

MAINE STATE LEGISLATURE

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Senate Legislative Record
One Hundred and Twenty-First Legislature
State of Maine

Volume II

First Regular Session (Continued)
May 21, 2003 to June 14, 2003

First Special Session
August 21, 2003 to August 22, 2003

First Confirmation Session
October 30, 2003

Second Regular Session
January 7, 2004 to January 30, 2004

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

Pages 715 - 1415

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

In Senate Chamber
Tuesday
January 20, 2004

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

Prayer by Deacon Dean Lachance, St. Andrews Church in
Augusta.

DEACON LACHANCE: Let us pray. Good and gracious God,
You have called the people in this chamber to serve the people of
Maine in a respectable and honorable way. Look upon them with
grace. May all ears be open to the needs and importance of
humanity that surrounds us. After reflection, may all who come
here and influence this chamber speak with diligence and clarity
for good causes. May all have the wisdom to make clear and
appropriate decisions. May God's grace and spirit be upon this
place to offer good news and hope for the poor, appropriate and
charitable care to the sick and the infirmed, liberty to those
oppressed, and to make this year acceptable to the Lord and to
those living, working, and visiting this great State of Maine. We
pray all this in Your name, Lord. Amen.

Pledge of Allegiance led by Senator Christine R. Savage of Knox
County.

Doctor of the day, Richard Kappelman, M.D. of Lewiston.

Reading of the Journal of Thursday, January 15, 2004.

Off Record Remarks

Out of order and under suspension of the Rules, on motion by
Senator **TREAT** of Kennebec, the following Senate Order:
S.O. 32

ORDERED, that a message be sent to the House of
Representatives proposing a Convention of the two branches of
the Legislature be held at 6:45 this evening, in the Hall of the
House for the purpose of extending to Governor John E. Baldacci,
an invitation to make such communication as pleases him.

READ and PASSED.

The Chair appointed the Senator from Kennebec, Senator
TREAT to deliver the message to the House of Representatives.
The Sergeant-At-Arms escorted the Senator to the House of
Representatives.

Senate at Ease.

Senate called to order by the President.

Subsequently, the Senator from Kennebec, Senator **TREAT**
reported that she had delivered the message with which she was
charged.

PAPERS FROM THE HOUSE

Joint Order

The following Joint Order:

H.P. 1355

ORDERED, the Senate concurring, that:

1. The Joint Standing Committee on Inland Fisheries and
Wildlife shall:

- A. Examine the current laws governing the sale of lead-
based tackle;
- B. Review the varieties of all lead-based tackle sold in the
State;
- C. Study existing cooperative agreements with
manufacturers to phase out lead-based tackle weighing less
than 1/2 ounce; and
- D. Identify other sources of lead discharges into the inland
waters of the State.

2. Based on its review, the committee shall report out, to the
House, a bill to address the issues surrounding lead discharges
into the waters of the State.

Comes from the House, **READ** and **PASSED**.

READ.

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

At this point a message was received from the House of Representatives, borne by Representative RICHARDSON of Brunswick, informing the Senate that the House concurred with the proposition for a Convention of the two branches of the Legislature to be held in the Hall of the House at 6:45 in the evening for the purpose of extending to the Honorable John E. Baldacci, Governor of the State of Maine, an invitation to attend the Convention and make such communication as pleases him.

COMMUNICATIONS

The Following Communication: S.C. 429

**121ST LEGISLATURE
SENATE OF MAINE
OFFICE OF THE PRESIDENT**

January 13, 2004

Honorable Joy J. O'Brien
Secretary of the Senate
3 State House Station
Augusta, ME 04333

Dear Secretary O'Brien:

Pursuant to my authority under Executive Order 9 FY 04/05, I have appointed Senator John Martin of Aroostook to serve as a member of the Governor's Advisory Council on the Sustainability of Forest Products Industry in Maine.

Please let me know if you have any questions regarding this appointment.

Sincerely,

S/Beverly C. Daggett
President of the Senate

READ and ORDERED PLACED ON FILE.

