

MAINE STATE LEGISLATURE

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One Hundred and Twenty-First Legislature
State of Maine

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Second Regular Session
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February 3, 2004 to March 18, 2004

Pages 715 - 1415

**STATE OF MAINE
ONE HUNDRED AND TWENTY-FIRST LEGISLATURE
FIRST REGULAR SESSION
JOURNAL OF THE SENATE**

In Senate Chamber
Wednesday
May 28, 2003

Senate called to order by President Beverly C. Daggett of
Kennebec County.

Prayer by Senator Betheda G. Edmonds of Cumberland County.

SENATOR EDMONDS: Good morning. Let us pray. Holy One,
thank You for all this wonderful green. Thank You for the lovely
beneficial rain. Thank You for all the fine people who work here
in the capital for the people of Maine. Help us to remember today
that liberty and justice for all is not a simple task. Guide us today
so that we can have a chance of making liberty and justice for all
a reality. Thank you.

Doctor of the day, A. Jan Berlin, M.D. of South Freeport.

Reading of the Journal of Tuesday, May 27, 2003.

Off Record Remarks

PAPERS FROM THE HOUSE

Non-Concurrent Matter

Bill "An Act to Revise the Reimbursement by the County Jail
Prisoner Support and Community Corrections Fund and To
Provide Additional Support to County Jails"

S.P. 390 L.D. 1186
(C "A" S-227)

In Senate, May 23, 2003, **PASSED TO BE ENGROSSED AS
AMENDED BY COMMITTEE AMENDMENT "A" (S-227).**

Comes from the House, Bill and accompanying papers
INDEFINITELY POSTPONED, in NON-CONCURRENCE.

On motion by Senator **STRIMLING** of Cumberland, **TABLED** until
Later in Today's Session, pending **FURTHER CONSIDERATION.**

SENATE PAPERS

Bill "An Act To Provide Affordable Loans for Higher Education"
S.P. 579 L.D. 1625

Sponsored by President DAGGETT of Kennebec.
(GOVERNOR'S BILL)

Cosponsored by Speaker COLWELL of Gardiner and Senators:
BROMLEY of Cumberland, TREAT of Kennebec,
Representatives: RICHARDSON of Brunswick, SULLIVAN of
Biddeford.

On motion by Senator **BROMLEY** of Cumberland, **REFERRED** to
the Committee on **BUSINESS, RESEARCH AND ECONOMIC
DEVELOPMENT** and ordered printed.

Ordered sent down forthwith for concurrence.

REPORTS OF COMMITTEES

House

Divided Report

The Majority of the Committee on **NATURAL RESOURCES** on
Bill "An Act To Protect Public Health by Reducing Human
Exposure to Arsenic"

H.P. 963 L.D. 1309

Reported that the same **Ought to Pass as Amended by
Committee Amendment "A" (H-490).**

Signed:

Senators:

MARTIN of Aroostook
EDMONDS of Cumberland
SAWYER of Penobscot

Representatives:

KOFFMAN of Bar Harbor
TWOMEY of Biddeford
HUTTON of Bowdoinham
MAKAS of Lewiston
SAVIELLO of Wilton
THOMPSON of China
TOBIN of Windham
JOY of Crystal
ANNIS of Dover-Foxcroft

The Minority of the same Committee on the same subject
reported that the same **Ought To Pass as Amended by
Committee Amendment "B" (H-491).**

Signed:

Representative:

DAIGLE of Arundel

Comes from the House with the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-490)** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-490)**.

Reports **READ**.

Senator **MARTIN** of Aroostook moved the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-490)** Report, in concurrence.

On motion by Senator **DAVIS** of Piscataquis, **TABLED** until Later in Today's Session, pending the motion by Senator **MARTIN** of Aroostook to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-490)** Report, in concurrence.

Senate

Ought to Pass As Amended

Senator **DAMON** for the Committee on **TRANSPORTATION** on Bill "An Act To Amend the Motor Vehicle Laws"

S.P. 545 L.D. 1590

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-237)**.

Report **READ** and **ACCEPTED**.

READ ONCE.

Committee Amendment "A" (S-237) **READ** and **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED**.

Sent down for concurrence.

Divided Report

The Majority of the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act To Preserve the Role of Assisted Living"

S.P. 403 L.D. 1197

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (S-236)**.

Signed:

Senators:

BRENNAN of Cumberland
MARTIN of Aroostook
WESTON of Waldo

Representatives:

EARLE of Damariscotta
CRAVEN of Lewiston
KANE of Saco
DUGAY of Cherryfield
WALCOTT of Lewiston
CAMPBELL of Newfield
LEWIN of Eliot
LAVERRIERE-BOUCHER of Biddeford

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

Signed:

Representatives:

SHIELDS of Auburn
CURLEY of Scarborough

Reports **READ**.

On motion by Senator **BRENNAN** of Cumberland, the Majority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED**.

READ ONCE.

Committee Amendment "A" (S-236) **READ** and **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED**.

Sent down for concurrence.

All matters thus acted upon were ordered sent down forthwith for concurrence.

ORDERS OF THE DAY

Unfinished Business

The following matter in the consideration of which the Senate was engaged at the time of Adjournment had preference in the Orders of the Day and continued with such preference until disposed of as provided by Senate Rule 516.

The Chair laid before the Senate the following Tabled and Later (5/27/03) Assigned matter:

HOUSE REPORTS - from the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act To Require Full Disclosure of Prescription Drug Marketing Costs"

H.P. 209 L.D. 254

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-465)** (8 members)

Minority - **Ought Not to Pass** (5 members)

Tabled - May 27, 2003, by Senator **DAVIS** of Piscataquis

Pending - motion by Senator **BRENNAN** of Cumberland to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence (Roll Call Requested)

(In House, May 21, 2003, 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-465).**)

(In Senate, May 22, 2003, Reports **READ**.)

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

THE PRESIDENT: The Chair recognizes the Senator from Waldo, Senator Weston.

Senator **WESTON:** Thank you, Madame President, men and women of the Senate. I urge you to defeat this motion. This legislation reaches out to one business, the pharmaceutical business. Every bit of information that we would get is not complete. Thank you.

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

Senator **TURNER:** Thank you, Madame President, ladies and gentlemen of the Senate. I haven't had the opportunity to spend much time reviewing bills that apply to prescription drugs this session. I think others have spoken and suggested to you that adoption of this bill continues to send what are a long series of very negative messages about our attitude towards the private sector. I would encourage that you vote against this bill.

Those in favor of it suggest somehow that this is going to help us control the cost of prescription drugs. I think, quite frankly, that it does just the opposite. Let me suggest to you that if I am a private college in Maine, or an attorney in Maine, and you ask me to incur some expense relative to my business enterprise, is there some way for me to pass that expense along to the consumer ultimately? The answer to that is yes. Just as this bill seeks to incur costs on the pharmaceutical industry, I believe they will pass those costs along, however modest they may be.

There are a number of things that do work, when you look at those things that work with respect to prescription drugs. Prior authorization is one. We have adopted prior authorization in Maine. Furthermore, I think we've become a national leader in prior authorization and have encouraged others around the United States. In the past session, or the past year, I think we have saved upwards of \$40 million using prior authorization. It is something that this legislature and the current Governor seeks to expand on a going forward basis. Prior authorization is a good thing. The second big thing is to craft, as large as possible, a purchasing collaborative, as large as you can legally do. Maine Rx is one of those. It's been challenged and those challenges have been met. That's an opportunity we've exercised. An opportunity where, again, we've taken a lead in, as a state. We've done two really big good things with respect to prescription

drugs. In my opinion, this bill before you is not one of the good things that we've been doing.

It seems to me that when you talk about pricing, and that's what we are really down to, I don't know a lot about prescription drug pricing. I'd be the first to acknowledge that. When you price, you basically have two options. You can do a bottoms-up pricing, incorporating your costs, your risk of capital, understanding your market, and how you can compete successfully in that market. You then price accordingly. Some will tell you that the prescription drug market is different than that. The fact is that it is very different. We passed landmark legislation in the 1980s that gave prescription drug companies the option to advertise. We gave them protections around patent rights, going for 17 years on those things that they brought forward. Guess what happened? We've had a deluge of therapies come forward from this industry. Frankly, those therapies have saved millions and millions of dollars, probably billions of dollars, and thousands of lives. They will continue to do that because we're allowing the industry to innovate, to capture its costs, and to try to spread those costs as best they can.

The other thing that we are choosing to conveniently ignore here, from a pricing standpoint, are the alternatives that face us. Many of the therapies that have come forward today, in fact, are less expensive alternatives to surgery and hospitalization. You might say cost effectiveness versus cost shifting. You can incur the cost of an expensive medication for \$1,000 a month, which is very expensive. Your alternative may be hospital surgery at \$20,000. You may be facing that surgery repeatedly. I think we need to understand what really drives the pricing. That is the value that it provides versus the alternatives. I don't think it's being driven by the cost of advertising.

One of these handouts that came to us a while back said drug makers spend at least \$3 billion a year on consumer advertising. It further suggests that this is twice as much as what is being spent on research. Somewhere here on my desk I have a publication, the Pfizer Annual Report.

THE PRESIDENT: The chair would interrupt debate to remind the Senator that props are not allowed.

Senator **TURNER:** I won't show the prop again. Thank you, Madame President. According to this report, they spent in excess of \$5 billion on research. There was a period of time we attacked research here and in other chambers around the country. I think that battle has been given up. We recognize that there is a high risk associated with investor capital to bring therapies to the marketplace. Again, the suggestion that somehow advertising is driving the cost of prescription drugs is just not valid.

This company, that I happen to be an investor in, has a board of directors. It's an interesting group. There are 16 of them. One of them is the President and CEO of the College Fund, former Congressman Gray. Another is the President of Brown University. Yet a third is the Chairman and CEO of Fanny Mae. Still others have PhDs in Science. I think what you see is a very well-managed company that operates in a very responsible fashion. Do they advertise? They do. They advertise Lipitor. In their annual report they even talk about the fact that the market opportunity is very broad for Lipitor. If you are not familiar with it, you can see it on television. It attacks high cholesterol. Of course, if you have high cholesterol, you have an opportunity to not take the drug. You could change your diet and probably drive down the demand for the drug. We don't want to go the tough

road, here or elsewhere. We want the silver bullet, the magic elixir. So, Lipitor gets marketed. Another big driver of revenue for Pfizer is Viagra. It is advertised. I'll leave you to conclude what the meaning of it may be when two prominent Republicans are often featured in their ads. Bob Dole, and some baseball player, Rafael Palmeiro of the Texas Rangers. The point is, if you think about it, you have a highly decorated World War II veteran, who ran for the Presidency of the United States. A pretty tough guy. You have a Hispanic American, from a culture that's very machismo. Those in his culture who might suffer in silence now see, through advertising, that a guy who hits 500 home runs and has multiple Golden Gloves may, in fact, be onto something and they ought to consider this. So advertising, in my way of thinking, does a lot of good. It helps to educate people.

Looking at this company, they have an award from the Council of State Governments, a corporate citizenship award. They have the United Way's Spirit of America award. They have a Council to Aid to Education Leaders for Change award. While they do make lots of money, they also have 100 therapies currently in development, many of which, in fact, will never be advertised. We took some time here in this chamber yesterday in the Senator from Penobscot, Senator Youngblood's absence to wish he and his wife Godspeed as she dealt with her cancer. The therapies, I suspect, that Peggy Youngblood has worked with through her physicians are not being advertised on television. In fact, I would suggest to you that the cost associated with those therapies are probably being provided at a loss. Those losses are being supplemented by revenues that drive popular drugs that, in turn, are driven by advertising. So advertising, to my way of thinking, is a good thing.

I suspect that all of you have gotten something from Pfizer. I have, it's dated early April. It talks about the contributions that they have made to Maine on their own therapies by giving their drugs away to physicians, who in turn give them to your constituents. I am blessed with a district, District 26, that is relatively well off. My district only enjoyed, in 2002, the equivalent of \$1,500 in free drugs. Where do you suppose that \$1,500 shows up in the accounting of Pfizer? Some will tell you marketing and advertising. If they tell you that, they are correct. Since I have a relatively well off district, you might want to know that your districts, collectively, including mine, got just about \$2.5 million in free drug therapies, part of the marketing and advertising budget of just one pharmaceutical company. If you want to be doing something to help this problem, and we all do, remember you've done a lot already with respect to prior authorization. You've done a lot already with respect to purchasing collaboratives. You may have an opportunity to do even more. You might, for example, encourage the Department of Health and Human Services within the state to use the prescription drug cards made available by Pfizer and others. I'm told, I don't have it in front of me, that we have something in the neighborhood of 15,000 people making use of the discount pharmaceutical cards in Maine today. What has our government done to encourage the further use of those cards? The industry tells us 54,000 people are eligible. My suggestion is that we've done nothing because we like to craft pharmaceutical companies as the villain rather than the hero. I think our cannons are aimed in the wrong direction. I could go on and on. We need pharmaceutical companies to work collaboratively with us and to help us. Collaboratively, I think we can make some progress. For those of you who want to take and continue to make them into the enemy, I believe you are wrong headed in your approach.

I would encourage that you vote against the pending motion. Thank you.

