

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

WHEREAS, Major General Tinkham left active duty with the rank of Captain and joined the Maine Army National Guard in 1973 and was assigned as a battery commander with the 152nd Field Artillery; and

WHEREAS, following a second battery command and the completion of a number of staff assignments, including a tour at the federal National Guard Bureau, he commanded the Troop Command, Maine Army National Guard; and

WHEREAS, Major General Tinkham has also served as the Deputy Commissioner of Defense, Veterans and Emergency Management and as Executive Director of Maine Veterans' Homes; and

WHEREAS, Major General Tinkham faced some of his greatest challenges during the crisis on September 11, 2001, when he directly oversaw the state response to the terrorist attacks; and

WHEREAS, Major General Tinkham possesses determination, sound judgment and a work ethic that exemplifies the best in Maine people; now, therefore, be it

RESOLVED: That, We, the Members of the 121st Legislature, now assembled in the Second Special Session, on behalf of the people we represent, extend our congratulations and warmest wishes to Major General Joseph E. Tinkham, II on the occasion of his retirement and we take this opportunity to acknowledge his long and distinguished career and thank him for this service to this State and to the Nation; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to Major General Joseph E. Tinkham, II as a token of our esteem.

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

READ and **ADOPTED**, in concurrence.

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 (1/27/04) Assigned matter:

SENATE REPORTS - from the Committee on **BUSINESS, RESEARCH AND ECONOMIC DEVELOPMENT** on Bill "An Act To Authorize Collaborative Practice for Emergency Contraception"

S.P. 376 L.D. 1152

Majority - **Ought to Pass** (9 members)

Minority - **Ought Not to Pass** (4 members)

Tabled - January 27, 2004, by Senator **BROMLEY** of Cumberland

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

(In Senate, January 27, 2004, Reports **READ**.)

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

Senator **BROMLEY:** Thank you, Madame President. I'm very proud to urge the support of this bill today. I will state briefly what it does and then give a few remarks to some questions that I've had.

This bill authorizes a pharmacist to initiate emergency contraceptive drug therapy, which we're calling EC, in accordance with standardized protocols developed by the pharmacist and also authorized by a prescriber acting within his or her scope of practice. This bill requires the pharmacist to initiate emergency contraception drug therapy under these provisions, to provide the recipient with a standardized fact sheet developed by the Department of Professional and Financial Regulations, the Board of Pharmacy in consultation with the Department of Human Services, the American College of Obstetricians and Gynecologists, the Maine Pharmacy Association, and other healthcare organizations. This allows the pharmacist, in what we are calling collaborative practice, to dispense emergency contraception to a woman seeking this.

Let me give you a list of the supporters of this measure. They are; Downeast Sexual Assault Services, Family Planning Association of Maine, Maine Association of Independent Neighborhoods, the Maine Choice Coalition, Maine Civil Liberties Union, the Maine Coalition Against Sexual Assault, the Maine Coalition to End Domestic Violence, the Maine Interfaith Council for Reproductive Choices, Maine Lesbian Gay Political Alliance, the Maine Nurse Practitioner Association, Maine State Nurses Association, Maine Women's Fund, Maine Women's Lobby, Medical Students for Choice, the National Association of Social Workers, Planned Parenthood of Northern New England, University of Southern Maine, the Aroostook County Action Program, and the Maine Medical Association.

For those of us in this chamber that have, in the past, supported issues around choice and birth control are going to find this an easy bill to support. Those of us who may have a deep philosophical belief against birth control may not want to support this bill. Those of us that may have had some ambivalence about this issue may find this the bill that we can support. Those of us who join, who agree that reducing the incidence of abortion is important to us, will find this a good remedy. I urge you to support this bill. Thank you very much.

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

Senator **SHOREY:** Thank you, Madame President, men and women of the Senate. I'm not going to argue about the moral issues here. There will be other people talking about that. I sit on this committee and I am going to talk about what this bill does. What this bill does is expands the pharmacist's scope of practice. Again, it expands the pharmacist's scope of practice without sunrise review. For those of you that don't know what sunrise review is, basically it is the department looking into an issue and

reporting back to us whether they support it or they don't support it. It gives us the pros and cons. That is not being done here. That is very dangerous. It is very dangerous.

