

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

LEGISLATIVE RECORD

OF THE

One Hundred And Fourteenth Legislature

OF THE

State Of Maine

VOLUME I

FIRST REGULAR SESSION

December 7, 1988 to May 10, 1989

An Act to Implement the Aroostook Band of Micmacs Settlement Act (S.P. 152) (L.D. 272) (C. "A" S-53)
 TABLED - May 3, 1989 by Representative GWADOSKY of Fairfield.

PENDING - Passage to be Enacted.

On motion of Representative Gwadosky of Fairfield, retabled pending passage to be enacted and specially assigned for Monday, May 8, 1989.

The Chair laid before the House the second item of Unfinished Business:

Resolve, Authorizing the Transfer of State Interest in a Parcel of Real Estate to Arthur A. Tukey and Louise H. Tukey (H.P. 589) (L.D. 803) (C. "A" H-97)

TABLED - May 3, 1989 by Representative JOSEPH of Waterville.

PENDING - Final Passage.

On motion of Representative Gwadosky of Fairfield, retabled pending final passage and specially assigned for Monday, May 8, 1989.

TABLED AND TODAY ASSIGNED

The Chair laid before the House the first tabled and today assigned matter:

HOUSE DIVIDED REPORT - Majority (9) "Ought Not to Pass" - Minority (3) "Ought to Pass" - Committee on State and Local Government on Bill "An Act to Reduce the Expense of the Legislative Process by Shortening the Length of Legislative Sessions" (H.P. 317) (L.D. 433)

TABLED - May 4, 1989 by Representative GWADOSKY of Fairfield.

PENDING - Acceptance of Either Report.

On motion of Representative Gwadosky of Fairfield, retabled pending acceptance of either report and specially assigned for Monday, May 8, 1989.

The Chair laid before the House the second tabled and today assigned matter:

An Act to Provide for Division of Omitted Marital Property (H.P. 312) (L.D. 426) (H. "A" H-119)
 TABLED - May 4, 1989 by Representative ANTHONY of South Portland.

PENDING - Passage to be Enacted.

On motion of Representative Gwadosky of Fairfield, retabled pending passage to be enacted and specially assigned for Monday, May 8, 1989.

The Chair laid before the House the third tabled and today assigned matter:

An Act Relating to Confidentiality of Investigative Records of Boards and Commissions (H.P. 232) (L.D. 316) (S. "A" S-51 to C. "A" H-51)

TABLED - May 4, 1989 by Representative GWADOSKY of Fairfield.

PENDING - Passage to be Enacted.

On motion of Representative Gwadosky of Fairfield, retabled pending passage to be enacted and specially assigned for Monday, May 8, 1989.

(At Ease)

The House was called to order by the Speaker.

The Chair laid before the House the following matter: Resolve, Creating a Commission to Study

Commodity Taxes on Farmers (EMERGENCY) (H.P. 1081) (L.D. 1503) (Committee on Agriculture suggested) which was tabled earlier in the day and later today assigned pending the motion of Representative Aliberti of Lewiston that L.D. 1503 be referred to the Committee on Agriculture.

On motion of Representative Swazey of Bucksport, was referred to the Committee on Taxation, ordered printed and sent up for concurrence.

The Chair laid before the House the following matter: An Act to Amend the Laws Relating to Notaries Public (H.P. 241) (L.D. 353) (C. "A" H-105) which was tabled earlier in the day and later today assigned pending passage to be enacted.

This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 114 voted in favor of the same and none against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

The Chair laid before the House the following matter: Bill "An Act to Require Parental Consent to a Minor's Abortion" (H.P. 457) (L.D. 622) (C. "B" H-128) which was tabled earlier in the day and later today assigned pending the motion of Representative Gwadosky of Fairfield that the House reconsider its action whereby the Minority "Ought to Pass" as amended Report was accepted.

The SPEAKER: The Chair recognizes the Representative from Winslow, Representative Carter.

Representative CARTER: Mr. Speaker, may I inquire why the motion to reconsider is being made?

The SPEAKER: Representative Carter of Winslow has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative Gwadosky.

Representative GWADOSKY: Mr. Speaker, Men and Women of the House: I would be happy to respond to the Representative from Winslow, Representative Carter. The motion that I made earlier to reconsider the acceptance of the Minority Report was made on behalf of myself and many others who would like an opportunity to debate this bill further.

I would request a division at this time.

The SPEAKER: The Chair will order a vote. The pending question before the House is the motion of Representative Gwadosky of Fairfield that the House reconsider its action whereby the Minority "Ought to Pass" as amended Report was accepted. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

Representative Carter of Winslow requested a roll call vote.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The Chair recognizes the Representative from Stockton Springs, Representative Crowley.

Representative CROWLEY: Mr. Speaker, could I pose a question to the Speaker?