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

Senator **BRENNAN:** Thank you, Madame President, men and women of the Senate. I certainly do respect the opinion of the good Senator from Cumberland, Senator Turner. I also equally disagree with the same level of respect that I have for his comments. Let's look at this very clearly. Any one of us can go home tonight, turn on the TV set or pick up the newspaper, and find significant advertising from pharmaceutical companies on a wide range of drugs. We have seen, in the last several years, a significant increase in the cost of pharmaceuticals and drugs. The relationship between the marketing and advertising cost seems to be fairly clear. All this bill does is simply ask the pharmaceutical companies to file annual reports telling us how much they spend on marketing and advertising. It doesn't say to the pharmaceutical companies that they can't advertise, that they can't market, or how much they can or can't spend. It doesn't do anything to stop current practices. It simply says we, as a state, would like to know, in aggregate, without infringing on any of the proprietary information that pharmaceutical companies have, how much is spent on advertising and marketing. Why do we care? Because our state health plan, our health care costs, and every one of us has constituents that we represent that are being impacted by those pharmaceutical costs.

Again, while I respect the comments of the good Senator from Cumberland, Senator Turner, please just look at this bill. It simply asks that pharmaceutical companies to file an annual report on how much money they spend on marketing and advertising in the State of Maine. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Mayo.

Senator **MAYO:** Thank you, Madame President, men and women of the Senate. We had a rather lengthy debate on this subject yesterday morning before it was tabled. It now appears that we're going to have another long debate. I think that debate is good, because this is what I would consider to be a very vital and important issue for the Senate to make a decision on.

As I indicated yesterday, I was sponsor of a bill very similar to L.D. 254. While I respect the good Senator from Cumberland, Senator Turner, on a good many things, I do not consider that I am wrong by having been a sponsor of that particular piece of legislation or a co-sponsor of the bill that is before us today.

I would draw your attention to the fact that the United States is one of the few countries that even allows drug advertising. It is not common in the industrialized world in which we live for drug companies to be allowed to advertise. Maine would not be establishing something that is uncommon within the world. We heard earlier this morning about \$5 billion or more that is spent on research and development by the drug companies. I would call your attention to the fact that a great deal of this money comes from the federal government to the drug companies and is not of their own making.

I personally feel, and have felt for quite some time, that advertising can help the consumer. However, in this case, it's very difficult to equate the advertising for drugs and the advertising for appliances and some of the other products that we

have heard about as the debate has gone on for over two days. We do know that drug companies spend billions of dollars on promoting their most expensive, and I would repeat expensive, products. Those are the products that they want us to consume. I don't know if anybody else happened to be watching at 5:00 a.m. this morning on channel six, I believe, as I was coming and going in front of that television set, I saw the advertisement for three different drugs. They were all name brands, not generic. We all know that name brand pharmaceuticals are more expensive than the generic. There was an article in yesterday's Wall Street Journal about the drug companies making drugs available to physicians and the fact that, with the limited research done by the writer, none of the drugs being pushed to the physicians in this community outside of New York City were generic. They were all highly advertised name brand drugs.

I personally feel that making the information available as to the amount of money spent in Maine on prescription drug advertising will, over time, lead the consumer to make a better choice and to ask questions when he or she is in need of a prescription drug. Ladies and gentlemen of the Senate, I would urge that you follow the committee's recommendation and accept L.D. 254. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Oxford, Senator Bennett.

Senator **BENNETT:** Thank you, Madame President and fellow members of the Senate. I have two points to make today. First, I come at this issue from a different point of view than most. I generally support enhanced disclosure requirements. We live in a disclosure based world. For disclosure to be effective, it must be real. It must impart real information. That information needs to impart knowledge. T.S. Elliot wrote once, 'where is the knowledge? Lost in information. Where is the wisdom? Lost in knowledge.' This is an important couplet for our times. I'm concerned that this bill may provide information without knowledge. Certainly, I doubt that it will be knowledge laced with wisdom.

The reality is that the big multi-national corporations that this bill targets have shown themselves to be tremendously, terrifically adept at bending the disclosure rules, all around Robin Hood's barn. In fact, meaningless and ineffective disclosure is the reason, more than any other, for the current state of our stock market, which is in shambles. Billions of dollars are being lost because of the terrific capacity of companies to misreport information. This bill, as it is constructed with the requirement that information be disclosed on the state basis, will impart nothing of value. I am convinced that this bill will not provide real accountability, but merely a fig leaf of accountability.

My second point is that we seem to be sending out of this building this year a disharmonic message to an industry that is very important for our economy. Our policies clash. On one hand, we declare the biomedical industry and biomedical research a very important part of our economic future. On the other hand, we have this bill and others. On the one hand, we identify the biomedical industry as part of an emerging cluster of growth. In the last few years we've seen, in the greater Portland area, five biomedical companies expand to more than 60, not to mention the tremendous growth at Jackson Laboratories, MDI Labs, and others. On the other hand, we have this bill and others. On the one hand we voted, not long ago, for a \$20 million

bond package to underwrite and support the biomedical industry. On the other hand, we have this bill.

It is somewhat reluctantly, but nonetheless emphatically, I will vote against the pending motion. I encourage the Senate to do the same.

THE PRESIDENT: The Chair recognizes the Senator from Washington, Senator Shorey.

Senator **SHOREY:** Thank you, Madame President. May I pose a question through the chair?

THE PRESIDENT: The Senator may pose his question.

Senator **SHOREY:** Thank you. The good Senator from Cumberland said this bill doesn't do anything. My question is, with the information that will be submitted to the state, who will be evaluating it and what will be done with the evaluation?

THE PRESIDENT: The Senator from Washington, Senator Shorey poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Cumberland, Senator Brennan.

Senator **BRENNAN:** Thank you, Madame President, men and women of the Senate. The information will be gathered by the Department of Human Services in aggregate form and will be presented to the Committee of oversight, the Health and Human Services Committee.

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

Senator **TURNER:** Thank you, Madame President, ladies and gentlemen of the Senate. I feel it necessary to refute a few things that have been put into the chamber since I spoke. First of all, the \$5 billion in research expense is not a pharmaceutical industry number. It is one company's number, the Pfizer Corporation. To the specifics of this bill, as I understand it, because it has been modified, we won't have a \$10,000 fine, we'll have a \$1,000 fine. If you market regionally or nationally, you are not picked up in this particular bill. I defer to the good Senator from Oxford, Senator Bennett, and say that smart people can be clever. Probably what I would do is withdraw my advertisements from the Bangor Daily News, if I had them. I would withdraw my advertisements from the local cable company. I would withdraw my advertisements from Channel 13 or Channel 6 in Portland and do my advertising through the regional cable, through the national publications, through CBS and NBC, and reach the audience that I seek to reach but without local, private enterprise alternatives.

Someone has talked about insurance companies promoting their expensive products. They do that. They are entitled to do that. Doctors are entitled to evaluate the ethicality of what they promote and provide alternatives. They do that. The linchpin of prior authorization, which we talked about earlier today, is built around the fact that we want to make sure that lower cost alternatives are indeed considered, and when their ethicality is analogous to the more expensive offering, the less costly alternative is provided.

Lastly I want to say once more, since it has already been discredited a number of different times, that somehow research that is being paid for by the government is underwriting all the

research activity of the pharmaceutical industry. In fact, there is private research underwritten by the federal government. It is something that they were encouraged to do. What they do is basic research that gets passed along, most typically, to small start-up companies, not unlike those that the good Senator from Oxford, Senator Bennett, talked about who have increased their presence in the Portland area or those on MDI who are trying to draw down NIH and CDC funds or private funds. That research has a long way to go before anybody sees a therapy that is worth a plugged nickel.

When we last debated this bill in the 120th, I took you through a company called Virxsys. Virxsys is a small start-up company which venture capitalists so far have dropped \$45 million. Their Chief Technological Officer was a tenured professor at the University of Maryland who worked for years on an approach to reverse or inoculate one against cancer, and by association HIV because it plays tricks on the immune system. He begged for money. No one was forthcoming. He shopped his idea around the venture capitalist community for months, to the point where the last guy he went to had to give him money to get back to Maryland. The story continues to unfold. There are trials going on. If they are successful, we may have something that will be revolutionary. If you are familiar with the attacks being put forth by this industry on HIV, there are at least 20 therapies in various stages of development, often with exemptions for extensive trials, to be able to go to the market early where people in desperation offer themselves up for consideration. The idea that somehow all this research is already paid for is a total myth.

This bill warrants one action on your part. That is to kill it. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Waldo, Senator Weston.

Senator **WESTON:** Thank you, Madame President, men and women of the Senate. Although I have not been able to find a direct benefit to the consumer though this bill, there maybe a benefit to state government. If you look at the amendment that is before us, under Section 2, under Report, it says that the Department of Human Services will report to the Joint Standing Committee on Health and Human Services on the assessment of the fees to these companies and use of those fees in support of the work of the department.

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Cumberland, Senator Brennan to Accept the Majority Ought to Pass as Amended Report. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#117)

YEAS: Senators: BRENNAN, BROMLEY, BRYANT, CATHCART, DAMON, DOUGLASS, EDMONDS, GAGNON, HALL, HATCH, LEMONT, MARTIN, MAYO, PENDLETON, ROTUNDO, STANLEY, STRIMLING, TREAT, THE PRESIDENT - BEVERLY C. DAGGETT

NAYS: Senators: BENNETT, BLAIS, CARPENTER, DAVIS, GILMAN, KNEELAND, MITCHELL, NASS, SAVAGE, SAWYER, SHOREY, TURNER, WESTON, WOODCOCK, YOUNGBLOOD

ABSENT: Senator: LAFOUNTAIN

19 Senators having voted in the affirmative and 15 Senators having voted in the negative, with 1 Senator being absent, the motion by Senator **BRENNAN** of Cumberland to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **PREVAILED**.

READ ONCE.

Committee Amendment "A" (H-465) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED**, in concurrence.

Off Record Remarks

On motion by Senator **HATCH** of Somerset, the Senate removed from the **SPECIAL HIGHWAY TABLE** the following:

Emergency

An Act Authorizing the Operation of Low-speed Vehicles on Certain Roads

H.P. 313 L.D. 393
(S "A" S-173 to C "A" H-357)

Tabled - May 23, 2003, by Senator **HATCH** of Somerset

Pending - **ENACTMENT**

(In Senate, May 19, 2003, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-357) AS AMENDED BY SENATE AMENDMENT "A" (S-173)** thereto.)

(In House, May 23, 2003, **PASSED TO BE ENACTED**.)

This being an Emergency Measure and having received the affirmative vote of 34 Members of the Senate, with no Senators having voted in the negative, and 34 being more than two-thirds of the entire elected Membership of the Senate, was **PASSED TO BE ENACTED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

All matters thus acted upon were ordered sent down forthwith for concurrence.

Out of order and under suspension of the Rules, the Senate considered the following:

PAPERS FROM THE HOUSE

Non-Concurrent Matter

HOUSE REPORTS - from the Committee on **JUDICIARY** on Bill "An Act To Prohibit Discrimination in Housing"
S.P. 287 L.D. 892

Majority - **Ought Not to Pass** (7 members)

Minority - **Ought to Pass as Amended by Committee Amendment "A" (S-193)** (6 members)

In Senate, May 22, 2003, the Minority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-193)**.

Comes from the House, the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**, in **NON-CONCURRENCE**.

Senator **PENDLETON** of Cumberland moved the Senate **ADHERE**.

Senator **WOODCOCK** of Franklin moved the Senate **RECEDE** and **CONCUR**.

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

On motion by Senator **STRIMLING** of Cumberland, **TABLED** until Later in Today's Session, pending the motion by Senator **WOODCOCK** of Franklin to **RECEDE** and **CONCUR**. (Roll Call Ordered)

Out of order and under suspension of the Rules, the Senate considered the following:

ENACTORS

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

Acts

An Act to Require Disclosure of Retail Prescription Drug Prices
H.P. 111 L.D. 102
(C "B" H-463)

An Act To Create a Uniform Approach to the Determination of Child Support When Parents Provide Substantially Equal Care for Children
H.P. 189 L.D. 234
(C "A" H-499)

An Act To Assist Regional Transportation Providers To Comply with the Booster Seat Law

H.P. 474 L.D. 644
(H "A" H-407 to C "A" H-161;
S "A" S-226)

An Act To Ensure the Safety of Children Touring Incinerator Facilities

H.P. 510 L.D. 693
(C "A" H-492)

An Act To Amend the Laws Relating to Medical Certification of the Cause of Death and the Medical Examiner Act and To Create the Maine Elder Death Analysis Review Team

H.P. 885 L.D. 1211
(C "A" H-493)

An Act Relating to the Protection of Whistleblowers

H.P. 1044 L.D. 1425
(C "A" H-395)

An Act To Change the Time Requirement for Mental Retardation Evaluations

H.P. 1085 L.D. 1480
(C "A" H-471)

An Act To Effectively Separate Children's Homes from Adult Residential Care Facilities Regarding Fire Safety

H.P. 1131 L.D. 1542
(C "A" H-487)

An Act To Expedite the Drilling of Private Drinking Water Wells

S.P. 558 L.D. 1604
(C "A" S-224)

PASSED TO BE ENACTED and having been signed by the President were presented by the Secretary to the Governor for his approval.