The Following Communication: S.C. 430

**STATE OF MAINE
DEPARTMENT OF PROFESSIONAL
AND FINANCIAL REGULATION
BUREAU OF FINANCIAL INSTITUTIONS
36 STATE HOUSE STATION
AUGUSTA, MAINE 04333-0036**

January 15, 2004

The Honorable Beverly Daggett
President of the Senate
Maine Senate
3 State House Station
Augusta, Maine 04333

Dear President Daggett:

In accordance with Title 9-B MRSA §217, as amended, enclosed please find a copy of the "Annual Report from the Superintendent of the Bureau of Financial Institutions to the Legislature." In addition to the annual statistical information, the Report also includes informational segments which often address issues of current importance to the Legislature, the Executive Branch, and the Maine financial institution community.

If you or your staff have any questions regarding the information contained in this Report, the Bureau would be pleased to respond. This Report will also be available in electronic format on the Bureau of Financial Institution's web site at MaineBankingReg.org.

Very truly yours,

S/Howard R. Gray, Jr.
Superintendent

READ and with accompanying papers ORDERED PLACED ON FILE.

REPORTS OF COMMITTEES

House

Change of Committee

The Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act To Clarify the Responsibilities under the Adult Protective Services Act"

H.P. 1287 L.D. 1765

Reported that the same be **REFERRED** to the Committee on **JUDICIARY**.

Comes from the House with the Report **READ and ACCEPTED** and the Bill **REFERRED** to the Committee on **JUDICIARY**.

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

On motion by Senator **BRENNAN** of Cumberland, **REFERRED** to the Committee on **JUDICIARY**, in concurrence.

The Committee on **HEALTH AND HUMAN SERVICES** on Bill "An Act To Ensure Adequate Home-based Care Services and Provide the Most Cost-effective Long-term Care for Maine Seniors"

H.P. 1330 L.D. 1808

Reported that the same be **REFERRED** to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS**.

Comes from the House with the Report **READ and ACCEPTED** and the Bill **REFERRED** to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS**.

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

On motion by Senator **BRENNAN** of Cumberland, **REFERRED** to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS**, in concurrence.

The Committee on **TRANSPORTATION** on Bill "An Act To Authorize a General Fund Bond Issue in the Amount of \$3,000,000 To Build a Warehouse To Stimulate and Support Maine's Manufacturing, Transportation and Harbor Industries"
H.P. 1225 L.D. 1647

Reported that the same be **REFERRED** to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **REFERRED** to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS**.

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

On motion by Senator **DAMON** of Hancock, **REFERRED** to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS**, in concurrence.

ORDERS OF THE DAY

Unfinished Business

The following matters 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 Specially (1/8/04) Assigned matter:

SENATE REPORTS - from the Committee on **INSURANCE AND FINANCIAL SERVICES** on Bill "An Act To Eliminate the Department of Professional and Financial Regulation, Bureau of Insurance Travel Restrictions for Obtaining Health Care"
S.P. 146 L.D. 428

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

Minority - **Ought to Pass as Amended by Committee Amendment "A" (S-354)** (5 members)

Tabled - January 7, 2004, by Senator **TURNER** of Cumberland

Pending - motion by Senator **LAFOUNTAIN** of York to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report

(In Senate, January 7, 2004, Reports **READ**. On motion by Senator **LAFOUNTAIN** of York, the Majority **OUGHT NOT TO PASS** Report **ACCEPTED**. On motion by Senator **TURNER** of Cumberland **RECONSIDERED**.)

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

Senator **TURNER:** Thank you, Madame President, ladies and gentlemen of the Senate. I would ask that you not support the motion before us. This matter has to do with the so-called Rule 850, which is the most restrictive matter facing those who seek medical coverage and where their insurance carriers can ask them to secure that coverage. We did make some provisions, as many of you know, within Dirigo Health to provide some limited expansion. That expansion has not taken place and further, it is my opinion, and I hope you will agree, that continuing to place restrictions like Rule 850 do nothing to reduce the cost of health care for all of us in Maine. I would ask that you vote against the motion put forth by the good Senator from York, Senator LaFountain.