My question is, is Committee Amendment "A" germane to this title?

The SPEAKER: The Chair would advise the Representative that Committee Amendment "A" is not before this body and the Chair is not in a position to make a ruling on the germaneness of Committee Amendment "A" at this time.

The Chair recognizes the Representative from Winslow, Representative Carter.

Representative CARTER: A parliamentary inquiry, Mr. Speaker.

Since 24 hours has elapsed since the first reading took place, does the motion to reconsider require a two-thirds vote?

The SPEAKER: The Chair would advise the Representative that the 24 hours has not gone by, the motion to reconsider is in order at this time without a two-thirds vote.

The pending question before the House is the motion of Representative Gwadosky of Fairfield that the House reconsider its action whereby the Minority "Ought to Pass" as amended by Report was accepted. Those in favor will vote yes; those opposed will vote no.

The SPEAKER: The Chair recognizes the Representative from Lisbon, Representative Jalbert.

Representative JALBERT: Mr. Speaker, I request permission to pair my vote with Representative Anthony of South Portland. If he were present and voting, he would be voting yea and I would be voting nay.

The SPEAKER: The Chair recognizes the Representative from Thomaston, Representative Mayo.

Representative MAYO: Mr. Speaker, I request permission to pair my vote with Representative Tardy of Palmyra. If Representative Tardy were present and voting, he would be voting nay; I would be voting yea.

The SPEAKER: The Chair recognizes the Representative from Stockton Springs, Representative Crowley.

Representative CROWLEY: Mr. Speaker, I request permission to pair my vote with Representative Nutting of Leeds. If Representative Nutting were present and voting, he would be voting yea; I would be voting nay.

The SPEAKER: The Chair recognizes the Representative from Bangor, Representative Pederson.

Representative PEDERSON: Mr. Speaker, I request permission to pair my vote with Representative Clark of Millinocket. If he were present and voting, he would be voting nay; I would be voting yea.

The SPEAKER: The Chair recognizes the Representative from Bethel, Representative Mills.

Representative MILLS: Mr. Speaker, I request permission to pair my vote with Representative Jacques of Waterville. If Representative Jacques were present and voting, he would be voting nay; I would be voting yea.

The SPEAKER: The Chair recognizes the Representative from Princeton, Representative Moholland.

Representative MOHOLLAND: Mr. Speaker, I request permission to pair my vote with Representative Constantine of Bar Harbor. If she were present and voting, she would be voting yea; I would be voting nay.

The SPEAKER: The pending question before the House is the motion of Representative Gwadosky of Fairfield that the House reconsider its action whereby the Minority "Ought to Pass" as amended by Report was accepted. Those in favor of that motion will vote yes; those opposed will vote no.

ROLL CALL NO. 18

YEAS - Adams, Aikman, Allen, Ault, Begley, Brewer, Burke, Butland, Carroll, D.; Cathcart, Chonko, Clark, M.; Coles, Conley, Cote, Daggett, Donald, Dore,

Erwin, P.; Farnsworth, Foss, Foster, Garland, Graham, Greenlaw, Gurney, Gwadosky, Hale, Handy, Hanley, Hastings, Heesch, Hepburn, Hoglund, Holt, Joseph, Ketover, Kilkelly, LaPointe, Larrivee, Lawrence, Lebowitz, Libby, Lisnik, MacBride, Macomber, Mahany, Marsano, Marsh, Marston, McGowan, McPherson, Melendy, Mitchell, Nadeau, G. G.; Nadeau, G. R.; Norton, O'Dea, Oliver, Pendleton, Plourde, Priest, Rand, Reed, Richards, Ridley, Rolde, Rydell, Simpson, Skoglund, Small, Stevenson, Strout, B.; Swazey, Townsend, Tracy, Walker, Webster, M.; Wentworth, Whitcomb.

NAY - Aliberti, Anderson, Bailey, Bell, Carroll, J.; Carter, Curran, Dellert, Dexter, Dipietro, Duffy, Dutremble, L.; Farnum, Farren, Hichborn, Hickey, Hussey, Hutchins, Jackson, Look, Lord, Luther, Martin, H.; McCormick, McHenry, McSweeney, Michaud, Murphy, O'Gara, Paradis, E.; Paradis, J.; Paradis, P.; Parent, Paul, Pineau, Pouliot, Richard, Rotondi, Ruhlman, Seavey, Sheltra, Sherburne, Smith, Stevens, A.; Strout, D.; Tamaro, Telow, Tupper.

ABSENT - Boutilier, Cashman, Gould, R. A.; Higgins, Manning, McKeen, Merrill, Pines, Stevens, P.; The Speaker.

PAIRED - Anthony, Clark, H.; Constantine, Crowley, Jacques, Jalbert, Mayo, Mills, Moholland, Nutting, Pederson, Tardy.