An Act To Establish the Pine Tree Development Zones Program
S.P. 456 L.D. 1385
(S "C" S-231 to C "A" S-68)

On motion by Senator **CATHCART** of Penobscot, placed on the **SPECIAL APPROPRIATIONS TABLE**, pending **ENACTMENT**, in concurrence.

An Act to Amend the Membership of the Propane and Natural Gas Board

S.P. 49 L.D. 126
(H "A" H-503)

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

On motion by Senator **TREAT** of Kennebec, **TABLED** until Later in Today's Session, pending **ENACTMENT**, in concurrence. (Roll Call Ordered)

Out of order and under suspension of the Rules, the Senate considered the following:

ENACTORS

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

Resolves

Resolve, Directing the Department of Human Services To Enact Rules To Reduce the Health Risks Associated with Latex Gloves
S.P. 262 L.D. 767
(S "A" S-225 to C "A" S-177)

FINALLY PASSED and having been signed by the President was presented by the Secretary to the Governor for his approval.

Resolve, Allowing Christy Reposa To Sue the State
H.P. 536 L.D. 730
(H "A" H-383 to C "A" H-356)

On motion by Senator **CATHCART** of Penobscot, placed on the **SPECIAL APPROPRIATIONS TABLE**, pending **FINAL PASSAGE**, in concurrence.

Out of order and under suspension of the Rules, the Senate considered the following:

ENACTORS

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

Emergency Resolve

Resolve, To Prepare Maine's Students for Active Citizenship
H.P. 333 L.D. 425
(C "A" H-239)

On motion by Senator **GAGNON** of Kennebec, placed on the **SPECIAL STUDY TABLE**, pending **FINAL PASSAGE**, in concurrence.

Out of order and under suspension of the Rules, the Senate considered the following:

REPORTS OF COMMITTEES

House

Ought to Pass As Amended

The Committee on **LABOR** on Bill "An Act To Provide Equitable Treatment to State Employees"

H.P. 1198 L.D. 1619

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-531)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-531)**.

Report **READ** and **ACCEPTED**, in concurrence.

READ ONCE.

Committee Amendment "A" (H-531) **READ**.

On motion by Senator **BLAIS** of Kennebec, **TABLED** until Later in Today's Session, pending **ADOPTION** of Committee Amendment "A" (H-531), in concurrence.

The Committee on **UTILITIES AND ENERGY** on Bill "An Act to Amend the Charter of the New Portland Water District" (EMERGENCY)

H.P. 1199 L.D. 1620

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-530)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-530)**.

Report **READ** and **ACCEPTED**, in concurrence.

READ ONCE.

Committee Amendment "A" (H-530) **READ** and **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED**, in concurrence.

Out of order and under suspension of the Rules, the Senate considered the following:

REPORTS OF COMMITTEES

House

Divided Report

The Majority of the Committee on **LABOR** on Bill "An Act to Amend the Maine Workers' Compensation Act of 1992 as it Relates to Compensation for Amputation of a Body Part"
H.P. 110 L.D. 101

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-65).**

Signed:

Senators:

EDMONDS of Cumberland
STANLEY of Penobscot

Representatives:

SMITH of Van Buren
HUTTON of Bowdoinham
HATCH of Skowhegan
PATRICK of Rumford
JACKSON of Fort Kent
WATSON of Bath

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

Signed:

Senator:

BLAIS of Kennebec

Representatives:

TREADWELL of Carmel
CRESSEY of Baldwin
HEIDRICH of Oxford
NUTTING of Oakland

Comes from the House with the Minority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.

Reports **READ**.

Senator **EDMONDS** of Cumberland moved the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in **NON-CONCURRENCE**.

On further motion by same Senator, **TABLED** until Later in Today's Session, pending the motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in **NON-CONCURRENCE**.

Out of order and under suspension of the Rules, the Senate considered the following:

REPORTS OF COMMITTEES

House

Divided Report

The Majority of the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act To Provide an Exception to the Laws Governing Fingerprinting of Educational Personnel"
(EMERGENCY)

H.P. 924 L.D. 1250

Reported that the same **Ought Not to Pass.**

Signed:

Senators:

DOUGLASS of Androscoggin
BRENNAN of Cumberland
MITCHELL of Penobscot

Representatives:

CUMMINGS of Portland
GAGNE-FRIEL of Buckfield
NORTON of Bangor
THOMAS of Orono
FINCH of Fairfield
FISCHER of Presque Isle
MURPHY of Kennebunk
ANDREWS of York
LEDWIN of Holden

The Minority of the same Committee on the same subject reported that the same **Ought To Pass.**

Signed:

Representative:

DAVIS of Falmouth

Comes from the House with the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.

Reports **READ**.

Senator **DOUGLASS** of Androscoggin moved the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in concurrence.

On motion by Senator **DAVIS** of Piscataquis, **TABLED** until Later in Today's Session, pending the motion by Senator **DOUGLASS** of Androscoggin to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in concurrence.

Out of order and under suspension of the Rules, the Senate considered the following:

REPORTS OF COMMITTEES

House

Divided Report

The Majority of the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act To Repeal the Fingerprinting Requirement for Teachers and School Employees"

H.P. 483 L.D. 653

Reported that the same **Ought Not to Pass**.

Signed:

Senators:

DOUGLASS of Androscoggin
BRENNAN of Cumberland
MITCHELL of Penobscot

Representatives:

CUMMINGS of Portland
LEDWIN of Holden
MURPHY of Kennebunk
ANDREWS of York
FISCHER of Presque Isle

The Minority of the same Committee on the same subject reported that the same **Ought To Pass as Amended by Committee Amendment "A" (H-481)**.

Signed:

Representatives:

GAGNE-FRIEL of Buckfield
DAVIS of Falmouth
FINCH of Fairfield
NORTON of Bangor
THOMAS of Orono

Comes from the House with the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.

Reports **READ**.

Senator **DOUGLASS** of Androscoggin moved the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in concurrence.

On motion by Senator **WOODCOCK** of Franklin, **TABLED** until Later in Today's Session, pending the motion by Senator **DOUGLASS** of Androscoggin to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in concurrence.

Senate at Ease.

Senate called to order by the President.

Senator **TREAT** of Kennebec was granted unanimous consent to address the Senate off the Record.

Senator **DAVIS** of Piscataquis was granted unanimous consent to address the Senate off the Record.

All matters thus acted upon were ordered sent down forthwith for concurrence.

RECESSED until 5:00 in the afternoon.

After Recess

Senate called to order by the President.

ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later Today Assigned matter:

Bill "An Act To Provide Equitable Treatment to State Employees"
H.P. 1198 L.D. 1619

Tabled - May 29, 2003, by Senator **BLAIS** of Kennebec

Pending - **ADOPTION OF COMMITTEE AMENDMENT "A" (H-531)**, in concurrence

(In House, May 27, 2003, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-531)**.)

(In Senate, May 29, 2003, Committee Amendment "A" (H-531) **READ**.)

Committee Amendment "A" (H-531) **ADOPTED**, in concurrence.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED**, in concurrence.

The Chair laid before the Senate the following Tabled and Later Today Assigned matter:

HOUSE REPORTS - from the Committee on **LABOR** on Bill "An Act to Amend the Maine Workers' Compensation Act of 1992 as it Relates to Compensation for Amputation of a Body Part"
H.P. 110 L.D. 101

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-65)** (8 members)

Minority - **Ought Not To Pass** (5 members)

Tabled - May 28, 2003, by Senator **EDMONDS** of Cumberland

Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in **NON-CONCURRENCE**

(In House, May 1, 2003, the Minority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.)

(In Senate, May 28, 2003, Reports **READ**.)

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Blais.

Senator **BLAIS:** Thank you very much, Madame President, men and women of the Senate. I won't go into a great deal of detail on this matter, but what I will say is this is yet another bill that comes before us that increases costs on Maine employers. I hope that you would oppose it. What this piece of legislation does is doubles the benefit in the case of amputation. This is a cost that we should not be putting on Maine employers at this time. It's just going to increase costs for the Workers' Compensation System and also reverses the reforms of 1992. I would hope that you would join me in opposing the motion on the floor. Thank you.

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

Senator **EDMONDS:** Thank you, Madame President, men and women of the Senate. I want to clarify a few things here. The good Senator from Kennebec, Senator Blais, is correct. This does double the benefit paid to folks who have lost a body part, a limb, on the job. Let me give you a little context here. In the year 2000 there were 29 people who had a body part amputated. This is excluding fingertips, by the way. In 2001 there were 30 people to whom this happened. Both of those are quite a bit above previous years. This is the magnitude of the discussion we're having here. In committee, we put on an amendment that made the bill applicable to injuries on or after January 1, 2003 rather than retroactively. I'm assuming, unfortunately, if we go on as we have been going on in the workplace in Maine, about 30 people will lose a limb on the job in Maine in the coming year. That is a small number of people, but to those individuals this is an enormous difficulty. Once you've had a body part amputated, your whole work career, undoubtedly, changes. We felt it only fair, that somebody would get a greater benefit for the tragedy of losing a limb. I would encourage you to vote with me on the Ought to Pass as Amended report.

Same Senator requested a Roll Call.

THE PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Blais.

Senator **BLAIS:** Thank you, Madame President, men and women of the Senate. Current law already provides adequate compensation in its benefit structure by providing wage and loss benefits in the case of an amputation. I'd like to remind you once again, what this piece of legislation does is double the benefit. Recently the NCCI estimated that this piece of legislation could potentially add between \$400,000 and \$2 million in additional yearly costs to the Maine system, just when we are on the heels of trying to recover from a crisis in the Workers' Compensation System. Now is not the time to be increasing benefits and rolling back the reforms of 1992. This is just one more impediment on Maine's employers. I hope that you will join me in opposing the motion that is on the floor. Thank you.

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

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Cumberland, Senator Edmonds to Accept the Majority Ought to Pass as Amended Report. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#118)

YEAS: Senators: BRENNAN, BROMLEY, BRYANT, CATHCART, DAMON, DOUGLASS, EDMONDS, GAGNON, HALL, HATCH, MARTIN, ROTUNDO, STANLEY, STRIMLING, TREAT, THE PRESIDENT - BEVERLY C. DAGGETT

NAYS: Senators: BENNETT, BLAIS, CARPENTER, DAVIS, GILMAN, KNEELAND, LEMONT, MAYO, MITCHELL, NASS, PENDLETON, SAVAGE, SAWYER, WESTON, WOODCOCK, YOUNGBLOOD

ABSENT: Senators: LAFOUNTAIN, SHOREY, TURNER

16 Senators having voted in the affirmative and 16 Senators having voted in the negative, with 3 Senators being absent, the motion by Senator **EDMONDS** of Cumberland to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in **NON-CONCURRENCE, FAILED**.

The Minority **OUGHT NOT TO PASS** Report **ACCEPTED**, in concurrence.

The Chair laid before the Senate the following Tabled and Later Today Assigned matter:

HOUSE REPORTS - from the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act To Provide an Exception to the Laws Governing Fingerprinting of Educational Personnel" (EMERGENCY)

H.P. 924 L.D. 1250

Majority - **Ought Not to Pass** (12 members)

Minority - **Ought To Pass** (1 member)

Tabled - May 28, 2003, by Senator **DAVIS** of Piscataquis

Pending - motion by Senator **DOUGLASS** of Androscoggin to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in concurrence

(In House, May 27, 2003, the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.)

(In Senate, May 28, 2003, Reports **READ**.)

On motion by Senator **DOUGLASS** of Androscoggin, the Majority **OUGHT NOT TO PASS** Report **ACCEPTED**, in concurrence.

The Chair laid before the Senate the following Tabled and Later Today Assigned matter:

HOUSE REPORTS - from the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act To Repeal the Fingerprinting Requirement for Teachers and School Employees" H.P. 483 L.D. 653

Majority - **Ought Not to Pass** (8 members)

Minority - **Ought To Pass as Amended by Committee Amendment "A" (H-481)** (5 members)

Tabled - May 28, 2003, by Senator **WOODCOCK** of Franklin

Pending - motion by Senator **DOUGLASS** of Androscoggin to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in concurrence

(In House, May 27, 2003, the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.)

(In Senate, May 28, 2003, Reports **READ**.)

On motion by Senator **DAMON** of Hancock, 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 opened the vote.

ROLL CALL (#119)

YEAS: Senators: BENNETT, BLAIS, BRENNAN, CARPENTER, DOUGLASS, MARTIN, MAYO, MITCHELL, PENDLETON, ROTUNDO, STANLEY, WESTON, YOUNGBLOOD

NAYS: Senators: BROMLEY, BRYANT, CATHCART, DAMON, DAVIS, EDMONDS, GAGNON, GILMAN, HALL, HATCH, KNEELAND, LEMONT, NASS, SAVAGE, SAWYER, STRIMLING, TREAT, WOODCOCK, THE PRESIDENT - BEVERLY C. DAGGETT

ABSENT: Senators: LAFOUNTAIN, SHOREY, TURNER

13 Senators having voted in the affirmative and 19 Senators having voted in the negative, with 3 Senators being absent, the motion by Senator **DOUGLASS** of Androscoggin to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in concurrence, **FAILED**.

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

THE PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Martin.

Senator **MARTIN:** Thank you, Madame President and members of the Senate. I'd like to pose a question through the chair to any member of the committee as to whether or not this bill actually repeals entirely the entire requirement for all fingerprinting?

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Douglass.