Currently in the State of Maine, pharmacists do not have the ability to write prescriptions. They are not trained in it. The good Senator from Cumberland, Senator Bromley, was reading off a whole litany of groups that support this. She mentioned the Maine Medical Association. I have a letter here from the Maine Medical Association that states should L.D. 1152 be enacted the association would work with the Board of Pharmacy, the Board of Medicine, and other interested parties to ensure that pharmacists receive adequate training programs. What that means is that pharmacists are going to be asked to dispense this medication. The association does not believe the training provisions described in section 13823 of the bill are not adequate to ensure patient protection. While pharmacists are well trained and educated in drug therapy and dispensing, they are not trained in systematic medicine. In our view, a pharmacist needs meaningful, comprehensive training to initiate emergency contraception drug therapy tantamount to writing a prescription. Why do they need a prescription? Physicians are qualified to screen, for medical reasons, why EC, the contraceptive that we are talking about, might cause other medical problems if the patient has contradictions such as diabetes, liver problems, heart disease, breast cancer, deep vein thrombosis, or women who smoke and are over 35. The morning after pill is ten to fifteen times more potent than the standard birth control pill and you have seen packets that list all the complications that can come out from that. I don't feel that we should be allowing the pharmacists to expand their scope of practice here.

Also what we are going to be doing in this bill is asking the pharmacist to be a social worker. I have a little more respect for that calling, social workers. I think they do a great job. The good Senator from Cumberland, Senator Bromley, said that pharmacists will be giving out a fact sheet to these people, these people being teenagers. That is who is going to come for this. It's not going to be the older women. It's going to be the teenagers. Where are these teenagers going to be going? They are going to be going to the stores that are not in their towns, because they don't want to see a pharmacist who they sit next to in church on Sunday and go up to them and say 'here's what I need, can you prescribe this for me?' They are not going to do that. They are going to go out of town, to some big box store, somewhere else where they are going to stand in line with 50 other people while there is a pharmacist there who may not be sympathetic to their needs, sympathetic to their views, understand who they are or what they are, but are giving them a fact sheet and saying 'here, go do this at your own peril.' At your own peril. We're putting children in the State of Maine at risk here. I don't think that is right.

Again, this is not targeted to women. This is targeted to teenagers. This is targeted. There is no age on this. Is a 12 year old going to go in? Is a 14 year old going to go in? What is going to happen here?

I urge you, whether you agree or disagree with this issue, about abortion, about birth control, etcetera, we have to look at it at a different fact here. The fact remains that we are expanding the scope of practice for pharmacists, and we're allowing them to prescribe a drug, a drug that could be dangerous, to the youth of our state. I urge you to vote against this. Thank you.

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

Senator **PENDLETON:** Thank you, Madame President. With all due respect for the good Senator from Washington, Senator Shorey, I disagree. Having been a nurse for many, many years and practiced in nursing, I just need to remind folks here in the Senate that for many, many years nurses have been able to use best practices and use a type of prescribing on certain medications under certain conditions. When I worked in the intensive care unit and the coronary care unit, I worked under those very conditions that we are now offering to pharmacists. Pharmacists are highly educated and pharmacists are able to do this. In the case of asthma and diabetes, as was mentioned, and several other diseases, it would be the same as the nursing best practices that I practiced in the intensive care unit because if that person has those diseases that is a person off limits. You do not prescribe to that person because that person has special considerations. That is covered in the bill. It's covered in the amendment.

As far as patients going in and getting a slip of paper with the complications, absolutely, that is best practice. That is what nurses do and doctors do all the time. No matter what the procedure, what the medication, you are always handed side effects. Always.

As far as a dangerous medication, men and women of this Senate, prescribed the wrong way, by the wrong person, or taken on your own, an aspirin could kill you. Thank you.

