and was reenacted with modifications as Chapter 238, Public Laws of 1919.

It is now 39 M.R.S.A. 1 et seq.

The Act was first challenged as to its constitutionality in **Mailman's Case**, 118 Me. 172 (1919). The Court in that case, speaking through Mr. Justice Deasy (later Chief Justice) said in part:

"... in causes arising under The Workman's Compensation Act the chairman of the Industrial Accident Commission is by statute made the trier of facts and his decrees are, in the absence of fraud, final.

"The constitutionality of a law vesting such a power in a tribunal not a court with a jury and which is partly and perhaps primarily administrative has been questioned.

"The Maine Workman's Compensation Act is elective. No employer or employee is bound to submit to it without his assent, actively or passively manifested. Substantially similar statutory provisions have been upheld generally by courts. (Citations omitted) For reasons which are in these cases mobilized in compelling force, we hold that the Maine Compensation Act is not violative of the constitution in respect to the method by it provided for the exclusive determination of issues of fact." 118 Me. at 175

Legislative Document No. 2296 differs from the Laws of Maine, 1915, Chapter 295, and the present law, 39 M.R.S.A. 1, et seq., in the critically important respect that it is not elective, and thus no waiver principle can be invoked.

By its terms it covers all employers (with exceptions not here material) and all employees (with exceptions not here material).

The Act applies to every employer without regard to his assent or lack of it. Each employer subject to the Act is required to secure compensation and other benefits to his employees by either,

(a) insuring and keeping insured the payment of such compensation and other benefits under an industrial accident insurance policy, or

(b) furnishing satisfactory proof to the Commission of his solvency and financial ability to pay the compensation and benefits, and deposit cash, satisfactory securities or a surety bond in such sum as the Commission may determine; such bond to run to the Treasurer of State and his successor in office, and to be conditioned upon the faithful performance of this Act relating to the payment of compensation and benefits to an injured employee.

Section 10 of the proposed Act would impose a criminal penalty upon any employer who is required to secure the payment to his employees of the compensation provided for by the Act and fails to do so.

The proposed Act further provides that any private employer who has not

secured payment of compensation under sections 21 to 27 shall not be entitled to the defenses set forth in section 3 of the proposed Act in any civil action brought by the employee (with exceptions not here material) to recover for personal injuries or death arising out of and in the course of his employment.

Moreover, the employee of such employer may, in lieu of bringing such a civil action, claim compensation from such employer under the Act.

Section 9 of the proposed Act makes provision that whenever the employer shall have secured the payment of compensation as provided in sections 21 to 27 the employee shall be held to have waived his right of action at common law and under the statute specified in section 4 of the proposed Act to recover damages for the injuries sustained by him.

The Workmen's Compensation Act was enacted pursuant to the police power of the State. Its purpose is to lift the burden of industrial accidents from injured workmen and their dependents and place it on industry, and finally through insurance premiums, distribute it to society as a whole.

The Act thus gave a new remedy for victims of industrial accidents and created a new tribunal of the administration of such remedy, i.e., the Industrial Accident Commission.

As Mr. Justice Morrill, concurring in **Nadeau v. Caribou Water, Light & Power Co.**, 118 Me. 325, 333, said:

"That Act did not create any new cause or form of action; it did not give an injured employee a new remedy in the courts of the State; but it did give a new and wider remedy for securing compensation for industrial injuries, by a procedure in which negligence has no place and which is designed to charge compensation for injuries received by employees in industry upon the industry itself. That procedure is entirely outside the common law courts, and is only reviewable in equity to a limited extent."

The Justices of the Supreme Court of the Commonwealth of Massachusetts were asked to express their opinion concerning the constitutionality of a compulsory new Workmen's

Compensation statute in Massachusetts. **Opinion of the Justices** to the Senate and House of Representatives, 309 Mass. 571 (1941).

There as here, the question was raised as to whether or not the proposed statute impinged on the constitutionally guaranteed right to trial by jury under Part I, article 15, of the Constitution of the Commonwealth of Massachusetts.