Senator **DOUGLASS:** Madame President, men and women of the Senate, yes. This bill is a complete repeal of the fingerprinting law and eradication of the fingerprints from the database.

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

Senator **MITCHELL:** Thank you, Madame President, women and men of the Senate. I would ask you to please vote against the minority Ought to Pass report. In committee, we had asked our commissioner to come before our leadership and bring to us information that would actually provide us with enough information as to whether we should repeal this law in its completeness, whether we should have new hires only, or whether we should leave the law as it is. Based on the information that has been derived from existing fingerprinting to date, what is the effect it has had on the recertification, the new hires, or the hiring of new people? What is the effect it is going to have? Will child abuse and pedophiles be eliminated by us keeping this law in place? Should we keep the law as it is, repeal it in its entirety, or go with new hires only?

The Commissioner actually consulted with our Attorney General, presented the Governor with information, and came back to our committee. She said, based on what she cannot reveal to us due to confidentiality laws, and based on the information she has been working with, which is based on our existing employees, we should keep the law as it is. We all know that we don't want our children subjected to child abuse. We don't want them subjected to pedophiles. The reason you see three Senators voting Ought Not to Pass on this bill is because this would mean that with 80% of the current employees having been fingerprinted, we are going to repeal this when we know that of the 80% we have found situations that really support us keeping this law in place. I would ask you to please, for the benefit of our children, to vote against the minority Ought to Pass as Amended report so that we can retain this existing law and continue the fingerprinting of the remaining 20% of the employees that are currently left to fingerprint.

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

Senator **WOODCOCK:** Thank you, Madame President, ladies and gentlemen of the Senate. I am a professional educator. For 25 years I've existed in the classrooms of high schools throughout the portion of Maine we call central Maine. This bill is important

for many reasons. It was ill conceived, the fingerprinting law, to begin with, in my opinion. The main thrust of this issue, which has yet to be resolved, is that when we catch people for interacting inappropriately with youngsters in the classrooms or in the buildings of the schools of our state we fail to prosecute them. In so doing, they continue to be a part of the educational profession. I have expressed this to many people within my own profession. I've expressed it to many legislators. This is a meaningless fingerprinting law unless the school districts decide to go into litigation against those that they catch wrong doing. With that said, no one wants pedophiles in the classroom. Until we stop that particular lack of litigation, they will be there. Thank you.

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

Senator **MITCHELL:** Thank you, Madame President, ladies and gentlemen of the Senate. I understand the emotion and the feelings of our good Senator from Franklin, Senator Woodcock. However, we must look ahead, not at the past performances. The past performances are why we've had our children abused. We need to look at how we're correcting that. Completing the law that we enacted several years ago enables us to move forward and correct what was misconceived, ill conceived, or the way it has been handled. We cannot start by living in the past. We have to look to the future and be assured that the people we have in our courts and our administrators are going to make sure that the children are protected. This fingerprinting is going to assist them in making that happen. Again, I implore you to please vote against the minority Ought to Pass as Amended report.

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

Senator **WOODCOCK:** Thank you, Madame President, ladies and gentlemen of the Senate. I totally agree with the Senator from Penobscot, Senator Mitchell, we should be looking ahead. I've said that from the beginning at the inception of this law. There is no reason to be looking behind. Hence why are we fingerprinting teachers who have been in the business for 25 years?

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Rotundo.

Senator **ROTUNDO:** Thank you, Madame President. I request permission to ask a question through the chair.

THE PRESIDENT: The Senator may pose her question.

Senator **ROTUNDO:** Thank you. I wondered if this law allows for the reinstatement of employees who have lost their positions as a result of fingerprinting?

THE PRESIDENT: The Senator from Androscoggin, Senator Rotundo poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Androscoggin, Senator Douglass.

Senator **DOUGLASS:** Madame President, at the risk of being wrong, I believe this is not one of the bills that reinstates teachers

who refused to be fingerprinted. I believe that was the question. Earlier on our calendar we had another bill that did that. That was L.D. 1250. Some of the bills had combinations of scenarios that are relevant to fingerprinting, but I believe this one was an outright repeal. I don't believe it included the reinstatement of teachers who were not recertified.

THE PRESIDENT: The Chair recognizes the Senator from Waldo, Senator Weston.

Senator **WESTON:** Thank you, Madame President, men and women of the Senate. May I pose a question through the chair?

THE PRESIDENT: The Senator may pose her question.

Senator **WESTON:** With regard to the last question and the answer, if the law is repealed, from this day forward there will be no fingerprinting. Anyone who has been found to have a conviction, will there be any record to show that from this day forward without any fingerprinting law?

THE PRESIDENT: The Senator from Waldo, Senator Weston poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Androscoggin, Senator Douglass.

Senator **DOUGLASS:** Men and women of the Senate, I apologize. I was hoping a different bill, which I believe is cleaner in its issues, would come before us first. On this particular bill, the question of what happens to teachers who were not certified under the current law is that they would not be reinstated although the fingerprints would go away, so far as they are now in a database. There are three categories of people who work in the school system. They would not be reinstated. What would happen is we simply wouldn't have the fingerprinting law going forward. This, as I recall, does not reinstate those whose certification has been denied. Now 4/5 of the teaching population has gone through this process at this point. There is 1/5 left to go under the old law. That group of educators is slated to have this procedure of fingerprinting occur this summer, between now and the end of next September.

THE PRESIDENT: The pending question before the Senate is Acceptance of the Minority Ought to Pass as Amended Report. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#120)

YEAS: Senators: BROMLEY, BRYANT, CATHCART, DAMON, DAVIS, EDMONDS, GAGNON, HALL, HATCH, KNEELAND, NASS, SAVAGE, STRIMLING, TREAT, WOODCOCK, THE PRESIDENT - BEVERLY C. DAGGETT

NAYS: Senators: BENNETT, BLAIS, BRENNAN, CARPENTER, DOUGLASS, GILMAN, LEMONT, MARTIN, MAYO, MITCHELL, PENDLETON,

ROTUNDO, SAWYER, STANLEY, WESTON,
YOUNGBLOOD

ABSENT: Senators: LAFOUNTAIN, SHOREY, TURNER

16 Senators having voted in the affirmative and 16 Senators having voted in the negative, with 3 Senators being absent, **ACCEPTANCE** of the Minority **OUGHT TO PASS AS AMENDED** Report, in **NON-CONCURRENCE**, **FAILED**.

Senator **MARTIN** of Aroostook moved the Senate **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in concurrence.

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

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

Senator **BRENNAN:** Thank you, Madame President, men and women of the Senate. We stand on the verge with this vote of doing what no other state in the country has done. We've been very proud in the past. Dirigo, we lead the country. No other state that has passed fingerprinting has repealed fingerprinting. We stand on the verge of leading the country and being the first to repeal fingerprinting. We weren't even the first to pass fingerprinting. In fact, over 40 other states have fingerprinting laws, 40 other states. We will now stand as being the first to say we want to repeal fingerprinting.

Let me briefly, just for a minute, tell you how we got here. In 1995 - 1996 the original bill came forward to do background checks on school personnel. I was on the Education Committee at that time. I was a little skeptical of that proposal, but everybody on the committee, and I would say everybody in this chamber, supported the fact that we should do good, appropriate background checks not only on school employees, but any employee. Nonetheless, we said that we would put together a stakeholders group made up of representatives from Maine Municipal, the Maine School Board Management, superintendents, principals, the Maine Education Association, and the State Police. They would work this out and come back to us with something that they think would work. They came back in 1997. The committee looked at the stakeholder proposal. Everybody agreed to it. You know what they said at the time? We agree to this because who could be opposed to protecting children. In 1997, this passed on the consent calendar. Many legislators say they don't remember voting for fingerprinting or against fingerprinting. They are right. There was no roll call vote. It was a unanimous report that everybody supported, including all the stakeholders and the Education Committee. That was in 1997. How many repeal bills came before the legislature in 1998? None. How many repeal bills came before the legislature in 1999? None. It wasn't until the year 2000 that there was the first discussion about either amending or repealing fingerprinting. The only issue up until that time was who was going to pay. The legislature, and I'll take responsibility for this, made a mistake in 1997 when this was passed by saying that teachers and school personnel would have to pay the cost of both the fingerprinting and the background check.

Why did we get to the point of supporting fingerprinting with all of the negative things that are associated with fingerprinting?

It is associated with criminal activity, of doing something wrong. People on the Education Committee were very sensitive to that issue, but became convinced that fingerprinting was the only way to do background checks that were 100% accurate. You didn't have false positives or false negatives. Guess what? We looked into every other avenue before we got to fingerprinting. We looked into social security background checks, name background checks, state background checks, everything. The only way that we could be assured of doing an accurate background check on school personnel was by fingerprinting. There was no repeal in 1998 or 1999. The issue before us in 2000 was who was going to pay. That issue then turned into a debate about whether or not we should do fingerprinting, and we know the history from that.

Let me say this. This issue has been turned into an issue about child abuse and neglect and keeping 'potential predators' away from our children. That is one of the issues, but it is not the only issue. This issue is about making sure that the people who work in school settings do not have criminal backgrounds that would be detrimental to the position that they are holding. This law applies not only to teachers but also to school bus drivers, other school personnel, cafeteria workers, and people who work in the business office. It is not about teachers. It's about people who work in school settings. Under this law, you can be disqualified if you work in Iowa and had three OUIs and came to Maine to try to be a school bus driver. That would disqualify you from continuing to work as a school bus driver in the State of Maine. I think all of us would agree that this is a good thing. If you embezzled money in Arizona, you shouldn't be the Director of Financial Aid for the school of Scarborough. I think we all agree with that. This is a good thing. When parents go to adopt a child, they are fingerprinted. We don't look upon them as criminals or say that they have done anything unsavory. In fact, we commend them for moving forward with that step to adopt a child. Somehow, because we're doing fingerprinting with school personnel to assure that people that may have a felonious offense in their background that would make it inappropriate for them to be in a school setting, it all of a sudden becomes a civil rights issue and casts aspersions on both teachers and people that work in school settings. It is simply not true.

The last point that I would like to make before we take this vote is that we had not only one Governor, but two Governors that sat down and looked at the data. They looked at the program, looked at the policy, and said that this is the right thing to do. I will say, not only one, but two Commissioners of the Department of Education looked at the program, reviewed the data, and came to the conclusion that this was sound public policy. Again, the one thing that I regret and take some responsibility for that happened in 2000 when we were visiting this issue, is that we did not make it clear that aggregate data that was gathered as a result of decisions made by the Department of Education would be made available to the legislature for review. The Education Committee fully intended, at that time, that this data be made available to the legislature. Because we were not specific about that being allowed and available to the legislature, it then fell under Maine's privacy act. That is something that this legislature could remedy. I believe that if the data, if the information, that was available to the Commissioner of Education and other elected officials in this state when they made their decision was available to the legislature, I believe we would do the same. I ask you not to accept the majority Ought Not to Pass report. You will notice a majority of the Education Committee was opposed to this. I think that this body should go along with the

recommendation of the Education Committee and I urge you to oppose the pending motion.

THE PRESIDENT: The Chair recognizes the Senator from Somerset, Senator Hatch.

Senator HATCH: Thank you, Madame President, ladies and gentlemen of the Senate. They say that memory is a good thing, but I don't remember ever giving my okay and I voted on this bill. I want you to know that I thought it was bad then and it is still bad policy now. I would appreciate it if you would accept this Ought Not to Pass report and go on and pass the Ought to Pass as Amended report. I think over the years we've done our teachers a real disservice. We don't have any evidence of any wrong doing by any teacher in this state. That information is not given. I called my superintendent in S.A.D. 54 on the day that this bill came up in the House in 1997 because I hadn't heard from him. I said, okay what is your feeling on this bill? He said, we do great background checks. In other words, this bill wasn't necessary. It wasn't then and it isn't now. I really feel we have given all the teachers in this state a real disservice by having this on the books. They say, well if you've got nothing to hide you won't mind being fingerprinted. Why should we fingerprint people who we entrust? We should have done background checks in the first place. It's time for the foolishness to stop and us to be looking at everybody as if they are perverted, or that they have done something wrong, even before we know who they are. I would ask you to upset this Ought Not to Pass and go on to pass the Ought to Pass as Amended report to repeal fingerprinting. Thank you.

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

Senator WOODCOCK: Thank you, Madame President, ladies and gentlemen of the Senate. Many years ago, as did the good Senator from Cumberland, Senator Brennan, I competed on the football field and took a few hard hits from middle line backers. I am going to support the good Senator from Cumberland, Senator Brennan's, notion that we ought to go ahead and oppose this Ought Not to Pass motion that is on the floor and I am completely supportive of that concept because I agree with him.

I would share with you some more things, if I might. I would like to reiterate. School systems do not prosecute pedophiles. It is very seldom they do so. The reasons are perfectly acceptable to me, or most of them are. You don't want a young child to be involved with testimony. You don't want a young child to be brought before people and to have to go through the horrible experience of reiterating what had happened with the so-called professional. The arrangement is usually made that they resign or are fired. In so doing, they now have no criminal record. When they have no criminal record, they can be fingerprinted from now until the end of this fingerprinting program, hopefully in 90 days. It will mean nothing as far as that official record is concerned.

