

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 Sixteenth Legislature

OF THE

State Of Maine

VOLUME III

FIRST REGULAR SESSION

Senate

December 2, 1992 to May 18, 1993

Which was referred to the Committee on **TAXATION** and **ORDERED PRINTED**.

Sent down for concurrence.

Senator **ESTY** of Cumberland was granted unanimous consent to address the Senate off the Record.

On motion by Senator **CAHILL** of Sagadahoc, **RECESSED** until the sound of the bell.

After Recess

Senate called to order by the President.

COMMITTEE REPORTS

House

Ought to Pass

The Committee on **STATE & LOCAL GOVERNMENT** on Bill "An Act to Correct the Boundary Description of the Town of Long Island"

H.P. 721 L.D. 980

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

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

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

The Bill **READ ONCE**.

The Bill **TOMORROW ASSIGNED FOR SECOND READING**.

Ought to Pass As Amended

The Committee on **UTILITIES** on Bill "An Act to Amend the Charter of the Newport Water District" (Emergency)

H.P. 705 L.D. 957

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (H-134)**.

Comes from the House with the Report **READ** and **ACCEPTED** and the Bill **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-134)**.

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

The Bill **READ ONCE**.

Committee Amendment "A" (H-134) **READ** and **ADOPTED**, in concurrence.

Which was, under suspension of the Rules, **READ A SECOND TIME**, and **PASSED TO BE ENGROSSED, As Amended**, in concurrence.

Under suspension of the Rules, ordered sent forthwith to the Engrossing Department.

Senate

Ought to Pass As Amended

Senator **VOSE** for the Committee on **UTILITIES** on Bill "An Act to Protect Consumers when Disconnecting Cable Television Services" (Emergency) S.P. 195 L.D. 631

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (S-58)**.

Which Report was **READ** and **ACCEPTED**.

The Bill **READ ONCE**.

Committee Amendment "A" (S-58) **READ** and **ADOPTED**.

The Bill as **Amended, TOMORROW ASSIGNED FOR SECOND READING**.

Divided Report

The Majority of the Committee on **JUDICIARY** on Bill "An Act to Prevent Discrimination" S.P. 92 L.D. 246

Reported that the same **Ought to Pass as Amended** by **Committee Amendment "A" (S-57)**.

Signed:

Senators:

CONLEY of Cumberland
BERUBE of Androscoggin

Representatives:

LIPMAN of Augusta
CARON of Biddeford
CATHCART of Orono
FAIRCLOTH of Bangor
COTE of Auburn
FARNSWORTH of Hallowell
KETTERER of Madison
SAXL of Bangor
OTT of York

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

Signed:

Senator:
HANLEY of Oxford

Representative:
PLOWMAN of Hampden

Which Reports were **READ**.

Senator **CONLEY** of Cumberland moved that the Senate **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report.

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

Senator **CONLEY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. What we are about to debate is L.D. 246, "An Act to Prevent Discrimination". I am proud to be the sponsor of this measure for the third consecutive session. I would like to point out to the chamber that this Bill is not new to this Legislature, this is actually the ninth time that we have to revisit this issue. Back in 1975 when this Bill first came forward it was hard for people to find someone to sponsor this legislation. After significant debate in the other body and in this body it was only able to generate a scant number of votes. People who turned up at the hearing in reference to this Bill, there were literally hundreds of people who had a lot of very mean, and nasty things to say about people because of their sexual orientation. How glad I am to be a citizen in this State as the nature of this debate has changed so significantly since that time. Back then comments used on the floor of this chamber would have been ruled out of order by the presiding officer in charge. Again, the tenor of the debate has changed significantly. As a matter of fact, this year things have changed so substantially that there were over forty cosponsors on this L.D. Over fifty organizations and businesses have come to support this measure. The Maine Chamber of Commerce and the Maine Medical Association are two of those fifty that came forward. Not two organizations I put in the bastion of liberal politics from which I tend to hail from time to time. There are also many labor organizations who came forward, many churches who came forward, and many individual citizens who came forward to talk about the discrimination which they have endured at the hands of some of our fellow citizens.