Yes, 80; No, 48; Absent, 10; Vacant, 1; Paired, 12; Excused, 0.

80 having voted in the affirmative and 48 in the negative with 10 being absent, 12 paired and 1 vacant, the motion to reconsider did prevail.

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Conley.

Representative CONLEY: Mr. Speaker, Ladies and Gentlemen of the House: I move that the House accept the Majority "Ought to Pass" Report.

When we left this debate yesterday near the witching hour of twelve, my good chairman was holding the floor debating this particular Committee Amendment, the Majority Report. As time's winged chariot hurried near and we were getting ready to depart for lunch, there was little opportunity to debate the points which my respected chairman raised. I would like to take this opportunity to raise to this body the objections which he talked about and talk about that Committee Amendment.

Representative MacBride explained very thoroughly what the Majority Report would do in this matter. Representative Hastings talked about the rainbow of ideas and positions which came together in reaching this amendment which we now have before us. I don't think it is necessary to go through the details of what that report sought to do.

Essentially, unlike the Minority Report, which offered two stops, your parents or court, this amendment sought to deal with the very real issues that are involved here, namely to try to get some help for these young women who are in this very delicate situation.

As Representative MacBride pointed out, we put in this bill a number of avenues that this young person could go to to seek this help. That was the purpose of this amendment, that is why this amendment came about, to do something where nothing has been done, where nobody has been able to put together something that everybody could live with.

My respected chairman's first objection to this amendment was what he calls or insinuated would give everybody a roll call for each pocket. I guess I find, of all his objections, that one to be the most personal to me and the one which I believe does the most damage to the integrity of this amendment because it calls into question the principles of the

people who worked on this issue. I can suggest to this body that whenever you can get the two names of Hanley and Conley on the same Report, it is almost like bringing Northern Ireland together to solve their problems. We worked very, very hard on this, endless hours, with much pressure from many, many people. Nobody but nobody had as much pressure as members of this committee as well as our chairman and he has done very well under fire. But I have to take serious objections with his comments about a roll call for each pocket. We worked on this bill and this amendment to come up with something that would do the job, that would provide the help for the people that need it in this very delicate situation. I commend the majority for working on that. We gave way to principles, we gave way to strong beliefs, which all of us held, in order to form this agreement.

The second objection which he had was to the constitutionality. Brother Hastings, the now self-declared dean of this body in the area of law, expressed it well the other day when he said that, when a lawyer doesn't have the facts, he argues the law. By arguing the law, he hopes that you can get someone to come to your position, usually a judge. Well, in reference to this constitutionality issue, I am no judge, I am no legal scholar and I would never claim to be dean of this body but others far more knowledgeable than I have researched the amendment which is before you in reference to constitutionality.

In regard to my good chairman's concerns about the Thornburgh decision and whether or not this amendment would pass constitutional muster in light of that decision, I respectfully disagree with him and many scholars do. As this body well knows, anything we ever do is presumed to be constitutional until proven otherwise. The research in this area shows the Thornburgh decision which was really dealing with requirements that women had to meet, and they found that those requirements would actually confuse the woman and create anxiety and, therefore, would impede her ability to make her decision. Our bill does not do that. The things that we have put in there for counseling are there to help the woman to help her make a decision and so she could know about the very real health concerns which accompany any decision. Scholars, much more knowledgeable than I, have said that this position is constitutional.

Another objection which he raised is the inclusion of ordained clergy in the bill. I would suggest to this body that that also is a red herring. There is no requirement in this bill that clergy counsel people in reference to abortion, no requirement whatsoever. It is similar to the way law is in requiring abortions be performed by physicians. We don't require physicians to act against their will or their conscience. We would not require clergy to do so. The presence of clergy in there is for the benefit of the teenager who may want to consult a clergy member. The clergy member doesn't have to meet with this person if she does not want to. If it is that offensive, then it can be removed but the committee put it in there for the benefit of the teenager so this young woman could go to somebody she trusted to talk about this very, very personal and very important decision.

I guess what bothers me the most, and it was not expressed by my chairman and he has never talked about this, but it has been in the newspapers and on TV in reference to the oppositions of the Majority Report feelings about our proposal. To quote from the leader of this opposition "This is the most abortionist piece of legislation that has ever been proposed." I guess that bothers me more than anything because this committee and the majority that

worked on this issue are not abortionists. The people who worked on this felt that it was better for the mental and emotional health of this teenager, to work her problems out with a counselor, guardian or doctor rather than to have this young person go to court and stand next to criminals, abusers, people who are there maybe who lost their children because they don't know how to take care of them and be stuffed into a hallway in a corridor with screaming attorneys and their clients running all about them. Is that where these people should be? I think not. I don't think this body really wants them there. To say that this amendment is an abortionist bill is unfair. The people who worked on this worked hard at it because they put principles aside to get to the bottom of this, which is the mental and emotional health of this teenager in trying to keep that family together.