The Justices answered at page 601:

"So far as proceedings under the workmen's compensation law are concerned the law 'creates rights and remedies and procedure all its own, not previously known to the common or statutory law,' and to parties properly within its terms 'it abolishes old legal rights and obligations and creates a new relation with its peculiar statutory incidents.' (Citations omitted) If 'the parties are subject to the act, then all their rights arising under it are to be settled by the agencies there provided and not as in actions at common law.' (Citations omitted) This principle is applicable to the right to trial by jury. Employers insuring under the workmen's compensation law are subject to no liability at common law for personal injuries sustained by employees not reserving their common law rights. Such employers are not harmed by being relieved from such liability and in our opinion the substitution, in the manner provided by the workmen's compensation law as changed by the proposed law, for the common law liability of employers insuring under that law to employees not reserving their common law rights, of a system of workmen's compensation insurance to be administered in the manner provided by the workmen's compensation law as so changed is not open to constitutional objection on the ground that in such administration there is to be no trial by jury."

The Massachusetts Court earlier had explained its reasoning in **Opinion of the Justices**, 309 Mass. 562 at 568, as follows:

"The existing workmen's compensation law as amended by the bill would not provide a new remedy to enforce a common law liability, but rather, in the exercise of the police power, would attach new incidents to the relationship of employer and employee,

to be enforced by a procedure analogous to equitable procedure. See **Devine's Case**, 236 Mass. 588, 593; **Greem v. Cohen**, 297 Mass. 439, 443. No such right in an employee as the right to workmen's compensation was known to the law at the time the Constitution was adopted and the new right is created in recognition of the fact that 'the remedies afforded by actions of tort at common law and under the employers' liability act were inadequate.' **Greem v. Cohen**, 298 Mass. 439, 443. See also **Young v. Duncan**, 218 Mass. 346, 349. With respect to the enforcement of an employee's common law rights when reserved by him, we find nothing in the bill that excludes trial by jury on any issue involved, including the issue whether the employer was insured. See **Young v. Duncan**, 218 Mass. 346, 348; **Mountain Timber Co. v. Washington**, 243 U.S. 219, 235. The new right conferred by the bill upon an employee, in substitution for his common law rights, is not a right to property as damages, but a right to protection by insurance. See G. L. c. 152, s.26. As between an employee waiving his common law rights and an insured employer there is no controversy concerning property. As between such an employer and such an employee the existing law as amended by the bill 'leaves nothing to be tried by jury.' **Mountain Timber Co. v. Washington**, 243 U.S. 219, 235. And an insurer by electing to insure an employer consents to the procedural provisions of the existing law as amended by the bill. See **Ahmed's Case**, 278 Mass. 180, 183."

The Massachusetts Court concluded by quoting from **Mountain Timber Co. v. Washington**, 243 U.S. 219, 235, as follows:

"As between employee and employer, the act abolishes all right of recovery in ordinary cases, and therefore leaves nothing to be tried by jury."

We approve of this rationale and the opinions resulting therefrom.

We, therefore, advise you that Legislative Document No. 2296, if enacted into law, would not be violative of Article I, Section 20, Constitution of Maine.

Dated at Portland, Maine, this twenty-seventh day of February, 1974.

Respectfully submitted:

Armand A. Dufresne, Jr.
 Randolph A. Weatherbee
 Charles A. Pomeroy
 Sidney W. Wernick
 James P. Archibald
 Thomas E. Delahanty

Which was Read and Ordered Placed on File.

Committee Reports House

Ought to Pass in New Draft

The Committee on State Government on, Bill, "An Act Establishing a Commission on Maine's Future." (H. P. 1926) (L. D. 2458)

Reported that the same Ought to Pass in New Draft under Same Title (H. P. 1984) (L. D. 2528)

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 Election Laws on, Bill, "An Act Relating to Elections to the House of Representatives." (H. P. 1985) (L. D. 2530) pursuant to Joint Order (H. P. 1968)

Reported that the same Ought to Pass.

Signed:

Senators:

SHUTE of Franklin
 JOLY of Kennebec
 CIANCHETTE of Somerset

Representatives:

ROSS of Bath
 BOUDREAU of Protland
 HANCOCK of Casco
 SNOWE of Auburn
 KAUFFMAN of Kittery
 KELLEY of Machias
 BINNETTE of Old Town

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

Signed:

Representative:

HOFFSES of Camden

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

Which reports were Read and the Majority Ought to Pass Report of the Committee Accepted in concurrence.

