

# **MAINE STATE LEGISLATURE**

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Senate Legislative Record

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State of Maine

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LEGISLATIVE RECORD - SENATE, TUESDAY, MARCH 29, 2005

Comes from the House, REFERRED to the Committee on BUSINESS, RESEARCH AND ECONOMIC DEVELOPMENT and ordered printed.

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

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

**REPORTS OF COMMITTEES**

**Senate**

**Ought to Pass As Amended**

Senator GAGNON for the Committee on LEGAL AND VETERANS AFFAIRS on Bill "An Act Regarding the Gambling Control Board" (EMERGENCY)

S.P. 32 L.D. 90

Reported that the same Ought to Pass as Amended by Committee Amendment "A" (S-47).

Report READ and ACCEPTED.

**READ ONCE.**

Committee Amendment "A" (S-47) READ and ADOPTED.

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

Sent down for concurrence.

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

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Senate at Ease.

Senate called to order by the President.

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**ORDERS OF THE DAY**

The Chair laid before the Senate the following matter Tabled pending a Ruling of the Chair:

Bill "An Act To Extend Civil Rights Protections to All People Regardless of Sexual Orientation"

S.P. 413 L.D. 1196

Tabled - March 29, 2005

Pending - **RULING OF THE CHAIR**

(In House, March 8, 2005, REFERRED to the Committee on JUDICIARY and ordered printed, in concurrence.)

(In Senate, March 29, 2005, READ A SECOND TIME. On motion by Senator PLOWMAN of Penobscot, Senate Amendment "A" (S-44) READ. On motion by Senator HOBBINS of York, INDEFINITELY POSTPONED. On motion by Senator PLOWMAN of Penobscot, Senate Amendment "B" (S-48) READ. Senator HOBBINS of York moved to INDEFINITELY POSTPONE. Same Senator inquired if Senate Amendment "B" (S-48) was GERMANE.)

The Chair RULED SENATE AMENDMENT "B" (S-48) GERMANE.

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

Senator MARTIN: Thank you, Madame President and members of the Senate. As one of the original supporters in 1971 that dealt specifically with the creation of the Maine Human Rights Commission, this amendment bothers me a great deal. I well remember the debate on the enactment of this piece of legislation. As a matter of fact, I quoted at length on the floor from a book called The History of Aroostook written by a Mr. Wiggins, as I recall, with a foreword by Mr. Collins, in which they describe visiting the St. John Valley and how pleased they were to see the American flag flying in Ft. Kent as they came across the hill. To see those 'gay, loving people', the French, and how they were pleased to see those French individuals and citizens now supporting the American flag. The issue of discrimination had nothing to do with Gay and Lesbians as we are now looking at it today.

The reason why this language is not into the law that is now being purported to be made part of the Maine Human Rights Act was because of individuals who can't afford a lawyer. Look at the people who make the claims before the Maine Human Rights Commission presently, having nothing to do with the future, since the creation of the law in 1971. Go to the Commission and see the people who appear. You can answer the question yourself as to whether or not they can afford an attorney because you will know they can't. That is why the Maine Human Rights Commission exists. You see, if those of us in this body have a problem with discrimination, we can just sue and go right to civil cases before the Superior Court of this state and bring our cases forth. We don't need the Human Rights Commission because we can go on matters of business, matters of individual attacks, or on libel. On those things, we go right to court and we can afford the attorney. The Maine Human Rights Commission was created to allow poor people that ability which they do not have today. This amendment has nothing to do, as far as I'm concerned, with the issue before us on this bill. More, however, it is an attempt to destroy the commission. I implore you, nothing to do with the issue, to defeat this on its lack of merit as to what it will do on all cases that come before the commission. Finally, I would simply add to my Republican colleague, was there a public hearing on this issue?

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

LEGISLATIVE RECORD - SENATE, TUESDAY, MARCH 29, 2005

**Senator PLOWMAN:** Senator Martin, maybe we'll talk about the budget discussion in a little while because I'm pretty sure there are some things in there that haven't had public hearings either. Back to the subject at hand. 1971 was a long time ago. This act, the act that we are discussing today, wouldn't have gotten passed in 1971. It wouldn't have even come up. Lawyers didn't advertise, 'See me free for the first time and I'll tell you if you have a case' back in 1971. Lawyers didn't advertise. Things have changed. You are going to see it right here today. If you feel that you have a good case, take it. You need to be sure. That's what this amendment says. While times are changing, I think it's totally appropriate to bring this amendment before the body. I can count, but I still bring it anyway because I want to air the issue and I'll be looking forward to discussion with the Senator from Aroostook, Senator Martin.

