

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

One Hundred And Sixteenth Legislature

OF THE

State Of Maine

VOLUME V

SECOND REGULAR SESSION

House of Representatives
January 5, 1994 to April 14, 1994

ONE HUNDRED AND SIXTEENTH MAINE LEGISLATURE
SECOND REGULAR SESSION
34th Legislative Day
Tuesday, April 5, 1994

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

Prayer by Reverend William Zehring, South Parish Congregational Church, Augusta.

National Anthem sung by Katie Small of Troy Howard Middle School, Belfast.

The Journal of Friday, April 1, 1994 was read and approved.

Committee of Conference

Report of the Committee of Conference on the disagreeing action of the two branches of the Legislature on: Bill "An Act to Require Disclosure of Minimum Bid Requirements at Mortgage Foreclosure Sales" (S.P. 567) (L.D. 1602) have had the same under consideration and ask leave to report:

That they are unable to agree.

(Signed) Senator CIANCHETTE of Somerset, Senator MARDEN of Kennebec, and Senator KIEFFER of Aroostook - of the Senate

Representative TRACY of Rome, Representative TOWNSEND of Canaan, and Representative CARLETON of Wells - of the House.

Came from the Senate with the Committee of Conference Report read and accepted.

The Committee of Conference Report was read and accepted in concurrence.

SENATE PAPERS

The following Communication:

Maine State Senate
Augusta, Maine 04333

April 1, 1994

Honorable Joseph W. Mayo
Clerk of the House
State House Station 2
Augusta, Maine 04333

Dear Clerk Mayo:

Please be advised that the Senate today insisted and joined in a Committee of Conference on the disagreeing action between the two branches of the Legislature on Bill "An Act to Encourage Municipal Investment in Local Economic Development Projects" (EMERGENCY) (S.P. 647)(L.D. 1806).

The President appointed on the part of the Senate the following:

Senator DUTREMBLE of York County
Senator SUMMERS of Cumberland County
Senator CAREY of Kennebec County

Sincerely,

S/Joy J. O'Brien
Secretary of the Senate

Was read and ordered placed on file.

Non-Concurrent Matter

Bill "An Act to Implement the Recommendations of the Commission to Study the Future of Maine's Courts" (H.P. 1008) (L.D. 1354) which was passed to be engrossed as amended by Committee Amendment "A" (H-1000) as amended by House Amendment "A" (H-1015) thereto in the House on April 1, 1994.

Came from the Senate passed to be engrossed as amended by Committee Amendment "A" (H-1000) in non-concurrence.

On motion of Representative COTE of Auburn, tabled pending further consideration and later today assigned.

Non-Concurrent Matter

Bill "An Act to Clarify the Maine Banking Code as it Pertains to Service Corporation Serving Credit Unions" (S.P. 555) (L.D. 1591) on which the bill and accompanying papers were indefinitely postponed in the House on March 31, 1994.

Came from the Senate with that body having insisted on its former action whereby the Majority "Ought to Pass" as amended Report of the Committee on Banking and Insurance was read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (S-537) in non-concurrence.

On motion of Representative PINEAU of Jay, tabled pending further consideration and later today assigned.

Non-Concurrent Matter

Bill "An Act to Protect the Rights of Employees and to Ensure the Proper Expenditure of Public Funds" (H.P. 1303) (L.D. 1758) which was passed to be engrossed as amended by Committee Amendment "A" (H-865) as amended by House Amendment "A" (H-1013) thereto in the House on March 31, 1994.

Came from the Senate passed to be engrossed as amended by Committee Amendment "A" (H-865) as amended by Senate Amendment "B" (S-575) thereto in non-concurrence.

Representative RUHLIN of Brewer moved that the House Adhere.

On further motion of the same Representative, tabled pending his motion that the House Adhere and later today assigned.

ORDERS

On motion of Representative GEAN of Alfred, the following Joint Resolution: (H.P. 1477) (Cosponsored by Representative KONTOS of Windham, Senator McCORMICK of Kennebec)

JOINT RESOLUTION RECOGNIZING THE MAINE STATE GRANGE

WHEREAS, the State of Iowa has a long and proud history as the "Nation's Breadbasket," ranking second in agricultural production; and

WHEREAS, in 1993, most of the rain sorely needed by the farmers of Maine was deposited in the fields of Iowa; and

WHEREAS, the devastating floods that followed have caused loss of life, property damage in excess of \$1,000,000,000 and the flooding of over 2,000,000 acres of farmland, with crop damage exceeding \$750,000,000; and

WHEREAS, Iowa farmers are experiencing a tremendous shortage of hay to feed their cattle, thus tragically compounding their losses; and

WHEREAS, the Members of the Maine State Grange, Patrons of Husbandry, now celebrating 120 years of service to and support of the life and spirit of farming in America, have recognized the tragedy of Iowa's farmers and, in the great helping spirit of the Grange, have chosen to act; and

WHEREAS, in recognition of their special kinship with the farmers of Iowa, which easily transcends the 1,500 miles between their homes, Grange Members from all parts of Maine have responded to the crisis by donating their own hay to Iowa farmers; now, therefore, be it

RESOLVED: That We, the Members of the One Hundred and Sixteenth Legislature, now assembled in the Second Regular Session, in perfect accord with the sentiments of those members of our body who identify themselves as the "Corn Caucus," take this occasion to recognize the Maine State Grange for its generosity and its commendable representation of Maine and its citizens; and be it further

RESOLVED: That suitable copies of this resolution, duly authenticated by the Secretary of State, be transmitted to the Master of the Maine State Grange and the Master of the Iowa State Grange.

Was read and adopted and sent up for concurrence.

On motion of Representative JOSEPH of Waterville, the following Joint Order: (H.P. 1475)

ORDERED, the Senate concurring, that the Joint Standing Committee on State and Local Government report out a bill establishing secession and annexation procedures and standards to the House.

Was read and passed and sent up for concurrence.

SPECIAL SENTIMENT CALENDAR

In accordance with House Rule 56 and Joint Rule 34, the following item:

In Memory of:

Alexander Richard, of Madison, former member of the Maine House of Representatives, longtime educator, decorated veteran of World War II and member of the Maine Air National Guard, in which he obtained the rank of Colonel. Mr. Richard will be fondly remembered for his contributions, effective leadership and many years of dedicated service to the citizens of his community; (HLS 930) by Representative KETTERER of Madison. (Cosponsors: Representative JACQUES of Waterville, Representative PARADIS of Augusta, Speaker GWADOSKY of Fairfield, Senator BUSTIN of Kennebec, Senator ESTY of Cumberland, President DUTREMBLE of York)

On objection of Representative KETTERER of Madison was removed from the Special Sentiment Calendar.

Was read.

The SPEAKER: The Chair recognizes the Representative from Madison, Representative Ketterer.

Representative KETTERER: Mr. Speaker, Colleagues of the House: I address these comments to Mrs. Shirley Richard who is up in the gallery and Marcel Richard, wife and brother of Alex Richard, respectfully.

I thank my colleagues in the House in advance for their patients today.

What I am about to say is very difficult for me and very painful. On a bitter cold day in February, 1954, Loretta Ketterer died of a blood clot in the brain. When she died she left four children, a 17 year old daughter, a 13 year old daughter, and two sons ages 7 and 5. I am that 5 year old, that woman was my mother.

Between 1954 and 1962 my two sisters and my brother and myself lived in our home with my father who, like Alex Richard, was an educator in public schools.

My father, Frederick Augus Ketterer, was a well-intentioned but very rigid disciplinarian. Like Alex Richard he wanted success for all of us. He wanted us to achieve and strive to be successful.

On an August day in 1962 I learned that things change, that was the day my father died of a massive heart attack, I was 13.

I had in mind his words to me regarding achievement, success, honor and personal integrity, they were the same words that I later heard from my mentor and friend, Alex Richard.

One important difference between my father and my mentor, Alex Richard, was that my father was largely incapable of expressing his feelings and encouraging

us in a positive way as children, as students, and as individuals. Perhaps, fortunately for me, Alex possessed that rare and special skill.

Later in life as I grew closer to Alex Richard, a man who had distinguished himself in the Madison community in Somerset County as an educator, as a football coach, and as a friend of those who had no one else to speak for them. I remembered back to all that both my parents, particularly my father, had said to me.

Alex served in this House from 1980 to 1990 and being sentimental the way I am, as some of you may know, I requested at the time that I came to this House in 1990 as Alex's successor, to sit in the very same seat, in the very same row that Alex Richard had occupied for ten years. Fortunately, I was able to obtain this seat and it has been symbolic to me in many ways. Alex helped me as a campaign treasurer for my election in 1990 and again in 1992. But, more importantly and apart from that Alex was an individual who could urge people to do their very best. That is exactly what he did with me. In this respect he gave to me something that my own father could not, he made a connection with me as an individual that I have not connected with in any other way with any other individual.

I was fortunate enough two days before Alex died to go to the Redington Fairview Hospital in Skowhegan so that I could say my last farewell to my second father. I held his hand and I told him that I loved him, I loved him for all that he had done for me and for others in our community, of which there are many. During that hour Alex, whose mental and cognitive facilities were excellent, was able to reminisce with me about his days in the House of Representatives, his days in World War II, his involvement in the military for the better part of a half a century, and of course regarding his family. I guess it was only natural, given the history that I had, the unfortunate and untimely death of my mother and my father that Alex and Shirley, in part perhaps because they had no children, formed with me a natural bond.

I wish to publicly thank Alex for all that he did for me and did for our community. I wish to thank Shirley as well for her support and her love of Alex.

Alex Richard was an individual of whom we could all be proud — I know I certainly was — to have counted him as a friend and as a second father. He gave me inspiration to do the right things and for this I will be eternally grateful.

For all of these reasons, Mr. Speaker, I request that when we adjourn this day that we do so in memory and honor of Alexander Richard.

The SPEAKER: The Chair recognizes the Representative from Waterville, Representative Jacques.

Representative JACQUES: Mr. Speaker, Men and Women of the House: I would ask your indulgence, if I may, this afternoon to add a few more words on those that have already been put forth by our learned colleague the good Representative from Madison, Representative Ketterer.

I served all of Representative Richard's tenure in this House with him. I was what we used to call affectionately in those days as row captain for the back row.

After Alex passed away I had the pleasure of attending the funeral service. I have attended many funeral services, some might say we have probably

attended too many funeral services in my tenure in this body. I have to tell you I always look at those that attend a funeral service to basically give myself a sense of judgment on the life that was lived by the person whom we honor that day. I remember looking around the church in Madison that day and there were two one star Generals sitting in front of us, a group of former legislators and current legislators including the current Speaker and the former Speaker were sitting on one side of the church. As I looked around you could see at least three generations of people who attended school in that community that probably were touched or their lives were affected by the fact that they had Representative Richard as a teacher. We had a one star General from the Air Guard sitting in front of us and we had a one star General from the Army Guard sitting in front of us in full uniform, which was quite impressive because I had never realized to what degree Alex had served his country, he never bragged about it much and I was both impressed and amazed when I was able to read the obituary and see indeed what his accomplishments had been in his service to this country.

Those of you that served with Alex will not be surprised by my words but those of you who didn't not, I just did not want this time to go by without at least expressing some of the feelings that some of us who served with him had.

I never heard Alex Richard say anything out of line. He never made any off-color remarks about anyone. He never made any off-color remarks about anything. He was a consummate gentleman in every way and I envy him for that. Oh, would I be able to do such a thing. I think often times we lose sight of what being a true man is all about and clearly you can be a kind and gentle man and not have your manhood questioned or people wondering if you really are a man.

He was always a very patient and steady force to us and at times when I had been known to be a little erratic and probably got a little excited he was always willing to come over and put a hand up on my shoulder because he was not a big man in stature but certainly a big man in principle and belief.

One of the things that will leave an impression upon me the rest of my life that Alex did to me and to the members of the House who served with him is that he taught us contrary to the way we had been taught most of our lives, the correct way to say the Pledge of Allegiance. I had probably said it 10,000 times by the time Alex had arrived at this body, always believing that I had been taught the correct way. Representative Richard got up one day and pointed out to the members of this body that there is no pause between "One nation under God" indeed it is one continuous statement. Over the years as legislators have come and gone sometimes we forget that but clearly it is something I will never forget. I have never made that mistake again and every time I say the Pledge of Allegiance today I think of Alex Richard because clearly he showed that even though we had been doing it the wrong way for many many years that indeed we could change and do it the correct way. That will stand out in my mind as something that Representative Richards has left a lifelong impression on myself and I am sure on those who served with him.

Clearly, as you looked around the church that day and you saw everyone from every walk of life, from

those of the humblest of means, to those who have achieved greatness in this country. I might add that former Senator Margaret Chase Smith took the time out from her schedule to be there, sitting in the front, looking like she always does. That said all it needed to say to me, that even though the two of them came from different political parties, from different sides of the aisle that they were indeed former legislators and current legislators from the other side of the aisle in that church and clearly one of the finest elected officials ever to serve this great state was there paying her tribute to the kind and gentle Representative from Madison.

Subsequently, was adopted and sent up for concurrence.

REPORTS OF COMMITTEES

Ought to Pass Pursuant to Joint Order (H.P. 1344)

Representative JOSEPH from the Committee on State & Local Government on Bill "An Act to Revise the Salaries of Certain County Officers" (EMERGENCY) (H.P. 1476) (L.D. 2004) reporting "Ought to Pass" Pursuant to Joint Order (H.P. 1344)

Report was read and accepted. The bill read once.

Under suspension of the rules, the Bill was given its second reading without reference to the Committee on Bills in the Second Reading.

Under further suspension of the rules, the Bill was passed to be engrossed and sent up for concurrence.

BILLS IN THE SECOND READING

Bill "An Act to Separate Cushings Island in Casco Bay from the City of Portland and to Create the Cushings Island Village Corporation as Part of the Town of Long Island" (S.P. 454) (L.D. 1421)

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

On motion of Representative JOSEPH of Waterville was set aside.

On further motion of the same Representative, tabled pending passage to be engrossed and later today assigned.

As Amended

Bill "An Act to Improve Access to Pharmaceuticals for Rural Health Center Patients" (H.P. 558) (L.D. 755) (C. "A" H-986)

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

On motion of Representative ERWIN of Rumford was set aside.

On further motion of the same Representative, the House reconsidered its action whereby Committee Amendment "A" (H-986) was adopted.

The same Representative presented House Amendment "A" (H-1018) to Committee Amendment "A" (H-986) which was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Rumford, Representative Erwin.

Representative ERWIN: Mr. Speaker, Ladies and Gentlemen of the House: This amendment will insure that any saving realized by the retail pharmacies from the best price amendment will be passed on to the consumer. It is a simple fairness issue.

If the retail pharmacies are to get a lower price from the drug manufacturing companies then the consumer and not the retail pharmacist should be the ultimate beneficiary. This amendment will assure that, I urge you to adopt the amendment.

The SPEAKER: The Chair recognizes the Representative from Raymond, Representative Bruno.

Representative BRUNO: Mr. Speaker, Ladies and Gentlemen of the House: There is a lot of confusion on this bill lately. I hope I can clear it up, being a pharmacist. What this amendment is going to do is control drug prices in the State of Maine. I don't think anyone wants to control retail prices. All the pharmacists in the State of Maine are asking for right now is a level playing field from the manufacturers. We are saying that if you are willing to sell to someone, for example, at \$2.00 an item for 1,000 units, why should I, if I want to buy in that same volume, have to pay \$18.00 an item?

Under this amendment this is saying I would have to pass on whatever savings that I received at buying at a lower to the consumer. Let me tell you the best price in the State of Maine right now is passed on to the State of Maine. We are the second lowest reimbursed state for Medicaid to pharmacy in the nation. We have not received an increase in our fee for over ten years. Yet, you want me to pass on even more.

It also says I have to pass on any samples I receive to the consumer. Can someone explain to me how I can receive free merchandise of a prescription drug on one hand and pass that on to a consumer of a different prescription drug. I don't think you want to do that. All we are asking for is a level playing field.

I know there have been a lot of threats out there that the manufacturers are going to raise prices if you pass this bill. Senator Cohen had a hearing last year on the Committee on Aging in the U.S. Senate and the pharmaceutical manufacturers have surpassed the rate of inflation for the last 15 years. So, can you tell me what an idle threat is if you are going to say I am going to raise your price if you pass this bill? They are already doing it. Senator Prior released a press release last week saying that the pharmaceutical companies are charging again 15 times the producer price index. So, don't give in because of the threat of a price increase. It is not going to stop them, folks.

I ask you to defeat House Amendment "A" to Committee Amendment "A" and just accept the Committee Report.

The SPEAKER: The Chair recognizes the Representative from Gardiner, Representative Treat.

Representative TREAT: Mr. Speaker, Men and Women of the House: I urge you to vote against the pending amendment. This is a proposed amendment to a unanimous — well actually it is not unanimous, it is one dissenting vote on this report, the remainder of the committee was in favor of this. What it does is

essentially it is going to reduce drug prices for consumers in Maine, that is a good thing. This amendment is intended to undercut what the bill already does.