Thereupon, the Bill was Read Once and Tomorrow Assigned for Second Reading.

**Senate
Ought to Pass**

Mr. Cox for the Committee on Business Legislation on, Bill, "An Act Relating to the Real Estate Commission." (S. P. 841) (L. D. 2382)

Reported that the same Ought to Pass.

Mr. Hichens for the Committee on Health and Institutional Services on, Bill, "An Act Establishing a Full-time Administrative Assistant for the State Parole Board." (S. P. 892) (L. D. 2494)

Reported that the same Ought to Pass.

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

Ought to Pass in New Draft

Mr. Cox for the Committee on Business Legislation on, Bill, "An Act to Repeal the Corporate Franchise Tax and Recover Revenue Losses by an Adjustment in the Proposed Annual Report Fee." (S. P. 877) (L. D. 2442)

Reported that the same Ought to Pass in New Draft under New Title: "An Act to Repeal the Corporate Franchise Tax and Recover Losses by an Adjustment in the Annual Report Fee." (S. P. 915) (L. D. 2536)

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

Divided Report

Seven members of the Committee on Natural Resources on, Bill, "An Act to Clarify Certain Administrative Aspects of the Saco River Corridor Commission." (S. P. 826) (L. D. 2353)

Reported in Report "A" that the same Ought to Pass as Amended by Committee Amendment "A" (S-369).

Signed:

Senators:

CUMMINGS of Penobscot

MARCOTTE of York

Representatives:

ROLDE of York

BRIGGS of Caribou

CURRAN of Bangor

SMITH of Exeter

PETERSON of Windham

Four members of the Same Committee on the same subject matter reported in Report "B" that the same Ought to Pass as Amended by Committee Amendment "B" (S-370).

Signed:

Representatives:

MacLEOD of Bar Harbor

HERRICK of Harmony

PALMER of Nobleboro

HUBER of Falmouth

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

Signed: Representative:

BERUBE of Lewiston

Which reports were Read, the Ought to Pass as Amended Report "A" 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 to Repeal Fee to Ex Officio Member of Industrial Accident Commission." (H. P. 882) (L. D. 2392)

Bill, "An Act Relating to Conferring Degrees by Thomas College." (H. P. 1979) (L. D. 2522)

Bill, "An Act to Advance Collection of Telephone and Telegraph Taxes." (H. P. 1980) (L. D. 2523)

Bill, "An Act Relating to Applications for Absentee Ballots." (H. P. 1981) (L. D. 2524)

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

House-As Amended

Bill, "An Act Relating to the Powers of Hospital Administrative District No. 1 in Penobscot County." (H. P. 1940) (L. D. 2477)

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

Enactors

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

An Act Relating to Duties of the Attorney General. (S. P. 780) (L. D. 2236)

An Act Relating to Due Dates of Property Taxes. (H. P. 1903) (L. D. 2411)

An Act to Reorganize the Department of Military, Civil Defense and Veterans Services. (H. P. 1975) (L. D. 2517)

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

Emergencies

An Act Prohibiting Swimming or Bathing in Mt. Zircon Reservoir, Blanchard Reservoir and the Distribution or Pettengill Reservoir, all in Rumford, Oxford County. (S. P. 844) (L. D. 2385)

An Act Relating to the Budgetary Process of the Eleven New Regions for Vocational Education. (H. P. 1945) (L. D. 2479)

These being emergency measures and having received the affirmative votes of 23 members of the Senate, were Passed to be Enacted and, having been signed by the President, were by the Secretary presented to the Governor for his approval.

Constitutional Amendment

RESOLUTION, Proposing an Amendment to the Constitution to Provide for Appointment of Justices of the Peace and Notaries Public to an Initial Term by the Governor with the Approval of the Executive Council and for Additional Terms of These Officers to be by Renewal of Commission, as Provided by Law. (H. P. 1973) (L. D. 2514)

This being a Constitutional Amendment and having received the affirmative votes of 23 members of the Senate, was Finally Passed and, having been signed by the President, was by the Secretary presented to the Secretary of State.