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

Senator **GILMAN:** Thank you, Madame President, men and women of the Senate. I, also, would like to address this issue today. The medical name is Preven, of Plan B. It's a synthetic estrogen hormone that is given in extremely high dosages, 10 to 15 times higher, twice in a 72 hour period which could result in a 30 times higher dosage. The side effects are nausea, blood clots in legs and lungs, stroke, entopic pregnancy, and intrauterine pregnancy. To reiterate what the good Senator from Washington, Senator Shorey, said, information that you will get in the brochure, if you went to the drug store and got their print out, includes that if the patient suffers from headaches, heart disease, elevated blood pressure, diabetes, liver disease, or has a history of varicose veins, these physical symptoms could cause major complications or death. The much lower dosage birth control pill causes 150 chemical changes to the female body. Preven is a potent synthetic chemical that is foreign to the female's reproductive system. This synthetic steroid is not normal and it's metabolism differs markedly from natural estrogen. The concern for teenagers is that, taking the synthetic steroid as opposed to the natural estrogen, estrogen helps in the development of the brain and the brain growth is not complete until the end of their teenage years. I received this information from a national nurses' association and a national physicians' association, from two medical doctors here in Maine, and a registered nurse. For young women who are on birth control pills, it is the most frequent cause of sudden death. A 400% increase on the pill. Now remember, this dosage of this emergency contraceptive can be as high as 30 times higher than the birth control dosage.

Preven has not been adequately tested for it's long-term effects on teenagers. I found that in the literature that came from

the pharmacy. It took 20 years for medical science to discover the evidence of the dangers of hormone replacement therapy for post-menopausal women. I think we all know women that have gone off that medication. Twenty years ago the College of Obstetrics and Gynecology approved that medication for women and today we find it is dangerous. The emergency conception pill was approved first in England and Scotland. We are now receiving reports out of there. In Scotland, the pill has increased promiscuity, and as a result, sexually transmitted diseases are climbing at an alarming rate, as they are already in this country and in the State of Maine. Abortion rates have not gone down in Scotland. The morning after pill, they say, lulls the teens into a false sense of security.

The print out with Preven is seven pages long. Will the pharmacist have enough medical history of each individual female's menstrual cycle to make recommendations on the warnings found in this literature? Does the patient not deserve a total medical examination and evaluation by her physician of her physical and reproductive health?

When I debated on the women's health bill, L.D. 798, regarding informed consent, the argument was then that it would interfere with the doctor-patient relationship, which there was none. We had many women testify that there was no doctor-patient relationship when our women go for an abortion. The patient didn't even see the doctor before the abortion was performed. Now the argument is that they want to remove all doctor-patient relationship and pass it onto someone who does not have the medical knowledge to prescribe medications like this risky drug. I guess the common sense question to ask is, would you want your daughter or grand-daughter to take this pill without a good physician involved? Knowing all the facts, risks, and serious consequences, would you want them to take it at all?

I just want to relay a personal example of when I was raising my children and they had a fever. I was hesitant to give them an aspirin. I would give it because the doctor recommended it. We know today that we cannot give baby aspirin to children because of a risk of a syndrome that they could contract. What do we know about the long-term risks that this emergency contraception is going to be on our youth of today? Thank you very much.

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

Senator **MITCHELL:** Thank you, Madame President, ladies and gentlemen of the Senate. I rise to ask you this morning to please support the current bill, 'An Act to Authorize Collaborative Practice for Emergency Contraception.' I would like to tell you, briefly, a story of a doctor that I chatted with two weeks ago, in addition to others who have called and presented information. Please explain to your colleagues the need and necessity to have this pill available. One particular physician said to me, 'if you think that 12 year olds are not participating in sex, then you need a reality check. I gave birth to a baby of a 13 year old a week ago and I have a 12 year old that is currently pregnant and whose parents are bringing her to me.' We need to have a reality check here. If we can stop these pregnancies from happening, and this pill, according to all of our obstetrics and gynecology associations, is not harmful. Emergency contraception meets all customary criteria for over-the-counter use. It is safe. There is no potential for over-dose or addiction. It is not harmful to an existing pregnancy. There is no need for medical screening.

There is self-identification of the need. Uniform dosage and no important drug interactions.

This drug is currently being considered for approval for over-the-counter. Our pharmacists are currently counselors to many people of all ages because when our people go into a drug store they rely on their pharmacist for giving them advise on over-the-counter drugs as well as advise on what they are taking, whether they should be having the generic or whether they should have the real drug.

Let's not put down the ability of these pharmacists. We're asking them to save a child from becoming pregnant, a teenager who made a mistake, and all of us make mistakes in our lives. If we can help this person from becoming pregnant and from seeking an abortion out of fear, let's make sure that we give them this opportunity and pass this bill before it becomes an over-the-counter drug. It's not that serious. If you've got Maine Medical and you've got these doctors pleading with us to please pass this bill, let's make sure we do everything we can to keep our young people safe from pregnancy. Maine has a great reputation for lowering the number of their teenage pregnancies. We need to continue to do that. Thank you for your support.

