

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD
OF THE
One Hundred and Ninth
Legislature

OF THE
STATE OF MAINE

Volume II

First Regular Session

May 7, 1979 to June 15, 1979

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HOUSE

Wednesday, May 16, 1979

The House met according to adjournment and was called to order by the Speaker.

Prayer by the Reverend Herbert L. Reid of the Church of World Brotherhood of Fairfield.

Reverend REID: We thank you, Dear God, for the sacred memory of our mothers and that they never had an abortion. Amen.

The journal of yesterday was read and approved.

Papers from the Senate

The following Joint Order, an Expression of Legislative Sentiment recognizing that:

Karen Anderson of Woodland has been named Valedictorian of Caribou High School graduating class of 1979 (S. P. 552)

Came from the Senate read and passed.

In the House, was read and passed in concurrence.

The following Joint Order, an Expression of Legislative Sentiment recognizing that:

Sharon Ouillette of Caribou has been named Salutatorian of Caribou High School graduating class of 1979 (S. P. 553)

Came from the Senate read and passed.

In the House, was read and passed in concurrence.

The following Joint Order, an Expression of Legislative Sentiment recognizing that:

The Maine Mariners have won their second straight Calder Cup and, in their second year of existence, remain as American Hockey League Champions (S. P. 554)

Came from the Senate read and passed.

In the House, was read and passed in concurrence.

The following Joint Order, an Expression of Legislative Sentiment recognizing that:

May 4, 1979, marks the 50th anniversary of the Jackson Laboratory at Bar Harbor, the world's largest center of mammalian genetics research (S. P. 555)

Came from the Senate read and passed.

In the House, was read and passed in concurrence.

Reports of Committees

Ought to Pass in New Draft

Committee on Election Laws on Bill "An Act Concerning Assistance to Blind or Disabled Voters in Marking Ballots" (S. P. 255) (L. D. 729) reporting "Ought to Pass" in New Draft (S. P. 549) (L. D. 1611)

Came from the Senate with the Report read and accepted and the New Draft passed to be engrossed.

In the House, the Report was read and accepted in concurrence, the New Draft read once and assigned for second reading tomorrow.

Divided Report

Later Today Assigned

Majority Report of the Committee on State Government on Bill "An Act to Assess a Surcharge on Fines and Penalties for the Operation of the Maine Criminal Justice Academy" (S. P. 250) (L. D. 714) reporting "Ought to Pass" in New Draft under New Title Bill "An Act to Assess a Surcharge on Fines for the Operation of the Maine Criminal Justice Academy" (S. P. 545) (L. D. 1608)

Report was signed by the following members:

Messrs: AULT of Kennebec
MARTIN of Aroostook
SUTTON of Oxford

— of the Senate.

Messrs: BARRY of Fort Kent
CONARY of Oakland
LANCASTER of Kittery

Mrs. PARADIS of Augusta
REEVES of Pittston
MASTERSTON of Cape Elizabeth
DAMREN of Belgrade

— of the House.

Minority Report of the same Committee reporting "Ought Not to Pass" on same Bill.

Report was signed by the following members:

Mrs. KANY of Waterville
BACHRACH of Brunswick
Ms. LUND of Augusta

— of the House.

Came from the Senate with the Majority "Ought to Pass" in New Draft under New Title Report read and accepted and the New Draft passed to be engrossed.

In the House: Reports were read.

The SPEAKER: The Chair recognizes the gentlewoman from Waterville, Mrs. Kany.

Mrs. KANY: Mr. Speaker, I move acceptance of the Minority "Ought Not to Pass" Report.

I would like to explain my reasons for being on the "ought not to pass" side. I, truthfully, don't feel strongly about this bill, but I did read over the debate last time and this bill had been before us two years ago and I was one of the signers on the "ought to pass" side at that time, may be partially being from Waterville and at that time the Criminal Justice Academy had a lot of problems. They were just coming out from under LEAA funding and, of course, we all believe strongly that our law enforcement officers must be trained, no question about it. I am sure there isn't a person in this body that would not want to see a good appropriation, because it is absolutely essential that we have our law enforcement officers trained. But after reading that debate, after hearing other people's thinking on that, I remember hearing from Representative Boudreau of Waterville, who was opposed, and some great lines from a Beatle Song, which I hope he will give to you again, which really made an impression upon me, and hearing Representative Tierney and his opposition and so on, it just led me to believe that perhaps a surcharge on fines was not the way to go.

It also calls for a kind of cumbersome appropriation process, in that what would happen is that these surcharges on fines would be collected and then they would be designated into a special fund and then the Appropriations Committee would have to appropriate through that fund those monies, doing it that way instead of through the General Fund. So, it is a cumbersome process, it is not the ideal appropriations process as far as I am concerned, and I really don't know if a surcharge on fines is the way to go.

If you want larger fines, perhaps maybe you had better change your criminal laws so you could have higher fines. I am really not trying to convince anybody, I just really wanted to make my statement on the record as to why I am opposed. It just doesn't seem the way to go. Perhaps I am not being political, being from Waterville, of course that is where the Maine Criminal Justice Academy is located, but I do not think this is ideal, and the more thought I give to the appropriations process, the less I like this cumbersome appropriations process, the extremely more difficult administration and all that this bill, in its new draft, would require.

On motion of Mr. Boudreau of Waterville, tabled pending the motion of Mrs. Kany of Waterville to accept the Minority "Ought Not to Pass" report in non-concurrence and later today assigned.

Divided Report

Majority Report of the Committee on Fisheries and Wildlife reporting "Ought Not to Pass" on Bill "An Act to Increase the Fee for Tagging Wild Game to \$1" (S. P. 277) (L. D. 843)

Report was signed by the following members:

Mr. PIERCE of Kennebec

— of the Senate.

Messrs. PAUL of Sanford
VOSE of Eastport
CHURCHILL of Orland
PETERSON of Caribou
GILLIS of Calais
MacEACHERN of Lincoln
DOW of West Gardiner
JACQUES of Waterville
TOZIER of Unity

— of the House.

Minority Report of the same Committee reporting "Ought to Pass" as amended by Committee Amendment "A" (S-179) on same Bill.

Report was signed by the following members:

Messrs: USHER of Cumberland
REDMOND of Somerset

— of the Senate.

Mr. MASTERMAN of Milo

— of the House.

Came from the Senate with the Minority "Ought to Pass" as amended by Committee Amendment "A" (S-179) Report read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (S-179)

In the House: Reports were read.

The SPEAKER: The Chair recognizes the gentleman from West Gardiner, Mr. Dow.

Mr. DOW: Mr. Speaker, I move we accept the Majority "Ought Not to Pass" Report in non-concurrence.

The SPEAKER: The Chair recognizes the gentleman from Milo, Mr. Masterman.

Mr. MASTERMAN: Mr. Speaker, Men and Women of the House: For many many years, there has been a 25 cent tagging fee. When you take the deer in to have it tagged, it costs you 25 cents for that tag.

There are a number of places where this is done in homes. It seems to me, in a day of economy, that this is asking quite a lot for someone to come out and connect that metal tag on the deer's leg, after slicing a hole in the leg to attach said tag.

The bill was for a dollar, which I was for, and then we had to amend it and we decided that 50 cents would be a fair amount. All the amendment does, it goes from a dollar to 50 cents for a tagging fee.

I would ask for a division on this and we will find out just where we stand.

The SPEAKER: The Chair recognizes the gentleman from West Gardiner, Mr. Dow.

Mr. DOW: Mr. Speaker and Members of the House: Just to give you an idea of why it came out with a Majority "Ought Not to Pass" Report, Mr. Masterman is right, it increases it from 25 cents to 50 cents.

Most of the people who do the tagging have stores and they want to have these people come in. They were not there at the hearing to testify for the bill; in fact, the department has a waiting line for people to have these tagging stations.

It is only a small amount, although it is, of course, a hundred percent increase. At this time, I don't think it is needed, and that is the reason for the Majority "Ought Not to Pass" Report.

The SPEAKER: The Chair recognizes the gentleman from Milo, Mr. Masterman.

Mr. MASTERMAN: Mr. Speaker, Men and Women of the House: I guess you could say this is a case where the department is not interested because the money is not coming to the department. I think that is what the issue is. If you think those people out there who have the courtesy for you and I to take their time to tag that deer, if you think they should stay at 25 cents, that is all right with me, but I think it is terribly wrong and I would hope you would vote against the pending motion.

The SPEAKER: The Chair recognizes the

gentleman from Sangerville, Mr. Hall.

Mr. HALL: Mr. Speaker, I would like to pose a question to the Chairman of the Committee, if I might. It is my understanding that all of these records have to be kept accurate before they are sent into the state. The information brought to me by one of my constituents this weekend, they can be held liable if everything isn't in order, so the quarter that they are getting isn't worth it. Is that right?

The SPEAKER: The gentleman from Sangerville, Mr. Hall, has posed a question through the Chair to anyone who may care to answer.

The Chair recognizes the gentleman from West Gardiner, Mr. Dow.

Mr. DOW: Mr. Speaker, yes, that is correct.

The SPEAKER: The Chair will order a vote. The pending question is on the motion of the gentleman from West Gardiner, Mr. Dow, that the Majority "Ought Not to Pass" Report be accepted in non-concurrence. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

52 having voted in the affirmative and 42 having voted in the negative, the motion did prevail.

Sent up for concurrence.

Divided Report

Later Today Assigned

Eight Members of the Committee on Judiciary on Bill "An Act to Insure that Informed Consent is Obtained before an Elective Abortion is Performed" (S. P. 484) (L. D. 1482) report in Report "A" that the same "Ought to Pass" as amended by Committee Amendment "A" (S-182)

Report was signed by the following members:

Mr. DEVOE of Penobscot — of the Senate.

Messrs. LAFFIN of Westbrook
SIMON of Lewiston
GRAY of Rockland
JOYCE of Portland
STETSON of Wiscasset
CARRIER of Westbrook
SILSBY of Ellsworth

— of the House.

Three Members of the same committee on the same Bill report in Report "B" that the same "Ought Not to Pass".

Report was signed by the following members:

Mrs. TRAFTON of Androscoggin
Mr. COLLINS of Knox

— of the Senate.

Mrs. SEWALL of Newcastle

— of the House.

One Member of the same Committee on same Bill reports in Report "C" that the same "Ought to pass" as amended by Committee Amendment "B" (S-183)

Report was signed by the following member:

Mr. HOBBS of Saco

— of the House.

Came from the Senate with Report "A" read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (S-182) as amended by Senate Amendment "A" (S-190) thereto.

In the House: Reports were read.

The SPEAKER: The Chair recognizes the gentleman from Westbrook, Mr. Carrier.

Mr. CARRIER: Mr. Speaker I move that we accept Report A, "Ought to Pass."

The SPEAKER: The Chair recognizes the gentleman from Cumberland, Mr. Garsoe.

Mr. GARSOE: Mr. Speaker, I move this be tabled until later in today's session.

Whereupon, Mr. Barry of Fort Kent requested a vote.

The SPEAKER: The pending question is on the motion of the gentleman from Cumberland, Mr. Garsoe, that this be tabled pending the motion of Mr. Carrier of Westbrook to accept Report A, in concurrence and later today assigned.

All those in favor of tabling will vote yes; those opposed will vote no.

A vote of the House was taken.

78 having voted in the affirmative and 14 having voted in the negative, the motion did prevail.

Non-Concurrent Matter

Bill "An Act to Improve Private Remedies for Violations of the Antitrust Law" (H. P. 1077) (L. D. 1330) which was passed to be engrossed as amended by Committee Amendment "A" (H-343) in the House on May 8, 1979.

Came from the Senate with the Bill and Accompanying Papers Recommended to the Committee on Business Legislation in non-concurrence.

In the House: The House voted to recede and concur.