Just to give you a little more detail in terms of what we are dealing with here — drug prices are basically out of control and they bear very little relationship to either general inflation or even medical inflation.

The same report that Representative Bruno was referring to found that in fact drug prices far outpays any other health care prices as well. So, if you are wondering why your health care prices are so high, we can look partly to what the drug costs are. 22.5 percent of the manufacturers part of prescription price, which is about an average of \$3.58 per prescription actually went to a lot of things, it had nothing to do with research and development and putting that drug on line. It went for marketing and advertising. If you have seen the suits around this building you will understand where that money is going because there are a lot of them.

The report also found that pharmaceutical manufacturers make approximately \$2.36 in pure profit on each prescription filed, only 16 percent of this goes to research and development of the total cost of the prescription.

In terms of between 1980 and 1992 prescription drug inflation increased six times the rate of general inflation. According to this same Cohen report, prescription drug costs rose 6.4 percent, over four times the general inflation.

Considering that almost 10 percent of the average health care bill nationally is for pharmaceuticals, as I pointed out earlier, it is not surprising that our health bills have gone up. This bill is a small step but it is a first and important step in reducing those prices overall. It basically brings down the prices so that they can't play favorites with one type of purchaser versus another or favor one type of drug over another.

I urge your defeat of this amendment so that we can support the unamended version of this bill.

The SPEAKER: The Chair recognizes the Representative from Raymond, Representative Bruno.

Representative BRUNO: Mr. Speaker, Ladies and Gentlemen of the House: One other point I want to make — last year when the Governor proposed his budget he had a limit on the number of prescriptions eligible for receipt for the Drugs for the Elderly Program and the Maine Medicaid Program. What I did was go to the pharmacists in Maine and I said, "Look, we can't have this, we need some improvement here, what can we do to save these programs?" The pharmacists of Maine came back here and said we can save you money in these programs. I went in front of Appropriations about one o'clock in the morning and I said if you implement some of these changes you will save yourselves some money. There was \$2 million in savings pegged in, pegged into last years budget. Not only have the pharmacists of Maine saved you that \$2 million but the Drugs for the Elderly Program is 28 percent the mark that was supposed to be saved. This is what the local guys have done for you. The pharmaceutical manufacturers brought in an expert from California and they said if you implement a penny of this you aren't going to save any money. Well, I have proven myself that I can save money, I have proven it to you.

Once again they are saying that we are going to raise your prices. So now what I am asking you to do is support the local guy once again. I ask you to defeat the House Amendment.

Mr. Speaker, I ask for a roll call.

The SPEAKER: The Chair recognizes the Representative from Scarborough, Representative Pendexter.

Representative PENDEXTER: Mr. Speaker, Men and Women of the House: I was the lone member voting against this bill in committee and I feel that I need to rise and explain why I took the position I did.

It is very difficult for me to do what I had to do but I voted against the amendment that Representative Bruno presented to us at the eleventh hour because I felt that I objected to the process with which this issue, which, (as you can understand) is a very complicated, controversial issue. Though it is very easy to vote against a pharmaceutical company I just don't feel that this is an issue that we should be discussing in the halls, trying to fix with amendments. I feel that the process should have worked and that it should be an issue that stands by itself, should have had its own public hearing so we could have gotten the information to make informed votes.

My vote, no, on this issue is not a reflection on either side, it is just I feel I don't have enough information to make up my mind. I felt that I needed to explain that.

The SPEAKER: The Chair recognizes the Representative from Rumford, Representative Erwin.

Representative ERWIN: Mr. Speaker, Ladies and Gentlemen of the House: Just a few more points. The Federal Trade Commission has reviewed the current method of pricing pharmaceuticals. As recently as 1989 the Federal Trade Commission said that price competition benefits customers providing incentives for vigorous retail price and service competition. The FTC has repeatedly noted the validity of price differences because of real functional differences among customers. Note that retail pharmacies also practice price differentiation among their customers, discounts are offered to elderly patients, labor unions, large employers, government programs, frequent customers, nursing homes and managed care patients. Even when different retail pharmacies purchase at the same price it is easily demonstrated that wide disparities exist among patient purchase prices from store to store. The state and federal programs like Medicaid, Public Health Service, Veterans Administration and so forth are already automatically receiving the best price, hospitals are receiving discounts. Do you want to jeopardize discounts that help the most needy patients in your state? I urge you to support the amendment.

The SPEAKER: The Chair recognizes the Representative from Gardiner, Representative Treat.

Representative TREAT: Mr. Speaker, Men and Women of the House: Just to clarify for the House, hospitals are exempted from the provisions of the committee majority amendment as are non-profit groups. Please don't give into scare tactics, defeat this amendment so that we can stick with our report from earlier last week.

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

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

The SPEAKER: The pending question before the House is adoption of House Amendment "A" (H-1018) to Committee Amendment "A" (H-986).

The SPEAKER: The Chair recognizes the Representative from Eagle Lake, Representative Martin.

Representative MARTIN: Mr. Speaker, pursuant to House Rule 19, I wish to be excused from voting since I am treasurer of a profit-making pharmacy.

The SPEAKER: The pending question before the House is adoption of House Amendment "A" (H-1018) to Committee Amendment "A" (H-986). Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 308

YEA - Erwin.

NAY - Adams, Ahearne, Aikman, Aliberti, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Beam, Bennett, Birney, Bowers, Brennan, Bruno, Cameron, Campbell, Carleton, Caron, Carr, Carroll, Cashman, Chase, Chonko, Clark, Clement, Cloutier, Clukey, Coffman, Coles, Cote, Cross, Daggett, Dexter, DiPietro, Donnelly, Dore, Driscoll, Dutremble, L.; Faircloth, Farnsworth, Farnum, Farren, Fitzpatrick, Foss, Gamache, Gean, Gould, R. A.; Gray, Greenlaw, Hale, Hatch, Heeschen, Heino, Hichborn, Hoglund, Holt, Hussey, Jacques, Jalbert, Johnson, Joseph, Joy, Kerr, Ketterer, Kilkelly, Kneeland, Kontos, Larrivee, Lemke, Libby Jack, Lindahl, Lipman, Look, Lord, MacBride, Marsh, Marshall, Melendy, Michael, Michaud, Mitchell, E.; Mitchell, J.; Morrison, Murphy, Nadeau, Nash, Nickerson, Norton, O'Gara, Oliver, Ott, Paradis, P.; Pendexter, Pendleton, Pfeiffer, Pineau, Pinette, Plourde, Plowman, Poulin, Pouliot, Rand, Reed, G.; Reed, W.; Richardson, Robichaud, Rotondi, Rowe, Ruhlin, Rydell, Saint Onge, Saxl, Simonds, Simoneau, Skoglund, Small, Spear, Stevens, A.; Stevens, K.; Strout, Sullivan, Swazey, Tardy, Taylor, Thompson, Townsend, E.; Townsend, G.; Townsend, L.; Tracy, Treat, Tufts, Vigue, Walker, Wentworth, Whitcomb, Winn, Young, Zirnkilton.

ABSENT - Cathcart, Constantine, Hillock, Kutasi, Lemont, Libby James, Martin, H.; Ricker, True, The Speaker.

EXCUSED - Martin, J..

Yes, 1; No, 139; Absent, 10; Paired, 0; Excused, 1. 1 having voted in the affirmative and 139 in the negative, with 10 being absent and 1 excused, House Amendment "A" (H-1018) to Committee Amendment "A" (H-986) was not adopted.

Subsequently, Committee Amendment "A" (H-986) was adopted.

The Bill was passed to be engrossed as amended by Committee Amendment "A" (H-986) and sent up for concurrence.

By unanimous consent, all matters having been acted upon were ordered sent forthwith.

ENACTORS
Bond Issue

An Act to Authorize a General Fund Bond Issue in the Amount of \$5,000,000 for Training Equipment for the Maine Technical College System (H.P. 1442) (L.D. 1968) (C. "A" H-970)

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

On motion of Representative JACQUES of Waterville, tabled pending passage to be enacted and later today assigned.

Emergency Measure

An Act to Prohibit Discrimination in the Assignment of School Attendance Areas (H.P. 1155) (L.D. 1554) (H. "A" H-1002 to C. "A" H-966)

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. 105 voted in favor of the same and 2 against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Emergency Measure

An Act to Authorize Use of Civil Administrative Penalty Authority and Administrative Order Authority Against Violation of Federal and State Drinking Water Laws, Regulations and Rules (H.P. 1329) (L.D. 1792) (S. "A" S-559 to C. "A" H-864)

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. 102 voted in favor of the same and 26 against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Emergency Measure

An Act to Correct Errors and Inconsistencies in the Laws of Maine (S.P. 676) (L.D. 1852) (C. "A" S-531; H. "A" H-985)

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. 111 voted in favor of the same and 0 against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Emergency Measure

An Act to Make Supplemental Allocations from the Highway Fund, Other Funds and Make Other Necessary Changes for the Proper Operation of State Government

for the Fiscal Years Ending June 30, 1994 and June 30, 1995 (S.P. 699) (L.D. 1897) (Governor's Bill) (C. "A" S-562)

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 the same and 0 against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Emergency Measure

An Act to Prohibit the Use of Gill Nets in the Kennebec and Androscoggin Rivers (S.P. 710) (L.D. 1918) (H. "A" H-1010 to C. "A" S-470)

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. 110 voted in favor of the same and 4 against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Emergency Measure

An Act to Establish Fairness in the Placement of On-line Lottery Machines (H.P. 1469) (L.D. 1995)

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. 109 voted in favor of the same and 4 against and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Emergency Measure

Resolve, Authorizing Aroostook County to Issue Bonds for the Northern Maine Development Commission, Inc. (S.P. 772) (L.D. 1992) (Governor's Bill)

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

On motion of Representative JACQUES of Waterville, tabled pending final passage and later today assigned.

Emergency Measure

Resolve, to Establish a Commission on the Future of Maine's Paper Industry (S.P. 773) (L.D. 1996)

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

On motion of Representative JACQUES of Waterville, tabled pending final passage and later today assigned.

An Act to Bring the Department of the Attorney General into Conformity with the Criminal History Record Information Laws (H.P. 665) (L.D. 903) (C. "A" H-953)

An Act to Provide for Greater Efficiency within the Department of Agriculture, Food and Rural Resources (H.P. 1191) (L.D. 1588) (H. "A" H-981 to C. "A" H-944)

An Act Regarding the Rights of Grandparents in Child Protection Proceedings (H.P. 1352) (L.D. 1818) (S. "A" S-544 to C. "A" H-938)

An Act to Extend Penalty Sanctions to Employee Health Benefit Plans (S.P. 671) (L.D. 1843) (C. "B" S-563)

An Act to Implement the Recommendations of the Commission to Study the Statutory Procedures for Local Property Tax Abatement (H.P. 1387) (L.D. 1886) (H. "A" H-978 to C. "A" H-853)

An Act to Clarify and Make Technical Changes to Various Professional Licensing Board Laws (S.P. 720) (L.D. 1942) (Governor's Bill) (S. "B" S-558 to C. "A" S-490)

An Act to Amend the Public Smoking Laws (S.P. 724) (L.D. 1945) (S. "D" S-560 to C. "A" S-488)

An Act Regarding the Department of Corrections (H.P. 1454) (L.D. 1982) (C. "A" H-993)

An Act to Conserve Sea Urchin Resources (H.P. 1459) (L.D. 1984) (H. "B" H-983)

An Act to Correct the Purchasing Laws to Delegate Small Purchases (H.P. 1468) (L.D. 1994) (Governor's Bill)

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.

By unanimous consent, all matters having been acted upon were ordered sent forthwith.

An Act to Amend the Laws Governing the Required Qualifications to Practice Law in the State (H.P. 1153) (L.D. 1552) (C. "B" H-957)

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

On motion of Representative JACQUES of Waterville was set aside.

On further motion of the same Representative, tabled pending passage to be enacted and later today assigned.

An Act to Clarify the Licensing Authority of the Department of Public Safety (S.P. 614) (L.D. 1712) (H. "A" H-933 to C. "A" S-518)

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

On motion of Representative JACQUES of Waterville was set aside.

On further motion of the same Representative, tabled pending passage to be enacted and later today assigned.

An Act to Increase the Jurisdiction of the Loring Development Authority of Maine (H.P. 1275) (L.D. 1723) (C. "A" H-974)

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

On motion of Representative JACQUES of Waterville was set aside.

On further motion of the same Representative, tabled pending passage to be enacted and later today assigned.

An Act to Establish a Technical College in York County (H.P. 1313) (L.D. 1775) (H. "A" H-989 to C. "A" H-851)

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

On motion of Representative GRAY of Sedgwick was set aside.

The same Representative requested a roll call on passage to be enacted.

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

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

On motion of Representative COLES of Harpswell, tabled pending passage to be enacted and later today assigned. (Roll Call Ordered)

An Act Regarding Access to Chiropractic Services (H.P. 1461) (L.D. 1986) (H. "A" H-998)

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

On motion of Representative JACQUES of Waterville was set aside.

On further motion of the same Representative, tabled pending passage to be enacted and later today assigned.

UNFINISHED BUSINESS

The following matters, in the consideration of which the House was engaged at the time of adjournment Friday, April 1, 1994, have preference in the Orders of the Day and continue with such preference until disposed of as provided by Rule 24.

SENATE DIVIDED REPORT - Report "A" (9) "Ought to Pass" as amended by Committee Amendment "A" (S-551) - Report "B" (2) "Ought Not to Pass" - Report "C" (1) "Ought to Pass" as amended by Committee Amendment "B" (S-552) - Committee on Business Legislation on Bill "An Act to Clarify Agency Relationships in Real Estate Transactions" (S.P. 616) (L.D. 1714) - In Senate, Report "A" "Ought to Pass" as amended read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (S-551). TABLED - March 31, 1994 (Till Later Today) by Representative HOGLUND of Portland. PENDING - Motion of same Representative to accept Report "A" "Ought to Pass" as amended.

The SPEAKER: The Chair recognizes the Representative from Clinton, Representative CLEMENT.

Representative CLEMENT: Mr. Speaker, Men and Women of the House: I rise in opposition to this bill. I move to indefinitely postpone L.D. 1714 and all its accompanying papers and request a roll call when the time comes.

Mr. Speaker, Men and Women of the House: I am going to touch a couple of things on this bill, one of them is dual agency, one issue is the common law and the conflict of interest is the other one. This piece of legislation came about a year or so ago in the State of Minnesota when the courts in Minnesota found the real estate company in violation of common law. That is why you see this piece of legislation in front of you today. I could read the letter from the court but there is no need to spend a lot of time on that, it is a fact.

This bill eliminates the four most important duties that protect the consumer under common law. The Attorney General's Office has shared a bunch of information that we dealt with and recommended four amendments. I guess there is going to be one amendment on the floor, if this bill does pass, in the near future.

I am very opposed to this piece of legislation. It does not restore the consumer protection that presently exists under common law. What we are doing is taking away common law, replacing it with specific piece of law that does not protect the consumer. I am sure the lobbyist in the hall ways today were plentiful in the real estate department. My phone has rung off the wall for a couple of weeks, and that's okay.

I am standing in front of you today and I want to be put on the Record as how can one agent truly represent the best interest of both parties when those interests tend to be mutually exclusive by the very nature of this transaction?

The State of Vermont is dealing with this issue, they haven't passed a law on it but they are leaning towards outlawing dual agency.

Like I said earlier the Department of the Attorney General's Office is against this. Friday I passed out a couple of hand-outs on this dual agency. It has a picture of what it is now (common law) and what the dual agency law that we are voting on today are

going to do. It is going to help the realtor, it is going to protect the realtor. I am not against realtors, believe you me, but I think we need something that is fair to the consumer and it is very important to the consumer that we stand up and share with you what the consumer has shared with me.

The SPEAKER: The Chair recognizes the Representative from Saco, Representative Nadeau.

Representative NADEAU: Mr. Speaker, Men and Women of the House: First of all I am going to quickly try to dispel a couple of comments that were just made. One, this is a consumer bill. This is a collaborative effort by many parties. I don't know where this anti-consumer stuff came from but it is not the fact.

It was a fact at one point that the Attorney General's Office was asked for an opinion. However, what failed to be mentioned a couple of moments ago was that opinion was asked of the initial legislation a month ago. Now you know and I know that especially in the last month of the session if you really want to track a bill you ought to be tracking it daily and not monthly. So, the opinion that was issued or the comments that were issued by Mr. McKenna was issued a month ago. That has not been pointed out but that is a fact.

As far as the dual agency, there is no conflict there. That practice is happening. What this bill does do is it tells the buyers this is what you have got to do, you follow these rules and regulations. It tells the sellers agent this is what you have got to do. It tells a dual agent if you were involved in this kind of a situation this is what you do, this is what you don't do. That practice is already happening. All this bill does in fact do is clarify the do's and don't's.