For all these reasons, Mr. Speaker, I ask that this body go along with my motion.

The SPEAKER: The Chair recognizes the Representative from Stockton Springs, Representative Crowley.

Representative CROWLEY: Mr. Speaker, Ladies and Gentlemen of the House: I would like to pose a question to the Chair.

Is Amendment "A" germane to L.D. 622?

The SPEAKER: The Chair would advise the Representative from Stockton Springs, Representative Crowley, that the Committee Amendment is not before the body. The pending motion is to accept the Majority Report. If the Majority Report is accepted, then the Committee Amendment would then be before the body. Therefore, the Chair is not in a position to rule on the germaneness of Committee Amendment "A".

The Chair recognizes the Representative from Winslow, Representative Carter.

Representative CARTER: Mr. Speaker, Ladies and Gentlemen of the House: We had a lengthy debate on this bill yesterday and serious questions were raised about the constitutionality of the Majority Report. The good gentleman from Portland, Representative Conley, has indicated that the teenagers would be affected by this parental consent bill and would have to stand next to criminals. It is my understanding that Probate Court is a family court and this is where our Minority Report would provide the avenue for the teenager, if that happens to be that young persons wish.

I still have many reservations about the Majority Report, about its constitutionality. I am not a lawyer but just the fact that seven lawyers worked on the bill does not make it constitutional. I am not infallible and I don't think anybody else is either.

Apparently we are all sincere, the committee has put a lot of work into this bill. I would suggest, if we really are sincere in trying to pass a piece of legislation that is going to achieve what we are trying to achieve, would be to table this item and declare a solemn occasion and submit Report A, the Majority Report, to the courts for a ruling.

In the meantime, we could keep both reports on the table and if Report A happens to be unconstitutional as many of us believe it is, then we can proceed with the Minority Report and then we can really accomplish something this session. I would hope that somebody from the opposite side would make a motion to table so that I can prepare the necessary request for proclaiming a solemn occasion.

The SPEAKER: The Chair recognizes the Representative from Fryeburg, Representative Hastings.

Representative HASTINGS: Mr. Speaker, Members of the House: I will be very brief because yesterday I spoke to you probably in a too lengthy manner. Yet,

I cannot sit still and have before you a decision which is going to affect those 78 kids without you recognizing that this bill has been reviewed by others within this committee as to its constitutionality and all have agreed that it is constitutional, that the inclusion of clergy as a potential counselor does not render it invalid in any way. We should all remember, at least in a bit of gaiety, that there were 7 of us and there were only 7 on the Supreme Court so perhaps it is a tie, that is, there were 7 lawyers, although I think perhaps we have to count a few law students.

There were several points brought out by my brother yesterday, that is the chairman of our committee, which I will not repeat because Representative Conley has, in fact, gone through those rather well. The main thing I would point out is the fact of severability -- as was discussed, the committee worked many, many hours, way beyond any other bill, on this particular point. We are not a committee of 12 or a majority of 12 that always wears blue socks. We do not have the same ideas and creeds. It is, if you will, a kaleidoscope of different ideas that will work together to build a consensus that was considered the best that could be arranged under all the events that we considered for the minor.

It is not a parental consent bill, this law in its original form was not a parental consent bill. It has always been a bill to protect minors and that is what this law is about today. I suggest to each of you that it is a fair, middle ground that all of us should consider favorably and acknowledge at least that it is with earnest effort that this Majority Report has been presented to you in hopes that we may give safe haven to those young children who are, if you will, in need of help. Remember, that there are ten of us from this body on the Judiciary Committee -- we are not a judge but we are in fact your Representatives who have worked this bill to the Majority Report, which we present to you today. I urge your green light on the motion.

Representative Jalbert of Lisbon requested a roll call.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The Chair recognizes the Representative from Augusta, Representative Paradis.

Representative PARADIS: Men and Women of the House: Hopefully this is the last time I have to make a speech on this subject for every one concerned including this Representative. I appreciate the comments of my committee members, the so-called Supreme Justices designee, and if they were ever to appear before my committee in that position under nomination, I think I would probably vote for their confirmation to be on the Law Court. They are both distinguished members of the bar. The last four or five years I have had an opportunity to examine other members of the bar and I think they would stand muster if that were the case.

In that light, I would like to say that when I debated another paper yesterday, mine was about three pages long; today we are trying to spell out something different and we have ten pages, seven of which deal with informed consent. If there ever was

truly a lawyers bill before this body, this is a lawyers bill.