Non-Concurrent Matter

Bill "An Act to Eliminate the Boards of Visitors within the Department of Mental Health and Corrections" (H. P. 1143) (L. D. 1405) on which the Majority "Ought to Pass" as amended by Committee Amendment "A" (H-366) Report of the Committee on Health and Institutional Services was read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (H-366) in the House on May 11, 1979.

Came from the Senate with the Minority "Ought to Pass" as amended by Committee Amendment "B" (H-367) Report of the Committee on Health and Institutional Services read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "B" (H-367) in non-concurrence.

In the House: On motion of Mrs. Prescott of Hampden, the House voted to adhere.

Non-Concurrent Matter

Bill "An Act Concerning Part-time Licenses under the Liquor Statutes" (H. P. 1215) (L. D. 1494) on which the Majority "Ought Not to Pass" Report of the Committee on Legal Affairs was read and accepted in the House on May 11, 1979.

Came from the Senate with the Minority "Ought to Pass" as amended by Committee Amendment "A" (H-374) Report of the Committee on Legal Affairs read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (H-374) in non-concurrence.

In the House:

The SPEAKER: The Chair recognizes the gentleman from Van Buren, Mr. Violette.

Mr. VIOLETTE: Mr. Speaker, I move that the House adhere.

The SPEAKER: The Chair recognizes the gentleman from Bethel, Miss Brown.

Miss BROWN: Mr. Speaker, I move that we recede and concur.

The SPEAKER: The gentleman from Bethel, Miss Brown, moves that the House recede and concur. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

Whereupon, Miss Brown of Bethel requested a roll call vote.

The SPEAKER: For the Chair to order a roll call, it must have the expressed desire of one-fifth of the members present and voting. All those desiring a roll call vote will vote yes; those opposed will vote no.

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

The SPEAKER: The Chair recognizes the gentleman from Bethel, Miss Brown.

Miss BROWN: Mr. Speaker, Ladies and Gentlemen of the House: I will take just a moment to review this bill with you.

The other day I spoke on it and explained to you what exactly it did. This allows a liquor license to be granted to a hotel, inn or restaurant

on a seasonal basis. They can get a six-month's license and pay for it at the same price they are paying now, \$500 and a \$10 filing fee, and it can be split. It can be open for like a ski season, open for two months, and then if the place wants to close down until June or July, when the summer business is there, they can reopen in June and utilize the rest of that time, the other three months of that license.

The liquor enforcement will not have any problems with this, because the liquor license itself will have stated right on it which months it is valid and which months it is not. The state will not be losing money on this because they are going to be paying the exact same price they are paying now for it, and I urge you to support my motion on recede and concur.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. Soulas.

Mr. SOULAS: Mr. Speaker, Ladies and Gentlemen of the House: Just to remind you that we did vote this bill down unanimously and it is not going to change, it is the same bill. It is still going to give a licensee an opportunity to get a little more for his money and it is still going to cost the state \$100,000.

I hope you will vote against the motion.

The SPEAKER: The Chair recognizes the gentleman from Bethel, Miss Brown.

Miss BROWN: Mr. Speaker, Ladies and Gentlemen of the House: A correction on that. I believe I did have two Senators sign out my report, so I don't think that is a unanimous report.

The SPEAKER: A roll call has been ordered. The pending question is on the motion of the gentleman from Bethel, Miss Brown, that the House recede and concur. Those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA — Aloupis, Berube, Boudreau, Bowden, Brannigan, Brown, D.; Brown, K.L.; Bunker, Carter, F.; Churchill, Conary, Cunningham, Damren, Davis, Dexter, Drinkwater, Dudley, Fenlason, Fillmore, Garsoe, Gillis, Gould, Gray, Hall, Huber, Hutchings, Immonen, Kiesenman, Leighton, Leonard, Lewis, Locke, Lowe, MacBride, Masterton, Matthews, Morton, Nadeau, Nelson, A.; Nelson, M.; Payne, Peltier, Peterson, Reeves, J.; Rolde, Rollins, Sewall, Sherburne, Smith, Sprowl, Stetson, Tarbell, Torrey, Twitchell, Whittemore

NAY — Bachrach, Barry, Beaulieu, Benoit, Birt, Blodgett, Bordeaux, Brennerman, Brown, A.; Brown, K.C.; Call, Carrier, Chonko, Cloutier, Cox, Curtis, Davies, Dellert, Diamond, Doukas, Dow, Dutremble, D.; Dutremble, L.; Elias, Fowlie, Gavett, Gowen, Gwadosky, Hanson, Hickey, Hobbins, Howe, Hunter, Jacques, P.; Joyce, Kane, Kany, Kelleher, Laffin, Lancaster, LaPlante, Lizotte, Lund, MacEachern, Mahany, Marshall, Martin, A.; Masterman, Maxwell, McHenry, McKean, McMahon, McPherson, McSweeney, Mitchell, Nelson, N.; Paradis, Paul, Prescott, Reeves, P.; Silsby, Simon, Soulas, Strout, Studley, Theriault, Tierney, Tozier, Tuttle, Vincent, Violette, Vose, Wentworth, Wood, Wyman.

ABSENT — Austin, Baker, Berry, Brodeur, Carroll, Carter, D.; Connolly, Higgins, Hughes, Jackson, Jacques, E.; Jalbert, Lougee, Michael, Norris, Pearson, Post, Roope, Small, Stover

Yes, 55; No, 75; Absent, 20.

The SPEAKER: Fifty-five having voted in the affirmative and seventy-five in the negative with twenty being absent, the motion does not prevail.

Thereupon, on motion of Mr. Violette of Van Buren, House voted to adhere.

Petitions, Bills and Resolves Requiring Reference

The following Bill was received and referred to the following Committee:

Local and County Government

Bill "An Act to Require County Charters and to Transfer Approval for County Budgets from

the Legislature to the Counties" (H. P. 1412) (L. D. 1618) (Presented by Mr. Michael of Auburn) (Cosponsors: Mr. Brown of Livermore Falls and Ms. Lund of Augusta) (Ordered Printed)

Sent up for concurrence.

By unanimous consent, ordered sent forthwith to the Senate.

Orders

An Expression of Legislative Sentiment (H. P. 1406) recognizing that:

Selma Black has given long and dedicated service to the Portland School System

Presented by Mrs. Beaulieu of Portland (Cosponsors: Mrs. Payne of Portland, Mrs. Nelson of Portland, and Senator Najarian of Cumberland)

The Order was read and passed and sent up for concurrence.

An Expression of Legislative Sentiment (H. P. 1407) recognizing that:

Noah Hrehovcik, a 6th grader at Kennebunkport Consolidated School, is this year's winner of the York County Civic Oration contest sponsored by Modern Woodman of America,

Presented by Mr. Hanson of Kennebunkport.

The Order was read and passed and sent up for concurrence.

An Expression of Legislative Sentiment (H. P. 1408) recognizing that:

Melinda Morrow of Portland has been selected Salutatorian of the 1979 graduating class of Portland High School

Presented by Mrs. Beaulieu of Portland (Cosponsor: Mr. Brenerman of Portland)

The Order was read and passed and sent up for concurrence.

An Expression of Legislative Sentiment (H. P. 1409) recognizing that:

Miss Linda A. Regina of Biddeford, a cum laude graduate in dental hygiene from the University of Bridgeport, is the recipient of the Charles A. Dana scholar award for qualities of leadership and promise of future success, in addition to academic achievement

Presented by Mr. Lizotte of Biddeford.

The Order was read and passed and sent up for concurrence.

An Expression of Legislative Sentiment (H. P. 1411) recognizing that:

Eugene Letourneau of Waterville, author of "Sportsmen Say" column for the Guy Gannett Press, has been selected as the 7th recipient of the Silver Trout Award for his contributions to the cause of conservation and the continuation of the fisheries resources in Maine,

Presented by Mr. Jacques of Waterville (Cosponsors: Mrs. Kany of Waterville, Mr. Boudreau of Waterville and Senator Pierce of Kennebec)

The Order was read and passed and sent up for concurrence.

A Joint Resolution (H. P. 1410) in memory of Lee Evans, who served as a Representative during the 101st Legislature through the 106th Legislature is presented by Mr. Tozier of Unity (Cosponsors: Mr. Drinkwater of Belfast, Mrs. Hutchings of Lincolnville and Mr. Lowe of Winthrop)

The Resolution was read and passed and sent up for concurrence.

House Reports of Committees

Ought Not to Pass

Mr. Howe from the Committee on Business Legislation on Bill, "An Act Relating to a Compensation for Minors Delivering Newspaper Supplements" (H. P. 729) (L. D. 916) reporting "Ought Not to Pass"

Was placed in the Legislative Files without further action pursuant to Joint Rule 22, and sent up for concurrence.

Leave to Withdraw

Mr. Wyman from the Committee on Labor on Bill "An Act to Provide Inflation Protection for Partially Disabled Employees" (H. P. 820) (L. D. 1021) reporting "Leave to Withdraw"

Mr. Wyman from the Committee on Labor on Bill "An Act Concerning Payments and Expenses for Facial Disfigurement and Burial Expenses" (H. P. 1242) (L. D. 1492) reporting "Leave to Withdraw"

Mrs. Beaulieu from the Committee on Labor on Bill "An Act to Create a Presumption Concerning Asbestosis Under the Workers' Compensation Act" (H. P. 1258) (L. D. 1511) reporting "Leave to Withdraw"

Mr. Lizotte from the Committee on Business Legislation on Bill "An Act to Provide for Sales of Straight Life Insurance by Savings Banks" (H. P. 968) (L. D. 1243) reporting "Leave to Withdraw"

Mr. Lizotte from the Committee on Business Legislation on Bill "An Act to Exempt Financial Institutions from the Motor Vehicle Dealers Licensing Requirements" (H. P. 996) (L. D. 1232) reporting "Leave to Withdraw"

Mr. Howe from the Committee on Business Legislation on Bill "An Act Relating to Notification under the Maine Consumer Credit Code" (H. P. 688) (L. D. 868) reporting "Leave to Withdraw"

The reports were read and accepted and sent up for concurrence.