The comment has been made that this is not about teachers. I want to share with you the fact that this is about teachers. In the teaching community, this law, from its inception, has created exceptional distraught. We're pedophiles by implication. There have been 1,200 hits. I didn't say that, somebody leaked that information to the press. They weren't supposed to, but they did it to justify the system. When you have 1,200 hits, the

assumption is that there are 1,200 pedophiles. This is not necessarily true. The criminal code is different in some states. It means that the degree of your prosecution could be different in Maine and you would be a hit on our system. Does it make you a pedophile? No. Does it make you someone who may have committed a traffic violation of the highest degree? Possibly. We don't know. We're not going to know because the records are supposed to be confidential.

I made a phone call one day to the Department of Education and posed the question of if could I use my military fingerprints in lieu of being fingerprinted again. I figured if I'd served in the Vietnam War and served almost three years in the military defending our nation, at least my fingerprints should be acceptable. I was told that I could not. I had to be fingerprinted anew, 'because you may have altered them in some way.' It has been the first and foremost thing on my mind since I came home from Vietnam, altering my fingerprints so that I could go into the classroom and teach for 25 years and not be caught for my wrong doings in downtown Saigon. We were being charged \$50 to have our own fingerprints taken. I will assure you, if you want the experience of feeling very touchy feely about life, pick a \$50 bill out of your pocket, give it to the State Police, and say, 'take my fingerprints, I am not a pedophile.'

I would also concur with the good Senator from Cumberland, Senator Brennan. We do lead in Maine. It's our motto. I differ a little bit with his interpretation. I think it is time to lead and get rid of a law that has meant very little, has very unsuccessful applications, in my opinion, and has sullied the reputation of many good professionals in this state. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Waldo, Senator Weston.

Senator WESTON: Thank you, Madame President, men and women of the Senate. I don't think when I debated this last I thought I would be debating it again, especially not here in this chamber. When you serve in this legislature, you live in a fishbowl. It is even more so when your husband teaches and is principal for 30 years in the very community that you live in. When you lead Cub Scouts and Girl Scouts and substitute teach, that means your whole family is in a fishbowl. Neither my husband nor I could have committed any kind of crime and not had probably every person in my county know it. When I go into a classroom for three or four months taking over the entire education for this class, and I meet a parent at the door in the morning, the very least I should offer them is the confidence that the very person who is going to be keeping them in a room for eight hours has not been convicted of a felony or a crime against a child. Is that too much for a parent to ask? My husband and I went gladly to be fingerprinted even though we live in a fishbowl. I want those parents to have that confidence. We mandate education in this state. Our parents, unless you can afford a private school, have no choice about who supervises that child. Perhaps there are school districts that pass on people who they shouldn't. If they do not prosecute, shame on them. I am not going to use that as an excuse for not doing something that we can do as a state, that we've started doing, and has been proven. I am not willing to roll that back. I am very pleased to have been fingerprinted and to give the parents in my school district the confidence that at least I have not been convicted. I can't promise them safety for their child for all that day. There are very

few promises I can make. This is one that I can make and back up. I think we should be willing to do that. Thank you.

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

Senator **BRENNAN:** Thank you, Madame President, men and women of the Senate. I want to thank the good Senator from Franklin, Senator Woodcock, for pointing out the error of my comment, and in fact, I am very supportive of the pending motion, which is to accept the majority Ought to Pass as Amended report.

THE PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Martin.

Senator **MARTIN:** Thank you, Madame President and members of the Senate. I, too, served on the Education Committee for a brief time in the other body. I went through what some of you have heard in the discussion that took place here today and the history, as pointed out by the good Senator from Cumberland, Senator Brennan.

Frankly, we went through a period where no one paid much attention. Frankly in my opinion, if the legislature had been paying for this, it never would have become an issue. It became an issue only because the legislature failed to act in January of that year to put the money in the budget to pay for it. It dragged through January, February, March, April, and then at that point it became a horrible mess. I've never forgotten that the enactment of the legislation was unanimous. It was sponsored by the Maine Teachers Association and the Maine School Board Association. It was supported by them and everyone in this state supported it, for obvious reasons. It clearly was an educational issue and not a teacher issue. It was then and I think it still is today.

I presently serve on a school board, probably the worst political office I've ever held. I can assure you that it's a easy thing to tell teachers what we have to go through. I want to relate to you an experience that made me convinced that this law ought to stay in place. As a member of the school board, we were in the process of hiring a teacher from another school district. The teacher came with the greatest of recommendations from the superintendent. We ended up offering the teacher a position. The teacher hadn't been there more than two weeks when the State Police came and arrested the individual. Where is the fault? The system itself is at fault. Basically, superintendents don't want to get sued and school boards don't want to get sued. What they do is suggest that the teacher just go away and they will give them a letter of recommendation. This law at least gives us an ability to do some checking. Frankly, it is the one thing we have, especially as we now try to find specialized teaching individuals and we have to find them from out-of-state, because out-of-state records are better than what we have here.

I don't like fingerprinting any better than anyone else. Frankly, on the other side, I might point out that just a few days ago, by a fairly good vote, this body decided to store DNA from minors in case of the possibility that we may have to use it when they get to be adults and commit other crimes. We can't have it both ways. It seems to me that the best thing we can do is accept the Ought Not to Pass report today, which I believe is the pending motion. That is the majority report from the Education Committee.

THE PRESIDENT: The Chair recognizes the Senator from Oxford, Senator Bennett.

Senator **BENNETT:** Thank you, Madame President and fellow members of the Senate. I rise with a confession. I have changed my opinion on this issue. I will hasten to add that I have not changed my opinion on this issue within the same speech. I have changed my opinion on this issue over the years. I was present in 1997 when the matter was put under the hammer in the Senate. I didn't object to it going under the hammer. I was here in the year 2000 when we had the vigorous debate about this issue. I voted against the fingerprinting regimen. It seems to me, however, now that indignity has been done. I objected to listening to the story of one school where they actually had the teachers line up in one of my schools, go through the line, and have their fingerprints taken in front of the students. It was like a perp walk. Was that done right? No, of course not. We do have the information now. Are we using it well? Perhaps we can use it better. We've spent millions of dollars on getting this information and it seems to me foolhardy to throw it in the waste can. The information may not be perfect, but it is there. We ought to use it. In my view, we now should turn our attention to using it well. It seems to me that, here today, we are debating an issue that is at least three years old, and perhaps six years old. If we really want to look at the future, we ought to think about using the information and moving forward rather than looking back to the debate of the year 2000. Thank you.

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

Senator **WOODCOCK:** Thank you, Madame President, ladies and gentlemen of the Senate. I am fairly new to the political arena, but I want to thank the good Senator from Cumberland, Senator Brennan, for teaching me this evening the subtle art of confusing the issue because I thought I knew how I was going to vote on this, but I'm really not sure. Thank you.

THE PRESIDENT: The pending question before the Senate Acceptance of the Majority Ought Not to Pass Report. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#121)

YEAS: Senators: BENNETT, BLAIS, BRENNAN, CARPENTER, DOUGLASS, GILMAN, LEMONT, MARTIN, MAYO, MITCHELL, PENDLETON, ROTUNDO, SAWYER, STANLEY, WESTON, YOUNGBLOOD

NAYS: Senators: BROMLEY, BRYANT, CATHCART, DAMON, DAVIS, EDMONDS, GAGNON, HALL, HATCH, KNEELAND, NASS, SAVAGE, STRIMLING, TREAT, WOODCOCK, THE PRESIDENT - BEVERLY C. DAGGETT

ABSENT: Senators: LAFOUNTAIN, SHOREY, TURNER

16 Senators having voted in the affirmative and 16 Senators having voted in the negative, with 3 Senators being absent, the motion by Senator **MARTIN** of Aroostook to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report, in concurrence, **FAILED**.

On motion by Senator **TREAT** of Kennebec, **TABLED** until Later in Today's Session, pending **ACCEPTANCE** of the Minority **OUGHT TO PASS AS AMENDED** Report, in **NON-CONCURRENCE**.

Out of order and under suspension of the Rules, the Senate considered the following:

REPORTS OF COMMITTEES

House

Divided Report

The Majority of the Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act To Restrict Fingerprinting of Educational Personnel to New Hires"

H.P. 667 L.D. 890

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-520)**.

Signed:

Senator:
DOUGLASS of Androscoggin

Representatives:
GAGNE-FRIEL of Buckfield
DAVIS of Falmouth
FINCH of Fairfield
CUMMINGS of Portland
NORTON of Bangor
MURPHY of Kennebunk
THOMAS of Orono
FISCHER of Presque Isle

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

Signed:

Senators:
MITCHELL of Penobscot
BRENNAN of Cumberland

Representatives:
LEDWIN of Holden
ANDREWS of York

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-520)**.

Reports **READ**.

Senator **DOUGLASS** of Androscoggin moved the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Douglass.

Senator **DOUGLASS:** Madame President, men and women of the Senate. This is essentially the same bill as that which we just debated. However, it comes in this form. It essentially repeals the fingerprinting law of 1996 or 1998, whichever it was. It establishes that fingerprinting will go forward from August 2003 alone on new hires, newly certified personnel, newly accrued personnel, or anyone who works in the school setting under Chapters 501 and 502 of our education laws. This is a cleaner way of looking at a problem that actually is, in many respects, history. It is the issue of those teachers who have been in our system for so many years, from the time before we could use electronic databases and so forth and so on.

I will tell you, quite frankly, that I have voted on both sides of the issue here. It seemed to me, when this was first brought to my attention when I came to this body in 1998, the issue was who was going to pay for the fingerprinting. I wasn't convinced that we really had information enough to determine whether or not it was a good idea to do fingerprinting. My experience was that as long as you had a person's name and date of birth you could get their records, particularly their record in Maine. I think that is still true. I personally think every school district should be running background checks on every person who is working closely with students in their district. However, some of the debate is over what you can do easily.

The reason I believe that the earlier law was passed was because with the electronic database it is easy to put information out there. Everything from every state in the union can come back that someone might or might not have on their record. I'm quite sure that in the majority of cases that information has been kept confidential, and we have most of our teachers working in our school systems after having been fingerprinted.

Nevertheless, this is a compromise bill. Currently 4/5 of our teachers have been fingerprinted. Although we cannot be told that anyone has been denied recertification or approval within the school setting, as in the case with bus drivers or other school personnel, it seems that this may very well have been the case. What this bill does, as a compromise, is to get rid of the database so that those people who have already been through the check now no longer have to worry that their fingerprints are out there, in some federal system, ripe for the taking if you will, as we worry about electronic issues. We have screened 4/5 of our teachers and education personnel. There is 1/5 that has yet to be done. At the time that this comes into effect, there will have been more who have been screened. In effect, we're kind of having the old law. Going forward, we are only applying the law to new hires, teachers who are asking for new certificates or certification under our laws, and personnel who need approval under the chapters that apply to public education in our state. What this bill does, in effect, is take the database out of the system. It does not reinstate those who were not recertified, and it keeps fingerprinting for those who are new applicants.

I think it accomplishes a compromise that I recommend to you. It provides that we will have background checks for every

person who works in a school beginning in August. At that time, we will have already screened virtually everyone who is in our current system. The issue of who is in our system now and have they been screened will have been answered, and who goes forward subject to this provision is also answered. We also eliminate the database for those who are new. It is a compromise. If you are passionate about one side or the other, this may not appeal to you. That is exactly why I think it is the right thing to do. I hope you will vote in favor.

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

Senator **SAWYER:** Thank you, Madame President, ladies and gentlemen of the Senate. I can't pass up this opportunity to stick my oar in the water on the topic before us. I suppose we each bring our own life experiences to this discussion, particularly those of us that were not here when the bill was passed nor sitting in on the Education Committee's discussions. In my own life experiences, I've had, I think, two experiences that provide me with some guidance. The first is that for 27 years, because I was in the transportation industry, I needed to provide a Department of Transportation drug test even though for most of those 27 years I was navigating a desk around my office. The DOT requires it and every employee in my company had to pass that test. Secondly, I would show you, but I understand the rules say I can't, in my briefcase is an application to the U.S. Coastguard, which now not only requires a drug test, but also requires my submitting fingerprints. What do I get from that? One of the things I get from that is that I know the license holder working beside me has dramatically decreased the opportunity to injure either themselves or me in the process. I will be voting in favor of continuing the existing law. I would just indicate one of life's embarrassing experiences. You have not lived until you've provided a witnessed drug test under the Department of Transportation. Thank you.

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

Senator **BRENNAN:** Thank you, Madame President, men and women of the Senate. I feel fairly confident that I have it right this time. I'm going to encourage you to oppose the pending motion to accept the majority Ought to Pass report and instead accept the minority Ought Not to Pass report. The Senator from Androscoggin, Senator Douglass, mentioned that this was cleaner way of looking at the issue. She may be right, and this is a cleaner way of looking at the issue, but it certainly is not a more fair way of looking at the issue. As was pointed out, the overwhelming majority, in fact 80%, of school personnel have already been fingerprinted and had background checks done. There are only about 3,500 to 4,000 remaining people that have not been fingerprinted or had that type of background check done. I think it is unfair to all those people that have been subject to current law to then excuse the remaining few from fingerprinting and from the type of background check that we've had for the last three years.

Secondly, I'd like to point out that when the law was passed in 2000 it was specifically written into the law that the database and fingerprinting could only be used for background checks for school personnel. It could not be used in any other way for any other purpose or for any other type of criminal activity or pursuit.