Mention was made of past legal statute, to some extent that is accurate. What this bill does is tell the Real Estate Commission, these are the rules and regulations, you formulate the appropriate policies to go with this and it establishes proper procedures which will not need to be abrogated by common law of the 1830's.

There are basically four things here, the common law aspect, the definition of what the buyers agent does, what the sellers agent does and what a dual agent does. That is all, anything more than that, anything anybody has tried to instill in you in their lobbying techniques or their discussion about this bill just isn't there.

I think it is imperative to try to keep facts and heated opinions and heated emotions at two separate matters. This is one of those bills where many opinions were issued and many of those opinions were just simply not true.

I would urge you to reject the pending motion and let's go on and send this bill on its merry way.

The SPEAKER: The Chair recognizes the Representative from Wells, Representative Carleton.

Representative CARLETON: Mr. Speaker, Men and Women of the House: I don't know how I am going to vote on this bill. I thought I would provide you all with some information from my perspective which is that of a real estate attorney who deals in real estate transactions all the time. Of course the problem historically with real estate brokers and real estate transactions has been the potential problem of a conflict. When you go in as buyer of real estate and talk with a broker usually that broker is supposed to be working for the seller. We

have multiple listing service arrangements where in fact a buyer who comes in to buy property may have had no contact with the seller or the sellers real estate agency that listed the property and a particular broker may be dealing only with a buyer. Sometimes buyers get confused with who that broker is supposed to be working for. It is one of the basic tenets of agency that a person is supposed to act for their principle and this gets mixed up in real estate transactions. Many buyers do not understand what the situation is. I have the feeling and I have been told that a lot of buyers are beginning to feel that certain information has not been given to them and there has been an increase in litigation which is what has led to this effort at passing a law.

When you talk about agency and you start talking about dual agency you are talking about representing two people at once. When you talk about a buyers agent and a designated or sellers agent and a designated buyers agent perhaps in the same agency you are also talking about the agency having some relationship in representing the buyer and the seller in some fashion or another. Office politics being what it is within real estate agencies I think there may be some concern and I certainly have some concern about whether or not the protections that this bill seeks to write into law will in fact occur.

For myself, I am a little bit uncomfortable with this bill. I would like to see it studied more. I think there is a report that calls for such a study. I know that the disclosure requirements in this bill which require disclosure to a potential buyer about who the broker is representing are a very good thing and I hope that those are enacted into law.

The elimination of common law causes of action, that is law suits, that this bill apparently sets forth is another concern that I have. I am told that every possible, that every protection that our common law, that is our case law, developed by judges and juries is in this proposed law. I don't know whether or not that is the case. A lot of people are subject to common law requirements. This bill proposes to eliminate that for real estate brokers so I think you ought to think long and hard about this particular bill. As I say, I am not sure how I am ultimately going to vote upon it but it is a serious business and I hope you will keep these comments in mind before you vote.

The SPEAKER: The Chair recognizes the Representative from Kennebunk, Representative Libby.

Representative LIBBY: Mr. Speaker, Members of the House: The purpose of this legislation is to define the role of licensees in the real estate transactions by establishing rules, regulations, which state what a selling agent, a buyers agent and a disclosed dual agent can and cannot do for their client and for their customers.

All of this of course took place, as has been referred to, in the findings of a court in a recent Minnesota case. They found that although the broker had dotted all the "i's" and crossed all the "t's" declared his position with his client and submitted the necessary disclosures the court found the broker innocent of negligent misrepresentation but guilty of the Unfair Trades Practice Act.

We may think this is an isolated case but it has come home to roost in a small town of West Newfield just recently where the same problem occurred. The courts found as they had in Minnesota.

This legislation requires that the real estate commission to establish mandatory forms to be used by all licensees for better agency disclosures. Again, the Maine Real Estate Commission will enforce these provisions for consumers.

The SPEAKER: The Chair recognizes the Representative from Winslow, Representative Vigue.

Representative VIGUE: Mr. Speaker, Ladies and Gentlemen of the House: According to the Demo memo one statement, a dual agent referring to the bill we are referring to here — a dual agent in a real estate transaction would basically represent the interests of both the buyer and the seller concurrently with the written consent of both. This, ladies and gentlemen, is really the gist of what we are doing right here as we are going to legally allow this to take place.

L.D. 1714 resulted from the combined efforts of the Maine Real Estate Commission and the Maine Association of Realtors. This was not just done by itself. These are our people where as the opposition seems to be fueled by lobbyist and lawyers from out of state, from New York, from Massachusetts.

A number of letters we received last week were disclaimed or they had disclaimers at the bottom of the page that they were not allowed to use the name of the Massachusetts home buyers club, and the letters were still sent out and used.

The Consumer Federation of America faxed a disclaimer against the use of its name, it was sent to the other body.

The majority of real estate agents in the State of Maine and the brokers support the Majority "Ought to Pass" Report. L.D. 1714 regulates and defines disclosed dual agency. It does not create it. It is currently legal and is being practiced but it is unregulated. L.D. 1714 will regulate this. L.D. 1714 directs the Maine Real Estate Commission to more closely regulate the real estate practice in the State of Maine.

I urge you to support Committee Amendment "A" and L.D. 1714. I urge you to oppose indefinite postponement that is currently being voted upon.

The SPEAKER: The Chair recognizes the Representative from Dexter, Representative Reed.

Representative REED: Mr. Speaker, Ladies and Gentlemen of the House: L.D. 1714 is legislation which clarifies our roles as licensed real estate agents and the services we provide to our clients and customers. It clarifies what we can and cannot do as buyers agents and sellers agents. It also established guidelines and gives authority to the Maine Real Estate Commission to regulate the currently legal practice of disclosed dual agency.

This bill requires more disclosure by us as real estate licensees in several areas. For example, the disclosure of agency and whom we represent. It also gives consumers the freedom to choose a type of agency representation they want.

We need your support of this legislation so that we as agents and the clients and customers we serve have a clearer understanding of our role. I hope you will please vote against the indefinite postponement of this bill and support the Real Estate Commission, they do a good job protecting the consumer. L.D. 1714 is a good bill and I hope you will defeat the indefinite postponement and vote with the bill.

The SPEAKER: The Chair recognizes the Representative from Lewiston, Representative Aliberti.

Representative ALIBERTI: Mr. Speaker, Colleagues of the House: I have a tendency to support this legislation and not support the indefinite postponement but not entirely committed. Thus, through the Chair I would pose a three-part question. As if today's date, April 5th, 1994 — the opinion that came down in a memorandum March 31, from James A. McKenna, Assistant Attorney General, was that an official opinion?

The second part of that question, has it been considered by the committee as an official opinion of the lawmaking section of our, responsible lawmaking section of our state? And is this being considered or any part of the legislation at this time why and why not?

The SPEAKER: Representative Aliberti of Lewiston has posed several questions through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from Saco, Representative Nadeau.

Representative NADEAU: Mr. Speaker, Men and Women of the House: To my colleague from Lewiston, the first question, as I understand it was is that opinion accurate? And, my answer would be mixed but mostly in the negative. The opinion was basically written while looking at the original law or the original proposed bill, which has been changed several times between the time that memo was actually written and April 5, 1994.

The second part of the series of questions had to do with was that memo considered by the Committee? The answer is actually yes. Anyone in this body or the other body would be very hard pressed to answer differently than I just have. As I understand it there were basically four concerns, three of them were very expressly addressed and issued. The fourth one has been discussed and to most individuals has been satisfactorily reached.

The third question had to do with the overall mix of how did that opinion relate to the proposed bill, as I understand the question, the answer to that was all opinions either written or verbally issued were addressed by the committee and I think the Committee Report accurately reflects that.

If I didn't answer that I would be more than happy to give another stab at it but I think it does.

The SPEAKER: The Chair recognizes the Representative from Rumford, Representative Cameron.

Representative CAMERON: Mr. Speaker, Ladies and Gentlemen of the House: I have not been comfortable with this bill from the very beginning and I think quite a few of you know that and I did oppose it in committee.

There is an amendment on the way that I think will address some of my concerns. As yet the sponsor has not had an opportunity to tell you that.

A couple of the comments that were just made I would like to elaborate on and clarify. Dual agency was referred to as being legal now. That is true. Undisclosed dual agency is illegal. At this time I don't think we have any way of knowing — I didn't, maybe I was asleep in the committee but I did not see anything that convinced me that realtors were now letting their customers know whether or not they were acting as a dual agency, maybe they are, maybe they aren't. I don't want anybody to take that as an accusation because it is not intended that way. I am only saying that I did not see anything that convinced me that the public was now being protected.

I have heard people say that this will allow dual agency. Dual agency already exists as long as the agent is up-front with the customer. So that part doesn't change a whole lot.

My biggest concern right from the very beginning was, as Representative Carleton already referred to, was the abrogating of the common law. I make no pretension of being a lawyer and if I had to define to you the word abrogate I would stand here and stutter probably. I do understand it enough that it does concern me and I will say that I believe this piece of my concern is going to be addressed by the amendment.

I am still not comfortable with the law, the proposal. My feelings from the beginning have been to some degree alleviated. I don't quite agree with Representative Nadeau in some of his answers about how the committee reviewed the recommendations of Mr. McKenna but that comes down to a matter of opinion more than anything else.

It is my understanding that Mr. McKenna still feels the same way.

I would pose a question to Representative Nadeau, the question being what are the great changes that have occurred since the committee passed this bill out? I was on the committee and except for the amendment that I referred to that may alleviate some of my fears, I don't know of any changes.

The SPEAKER: Representative Cameron of Rumford has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from Portland, Representative Høglund.

Representative HØGLUND: Mr. Speaker, Men and Women of the House: I believe since — I have the amendment that is coming, we didn't have a chance to put it on and that will alleviate a lot of problems.

The other thing is, from my understanding, it is just a disclosure act instead of all the other things, defining disclosure. Grant you, it can be done. Supposedly they are out there doing it and it is being done. The thing is right now if you go in you can have a choice if that is what you want or who you want selling your property or buying your property, knowing that they disclosed you in writing, that they are a dual agent.

I think that is pretty much what specifically we have left to the bill. I hope I answered you.

The SPEAKER: The Chair recognizes the Representative from Gardiner, Representative Treat.

Representative TREAT: Mr. Speaker, Men and Women of the House: I would also like to address the question from Representative Aliberti of Lewiston concerning the memo from the Assistant Attorney General, James McKenna. There are actually two McKenna memos. One went to the committee of deliberation, a second one is addressed and that was just handed out to the body, it is addressed to myself and Representative Brennan when we raised concerns about this bill and how it impacted consumers and we were unclear as to whether Mr. McKenna's concerns were addressed in the Committee Amendment. He very clearly states in the handout that I have handed out that three of his four concerns are addressed. The fourth concern is not addressed. I do have an amendment coming which does address that fourth concern and we can talk about that at that time. Essentially it deals with whether or not there is adequate consumer remedy if something does go wrong here. I think there is great potential

for something to go wrong and for myself I would like to see greater consumer protection put into this bill.

The SPEAKER: The Chair recognizes the Representative from Paris, Representative Burney.

Representative BURNEY: Mr. Speaker, Men and Women of the House: I am presently, in my other life, a buyer/broker. I know that there are buyer/brokers out there that are opposed to this legislation. I am not.

I will tell you it is very difficult to work out there in the real estate field with no uniform disclosures on dual agency. Dual agency is legal now. If we don't want dual agency there should be a bill put in next year to have its due course in hearings but right now we do deal with dual agency and there is nothing uniform, there is no uniform regulation on it. I will tell you it is scary, it is scary for me but it is more scary for the consumer, I feel.

I think this bill with this amendment will clarify the disclosure and make it clear. The Real Estate Commission will have uniform disclosure so that the consumer will know and there will be a chance to prosecute because there will be better regulations.

Another thing that I do want to mention, the way I read this bill and amendment, it does not eliminate common law, it codifies common law. The Real Estate Commission is an advocate of the consumer and they have worked with the Realtors Association of this state to address these matters in this bill. Last year there were two bills before the committee and basically there was an agreement to bring it back this year to work together, put your heads together and bring us back something that will protect the consumer and clarify the dual agency law that is already on the books. Therefore I will be supporting this bill and I ask you to vote no on indefinite postponement of the bill and all accompanying papers.

The SPEAKER: The Chair recognizes the Representative from Rumford, Representative Cameron.

Representative CAMERON: Mr. Speaker, I would pose a question through the Chair. Mr. Speaker, I am not proposing the question to anyone specific but somebody who has a better understanding of legal issues more than I do.

In the case of an agent who has a listing and a customer comes in and is interested in that listing if the bill in fact provides that the agency must let the customer know, disclose in what capacity the agency is acting, if one member of the agency is acting as a buyer agent and another member of the agency is acting as a seller agent, does not the owner of the agency still legally become a dual agent? Are there not really three people involved here, three separate and distinct types of agency, both the buyer agent representing the buyer; the seller agent representing the seller and the person to whom they both answer, if you will, and for whom they both work? Doesn't the owner of that agency still, unless this law changes and I don't see it, doesn't that person still act as an undisclosed dual agent?

The SPEAKER: Representative Cameron of Rumford has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from Wells, Representative Carleton.

Representative CARLETON: Mr. Speaker, Men and Women of the House: In reading Committee Amendment "A" section in the statute, 13278-2, it looks like

the statute says that a real estate brokerage agency is not to be considered a dual agency solely because of this situation. So, I think the answer is that the brokerage agency, according to this bill, would not be considered to be a dual agent under the statute. The question remains whether or not they are a dual agent in fact.

The SPEAKER: The Chair recognizes the Representative from Clinton, Representative Clement.

Representative CLINTON: Mr. Speaker, Men and Women of the House: A couple of points I want to point out. One, the Department of the Attorney General, the Assistant, James McKenna, works for the Public Protection Unit. The Real Estate Commission doesn't exactly work for the consumer issues, they work with the issues that are brought to them by the real estate people and by the consumer. If we listen to the wisdom of Representative Carleton who deals with this issue on a daily basis as he is an attorney and is worried, so should we be.

I am very uncomfortable with this piece of legislation, obviously, and I feel that we should indefinitely postpone.

The SPEAKER: The Chair recognizes the Representative from Wells, Representative Carleton.

Representative CARLETON: Mr. Speaker, Men and Women of the House: I would like to see the motion to indefinitely postpone defeated because I think there may be some amendments which may help me out. There is also Committee Report "C" which requires disclosure of the agency relationship which I think is a good idea and further study. I would like to see this body have the option of adopting another one of the options, Report "C."

The SPEAKER: A roll call has been requested. For the Chair to order a roll call it must have the expressed desire of more than one-fifth of the members present and voting. Those in favor 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 pending question before the House is the motion of Representative Clement of Clinton that this bill and all accompanying papers be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 309

YEA - Adams, Barth, Bowers, Brennan, Cameron, Caron, Chase, Chonko, Clement, Coffman, Farnsworth, Gean, Hale, Hatch, Heeschen, Hussey, Johnson, Ketterer, Lemke, Martin, J.; Melendy, Mitchell, J.; O'Gara, Oliver, Pfeiffer, Pineau, Richardson, Skoglund, Townsend, E.; Townsend, L.; Wentworth.

NAY - Ahearne, Aikman, Aliberti, Anderson, Ault, Bailey, H.; Bailey, R.; Beam, Bennett, Birney, Bruno, Campbell, Carleton, Carr, Carroll, Cashman, Clark, Cloutier, Clukey, Coles, Constantine, Cote, Cross, Daggett, Dexter, DiPietro, Donnelly, Dore, Driscoll, Dutremble, L.; Erwin, Faircloth, Farnum, Farren, Fitzpatrick, Foss, Gamache, Gould, R. A.; Gray, Greenlaw, Heino, Hichborn, Hoggund, Holt, Jacques, Jalbert, Joseph, Joy, Kerr, Kilkelly, Kneeland, Kontos, Libby Jack, Lindahl, Lipman, Look, Lord, MacBride, Marsh, Marshall, Michael, Michael, Mitchell, E.; Morrison, Murphy, Nadeau, Nash, Nickerson, Norton, Ott, Paradis, P.; Pendexter, Pendleton, Pinette, Plourde, Plowman, Poulin,

Pouliot, Rand, Reed, G.; Reed, W.; Robichaud, Rotondi, Rowe, Ruhlin, Rydell, Saint Onge, Saxl, Simonds, Simoneau, Small, Spear, Stevens, A.; Stevens, K.; Strout, Sullivan, Swazey, Tardy, Taylor, Thompson, Townsend, G.; Tracy, Treat, Tufts, Vigue, Walker, Whitcomb, Winn, Young, Zirkilton.

ABSENT - Cathcart, Hillock, Kutasi, Larrivee, Lemont, Libby James, Martin, H.; Ricker, True, The Speaker.

Yes, 31; No, 110; Absent, 10; Paired, 0; Excused, 0.

