

# MAINE STATE LEGISLATURE

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One Hundred and Twenty-Ninth Legislature

State of Maine

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beginning at Page 1

another bill with regard to the issue of pregnancy. Thank you, Mr. President.

Sent down for concurrence.

**THE PRESIDENT:** The pending question before the Senate is Acceptance of the Majority Ought to Pass as Amended Report. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

**ROLL CALL (#338)**

YEAS: Senators: BELLOWS, BREEN, CARPENTER, CARSON, CHENETTE, CHIPMAN, CLAXTON, DESCHAMBAULT, DIAMOND, DILL, GRATWICK, HERBIG, LAWRENCE, LIBBY, LUCHINI, MILLETT, MIRAMANT, SANBORN H, SANBORN L, VITELLI, PRESIDENT JACKSON

NAYS: Senators: BLACK, CYRWAY, DAVIS, DOW, FARRIN, FOLEY, GUERIN, HAMPER, KEIM, MOORE, POULIOT, ROSEN, TIMBERLAKE, WOODSOME

21 Senators having voted in the affirmative and 14 Senators having voted in the negative, the motion by Senator **CARPENTER** of Aroostook to **ACCEPT** the Majority **OUGHT TO PASS AS AMENDED** Report, in concurrence, **PREVAILED**.

Bill **READ ONCE**.

Committee Amendment "A" (H-643) **READ** and **ADOPTED**, in concurrence.

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Senate at Ease.

The Senate was called to order by the President.

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On motion by Senator **CARPENTER** of Aroostook, Senate Amendment "A" (S-349) **READ**.

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

Senator **CARPENTER:** Thank you, Mr. President. This simply strikes out two section of this bill which are covered in a previously engrossed bill, L.D. 666. Just avoids duplication. Thank you.

On motion by Senator **CARPENTER** of Aroostook, Senate Amendment "A" (S-349) **ADOPTED**.

Under suspension of the Rules, **READ A SECOND TIME** and **PASSED TO BE ENGROSSED AS AMENDED BY COMMITTEE AMENDMENT "A" (H-643) AND SENATE AMENDMENT "A" (S-349)**, in **NON-CONCURRENCE**.

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**REPORTS OF COMMITTEES**

**House**

**Divided Report**

The Majority of the Committee on **JUDICIARY** on Bill "An Act To Clarify Various Provisions of the Maine Human Rights Act" H.P. 1216 L.D. 1701

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

Signed:

Senators:  
CARPENTER of Aroostook  
BELLOWS of Kennebec

Representatives:  
BAILEY of Saco  
BABBIDGE of Kennebunk  
CARDONE of Bangor  
EVANGELOS of Friendship  
HARNETT of Gardiner  
RECKITT of South Portland  
TALBOT ROSS of Portland

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

Signed:

Senator:  
KEIM of Oxford

Representatives:  
CURTIS of Madison  
DeVEAU of Caribou  
HAGGAN of Hampden

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

Reports **READ**.

Senator **CARPENTER** of Aroostook moved the Senate **ACCEPT** the Majority **OUGHT TO PASS** Report, in concurrence.

On motion by Senator **KEIM** of Oxford, 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 Oxford, Senator Keim.