We made it very clear that those fingerprints remain in that database specifically for doing the background checks.

Lastly, and probably the least compelling of the argument that I would make here, the public has shown broad and strong support for this public policy. I don't ever ask anybody or encourage anybody to vote based on opinion poll or simply what the public might say in a survey. I would remind members of this chamber that this issue, while it might be contentious here and it may be contentious with some members of school personnel, is not a contentious issue with the public.

I think one last point is that the other issue that good Senator from Franklin, Senator Woodcock, has made is that fingerprinting somehow injects an element of criminal behavior on those school personnel or those in the teaching profession. If this bill were to pass and people were to vote for this bill, what they would be basically saying is that it is okay just to fingerprint those new people that are coming into the system. All the things that were said about fingerprinting doesn't apply to them, it only applies to the policy that we've had for the last four years. Again, I think that is unfair and I think it is incongruent with the policy that we have tried to put forward in the last three years. Thank you and I hope you will join me in opposing the pending motion.

THE PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Mayo.

Senator **MAYO:** Thank you, Madame President, ladies and gentlemen of the Senate. Excuse my voice, I'm in the process of losing it. Some in this body might be happy at that point.

I had a similar bill to the one that we have before us tonight, L.D. 890. It had one different twist to it in that I, at that point, was supportive of doing. Something to aid and assist those men and women who left teaching because of their strong feelings on that issue. I think there are very few school systems in this state that did not experience that at least once during this, what I consider to be, unfortunate experience. I was here in the other body when this bill was passed. I have had the experience in the past of debating the good Senator from Cumberland, Senator Brennan, on this issue. While he and I tend to agree on a number of things, fingerprinting has not been one of them. The good Senator from Waldo, Senator Weston, made a comment which I think applies to the issue that we have in front of us with the Ought to Pass as Amended report. She said that she lived in a 'fishbowl' with her husband being a teacher, and then a principal, and the fact that she substituted was known by everybody in the community, and most likely, the county. I would agree with her in that regard. But we do not have the same knowledge of those people who are new and coming into the system. That is why this evening I shall be supporting the majority Ought to Pass as Amended because I feel that new people coming in, be they from another school system in the state or from out of state, need this to take place. I feel very comfortable supporting that. I would hope that you would join me in supporting L.D. 890 as amended. Thank you.

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

Senator **STRIMLING:** Thank you, Madame President. I just had a couple of questions that I'd like to pose.

THE PRESIDENT: The Senator may pose his question.

Senator **STRIMLING**: Thank you. I was looking through the bill. The Senator from Androscoggin, Senator Douglass, was saying that in the bill it somewhere gets rid of everybody's previous records. I couldn't find that and was wondering if somebody could just direct me to that.

THE PRESIDENT: The Senator from Cumberland, Senator Strimling poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Androscoggin, Senator Douglass.

Senator **DOUGLASS**: Madame President, section 15 of the bill, L.D. 890, pertains to the removal of applicants' fingerprints from the state repository. As we amended it, I believe the words used in the amendment are removed and/or deleted. It is in section 15.

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

Senator **MITCHELL**: Thank you, Madame President, men and women of the Senate. I rise to ask you to please vote against the majority Ought to Pass as Amended report. I'd like to state my reasons for you, and the facts that really are essentially what we should be considering. The good Senator from Androscoggin, Senator Douglass, mentioned that her amendment removes the database. Let's think about that for a minute. The main reason that we passed this fingerprinting in 1997 was so that we, as the good Senator from Cumberland, Senator Brennan, mentioned, would be one of the 40 states who have fingerprinting that enables us to have access to the FBI files and the national records of fingerprinting for people coming into this state. If we remove that database, that means that we no longer can verify with the national records. We would have to go to each individual state to actually verify if that person had been convicted or what his fingerprinting records were.

Fingerprinting new hires in the State of Maine and not keeping the old database means that it would only pertain to information in Maine. It would also mean that we would not only not have that database available, but it also means that background checks do not provide you with the same information as what you get from the fingerprinting. It would mean that if the person that you currently had hired and have on your payroll decides to leave the State of Maine and they have a record but you have taken their fingerprinting file out, when they go to another state, there is no record where that person has been convicted in the State of Maine as a pedophile or of child abuse. What we are doing is taking away our investment in 1997. The fact is that by the time this law is enacted, you've only got less than 20% of the people in the State of Maine who have not been fingerprinted. Why, with the investment that was made in sound judgment, would we disregard this at this point? Once again, the State of Maine would be criticized, nationally, with the attitude of don't depend on Maine because they change their laws and don't always stick to what they decide originally.

We have a Commissioner that is very competent. She does an excellent job. We pay our commissioners good money to do their work. We have to have trust in the people we hire to do their work. If the Commissioner comes before the committee with information stating that we do not, or should not, change the existing law because of the information that she has before her, that should be a signal to us. Perhaps this is why our good Governor changed his position, and the Portland Press Herald

quoted that. We need to be looking at what we are doing and if we are consistent with following through with the laws that we have enacted in this body. Do we want to make changes that will only affect less than 20% of the teachers and throw away all those files that we have worked earnestly and have spent a lot of money for? We have corrected the mistakes we made, as we often times do with a law initially.

I would say that we have to put our pride in our back pockets of the people in the profession who are resistant to putting their fingers on an ink pad. Think about what the Senator from Waldo, Senator Weston, has said to us about how proud she is to have been fingerprinted because she can face any parent and they know that she has not been convicted of a crime. I would ask you to please support defeating the majority Ought to Pass as Amended report so we can go on and pass the minority Ought Not to Pass report. Thank you.

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

Senator **STRIMLING**: Thank you, Madame President. Thank you to the Senator from Androscoggin, Senator Douglass, for pointing out the place in the bill. I did find it.

My second question is, because I haven't been here for the whole debate and I was reading the bill, if they find something in somebody's history, does it automatically exclude them under certain circumstances or are they allowed to take a look at the situation? Perhaps the person has turned their life around and things have changed.

THE PRESIDENT: The Senator from Cumberland, Senator Strimling poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Androscoggin, Senator Douglass.

Senator **DOUGLASS**: Madame President, women and men of the Senate, I may not have the definitive answer for that because I'm not sure that we posed that precise question or in that fashion to the Commissioner. I would like to relate to the body what we've learned. The Commissioner and three people in the department are privy to this information and it is kept very confidential. When a problematic conviction comes forward and to their attention through this process, they notify the individual. The individual does have some appeal rights. Different convictions are applicable to different positions. Obviously, operating under the influence of alcohol is something that is appropriate to be considered for those who would be drivers. It's not considered for those who are teachers, unless it seems to be a component of another aspect that relates to behavior with children. I know I asked the question of whether convictions of assault, that might have occurred as a plea bargain down from a sexual assault would be inquired into by the commissioner. I believe the answer was positive. They do look at the circumstances, if they are requested to do so, or are alerted to it by the nature of the conviction, or requested by the individual whose certificate is at issue. There is a procedure in place for appeals and for putting this in context. I think the question was about rehabilitation. I guess that is addressed in this law through the fact that if the conviction is more than five years old it is not to be considered.

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

Senator **BRENNAN:** Thank you, Madame President, men and women of the Senate. Let me just answer very specifically the good Senator from Cumberland, Senator Strimling. If the conviction is for child abuse and exploitation, the consequence is the license would be denied for five years without a hearing if the conviction is within five years. For other felonies, the license may be denied with a hearing if the discharge is within the past three years. For misdemeanors, the license may be denied with a hearing if the discharge is within the past three years, and conviction is relevant to the job or if children are placed in harms way. The legislation is very specific, and very clear. It does not allow the department to go a fishing expedition, looking at a broad array of convictions and determining whether or not an applicant would have their license denied. In fact, it's very narrow and very clear. The look back that they have is limited also.

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

THE PRESIDENT: The pending question before the Senate is the motion by the Senator from Androscoggin, Senator Douglass to Accept the Majority Ought to Pass as Amended Report. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#122)

YEAS: Senators: BROMLEY, BRYANT, CATHCART, DOUGLASS, EDMONDS, GAGNON, HALL, HATCH, MAYO, NASS, TREAT, THE PRESIDENT - BEVERLY C. DAGGETT

NAYS: Senators: BENNETT, BLAIS, BRENNAN, CARPENTER, DAMON, DAVIS, GILMAN, KNEELAND, LEMONT, MARTIN, MITCHELL, PENDLETON, ROTUNDO, SAVAGE, SAWYER, STANLEY, STRIMLING, WESTON, WOODCOCK, YOUNGBLOOD

ABSENT: Senators: LAFOUNTAIN, SHOREY, TURNER

12 Senators having voted in the affirmative and 20 Senators having voted in the negative, with 3 Senators being absent, the motion by Senator **DOUGLASS** of Androscoggin to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **FAILED**.

The Minority **OUGHT NOT TO PASS** Report **ACCEPTED**, in **NON-CONCURRENCE**.

Sent down for concurrence.

The Chair laid before the Senate the following Tabled and Later (5/20/03) Assigned matter:

SENATE REPORTS - from the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act To Protect Against Unfair Prescription Drug Practices"

S.P. 194 L.D. 554

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-204)** (7 members)

Minority - **Ought Not to Pass** (6 members)

Tabled - May 20, 2003, by Senator **BRENNAN** of Cumberland

Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report

(In Senate, May 20, 2003, Reports **READ**.)

On motion by Senator **BRENNAN** of Cumberland, the Majority **OUGHT TO PASS AS AMENDED** Report **ACCEPTED**.

READ ONCE.

Committee Amendment "A" (S-204) **READ** and **ADOPTED**.

Senator **WESTON** of Waldo **OBJECTED** to **SUSPENSION OF THE RULES** for the purpose of giving this Bill its **SECOND READING** at this time by title only.

Pursuant to Senate Rule 510, **ASSIGNED FOR SECOND READING AT 7:50 IN THE EVENING.**

Out of order and under suspension of the Rules, the Senate considered the following:

REPORTS OF COMMITTEES

House

Ought to Pass

The Committee on **EDUCATION AND CULTURAL AFFAIRS** on Bill "An Act To Amend the Educators for Maine Program" H.P. 985 L.D. 1340

Reported that the same **Ought to Pass**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED**.

Report **READ** and **ACCEPTED**, in concurrence.

Under suspension of the Rules, **READ TWICE** and **PASSED TO BE ENGROSSED**, in concurrence.

ORDERS OF THE DAY

Out of order and under suspension of the Rules, the Senate considered the following:

REPORTS OF COMMITTEES

House

Divided Report

Nine members of the Committee on **NATURAL RESOURCES** on Bill "An Act To Fund Municipal Collection of Household Hazardous Waste"

H.P. 1135 L.D. 1549

Reported in Report "A" that the same **Ought to Pass as Amended by Committee Amendment "A" (H-494)**.

Signed:

Senators:

MARTIN of Aroostook
EDMONDS of Cumberland
SAWYER of Penobscot

Representatives:

KOFFMAN of Bar Harbor
TWOMEY of Biddeford
HUTTON of Bowdoinham
MAKAS of Lewiston
SAVIELLO of Wilton
THOMPSON of China

Three members of the same Committee on the same subject reported in Report "B" that the same **Ought to Pass as Amended by Committee Amendment "B" (H-495)**.

Signed:

Representatives:

DAIGLE of Arundel
JOY of Crystal
ANNIS of Dover-Foxcroft

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

Signed:

Representative:

TOBIN of Windham

Comes from the House with Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-494) READ and ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-494) AS AMENDED BY HOUSE AMENDMENT "A" (H-526)** thereto.

Reports **READ**.

On motion by Senator **MARTIN** of Aroostook, Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (H-494) ACCEPTED**, in concurrence.

READ ONCE.

Committee Amendment "A" (H-494) **READ**.

On motion by Senator **DAVIS** of Piscataquis, **TABLED** until Later in Today's Session, pending **ADOPTION** of Committee Amendment "A" (H-494), in **NON-CONCURRENCE**.

Out of order and under suspension of the Rules, the Senate considered the following:

PAPERS FROM THE HOUSE

Non-Concurrent Matter

Resolve, Regarding Legislative Review of Chapter 7: Rules Advancing the Performance of Sound Student Safety Practices in Maine's Public Schools and Colleges, a Major Substantive Rule of the Department of Labor, Bureau of Labor Standards (EMERGENCY)

H.P. 1101 L.D. 1508
(C "A" H-423)

In Senate, May 20, 2003, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-423)**, in concurrence.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-423) AS AMENDED BY HOUSE AMENDMENT "A" (H-521)** thereto, in **NON-CONCURRENCE**.

On motion by Senator **TREAT** of Kennebec, **TABLED** until Later in Today's Session, pending **FURTHER CONSIDERATION**.

Non-Concurrent Matter

SENATE REPORTS - from the Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act To Change the Name of the Augusta Mental Health Institute to 'Riverview Psychiatric Center'"
S.P. 525 L.D. 1562

Report "A" - **Ought to Pass as Amended by Committee Amendment "A" (S-208)** (5 members)

Report "B" - **Ought to Pass as Amended by Committee Amendment "B" (S-209)** (2 members)

Report "C" - **Ought to Pass as Amended by Committee Amendment "C" (S-210)** (1 member)

In Senate, May 23, 2003, on motion by Senator **BRENNAN** of Cumberland, Report "C", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "C" (S-210) READ and ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "C" (S-210)**.