They talked about discrimination that they face in getting jobs, discrimination that they face in getting thrown out of their apartments, discrimination in not being able to get public accommodations or even credit. These people have real faces, with real names and real courage to come up before our Committee and tell us about the pain which they have suffered because of a lack of inclusion in the Maine Human Rights Act of the term sexual orientation. What scared me most as a member of that Committee and as a member of the eleven out of thirteen members of that Committee that signed onto the Majority Report, is that these individuals testified about the violence which they have had to endure in their lives just because of the perception by some members of the public that they are gay or lesbian. This violence which they have had to endure could not be reported because here in the State of Maine it is legal to fire somebody because of their sexual orientation. You can literally say to

somebody yes you've done a great job here, as a matter of fact you have produced more than any of the other workers in this plant, people here seem to like you, you have an excellent reputation among your co-workers for diligence and hard work but I found out that you happen to be gay, sorry I don't like your type, hit the bricks. That is legal here. That is wrong, it's wrong and we ought to be ashamed to have that type of situation here in the State of Maine.

We should take a step today to join with the ten other states in this country which have passed this type of legislation. Maine needs this legislation. We were on the forefront when this legislation was introduced some twenty years ago and now we've been left behind. Our sister and brother states have adopted this measure, all without problem. You are going to hear some testimony here today in this chamber, testimony I would describe as being red herring in nature, there will be some scare tactics dwelled up, some fact situations put together by some high paid lawyers who really, in their hearts although they can't come out and say it because you can't say what you could say twenty years ago, really don't like individuals who happen to not be of the same sexual orientation that they hail from. People can hang whatever statistic, whatever face, whatever name they want on a reason for not supporting this Bill but the fact of the matter is all this Bill is about is ending discrimination. It doesn't give special rights to anyone. It does away with a special wrong, a wrong which our gay and lesbian citizens have had to endure for too long. I grew up in a household with a father who amongst all of my siblings, as many as we were, often told us about how difficult it was to be Irish growing up in Portland. Those of you who know Portland and have been around Portland for some time know that it is true that signs hung in restaurant and business windows said Irish need not apply. We know that is wrong. We've rectified that wrong, let's rectify this wrong. Thank you.

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

Senator **LUTHER:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I simply must differ with the good Senator from Cumberland that that in fact is not the law in the State of Maine. As a matter of fact if an employer were to be so silly as to give a gay or lesbian in writing that reason I think the gay or lesbian would have a tort case. In fact the law in the State of Maine is at will. You can be fired at any time for no reason and also you can quit for no reason. Some people seem to think that is fair, I suppose if jobs were hobbies that you did just to take up your time then I suppose it would be fair. I don't know why it is so sad that the lesbian school teacher can be fired for simply being a lesbian but Joe Arseneault, the truck driver with a wife and three children at home under ten, can be fired with no reason at all and that does not draw a tear from anybody. The fact of the matter is that everyone in this State who works should have just cause for dismissal and I disagree that this will not give special privileges. This will give the gay and lesbian community just cause for dismissal. If you belong to a union you will also have just cause for dismissal but seeing as Maine is a State where businesses are small, often with five or six people to a business, you aren't going to find many unions trying to unionize that business. I firmly believe in just cause for dismissal and I will vote for it and support it when it covers all Maine workers. Thank you.

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

Senator **HANLEY:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I have had an opportunity in four terms in the Legislature to serve on the Judiciary Committee all those four terms. Serving on the Judiciary has given me the opportunity to participate in four public hearings regarding discrimination based on sexual orientation. It has provided me with an opportunity to serve for four terms in work sessions and now for the fourth time debate on the Floor. I have probably logged over fifty or sixty hours of debate, discussion, deliberation on this issue alone. It is after all of that deliberation that I rise this afternoon and request that you members of the Senate vote against the Majority Ought to Pass Report. To force a person to explain and defend every choice, every decision under threat of legal penalties is too great a price. To eliminate unfair prejudice we must educate and persuade, not legislate and punish. You will not change peoples minds or their hearts by threatening them or suing them.

L.D. 246 will not increase our civil rights, it will in fact reduce our civil rights. It will increase the power of the government at the expense of our individual freedoms of association and private property. A law such as this should not be an unguided missile, turned loose with little idea of where it will land. My good friend from Cumberland, Senator Conley, raised a number of very good points as far as the fact of where this debate has gone. Where this issue has been and where it is now. As the good Senator pointed out, in the late seventies you couldn't find a sponsor, nor could you find very many who would support this legislation. I say now that has changed, the pendulum has swung. Now you have any number of people who are willing to sponsor this legislation and to say that discrimination is bad. Let me echo with my good friend from Cumberland, any discrimination is bad. Whether it's based on your age, your gender, your political affiliation, your sexual orientation, whether you're left handed, whether you're over weight, whether you're not that attractive, whether or not you're from the southern part of the state or the northern part of the state. No discrimination should be allowed. The question at hand for this Senate is whether or not this is appropriate legislation to enact.