Senator **KEIM**: Thank you, Mr. President. Ladies and gentlemen of the Senate, I'm going to walk through a few issues with this bill. One of them is that it expands the, as I mentioned previously, all these bills are slanted towards the aggrieved person and the definition of an aggrieved person is expanded in this bill to now be not just members who are actually part of the protected class status but can also be an aggrieved person based on the person's known relationship or association with a member of the protected class and discrimination on the basis of perceived protected class status. So basically, an aggrieved person could be any one single person in this building. Additionally, there is a new definition for harassment which is a significant departure from case law which has a six factor test so it is very carefully decided if a matter would be harassment. We have gone by the federal guidelines which use the word 'severe' and 'pervasive'. So, this is an expansion of harassment to now include any intimidating, hostile, or offensive environment in any of the settings which are employment, housing, public accommodation, educational opportunity, or extension of credit. So, this is going to be, obviously, litigated and will have to see how the courts will end up defining this, but it lowers the bar so significantly that this is going to, I think, put people in fear of just general slip of the tongue conversation because, as you can imagine, there is a lot that could be encapsulated under intimidating, hostile, or offensive. Additionally, walking through this bill, it allows under reasonable accommodations for the protected class to have leaves of absence and that is a plural, which is an expansion. So we are putting leaves of absence in this as a reasonable accommodation. Additionally in this bill, and of very great concern, is the fact that they add the word 'bonafide' in here as an adjective when describing a religious corporation association or organization. So the definition now throughout, all through the act, is that in order for there to be an exemption in some of this law then the Human Rights Commission or the State has to approve of the religion because of the word bonafide. I asked the AGs Office about this word and they had no answers of why we would have the word bonafide in there. So I find that very problematic and we definitely are putting at risk religious freedom. Given the extreme expansion of harassment, the other thing that is a problem in this bill is that it's a significant departure from past legislative decisions and a departure from how the law courts have seen liability because now, under this act, there is personal liability. So it's not just for the employer, it can also be for the supervisors or for the person that happens to be delivering your pizza. They can all now be personally liable under this act rather than just their employer and that is a significant change from current practice and how this Human Rights Act has been implemented in the past. I think this is a poorly thought out piece of legislation and it has not been vetted enough to understand the ramifications to the business community and to regular people in Maine and I would encourage you all to follow my light.

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

Senator **CARPENTER**: Thank you, Mr. President. Mr. President, the Maine Human Rights Act has been a political football around these parts for more years than I care to remember. I want to just address three specific items that my colleague, my good friend from Oxford County, mentioned. The definition of aggrieved person, with regards to who may bring an action under the Maine Human Rights Act, is changed in this bill. There's no question

about it. It includes discrimination based on a person's known relationship, association with, or discrimination on the basis of a perceived. In other words, if somebody, your employer, perceives that you are hanging out with the wrong people, and that happens to be somebody of a protected class, you can be considered an aggrieved person. I want to read you the expanded definition of harassment because I think that's significant. Senator Keim read you a portion of the third subsection of this. I want to read the whole thing. 'Harassment means verbal or physical conduct related to a protected class or directed at an individual because of protected class status when such conduct has the purpose or effect of unreasonably interfering with the individual's access to employment, housing, public accommodation, educational opportunity, or extension of credit, or creating an intimidating, hostile, or offensive environment in those settings.' I think most of us would agree those are things we would prefer not to help create. With regard to the personal liability section, which she just referred to, I don't disagree but there's a change there as well. I'm going to read that to you. 'A person may be held liable for that person's action without regard to whether such person would otherwise be an employer.' In other words you're not going to be allowed to hide behind your status as the employer. 'Provider of public accommodation, institution, or other covered entity when the individual,' and this is the only time when this will apply, 'engages in individual and independent unlawful conduct outside the scope of that person's actions on behalf of the employer.' In other words, just because I'm the boss, just because I'm the owner, doesn't allow me to hide behind that with regards to the Maine Human Rights Act in terms of liability. If I act outside the scope of my capacity as the owner or the employer or the provider of public accommodations then I may be held personally liable. That's something that I would like to see in the Maine Human Rights Act and that's why I supported this bill. Thank you.

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

Senator **CYRWAY**: Thank you, Mr. President. Ladies and gentlemen of the Senate, all session I've seen a lot of bills come through that are nationally pushed and this is a nationally pushed bill, and the same thing with the next one, where we're looking at a lot of bills that are coming through and putting the pressure on Maine people. When can we be human beings? That's the question. Do we keep pushing and pushing to the point where we've got to be molded to where we can't even voice ourselves, to make emotions, not be able to express ourselves? Where is that line drawn? I'm very concerned here because now you're going to get it so that the employers won't even want to dare to hire anybody. Let's put the businesses right out because they're not going to be able to do anything. I'm very concerned here. As a Maine State person, I like to be person, a human being. When does that become part of what we are? Let's not be lawyered to death and that's what we're doing. We're making lawyers have a field day with us and making us so we can't be emotional, we can't be a person. Just, please, let's step back and think about these before we keep pushing the button to the point where we can't be a man, a woman, or whatever we want to be. We're just going to make ourselves one unit and we're going to be on conveyor belt that I've been saying that we stand on the conveyor belt and just stand there and just be moved right through the line.