Last year, I defended certain actions regarding Tort liability because I felt that rights of people were in danger of being abridged and compromised. I defended the legal profession. This afternoon, I can't stand up and defend the legal profession when it has used all of its resources to come up with a seven page amendment that really dances around the whole issue of parental consent and seeks to define what might be good, what might not be good, what could propose to be problems with different professional categories, namely members of the clergy and other counselors, not just members of the clergy, I want that clear, but anyone in conscience who could not participate. Maine law has always recognized that until this proposed amendment -- that we do not force a private individual to participate in a discussion or action counter to their own conscience.

What I find most interesting is that my friends this afternoon have not discussed the refuted, the important section, Section 9 on Non-Severability. In fact, no one had even mentioned the term until I just did. As I said yesterday and I would like to reiterate, I have never seen that clause presented to this body ever before on any piece of legislation that ever had the question of constitutionality raised. In the event that any portion of this section is held invalid, it is the intent of the legislature that this entire section is invalidated. I think that speaks pretty well to the intent of the bill, the amendment that we have. It isn't us, the Minority supporters, who are saying, let's not have anything, it is clearly stated in their amendment that if they cannot have everything in this bill, they would not chance any court to invalidate the informed consent and allow parents to have control over their minor children.

It gets even more interesting. If you have an opportunity to read the amendment, on Page 3 under Section 2a, it says "The attending physician has received and will make part of the medical record the informed written consent of the minor and one parent, guardian or adult family member." When they accuse us of watering down parental consent, there is a Niagara Falls of watering down parental consent in this section.

Further on Section 3 it states, "To ensure that the consent for an abortion is informed consent, the attending physician or the physician's designee" -- physician's designee, since the term has not been defined in the amendment, let me propose from my unbiased viewpoint what a physician's designee could be. It could be the physician's assistant or the physician's receptionist. If you don't believe that happens, ask the two young women who are minors who had abortions and testified before our committee.

We have a real professional clause here that could never get beyond our committee in any bill of any other form without raising the ire of our legal community in Maine. But you have it before you this afternoon and it says on Page 4, "No recovery may be allowed against any physician upon the grounds that the abortion was rendered without the informed consent of the minor." When I asked for clarification in the work session, it was said that that was necessary because of the Health Security Act. We would have to make that immuned in this instance because remember, it is a minor that is having that abortion performed, not an adult member of this community of the State of Maine. When physicians perform surgery on minors, we would have Tort problems and they best make sure that the guardian or the parent has consented to that

surgery. It isn't like having a tooth filled like I had filled this morning. I think it is a little bit more complicated and no one questions that.

The Health Security Act says, "A valid consent is one which is given by a person who, under all surrounding circumstances, is mentally and physically competent to give consent." The courts say that that is not possible for a minor child, male or female, and that is why they do not enjoy majority rights. You have to have a parent or guardian see to that type of procedure. We protect the minorities in that fashion under the Constitution. This clause, in all of its possibility, gives that immunity to that physician in that one instance only.

We are making this procedure so singular in action that nowhere else in our statutes do we give that type of at they cannot operate on the toe of your daughter or abort your daughter's child without having to have the consent of the adult. I find that absolutely incredible and that clause could not stand on its own in this body or any other law or proposal and we know it but it is here this afternoon in that bill. Why is that? I will let the supporters of that amendment tell you that. I don't know why that it is so necessary except for all the possibilities that come to my mind of a young person being injured. When we say we want safe abortions, is that going to ensure safety when the physician knows that he or she is immuned?

It goes on on Page 5 as to what the physician must do -- discuss the possibility of involving the minor's parents, guardian or other adult family member and I found that word "possibility" so intriguing, not desirability but possibility. It is such a strong consent bill and they believe so strongly in having the parent involved, it is like it is the last possibility and we will slip it in before you ink the page. It mentions that several other times.

Then when we get to court if there is any problem (on Page 6) and the father or mother seeks to recover for that action, we have presumption of validity of informed consent, rebuttal. Informed consent, which is evidenced in writing containing information and statements provided in subsection 4, which is signed by the minor, "shall be presumed to be a valid informed consent. This presumption, however, may be subject to rebuttal only upon proof that the informed consent was obtained through fraud, deception or misrepresentation of material facts". The burden is now on the family, not on the doctor. They are telling you that it is too late then to even bother with it, the fact has already happened. We gave them immunity, we have told you that you can't question, you have got to prove and prove and state your case and you had better have a deep pocket because the state is not going to be representing you. We just stated in that law, you are immuned so go to it.

I guess you can feel that my reasons haven't changed. I think it is still a bad amendment as it was when it was discussed in committee.

Mr. Speaker, I move that this bill and all its accompanying papers be indefinitely postponed. I would request a roll call.