THE PRESIDENT: The Chair recognizes the Senator from York, Senator LaFountain.

Senator **LAFOUNTAIN:** Thank you, Madame President, men and women of the Senate. I rise to encourage you to support the pending motion, which is the Majority Ought Not to Pass report. The topic of travel restrictions was discussed, not only in the context of L.D. 428, but also in the context of the Dirigo Health Plan. As a result of what we implemented last session, the Dirigo Plan will allow managed care plans to apply to the Superintendent of Insurance for permission to offer health plans with financial incentives to encourage the use of designated providers for specialty and hospital care if the plan does not exceed the Bureau of Insurance rule, Chapter 850, travel standards. As required by the Dirigo Plan law, the Bureau of Insurance is required to prepare rules, which are major substantive in nature, which would be reviewed by the Insurance and Financial Services Committee in this legislature later on in this session. 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. It is my understanding that the Dirigo Board did secure the services of a consultant to look at this matter. That is my understanding and perhaps the chair of the Insurance and Financial Services Committee has that report and can comment on the findings of the consultant.

THE PRESIDENT: The Chair recognizes the Senator from York, Senator LaFountain.

Senator **LAFOUNTAIN:** Thank you, Madame President. I am not in possession of what the Dirigo Board has discussed in reference to this issue. However, it is the Bureau of Insurance, the Superintendent specifically, who will be drafting the rules that will be coming before this legislature.

THE PRESIDENT: The Senator from Cumberland, Senator Turner, requests unanimous consent of the Senate to address the Senate a third time on this matter. Hearing no objection, the Senator may proceed.

Senator **TURNER:** Thank you, Madame President. I think, as many of you may know, Rule 850 requires you to deal with the

matter within one hour or fifty miles. The proposition that has been considered by the board through the consultant retained was to double that, in theory, from one hour to two hours and from fifty miles to one hundred miles. It is my contention, because of how our population is centered, that much of the highest quality, lower cost health care, in fact, resides, for many people, beyond those boundaries. I don't think it is unreasonable for us to expect that we should have people traveling where the quality can, in fact, be higher and the cost lower. We should not be setting up arbitrary boundaries of time and distance for that purpose when, in reality, what we are trying to do is lower costs. I think those of you who have studied this matter invariably conclude, as do others, that typically quality and cost run inverse proportions. The more frequently you do a procedure, the higher the quality and you are able to do it at a lower cost. I think Rule 850 runs counter to what we are trying to do with respect to Dirigo. Again, I would ask you to consider not accepting the motion before us from the Senator from York, Senator LaFountain. Thank you.

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

Senator **DOUGLASS:** Thank you, Madame President, women and men of the Senate. I rise in support of the pending motion. We are a large geographic state. Rule 850 was established to protect people who are sick from having to go great distances for their health care. Because of costs, some change in that policy may be recommended at this time. It is preferable to have the Dirigo Health Board make those decisions rather than simply erase a rule that was put in force for very good reasons, to protect the citizens of the state who are not healthy and who do have to travel already some distance for their health care. I urge you to support the current motion.

On motion by Senator **LAFOUNTAIN** of York, the Majority **OUGHT NOT TO PASS** Report **ACCEPTED**.

Senator **TURNER** of Cumberland moved the Senate **RECONSIDER** whereby it **ACCEPTED** the Majority **OUGHT NOT TO PASS** Report.

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

The Chair noted the absence of the Senator from Somerset, Senator **HATCH** and further excused the same Senator from today's Roll Call votes.