31 having voted in the affirmative and 110 in the negative, with 10 being absent, the motion to indefinitely postpone the Bill and all accompanying papers did not prevail.

Subsequently, Report "A" "Ought to Pass" was accepted. The Bill read once. Committee Amendment "A" (S-551) was read by the Clerk.

Representative HOGGLUND of Portland presented House Amendment "A" (H-1036) to Committee Amendment "A" (S-551) which was read by the Clerk and adopted.

Representative TREAT of Gardiner presented House Amendment "B" (H-1039) to Committee Amendment "A" (S-551) which was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Gardiner, Representative Treat.

Representative TREAT: Mr. Speaker, Men and Women of the House: Basically I am very uncomfortable with this bill for many of the reasons that people from both parties have stated to you tonight. Just to summarize, I think there are three things about this bill that are of concern. First of all, it endorses a problematic practice which agents can represent two parties that have basically opposing interests.

Secondly, it obliterates common law and much of the law currently protecting consumers in this case.

We have just put on an amendment under the hammer, which I did work with Representative Hoggund on the language of which does address the common law piece of that to some extent. It doesn't restore common law entirely but what it does is say that you can look to common law when it is not inconsistent with what is laid out in the bill.

What I am proposing to do here is to address the second concern which I have which there would be adequate consumer remedy and that common law piece doesn't really address the consumer remedy piece.

As we discussed earlier today there is a memorandum on your desk from Jim McKenna of the AG's office. In it he states that they have four concerns. Their first preference was not to pass this bill but to go with Report "C" which is actually disclosure with a study. He then says though, if that isn't done I would like four things done. The Committee has addressed three of those concerns, one of them is not addressed and the purpose of House Amendment "B" is to address that forth concern. Essentially what House Amendment "B" does is that it makes violations of this bill, that we are now considering, to be subject to the Unfair Trade Practices Act. Now, if you take a look at the memorandum that Jim McKenna wrote what he specifically asked for is something slightly different. His language that he would like to see on this bill is that violation of this section is prima facie evidence of an Unfair Trade Practice. I did not use that language and I did not use it in an attempt to make my amendment acceptable to more people including the Real Estate Commission and

others who are concerned about the language prima facie evidence.

Without getting into a whole lot of legalistic mumbo jumbo if I could just try to explain what the difference is, my amendment is a much weaker version than what Jim McKenna would like to see on this bill.

Essentially the difference is that when you have a prima facie violation it means that there is a presumption that the violation is a violation of the one act is a violation of the other act, the Unfair Trade Practices Act. Under my amendment it doesn't say that, it just says it will be subject to the Unfair Trade Practices Act and is basically up to everyone to prove whether it is a violation or not and there isn't that same presumption actually written into the law.

There are right now 26 state acts which do specifically mention the Unfair Trade Practices Act either in the way I have drafted it here or as a prima facie evidence language. I know that there are concerns. People have said to me that this shouldn't apply to real estate agents. But, it does apply to many other things which to my mind are far less significant than buying real estate. For example, if you go door to door with home repair you are subject to the Unfair Trade Practices Act. If you are selling time shares which is also a real estate related matter you are subject to the Unfair Trade Practices Act. The mobile home construction warrantee law is also subject to the unfair trade practices act. Charitable solicitation, hearing aids — to me something to the order of a real estate transaction which is probably the single most important sale and purchase that anybody makes ought to be considered and you ought to have the same kind of protection for that that you would have when you buy a hearing aid.

This bill basically puts us into really unknown territory. I know from the perspective of a lawyer that we get into very questionable grounds when we are trying to represent two people at the same time who have differing interests. I think the same is true with real estate brokers.

I am not trying to kill this bill. I understand that these practices are going on now and this legislation will, to some extent, regulate those practices. I am very concerned that this bill gets rid of important protections for the consumer. I am trying to right that balance. I know that on final enactment I can't support this without making sure that at least these two amendments are put in.

I hope you will vote for House Amendment "B."

The SPEAKER: The Chair recognizes the Representative from Winslow, Representative Vigue.

Representative VIGUE: Mr. Speaker, Ladies and Gentlemen of the House: There is no reason in the world to include L.D. 1714 under the Unfair Trade Practices Act. This is a regulated profession and therefore does not require this kind of coverage.

Mr. Speaker, I request a roll call.

The Real Estate Commission and the real estate profession is opposed to including amendment "B" under the Unfair Trade Practices Act and I hope that you will oppose this motion.

The SPEAKER: The Chair recognizes the Representative from Mount Desert, Representative Zirkilton.

Representative ZIRNKILTON: Mr. Speaker, Ladies and Gentlemen of the House: I think it is important we do talk about some of the legal mumbo jumbo

because this amendment does have some far-reaching ramifications.

I would pose a question through the Chair to Representative Treat, she made references to what Mr. McKenna of the AG's office has recommended and you seem to infer that he would like to see this amendment adopted. I am kind of curious why he would want to see it adopted when no other state in this country, I am told, subjects real estate agents or brokers to this Unfair Trade Practice Act. I am sure, as I am told, the Representative is aware at least in the State of Maine that other licensed professional such as bankers, attorneys, doctors, architects, etcetera, are not subject to this act. I am curious as to why Mr. McKenna specifically, and yourself, feel that this is a necessary measure of protection.

The SPEAKER: The Representative from Mount Desert, Representative Zirkilton, has posed a question through the Chair to Representative Treat of Gardiner who may respond if she so desires.

The Chair recognizes that Representative.

Representative TREAT: Mr. Speaker, Men and Women of the House: In answer to your question, I believe that this is a fairly new and unusual law that we are proposing to enact here and I am not familiar with a whole lot of states that have it. It is getting rid of long-standing common law governing what agency practice is and how it should operate and it is getting rid of protections that go along with that common law. I know that we put an amendment that addresses some of those concerns. I worked on that amendment and I know how limited it is. This is not an extraordinary remedy, it is a very common one with regard to consumer transactions. This is a consumer transaction and I believe it should be covered, especially here where we are going into uncharted territory. It is especially appropriate that we have a remedy for the consumer in case things go wrong.

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Høglund.

Representative HØGLUND: Mr. Speaker, I move that we indefinitely postpone House Amendment "B." Furthermore the amendment that I put on just a little while ago, I grant you Representative Treat helped me put that amendment together. I was under the impression that if there was statutory law that that apply, if it was no law whatsoever then the common law would apply. I trust her judgment so I assume we did the right thing.

On Unfair Trade Practice on Amendment "B" that I just moved to indefinitely postpone this is a licensure procedure. We have professional licensees and licensure that come under the Unfair Trade Practice so that if you do something wrong you are taken care of. This is a consumer bill, it takes care of the dual agency, describes it, and allows for the remedy to be there.

Obviously the Attorney General gave an opinion and he said it was an opinion that he would like to have it there but he assured us that when he left our committee room — anyone can correct me if I am wrong — that they could have a remedy under the Unfair Trade Practice Act and that is because on the hearing aids, we don't license them going door to door. On real estate agents we license them, on plumbers we license them, electricians we license, burner men we license, mostly all nurses, doctors, we license those so they come under a whole complete different fact

than all those things that go door to door that are unlicensed.

I ask you please to vote against this amendment, support the indefinite postponement.

The SPEAKER: The Chair recognizes the Representative from Mount Desert, Representative Zirkilton.

Representative ZIRKILTON: Mr. Speaker, Ladies and Gentlemen of the House: I would like to echo the previous speakers remarks and tell you very briefly the reason I chose to stand up on this issue is because I am a former licensed real estate agent and associate broker in the State of Maine. I no longer possess that license but I can tell you from several years of experience that much of what you are referring to today has been going on for some time. What went on in the agency that I was with, which was run extremely professionally, in my opinion, by a gentleman whom I have high regard for, Bob Suminsky. Many of you involved in the real estate industry may know who he is. We had what we called "floor time" where agents would spend a period of time on the floor and whatever calls would come in or whatever folks might come in off the street, those would then be assigned to that agent on duty. What agents would hope for more than anything else would be to have someone come in and become interested in a property that that individual might in fact have listed also because then you would get the listing and the sale as well, sort of double your commission, but it was always done with interest of the seller in mind because that is what is required. I cannot understand why anyone would oppose an attempt to disclose more information to our customers to the public. That is what this is all about, to make sure that people know absolutely who is representing who and I hope you go ahead and adopt it.

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Rowe.

Representative ROWE: Mr. Speaker, Men and Women of the House: I support the proposed amendment, House Amendment "B" that is before us now with a motion to indefinitely postpone. I request that you vote against the motion. I thank the Representative from Gardiner for bringing the amendment to our attention and I would like to tell you why.

A couple of things may be redundant as to what she said but I think it is worth repeating. The Maine Real Estate Commission have the power to impose disciplinary action against real estate agents who are found in violation of the provision in Committee Amendment "A" to L.D. 1714 that we voted on. However the Commission lacks the authority to provide equitable relief to persons aggrieved by violations of the act.

The Maine Unfair Trade Practices Act provides protection to Maine consumers by declaring that any unfair or deceptive acts or practices in the conduct of any trade or commerce is illegal. The Unfair Trade Practices Act provides potential private remedies to persons who purchase goods or property and suffer a loss as a result of a unlawful or deceptive trade practice. Now, remedies under that act may include restitution or other equitable relief including injunction, also attorney fees and court costs may be awarded. I thought you ought to know what the Maine Unfair Trade Act offers consumers or the potential offerings that are available under that act.

If I have misquoted the law in any way I would invite someone to correct me.

House Amendment "B" does not say that violations of this act or per se violations of the Unfair Trade Practices Act or in other words that a violation of the language in L.D. 1714 is in itself a violation of the Unfair Trade Practices Act nor does it say that its prima facie evidence of an Unfair Trade Practice Act violation, as you know Assistant Attorney General McKenna advocated for, it simply says that violations of this act are subject to the Unfair Trade Practices Act. I guess I don't see any harm in that and I don't understand why we should be afraid to pass this.

I know many of you have expressed concern for individuals who may be represented by dual agents. This proposed amendment should provide you with some comfort. The argument against the amendment is that the majority of statutes dealing with other licensed professions do not contain this language. We have heard about lawyers and doctors and others. Well, I would suggest that this concept of dual agency is somewhat unique and new and that in those other professions you don't have a single individual serving two principals at the same time. I think this is different and for that reason I think it is important that we have this language in the statute. Therefore I ask for your support and I ask for you to vote against the motion to indefinitely postpone.

The SPEAKER: The Chair recognizes the Representative from Scarborough, Representative Pendleton.

Representative PENDLETON: Mr. Speaker, I would pose a question through the Chair.

I think a few speakers ago I heard someone mention something about the real estate broker in violation and subject to the Unfair Trade Practices Act, what I would like to know is if that person, the broker with a license, if they are sanctioned to the Unfair Trade Practices Act, would that license be taken away from that real estate broker for good or how long, what would the penalty be?

The SPEAKER: Representative Pendleton of Scarborough has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from Portland, Representative Hoglund.

Representative HOGLUND: Mr. Speaker, Men and Women of the House: I believe that they would have their license revoked and it is up to the Maine State Real Estate Commission. We have a commission that oversees all of this and it is like a trial or a hearing. I hope that answers your question.

The SPEAKER: The Chair recognizes the Representative from Scarborough, Representative Pendleton.

Representative PENDLETON: Mr. Speaker, Men and Women of the House: If a person goes to the Commission and they go through the process, still what I need to know is is the license revoked for good, does the Commission make that decision on a case by case decision?

The SPEAKER: Representative Pendleton of Scarborough has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from Portland, Representative Hoglund.

Representative HOGLUND: Mr. Speaker, Men and Women of the House: From what I understand, Representative Pendleton, is if whenever there is a violation your license can be revoked but there is a

Commission, a Real Estate Commission or Agency or whatever it is called, that takes care of all these things this type of violation or thing is pending.

The SPEAKER: The Chair recognizes the Representative from Gardiner, Representative Treat.

Representative TREAT: Mr. Speaker, Men and Women of the House: If I could just additionally respond to the Representative from Scarborough, Representative Pendleton's question — under the Committee Amendment that deals with the responsibilities of the Real Estate Commission and that goes to whether a license can be taken away. This amendment does not deal with that particular provision. This amendment deals with whether or not someone, a consumer who has been injured by deception, can be made "whole" by going to court and getting damages. So, there are two different remedies, one is already in the bill as it has been adopted, at least first reading, by this body, the other is the pending amendment.

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Hوجلund.

Representative Hوجلund: Mr. Speaker, Members of the House: Representative Pendleton, if that should ever happen obviously you would lose your license.

The SPEAKER: The Chair recognizes the Representative from Mount Desert, Representative Zirkilton.

Representative ZIRNKILTON: Mr. Speaker, I would pose a question through the Chair.

Not to belabor this point but Representative Rowe, you made a comment that attorneys are not subject to this because they don't represent opposing clients. I think there are situations where attorneys have represented both the buyer and seller in transaction and that seems to fly in the face of what you said. Perhaps you could clarify that for me.

The SPEAKER: Representative Zirkilton of Mount Desert has posed a question through the Chair to Representative Rowe of Portland who may respond if he so desires.

The Chair recognizes that Representative.

Representative ROWE: Mr. Speaker, Men and Women of the House: I don't deny that there are some occasions when attorneys have represented both buyers and sellers in transactions, however, I would submit that in most of the licensed professions you have an agent representing a single principal. I do think this is unique because we are setting up in statute a dual agency.

The SPEAKER: The Chair recognizes the Representative from Wells, Representative Carleton.

Representative CARLETON: Mr. Speaker, Men and Women of the House: To address the question posed by the good Representative, attorneys in real estate transactions can represent only one party. Sometimes they do prepare documents which are considered to be ministerial acts for another party. For instance if an attorney represents a buyer sometimes that attorney may be asked to prepare the deed but certainly cannot get into any — if there are negotiations or differences between a buyer and seller concerning the terms of the sales, an attorney would be in a conflict of interest and could be brought up before the bar association if he or she engaged in trying to represent both parties.

The SPEAKER: The Chair recognizes the Representative from Hallowell, Representative Farnsworth.

Representative FARNSWORTH: Mr. Speaker, Men and Women of the House: I just wanted to comment that it seems to me that to confuse licensing with the Unfair Trade Practices Act may be exactly appropriate because licensing is essentially what entitles a person to practice their trade and what allows them to start getting in the business and keep in the business. Unfair Trade Practices has to do with what they do after they are in business and it seems to me there is nobody here that would want to make it easier for some unscrupulous person and I am sure there is only a distinct minority that would take advantage of what we are doing with this change in the law and practice their profession in a way that is deceptive. The consequences for the consumer are great and the licensing mechanism doesn't really give the consumer a chance to be made whole as has already been pointed out, it is a very different thing than licensing.

I personally think that the real estate agents have made pretty clear that their intentions are good with this. I have been very uncomfortable with it because we are changing and we still are, even with the amendment that was already adopted, common law — and if we are going to tinker with that I would like to protect consumers while we are at it. We are not adding anything that isn't done in other states, and we are not adding anything that is automatic. What we are doing is protecting people against deceptive practices and to my mind you really can't say that you support not making it applicable without saying that you are willing to let people exposed to that. I feel that everybody here should be comfortable saying we don't want any more exposure to deceptive practices in this state, therefore I ask you to vote against indefinite postponement.

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Hوجلund.

Representative Hوجلund: Mr. Speaker, Men and Women of the House: I don't want to prolong this any longer, I am sure you are all tired of hearing from it. I did not mean to imply that because you were a licensed profession that you would automatically, under the Unfair Trade Practices Act, what it is is our professional licenses come under the Unfair Trade Practices Act. Anything that is licensed has a licensing board like the medical board for doctors, nursing board for nurses, real estate agents under the commissioners, but all those licensing professions come under the Unfair Trade Practices Act.

The SPEAKER: The Chair recognizes the Representative from Glenburn, Representative Winn.

Representative WINN: Mr. Speaker, Ladies and Gentlemen of the House: I have been rather apprehensive about this bill for quite a while now and I would feel much more supportive of it if we did not indefinitely postpone this measure. I think this measure would add a degree of safety for the consumers out there in the state that are depending on us to help protect their most important investment in their life which is their home.

The SPEAKER: The Chair will order a vote. The pending question before the House is the motion of Representative Hوجلund of Portland that House Amendment "B" (H-1039) to Committee Amendment "A" (S-551) be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

Representative Treat of Gardiner requested a roll call vote.

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

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

The SPEAKER: The Chair recognizes the Representative from Augusta, Representative Lipman.

Representative LIPMAN: Mr. Speaker, Ladies and Gentlemen of the House: I didn't intend to speak on the motion however I would like to offer a little bit different perspective. I would urge you to support the motion to indefinitely postpone. The reason is that you have a common law remedy by the bill itself. The common law remedy is if in fact the broker is deceitful you can sue them for fraud, you don't need an Unfair Trade Practices Act. And, if they are deceitful you can sue them for fraud for the harm done and also for punitive damages. So, I for one am going to push the green light to indefinitely postpone because I believe our common law we have had for 200 law provides and an adequate remedy and we don't need to add to that with an Unfair Trade Practice, in fact, that may end up limiting the rights of someone who has been injured.