The SPEAKER: A roll call has been requested. For the Chair to order a roll call, it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken and more than one-fifth of the members present and voting having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is the motion of Representative Paradis of Augusta that L.D. 622 and all its accompanying papers be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 19

YEA - Aliberti, Anderson, Bailey, Bell, Carroll, J.; Carter, Crowley, Curran, Dexter, Dipietro, Dutremble, L.; Farnum, Farren, Foss, Greenlaw, Hichborn, Hickey, Hussey, Hutchins, Jalbert, Lisnik, Look, Lord, Luther, Macomber, Martin, H.; McCormick, McGowan, McPherson, Michaud, Mitchell, Moholland, Murphy, O'Gara, Paradis, E.; Paradis, P.; Parent, Paul, Plourde, Pouliot, Richard, Ridley, Rotondi, Ruhlin, Seavey, Sheltra, Smith, Stevens, A.; Strout, B.; Strout, D.; Telow, Walker, Webster, M.;

NAY - Adams, Aikman, Allen, Ault, Begley, Brewer, Burke, Butland, Carroll, D.; Cathcart, Clark, M.; Coles, Conley, Cote, Daggett, Dellert, Donald, Dore, Duffy, Erwin, P.; Farnsworth, Foster, Garland, Graham, Gurney, Gwadosky, Hale, Handy, Hanley, Hastings, Heeschen, Hepburn, Hoglund, Holt, Jackson, Joseph, Ketover, Kilkelly, LaPointe, Larrivee, Lawrence, Lebowitz, Libby, MacBride, Marsano, Marsh, Marston, Mayo, McHenry, McSweeney, Melendy, Mills, Nadeau, G. G.; Nadeau, G. R.; Norton, O'Dea, Oliver, Paradis, J.; Pederson, Pendleton, Pineau, Priest, Rand, Reed, Richards, Rolde, Rydell, Sherburne, Simpson, Skoglund, Small, Stevenson, Swazey, Tammaro, Townsend, Tracy, Tupper.

ABSENT - Anthony, Boutilier, Cashman, Chonko, Clark, H.; Constantine, Gould, R. A.; Higgins, Jacques, Mahany, Manning, McKeen, Merrill, Nutting, Pines, Stevens, P.; Tardy, The Speaker.

Yes, 55; No, 77; Absent, 18; Vacant, 1; Paired, 0; Excused, 0.

55 having voted in the affirmative and 77 in the negative with 18 being absent and 1 vacant, the motion did not prevail.

The SPEAKER: The pending question now before the House is the motion of the Representative from Portland, Representative Conley, that the House accept the Majority "Ought to Pass" Report, a roll call having been ordered.

The Chair recognizes the Representative from Fryeburg, Representative Hastings.

Representative HASTINGS: Mr. Speaker, Ladies and Gentlemen of the House: I rise to answer briefly four points raised by the Representative from Augusta, Representative Paradis. First, he well knows that you may not have a veto power by parents as to whether or not a minor may have an abortion. Regardless of the wishes of those who support his position, you may not have such a right and anything put in the bill to that effect, would render the bill unconstitutional. Therefore, it has to be phrased in the way it is drafted and he well recognizes that that was discussed and had been discussed completely by the majority in their adoption of their report.

To the severability, I spoke about a rainbow or kaleidoscope of ideas that was used in pairing the majority report and that Amendment "A" -- as Representative Conley has indicated, it took representatives from one side of the field to the other. I hate to use the terms but they are so well used out in the halls outside of this House, it took those who are totally pro-choice and those totally pro-life come together to a middle ground. They were willing to do that in that committee because they fashioned a bill, which after very, very careful drafting, was determined to be constitutional and we did not want any changes in that bill. In fact, the committee had agreed that we would come to the floor

by its Majority Report and support it without amendment. That is what we have done today. We support it without amendment because it is a commonality of interest that drafted this bill and yet, that does not detract from the soundness and the philosophy that it espouses. It is a minor's protection bill and it does protect those minors in safe havens.

Next, he either misconstrues or read from an early draft of the amendment -- there is no physician's designee in the amendment before you today. If he read that, he is false. He is not reading from the current bill. Amendment "A" has no potential for a physician's designee as a counselor.

Fourth, he read from the bill and took it out of context when he mentioned that a physician would have no recovery allowed against him if an abortion was being performed because (1) when there has been valid informed consent given by a minor consistently with the regulations of standards that are prescribed by the courts in the State of Maine for physicians acting in health care matters for minors. (2) When the physician has obtained informed written consent by the minor.....

The SPEAKER: The Chair recognizes the Representative from Winslow, Representative Carter.

Representative CARTER: Mr. Speaker, a point of order?

Is the good gentleman reading from a proposed House Amendment or is he reading from Committee Amendment "A" to which the motion is before this body?

The SPEAKER: The pending question is adoption of the Majority "Ought to Pass" Report which consists only of Committee Amendment "A" and would the Representative please restrict his remarks to that?