Comes from the House, Report "A", **OUGHT TO PASS AS AMENDED BY COMMITTEE AMENDMENT "A" (S-208) READ and ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-208)**, in **NON-CONCURRENCE**.

Senator **BRENNAN** of Cumberland moved the Senate **INSIST**.

Senator **MARTIN** of Aroostook moved the Senate **ASK FOR A COMMITTEE OF CONFERENCE**.

Senate at Ease.

Senate called to order by the President.

Senator **MARTIN** of Aroostook requested and received leave of the Senate to withdraw his motion to **ASK FOR A COMMITTEE OF CONFERENCE**.

Senator **BRENNAN** of Cumberland requested and received leave of the Senate to withdraw his motion to **INSIST**.

On further motion by same, the Senate **INSISTED** and **ASKED FOR A COMMITTEE OF CONFERENCE**.

Sent down for concurrence.

ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later Today Assigned matter:

Resolve, Regarding Legislative Review of Chapter 7: Rules Advancing the Performance of Sound Student Safety Practices in Maine's Public Schools and Colleges, a Major Substantive Rule of the Department of Labor, Bureau of Labor Standards (EMERGENCY)

H.P. 1101 L.D. 1508
(C "A" H-423)

Tabled - May 28, 2003, by Senator **TREAT** of Kennebec

Pending - **FURTHER CONSIDERATION**

(In Senate, May 20, 2003, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-423)**, in concurrence.)

(In House, May 28, 2003, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-423) AS AMENDED BY HOUSE AMENDMENT "A" (H-521)** thereto, in **NON-CONCURRENCE**.)

Senator **DOUGLASS** of Androscoggin moved the Senate **RECEDE** and **CONCUR**.

THE PRESIDENT: The Chair recognizes the Senator from Androscoggin, Senator Douglass.

Senator **DOUGLASS:** Madame President, this amendment, that comes to us from the House, has a technical change because the bill included a reference to the Education and Cultural Affairs Committee chair making certain findings. In fact, when we put these into law, we say that the legislature makes these findings. It's just a technical amendment. Thank you.

On motion by Senator **DOUGLASS** of Androscoggin, the Senate **RECEDED** and **CONCURRED**.

Out of order and under suspension of the Rules, the Senate considered the following:

PAPERS FROM THE HOUSE

Non-Concurrent Matter

SENATE REPORTS - from the Committee on **LEGAL AND VETERANS AFFAIRS** on Bill "An Act Concerning Political Action Committees and Party Committee Activities Prior to Elections"
S.P. 91 L.D. 232

Majority - **Ought to Pass as Amended by Committee Amendment "A" (S-223)** (11 members)

Minority - **Ought Not to Pass** (2 members)

In Senate, May 23, 2003, on motion by Senator **GAGNON** of Kennebec, the Minority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.

Comes from the House, the Majority **OUGHT TO PASS AS AMENDED** Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-223)**, in **NON-CONCURRENCE**.

On motion by Senator **GAGNON** of Kennebec, the Senate **ADHERED**.

Non-Concurrent Matter

Bill "An Act To Require a Toll-free Telephone Number To Be Maintained by the Bureau of Unemployment Compensation" (EMERGENCY)

S.P. 39 L.D. 116
(C "A" S-168)

In Senate, May 22, 2003, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-168)**.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (S-168) AS AMENDED BY HOUSE AMENDMENT "A" (H-518)** thereto, in **NON-CONCURRENCE**.

Senator **EDMONDS** of Cumberland moved the Senate **RECEDE** and **CONCUR**.

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

Senator **EDMONDS:** Thank you, Madame President. Just to let you folks know, this amendment just removes the emergency.

On motion by Senator **BLAIS** of Kennebec, 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 opened the vote.

ROLL CALL (#123)

YEAS: Senators: BRENNAN, BROMLEY, BRYANT, CATHCART, DAMON, DOUGLASS, EDMONDS, GAGNON, HALL, HATCH, MARTIN, PENDLETON, ROTUNDO, STANLEY, STRIMLING, TREAT, THE PRESIDENT - BEVERLY C. DAGGETT

NAYS: Senators: BENNETT, BLAIS, CARPENTER, DAVIS, GILMAN, KNEELAND, LEMONT, MAYO, MITCHELL, NASS, SAVAGE, SAWYER, WESTON, WOODCOCK, YOUNGBLOOD

ABSENT: Senators: LAFOUNTAIN, SHOREY, TURNER

17 Senators having voted in the affirmative and 15 Senators having voted in the negative, with 3 Senators being absent, the motion by Senator **EDMONDS** of Cumberland to **RECEDE** and **CONCUR**, **PREVAILED**.

Out of order and under suspension of the Rules, the Senate considered the following:

PAPERS FROM THE HOUSE

Non-Concurrent Matter

Bill "An Act To Increase Access to Information Regarding Referendum Questions"

H.P. 925 L.D. 1251
(C "A" H-449)

In Senate, May 20, 2003, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-449)**, in concurrence.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-449) AS AMENDED BY HOUSE AMENDMENT "A" (H-532)** thereto, in **NON-CONCURRENCE**.

On motion by Senator **GAGNON** of Kennebec, the Senate **RECEDED** and **CONCURRED**.

Non-Concurrent Matter

Bill "An Act To Retain Teachers Holding Targeted Need Area Certificates "

H.P. 714 L.D. 957
(C "A" H-458)

In Senate, May 21, 2003, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-458)**, in concurrence.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-458) AS AMENDED BY HOUSE AMENDMENT "A" (H-523)** thereto, in **NON-CONCURRENCE**.

On motion by Senator **DOUGLASS** of Androscoggin, the Senate **RECEDED** and **CONCURRED**.

Out of order and under suspension of the Rules, the Senate considered the following:

ENACTORS

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

Pursuant to Constitution Public Land

Resolve, Conveying The State's Interest in a Parcel of Property Located in Orrington

H.P. 1130 L.D. 1541
(C "A" H-431)

In accordance with the provisions of Article IX, Section 23 of the Constitution, this requires the affirmative vote of two-thirds of the entire elected Membership of the Senate, 32 Senators having voted in the affirmative and no Senators having voted in the negative, and 32 being more than two-thirds of the entire elected Membership of the Senate, was **FINALLY PASSED** and having been signed by the President, was presented by the Secretary to the Governor for his approval.

Pursuant to Constitution Public Land

Resolve, Authorizing Certain Land Transactions by the Department of Conservation, Bureau of Parks and Lands

H.P. 1141 L.D. 1558
(C "A" H-432)

Comes from the House, **FAILED FINAL PASSAGE**.

On motion by Senator **TREAT** of Kennebec, **TABLED** until Later in Today's Session, pending **FINAL PASSAGE**, in **NON-CONCURRENCE**.

Out of order and under suspension of the Rules, the Senate considered the following:

PAPERS FROM THE HOUSE

Non-Concurrent Matter

Bill "An Act To Revise Certain Provisions of Maine's Fish and Wildlife Laws" (EMERGENCY)

H.P. 1087 L.D. 1482
(C "A" H-422)

In Senate, May 22, 2003, **PASSED TO BE ENACTED**, in concurrence.

RECALLED FROM THE GOVERNOR'S DESK, pursuant to Joint Order (H.P. 1203), in concurrence.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-422) AS AMENDED BY HOUSE AMENDMENT "A" (H-524)** thereto, in **NON-CONCURRENCE**.

On motion by Senator **BRYANT** of Oxford, the Senate **RECEDED** and **CONCURRED**.

Non-Concurrent Matter

Resolve, To Study Obesity and Methods To Decrease the Cost of Health Care and Increase the Public Health

H.P. 363 L.D. 471
(C "A" H-464)

In Senate, May 21, 2003, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-464)**, in concurrence.

Comes from the House, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-464) AS AMENDED BY HOUSE AMENDMENT "A" (H-529)** thereto, in **NON-CONCURRENCE**.

On motion by Senator **BRENNAN** of Cumberland, the Senate **RECEDED** and **CONCURRED**.

Out of order and under suspension of the Rules, the Senate considered the following:

ENACTORS

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

Act

An Act To Promote Stewardship of Forest Resources

H.P. 1194 L.D. 1616
(C "A" H-512)

THE PRESIDENT: The Chair recognizes the Senator from Oxford, Senator Bennett.

Senator **BENNETT:** Thank you, Madame President and fellow members of the Senate. I will be voting for enactment of this bill. It doesn't seem to have generated a lot of controversy as it quickly worked its way through the Agriculture, Conservation and Forestry Committee. As I read the bill, as amended, as it stands before us here pending enactment. I think one part of this bill I want to comment on. This bill is about curbing liquidation harvesting activities. This bill has a focus on forest practices. What this bill really does is empower the Commissioner of Conservation to study this issue and report back to us next year, hopefully, with some legislation being generated in the Agriculture, Conservation and Forestry Committee that we can act upon. My reading of this suggests that forest practices are not the primary economic motivator in liquidation harvesting. In my experience, the primary economic motivator is land sales. My hope is that when we enact this bill the Commissioner of Conservation will look at the economic incentives that we have currently built in for liquidation harvesting activities. The people who engage in this practice are interested in turning over assets very quickly. They buy the land at as low a rate as they can, strip all the available timber off it as quickly as they can, and then they sell the land as quickly as they can, often having subdivided or effectively subdivided it.

I own a small parcel of land in the town of Greenwood, which I have owned with my sister. It has been in my family for six to seven generations. Regrettably, we fell victim to something which is all too common in some of our pristine areas, particularly those in western Maine that are close to lakes and other natural assets. We had somebody who came in, not even in a contiguous parcel, built a road across our land, blasted rocks on our land, and cut trees on our land in order to access a parcel that wasn't even contiguous to ours. Because we don't visit that property terribly often, the damage was well done before we had a chance to react. By the time we did react, we had to react with court action, which lead to thousands of dollars in expenses to attorneys and an unsatisfactory outcome for everyone.

One of the means of turning this property over, and one of the tricks to the trade, is to deed property to immediate family members in order to skirt the subdivision laws. Those family members then hold onto the land for enough time, five years, in order to avoid the subdivision review. My hope is that when the Commissioner of Conservation looks at this problem, he doesn't just focus on the forest practices. The forest practices are the things that stand out most to us, but that doesn't mean that this is driving the economics of the transaction. The only way to deal with liquidation harvesting is to get into the belly of the beast and the beast is the economic motivations. That has to do more with land value and transfers of assets than it does with the forest practices. Too often, I think, in this legislature we focus on liquidation harvesting from the point of view of forestry practices when we can be more effective in curbing it by focusing on some

of the loopholes that exists that provide perverse motivations for people to act too rashly and disturb cherished places in this state.

I encourage you to vote for this bill and join me in asking the Commissioner of Conservation to take a hard look at those economic motivations. Thank you, Madame President.

THE PRESIDENT: The Chair recognizes the Senator from Oxford, Senator Bryant.

Senator **BRYANT:** Thank you, Madame President, men and women of the Senate. I would concur with the good Senator from Oxford, Senator Bennett. The Commissioner is well aware of liquidation harvesting and what drives it. The Commissioner also has stated to the committee that he is going to reduce that. He is also going to make sure that some of the people that do liquidation harvesting have their business plan just around liquidation. He is committed to the committee. He is going to come back with a decent plan around how to curb that. So I would encourage you to vote for the pending motion also.

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

Out of order and under suspension of the Rules, the Senate considered the following:

COMMUNICATIONS

The Following Communication: S.C. 264

**121ST LEGISLATURE
COMMITTEE ON
APPROPRIATIONS AND FINANCIAL AFFAIRS**

May 27, 2003

Honorable Beverly C. Daggett, President of the Senate
Honorable Patrick Colwell, Speaker of the House
121st Maine Legislature
State House
Augusta, Maine 04333

Dear President Daggett and Speaker Colwell:

Pursuant to Joint Rule 310, we are writing to notify you that the Joint Standing Committee on Appropriations and Financial Affairs has voted unanimously to report the following bill out "Ought Not to Pass":

L.D. 1232 RESOLUTION, Proposing an Amendment to the Constitution of Maine To Increase the State Bonding Limit under Certain Circumstances

We have also notified the sponsor and cosponsors of the Committee's action.