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

ROLL CALL (#219)

YEAS: Senators: **BLAIS, CARPENTER, DAVIS, GILMAN, KNEELAND, LEMONT, NASS, SAVAGE, SAWYER, SHOREY, TURNER, WESTON, WOODCOCK, YOUNGBLOOD**

NAYS: Senators: **BRENNAN, BROMLEY, BRYANT, CATHCART, DAMON, DOUGLASS, EDMONDS, GAGNON, HALL, LAFOUNTAIN, MARTIN, MAYO, PENDLETON, ROTUNDO, STANLEY, STRIMLING, TREAT, THE PRESIDENT – BEVERLY C. DAGGETT**

ABSENT: Senators: **BENNETT, MITCHELL**

EXCUSED: Senator: **HATCH**

14 Senators having voted in the affirmative and 18 Senators having voted in the negative, with 2 Senators being absent and 1 Senator being excused, the motion by Senator **TURNER** of Cumberland to **RECONSIDER** whereby the Senate **ACCEPTED** the Majority **OUGHT NOT TO PASS** Report, **FAILED**.

Sent down for concurrence.

The Chair laid before the Senate the following Tabled and Later (1/13/04) Assigned matter:

SENATE REPORT - from the Committee on LEGAL AND VETERANS AFFAIRS on Bill "An Act To Authorize the State To Establish a Multijurisdictional Lottery or Lottery Games"
S.P. 515 L.D. 1536

Report - Ought to Pass as Amended by Committee Amendment "A" (S-147)

Tabled - January 13, 2004, by Senator **GAGNON** of Kennebec

Pending - **ACCEPTANCE OF REPORT**

(In Senate, January 13, 2004 Report **READ**.)

On motion by Senator **GAGNON** of Kennebec, Bill and accompanying papers **COMMITTED** to the Committee on **APPROPRIATIONS AND FINANCIAL AFFAIRS**.

Sent down for concurrence.

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

The Chair laid before the Senate the following Tabled and Later (1/13/04) Assigned matter:

SENATE REPORTS - from the Committee on **INSURANCE AND FINANCIAL SERVICES** on Resolve, To Study the Feasibility and Effectiveness of Providing Consumers with Consumer Reports on Health Care Services (EMERGENCY)

S.P. 169 L.D. 497

Majority - **Ought Not to Pass** (9 members)

Minority - **Ought to Pass as Amended by Committee Amendment "A" (S-357)** (4 members)

Tabled - January 13, 2004, by Senator **LAFOUNTAIN** of York

Pending - motion by same Senator to **ACCEPT** the Majority **OUGHT NOT TO PASS** Report

(In Senate, January 13, 2004, Reports **READ**.)

THE PRESIDENT: The Chair recognizes the Senator from York, Senator LaFountain.

Senator **LAFOUNTAIN:** Thank you, Madame President, men and women of the Senate. I rise to encourage you to support the pending motion, the Majority Ought Not to Pass report. Likewise, this bill was discussed in the context of L.D. 497 before the Insurance and Financial Services Committee and also discussed with the Health Care Reform Committee. As a result, the Health Care Reform Committee included in the Dirigo legislation provisions within this bill that actually bi-pass the study and go right directly to Maine law, which now requires Maine physicians and hospitals to provide a list of all charges to consumers, likewise provides for the Maine Health Data Organization to provide an annual report, listing the ten most frequently used in-patient and out-patient services, and also requiring the Maine Quality Forum to develop quality measures and standards. Thank you.

On further motion by same Senator, the Majority **OUGHT NOT TO PASS** Report **ACCEPTED**.

Ordered sent down forthwith for concurrence.

Off Record Remarks

On motion by Senator **TREAT** of Kennebec, **RECESSED** until 6:30 in the evening.

After Recess

Senate called to order by the President.

The Chair appointed the Senator from Kennebec, Senator **TREAT**, to serve as President Pro Tem for this evening's reconvening.

At this point, the Senate retired to the Hall of the House, where a Joint Convention was formed.

After Convention

In Senate Chamber

Senate called to order by President Pro Tem **SHARON A. TREAT** of Kennebec County.

On motion by Senator **GAGNON** of Kennebec, **ADJOURNED**, to Wednesday, January 21, 2004, at 10:00 in the morning.