The SPEAKER: The Chair recognizes the Representative from Gardiner, Representative Treat.

Representative TREAT: Mr. Speaker, Men and Women of the House: I beg to differ with the Representative from Augusta, Representative Lipman.

If you turn to your copy of Committee Amendment "A" which is what we are now addressing, turn to page 8 and look at section 13276 which starts off "interpretation" you will find the following words, "the provisions of this subchapter supersede the duties and responsibilities of the parties under the common law including fiduciary responsibilities of an agent to a client or principal except with regard to vicarious liability and exceptions set forth in this subchapter."

Now, we did just adopt an amendment that deals with common law but that deal specifically with saying that you can use common law to interpret the duties that are set forth in another section of the act. It does not specifically preserve those things. I think it is somewhat unclear whether or not they are preserved. I hope they are but I think we are taking a big risk here and we would be a lot safer if we spell out what the remedies are in the act.

The SPEAKER: A roll call has been ordered. The pending question before the House is the motion of Representative Hognlund of Portland that House Amendment "B" (H-1039) to Committee Amendment (S-551) be indefinitely postponed. Those in favor of that motion will vote yes; those opposed will vote no.

ROLL CALL NO. 310

YEA - Ahearne, Aikman, Aliberti, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Birney, Campbell, Carleton, Carr, Carroll, Cashman, Chonko, Clark, Cloutier, Clukey, Constantine, Cote, Cross, Daggett, Dexter, DiPietro, Donnelly, Dore, Driscoll, Dutremble, L.; Erwin, Faircloth, Farnum, Farren, Fitzpatrick, Foss, Gamache, Gould, R. A.; Gray, Greenlaw, Hatch, Hichborn, Hognlund, Hussey, Jacques,

Jalbert, Joy, Kerr, Ketterer, Kilkelly, Kneeland, Kontos, Larrivee, Lemont, Libby Jack, Lindahl, Lipman, Look, Lord, MacBride, Marsh, Marshall, Martin, J.; Michael, Michaud, Mitchell, E.; Morrison, Nadeau, Nash, Nickerson, Norton, O'Gara, Ott, Paradis, P.; Pendexter, Pendleton, Pineau, Pinette, Plourde, Plowman, Poulin, Pouliot, Rand, Reed, G.; Reed, W.; Robichaud, Rotondi, Saint Onge, Simonds, Small, Spear, Stevens, A.; Strout, Sullivan, Swazey, Tardy, Taylor, Thompson, Townsend, G.; Tufts, Vigue, Whitcomb, Young, Zirkilton.

NAY - Adams, Beam, Bowers, Brennan, Bruno, Cameron, Caron, Chase, Clement, Coffman, Coles, Farnsworth, Gean, Hale, Heeschen, Heino, Holt, Johnson, Joseph, Lemke, Melendy, Mitchell, J.; Murphy, Oliver, Pfeiffer, Richardson, Rowe, Ruhlin, Rydell, Saxl, Simoneau, Skoglund, Stevens, K.; Townsend, E.; Townsend, L.; Tracy, Treat, Walker, Wentworth, Winn.

ABSENT - Cathcart, Hillock, Kutasi, Libby James, Martin, H.; Ricker, True, The Speaker.

Yes, 103; No, 40; Absent, 8; Paired, 0; Excused, 0. 103 having voted in the affirmative and 40 in the negative, with 8 being absent, subsequently, House Amendment "B" (H-1039) to Committee Amendment "A" (S-551) was indefinitely postponed.

Committee Amendment "A" (S-551) as amended by House Amendment "A" (H-1036) thereto was adopted.

Under suspension of the rules, the Bill was given its second reading without reference to the Committee on Bills in the Second Reading.

Under further suspension of the rules, the Bill was passed to be engrossed as amended by Committee Amendment "A" (S-551) as amended by House Amendment "A" (H-1036) thereto in non-concurrence and sent up for concurrence. Ordered sent forthwith.

The House recessed until 6:30 p.m.

(After Recess)

HOUSE DIVIDED REPORT - Majority (9) "Ought Not to Pass" - Minority (4) "Ought to Pass" as amended by Committee Amendment "A" (H-958) - Committee on Judiciary on Bill "An Act Concerning High-speed Chases" (EMERGENCY) (H.P. 1294) (L.D. 1742)

TABLED - March 31, 1994 by Representative ZIRNKILTON of Mount Desert.
 PENDING - Motion of Representative CAMERON of Rumford to Reconsider whereby the Majority "Ought Not to Pass" Report was read and accepted.

Subsequently, the House voted to Reconsider.
 The SPEAKER: The Chair recognizes the Representative from Township 27, Representative Bailey.

Representative BAILEY: Mr. Speaker, Men and Women of the House: I rise on this bill to urge the House to reconsider the vote of last week when we voted to accept the "Ought Not to Pass" Report. I won't debate the issue at great length. I will say that during the debate last week there were some misunderstandings that the State Police were opposed to this initiative and I will say that the State Police did testify at the committee hearing in

support of this legislation. I talked with the Chief of the State Police last Thursday and he advised me it was a misunderstanding and that they do support this piece of legislation.

The only other thing I would say is that this does provide an extra tool for law enforcement people to use, identify the plate of the vehicle and it holds the owner of the vehicle civilly responsible for a civil infraction. It does give them a tool to follow-up their investigations.

I urge your support and defeat the "Ought Not to Pass" so we can accept the bill.

The SPEAKER: The Chair recognizes the Representative from Auburn, Representative Cote.

Representative COTE: Mr. Speaker, Men and Women of the House: I will clarify the misunderstanding. This bill has a noble purpose to avoid the danger, property damage and injuries caused by people engaging in a high-speed chase when they are trying to elude police. But, charging the owner of the vehicle with a traffic infraction does not make sense and can be counter productive. It does not make sense to charge the owner with a traffic offense because the owners activity, owning the vehicle, is totally unrelated to the societal harm, the high-speed chase that the law is attempting to avoid.

If the owner is charged with a traffic offense that adjudication will be completed long before any criminal action is completed against the actual operator of the vehicle. In addition, the bill says the owner commits a traffic infraction unless another person is convicted of the crime of eluding an officer. In actuality very few people are convicted of eluding an officer. Most cases end up being reduced to failure to stop. So, under the exact language of the bill the police could convict the operator of failure to stop and yet the owner who was not operating the vehicle at the time of the high-speed chase is still held liable for the traffic infraction of owning the vehicle. If your daughter takes your car and is involved in a high-speed chase are you left holding the bag? If she didn't steal your car and she is not convicted of eluding an officer you have committed a traffic infraction just by owning the vehicle.

This bill raises a constitutional equal protection question. Why should a rental company owner or an automobile dealer be treated any less severely than any other vehicle owner when another person uses that vehicle in a high-speed chase?

The bill raises a concern related to the Fifth Amendment guarantee against self-incrimination. It allows police to question vehicle owners and charge them with a civil violation if the owners do not provide information about who was driving the car. It comes down to this, if you don't talk you will be punished with a traffic infraction.

A vehicle owner who was also the operator may be able to avoid prosecution for the crime of eluding an officer when the high-speed chase occurred by simply refusing to talk to police when questioned as the owner of the vehicle. Being adjudicated of a civil violation of owning the car is a lot less onerous than being convicted of a Class C crime or Class E crime if serious bodily injury occurred as a result of the high-speed chase.

A very real concern raised by a prosecutor is that this bill will give criminals even more incentive to try to out-run the police, knowing that the police will simply write down the license number and then

give up on catching them. This may actually result in more high-speed chases from law enforcement with all the accompanying danger to the people. The ironic results could be more injuries and deaths when just the opposite is the intention of this bill.

We already know that drivers who flee face severe punishment, let's keep it that way. I urge you to vote "Ought Not to Pass."

The SPEAKER: The Chair recognizes the Representative from York, Representative Ott.

Representative OTT: Mr. Speaker, Men and Women of the House: The other night when we debated this bill I had tried to explain the points I felt supported passage of this measure. I indicated that high-speed chases were becoming an national problem and that that national problem was spawning a debate that focused on the value of the chase versus the liability that resulted from the tragic circumstances of accidents. It is this liability that has reached such frightening and tragic proportions that I think warrants our favorable consideration of this bill.

I looked over the weekend and found some statistics I would just to share with you. The National Traffic Safety Administration compiled some figures for 1988, 1989 and 1990. Of those, high-speed chases led to 296 fatalities in 1988. In 1989 there were 300 fatalities and in 1990, 314.

A professor Beckman of the Michigan State University also had some statistics that I think shed some light on this problem. He concluded that 45 percent of these high-speed chases end in property damage. 23 percent end in injuries and another 3 percent in fatalities. Granted, some of those may not all be innocent bystanders but his best projection was at least a third of them involved innocent victims or officers who were in the pursuing vehicles.

As a result, experts are searching for alternatives. Alternatives for apprehension methods that wouldn't lead to these staggering statistics. Maine, fortunately, has been one of the states that has already taken some positive steps. Back in 1989 we passed legislation that required all Maine police departments to have a pursuit policy. At least for the state police, those involve a number of factors, the nature of the offense, the weather conditions, the traffic conditions, the population density, the officers knowledge of the area, all these go into the consideration that he or she makes in that decision making process of how long to pursue the fleeing vehicle and when to break off the chase.

This bill just gives the police arm another option.

This professor Beckman also talked in an article that I read about the causes of high-speed chase and attributes most of them to young drivers and usually the result of panic. They run because they are driving Uncle Freddie's car when Uncle Freddie told him not to, or they have a six-pack of beer in the car or they are under age or they have an expired license, it goes on and on. These are the factors that seemingly result in most of the high-speed chases.

Someday we are probably going to have some electronic disabling technology that would allow police officers who are in pursuit to perhaps activate a radio signal or to activate some computer order that would disable the fleeing vehicle, bring it to a total stop. We are not there right now.

This is just a modest measure that may produce some significant results in terms of sparing somebody

property damage and more importantly, their own life where they are in the wrong place at the wrong time.

I ask that you defeat the pending motion.

Mr. Speaker, I ask for a division.

Representative MICHAUD of East Millinocket assumed the Chair.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Houlton, Representative Clukey.

Representative CLUKEY: Mr. Speaker, Ladies and Gentlemen of the House: I urge you to defeat the "Ought Not to Pass" motion so we can go on to pass this bill.

In all likelihood the provisions of this bill will not be used in most high-speed chases. My experience would say that most of these chases would be carried to their conclusion and probably the operator apprehended. But in the situations where there are extenuating circumstances or dangerous situation where the police officer had the change to get the registration number he could break off the chase and it would be just another tool of the law enforcement officer in these dangerous situations.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Augusta, Representative Paradis.

Representative PARADIS: Mr. Speaker, Ladies and Gentlemen of the House: I will be very brief because of the hour, we need to get on with a lot of debate tonight.

It is with a certain amount of fear that I get up to oppose my two good friends, Representative Bailey, a retired State Police officer and Representative Clukey, another retired State Police officer. I am usually on their side on law enforcement debates. We have debated issues of high-speed pursuit in the Judiciary Committee for all the eight years that I was a member. Tonight I rise to support the Chair from Auburn, Representative Cote, on her motion to accept the Majority "Ought Not to Pass" Report from the Committee on Judiciary.

As I read the bill, as I listen to the debate, the points are valid on both sides. The final line that convinces me to keep my vote "Ought Not to Pass" as it was last week when we voted to accept the Majority "Ought Not to Pass" is as modest as this measure is it shifts the burden away from the driver of the motor vehicle to the owner of the motor vehicle. I don't like that. I think it is wrong. It doesn't mean we are going to get fewer chases, it just means that whenever we cannot apprehend the driver of the motor vehicle that person speeds away and now the owner has to answer.

We have three exceptions, if it is a leased vehicle, if it is a used care dealer or dealership or it was stolen or if the driver is convicted of an offense, otherwise the owner now faces charges.

What is the bottom line, what does that really do to lessen the impact and number of high-speed chases and how does that protect our highways? It doesn't do any of those. It is almost as if I can say that with a great deal of respect for the sponsor of the bill, it is almost too modest. The public is not sympathetic to that aspect of law enforcement that pursues a vehicle. It is necessary many times. It is the most difficult thing for law enforcement

officers to do. I support them in their endeavor. We need good law, we need better law, but we don't need this law, that is the problem. It is a statement but it is a weak one and it puts the burden on the owner of the vehicle. So, it doesn't really do anything.

I urge you to accept the Majority "Ought Not to Pass" hold the same vote that we had a week ago and let's move on to some other issues tonight.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Houlton, Representative Clukey.

Representative CLUKEY: Mr. Speaker, Ladies and Gentlemen of the House: The only time the owner would be held responsible would be if the driver was not identified. I submit to you that 98 percent of the time the driver would be identified.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Augusta, Representative Paradis.

Representative PARADIS: Mr. Speaker, Ladies and Gentlemen of the House: Just as a point of reply, I checked with my District Attorney on that, on that very issue. How, if you cannot get so close to that vehicle to stop the vehicle and the person is driving with his or her back to the police officer how are you going to get a conviction in court? How is the District Attorney going to go to court and say that I know that John Doe was the driver of that vehicle when opposing counsel says, "Did you see the persons face?" The police officer says, "No, we were 100 yards apart, we were driving at 85 miles an hour and I couldn't see the persons face." So, what does it really do. I don't think you are going to get convictions. That is why I am not going to vote for this bill.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Township 27, Representative Bailey.

Representative BAILEY: Mr. Speaker, Ladies and Gentlemen of the House: There is that possibility that you are not going to get convictions. This is designed after the passing of the stopped school bus bill. There is no question that that bill has cut down on the instance of vehicles passing stopped school busses. Hopefully, this bill would have the same effect on high-speed chases.

As Representative Ott said, the majority of high-speed chases are caused by young people being caught in situations that they feel the punishment for what they are doing is going to be a lot worse than what it is probably going to be. This bill just gives you the opportunity to not force that young person to run until he overreacts or goes around a turn and going way faster than he should and rolls over himself or hits another vehicle head on. The police officer can stop that chase before he forces that young person to do that then follow up after the fact. You may not get a conviction at that point but it does give you the opportunity to follow up. Let the young persons parents at least know that it was a young person involved. It gives the police the authority to follow up on an investigation which would otherwise probably have to force the issue to the point where somebody is going to get hurt or the potential for somebody getting hurt is likely.

I urge you to defeat this motion so we can pass this legislation and give the law enforcement that extra tool.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Waterville, Representative Jacques.

Representative JACQUES: Mr. Speaker, Men and Women of the House: As the Representative from Waterville, since 1978 I have been involved in legislation dealing with high-speed pursuit and I am a cosponsor of this legislation. I received a note from the good Representative from Hampden, Representative Plowman on why I voted against the committee report since I was a cosponsor? I sent her my answer and I would like to reiterate that answer to members of the House. Clearly, high-speed pursuits are something that we should resort to as an absolute last, worst case scenario. The simple fact of the matter is in high speed pursuits people die. Another fact of the matter is, high-speed pursuits often times innocent people die.

I signed on to this bill because I firmly believe that we can do much more than just adopt state-wide policy police department by police department, sheriffs department by sheriffs department and State Police to deal with high-speed pursuits.

The direction that the Majority Report took or I guess it is the Minority Report, is much like the direction that we on Fisheries and Wildlife took quite a few years ago dealing with snowmobilers and ATVs that were causing problems across the state. We, since it was impossible to identify who was operating we passed a law that says all you have to do is get the plate number or the registration number on a snowmobile and that would be sufficient grounds.

Well, the simple fact of the matter is that the lawyers had a field day and it was very difficult.

The former chief warden is a member of this body now, it was very difficult for a while to indeed enforce those laws because the burden of proof was still on to identify who the operator of these vehicles were. I think that will be a problem with this small solution to what we seem to be trying to deal with.

The reason I voted against this proposal is because, yes, I agree it is extremely a modest proposal but at the same time I think it makes everyone feel that we have done something to try to address high-speed pursuits in another way, shape or form. The simple fact of the matter is that is not the case. In my lifetime I have seen many young people die as a result of high-speed pursuits. Some were involved in that pursuit and some happened to be coming home from a high school dance with their girlfriend.

The other thing that we don't talk about is that often times people that get hurt or die in these accidents are our own police officers themselves. I don't know about you but I take the fact that I am a Representative pretty seriously and those troopers are considered my troopers, those game wardens are considered my game wardens. It upsets me to the fact that a game warden, a trooper, a sheriff or a local police man either gets killed or cripple themselves because a young man squealed his tires or because a young man ran a stop sign or because a young man was seen tipping up something that could be a can of beer. I doubt very much if those infractions indeed justify the end result which is dead young people.