Orders of the Day

The President laid before the Senate

the first tabled and specially assigned matter:

Bill, "An Act to Establish Better Interlocal Cooperation in Preparedness for Civil Disasters and Emergencies." (S. P. 828) (L. D. 2362)

Tabled — February 26, 1974 by Senator Speers of Kennebec.

Pending — Adoption of Committee Amendment "A" (S-355)

On motion by Mr. Speers of Kennebec, Committee Amendment "A" was Indefinitely Postponed.

Thereupon, the Bill was Tomorrow Assigned for Second Reading.

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

Bill, "An Act to Correct Errors and Inconsistencies in the Education Laws." (S. P. 895) (L. D. 2488)

Tabled — February 26, 1974 by Senator Katz of Kennebec.

Pending — Consideration.

(In Senate — Passed to be Engrossed.)

(In House — Passed to be Engrossed as Amended by House Amendment "A" (H-682) in non-concurrence.)

On motion by Mr. Olfene of Androscoggin, the Senate voted to Recede from its former action whereby the Bill Passed to be Engrossed.

The same Senator then presented Senate Amendment "A".

Senate Amendment "A", Filing No. S-371, was Read.

On further motion by the same Senator, tabled and Specially Assigned for March 4, 1974, pending Adoption of Senate Amendment "A".

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

Bill, "An Act to Clarify Certain Election Laws." (S. P. 914) (L. D. 2526)

Tabled — February 27, 1974 by Senator Shute of Franklin.

Pending — Passage to be Engrossed.

Mr. Conley of Cumberland then presented Senate Amendment "A" and moved its Adoption.

Senate Amendment "A", filing No. S-367, was Read and Adopted and the Bill, as Amended, Passed to be Engrossed.

Sent down for concurrence.

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

Bill, "An Act Repealing Certain Laws Relating to Games of Chance." (S. P. 911) (L. D. 2521)

Tabled — February 27, 1974 by Senator Berry of Cumberland.

Pending — Passage to be Engrossed.

Mr. HICHENS of York then presented Senate Amendment "A" and moved its Adoption.

Senate Amendment "A", Filing No. S-365, was Read.

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

Mr. CONLEY: Mr. President and Members of the Senate: I wonder if the good Senator would explain what the amendment does.

The PRESIDENT: The Senator from Cumberland, Senator Conley, has posed an inquiry through the Chair which the Senator may answer if he desires.

The Chair recognizes the Senator from York, Senator Hichens.

Mr. HICHENS: Mr. President and Members of the Senate: This amendment takes care of Section 344 on Page 6 of the legal document which states that: "All funds collected under authority of this chapter shall be paid to the Treasurer of State to be credited to the General Fund." The next section says that: "The necessary expenses of administering this chapter shall be paid out of the fees received under said chapter." There was a contradiction of the two chapters, so we are dispensing with Section 344 which allows all of these to go into the administration part of the bill and have the fees administering the chapter paid out of the fees received under the chapter.

The other part of the amendment says that "organizations the majority of whose members are persons under the age of 18 shall not be licensed under this section." Again, this is contradicted under section 340 where it says "No

such person shall sell chances, except in relation to charitable, religious, or recognizes youth associations under 18." So we have taken care of that.

The PRESIDENT: Is it now the pleasure of the Senate to adopt Senate Amendment "A"?

Thereupon, Senate Amendment "A" was Adopted and the Bill, as Amended, Passed to be Engrossed.

Sent down for concurrence.

On motion by Mr. Berry of Cumberland, the Senate voted to take from the table the third unassigned matter:

JOINT ORDER — Relative to Telecommunications Services. (S. P. 918)

Tabled — February 27, 1974 by Senator Berry of Cumberland.

Pending — Passage.

Thereupon, the Joint Order received Passage.

Sent down for concurrence.

Papers from the House

Out of order and under suspension of the rules, the Senate voted to take up the following:

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

Emergency

An Act to Validate Proceedings Authorizing the Issuance of Bonds and Notes by School Administrative District No. 51. (H. P. 1978) (L. D. 2520)

This being an emergency measure and having received the affirmative votes of 26 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.

(Off Record Remarks)

On motion by Mr. Sewall of Penobscot, Adjourned until 9:30 o'clock tomorrow morning.