Consent Calendar

First Day

In accordance with House Rule 49, the following items appeared on the Consent Calendar for the First Day:

(H. P. 1259) (L. D. 1507) Bill "An Act to Exclude Chainsaw and Skidder Allowances in the Computation of an Employee's Average Weekly Wage Under the Workers' Compensation Act" Committee on Labor reporting "Ought to Pass"

(H. P. 1207) (L. D. 1540) Bill "An Act to Enable Delegation of the Prevention of Significant Deterioration of Air Quality Program" Committee on Energy and Natural Resources reporting "Ought to Pass" as Amended by Committee Amendment "A" (H-429)

(H. P. 1126) (L. D. 1396) Bill "An Act to Make Substantive Changes in the Forestry Statutes" Committee on Energy and Natural Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-428)

(H. P. 1185) (L. D. 1458) Bill "An Act to Allow Approved Conservation Plans to Satisfy the Requirements of the Water Pollution Abatement Licensing Program" Committee on Energy and Natural Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-427)

(H. P. 1130) (L. D. 1399) Bill "An Act to Amend the Split Sentencing Provisions of the Criminal Code" Committee on Judiciary reporting "Ought to Pass"

(H. P. 1067) (L. D. 1348) Bill "An Act to Establish Standard Assessment Procedures for the Tax Laws" Committee on Taxation reporting "Ought to Pass" as amended by Committee Amendment "A" (H-431)

(S. P. 377) (L. D. 1157) Bill "An Act to Authorize the Provision of Services to Developmentally Disabled Children" Committee on Health and Institutional Services reporting "Ought to Pass" as amended by Committee Amendment "A" (S-163)

(S. P. 140) (L. D. 316) Bill "An Act to Insure the Accountability of Counties in Expenditure of Federal Funds" Committee on Local and County Government reporting "Ought to Pass" as amended by Committee Amendment "A" (S-175)

(S. P. 381) (L. D. 1213) Bill "An Act Concerning Insurance Consultants" Committee on Business Legislation reporting "Ought to

Pass" as amended by Committee Amendment "A" (S-178)

(S. P. 179) (L. D. 409) Bill "An Act Concerning the Maine Development District Law" Committee on Local and County Government reporting "Ought to Pass"

(H. P. 1144) (L. D. 1406) Bill "An Act Concerning Detentions, Public Proceedings and Recording Requirements under the Juvenile Code" Committee on Judiciary reporting "Ought to Pass" as amended by Committee Amendment "A" (H-433)

(H. P. 1167) (L. D. 1435) Bill "An Act to Clarify the Interstate Corrections Compact" Committee on Health and Institutional Services reporting "Ought to Pass"

(H. P. 806) (L. D. 1009) Bill "An Act Relating to the Powers of Hospital and Medical Service Organizations" Committee on Business Legislation reporting "Ought to Pass"

(H. P. 724) (L. D. 911) Bill "An Act Concerning Traditional Methods of Construction Under the Manufactured Housing Statutes" Committee on Business Legislation reporting "Ought to Pass"

(H. P. 270) (L. D. 344) Bill "An Act Concerning Licenses Issued by the Department of Inland Fisheries and Wildlife" Committee on Fisheries and Wildlife reporting "Ought to Pass" as amended by Committee Amendment "A" (H-438)

(H. P. 635) (L. D. 786) Bill "An Act Concerning the Categories of 'Horseless Carriage' and 'Antique Motor Car' under the Motor Vehicle Statutes" Concerning on Transportation reporting "Ought to Pass" as amended by Committee Amendment "A" (H-439)

(H. P. 1043) (L. D. 1194) Bill "An Act to Provide Moneys for Snow Removal at Private Airports Open to the Public" Committee on Transportation reporting "Ought to Pass" as amended by Committee Amendment "A" (H-440)

(H. P. 732) (L. D. 919) Bill "An Act to Update the Insured Value Factor in the Computation of Legal Tuition Fees under the Education Statutes" Committee on Education reporting "Ought to Pass" as amended by Committee Amendment "A" (H-441)

No objections being noted the above items were ordered to appear on the Consent Calendar of May 17, under listing of Second Day.

Consent Calendar

Second Day

In accordance with House Rule 49, the following items appeared on the Consent Calendar for the Second Day:

(H. P. 832) (L. D. 1039) Bill "An Act to Convert Wallgrass Plantation into the Town of Wallgrass" (Emergency) (C. "A" H-423)

(H. P. 1194) (L. D. 1461) Bill "An Act to Establish a Committee to Report to the Legislature on the Feasibility of Rebuilding Dams for the Production of Electricity" (C. "A" H-420)

(H. P. 838) (L. D. 1036) Bill "An Act Relating to the Protection of Underground Facilities" (C. "A" H-419)

(H. P. 780) (L. D. 973) RESOLUTION, Proposing an Amendment to the Constitution of Maine to Maintain and Protect the Integrity of the Maine State Retirement System" (C. "A" H-424)

(S. P. 510) (L. D. 1576) Bill "An Act to Provide for the Codification and Indexing of State Agency Rules by the Secretary of State" (Emergency) (C. "A" S-170)

(S. P. 331) (L. D. 965) Bill "An Act to Establish a Special License for Retired or Inactive Pharmacists" (C. "A" S-168)

(S. P. 512) (L. D. 1577) Bill "An Act to Amend the Maine Sunset Law" (Emergency)

No objections having been noted at the end of the Second Legislative Day, the Senate Papers were passed to be engrossed in concurrence, and the House Papers were passed to be engrossed and sent up for concurrence.

Second Reader Tabled and Assigned

Bill "An Act to Clarify the Provision Relating to Hearings on Juvenile Crimes and to Establish an Experimental Program for Education and Counseling of Juveniles" (H. P. 1375) (L. D. 1601)

Was reported by the Committee on Bills in the Second Reading and read the second time.

On motion of Mrs. Mitchell of Vassalboro, tabled pending passage to be engrossed and tomorrow assigned.

Passed to be Engrossed

Bill "An Act Making Additional Appropriations from the General Fund for the Current Fiscal Year Ending June 30, 1979, Changing Certain Provisions of the Law Necessary to the Proper Operations of State Government and Amending the Effective Date of Abolishing the Mental Health and Mental Retardation Fund" (Emergency) (S. P. 500) (L. D. 1562)

Was reported by the Committee on Bills in the Second Reading read the second time, the Senate Paper was passed to be engrossed in concurrence.

Amended Bills

Bill "An Act to Assist School Administrative Units in Addressing Problems Associated with Alcohol, Tobacco and Drug Use and Abuse" (S. P. 209) (L. D. 582) (C. "A" S-172)

Bill "An Act to Encourage the Maine State Museum Commission to Acquire Works of Art Beneficial to the State" (H. P. 1171) (L. D. 1454) (C. "A" H-406)

Bill "An Act to Authorize Per Diem for Members of an Advisory Committee or Panel of the New England Regional Fisheries Management Council" (H. P. 1245) (L. D. 1490) (C. "A" H-405)

Were reported by the Committee on Bills in the Second Reading, read the second time, the Senate Paper was passed to be engrossed as amended in concurrence and the House Papers passed to be engrossed as amended and sent up for concurrence.

Second Reader Later Today Assigned

Bill "An Act Concerning Arbitration Involving Municipal Fire and Police Departments" (H. P. 1191) (L. D. 1463) (C. "A" H-415)

Was reported by the Committee on Bills in the Second Reading and read the second time.

On motion of Mrs. Mitchell of Vassalboro, tabled pending passage to be engrossed as amended and later today assigned.

Bill "An Act Concerning State Valuation and Assessment" (H. P. 531) (L. D. 652) (C. "A" H-411)

Bill "An Act to Increase the Dollar Amount of an Accident that Must be Reported from \$200 to \$500" (H. P. 636) (L. D. 787) (C. "A" H-404)

Bill "An Act to Prohibit Rate Discrimination by Public Utilities" (H. P. 837) (L. D. 1041) (C. "A" H-384)

Bill "An Act to Clarify the Authority of the Public Utilities Commission in the Enforcement of Rebate Orders" (H. P. 1149) (L. D. 1416) (H. "A" H-430 to C. "A" H-410)

Were reported by the Committee on Bills in the Second Reading, read the second time, passed to be engrossed as amended and sent up for concurrence.

Second Reader Later Today Assigned

Bill "An Act to Provide a Grant to Community Health Services, Inc., for a Long-term Care Demonstration Project" (H. P. 1087) (L. D. 1343) (H. "A" H-421 to C. "A" H-390)

Was reported by the Committee on Bills in the Second Reading and read the second time.

The SPEAKER: The Chair recognizes the gentleman from Bangor, Mr. Kelleher.

Mr. KELLEHER: Mr. Speaker, Ladies and Gentlemen of the House: I believe the gentlelady from Portland has an amendment she wants to offer on this.

The SPEAKER: The Chair recognizes the gentlewoman from Portland, Mrs. Nelson.

Mrs. NELSON: Mr. Speaker, Ladies and Gentlemen of the House: I do, indeed, have an amendment. It is not ready and I would appreciate it if someone would table for later on in today's session.

On motion of Mr. Kelleher of Bangor, tabled pending passage to be engrossed as amended and later today assigned.

Passed to be Enacted Emergency Measure

An Act Relating to the Maine Medical and Hospital Malpractice Joint Underwriting Association Act (S. P. 143) (L. D. 319) (S. "A" S-158)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 112 voted in favor of same and one against, and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Passed to be Enacted

An Act Relating to Occupational Loss of Hearing (S. P. 199) (L. D. 495) (Conf. Comm. "A" H-369)

An Act Concerning the Definition of Criminal Mischief under the Maine Criminal Code (S. P. 253) (L. D. 762) (C. "A" S-148)

An Act Concerning Reserve Office Standards for Professional Law Enforcement Personnel (S. P. 405) (L. D. 1276) (H. "A" H-380)

Were reported by the Committee on Engrossed Bills as truly and strictly engrossed, passed to be enacted, signed by the Speaker and sent to the Senate.

An Act to Amend the Labor Law in Relation to Items to be Furnished Employees by Railroad Corporations with Every Payment of Wages (H. P. 344) (L. D. 443) (C. "A" H-309)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed.

Mr. Bunker of Gouldsboro requested a roll call.

The SPEAKER: For the Chair to order a roll call, it must have the expressed desire of one-fifth of the members present and voting. Those in favor will vote yes; those opposed will vote not.

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

The SPEAKER: The Chair recognizes the gentleman from Kennebunk, Mr. McMahon.

Mr. McMAHON: Mr. Speaker, Ladies and Gentlemen of the House: This bill also caught my eye and I would like to pose a question through the Chair.

I presume that this bill came from the Business Legislation Committee. I wish to ask that committee or the bill's sponsor why this bill is here in the form that it is?

If you look at the enactor, it seems to apply only to railroad employees, who work on a train and it requires that the company that employs them should do certain things that we do not require other companies to do. Probably there is a good reason for this but I would like to hear it.

The SPEAKER: The gentleman from Kennebunk, Mr. McMahon has posed a question through the Chair to anyone who may care to answer.

The SPEAKER: The Chair recognizes the gentleman from Pittsfield, Mr. Wyman.

Mr. WYMAN: Mr. Speaker, Ladies and Gentlemen of the House: This bill did not go to the Business Legislation Committee, it came to the

Labor Committee. Those who testified in its support felt that the particular situation concerning railroad employees was very unique one insofar as it is a very complex system of payment to railroad employees. One they do not now understand, that is, the employees, when they receive their wages. It is not computed on their pay stub exactly how the wages were computed or on what basis and how much and so forth. This bill will require that.

I would also remind the ladies and gentlemen of the House and particularly the gentleman from Kennebunk, Mr. McMahon, that under the current situation, this item is not negotiable. This is why employees have not been able to secure this very basic right for any employee and that is simply the right to know how they are paid and on what basis. That is all that the bill does. I hope that you will support it.

The SPEAKER: The Chair recognizes the gentleman from Kennebunk, Mr. McMahon.

Mr. McMAHON: Mr. Speaker, Ladies and Gentlemen of the House: I apologize to the House, if I had realized this bill came from the Labor Committee, I would have leaned over and asked my seatmate the question and not done so on the floor.

I am supportive of the intent of this but I wish to ask the gentleman from the Labor Committee a further question. Was there discussion in that committee when this bill was heard as to the advisability of doing this for other companies? Aren't there other employees who received check stubs that are meaningless and why is this bill being enacted for only one narrow class of employees?

The SPEAKER: The gentleman from Kennebunk, Mr. McMahon, poses an additional question through the Chair to the gentleman from Pittsfield, Mr. Wyman, who may respond, if he so desires.

The Chair recognizes the gentleman. Mr. WYMAN: Mr. Speaker, Ladies and Gentlemen of the House: In answer to that question, I believe that this bill deals exclusively with the particular area because, as I understand it and we understood it from the testimony that the committee received, it was that railroad employees are in a very unique situation. I certainly would not want to assume or conclude that there are not other employees that have similar problems, but it was brought to our attention that railroad employees are, because of the nature of the work and the nature of computation of wages or the lack of the computation of wages in a very unique situation. This bill is designed to address that particular situation.

I am not opposed on principle of conceptually to dealing with other types of employees, but I think that this particular bill, insofar as it deals with a very important segment of our work force and deals with a work force which is in a very unique situation relative to this area, is one that we ought to support. That is the reason why we haven't included others. The bill was not intended for that purpose.