Representative HASTINGS: Mr. Speaker, that is what I am reading from. I am using a blue copy but it is exactly like any red copy that you have before you. If you would look on 3b, which is items 1 and 2, on the pink copy that you have before you -- I do not have a pink copy but I guarantee you that it is identical to that which I refer to here.

The SPEAKER: The Chair recognizes the Representative from Island Falls, Representative Smith.

Representative SMITH: Mr. Speaker, I would like to pose a question through the Chair, if I may, to Representative Hastings.

I understand you had an Attorney General's opinion and would you care to comment on that?

The SPEAKER: Representative Smith of Island Falls has posed a question through the Chair to Representative Hastings of Fryeburg, who may respond if he so desires.

The Chair recognizes that Representative.

Representative HASTINGS: Mr. Speaker, Ladies and Gentlemen of the House: We did seek a written opinion from the Attorney General's office. The Attorney General's office indicated that they were unprepared to give any opinion on any bill regarding parental consent because of the pending argument before the Supreme Court. They did say, however, you should act on the presumption that the laws promulgated by this House or this body are constitutional. We have other opinions but that is what the Attorney General of the State of Maine told us.

The SPEAKER: A roll call has been ordered. The pending question before the House is the motion of Representative Conley of Portland that the House accept the Majority "Ought to Pass" as amended Report. Those in favor of that motion will vote yes; those opposed will vote no.

The Chair recognizes the Representative from Princeton, Representative Moholland.

Representative MOHOLLAND: Mr. Speaker, I would like to pair my vote with Representative Constantine of Bar Harbor. If she were present and voting, she would be voting yea; I would be voting nay.

The SPEAKER: The Chair recognizes the Representative from Mexico, Representative Luther.

Representative LUTHER: Mr. Speaker, I request permission to pair my vote with Representative Mahany of Easton. If she were present and voting, she would be voting yea; I would be voting nay.

The SPEAKER: The Chair recognizes the Representative from Lisbon, Representative Jalbert.

Representative JALBERT: Mr. Speaker, I request permission to pair my vote with Representative Anthony of South Portland. If he were present and voting, he would be voting yea; I would be voting nay.

The SPEAKER: The Chair recognizes the Representative from Rome, Representative Tracy.

Representative TRACY: Mr. Speaker, I request permission to pair my vote with Representative Nutting of Leeds. If he were present and voting, he would be voting nay; I would be voting yea.

The SPEAKER: The Chair recognizes the Representative from Thomaston, Representative Mayo.

Representative MAYO: Mr. Speaker, pursuant to House Rule 7, I request permission to pair my vote with Representative Tardy of Palmyra. If he were present and voting, he would be voting nay; I would be voting yea.

The SPEAKER: The Chair recognizes the Representative from Bangor, Representative Pederson.

Representative PEDERSON: Mr. Speaker, I request permission to pair my vote with Representative Clark of Millinocket. If he were present and voting, he would be voting nay; I would be voting yea.

The SPEAKER: The Chair recognizes the Representative from Bethel, Representative Mills.

Representative MILLS: Mr. Speaker, pursuant to House Rule 7, I request permission to pair my vote with Representative Jacques of Waterville. If he were present and voting, he would be voting nay; I would be voting yea.

ROLL CALL NO. 20

YEA - Adams, Aikman, Allen, Ault, Begley, Brewer, Burke, Butland, Carroll, D.; Cathcart, Clark, M.; Coles, Conley, Cote, Daggett, Dellert, Donald, Dore, Erwin, P.; Farnsworth, Foster, Garland, Graham, Greenlaw, Gurney, Gwadosky, Hale, Handy, Hanley, Hastings, Heeschen, Hepburn, Hoglund, Holt, Joseph, Ketover, Kilkelly, LaPointe, Larrivee, Lawrence, Libby, Lisnik, MacBride, Macomber, Marsano, Marsh, Marston, McPherson, McSweeney, Melendy, Mitchell, Nadeau, G. G.; Nadeau, G. R.; Norton, O'Dea, Oliver, Paradis, J.; Pendleton, Priest, Rand, Reed, Richards, Rolde, Rydell, Simpson, Skoglund, Small, Stevens, P.; Stevenson, Swazey, Townsend, Tupper, Webster, M.; Whitcomb.

NAY - Aliberti, Anderson, Bailey, Bell, Carroll, J.; Carter, Crowley, Curran, Dexter, Dipietro, Duffy, Dutremble, L.; Farnum, Farren, Foss, Hichborn, Hickey, Hussey, Hutchins, Jackson, Lebowitz, Look, Lord, Martin, H.; McCormick, McGowan, McHenry, Michaud, Murphy, O'Gara, Paradis, E.; Paradis, P.; Parent, Paul, Pineau, Plourde, Pouliot, Richard, Ridley, Rotondi, Ruhlin, Seavey, Sheltra, Sherburne, Smith, Stevens, A.; Strout, B.; Strout, D.; Tamaro, Telow, Walker, Wentworth, The Speaker.