Currently when people are harassed or hurt because of their sexual orientation there are laws on the books to protect them. In fact Maine has one of the strongest harassment statutes in the nation. We protect people that have been victims of violent assaults based on their sexual orientation. As far as the comments that there will be red herrings, and scare tactics by high priced lawyers I would just tell my good friend that after seven years of discussing this issue that it doesn't take high priced lawyers, it just takes a sense of common sense to look at exactly where this Bill is going. One interesting note is if you take a look at the fiscal note. In discussions in the hearings it was brought up that there would probably only be eight to ten claims a year based on this new change and that in fact, the fiscal note says, any expenses can be incurred by current operating expenses. That should be some indication as to whether or not how necessary and how prevalent this problem is. Men and women of the Senate let me just walk you through this because I think it's important how a complaint would be

lodged and how it would be handled by the Human Rights Commission. If I were to interview ten people to provide daycare for my children and one of the people that I interviewed was homosexual and I did not hire him, I do not know his sexual orientation but I decided that someone else was better qualified, that person could contact the Human Rights Commission. If they fulfill the certain criteria that first they are a member of the protected status, that they have the certain sexual orientation that was the basis for their not being hired, second that they qualified for the position, third that either they were fired from that position or they were not hired in the first place, the fourth is that they have to have a sworn affidavit stating that in their belief, their own personal belief, they think that the reason why they were not hired or the reason that they were fired was based on their sexual orientation. That's all it takes to get in the door, to get a claim going. Now what happens after that is the Human Rights Commission will then call up Senator Hanley and ask me whether or not I hired this individual, whether or not it was based on sexual orientation and the burden of production would then rest on myself. To show that of those ten people interviewed I refused to hire that one individual based on his sexual orientation. That's the way it works. We're not talking about your L.L. Beans, we're not talking about your BIW's, we're talking about you and as the Zoe Baird incident proved, whether or not you have one person providing daycare, or you have one person cleaning your home, you are an employer and as an employer you will now be bound by this law, by this proposed change in the law. You would no longer have that control as far as who is to be in your home, who was to watch over your children, who is to clean your home. I'm just talking about the single employer. The same holds true for the fisherman who wants to hire two or three individuals and go out to sea for two or three weeks at a time.

An attorney from Lewiston and an attorney, in fact that I just met who was in our caucus, from Portland, we were discussing as far as the cost from the employment aspect for your single employer or for any employer. If a complaint was filed against you, and you've got to realize that when you're interviewing someone you can't ask what their sexual orientation is, as a matter of fact if you have a complaint lodged against you based on their age, or their gender or their race, you can have a questionnaire stating that's just not true. I have ten women of the twenty people I employ, five are native americans, five are african americans. You can show that you can rebut any presumption that you are acting indiscriminately or discriminately based on certain qualifications. You do not have that opportunity based on sexual orientation. So where are we? You've had a complaint lodged against you, they have hit the four steps now it's your turn. In consulting with these two attorneys who have done a lot of work in labor relations and employee discrimination the ball park, just to defend your case, the low end is \$5,000 the other is \$10,000. He told me and he works with Herbert H. Bennett Associates Professional Association hasn't seen a defense of less than \$10,000.

Men and women of the Senate the most powerful testimony that I think I heard at the public hearing was from a woman in South Portland, that woman in South Portland recounted what had happened in past legislative sessions as far as on the Record. In the mid to late seventies when a lot of derogatory comments were made about homosexuals, about people based on their sexual orientation, she said now

thankfully, hopefully, and I think she was right, we have crossed the barrier. We as elected representative, a microcosm of state as it were, have made that leap, have made that transition from being educated on this issue to being understanding of individuals based on their sexual orientation. That's where the answer is. If this Bill were to pass discrimination would still exist, in fact I would argue that it would create a wider rift between heterosexuals and homosexuals. The bottom line, men and women of the Senate, is that we want to try and put away homophobia, if we want to try and deal with the problem at hand then we should encourage both sides to work together on this by creating, by enacting this legislation, by forcing individuals to make choices that they as a single employer would not want to make, you're going to be forcing people who have made that transition and have made that leap from being understanding and who do not have a need to discriminate, you're going to force them into a position where all of their growth, all of their understanding has now been for naught because they no longer have their own privacy as far as their own rights for association, their own rights for privacy within their home.