Mr. Jalbert of Lewiston was excused from voting pursuant to Joint Rule 10.

The SPEAKER: A roll call has been ordered. The pending question is on passage to be enacted. All in favor of that motion will vote yes; those opposed will vote no.

ROLL CALL

YEA—Aloupis, Austin, Bachrach, Baker, Barry, Beaulieu, Benoit, Berube, Birt, Blodgett, Boudreau, Bowden, Brannigan, Brennerman, Brown, A. Brown, K. C., Call, Carroll, Carter, D., Carter, F., Chonko, Churchill, Cloutier, Conary, Connolly, Cox, Curtis, Damren, Davis, Dellert, Dexter, Diamond, Doukas, Dow, Drinkwater, Dudley, Dutremble, D., Dutremble, L., Elias, Fenlason, Fowle, Gowen, Gwadosky, Hanson, Hickey, Higgins, Hobbins, Howe, Huber, Jacques, E., Jacques, P., Joyce, Kane, Kany, Kelleher, Kiesman, Laffin, Lancaster, LaPlante, Leonard, Lizotte, Locke, Lowe, Lund, MacBride, MacEachern, Mahany.

Marshall, Martin, A., Masterton, Matthews, Maxwell, McHenry, McKean, McMahon, McSweeney, Michael, Mitchell, Nadeau, Nelson, M., Nelson, N., Paradis, Paul, Payne, Peterson, Prescott, Reeves, P., Rolde, Simon, Soulas, Stover, Theriault, Tierney, Tozier, Tuttle, Twitchell, Vincent, Violette, Vose, Wentworth, Whittemore, Wood, Wyman, The Speaker.

NAY—Bordeaux, Brown, D., Brown, K. L., Bunker, Cunningham, Fillmore, Garsoe, Gavett, Gillis, Gould, Gray, Hall, Hunter, Hutchings, Immonen, Leighton, Lewis, Lougee, Masterman, McPherson, Morton, Nelson, A., Peltier, Reeves, J., Rollins, Sewall, Sherburne, Silsby, Smith, Sprowl, Stetson, Strout, Studley, Tarbell, Torrey.

ABSENT—Berry, Brodeur, Carrier, Davies, Hughes, Jackson, Jalbert, Norris, Pearson, Post, Roope, Small.

Yes, 104; No, 35; Absent, 12.

The SPEAKER: One Hundred and four having voted in the affirmative, thirty-five in the negative, with twelve being absent, the motion does prevail.

Thereupon, the Bill was passed to be enacted, signed by the Speaker, and sent to the Senate.

An Act Concerning Benefits for Fire Fighters under the State Retirement System for Heart or Lung Injuries (H. P. 583) (L. D. 733) (C. "A" H-324)

An Act to Encourage the Historic Preservation at the Statehouse and Blaine House (H. P. 613) (L. D. 777) (C. "A" H-352)

An Act to Amend the Judicial Retirement System (H. P. 811) (L. D. 1067) (S. "A" S-171)

An Act to Amend the Authority Granted to Municipalities to Enact Police Power Ordinances (H. P. 957) (L. D. 1187)

An Act Concerning Training of Ambulance Personnel and Providing for Review of Ambulance Funding by the Governor's Advisory Board on Ambulance Services (H. P. 1024) (L. D. 1257) (H. "A" H-350 to C. "A" H-327)

An Act to Refine the State's Accounting System (H. P. 1034) (L. D. 1282) (C. "A" H-351)

Were reported by the Committee on Engrossed Bills as truly and strictly engrossed, passed to be enacted, signed by the Speaker and sent to the Senate.

Orders of the Day

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

HOUSE DIVIDED REPORT — Majority (7) "Ought to Pass" as Amended by Committee Amendment "A" (H-409) — Minority (5) "Ought Not to Pass" — Committee on Judiciary on Bill, "An Act to Permit Nonprofit Legal Service Organizations" (H. P. 642) (L. D. 797)

Tabled—May 15, 1979 by Mr. Tierney of Lisbon.

Pending—Acceptance of Either Report.

Mr. Hobbins of Saco moved acceptance of the Majority "Ought to Pass" report.

The SPEAKER: The Chair recognizes the gentleman from South Portland, Mr. Howe.

Mr. HOWE: Mr. Speaker, Ladies and Gentlemen of the House: I rise in opposition to the Majority "Ought to Pass" Report. This bill really ought to have the word "insurance" in the title, and had it had that word in the title, I suspect I would have attempted at least to get the bill referred to the Committee on Business Legislation, where I think it belonged. I really don't rise out of any territorial jealousy on the matter but because of my objection to the bill on its merits.

The bill would set up a program under Title 44 of the insurance laws, which is really a special section of our laws of Maine that was created for and used exclusively by Blue Cross, Blue Shield.

It would set up a new type of insurance which is commonly known as prepaid legal insurance.

It doesn't sound bad at first blush I submit. In fact, the idea that working people of this state can buy some insurance to hedge against the day when they may need legal advice or assistance in court is not that bad a sounding idea, except I think that in many ways this type of insurance doesn't follow my notion of what insurance is for. Now, many of us insure our lives to protect our families, because we know that death is inevitable. We insure our health because we know that if our health should become bad that that could be financially catastrophic on our families, and on ourselves, on our income. I don't think either of those is the case with legal services.

Although it is not contained in the bill, I believe that the plan, according to what I have been told, has been worked out would provide something like six or eight hours of advice or six or eight hours of in-court time. If a court case in which you were involved either as a plaintiff and a defendant, where a really major catastrophic case, like a major illness, that wouldn't even begin to cover what you might suffer financially. So, the plan, as I understand it, although that plan isn't in the legislation, would not really hedge against the catastrophic, financial, legal case anyway.

Quite frankly, what I think it is, it is a lawyer's gravy train. I don't think it is going to do anything to discourage all of the more litigation that we see building up in our courts. If an attorney knows he or she is going to get paid for that six or eight hours of advice, then another six or eight hours in court, I think he is going to be more willing to go right ahead. If you, as the client, know that regardless of the merits of your case that you can go ahead and get several hours of advice and several more hours in court, what the heck, you have already paid for it, you will probably go right ahead. I tend to think that this may clutter up our court system even more than we have it today.

I hope you will weight this issue very carefully before you accept the "Ought to Pass" Report. I really think, based on my experience on the Committee on Business Legislation, where we normally deal with the bills coming out of Title 24-A, we ought to keep Blue Cross, Blue Shield in the health insurance business.

The SPEAKER: The Chair recognizes the gentleman from Lewiston, Mr. Simon.

Mr. SIMON: Mr. Speaker and Members of the House: I am the sponsor of this bill and I am proud today to rise in defense of it. I wish that the bill had been referred to the Committee on Business Legislation, because I think we could probably have dealt with everyone of Mr. Howe's criticisms over there. I wish we could have done it then or earlier rather than taking the time on the floor.

Since 1215, when King John signed the Magna Carta and put in there a clause that to no one will we sell justice," We have tried to have our court system be open to people of various economic means.

In 1963, the Supreme court held Gideon versus Wainwright, that a criminal defendant must be provided with court appointed counsel, if he can't afford counsel himself. Today in the state, we have some legal aid societies for people who can't afford counsel at all in civil cases.

What this bill would do would be to open options like that for people of moderate means, to the middle 70 percent of the American public who make too much to qualify for Pine Tree type services but yet who don't make enough to feel comfortable in going to a lawyer when they have a legal problem or in order to avoid a legal problem.

In responding to the good gentleman from South Portland, I must emphasize that that is what I, as a sponsor, have in mind for what will happen with the prepaid legal service program. Now, the gentleman has talked about six or eight hours a year that would be available under this program. When you are paying for

six or eight hours a year, you are obviously not going to sue to get the right to blow up the bridge at Kittery. The six or eight hours that we who are sponsoring the bill and the majority of the Judiciary Committee that reported out the bill had in mind on this is rather prosaic work, work done to draw up wills, to draw up nuptial contracts, to draw up other legal documents that will prevent litigation. Most of the work that lawyers do most of the time is keeping people out of court, either by advising what the law is so they don't get into a hassle or by making up a document that would prevent a suit from arising.

Mr. Howe talks about, that if a case were catastrophic, this prepaid legal service organization of the type we are discussing, probably wouldn't cover it. Well, we don't know that because it is not spelled out in the bill. However, if we take this set of assumptions, a prepaid legal service option would not pay for a catastrophic legal battle but it would probably avoid it.

One of the principal bugaboos about this bill is that it is claimed that it will lead to increased litigations. Now, you and I know that if we had 10 hours or 12 hours of legal service time, we are not going to become involved in a situation where we can foresee that there will be protracted litigation. If a prepaid legal service organization found that people are abusing this, that people were getting into it and getting into suits that were too complex, they would lose money, so they would either raise rates or cut hours.

The gentleman from South Portland, Mr. Howe, has said that people will sue if they have such coverage regardless of the merits. I would point out to him that the six or eight hours of court time that would be prepaid under this bill would in no way include the court costs. It would not include damages assessed against someone who brought a case maliciously, and it would not include the attorney's fees for the prevailing side if a person brought a case frivolously, if a person brought a case without merit.

In the bill, we are not setting up any program in government or out of government. We are simply allowing people the right to make a decision as to whether they would like to have this kind of service. We are allowing lawyers to decide whether they would like to participate in it. We are allowing consumers the right to decide to whether they would like to have this kind of service for themselves. We imagine that it would begin as a group plan, in a credit union or a labor union.

Some of you have probably been told that this would threaten existing legal service programs. We considered that in committee, we didn't think that the way the bill was written it would do so, but in order to take care of criticisms that came up long after the hearing and after the committee amendment that is before you was in draft, I agreed to put in a floor amendment at second reading that will make it absolutely clear that existing legal service organizations will not be forced out of business or in any way adversely affected by this bill. So, I hope that if you choose to vote against it, it will not be on the grounds.

What the bill is, it is a pilot program, it is an experiment, it depends on the market. If people don't want to participate in this, we are not making them. All we are asking you to do is give them a choice which they don't have under the law, the way it is interpreted today.

The SPEAKER: The Chair recognizes the gentleman from Hampden, Mrs. Prescott.

Mrs. PRESCOTT: Mr. Speaker, Ladies and Gentlemen of the House: I would like to support the concerns of Mr. Howe. I think that we should be very concerned about the implications of prepaid legal services and I understand, too, that at the public hearing the only proponents to this legislation were lawyers and that bothers me just a little bit, because if we

have demonstrated a need, then it shouldn't be a need from the legal end.

I understand that the lawyers in the Maine Bar Association and the Maine Trial Lawyers were all there in favor of the bill.

As far as I am concerned, this is setting some type of serious policy decision and I think that we should be very seriously looking at the pros and cons of this before we jump into anything. I think that the health care field should also have some input into such a piece of legislation as this.

I wonder if perhaps there has been some discussion on looking at it further as far as the study is concerned, because I am not sure that we have had a thorough discussion of the issue; whether it was discussed early in committee or not, I cannot say. All I can address is the fact that from Health and Institutions point of view, since we deal with Blue Cross—Blue Shield and insurance, we were not invited in to discuss the issue of prepaid legal services. That concerns me.

I would like to pose a question through the Chair, if I might, Mr. Speaker. I would like to know from the proponents or from the supporters of the Majority Report whether or not there has been a need demonstrated and I would also like to know how much the premiums will be and, furthermore, would like to know how much it will cost for six or eight hours of legal services, how much per hour?

The SPEAKER: The gentlewoman from Hampden, Mrs. Prescott, has posed a question through the Chair to any member who cares to answer.

The Chair recognizes the gentlewoman from Newcastle, Mrs. Sewall.