ABSENT - Boutillier, Cashman, Chonko, Gould, R. A.; Higgins, Manning, McKeen, Merrill, Pines.

PAIRED - Anthony, Clark, H.; Constantine, Jacques, Jalbert, Luther, Mahany, Mayo, Mills, Moholland, Nutting, Pederson, Tardy, Tracy.

Yes, 74; No, 53; Absent, 9; Vacant, 1; Paired, 14; Excused, 0.

74 having voted in the affirmative and 53 in the negative with 9 being absent, 1 vacant and 14 paired, the Majority "Ought to Pass" as amended by Committee Amendment "A" (H-127) Report was accepted, the Bill read once.

Committee Amendment "A" (H-127) was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Winslow, Representative Carter.

Representative CARTER: Mr. Speaker, if I am in order, pursuant to House Rule 31, I would request the Chair's ruling on germaneness.

The SPEAKER: The Chair would like to advise members that in the course of debate on this item in committee, the Chair was made aware that a request would be made. When a request is made for a ruling from the Chair, it is usually without notice. In this instance, I was aware that it was going to be made and I learned a long time ago (in this legislative body) that if you want to keep it quiet, you don't tell anyone. No one knows -- even though many have counseled as to what my decision ought to be, there is not a single person in this legislative body or outside this body that knows what my decision will be.

The Chair has determined after reviewing the amendment that, since Committee Amendment "B", the original Bill, and Committee Amendment "A" contains the provision of requiring parental consent and that Committee Amendment "A" keeps the intent of the Bill, in terms of a bypass from the parents, (in the first instance in the bill that is judicial) the committee extended the number of bypasses. Therefore, the Chair will rule that Committee Amendment "A" is germane with the purpose of the Bill and of the Amendment.

Subsequently, Committee Amendment "A" was adopted.

Under suspension of the rules, the Bill was read a second time, passed to be engrossed as amended by Committee Amendment "A" and sent up for concurrence.

By unanimous consent, was ordered sent forthwith to the Senate.

(Off Record Remarks)

On motion of Representative Nadeau of Saco, Adjourned until Monday, May 8, 1989, at nine o'clock in the morning.

STATE OF MAINE
ONE HUNDRED AND FOURTEENTH LEGISLATURE
FIRST REGULAR SESSION
JOURNAL OF THE SENATE

In Senate Chamber
Friday
May 5, 1989

Senate called to Order by the President.

Prayer by the Honorable Margaret G. Ludwig of Aroostook.

SENATOR LUDWIG: Let us pray. Lord, as we are once again reminded of the brevity of human existence and as we grieve for the loss of one of our fellow legislators, let us remember the advice offered in the Book of Micah, where it is written: "He hath showed Thee what is good and what doth the Lord require of Thee? But to do justly and to love mercy and to walk humbly with Thy God." Amen.

Reading of the Journal of Yesterday.

PAPERS FROM THE HOUSE

House Papers

Bill "An Act to Fund the Maine State Retirement System for Certain Employees Previously Covered by the County Retirement System"

H.P. 1062 L.D. 1484

Comes from the House referred to the Committee on AGING, RETIREMENT AND VETERANS and ORDERED PRINTED.

Which was referred to the Committee on AGING, RETIREMENT AND VETERANS and ORDERED PRINTED, in concurrence.

Resolve, Concerning Africanized Bees

H.P. 1055 L.D. 1477

Comes from the House referred to the Committee on AGRICULTURE and ORDERED PRINTED.

Which was referred to the Committee on AGRICULTURE and ORDERED PRINTED, in concurrence.

Bill "An Act to Amend the Real Estate Brokerage License Laws" (Emergency)

H.P. 1068 L.D. 1490

Resolve, to Establish the Commission to Study Real Estate Appraiser Certification and Licensing

H.P. 1069 L.D. 1491

Come from the House referred to the Committee on BUSINESS LEGISLATION and ORDERED PRINTED.

Which were referred to the Committee on BUSINESS LEGISLATION and ORDERED PRINTED, in concurrence.

Bill "An Act to Alter Cost-sharing Agreements Among Municipalities in School Administrative Districts"

H.P. 1066 L.D. 1488

Comes from the House referred to the Committee on EDUCATION and ORDERED PRINTED.

Which was referred to the Committee on EDUCATION and ORDERED PRINTED, in concurrence.

Bill "An Act to Exempt Shooting Ranges from Noise Control Standards"

H.P. 1058 L.D. 1480

Bill "An Act to Prohibit Dumping Waste on Sebago Lake"

H.P. 1060 L.D. 1482