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

Senator **SHOREY:** Thank you, Madame President, men and women of the Senate. I'd like to talk about a few things that the good Senator from Penobscot, Senator Mitchell, had mentioned. First of all, we're not talking about banning this drug. You can still go to a doctor and get it. What I am talking about is not allowing a pharmacist to prescribe this drug. Also there is a difference between the consideration of being an over-the-counter drug and being an over-the-counter drug. Thank you.

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

Senator **BROMLEY:** Thank you, Madame President. I just want to make a correction. This bill, in no way, gives pharmacists prescriptive authority. They absolutely do not, will not, and are not seeking prescriptive authority. They will not prescribe this drug. What this bill seeks to do is allow collaborative practice, which already exists for things like diabetes supplies, or asthma supplies. To add this particular drug to that list so that, under an agreed protocol, the pharmacist will have the right to dispense this drug. The agreed protocol is in connection with a physician. Just to be clear, this is not a bill that allows pharmacists to have prescriptive authority. They are not prescribing medications. Thank you, Madame President.

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.

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 PRESIDENT: The pending question before the Senate is the motion by the Senator from Cumberland, Senator Bromley to Accept the Majority Ought 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 (#238)

YEAS: Senators: BENNETT, BRENNAN, BROMLEY, BRYANT, CATHCART, DAMON, DOUGLASS, EDMONDS, GAGNON, HALL, LEMONT, MAYO, MITCHELL, PENDLETON, ROTUNDO, STRIMLING, TREAT, TURNER, THE PRESIDENT – BEVERLY C. DAGGETT

NAYS: Senators: BLAIS, CARPENTER, DAVIS, GILMAN, KNEELAND, MARTIN, NASS, SAVAGE, SHOREY, STANLEY, WESTON, WOODCOCK, YOUNGBLOOD

ABSENT: Senators: LAFOUNTAIN, SAWYER

EXCUSED: Senator: HATCH

19 Senators having voted in the affirmative and 13 Senators having voted in the negative, with 2 Senators being absent and 1 Senator being excused, the motion by Senator **BROMLEY** of Cumberland to **ACCEPT** the Majority **OUGHT TO PASS** Report, **PREVAILED**.

Under suspension of the Rules, **READ TWICE**.

On motion by Senator **BLAIS** of Kennebec, Senate Amendment "A" (S-379) **READ**.

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

Senator **BLAIS:** Thank you, Madame President, men and women of the Senate. This amendment that I am bringing forward would require the pharmacist, prior to initiating the emergency contraceptive drug therapy on a minor, to obtain the informed written consent of the minor and one parent, guardian, adult family member of the minor, or a court order. This provision is similar to that which is required before a minor may obtain an abortion and is in our existing law. The amendment also corrects a reference in the bill.

I would just like to say that I very much appreciate the passion that exists on both sides of this issue. However, as a parent, I'm very uncomfortable with relegating my parental responsibilities to a pharmacist in these types of matters. My daughter, my second child, will be born in April of this year. I've heard quite a bit today about the dangers of involving parents in the reproductive rights of their children. I have a hand-out in front of me here suggesting that fewer teens will obtain these types of contraceptive procedures and that will have fewer babies born to young unwed mothers. That may or may not be the case. I think what it reflects is a movement of parental responsibility away from parents and to the state. I think that is wrong. I think that parents need

to have responsibility for their children and take responsibility for their children. I'm one parent, here today, that would like to say that I would like to have that opportunity, if the need arises. I would hope that I would take the time, ahead of time, to work with my daughter and to make sure that she feels comfortable coming to me and talking about her reproductive decisions. I would certainly encourage all of us to work with our friends, our relatives, and everyone in this state to make sure that parents have an opportunity to be involved in the reproductive rights of their children and that they take that responsibility seriously. I would encourage you to support this amendment that I have brought forward today. Thank you, Madame President.

Same Senator requested a Roll Call.

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

Senator **BROMLEY:** Thank you, Madame President. I just wanted to remind people that 59% of sexually active teenager girls surveyed said they would stop, discontinue, or delay using certain reproductive health services if their parents were informed. Of those teens, 99% said that they would still continue having sex. I appreciate the reality check that the Senator from Penobscot, Senator Mitchell, gave us and want to note that all young women may not have the blessings of the parenting that the former speaker mentioned.