Young people, being as they are, myself being one not too long ago, Representative Bailey is exactly right, young people panic and they panic for myriad of reasons. One might be they have their dad's brand new car which happened to me. The difference was that high-speed pursuit scared the dickens out of me and I figured the best thing to do was pull over to

the side and take my medicine. I took my medicine that night with the police officer and as Representative Bailey suggested, I took my medicine later on when I got home and faced a Dad that was six foot three, 250 pounds, clearly the idea of doing what I did didn't pop up in my head again.

The reason I didn't vote for this because I think as Representative Paradis points out, it is going after the wrong person. It is going after the person who said yes, you can use my car to go out on a date; yes, you can use my car to go to the ball game or; yes you can use my car to go to the movies or whatever the case may be. I am going to get a call, a state trooper is say we are holding you responsible because a young person that used your vehicle panicked and did a stupid thing.

If the two choices to me are that they are going to come to me with the young man and hold him responsible versus the outcome of what sometimes happens in high-speed pursuit is they end up hauling somebody off in an ambulance or worse than that, a body bag. I guess, yes, probably I would much rather take the first part.

My concern is that we will once again get off the focus of trying to deal with high-speed pursuits in this state.

I tried to get an accounting from my police department and the state police on just property damage that the taxpayers have had to absorb as a result of high-speed pursuits. I couldn't get those back then.

I also asked how many incidents was it a result of an armed robbery, an attempted murder, assault that caused the high-speed pursuit. I was told that a great great number of these it is the smaller infractions, running the stop light, squealing your tires, raising cain like young people do. I never believed that those infractions were serious enough to die for. I remember quite emphatically a high-speed pursuit that occurred in my legislative district on a July evening about 6:30 at night down the south end of the City of Waterville that is full of children playing on the sides of the road, the sidewalks, there were baseball games going in empty parking lots. We had up to five police vehicles from two different communities, including a state police and a sheriff involved in a high-speed pursuit of speeds up to 75 and 80 miles an hour, in this highly residential area with short streets, narrow streets. It is really the oldest part of the City of Waterville. They were cutting across corners, curbing and when the whole thing was said and done fortunately the sergeant who was on duty in Waterville called the chase off, which involved a motorcycle operator — he called the chase off and it took at least a half a dozen times to get the police officers who now their adrenaline was up, they were really into this chase, to stop this high-speed pursuit. The next day when I asked what the young mans infraction was it was that he had popped a wheelie and spun his tires when he left his girlfriends house that night. I doubt very much in the big scheme of things if that action was justifiable for the potential death or maiming of one of my young constituents who were playing on the side of the road that warm July evening.

The bottom line was I felt sincerely, and I still do right now that the way that this bill attempts to address high-speed pursuits is really really so modest and so small in the level of what I believe to

be accountability and at least an attempt to end it that it just didn't seem worth while to me. I had hope for much more. I had signed on hoping for much more. I had cosponsored hoping for much more but apparently we are not going to get much more.

I really don't care how you vote on this issue, I just want to make sure everybody understands that I do not cosponsor a bill and then turn around and vote against the report that was put forth by some of the proponents of the bill lightly and without giving it much thought. This is based on 16 years of listening to high-speed pursuit horror stories and yet they still continue, people still die and in a lot of cases innocent bystanders still die. Maybe we will never solve this problem. I didn't think this bill went very far to even attempt to solve that problem.

The SPEAKER PRO TEM: The Chair recognizes the Representative from York, Representative Ott.

Representative OTT: Mr. Speaker, Men and Women of the House: I disagree with the previous speakers conclusion that we are after the wrong person. To me we are talking somewhat about accountability here. I think that is a worthy citizenship virtue. Why shouldn't we be held accountable for our actions. Why shouldn't we be held accountable when we permit someone to use our motor vehicle. We are not talking about somebody here we are trying to focus on that is going to be tried, strung up and convicted of some kind of a criminal offense. This is just a civil violation. No ones criminal constitutional rights are going to be violated here.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Rumford, Representative Cameron.

Representative CAMERON: Mr. Speaker, Men and Women of the House: It seems to me we may be focusing on the wrong issue here. To me the issue is not conviction, we don't live in a gestapo state and I have no particular interest in convicting young kids for some of the foolish things that they do.

As Representative Jacques said, this is a very small step and I absolutely agree with him. But, for most of the reasons that so eloquently laid to us, I will support the bill. It is a very small step, I will admit that, but I have heard absolutely no alternatives offered tonight. In lieu of the fact that we have had no alternatives offered I think it appropriate to support the bill. If we save the life of one child, one police officer, any citizen of this state because a police officer makes the decision, the split-second decision I have the license plate, I can go to the home, I will not pursue the high-speed chase. If we save one life by this small move, although it is by no means perfect I think it is well worth the effort.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Madison, Representative Ketterer.

Representative KETTERER: Mr. Speaker, Colleagues in the House: I am one of the signers of the Majority "Ought Not to Pass" Report and I would ask you to vote with the Majority. I would assign as grounds for that request the following; first, the committee report vote of nine to four "Ought Not to Pass" it seems to me should stand for something. That committee, like many others works hard and works hard to arrive at a consensus.

Secondly, and perhaps more importantly, this matter was subjected to full debate in this body last week and the debate was extended, it was thorough, it was complete and a vote was taken. The vote was 73 in favor of the "Ought Not to Pass" Report and 70

against. We fully debated this. People that sent us here expect us to do more than simply rehash and replot the same fields that we have already been over.

I would respectfully request that after we fully debated something that that be the end of the debate on that particular issue. If we follow the precedent here we can redebate and relitigate till May, June, July, have a couple of special sessions to air the debate. You have got to ask yourself is this really what we are after, is this what we are here to do.

There is an exception in the proposed statute for rental cars and loaner cars. If you want to treat people fairly you have to ask yourself the question if it is such a good idea why don't we apply that uniformly across the board?

I think we debated this last Wednesday — anyway, last Tuesday which was March 29, when I was going home from this body at twenty of ten I was stopped by the Skowhegan police department. (I got the ticket right here). It says 72 in a 55. Fortunately for me they made it a warning but notwithstanding that suppose I had gone a little bit faster? So that it was a high-speed chase and they weren't able to catch up with me or based on sound judgment they decided not to. That particular vehicle was a loaner vehicle. As some of you may know, I have had some transportation problems over the past few weeks, my wife's car is in the shop and my car is in the shop and I was in a loaner vehicle, the license plate said loaner at the bottom. But, under those circumstances they could have backed off, I wouldn't have this little warning in my hand and under the statute they wouldn't be permitted to go to the guy who was kind enough to lend me that vehicle and say who had that license plate during this time frame? Now, why under similar circumstances if my wife, if we ever get her car running, loans it to her brother and he did something stupid and foolish with that vehicle, why they would be able to come to her and put the squeeze on her and say, "Who was using that vehicle?" but not put the squeeze on the guy that loaned me the vehicle I was in when I got stopped for this ticket last Tuesday? It makes absolutely no sense.

There are other reasons why you should vote in conformity with the Majority "Ought Not to Pass." Much more importantly than that story is the fact what we are asking you to do here is to water down Fifth Amendment rights to remain silent. When people say this would be an effective tool for law enforcement, well you know that is a hard side to combat because it would be an effective tool for law enforcement. It would be an effective tool for law enforcement if in every situation someone is in rental property and they do drug transactions, if you held the landlord responsible for that. It would be much more effective to go that landlord and say you have to answer these questions or we are going to give you a ticket. There are reasons why we don't do that.

In this particular legislation the person who owns that vehicle has a Fifth Amendment right not to say anything to the police. We could pass laws that say in any homicide investigation if a homicide is being investigated you must speak with the police, it is your civic duty and we are going to make it as a law, you have to do it, you get a ticket if you don't do it. But, you are watering down someones Fifth Amendment right to remain silent when you do that, you are toying with United States Constitution and it applies to the states as well.

I ask you to resist the urge to do that. The simple fact that we are told it would be an effective tool is not a reason to water down and turn inside out somebodys Fifth Amendment right to remain silent. The person who gets a ticket through no fault of their own is going to suffer a financial forfeiture, they may suffer a loss of license when they have done nothing wrong. Ask yourself if you want to vote for legislation which makes it against the law to loan your vehicle to a friend or companion and if they do something wrong with your vehicle you get a ticket unless you are willing to turn them in. It is bad policy, it is bad law. I ask you to vote with the Majority "Ought Not to Pass."

The SPEAKER PRO TEM: The Chair recognizes the Representative from Bangor, Representative Faircloth.

Representative FAIRCLOTH: Mr. Speaker, I would pose a question through the Chair. What is the position of the Maine Prosecutors Association with regard to L.D. 1742 — to whomever may answer?

The SPEAKER PRO TEM: Representative Faircloth of Bangor has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from Auburn, Representative Cote.

Representative COTE: Mr. Speaker, Men and Women of the House: The Maine Prosecutors oppose this bill.

Representative WHITCOMB of Waldo requested a roll call on the motion to accept the Majority "Ought Not to Pass" Report.

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

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

The SPEAKER PRO TEM: The pending question before the House acceptance of the Majority "Ought Not to Pass" Report. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 311

YEA - Adams, Aliberti, Anderson, Beam, Bowers, Brennan, Carleton, Caron, Carroll, Chase, Chonko, Clement, Cloutier, Coles, Constantine, Cote, Daggett, Dore, Dutremble, L.; Erwin, Faircloth, Farnsworth, Farren, Fitzpatrick, Gamache, Gean, Gould, R. A.; Gray, Hale, Hatch, Heesch, Heglund, Holt, Hussey, Jacques, Johnson, Joseph, Kerr, Ketterer, Kontos, Larrivee, Lord, Marshall, Martin, J.; Melendy, Mitchell, E.; Mitchell, J.; Nadeau, Oliver, Paradis, P.; Pfeiffer, Pineau, Pinette, Poulin, Pouliot, Rand, Rotondi, Rowe, Ruhlin, Rydell, Saint Onge, Saxl, Simonds, Skoglund, Stevens, K.; Strout, Sullivan, Swazey, Townsend, E.; Townsend, L.; Tracy, Treat, Walker, Wentworth.

NAY - Ahearne, Aikman, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Birney, Bruno, Cameron, Campbell, Carr, Clark, Clukey, Coffman, Cross, Dexter, Donnelly, Driscoll, Farnum, Foss, Greenlaw, Heino, Hichborn, Joy, Kneeland, Lemke, Lemont, Libby Jack, Lindahl, Lipman, Look, MacBride, Marsh, Michael, Morrison, Nash, Nickerson, Norton, O'Gara, Ott, Pendexter, Pendleton, Plourde, Plowman, Reed, G.; Reed, W.; Richardson, Robichaud, Simoneau, Small,

Stevens, A.; Taylor, Townsend, G.; Tufts, Vigue, Whitcomb, Winn, Young, Zirkilton.

ABSENT - Cashman, Cathcart, DiPietro, Hillock, Jalbert, Kilkelly, Kutasi, Libby James, Martin, H.; Michaud, Murphy, Ricker, Spear, Tardy, Thompson, True, The Speaker.

Yes, 74; No, 60; Absent, 17; Paired, 0; Excused, 0. 74 having voted in the affirmative and 60 in the negative, with 17 being absent, the Majority "Ought Not to Pass" Report was accepted and sent up for concurrence.

Expression of Legislative Sentiment recognizing the Scarborough High School Academic Decathlon Team (HLS 912)

TABLED - March 31, 1994 by Representative PARADIS of Augusta.

PENDING - Passage.

Subsequently, was passed and sent up for concurrence.

SENATE DIVIDED REPORT - Majority (7) "Ought to Pass" as amended by Committee Amendment "A" (S-454) - Minority (5) "Ought Not to Pass" - Committee on Business Legislation on Bill "An Act to Increase Access to Primary Care by Redefining the Practice of Advanced Nursing" (S.P. 390) (L.D. 1185)

- In Senate, Majority "Ought to Pass" as amended Report read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (S-454) as amended by Senate Amendment "B" (S-513) thereto.

TABLED - March 31, 1994 by Representative HOGLUND of Portland.

PENDING - Motion of same Representative to accept the Majority "Ought to Pass" as amended Report.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Scarborough, Representative Pendexter.

Representative PENDEXTER: Mr. Speaker, Men and Women of the House: I do not take lightly the fact that I must rise to oppose the pending motion and ask you to defeat L.D. 1185. My decision to oppose this bill is not a negative reflection on the abilities and skills of nurse practitioners, in fact I am a nurse practitioner. We do indeed have a significant role to play in the health care arena. My decision to oppose this bill is not a negative reflection of my colleagues who served on the Business Legislation Committee who have worked long and hard to tend to come to a consensus on the issue of independent practice of nurse practitioners. I disagree that a consensus can be reached because you either have medical involvement with nurse practitioners or you don't.

My decision to oppose this bill stems from my experience of practicing as a pediatric nurse practitioner for 22 years. I have practiced in at least four different practice settings and can demonstrate to you how under existing law an nurse practitioner can practice quite independently in spite of having an interdependent relationship with a medical person.

I just happen to have a very deep philosophical disagreement with some of my nursing colleagues because I believe that nurse practitioners are practicing medicine and that is okay because by the nature of our education we are able to do that. But, we must have a medical individual involved and associated with our practice. If you were to come to my office where I practice, which is a pediatric practice and you observe what I do for a while and then you went into the other room and you observe the pediatrician and watched what he did whether we are providing well care and giving physicals or whatever or whether we are treating your infection and prescribing to treat those illnesses, I think you would come to the conclusion at the end of the day that what he does and what I do are really pretty much the same thing.

Medical diagnosis and treatment is a definition of medicine. Proponents argue that because a nurse is performing the medical diagnosis and the treatment then that is nursing and the very nature of our roles in the advance nursing practice is that we have entered the medical arena and we are diagnosing and treating in some practice parameters.

The controversy surrounding 1185 is whether you agree that we as legislators should legislate out the connection that present exists between nurse practitioners and physicians. I say to you that we should not, that formal nurse connection must remain and it must be flexible to accommodate the various practice settings that exist in our state.

L.D. 1185 opens up the Nurse Practice Act to redefine the practice of nurses in advance practice. Everybody seems to agree that the word to redefine that relationship should be collaboration. Collaboration is a good word but it has the possibility of countless different definitions. The definition that is presented to you in L.D. 1185 equates to independent practice and this is my principle reason for opposing this bill as it is presently before you. Let me read to you the definition that is in the Committee Amendment which by the way, for those of you would like to pull it out it has a filing number of (S-454). The definition of collaboration in the bill says, "Collaboration means the process in which physicians and advanced Registered Nurse Practitioners jointly contribute to the health care of patients with each collaborator performing those actions which that collaborator is licensed to perform or approved to perform by the collaborators licensing board." To me this doesn't say a whole lot. I mean it says that I am going to practice according to what I am licensed to do, (well I do that all the time) then I am going to perform according to what my licensing board tells me (and I do that all the time) and the physician is going to do the same. Somehow we are going to jointly contribute. It is very vague as to what the role of the physician is and thusly it presents a lot of problems with the bill.

I believe that the definition of collaboration should ensure that the medical individual will be associated somehow with our practice. The words mutual development or mutual agreement should be key words present in the definition of how we practice together. It should be flexible so that collaborative agreements can fit every other nurse practitioners needs because we do have various settings in our state.

The collaborative definition in this bill is borrowed from Washington D.C. and I fail to see what Washington D.C. and Maine have in common.

Words that sound compromising on paper don't really play out that effect in the real world.

I would like to share with you several practice settings that I have practiced with the existing law. The words of existing law states, "the duties performed by nurse practitioners shall be delegated to by physicians." That really does sound quite compromising. However, let me explain to you how I have been able to practice regardless of what the words and the law say.

One of the first practice settings I practiced in was for the City of Portland Health Department and I practiced in several of their health stations throughout the City. What I did basically was I staffed the health station, I saw everybody who came through the door. I was there all by myself, there was no physician on the premises. I did have a standing date with a physician, a certain time every week so that if I had problems that arose during the week that could wait for the time that he would come see me then I would save the problems and when he came to see me once a week we would see those patients together. I always had the ability to pick up the phone and call him any time that I came up with any problems that I needed to call him for. So, I think that in this setting I think you have to agree that I am certainly practicing very independently, I am in a health station all by myself, don't see anybody except once a week, however I have a telephone that I can call him any time I need him.

A second scenario that I have done is I have done weekend coverage. That is a lot of fun, I recommend it to every nurse practitioner, it really lets you know that you probably never want to be a physician. However, for two years I did weekend coverage with a group of pediatricians who also had a cardiac specialty. So these physicians were on call all the time because they were the only cardiologists who specialized in pediatrics. They had a dual practice going on so they used me to cover their common pediatric problems so that it would free them up to just do their cardiac on call visits. Basically, I went around with my beeper, I got all the calls that came through, I decided who needed to be seen, I would go to the office and see those patients myself. Quite independent, wouldn't you say? However, the other physicians always had a beeper as well and I was always able, anytime I needed anybody, to beep that physician and let him know that I needed him and he would either come to the office if I needed him or we would take care of the problem over the phone. Still very independent practice, but still there in a link.