Mrs. SEWALL: Mr. Speaker and Members of the House: I would be glad to respond to the question. First, about people who testified in favor of this bill, there was labor support for it and maybe I should withdraw my support knowing how I vote that way usually. But, labor wanted it, the State Employees Association was in favor of it, and I don't know whether the lawyers were called in or the Judiciary was called in when they set up Blue Cross fees.

If you don't like the way Blue Cross works, if you are against the concept of being able to buy insurance to take care of your health needs when something does happen, this is the same kind of thing we are saying for the legal profession, if you don't think that Blue Cross is a good idea, if you don't think that you should buy health insurance, you should just wait and save up your money and if you are on welfare then someone will help you with your medical bills, and if you are wealthy, you can afford to do it, but if you are in the middle, you can mortgage your house or sell something to pay for your medical bills, that is fine, and that is a valid feeling, and if you feel that way, I think that you should definitely vote against this. This does the same thing for the legal profession. It allows that middle class group, that group who might not be able to afford to get a lawyer or feel nervous about going, because I can tell you, it is about \$50 or \$60 an hour for that, and it allows those people to join in the things, I guess you would have to call it insurance business, as they do with Blue Cross. It would be optional.

Discussing and answering the question about the rates, how much would it cost? Well, just like any other insurance plan, how many people belong to the insurance plan? That is obviously going to make a difference how many people pay in? We will have to set it up and find out.

I don't know, when they set up the Blue Cross it went to—when they allowed Blue Cross to form a non-profit health association, I don't know whether they came to Judiciary for their consent or their approval but this bill was publicized, we have had hearings, we have had work sessions and anybody was perfectly welcome to come and to participate in the discussion.

I would just emphasize that this simply is the

option.

I think some companies are interested in it. Obviously, the labor unions have said they might be interested in having this sort of plan available and I would suspect that if a company or something didn't want it, they wouldn't have to do it.

The SPEAKER: The Chair recognizes the gentleman from Portland, Mr. Joyce.

Mr. JOYCE: Mr. Speaker, Ladies and Gentlemen of the House: I am certainly glad you didn't send to the Judiciary the choice of whether or not you wanted Blue Cross. We would still have it in committee. I am rather proud of the Maine Bar, the lawyers of the State of Maine, I think people look to them almost like clergymen.

I recall back that Gideon vs. Wainwright decision down there in Florida, how that court rules that there must always be a lawyer available to that man who committed a felony. I recall also that it did not affect the people up here in Maine really. Already the criminal justice system in Maine was making lawyers available even to those that committed misdemeanors.

I think this bill will clutter up the courts and now I think you can figure this out very easy, once a lawyer gets a client handed to him through this system, he is not going to let him go after he gives the eight hours that are covered. He is going to give them that full trip. He will give them the trip up through the courts, he is going to earn that bigger fee, I am sure the temptation is there. I don't want that. I think this is a bill that is a bad bill. I think it is a bill, perhaps, many years before its time. I urge that you oppose the motion before you.

The SPEAKER: The Chair recognizes the gentleman from Wiscasset, Mr. Stetson.

Mr. STETSON: Mr. Speaker, Ladies and Gentlemen of the House: I suppose you all identify me as a lawyer and I am proud to say I have been a member of the legal profession for a good many years. I am not actively engaged in the practice of law, however.

This is a good bill. It is not any revolutionary idea. As the gentleman from Lewiston, pointed out, it bridges a gap between the very poor and the relatively wealthy because it makes legal services available to those who otherwise could not afford it. When you purchase a liability insurance policy, you are purchasing legal insurance. In your premium that you pay for your automobile liability insurance, the policy will provide that the company will defend you in any liability claim. So, we already have prepaid legal services in that sense. If you are a member of AAA, you are also purchasing as a part of your membership dues, legal services provided by AAA. I believe the same is applicable to ALA.

I might explain one thing about the way the law operates, about the way the practice of law operates. If you go into a lawyer's office with a claim as a plaintiff, you will either be asked to pay a retained fee, that is a down payment for the lawyer to begin work on your particular case, or possibly the lawyer will undertake to perform these services on what is called a contingent fee basis, which is simply that the client pays nothing, except if he prevails in his suit, then the lawyer will receive a certain percentage, usually around 33 percent of the amount recovered. Now, this is all well and good for the person who has a good claim that he wants to pursue but he really can't afford to go in and pay that retainer fee. The result is that he can bring suit if he can find an attorney who is willing to take it on a contingency fee basis and he may be able to recover through legal action. But this bill would make it possible for many of us to bring a suit without having to go through that contingent fee basis. If the suit were successful, we would not be charged the 33 percent that the attorney necessarily takes out on a contingent fee basis.

If a person wants to purchase a home in this

day and age, I think most of us consider that the major financial transaction of our lives and knowing the complexities of the law, the real estate law in particular, I think most of us would want the services of a competent attorney in undertaking the purchase of a home. This bill would afford you that kind of legal service at a prepaid nominal amount.

So, actually this bill is going to serve as a consumer bill to the general public. It is not going to cost anybody a cent unless he wants to purchase this type of insurance.

I recall back in the days when Blue Cross, Blue Shield was first instituted, the same cries went up then that it was going to ruin the medical profession, it was going to be a gravy train for the incompetent doctors. I think as we see the cost of health care today, on today's market, we see that Blue Cross and Blue Shield have saved many a family from catastrophe, a financial catastrophe, by assisting, at least, in the payment of medical fees. So, I suggest to you that this particular measure is not going to be any gravy train. There are very few lawyers who can earn a living trying cases in court. Very few lawyers in the legal profession specialize in trial work, so it is not going to be a great burden on the courts, because this bill will afford to the ordinary person the opportunity to have legal services in a lawyer's office, where the legal services are needed to assist his everyday transactions.

So, looking at it from a standpoint of when you buy insurance, you are buying legal protection, when you buy a membership in AAA, you are buying legal protection, under the Workmen's Compensation law you are afforded legal protection, I suggest to you that this is a very necessary piece of legislation so that many of our people can afford legal protection at a modest premium rate instead of the \$40 or \$50 an hour that comes as a blow when you least expect it.

The SPEAKER: The Chair recognizes the gentleman from Augusta, Mr. Hickey.

Mr. HICKEY: Mr. Speaker, Ladies and Gentlemen of the House: We have heard this bill constantly compared to Blue Cross and Blue Shield. I think in the average person's life, it is absolutely mandatory today to have health protection, but I would like to ask the sponsors if they feel that there are enough legal problems in the average person's life to require this type of bill?

The SPEAKER: The gentleman from Augusta, Mr. Hickey poses a question through the Chair to any member who may care to answer.

The Chair recognizes the gentleman from Bangor, Mr. Tarbell.

Mr. TARBELL: Mr. Speaker, Ladies and Gentlemen of the House: I would like to respond just briefly to the question just posed. I think the answer is yes. I think it is unfortunate. I think that we as a legislature write a lot of laws and make a lot of public policy in the State of Maine at the state level and at the federal level and have really brought this upon ourselves and have brought this upon our people. The public really does feel the burden.

If you want to go out and purchase a used car or if you want to go out and buy a new car and you want to finance it and you want to sign all those fancy, complicated forms or you even want to buy some life insurance today, or you want to go out and purchase a home or you want to rent a trailer, when you can't afford a home, you can't afford a trailer and you want to sign a lease, you want a will, and we have got a brand new probate code that is working its way through the Judiciary Committee that is going to revise the probate laws of this state for the first time in the history of the state, if you want to understand how the probate law works, it is absolutely essential if you want a will, let alone if you get involved in an automobile accident or you get involved in a personal injury or any of those kind of complicated matters.

Yes, it is unfortunate, but the plight of society today is that you can't even turn around without having to know what your legal rights are, whether it is because of your employment or whether it is because of you as a consumer. It is very, very unfortunate and the fact of the matter is that we have established programs for our poor and the wealthy are able to afford these services, but the middle income families in our state and throughout the land are not. That is really one of the major problems and it is not only in the legal services field, it is in the medical field and the educational field, as well as the legal field and other fields, so, basically, our middle income people throughout our state and our country are really being squeezed out of some of the basic services and some of the basic needs that they may be confronted with during their lifetime.

I think there is a demonstrated need, but to respond further to the gentlelady from Hampden. Mrs. Prescott, the measure before us is only a pilot project, it is a study. In a way, that is precisely what it is and it would only be a permissive project. If there was no interest in the project or no interest in setting up that kind of a system by consumers that would use it and would pay premiums, and it is my understanding that the premiums would be somewhere in the neighborhood of \$10 a month, if there was no interest in the pilot project, it would not even occur.

I would like to remind people of the House, the few that are still remaining and listening to the debate, the MCA has set this up, the University of Maine has set this up in House, internally, as I understand it. They are not with a third party system now but have set it up for their own members to provide legal counsel to their people for basic legal services. So, there must be some need and we are not blazing new trails and being a pioneer state in this regard. This has come about in other states throughout the country, and as fortunate or unfortunate as the case may be, I think we are going to be confronted with this as time goes on.

The SPEAKER: The Chair recognizes the gentleman from Hampden, Mrs. Prescott.

Mrs. PRESCOTT: Mr. Speaker, Ladies and Gentlemen of the House: I think we all want services of a competent attorney and I don't argue that point at all. We all want them available and there are prepaid legal services available through MTA and the University of Maine, but I would like to emphasize that my concern is going through Blue Cross, Blue Shield. This is bound to increase costs just as it has with the medical end, and that is what I am very concerned about.

The SPEAKER: The Chair recognizes the gentleman from Harrison, Mr. Leighton.

Mr. LEIGHTON: Mr. Speaker, Ladies and Gentlemen of the House: I must be running a fever or something this morning because I find myself in agreement with a bunch of flaming liberals. I share the concerns primarily expressed by Representative Howe. If my memory serves me correctly, insurance by definition involves reducing a risk that has fell on a single individual's shoulders that would be catastrophic to him on a fixed charge by spreading the risk over a great number of people who have a similar exposure. It would seem to me that this proposal would seem to cover a rather mundane, legal service and could lull someone into a false sense of security while still being exposed to legal catastrophe. It also would need to be regulated. It does seem to me that is strictly an insurance matter and the attendant regulation, of course, is going to result in increased government and increased expense.

I have serious reservations and would urge you to vote against the measure.

The SPEAKER: The Chair recognizes the gentleman from Lewiston, Mr. Simon.

Mr. SIMON: Mr. Speaker, Ladies and Gentlemen of the House: I really am surprised to

hear the gentleman from Harrison, Mr. Leighton, rise in opposition to this bill. We all know how concerned he is about individual rights, and this is one concrete means of providing those rights.

I would like to address myself to the problem that he did point out though, and that is, he says this is not like insurance, in that it doesn't involve spreading the cost of catastrophic events among many people. Well, he is right on that point. What it is doing is effecting economies of scale rather than spreading catastrophic costs.

The way that it takes care of catastrophic costs is, if I may repeat myself, by heading them off at the pass.

There has been a concern expressed about going through Blue Cross-Blue Shield. Well, I didn't come here to debate the merits of one corporation or another, and I am generally a little bit leery of legislative debates that do that. It smacks either of bias or special pleading. However, I would point out that that type of consideration is immaterial to this bill, because this bill, although it would allow Blue Cross-Blue Shield to engage in such a program, it in no way mandates that Blue Cross-Blue Shield does it.

There are at least 26 states that have programs like this, and Blue Cross-Blue Shield is, by no means, the only firm involved in it. There is nothing to say that if Blue Cross-Blue Shield comes into Maine and tries this in Maine and people don't like it, the rates are too high, Mid West Mutual could come in, or XYZ corporation. The bill doesn't create a gravy train for any particular corporation.

Let's take a look at the argument that this will cause inflation. While there may be more use of lawyers' services for out-of-court affairs, wills, contracts and so on, this employment is actually beneficial on the inflation argument because it will decrease litigation in the long run. Furthermore, collective handling of paper work would allow for more streamlining. They could use automatic typing machines and what not.