Same Senator moved to **INDEFINITELY POSTPONE** Senate Amendment "A" (S-379).

Same Senator requested a Division.

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

Senator **EDMONDS:** Thank you, Madame President, men and women of the Senate. I think I just want to remind us all that, of course, most parents want to and will have good contact with their young people and will do everything in their power to have the lines of communication open for those young people. There are some young people for whom that will not be true, just plain and simple. Those young people need our protection.

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

Senator **BLAIS:** Thank you, Madame President. I appreciate the remarks of the good Senator from Cumberland, Senator Edmonds, who is also my chair on the Labor Committee. I would caution, however, that, as a body, we should be careful about passing legislation that is designed to address exceptions as opposed to the majority of cases in the situation.

On motion by Senator **TREAT** 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 Cumberland, Senator Bromley to Indefinitely Postpone Senate Amendment "A" (S-379). 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 (#239)

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

NAYS: Senators: BLAIS, CARPENTER, DAVIS, GILMAN, KNEELAND, NASS, SAVAGE, SHOREY, WESTON, WOODCOCK, YOUNGBLOOD

ABSENT: Senators: LAFOUNTAIN, SAWYER

EXCUSED: Senator: HATCH

21 Senators having voted in the affirmative and 11 Senators having voted in the negative, with 2 Senators being absent and 1 Senator being excused, the motion by Senator **BROMLEY** of Cumberland to **INDEFINITELY POSTPONE** Senate Amendment "A" (S-379), **PREVAILED**.

PASSED TO BE ENGROSSED.

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 (1/30/04) Assigned matter:

HOUSE REPORTS - from the Committee on **LEGAL AND VETERANS AFFAIRS** on Bill "An Act to Allow Beverage Sales from Mobile Service Bars on Golf Courses"

H.P. 486 L.D. 656

Majority - **Ought to Pass as Amended by Committee Amendment "A" (H-636)** (8 members)

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

Tabled - January 30, 2004, by Senator **GAGNON** of Kennebec

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

(In House, January 29, 2004, 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-636)**.)

(In Senate, January 30, 2004, Reports **READ**.)

Senator **BENNETT** of Oxford requested a Division.

On motion by Senator **MARTIN** of Aroostook, 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. This bill has been around the legislature almost as long as I've been here. It hasn't improved with age. Here we are, as a state, having basically made a decision that we are going to lower the alcohol content by which someone can be on the ride and drive to 1.08. We were at 1.12, we went to 1.10, and finally to 1.08, which is what the national standard says that Congress has indicated that states now have to have if they are going to continue to receive highway trust money. At the same time, we have been successful in the last number of years in this state to lower the number of people killed on Maine highways by OUI drivers. We have about 35,000 people in this state, right now, driving without licenses and we continue to struggle with that effort. If this goes through, we're now going to be able to have carts selling liquor and beer or whatever along the trails or the slopes or whatever the next thing will be, probably having them on the ski slopes so you can pick up a bottle as you go by on your way down the trail. At some point we have make the decision that we have gone, or are going, too far. My concern about this is that there is no control. It will, obviously, be sold and then transferred to someone who is underage. I just think it's not a good thing for this state to have. So if we are a little different from other states, so be it. Let it be that way. I hope that we do not accept the majority report and that we accept the minority Ought Not to Pass report.

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

Senator **GAGNON:** Thank you, Madame President, men and women of the Senate. I do have to disagree that this is not a better product. We did spend quite a bit of time in the committee. We did make sure that there were strict controls on the golf course and the golf cart. We talked a little bit earlier about people being somewhat naive and about having reality checks. We know that there is drinking happening on golf courses. We are one of only three states that don't permit this type of operation in a controlled way. We want to make sure that the golf cart that is providing the alcohol on the golf course is controlled tightly, that there is communication between the golf cart and the people who are running the operation at the main lodge, and any law enforcement that needs to get to that knows where they are immediately and be able to get to them. In terms of the product, or in terms of how we are going to go about this, this is the best way to go about it.

The debate about whether this should all fall on the golf courses, I think that is what we should be debating. That is open to debate. I didn't have a problem with it. The majority of the committee didn't have a problem with it. I would encourage you to support the majority report.