The last scenario I will share with you was I was involved in setting up a pediatric practice in a rural area approximately 30 miles away from the greater Portland area and had a very strong emphasis on nurse practitioners because a physician was only present on site one day for three afternoons. There were three physicians involved, each one of them came one afternoon. The rest of the time there were nurse practitioners covering the practice. We were 30 miles away from our coverage but we have mutually agree upon what we were going to do, how we were going to run this, always there was a connection that whenever we needed them we would pick up the phone

and call them. If we needed to send a sick kid over, they would see them. That is what it is all about.

I don't really see what the problem is with the law as it exists except there are a few nurses who don't like the words "duties delegated by a physician." I understand that, that is not really a very politically correct way to define what we do. However, in real life experiences I certainly can demonstrate to you I have practiced very independently in spite of the fact that the law states that according to some nurses the language is too compromising.

It is really kind of misleading that the word collaboration is used in this bill because it leads you all to think that collaboration sort of gives you a sense that we are working together, we are a team. Any kinds of words that you think about that would equate collaboration really doesn't exist in this bill because as I read to you, it is very very broad and it really doesn't say much. So, you have to understand that what collaboration means in this bill is independent practice.

So, let's talk about why not independent practice, what is wrong with me that I am so antiquated and old fashioned that I just can't buy this act? The premise that I base my judgment on is the fact that there is education and training differences amongst nurse practitioners ourselves and also a big difference between the education, training, and experiences between nursing and medicine.

Let me back-track just a little bit because I want you to have a clear understanding on how nurses become nurses and how nurses become nurse practitioners. A nurse can become an R.N. which means we have passed our boards and are licensed to practice in nursing in about four different ways. You can go to a two year associate degree program, you can go to a three year diploma program, you can go to four year college and get a Bachelor of Science in nursing or you can do the Masters route and have a Masters in nursing. So, there are four ways that you can become a registered nurse. Now, we all put R.N. after our name and you have no clue what course we have done — that is not really important, basically, we have all passed the boards, we are licensed to practice nursing safely in the state. You have no clue how I became an R.N. and maybe I won't tell you because it is not really important, this is not the issue. What I am saying is there is a big difference between a two year program and a Masters program. However, we are all allowed to practice the same.

To become a nurse practitioner you operate from the basis that you are a registered nurse. So there again you can become a nurse practitioner whether you have had two years of college, three year diploma, four years of nursing or a Masters. There are two ways you can become a nurse practitioner, through a certificate program or through a masters level. Certificate programs vary, it can be nine to 12 months but it always operates from an R.N. basis. In other words, all you need to have to fit into a nurse practitioner certificate program is that you have to be an R.N. then you take the course according to the specialty whether it is pediatrics, OB/GYN, family practice, or whatever, then after the 9 to 12 month program you become a nurse practitioner.

There is also a process whereby you become certified. Becoming certified means that you sit for a certification exam that is usually recommended to you by your national bodies. In other words I am

certified to practice as a pediatric nurse practitioner by National Association of Pediatric Nurse Practitioners and Associates.

The nurse practitioner situation is moving more towards a Masters level education process at this point. Approximately two-thirds though of the nurse practitioners in the country (and it is pretty much the same in Maine) have graduated from certificate programs and so about a third have taken the two year Masters degree programs. And, as of July of 1993 there were 26 certificate programs in this country and there were 114 Masters levels. So you can see — I mean, the nurse practitioner situation was originated way back in the early 1970's so over a course of all most 25 years you are finding that certificate programs now becoming less and less, Masters levels tend to be taking over the education process of nurse practitioners. However, the bottom line is that a nurse practitioner can vary anywhere from a two year college program with a certificate, nurse practitioner education or it can be as much as six years of college where thereby you have a nurse who has gone to college for six years.

It varies, men and women of the House, and I am not saying that one way of educating is better. What I am saying is there is that various difference in the educational process of nurse practitioners which is one my arguments why we need to continue to have medical oversight.

By contrast, the physicians have four years of college, four years of med school and then depending — they have at least three years of residency and depending on their specialty, sometimes that can be more years of residency. So, you are looking at eight years of college and three years of residency for a physician.

I just want to mention a little bit about focus on education because the nursing focus is different than the medical focus. The nursing focus is very non-clinical. In fact, a lot of the nurses who graduate from a four year program have such little clinical experience that when they first go to work they really need to be supervised by nurses on the floor before they are actually allowed to practice on their own. The National League of Nursing who credits nursing schools actually will discredit a nursing school if they are too clinical in their education. So, there is a very big focus in nursing education to not make it clinical. However, the role of a nurse practitioner is very clinical.

A physician on the other hand, his orientation is primarily that toward diagnosis and management of illness. He tends to, where nursing sort of deals with disease and we learn all we can about that disease, the physicians education is basically the more the fact that he takes the symptom and develops it into a diagnosis or a problem. I go through all this because I think you need to understand that as nurses are getting into the realm of medicine and doing some of those things that physicians do allow us to do and we work out together and that is fine.

But I think you need to understand that our whole educational focus is really quite non-clinical versus the physicians focus who is very clinical. In fact, he practices for three years. Who would want to go to a physician who is just out of med school. I don't think anyone would want to. He goes and he practices for three years before he is allowed to hang out his shingle and practice. I have a problem with us saying to nurse practitioners who don't have

very much clinical experience to say you can go hang out your shingle and be on your own. I have 22 years of experience, I am very good clinically at the moment, but in the beginning I wasn't. I learned what I know clinically through the physicians that I have worked with and through the experiences I have had over the years.

Basically, I think there absolutely needs to be that formal connection by the very nature of the educational differences of nurse practitioners and physicians.

I could go on and on and on but I won't. I do want to bring your attention to the handout that was passed out today, this blue piece of paper. It has some misleading information on it and I really feel it is important to clear it up. The first fact states that there are 16 states that have no requirements for physician collaboration or supervision for a nurse practitioner. The fact is that some of those states don't require collaboration of supervision because they don't have prescriptive writing powers. There are truly only three states that have anything that comes near to anything like independent practice, there are only three states who allow independent practice as well as prescriptive writing powers.

The second statement says that there are 24 states that have requirements similar to this. It all depends on how you define collaboration.

The third statement deals with third party reimbursement. That really has nothing to do with this bill except while you bring it up I will say to you that nurse practitioners in this state do not have the ability to draw down third party reimbursement. So, here they are on one hand saying that they want to be able to practice independently, however, they won't be able to get paid. I feel until you can financially stand your own, how can you be independent. They are going to have to bill through physicians or they are going to have to bill through agencies.

I think the issue that we should be debating relative to nurse practitioners is indeed the issue of third party reimbursement and I do support that but that is not the issue before us.

The fourth is Medicaid and we do get paid a Medicaid reimbursement in this state. Actually, Medicaid pays us directly.

I caution you, if physicians can't survive on 40 percent of their costs I don't think nurse practitioners can either.

The fifth one deals with prescriptive writing powers and I don't know why we have to talk about that because we have been able to do that here for years in this state. I think that is fine. I think that is excellent, we need to have prescriptive writing powers but we do have it.

I think the most misleading is the bright print at the end that says this doesn't break new ground. I don't see how you can define the fact that independent practice doesn't break new ground. It certainly does. And, that it provides greater access to health care. Well, you know, nurse practitioners have been in this state for 25 years and they have not ventured out into rural areas in 25 years, what makes you think they are going to do it now?

I was able to practice 30 miles away. That is about as rural as I have ever gotten and I don't see why anybody else, if they so choose to want to go practice in a rural area can do so under existing law.

In all I have read, and believe me I have read everything that there is to read on this issue, the fact that nurse practitioners provide greater access to health care in rural areas is based on conjecture and not on data. There is nothing there, it is just conjecture. I think to address the situations in rural areas we need teamwork rather than individual clinicians being out there on their own.

Finally, this handout is distributed by nurses who claim that they are, on behalf of the nurse practitioner colleagues, well, men and women of the House I also represent my nurse practitioner colleagues because there are some of us who do not agree with this.

I hope that you can join me in voting no for this L.D. because I think that we should be collaborating and not doing independent practice, therefore we should be collaborating, doing the definition of collaboration in a way that really defines collaboration.

I feel strongly that we need to maintain the link and if you vote no on this bill you are maintaining that link between nurse practitioners and physicians.

Lastly, if you vote no on this bill you are basically saying to nurses and physicians work together as a team for the benefit of all. I hope that you can support me in voting no for L.D. 1185.

Mr. Speaker, when the vote is taken I request a roll call.

THE SPEAKER PRO TEM: The Chair recognizes the Representative from Portland, Representative Høglund.

Representative HøGLUND: Mr. Speaker, Men and Women of the House: I agree with Representative Pendexter that nurse practitioners are well trained, well educated and they have been providing primary care since the early 1970's. They can still do that. What we are doing is creating a new advanced nurse practitioner which will be able to collaborate with a doctor.

Now, collaboration is something that they are going to be able to do in a written form. There will be a written form between the physician and the nurse practitioner and the ground rules on what they can do and the scope of practice will be set by them.

The other part of this bill allows for what they can do a joint practice counsel which will have nurses and doctors working on this to be able to put together and find physicians to be able to do this for the nurse practitioner.

The nurse practitioner, under this advanced nurse practitioner new category that we are going to create makes a nurse have at least six years of post secondary education and three internship and will be required to have a certified nurses certificate from a national body.

I do believe that when you talk about primary care in the rural area and you go back to looking at this particular piece of paper that Representatives Pendleton, Holt and Rand sent out, that it is another way of getting primary care to the rural areas because if a nurse can work in collaborating with a doctor she then can venture further because do not have a lot of doctors in the rural areas so therefore she would be able to venture and help give primary access.

Right now nurse practitioners can work and they can work under a doctors supervision but only a doctor can delegate to only two nurse practitioners. So therefore a doctor could collaborate with more than one advanced nurse practitioner. So, you are

getting a group of nurses and doctors who are going to be able to work as a team and provide more health care and primary care.

I would urge you to vote for this particular bill and support it.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Rumford, Representative Cameron.

Representative CAMERON: Mr. Speaker, Men and Women of the House: Many of the things that Representative Pendexter have said are absolutely true. I do take issue when she represents this bill as providing independent practice. This bill, in its original form, some 18 months ago did request independent practice, there is no question about that. From independent practice at that point a group of us spent the entire summer working on some compromise language on this. Independent practice was almost out of pocket rejected by the committee and most of the members of the group that worked on this through the summer.

The language of collaboration as it now exists we can debate all evening of whether or not it provides independent practice. Those of us on the committee that supported this effort felt that it did not provide for independent practice, therefore in my mind the debate of saying this bill provides for independent practice is incorrect because of the definition of collaboration. Yes, the definition of collaboration came from Washington D.C.. We had a number of definitions of collaboration from some seven or eight states who are now doing this kind of extended role of the nurse and we chose the one from Washington D.C., we could well have chosen some others, it seemed to us the one that most appropriately defined what we wanted to do with this bill and how we wanted to allow nurses to practice.

As far as being able to practice today in a setting that is apart from a doctor or relatively independent from a doctor — Representative Hogle stated that a doctor can only supervise or delegate to two nurses. Now, for over a year we have been told that that is not in statute, it is only in rule making and we can fix that but yet we have had a year and there has been no move by anybody to fix that issue. Because of that issue we have nurse practitioners that are unable to find work in the State of Maine. I will read to you two or three examples. "We know of a nurse practitioner who is qualified to see HIV positive patients. This nurse cannot see HIV positive patients because the supervising physician is not qualified to see HIV positive patients." With this bill she could see the HIV patients due to the collaboration as it is presently written.

Another one, "As a nurse practitioner who is qualified cannot find a doctor in the State of Maine with whom she can have supervise her therefore has left the State of Maine and is working in the State of New Hampshire" — where this type of practice is much more common and it is our understanding goes much further than the bill that is presently before you. I don't believe that the State of New Hampshire is any more advanced than the State of Maine and I don't believe that their people practicing medicine and nursing are any more advanced than those here in the State of Maine. New Hampshire is only one example of a number of states as you have seen by this blue handout who now allow nurses to practice in a much more extensive manner. If we were to believe that we were endangering the public by following the

trend that has begun in a number of other states I would have to say that we probably would be seeing mass genocide in the other states, obviously, we are not seeing that.

In the meetings that we held through the summer and in the testimony that was heard in the committee hearing, not one single incident was brought to our attention from any other state where this was happening, where the public was in danger. I keep hearing that that is going to be the problem, that the patient is going to be in danger. If that was the case somewhere in those 24 other states that have some form of collaboration and the seven or eight or nine that have independent practice, which I emphasize this does not provide for, we would have a very serious problem. This bill does allow nurses to practice in a much more advanced manner than they presently do. It still requires them to practice within the parameters of their training. Nobody makes the pretension nurses are doctors. They are not doctors, nobody is saying that they are doctors. We don't want them to be doctors. If they wanted to be doctors, they need to get the extra education, we all agree with that.

This bill provides that the nurses in advance practice, except the nurse midwife, must have a Masters level education. In my mind that is providing these nurses with a requirement that will give them more knowledge than some of them presently have and therefore serve the public better.

I also would emphasize that nothing, absolutely nothing in this bill forces anybody to do anything. Any nurse who wants to continue to practice in the relationship that they presently have with a doctor can continue to do that. Nobody is going to change that.

This bill will provide for a nurse practitioner that meets the educational requirements, that finds a doctor that they can write a collaborative agreement with, that finds a place where they can practice that the people feel comfortable with them practicing, it will provide them the opportunity to do that.

The Chief of Staff at my local hospital called me in the middle of the summer and chewed me out in fine style for even considering supporting something as ludicrous as allowing nurse practitioners with two and a half years of education to go out and practice independently. He is right. I couldn't possible support that but we are not doing that. We are asking nurses to get an advance level of education up to a Masters level training. We are asking them to serve an internship under a doctor or a supervised institution so that we are sure that they are capable of doing the more advance practice that they are requesting the opportunity to do. After they serve the internship they still have to find a doctor who is willing to sit down and write a contract with them which will spell out exactly how their relationship is going to work. I call that a link. Somebody that has more training than can back them up when they need the help.

We say many studies, much documentation that indicated (and I will use the conservative side) that 80 percent of what most of us go to a doctor for a nurse in advance practice could address. In some cases today are already addressing. We saw studies that said that there was no concern in the public's eye on trusting what the nurses were doing. We saw no evidence that said that there had been an increase in liability or suits because of nurses practicing in

a more advance manner. We saw none of that. We heard a lot of speculation, a lot of innuendo, we heard a lot of end of the world stories that are going to happen if this happens in Maine, none of which could be substantiated.

I submit to you that the nurses in this state are well educated, professional and they will not practice beyond the level which they are educated. They are professionals, I see absolutely no difference in the relationship between a nurse practitioner and a physician than what we presently have in a GP and a specialist. A general practitioner knows his or her limits, they will practice to that and then they will get help. In my mind there is nothing different here.

That gentleman that called me from my hospital also indicated to me — I asked him a question after he got done calling me most everything you can think of, I said, in a community, in a part of the state that we live in, I will use the town of Rangeley, too small to support a doctor, would you tell me under which circumstance citizens of that part of the state in the town of Rangeley are better served? That we have a law and rules as they presently exist where a nurse practitioner can't get a doctor to supervise and delegate from a distance, from afar, so that she can treat the people in the town of Rangeley to the best of her ability and to determine when they need to go somewhere else, are they better off with that nurse practitioner under a collaborative relationship where they can fax charts back and forth to the hospital with a doctor with whom they have a relationship and they can talk on the phone and make recommendations and if nothing more stabilize that person to move them to better medical care. Under which circumstance are they better served? Are they better served with no health professional at all or are they better served with that nurse practitioner with a collaborative relationship with either Farmington or the Rumford hospital? He admitted they were better served with a nurse in collaborative practice.

Now, you will hear that the nurses never did go out in the rural areas and they never will. I can't prove they will, I can't prove they won't. But, I do know that I want to provide every opportunity that I possibly can, remove every barrier that I possibly can for the people in this state who now do not have primary health care. We need approximately 150 more primary health providers in the State of Maine to serve our citizens. Most of our communities, particularly in northern Maine and eastern Maine are too small to provide an opportunity for a doctors who commonly expects to make six figures — I don't have a problem with that, they have horrendous bills to pay after getting out of school. I have no problem with them making \$150,000 a year but they can't go in those rural areas and work and make that kind of money and they are not going to go there. But, a nurse practitioner can go there at \$40,000 a year and serve the citizens of the State of Maine, I believe, in as safe a manner within the scope that they are trained as can they be served as they are now where they have no health professionals. If they don't go out into the rural areas I still don't have a problem with this law change because there are plenty of urban areas that need more primary health care providers.