Furthermore, the prepaid systems that we are talking about involve a ceiling on the amount of litigation time. Finally, I think that the bottom line, and this is something that I really had thought the gentleman from Harrison would have grasped, is that this is a free market proposal. If people don't like it, they don't have to buy it — that is the bottom line.

Yes, Mr. Speaker, I do ask for the yeas and nays.

The SPEAKER: For the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. All those desiring a roll call vote will vote yes; those opposed will vote no.

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

The SPEAKER: The Chair recognizes the gentleman from Lewiston, Mr. Call.

Mr. CALL: Mr. Speaker and Members of the House: This bill is absolutely frightening and should be killed.

The SPEAKER: The Chair recognizes the gentleman from South Portland, Mr. Howe.

Mr. HOWE: Mr. Speaker and Members of the House: I probably should not try to add anything to that sound advice, but, briefly, let me point out to you, which I think has been alluded to, that there are prepaid legal service programs in this state now. The MTA does have one, and a fairly good one.

I guess, frankly, what I object to is that this would create a large pool of funds for lawyers to work on which would rest in the hands of not a corporation but an organization which pays no taxes. And the gentleman from Lewiston, Mr. Simon, says that if Blue Cross-Blue Shield doesn't do it, but I submit they will because this is their bill, Mid West Mutual will come in. Well, Mid West Mutual is an insurance compa-

ny that operates under Title 24-A, or would if it came into Maine. Blue Cross-Blue Shield has put forth a bill that deals with Title 24, their title, not the title that affects any of the commercial corporations.

There is a trend in the legal profession today which I think is a good one, toward more competition, advertising, and I heard a radio ad on the other night from an attorney in North Windham that is advertising that he will prepare any number of papers for clients for only \$25.

I agree with Mr. Leighton that insurance is there to protect against the catastrophic situation, but that is not what this plan would apparently do. My information is that it would provide six or eight hours of assistance, and Mr. Tarbell indicates that would be about \$10 a month. Ten dollars a month is \$120 a year to protect against maybe \$400 or \$500 worth of catastrophe, and I don't think that is a terribly good buy.

Mr. Simon of Lewiston was granted permission to speak a third time.

Mr. SIMON: Mr. Speaker and Members of the House: First of all, I would like to point out that the issue of taxation of charitable institutions is before us in another bill, it is a separate issue. Furthermore, if Mr. Howe had objected to that point, he had about three months in which he could have approached the sponsor and ask that that part be amended or deleted.

Second, he has made the argument that we don't need this because we have legal advertising. Well, I don't see how that has any bearing on this. Prepaid legal services can have an additional good effect, more savings. Why turn down additional savings on top of the savings that are being affected by legal advertising. I think his point illustrates that the underlying philosophy of keeping legal costs low, maintaining competition, is a good thing.

Furthermore, and finally, Mr. Speaker, this is not a Blue Cross bill; Blue Cross cannot introduce legislation. This is my bill, it is Mr. Brenerman's bill, it is Mr. Tarbell's bill, it is Mrs. Sewall's bill, and I hope you will remember that comment next time, because it may be your bill that gets tarred with the brush of special interest, and it is our right to introduce bills, whoever suggests them to us, and I resent the implication that there is any kind of conflict in this matter.

The SPEAKER: A roll call has been ordered. The pending question is on the motion of the gentleman from Saco, Mr. Hobbins, that the Majority "Ought to Pass" Report be accepted. All those in favor will vote yes; those opposed will vote no.

The Chair recognizes the gentlewoman from Vassalboro, Mrs. Mitchell.

Mrs. MITCHELL: Mr. Speaker, I would like to pair my vote with the gentleman from Old Town, Mr. Pearson. If he were here, he would be voting yes and I would be voting no.

ROLL CALL

YEA—Aloupis, Barry, Bowden, Brenerman, Brown, K.L.; Bunker, Carter, D.; Cloutier, Doukas, Dow, Dutremble, D.; Dutremble, L.; Gowen, Hobbins, Huber, Immonen, Jalbert, LaPlante, Leonard, Lewis, Lund, Masterton, Michael, Nadeau, Peterson, Sewall, Simon, Soulas, Stetson, Tarbell

NAY—Austin, Bachrach, Baker, Beaulieu, Benoit, Berube, Blodgett, Bordeaux, Boudreau, Brannigan, Brown, A.; Brown, D.; Brown, K.C.; Call, Carrier, Carroll, Carter, F.; Chonko, Churchill, Conary, Connolly, Cox, Cunningham, Curtis, Damren, Davies, Davis, Dellert, Dexter, Diamond, Drinkwater, Dudley, Elias, Fenlason, Fillmore, Fowlie, Garsoe, Gavett, Gillis, Gould, Gray, Gwadosky, Hall, Hanson, Hickey, Higgins, Howe, Hughes, Hunter, Jackson, Jacques, E.; Jacques, P.; Joyce, Kane, Kany, Kelleher, Kiesman, Laffin, Lancaster, Leighton, Lizotte, Locke, Lowe, MacBride, MacEachern, Mahany, Marshall, Martin, A.; Masterman, Matthews, Maxwell, McHenry, McKean, Mc-

Mahon, McPherson, McSweeney, Nelson, A.; Nelson, M.; Nelson, N.; Paradis, Paul, Payne, Peltier, Post, Prescott, Reeves, J.; Reeves, P.; Rolde, Rollins, Sherburne, Smith, Sprowl, Stover, Strout, Studley, Theriault, Tierney, Torrey, Tozier, Tuttle, Twitchell, Vincent, Violette, Vose, Wentworth, Whittemore, Wood, Wyman.

PAIRED — Mitchell-Pearson.

Yes, 30; No, 108; Absent, 10; Paired, 2.

The SPEAKER: Thirty having voted in the affirmative and one hundred eight in the negative, with ten being absent and two paired, the motion does not prevail.

Thereupon, the Minority "Ought Not to Pass" Report was accepted and sent up for concurrence.

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

HOUSE DIVIDED REPORT — Majority (8) "Ought to Pass" in New Draft under New Title, Bill "An Act Relating to Abortions" (H. P. 1394) (L. D. 1612) — Minority (5) "Ought to Pass" as Amended by Committee Amendment "A" (H-413) — Committee on Judiciary on Bill, "An Act to Limit Abortions in the Second and Third Trimesters to Certain Specified Situations" (H. P. 865) (L. D. 1061)

Tabled—May 15, 1979 by Mr. Tierney of Lisbon.

Pending—Acceptance of either Report.

The SPEAKER: The Chair recognizes the gentleman from Westbrook, Mr. Laffin.

Mr. LAFFIN: Mr. Speaker, I move the House accept the Majority "Ought to Pass" Report.

The SPEAKER: The Chair recognizes the gentlewoman from Newcastle, Mrs. Sewall.

Mrs. SEWALL: Mr. Speaker, Ladies and Gentlemen of the House: I request a roll call on this.

Mrs. SEWALL: Mr. Speaker and Members of the House: This is the first of the so-called abortion bills. This bill is aimed not at doing anything particularly about abortions itself, it is aimed at making it more difficult for a doctor to perform an abortion, perhaps to throw him in jail if he makes an error in judgment. I would hope that you would defeat this bill.

The SPEAKER: The Chair recognizes the gentleman from Westbrook, Mr. Laffin.

Mr. LAFFIN: Mr. Speaker, Ladies and Gentlemen of the House: I can assure the members of this House that this certainly does plenty. This bill will prevent abortions after the first three months of a woman's pregnancy. Right now, the State of Maine does not have an abortion law and my bill will allow that no woman would be allowed to have an abortion during the second and third trimesters.

I have done a great deal of checking on this and I found out through the Attorney General that worked with me on this bill that the State of Maine, at the present time, our abortion law has been struck down and is illegal by the findings of the Supreme Court. Consequently, we have to live by their ruling whether we like it or not.

I say to you today, my friends, that abortion is nothing more than a brutal form of murder. I say to you today, how can you justify murdering a live, unborn child; yet, when a big, six-foot man commits a vicious murder, you don't want to put him to death. You can't be right on both cases.

I say to you this morning that abortions, up until the 1973 ruling by the Supreme Court, has been universally illegal and immoral, but because we have come so far in 2,000 years and we have had so many educated people in 2,000, they know better than our rights, and when woman say they have a right to choose, it is nothing more than the ignorant spot that they got themselves into in the first place.

We are adults, and, you know, we know what we as individuals must do and should do if we

are to raise or not raise a family. And this part that they use about unwanted pregnancy is a scapegoat to commit brutal murder. A child is alive and it is all right to murder that child.

We have had people down through the ages who have been put to death because they have committed an abortion. I don't know how many people can justify abortion and still be opposed to capital punishment; they don't know themselves.

Many times in our society, we have to face reality as reality is. How many people have been—and I call them people even though they are not born but there is life—

The SPEAKER: The Chair recognizes the gentleman from Newcastle, Mrs. Sewall.

Mrs. SEWALL: Mr. Speaker, I request that the gentleman stay with the bill and not argue the entire issue of abortions.

The SPEAKER: The Chair would advise the gentleman, if at all possible, and I know it is difficult for the gentleman to do that from time to time, but if he would restrict his remarks only to the issue which, at this point, would be the new draft, An Act Relating to Abortions. The Chair would, however, make note of the fact that the new draft allows just about everything to be debated, because the redraft, as it came out of committee, says under new title, Bill "An Act Relating to Abortions," and if you can't talk about anything under that subject, you can't talk about anything.

The gentleman may proceed.

Mr. LAFFIN: Thank you, Mr. Speaker. I have told several of my friends today that I would not get upset on abortion and I have no intention of getting upset. I certainly don't want to offend anyone, I certainly don't want to offend any woman of this House, I certainly don't want to offend any woman anywhere, but the motives that they use for abortions is what I am talking about, and it is nothing personal.

What my bill does is just what it was intended to do, because we have no laws in this state on abortion. My bill, if the people of this Legislature should pass this law, would make it illegal for an abortion to be performed after we have followed the guidelines of the Supreme Court. In fact, as the good gentlelady knows, I have even consented to go down on my abortion. My original bill called for a 10-year imprisonment for any doctor or any butcher, and we have got plenty of them around that perform abortions, and a \$2,000 fine. I was willing to go along with the advice of several of the members of the committee when they felt that was too strict, so we dropped the class down so that now it is a 5-year term and a thousand dollar fine.

So, I have compromised and usually when I compromise, I am always the loser, but I did in this case because of the fact that we don't have an abortion law in this state and that is what my bill contends with. It prohibits anyone who is licensed in a medical position to perform any abortions at any time. What is wrong with that? I think if we are going to have abortions, if people want to have abortions, if they want to murder, and I repeat if they want to murder their children they are giving birth to, then at least we should have some guidelines to say how they are going to do it and not have the butchers do it.

I realize that there is a place in this state where about 200 abortions a month are taking place. If a woman can live with that, whether she is married or not, I say that a woman is a sorry person.

It prohibits an abortion after viability except to save the life of a mother; what is wrong with that? I think that is a pretty good compromise. That is what my bill says and I am sticking to the bill. If the mother's life is in jeopardy, yes, an abortion may be performed. What is wrong with that?

The second part of my bill is incest or rape, what is wrong with that? Many of us today want so many privileges, so many people's

rights, that they forget about the right of life, and the right of life is an unborn child, whether that child is wanted or not.

I feel if we are to have laws in this state governing everything that you can possibly think of, for the State of Maine to not have an abortion law, we are wrong. I don't care what your beliefs or anything else are. I am saying that we should have laws that govern the actions of the people.