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

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

**Senator MILLS:** Madame President and men and women of the Senate, as is so often the case with issues that now come before us, the actual status of the current law is a lot more complicated than I think people are assuming from the nature of the debate that we have so far been witness to. The good Senator's amendment would, if enacted, impose council fees on the losing claimant at the administrative stage of investigation into a human rights claim. The Human Rights Act, which I had a hand in drafting when I was a second year law student in 1971, actually contemplates the non-use of attorneys by either side at the administrative stage. Typically, how this happens is that somebody that perceives that they have been discriminated against fills out a long sheet of paper, a questionnaire, a standard form. They can do that by themselves and frequently they do. Very seldom do they really hire council to initiate a claim. Often times the employer does not hire council to respond. In fact, many times if the claim is self-evident, that there is no basis for a discrimination claim under our law, the Human Rights Commission will write a nice letter back to the claimant saying, 'Thank you for your form but it really isn't anything we can look into because what has happened to you doesn't fall under the various discrimination categories that we are concerned about.' If the landlord or the bank or the housing agency or the employer is brought into it by the Human Rights Commission, they can step in and simply answer the questions, very informally, that are addressed by the Human Rights investigator assigned to look into the claim. This is very informal. It's a bit inquisitional, but the consequences are fairly loose at this early stage. No body can impose monetary sanctions on either party for how they respond during the administrative process. If the administrative process either fails to resolve the claim or get rid of the claim or if there is no outcome as a result of this attempt by the Human Rights Commission to resolve it informally, then there is an option of the claimant to go forward and go into court. That is where the ante is upped and we have a law that the judge in a case may impose council fees on either side. So if there is an improvidently brought claim, and it goes so far as to get into the court system, there is a right existing now to impose council fees either on the employer

or on the employee, if it is a job discrimination claim for example. It rests with the discretion of the court and usually, I suggest, would be awarded if there has been some inappropriate assertion of a claim or defense of a claim, depending on the judge's perception of it. There is also, for the claimant, an additional hurdle. In order to get council fees they have to have had a Right to Sue letter from the Commission and his case has to have been disposed adversely by the Commission. There are several predicates to his being able to make a claim for council fees. I won't bore you with the details. I just want to tell you it's a little bit difficult. The current law sort of contemplates pretty well what the situation should be with regard to council fees. Frankly, to impose council fees on either side at the administrative stage would, with all due respect to the good Senator, be out of sympathy rather with the language of the law that we've had for about 32 years now. Thank you.

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

**Senator DIAMOND:** Thank you, Madame President. May I pose a question through the Chair to anyone who may care to answer?

**THE PRESIDENT:** The Senator may pose his question.

**Senator DIAMOND:** I'm one of the few in here who evidently didn't write the Human Rights Act. I need to get some clarity. I appreciate the good Senator describing what the current process is with the court system. The question I have, for anyone who may care to answer, having just got this amendment, is there a definition of frivolous case that could appear before the Human Rights Commission? In other words, is there a formal procedure, other than just reviewing a form? Is there a formal procedure where frivolity could be determined at that level? Thank you, Madame President.

**THE PRESIDENT:** The Senator from Cumberland, Senator Diamond poses a question through the Chair to anyone who may wish to answer. The Chair recognizes the Senator from Somerset, Senator Mills.

**Senator MILLS:** Madame President and men and women of the Senate, I'll take a crack at it. There is certainly no definition of frivolity on behalf of either side in this act in any location. However, it is the purpose of the commission to investigate, at government expense, whether the claim has any threshold of merit and when it does not it is the burden of the commission to write back and dismiss promptly, with as little friction as possible, any claim that is obviously without merit and not in tune with the statute. They are very well trained people and I wish we had two or three more of them. There is no financial sanction on either party at that early stage.

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

**Senator PLOWMAN:** Madame President, I'd like to address the question. The word frivolous does not appear anywhere in the amendment. I'll read you section 2. 'If the commission does not find reasonable grounds to believe that unlawful discrimination has occurred, it shall enter an order so finding and dismiss the proceeding and', here's where the amendment is, 'order the

LEGISLATIVE RECORD - SENATE, TUESDAY, MARCH 29, 2005

claimant to pay the reasonable attorney's fees and costs of the party defending against the claim.' There has to be a finding that there is no merit to the complaint. It's that simple. It's the job of the commission.

**THE PRESIDENT:** The pending question before the Senate is the motion by the Senator from York, Senator Hobbins to Indefinitely Postpone Senate Amendment "B" (S-48). 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 (#30)

**YEAS:**      Senators: BARTLETT, BRENNAN, BROMLEY, BRYANT, COWGER, DAMON, DIAMOND, DOW, GAGNON, HASTINGS, HOBBINS, MARTIN, MAYO, MILLS, MITCHELL, NUTTING, PERRY, RAYE, ROSEN, ROTUNDO, SCHNEIDER, STRIMLING, SULLIVAN, TURNER, WESTON, WOODCOCK, THE PRESIDENT - BETH G. EDMONDS

**NAYS:**      Senators: ANDREWS, CLUKEY, COURTNEY, DAVIS, NASS, PLOWMAN, SAVAGE, SNOWEMELLO

27 Senators having voted in the affirmative and 8 Senators having voted in the negative, the motion by Senator HOBBINS of York to INDEFINITELY POSTPONE Senate Amendment "B" (S-48), PREVAILED.

PASSED TO BE ENGROSSED.

Sent down for concurrence.

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

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Senate at Ease.

Senate called to order by the President.

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

HOUSE REPORTS - from the Committee on **TAXATION** on Bill "An Act To Exempt Alternative Power Systems from Property Taxes"

H.P. 130 L.D. 179

Majority - Ought Not to Pass (12 members)

Minority - Ought To Pass as Amended by Committee  
Amendment "A" (H-76) (1 member)

Tabled - March 29, 2005, by Senator **STRIMLING** of Cumberland

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

(In House, March 28, 2005, the Majority **OUGHT NOT TO PASS** Report **READ** and **ACCEPTED**.)

(In Senate, March 29, 2005, Reports **READ**.)

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

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On motion by Senator **BRENNAN** of Cumberland, **ADJOURNED**, to Wednesday, March 30, 2005, at 10:00 in the morning.