There are a lot of questions as far as what the impact of this legislation would have. I think that's important for us as a Senate to ask. I guess I have a couple of questions and I would pose them to the good Senate Chair of the Judiciary Committee. If L.D. 246 is adopted in its present form would the Human Rights Commission interpret the Maine Human Rights Act to require an employer to provide health insurance benefits or other employee benefits to partners of homosexual employees if such benefits are available to spouses of heterosexual employees? Thank you.

On motion by Senator **CONLEY** of Cumberland, Tabled until Later in Today's Session, pending motion by same Senator to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report.

THE PRESIDENT: The Chair is pleased to recognize in the rear of the Chamber the members of the University of Maine Black Bear Championship Hockey Team. I would like to introduce each member so if they could either step up or make themselves known so that we know who you are. Reg Cardinal, Barry Clukey, Mike Dunham, Eric Fenton, Chris Ferraro, Peter Ferraro, Tony Frenette, Craig Gwinn, Greg Hirsch, Chris Imes, Cal Ingraham, Paul Kariya, Dave LaCouture, Mike Latendresse, Dave MacIsaac, Brad Mahoney, Blair Marsh, Matt Martin, Martin Mercier, Jim Montgomery, Dan Murphy, Brad Purdie, Jack Rodrigue, Kent Salfi, Mike Santonelli, Lee Saunders, Andy Silverman, Garth Snow, Pat Tardif, Chuck Texiera, Jaime Thompson, Justin Tomberlin and Jason Weinrich, coaches Red Gendron, Bruce Major and Grant Standbrook. Now it gives me great pleasure to have their coach, Shawn Walsh, come and address the Senate.

COACH SHAWN WALSH: Thank you. Your Senate President did a tremendous job on the french names, an average job on the Irish names and not a very good job on the Japanese names. We're certainly very proud to be here and I think what makes us the

proudest is you're the true warriors in the State of Maine, you people are the people who represent this State day in and day out. For one quick and not so quiet night on April 3, I think this group right in front of you represented the State of Maine and I think we represented them proudly. It's interesting, on the bus ride down we had the video tape playing of the National Championship game and we only got through the first two periods, we haven't yet seen the third period but I think in that third period what we are going to see on the way home is a word called resiliency and a word called staying positive in tough times. You people represent all of our citizens and knowing you have done that you have been very resilient and very positive and I want in my acceptance on behalf of this team to thank you for that. We all appreciate your feelings for us and believe me it's visa versa. Thank you very much.

THE PRESIDENT: The Chair recognizes the Senator from Penobscot, Senator O'Dea.

Senator **O'DEA:** Thank you Mr. President, Ladies and Gentlemen of the Senate. I'd like to take this opportunity to welcome the University of Maine Black Bears here to Augusta today and to have everybody here in the Senate take a close look at these individuals who represented our State so well. These are some of the faces of our 30,000 students system wide, some of the faculty and staff who guide and shape the next generation of leaders in Maine. Everyone of these individuals has made an outstanding contribution that we are all very much aware of and it's their contributions and it's the contributions that we don't see on the front pages of the newspapers that really shape where we are going to go tomorrow. We are all very much indebted to you for the work that you have done in bringing Maine to the very pinnacle of success in intercollegiate hockey. I don't think there was a person in this State who wasn't watching your game and there are several of us who have watched it more than once. It's been discussed in these halls, in fact it is still being discussed today, and if Coach Walsh needs to know how that third period ends up I'm sure there are any number of people here who could tell you shot for shot and play by play. Everybody from Kittery to Fort Kent is very pleased and very proud to say that you represented us very well. With that I would just like to say thank you as well. Thank you.

THE PRESIDENT: Once again we would like to thank you for the exciting year. Players and coaches great job. Thanks a lot.

ORDERS OF THE DAY

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

Senate Reports - from the Committee on **JUDICIARY** on Bill "An Act to Prevent Discrimination" S.P. 92 L.D. 246

Majority - **Ought to Pass as Amended**

Minority - **Ought Not to Pass**