Many times they say, well, certain groups are for certain things. I have been in touch with a priest out in Nebraska that has been put in jail for weeks because he refused the Supreme Court's ruling that abortions become legal. Literally weeks he served in prison because he broke the law for his beliefs. I am not going that far this morning. I will abide by the Supreme Court's ruling. But, I say to you my friends this morning, we need abortion laws in this state. We should not be a state to be recognized as allowing wholesale murders. We should not be in a position today to say, well, we will have a law for labor, we will have a law for management, but there will be no laws for abortions, this would be wrong, this would be dreadfully wrong.

If we, in this society, are going to survive, bring up children, then they must have at least some kind of education that was better than our own. When we endorse wholesale murders by butchers, when we endorse this type of thing, then we, as a legislature, are not doing the work that we were sent up here to do. If this House and the other body want to have wholesale abortions, then let's put it on the books. Let's say, yes, you can do it but, you see, no one has put a law in to say that you can't do it. These groups that are supporting the Supreme Court ruling that abortions be allowed in the first trimester, that is fine and good, they want that but they don't want any other law to stop them there. Yet, you don't see them putting any bill in. You don't see them putting any bill in because they want to keep the law we have which is unconstitutional. That is what they want to do, they want to leave it just the way it is.

But I am telling you, my friends, the child's life that you take, suppose that child came into this world and wouldn't it be wonderful if he turned out to be a doctor to find the cure for that dreadful disease of cancer? Wouldn't that be remarkable? How many then would want to deny the woman's right? And while we are on the subject, do you know how many poor women die each year because of breast cancer? Wouldn't it be a wonderful thing if a child was born in this world that could cure that?

I don't think there is anything funny about abortions! I think it is a sick and sorry society that allows it in the first place. I may not agree with their ruling, but I have a right to stand on this floor and give my viewpoints. If you want to agree with them, you can and we will have to live with it, but I certainly do not have to give to it.

I think my bill will at least be the right step forward and young babies will have a chance to live in this world, and that is all I am asking.

I suppose some of you are saying right now, that if my mother had had an abortion, I wouldn't be here, and probably you would be happy. That is your choice to think that, but that is not what happened, is it?

I ask the members of this House this morning, in the good conscience that you have, let little unborn children live.

The SPEAKER: The Chair recognizes the gentleman from Farmington, Mr. Morton.

Mr. MORTON: Mr. Speaker, Ladies and Gentlemen of the House: You may wonder why I am standing here. Yesterday, I was met in the corridor by a very fine lady and she immediately told me what her qualifications were to speak to me. She was a mother and had two daughters, so I guess perhaps in order to speak

on this bill, one should lay out his qualifications. I am 60 years old, I am a husband and a father. I have two daughters and a son. I have grandchildren and I want you to know that the women in my family all support the position I am going to take.

The gentleman from Westbrook said he didn't want to offend anyone this morning. I trust that he was sincere in that, because I want him to know at this point in time that he has offended me. To equate from the position that I might take with such words as butchering and wholesale murder, I don't think is proper for this assembly. The Supreme court has said that a right to choose exists and doesn't equate it with ignorance. It doesn't indicate that the people who wish to make their own choice are "sorry people".

I believe that the bill is patently unconstitutional and I am going to tell you why in very short terms and then I will sit down.

The bill has some definitions and probably the key definition in the bill is viability and viability means the state of fetal development when the life of the fetus may be continued indefinitely outside the womb by natural or artificial life-supportive systems. I submit to you that that is an impossible standard for a physician to have to adhere to in making a decision. Therefore, I believe that it is unconstitutional. The physician cannot know when he makes his decision whether viability has occurred or not, but under section four, if he makes a mistake, he is subject to the penalties of a Class B crime. That is much too strong a sanction. It completely eliminates the free choice between a woman and her physician, which is the Supreme Court's decision.

It is my understanding that the Supreme Court has made no decision with respect to viability. Therefore, I trust that the motion that is presently before you will be defeated.

The SPEAKER: The Chair recognizes the gentleman from Portland, Mr. Brannigan.

Mr. BRANNIGAN: Mr. Speaker, does a request for a point of information take precedence over debate?

The SPEAKER: The Chair would answer in the affirmative.

Mr. BRANNIGAN: Mr. Speaker, given not Mr. Morton's debate but the previous debate by the gentleman that I am glad is here, Mr. Laffin, there seemed to be a great deal of confusion to me as to which bill we are talking about. This new draft is something new to me as a Freshman, and he was discussing at times what he called his bill, which was second and third trimester, rape, incest, a lot of things that are not in the new draft. Are we, Mr. Speaker, speaking only about the new draft?

The SPEAKER: The Chair would advise the gentleman and members of the House that we are, in fact, at this point, because of the position in which we find ourselves, dealing with the Committee Report, which, in fact, contains both the new draft and the original document plus Committee Amendment "A". So at this point in time, all of the issues are, in fact, before us. After we have disposed of the initial vote and if this were to pass, then we would be dealing only in the second reading with the new draft.

Mr. BRANNIGAN: Mr. Speaker, the motion before us now, please, Mr. Speaker?

The SPEAKER: The motion before us is acceptance of the Majority "Ought to Pass" Report from the Committee on Judiciary.

Mr. BRANNIGAN: Mr. Speaker, which is?

The SPEAKER: That report, the Majority Report, is acceptance of the new draft. That means, in effect, that you can be debating against acceptance of the new draft and in favor of the original bill or, for that matter, opposed to all bills and all matters before us.

Mr. BRANNIGAN: Thank you for your excellent understanding of this.

The SPEAKER: The Chair recognizes the gentleman from Lewiston Mr. Simon.

Mr. SIMON: Mr. Speaker and Members of the House: I rise to respond to the point made by the gentleman from Farmington, Mr. Morton.

I believe that the good gentleman said the Supreme Court has never dealt with the definition of viability. In *Planned Parenthood of Central Missouri versus Danforth*, the United States Supreme Court, in a decision that was unanimous on this point, upheld the definition of viability that is contained in the new draft, L. D. 1612, a new draft I urge this House to support.

Following the good Speaker's instructions, I will be brief.

L. D. 1612 only does what the United States Supreme Court, in 1973, in the case *Rowe versus Wade* and *Doe versus Fulton* said what a state could do to regulate abortions. L. D. 1612 is perfectly consistent with the letter and the spirit of *Rowe versus Wade*. One may or may not disagree with *Rowe versus Wade* but it is the law of the land. *Rowe versus Wade* establishes the state's right to do several things. One of them is to require that all abortions be done by licensed physicians. L. D. 1612 requires that all abortions be done by licensed physicians.

The rationale for the Supreme Court's decision on this point was that prior to viability, the abortion decision is a medical decision, not a moral issue. In order to preserve its integrity as to medical decision, L. D. 1612 requires that it be a decision of the pregnant woman and her attending physician.

The second thing that L. D. 1612 does is prohibit abortions after viability. The Supreme Court's rationale for drawing the line at viability is that after the fetus is viable, after the fetus fulfills the criteria set forth in the *Danforth* decision, whose language is incorporated in 1612, the state has a compelling interest in the potential life of that fetus.

A few days ago, on our desks we received a bright yellow handout from the National Abortions Rights Action League—and about three quarters of the way down the page, it says on the pro-choice side of the ledger, "the court, referring to the Supreme Court in *Rowe versus Wade*, did not give women abortions on demand. It must be a decision between the woman and her doctor," the first phase of L. D. 1612. "The states may prohibit abortion in the third trimester except to preserve the life or the health of the woman." In actual practice, abortions are rarely, if ever, performed after viability of the fetus. What NARAL recognizes in its handout is that the third trimester and viability are about the same and what L. D. 1612 focuses on is the flexible standard of viability, which the Supreme Court has approved, rather than a flat 24-week criteria.

In other words, the assertion that this bill is unconstitutional is without foundation. All we are doing is replacing an unconstitutional law with a constitutional law, a law reflecting what the Supreme Court has expressed as the state's compelling interest in the potential life of the fetus and reflecting the sentiments of the people we are here to represent.

Therefore, Mr. Speaker, I ask that the House vote in favor of the "Ought to Pass" in New Draft Report, and when the vote is taken, I ask that it be taken by the yeas and nays.

The SPEAKER: The Chair recognizes the gentleman from Saco, Mr. Hobbins.

Mr. HOBBS: Mr. Speaker, Ladies and Gentlemen of the House: I was hesitant to speak on these particular issues, and it is interesting to note that most of the speakers are men and I suppose the sensitivity to the subject I don't think can be felt unless you are a woman, as much as it can be for a man.

We had four bills before the Judiciary Committee addressing the abortion issue and, as you know, it is probably one of the most controversial issues that has hit this country in years.

In 1973, the Supreme Court decision of *Rowe versus Wade* struck down every statute relating to abortion in this country. In fact, it struck

down the statute under Title 17 which regulated abortions in the state.

Out of the four bills before the Judiciary Committee, we have three bills left. I should add that the four bills that were before the Judiciary Committee in their initial form, I felt were unconstitutional and did not meet constitutional muster.

After much debate and much work on the committee, and with the help of the good gentleman from Lewiston, Mr. Simon, who is versed in the field of the Constitution in many instances, proposals came before this legislature which are the following: We presently have before us a bill dealing with parental notification, and I signed that bill out "Ought to Pass". The second bill we had before our committee dealing with the subject, which we have passed out, is a bill to do with informed consent. I supported a version which basically was a version of allowing informed consent, but I was the lone signer of that report and it is a little less restrictive than the majority report but consistent with the idea of informing a woman of the complications of abortion and the complications of birth, also providing alternative information as far as other choices besides the performing of an abortion on that individual.

The bill before you is a bill that I did not support, I support the minority viewpoint, because unlike my good friend and colleague in the field of law from Lewiston, it is my humble opinion, after only being a lawyer for a limited period of time, that this bill is unconstitutional.

The Supreme Court of this United States has never upheld a bill which included the definition of viability. The good gentleman from Lewiston, Mr. Simon, referred to the *Danforth* case. The *Danforth* case, in answering the case, the Supreme Court did discuss viability but did not, have never once upheld any definition of viability. In fact, if you read the cases, I think it is impossible, I think it is a vague term and I think it is impossible to define that term.

If you talk to a true right-to-life person, a person who goes to my church, and individuals in this House, you will find that their definition of viability is the time from conception on, it is not the second or third trimester. The true right-to-life position would be from the time of conception, not the second or third trimester.

This bill before you, I think, has serious constitutional questions. I suppose I have to separate my emotional feelings on this subject and my legal training feelings on this subject, which is very difficult, I have found, since I have been trained in the last few years in the field of law. This bill will make a physician make a judgmental decision with his years of training, and if that decision is not right, that person could be sanctioned criminally and thrown in jail—a responsible physician, not the butchers or whatever. That is the problem I have with the bill.

Whether you like abortion or not, the Supreme Court, in *Rowe V. Wade*, in 1973, ruled on it. And I think in talking about this particular issue and all these issues, you shouldn't let your — in my case, I suppose I am being contrary to my religious convictions on this particular legislation and consistent with my religious convictions on the other bills I signed out of committee. But I, as an individual, who has had some legal training, even though it has been humble and I have only been an attorney for five months, it is my feeling that this bill would not pass the constitutional muster test, which I think you will find if it was litigated, it would be unconstitutional.

I urge you to oppose this particular motion of "Ought to pass" and I urge you to keep an open mind on the other particular bills before us, because some of them do address some positive things we can do in this particular field.

The SPEAKER: The Chair recognizes the gentleman from Lewiston, Mr. Simon.

Mr. SIMON: Mr. Speaker, Ladies and Gentlemen of the House: In response to several notes that I have been getting concerning the Danforth decision, I would beg leave of the House to read the portions of the decision in which the Supreme Court unanimously upholds a statutory definition of viability. I am reading from Volume 44 of United States Law, Page 5200. Section 22 of the Act, the Missouri Abortion Control Act under review in this case defines viability as "That state of fetal development when the life of the unborn child may be continued indefinitely outside the womb by natural or artificial life-supportive systems. Appellants claim that this definition violates and conflicts with the discussion of viability in our opinion in Rowe."