That's what we're doing. Please, let's not be on that conveyor belt. Thank you.

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

Senator **CHENETTE:** Thank you, Mr. President. I wasn't going to speak to this bill but I'm just really appalled from what I'm hearing. We're defending harassment on the Floor of the Senate today. The last time I checked I'm a human being. I'm acting like a human being and I don't want to be harassed. I don't think anyone in this Chamber wants to be harassed and I don't know how we're questioning religious freedom. I don't know which religion we're referring to that promotes harassment or verbal or physical harassment or creating hostile environments or intimidation. Last time I checked there's a Golden Rule that is a string on most religions in this country that I know of. Do unto others as you would have them do unto you. I think we should practice that with this vote, Mr. President.

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

Senator **CYRWAY:** Thank you, Mr. President. Ladies and gentlemen of the Senate, I've been on Criminal Justice and I've listened to CLAC come in and we've talked about harassment and many other laws that are on the books and we try to keep it general. We try not to be specific because when we get into specifics then you get into, just for example, like a littering law that you don't put the wrappers of cigarette packs on the ground or you put gum here or whatever. Littering is littering. We try to make it general and now what we are doing is making specific things and that's what molds people to not be able to be a human being. That's what I'm saying here. We have the laws that protect the state of Maine people. Thank you.

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

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**THE PRESIDENT:** The pending question before the Senate is Acceptance of the Majority Ought to Pass Report. Is the Senate ready for the question?

The Doorkeepers secured the Chamber.

The Secretary opened the vote.

**ROLL CALL (#339)**

**YEAS:** Senators: BELLOWS, BREEN, CARPENTER, CARSON, CHENETTE, CHIPMAN, CLAXTON, DESCHAMBAULT, DIAMOND, DILL, GRATWICK, HERBIG, LAWRENCE, LIBBY, LUCHINI, MILLETT, MIRAMANT, SANBORN H, SANBORN L, VITELLI, PRESIDENT JACKSON

**NAYS:** Senators: BLACK, CYRWAY, DAVIS, DOW, FARRIN, FOLEY, GUERIN, HAMPER, KEIM, POULIOT, ROSEN, TIMBERLAKE, WOODSOME

**EXCUSED:** Senators: MOORE

21 Senators having voted in the affirmative and 13 Senators having voted in the negative, with 1 Senator being excused, the motion by Senator **CARPENTER** of Aroostook to **ACCEPT** the Majority **OUGHT TO PASS** Report, in concurrence, **PREVAILED**.

Under suspension of the Rules, **READ TWICE** and **PASSED TO BE ENGROSSED**, in concurrence.

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**Divided Report**

The Majority of the Committee on **JUDICIARY** on Bill "An Act To Enhance the Administration of the Maine Human Rights Act" H.P. 1217 L.D. 1702

Reported that the same **Ought to Pass as Amended by Committee Amendment "A" (H-642)**.

Signed:

Senators:  
CARPENTER of Aroostook  
BELLOWS of Kennebec

Representatives:  
BAILEY of Saco  
BABBIDGE of Kennebunk  
CARDONE of Bangor  
EVANGELOS of Friendship  
HARNETT of Gardiner  
RECKITT of South Portland  
TALBOT ROSS of Portland

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

Signed:

Senator:  
KEIM of Oxford

Representatives:  
CURTIS of Madison  
DeVEAU of Caribou  
HAGGAN of Hampden

Comes from the House with 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-642)**.

Reports **READ**.