Sincerely,

S/Sen. Mary R. Cathcart
Senate Chair

S/Rep. Joseph C. Brannigan
House Chair

READ and with accompanying papers **ORDERED PLACED ON FILE.**

Out of order and under suspension of the Rules, the Senate considered the following:

COMMUNICATIONS

The Following Communication: S.C. 265

**121ST LEGISLATURE
COMMITTEE ON
APPROPRIATIONS AND FINANCIAL AFFAIRS**

May 27, 2003

Honorable Beverly C. Daggett, President of the Senate
Honorable Patrick Colwell, Speaker of the House
121st Maine Legislature
State House
Augusta, Maine 04333

Dear President Daggett and Speaker Colwell:

Pursuant to Joint Rule 310, we are writing to notify you that the Joint Standing Committee on Appropriations and Financial Affairs has voted unanimously to report the following bills out "Ought Not to Pass":

- | | |
|----------|--|
| L.D. 39 | An Act to Authorize a General Fund Bond Issue in the Amount of \$10,000,000 to Promote Affordable Housing |
| L.D. 115 | An Act to Authorize a General Fund Bond Issue to Enable Low- income and Moderate-income Families to Conserve Energy in Their Homes |
| L.D. 165 | An Act To Authorize a General Fund Bond Issue in the Amount of \$1,200,000 To Provide Economic Development in Western Maine |
| L.D. 292 | An Act To Support Individuals With Developmental Disabilities Who Have Been Physically or Sexually Abused |
| L.D. 350 | An Act To Provide Funding For Construction of a Dormitory at the University of Maine at Fort Kent |
| L.D. 353 | An Act To Authorize a General Fund Bond Issue in the Amount of \$500,000 To Fund the Challenger Learning Center of Maine |
| L.D. 400 | An Act To Promote Student Aspirations through Higher Education Scholarships |

- L.D. 405 An Act To Authorize a General Fund Bond Issue in the Amount of \$50,000,000 for Research and Development and Capital Improvements for the University of Maine System and the Maine Technical College System
- L.D. 459 An Act To Appropriate Funds for the Millinocket Area Growth and Investment Council
- L.D. 582 An Act To Authorize a General Fund Bond Issue in the Amount of \$50,000,000 To Fund Renovating or Replacing Civic Centers Statewide
- L.D. 652 An Act To Authorize a General Fund Bond Issue in the Amount of \$15,000,000 for Economic Development
- L.D. 740 An Act to Authorize a General Fund Bond Issue in the Amount of \$8,200,000 for Use in Implementing the Maine Library of Geographic Information
- L.D. 885 An Act To Authorize a General Fund Bond Issue in the Amount of \$50,000,000 to Promote Revitalization of Service Center Communities through Infrastructure Improvements
- L.D. 1052 An Act To Authorize a General Fund Bond Issue in the Amount of \$5,800,000 To Adequately Fund the Applied Technology Development Centers in Order To Increase the Number of Research and Development Jobs and Companies in the State

We have also notified the sponsors and cosponsors of each bill listed of the Committee's action.

Sincerely,

S/Sen. Mary R. Cathcart
Senate Chair

S/Rep. Joseph C. Brannigan
House Chair

READ and with accompanying papers **ORDERED PLACED ON FILE.**

Out of order and under suspension of the Rules, the Senate considered the following:

ENACTORS

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

Act

An Act To Require Full Disclosure of Prescription Drug Marketing Costs
H.P. 209 L.D. 254
(C "A" H-465)

On motion by Senator **WOODCOCK** of Franklin, 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 opened the vote.

ROLL CALL (#124)

YEAS: Senators: BRENNAN, BROMLEY, BRYANT, CATHCART, DAMON, DOUGLASS, EDMONDS, GAGNON, HALL, HATCH, LEMONT, MARTIN, MAYO, PENDLETON, ROTUNDO, STANLEY, STRIMLING, TREAT, THE PRESIDENT - BEVERLY C. DAGGETT

NAYS: Senators: BENNETT, BLAIS, CARPENTER, DAVIS, GILMAN, KNEELAND, MITCHELL, NASS, SAVAGE, SAWYER, WESTON, WOODCOCK, YOUNGBLOOD

ABSENT: Senators: LAFOUNTAIN, SHOREY, TURNER

19 Senators having voted in the affirmative and 13 Senators having voted in the negative, with 3 Senators being absent, was **PASSED TO BE ENACTED** and having been signed by the President was presented by the Secretary to the Governor for his approval.

Senate at Ease.

Senate called to order by the President.

All matters thus acted upon were ordered sent down forthwith for concurrence.

ORDERS OF THE DAY

The Chair laid before the Senate the following Tabled and Later (5/23/03) Assigned matter:

Bill "An Act To Control County Jail Health Care Expenses"
H.P. 585 L.D. 808
(S "A" S-167 to C "A" H-365)

Tabled - May 23, 2003, by Senator **STRIMLING** of Cumberland

Pending - **FURTHER CONSIDERATION**

(In Senate, May 16, 2003, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-365) AS AMENDED BY SENATE AMENDMENT "A" (S-167)** thereto, in **NON-CONCURRENCE**.)

(In House, May 22, 2003, **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-365)**, in **NON-CONCURRENCE**.)

On motion by Senator **STRIMLING** of Cumberland, the Senate **RECEDED** from whereby the Bill was **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-365) AS AMENDED BY SENATE AMENDMENT "A" (S-167)** thereto, in **NON-CONCURRENCE**.

On further motion by same Senator, the Senate **RECEDED** from whereby it **ADOPTED COMMITTEE AMENDMENT "A" (H-365) AS AMENDED BY SENATE AMENDMENT "A" (S-167)** thereto.

On further motion by same Senator, the Senate **RECEDED** from whereby it **ADOPTED SENATE AMENDMENT "A" (S-167) TO COMMITTEE AMENDMENT "A" (H-365)** and **INDEFINITELY POSTPONED** same.

On further motion by same Senator, Senate Amendment "B" (S-242) to Committee Amendment "A" (H-365) **READ**.

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

Senator **STRIMLING:** Thank you, Madame President. The amendment that I've put forward, basically, keeps in all of the amendment language that we put under the hammer a few days ago. It adds in some language to remove the mandate from county jails. If you recall what the bill does, it basically allows county jails to charge MaineCare rates to those out-patient prisoners. County jails have their own health care systems internally, but for those that go out of the prison, it allows them to charge MaineCare rates. The amendment included the Department of Corrections in that as well in order to provide significant savings to the taxpayers in the State of Maine. All this does is say to the counties that they don't have to do this if they don't want to because that created a mandate. All it says is if they chose to do it, they can do it and the hospitals must respect that. Thank you very much.

THE PRESIDENT: The Chair recognizes the Senator from Knox, Senator Savage.

Senator **SAVAGE:** Thank you, Madame President, men and women of the Senate. My area has been host to the state prison forever, I guess. The original state prison has been demolished. We now have a new facility in South Warren, housing 800 plus or minus prisoners. This amendment, which will cover those prisoners at my local hospital at MaineCare rates, will cost my hospital \$200,000. I've been told the cost to the Maine Medical Center would be upwards of \$1 million. What they currently is have a contract with the Department of Corrections for a rate that will be paid for those patients that are treated within the hospital.

Same Senator requested a Roll Call.

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

Senator **STRIMLING:** Thank you very much, Madame President. I would just add to that, remember this is a cost to the taxpayers. It is just a question of who is going to pay this bill. Unfortunately, currently the taxpayers are paying this bill. Most of the people who are in prison would receive MaineCare anyway. They are people who are poor and would be receiving this if they weren't in jail. It really is not the only savings to the hospital. It's because we happen to throw them in jail. It's only the people who do out-patient care. Only the people we send out. It would really be a significant savings in the amounts that have been mentioned to the taxpayers of this state.

On motion by Senator **SAVAGE** of Knox, 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 opened the vote.

ROLL CALL (#125)

YEAS: Senators: BRENNAN, BROMLEY, BRYANT, CATHCART, DAMON, DOUGLASS, EDMONDS, GAGNON, HALL, MARTIN, PENDLETON, ROTUNDO, STANLEY, STRIMLING, TREAT, THE PRESIDENT - BEVERLY C. DAGGETT

NAYS: Senators: BENNETT, BLAIS, CARPENTER, DAVIS, GILMAN, HATCH, KNEELAND, MAYO, MITCHELL, NASS, SAVAGE, SAWYER, WESTON, WOODCOCK, YOUNGBLOOD

ABSENT: Senators: LAFOUNTAIN, LEMONT, SHOREY, TURNER

16 Senators having voted in the affirmative and 15 Senators having voted in the negative, with 4 Senators being absent, the motion by Senator **STRIMLING** of Cumberland to **ADOPT** Senate Amendment "B" (S-242) to Committee Amendment "A" (H-365), **PREVAILED**.

Committee Amendment "A" (H-365) as Amended by Senate Amendment "B" (S-242) thereto, **ADOPTED**, in **NON-CONCURRENCE**.

PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-365) AS AMENDED BY SENATE AMENDMENT "B" (S-242) thereto, in **NON-CONCURRENCE**.

Sent down for concurrence.

All matters thus acted upon were ordered sent down forthwith for concurrence.

Out of order and under suspension of the Rules, the Senate considered the following:

SECOND READER

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

Senate As Amended

Bill "An Act To Protect Against Unfair Prescription Drug Practices"
S.P. 194 L.D. 554
(C "A" S-204)

READ A SECOND TIME.

THE PRESIDENT: The Chair recognizes the Senator from Waldo, Senator Weston.

Senator **WESTON:** Thank you, Madame President, men and women of the Senate. Pharmacy benefits managers contract with employers, with states, and with insurance companies to manage their prescription drug benefits. This bill seeks to mandate state regulations on the PBMs. This bill would also have a significant intrusion in the marketplace that will have unintended consequences, such as increased costs, for both public and private payers. Adding a fiduciary duty to the relationship between PBMs and health plans will recreate a liability. The plans will have to purchase additional insurance to insure against and will add to the overall cost of premiums. PBM clients are not asking for this mandate on their subcontractors. In fact, not one employer or managed care organization, carrier or other payer appeared in support of this bill at the public hearing. L.D. 554 will have unintended consequence of increased costs of pharmaceuticals for our Maine consumers who are our constituents.

Same Senator requested a Roll Call.

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

Senator **BRENNAN:** Thank you, Madame President, men and women of the Senate. Earlier this week, we received a fact sheet on our desks that was distributed at the request of the Senator from Cumberland, Senator Pendleton. It talked about the GOA confirmed cost savings of pharmacy benefits managers. From what I could read in this fact sheet, I agree with the fact sheet. Pharmacy benefits managers play an important role in the health care system in terms of ensuring that health insurance plans get the best price they possibly can for drugs. I don't dispute many of the things that are said in this report about the benefits that we get from pharmacy benefits managers. All this bill does is define and clarify the relationship between the pharmacy benefits managers, the health plans, and the pharmaceutical companies that are involved in that transaction. It makes it clear that the pharmacy benefit manager's primary responsibility in the transaction is to the health plan. It is a very reasonable bill. It's a very sensible bill. There have been issues in other states and other parts of the country where pharmacy benefits managers have had side agreements and have had a relationship that has not been clear with themselves and the pharmaceutical

companies. I think this is a good, solid, proactive measure that will not take away all of the good things that we derive from having pharmacy benefits managers, and will simply clarify the relationship that they will have with the health plan. I would put out that the Attorney General has reviewed the bill, has reviewed the committee amendment, and is supportive. He finds that there is not a legal problem, and there should not be any added extra legal burden placed on pharmacy benefits managers as a result of this legislation. If you are concerned about the cost and increased costs of drugs, this is a prudent, very sound, and solid step forward in clarifying the relationship of pharmacy benefits managers and this whole process. I urge you to support the pending motion. Thank you.

THE PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Mayo.

Senator **MAYO:** Thank you, Madame President, ladies and gentlemen of the Senate. I rise in support of the bill that we have in front of us at this time. I don't think that many people would disagree with the fact that initially pharmacy benefits managers were helpful, very helpful, in reducing the cost of prescription drugs. That has changed over time. More recently it has been revealed, and basically not questioned, that PBMs frequently engage in questionable and unethical practices. It is estimated that something in the neighborhood of 10% of the \$161 billion, and I would repeat billion, spent by Americans on prescription drugs in 2002 was spent on side deals and undisclosed payments between drug companies and consumers. Not too many people realize, unless they followed this and similar issues pertaining to drugs and drug companies, a number of the PBMs today are owned and managed by the drug companies themselves. This makes it very easy for them to cut side deals with each other. If we, in Maine, come anywhere near the 10% figure that has been quoted in most of the newspapers and major magazines, we're talking about a savings in the State of Maine approaching \$70 million a year if these side deals are no longer allowed. Ladies and gentlemen of the Senate, I originally did have some question about attaching this particular requirement on the PBMs. As I have read material and talked with people over the past five months, I have come to the conclusion that this piece of legislation is needed and that it will not only help the consumers in the State of Maine, it will save funds. To me that is what it's all about. Thank you very much.

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

THE PRESIDENT: The pending question before the Senate is Passage to be Engrossed. A Roll Call has been ordered. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#126)

YEAS: Senators: BRENNAN, BROMLEY, BRYANT,
CATHCART, DAMON, DOUGLASS, EDMONDS,
GAGNON, HALL, HATCH, LEMONT, MARTIN,
MAYO, ROTUNDO, STANLEY, STRIMLING,
TREAT, THE PRESIDENT - BEVERLY C.
DAGGETT

NAYS: Senators: BENNETT, BLAIS, CARPENTER,
DAVIS, GILMAN, KNEELAND, MITCHELL, NASS,
PENDLETON, SAVAGE, SAWYER, WESTON,
WOODCOCK, YOUNGBLOOD

ABSENT: Senators: LAFOUNTAIN, SHOREY, TURNER

18 Senators having voted in the affirmative and 14 Senators
having voted in the negative, with 3 Senators being absent, was
PASSED TO BE ENGROSSED AS AMENDED.

Sent down for concurrence.

Senate at Ease.

Senate called to order by the President.

On motion by Senator **TREAT** of Kennebec, **ADJOURNED** to
Thursday, May 29, 2003, at 10:00 in the morning.