If I may skip a little ways, "We agree with the District Court and conclude that the definition of viability in the act does not conflict with what was said and held in Rowe. We agree that the definition of viability in the Act does not conflict with what was said and held in Rowe." It is as definite as can be.

Mr. Speaker and Members of the House, there may be people here who would like to have abortions be legal after viability. There may be people who believe, as some of the witnesses that testified against this bill believed, that a person ought to be able to have an abortion right up until the day before the baby is due. If you believe that, vote against the bill, but don't hide under the skirts of the Supreme Court Justices because they are with the majority report.

The SPEAKER: The Chair recognizes the gentleman from Falmouth, Mrs. Huber.

Mrs. HUBER: Mr. Speaker and Members of the House: The remarks just concluded, I am afraid, put a rather poor light on those of us who will vote against this motion, and I would only suggest that it is a real problem for any woman who has been forced by perhaps those who share different views to put off having an abortion or delay having an abortion until the question of viability actually becomes a real one. It is a position that I would have tremendous sympathy for such a person in such a position.

Mr. Laffin, early in his remarks, suggested that this legislature, those who believe in the Supreme Court Decision, had attempted to keep the unconstitutional law that we have on our books, on our books. I haven't been here very long, but some of you have and I think you may recall that there was an attempt to repeal that law, I believe it was in 1974; it failed because, I understand, people who believed that abortion should not be permitted refused to take that law off the books, just to give them something to hang on just in case they could make use of it. So, Mr. Laffin is correct on that as well as in some of the other things he said.

I am not a lawyer; however, I was interested that none of the people who have spoken on the constitutional aspects have brought up another decision, also made by the U. S. Supreme Court, and it was made this January, 1979. It was in the case of the Supreme Court striking down a Pennsylvania law requiring that a physician that performs an abortion try to save the life of the fetus if he believes the fetus is or "may be viable." In a six to three decision, the court held that the law was unconstitutionally vague and ambiguous. It was to make clear to the physician whether his primary responsibility was to his patient or his aborted fetus and because it subjected him to criminal liability without clearly defining what constituted criminal action. I am not a lawyer, but I would have to say that L. D. 1612 bears a remarkable resemblance in all respects to this Pennsylvania law.

The article I have here dealing with this decision does go on to discuss Rowe vs. Wade, Doe vs. Fulton and other bills. The Supreme Court Justice, Harry Blackman, in dealing with viability and discussing the decision of the Pen-

sylvania case, Rowe vs. Wade, Doe vs. Fulton and Danforth, made these remarks — "In these three cases, this court has stressed viability, has declared its determination to be a matter for medical judgment and has recognized that differing legal consequences ensue upon the near and far sides of that point in the human gestation period. We reaffirm these principles."

The Court went on to define the viability determination requirement ambiguous, because by requiring the physician to determine that the fetus is or "may be", the word used in L. D. 1612, viable, it is unclear whether the statute imparts a clearly objective standard or whether it imposes a mixed objective standard."

"Moreover," the Court said, "it is not clear whether the phrase 'may be viable' refers to viability as that term has been defined in Rowe and Danforth, or whether it refers to an undefined gray area prior to the stage of viability."

If I may continue in the court's decision in this case, it went on to say, "Apparently, the determination of whether the fetus is viable is to be based on the attending physician's experienced judgment or professional competence," the subjected point of reference.

In fact, this bill goes the opposite direction. In Section A, Subsection 4, it says the physician is guilty only if he knowingly disregarded the viability of the fetus. It is difficult to find out whether that is subjected judgment or not, but it certainly is a backwards way of looking at it.

The Court, in this decision, suggested the possibility that "may be viable" carves out a new time period during pregnancy when there is a remote possibility of fetal survival outside the womb, but the fetus has not yet attained the reasonable likelihood of survival the physicians associate with viability.

Furthermore, the decision declared this phrase to be impermissible ambiguity because viable and may be viable apparently refer to distinct conditions and that one of these conditions differs in some indeterminate way from the definition of viability set forth in Rowe and in Danforth.

The Court declared the uncertainty and difficulty of a viability determination about which experts are likely to disagree in conjunction with a statute imposing strict civil and criminal liability for an erroneous determination of viability, a mistake, could have a profound chilling effect on the willingness of physicians to perform abortions near the point of viability in the manner indicated by their best medical judgment.

The Court reaffirmed the decision of whether a fetus is viable is and must be a matter for the judgment of the responsible attending physicians. "State regulation that impinges upon this determination, if it is to be constitutional, must allow the attending physician the room he needs to make his best medical judgment."

The Court concluded that the statute did not afford broad discretion to the physician but instead "conditioned potential and criminal liability on confusing and ambiguous criteria, presenting serious problems with notice, discriminatory application and chilling effect on the exercise of constitutional rights."

The issue of abortion is an emotional one. I, although not legally trained, have tried to indicate to you why I feel this bill does not go in the proper direction.

For those who believe in a woman's right to an abortion, there are many problems. We must simply try to straighten out a tremendous conflict which exists at the base of this question, and that is when life begins and when, therefore, abortion becomes murder. I think it is clear that the Supreme Court, in 1973, could find no clear answer to this question in philosophy, theology or justice. I think it is also clear there is none.

Much of the controversy, in my opinion, reflects not just a religious scruple but also a yearning for moral punishment, if you will.

Congress has spent months in the past few years weighing how much misery and change would fall on the poor and pregnant before offering federal help.

There is a belief in Congress and in Akron, and, yes, perhaps in some parts of our own state, that many women think too easily of abortion, that they choose it as casually as they choose to have sex — that is simply not true. Very few people of either sex want abortions, certainly not women who have had abortions or anyone who has supported a friend through the experience. Abortion almost always symbolizes failure, failure of a contraceptive, a relationship or a family. Government does not need to get into this act and make it even worse than it already is.

I urge you to vote against the motion.

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

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

The SPEAKER: The Chair recognizes the gentleman from South Portland, Mr. Cloutier.

Mr. CLOUTIER: Mr. Speaker, Ladies and Gentlemen of the House: In 1973, as many people here today have spoken about, the Supreme Court decision legalized an abortion on demand and allowed for certain regulations of abortions performed after viability. This bill defines viability to be, as Mr. Morton said, "the state of fetal development when the life of the fetus may be continued indefinitely outside the womb by natural or artificial life-supporting systems." This is generally considered to be about 24 weeks of pregnancy, the sixth to the ninth months.

In accordance with that Supreme Court decision, abortions performed in these last three months of pregnancy are to be done only in those cases necessary to preserve the life or health of the mother. We are talking about viability. Ladies and gentlemen, I would like to bring to your attention that there are many, many premature abortions, children born, one pound children born at six months, five months, who have lived.

I would also like to bring to your attention the case in Massachusetts of Dr. Edilon who, because of the law, he knew that that child was living and what he did, he reached up into the uterus of that lady and strangled that child. What we have here today, ladies and gentlemen, is not a bill to completely wipe out abortions, we don't have one of those bills in the legislature this year, because I am sure every one of us standing and sitting here today would agree that to eliminate abortions would be totally unconstitutional, and I so agree with every one of you.

But what I am saying to you today, ladies and gentlemen, is the fact that children do live in the womb of their mother, and I would ask you today to remain consistent and uphold this viability bill and support the Majority "Ought to Pass" Report.

The SPEAKER: A roll call has been ordered. The pending question before the House is on the motion of the gentleman from Westbrook, Mr. Laffin, that the House accept the Majority "Ought to Pass" Report.

The Chair recognizes the gentleman from Lewiston, Mr. Jalbert.

Mr. JALBERT: Mr. Speaker, I would like to pair my vote with the gentleman from Cumberland, Mr. Garsoe. If he were here, he would be voting no and I would be voting yes.

The SPEAKER: The Chair recognizes the gentleman from Orono, Mr. Davies.

Mr. DAVIES: Mr. Speaker, I would like to pair my vote with the gentleman from Auburn, Mr. Brodeur. If he were here, he would be

voting yes; and I would be voting no.

The SPEAKER: The pending question before the House is the motion of the gentleman from Westbrook, Mr. Laffin, that the House accept the Majority "Ought to Pass" Report. Those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA — Austin, Barry, Beaulieu, Berube, Birt, Blodgett, Bordeaux, Boudreau, Bowden, Brown, A.; Brown, D.; Brown, K.C.; Bunker, Call, Carrier, Carroll, Carter, D.; Carter, F.; Chonko, Cloutier, Conary, Cunningham, Damren, Davis, Dexter, Diamond, Drinkwater, Dutremble, D.; Dutremble, L.; Elias, Fillmore, Fowlie, Gavett, Gillis, Gould, Gray, Gwadosky, Hanson, Hickey, Higgins, Hunter, Jacques, E.; Jacques, P.; Joyce, Kane, Kany, Kelleher, Laffin, Lancaster, LaPlante, Leighton, Leonard, Lewis, Lizotte, Locke, Lougee, MacBride, MacEachern, Mahany, Marshall, Martin, A.; Masterman, Matthews, Maxwell, McHenry, McMahon, McPherson, McSweeney, Michael, Nadeau, Nelson, A.; Nelson, N.; Paradis, Paul, Payne, Pearson, Peltier, Peterson, Prescott, Rollins, Sherburne, Silsby, Simon, Smith, Soulas, Stetson, Stover, Strout, Studley, Tarbell, Theriault, Torrey, Tozier, Tuttle, Twitchell, Violette, Vose, Wentworth, Wood, Wyman, The Speaker

NAY — Aloupis, Bachrach, Baker, Benoit, Berry, Brannigan, Brenerman, Brown, K.L.; Connolly, Cox, Curtis, Dellert, Doukas, Dow, Dudley, Fenlason, Gowen, Hall, Hobbins, Howe, Huber, Hughes, Hutchings, Immonen, Jackson, Kiesman, Lowe, Lund, Masterton, McKean, Mitchell, Morton, Nelson, M.; Post, Reeves, J.; Reeves, P.; Rolde, Sewall, Sprowl, Tierney, Vincent

ABSENT — Churchill, Norris, Roope, Small, Whittemore

PAIRED — Brodeur-Davies; Garsoe-Jalbert
Yes, 101; No, 41; Absent, 5; Paired, 4.

The SPEAKER: One hundred and one having voted in the affirmative and forty-one in the negative, with five being absent and four paired, the motion does prevail.

The Bill read once and assigned for second reading tomorrow.

The SPEAKER: The Chair recognizes the gentleman from South Portland, Mr. Howe.

Mr. HOWE: Mr. Speaker, I move that we reconsider our action on Bill "An Act to Permit Nonprofit Legal Service Organizations" (H. P. 642) (L. D. 797) whereby the House accepted the Minority "Ought Not to Pass" Report and hope you will all vote against me.

The SPEAKER: The gentleman from South Portland, Mr. Howe, moves that the House reconsider its action on L. D. 797, whereby the Minority "Ought Not to Pass" Report was accepted. Those in favor will vote yes; those opposed will vote no.

A viva voce vote being taken, the motion did not prevail.

On motion of Mr. McHenry of Madawaska, the House reconsidered its action on Bill "An Act to Assist School Administrative Units in Addressing Problems Associated with Alcohol, Tobacco and Drug Use and Abuse" (S. P. 209) (L. D. 582) (C. "A" S-172) whereby it was passed to be engrossed.

On further motion of the same gentleman, tabled pending passage to be engrossed and tomorrow assigned.

(Off Record Remarks)

On motion of Mr. Joyce of Portland, adjourned until eight-thirty tomorrow morning.