I again emphasize, this is not independent practice. It is beyond me how you can qualify this

as independent practice when the nurse practitioner has to have a signed collaborative agreement with a medical doctor before she can practice in a collaborative arrangement, that is beyond me to understand how that is independent practice.

I would urge you to support this bill. In my mind it is a tiny, tiny, tiny, step in the advancement of medical care to the citizens of the State of Maine.

The Speaker resumed the Chair.

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

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

The SPEAKER: The Chair recognizes the Representative from Rockland, Representative Melendy.

Representative MELENDY: Mr. Speaker, Members of the House: I do hope that you oppose the pending motion. I have worked as a certified medical assistant in the past, it has been 12 years now since I have been in the Legislature that I have worked in a physicians office. Over the course of the 12 years it has never been a problem to me to go and speak to the physicians on issues that they seem to be opposed and that I was supporting or vice versa. Many times I would go to the Knox County Medical Society meeting and I was the only person in the room supporting something and I was always forceful in going in and making sure that they heard my views and I wanted to hear theirs.

Well, today instead of giving you some of my own testimony what I would like to do is share with you two letters of the many many letters that I have received opposing this legislation just so that you can know exactly where the problems really lie. So, if I could, I would like to start off with a letter from Dr. Hall. "I am writing to express my concerns about the inappropriateness of extending the independent practice of the nurse practitioners. I have supervised a pediatric nurse practitioner for two years, four certified physician assistants over 11 years and have employed a PAC in my office for five years. I am a strong spokesperson for this level of practitioner. Having these providers available has permitted the island of Islesboro to have available a level of care which it would not otherwise find. Because of these providers have allowed me to keep my office visits at the lower level in the community. However, as a supervising physician I am continually impressed with the need for these practitioners to have direct access to a supervisor and to have all records frequently reviewed by the supervisor. The RNP and PAC's are excellent at obtaining history and the details of the physical examination. They have major limitations in deciding upon a list of probable and possible diagnosis, the differential diagnosis and major limitations in providing a comprehensive treatment plan. It does take the additional five years of minimum which an M.D. or D.O. training to develop

these skills. I would be glad to give you daily examples which occur in my office even under the care of the PAC's employed in my office, a woman who was distinguished as the outstanding physician's assistant for the state in 1992." That is a portion of his letter.

Here is another one that I really think needs to be read in its entirety. Again, I have got to say that these are people that I am quite often opposed to but they are saying what we need to be addressing when we vote for this. This is from Dr. Robert Furman. "I am writing this letter to voice my opposition to L.D. 1185. I am not a physician who usually picks up the phone every time a piece of medical legislation is being considered but I feel I must not let L.D. 1185 go by without voicing my feeling. The advocates of this bill have been quoted as saying, "between 60 and 80 percent of the basic health care performed by physicians at a much lower cost would be done by nurse practitioners or nurses with advance nursing skills" this is a gross misstatement. Perhaps 60 percent of health care provided by physicians could be done by nurses in a situation where the diagnosis was clarified, the treatment program was in place and the care being provided is essentially down to a routine regiment. A nurse practitioner with comparatively minimal advanced training beyond a Bachelor Degree in nursing is in no way qualified by education or training to practice as an independent medical practitioner. For the Legislature to even consider passing a bill that would equate this training with four years of medical school and three or four years of specialty training residency is ludicrous. To the outsider, it may seem that the nurse practitioner is essentially the same thing as a physician, the difference in background and training and the cognitive development between an nurse practitioner and a trained physician is tremendous. The routine physical assessment of a given patient can be done very well by a nurse practitioner, to interpret what the actual findings mean and to establish a diagnosis from a complex list of differential diagnosis is beyond the scope of the training of a nurse practitioner. One of the common reasons given to expand the role of the nurse practitioner is that it somehow is going to be economically more satisfactory to society. My experience would indicate just the opposite. The health care providers with the least amount of training tend to order by far the most complex and most expensive examinations. They approach a problem for which they have inadequate training to solve by ordering a shotgun array of expensive procedures in hopes of stumbling upon the right diagnosis. Even if a diagnosis is presented it usually is presented as a list of three or four possibilities. Again, the inadequate trained health care provider is confronted with trying to decide which if any or all of these diagnosis are correct. I can give you many example of patients I have seen in my orthopedic specialty who simply needed a good orthopedic exam to establish their diagnosis. These patients, when referred from a physicians assistant or nurse practitioners very commonly will have up to \$2,000 worth of unnecessary X-rays and lab studies done in an attempt to make an accurate diagnosis. Usually the end up being referred because either the diagnosis is still not clear or a diagnosis has been established but the need for further treatment is not at all certain in the mind of the referral source. For example a

patient with a herniated lumbar disk can be diagnosed in about a 20 minute office visit. The MRI, CT scan and multiple neurological consultations in nerve conduction studies are simply not necessary to establish treatment protocol for this type of patient. If the patient is not doing well and looks like they will end up needing a surgical procedure then appropriate studies should be carried out. As the great majority, perhaps 90 percent of the patients with herniated lumbar disks do not need surgery, a great deal of money is saved by the up-front skilled expertise provided by a properly trained physician. What will happen in the interest of saving money by providing a person of considerable less training to do the initial evaluation will be a tremendous increase in cost studies to be performed because the nurse practitioner doing the evaluation simply doesn't have the background to make a differential diagnosis in the first place. This is not a matter of trying to protect our turf, most of us practicing medicine can use all the expert assistance and help we can get but for the legislature to enact a bill that implies to the uninformed public that they are getting equal care at a reduced rate by enacting 1185 would be a great disservice to everyone."

I apologize for being so long but I do hope you were listening to a good part of that because to me he has got it right on target and we should be thinking twice about what we are doing. I hope you will vote no on this measure.

The SPEAKER: The Chair recognizes the Representative from Scarborough, Representative Pendetex.

Representative PENDEXTER: Mr. Speaker, Men and Women of the House: The Representative from Portland and the Representative from Rumford keep referring to the written collaborative agreement. Now, there is no way that this is mentioned anywhere in this bill. I think what they are doing is they are referring to an amendment they plan to offer. We have to deal with what is in the bill as it is. This is what is before us. There is nowhere in the definition of collaboration that it so states that there is anything that looks like a written collaborative agreement.

The way we are doing it now — I don't have any written agreement. We just mutually agree on what I am going to do and how we are going to work this out. It doesn't even have to be written. If you want to know the truth, this is going backward. Can you imagine if we have to write down everything that I am going to do in the office. The fact it is it not mentioned in the definition.

During the committee work sessions we went over and over and over this. The committee members who were supporting this were interchangingly using the word collaboration with independent practice to the point that they so stated and the Senate Chair of the Committee so stated, "I am not ready to give carte blanche to nurse practitioners to practice independently." So, thusly was created a tier system.

In the bill, the way it is written right now, the only nurses who can collaborate because collaborate means independent practice, are nurses who have a Masters level education, except they have played around with that and they put in a couple of exemptions. Plus, that nurse practitioner with a Masters level, we are talking about five or six years college, must also have three years of experience

working with a physician. But, they have also played around with that because they have also added "or they can work in a clinic or hospital situation that has a physician as a medical director." You know as well as I do that a medical director sits in the office, he does not work in the clinic.

If they are really so serious about having nurses who according to what they say is the highest educated and has the most practice then why are they messing around with it, why can't we just say Masters level is a Masters level, there are no exceptions and three years of experience with a physician is exactly that. In the bill as it is there are problems with that anyway.

Right now nurse practitioners do, we all, do the same thing. The Board of Nursing regulates us all the same way no matter whether we have two years or three years or four years of nursing experience, whether we have Masters — they require that we be an RN, they require that we have had nurse practitioner training, which is either a certificate program or a Masters program and they require that we be certified. As long as we fit those three situations we can practice as nurse practitioners.

This bill creates a tier system which I think is going to be even more confusing to consumers. Some nurses can collaborate, whatever that means, and I am telling you it is independent practice. Then others can do however we do it right now, which is either delegation of supervision or whatever you want to call it.

Can you imagine the Board of Nursing trying to regulate that?

What are we gaining?

The Representative from Rumford has given us two instances of when nurses could not find physicians, nurses that had problems. There are 463 nurse practitioners in this state and he gave you two examples. I have a solution for the first one, for the nurse practitioner who wants to do HIV counseling, all she has to do is go find a physician who feels that he is equipped to handle HIV and she can set up some kind of agreement with him and she can do HIV counseling or whatever she does.

There are only three states that have total independent practice with prescriptive writing privileges and I have to underling "prescriptive writing privileges" because a lot of states who have independent practice do not have prescriptive writing privileges. These three states have only declared independent practice within the year or maybe a year and a half but it hasn't been very long. So, of course there is no data, it hasn't gone on long enough and there is no way that you can evaluate whether this is a good way to do it or not. It just hasn't been around long enough.

What we are doing here is setting public policy. I say to you that I don't think that we are ready to legislate out that connection. You are making us have a divorce when we haven't even had a fight. The fight is here in the halls of the House. The fight is not out there in the real world. I have practiced for 22 years without any problems and I know a lot of nurse practitioners who have done the same. If it isn't broken why are we having to fix it.

I say to you that if the Representative from Portland and the Representative from Rumford were going to agree on having written collaborative agreement then why didn't they put it in the definition. Because they didn't want it because they

are supporting independent practice. We can both sit here and argue all night about who said what but I say to you that this bill is all about independent practice. You can make the decision on how you feel about that, whether you want to set public policy that legislates out a connection that presently exists between medicine and nurse practitioners.

Somebody made a reference to most of the time nurse practitioners can take care of problems and whatever. I just want to read to you something out of this article that it says, "Although nurse practitioners may be able to manage two-thirds of single patient encounters without physician consultation that is not the same as managing two-thirds of the patients over time. Any single patient would probably need the expertise of a physician at some point in time." That is what you have to remember.

Therefore, I continue to maintain that nurse practitioners always have direct continuing and unimpeded access to medical support consultation to assure the safety of patients and to assure the continuum of care. We can do some things very well, but we don't have the education and the background to take care of the complex needs of patients. So, that is why I continue to be adamant about the fact that we need to work as a team and not independently.

I will just mention — some of you have hard because the collaboration definition was so loose it created a whole huge problem around the whole liability issue. Some of you have heard that in fact it was veto material because it was not addressed properly. Then, some of you have heard that the problem had been taken care of. I will say to you that the language and the amendment that is on my desk is not what was agreed to with the second floor. Men and women of the House, the liability issue is not correct.

I continue to ask you to join me in voting against this bill.

The SPEAKER: The Chair recognizes the Representative from Scarborough, Representative Pendleton.

Representative PENDLETON: Mr. Speaker, Men and Women of the House: First of all I would like to thank the Business Legislation Committee for spending all summer on this particular issue on this bill. I would say to you change is always difficult. Nursing education and nursing philosophy in itself has changed over the last 25 years. I think on a practical point of view what we are missing here when we are debating back and forth is the issue of scope of practice. A nurse practitioner has a particular scope of practice, she would not be practicing as a physician any more than a physician would be practicing as a nurse because that particular nurse would be trained through the educational system to practice a certain scope to take care of routine situations. I would submit to you in collaboration a nurse practitioner, if they came across a situation that was not in their scope of practice would call a physician. The fact is, they should call a physician.

I think the other issue is — I believe that in collaboration a nurse and a physician can work as a team.

Another thing that was mentioned this evening is the situation where, why would nurses work in rural areas? Well, if you can't find a physician to directly supervise you right now then you won't be able to. Nurses that want to work with HIV positive

patients wouldn't be able to if they can't find a physician to supervise them.

Maine law currently permits nurse practitioners to diagnose and treat and prescribe medicine so long as it is in their scope of practice.

I would submit to you that nurses are not going to be practicing as physicians. Nurses are going to be practicing as nurse practitioners in their own scope of practice.

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Rand.

Representative RAND: Mr. Speaker, Men and Women of the House: I would urge you to accept the Majority "Ought to Pass" Report. One of the major issues facing our country and our state today is universal access to health care. We are talking about a major change nationally and state-wide on how we deliver health care in the United States. A recent study by a Dr. Len Nichols a fellow of the Agency for Health Care Policy and Research and a health economist estimated the annual cost of underusing nurses in advance practice is \$6.4 billion to \$8.75 billion a year. In Maine this translates to between \$48 million and \$66 million a year. We are not utilizing the knowledge and the talent that is out there because of some archaic laws that exist on the books right now.

My preference, to tell you the truth, was this bill in its original form. This bill will go a little way in allowing nurses in advance practice to focus on what they do, basically it is health maintenance and health promotion services and the M.D.'s will continue to focus on what they do, management and treatment of illness. This legislation allows both provider groups to concentrate on their area of expertise. We will get much more good quality, safe, health care for the people of this state at a reduced cost.

Please accept the Majority "Ought to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Rumford, Representative Cameron.

Representative CAMERON: Mr. Speaker, Men and Women of the House: At one point this evening there was reference made to a two tier system in the advanced practice nurses. That is right, but I find it very interesting that our argument comes up in opposition to this bill because the bill in its original form and even the amendment as was presented as it came out of the committee, we were not going to have a three year internship requirement. Nurse in advance practice would be a nurse in advance practice upon completing their education and passing the appropriate testing procedures.

The three year internship which creates this two-tier system was a compromise from the doctors request of five years. Although it may appear that we have created a two-tier system that was part of the compromise to get the bill out and get it passed.

I personally don't think that three years are necessary, many people do, and I can support that. But, that is the reason we ended up with what is referred to as the two-tier system. That was part of the compromise.

Another thing, about the written collaborative agreement, if I mislead you folks, I apologize. That was never my intent. The Representative is exactly right, that is in the amendment, and that again is part of the compromise that we worked out to get this accepted by all of the people, as many of the people concerned about it as possible. If I mislead you, I

apologize for that, that certainly never was my intention. I just wanted to make that clear that that is in the amendment. For those of you that may be concerned about that relationship, it doesn't have any formal connection, that is, if you help us pass this bill so we can put the amendment on, that will be taken care of.

The SPEAKER: The Chair recognizes the Representative from Rockland, Representative Melendy.

Representative MELENDY: Mr. Speaker, I would pose a question to anyone on the committee that would care to answer this. I keep hearing them saying that currently nurses cannot get anyone to supervise them. Can you tell me what assurances we would have if this bill were to pass, that they could get somebody to collaborate with them?

The SPEAKER: Representative Melendy of Rockland has posed a question through the Chair to any member who may respond if they so desire.

The Chair recognizes the Representative from Portland, Representative Hoglund.

Representative HOGGLUND: Mr. Speaker, Men and Women of the House: It also creates what they call a joint practice council which is oversight and set up the rules and regulations between them. Plus they cannot be collaborating or doing it unless they have a written agreement with a physician.

Representative Pendexter was granted permission to speak a third time.

Representative PENDEXTER: Mr. Speaker, Men and Women of the House: I would like to answer the question further that the Representative from Rockland poses.

The Representative from Portland keeps talking about a written collaborative agreement and I don't know where she is getting that because there is no provision for that in this bill. There absolutely is no provision for anything — written collaborative agreement.

The Representative from Rockland asks a very good question because the way the word collaboration is defined creates a huge liability problem. Any physician who listens to the medical legal council is not going to collaborate nurse practitioners as provided for in this L.D. unless the liability is addressed correctly. I just alluded to you that it still isn't fixed.

Representative Cameron of Rumford was granted permission to speak a third time.

Representative CAMERON: Mr. Speaker, Men and Women of the House: Very quickly, in response to Representative Melendy's question. There are no guarantees and I do not profess to guarantee that they are going to be able to find a collaborating physician, but if you can't find a collaborating physician they will not be able to function as a nurse in collaboration so therefore we are not forcing anybody to do anything and if we pass the bill and they can't find that situation, nothing ventured nothing gained is what it amounts to. We know that if they don't pass it they definitely won't be able to.

The SPEAKER: A roll call has been ordered. The pending question is the motion of Representative Hoglund of Portland that the House accept the Majority "Ought to Pass" Report.

The Chair recognizes the Representative from Boothbay, Representative Heino.

Representative HEINO: Mr. Speaker, pursuant to House Rule 7, I request permission to pair my vote

with Representative Spear of Nobleboro. If he were present and voting he would be voting yea, I would be voting nay.

The SPEAKER: The pending question is the motion of Representative Hoglund of Portland that the House accept the Majority "Ought to Pass" Report. Those in favor of that motion will vote yes; those opposed will vote no.

ROLL CALL NO. 312

YE - Adams, Ahearne, Beam, Bowers, Brennan, Bruno, Cameron, Caron, Carroll, Chase, Chonko, Clark, Clement, Coffman, Coles, Constantine, Cross, Daggett, Dexter, Dutremble, L.; Erwin, Faircloth, Farnum, Fitzpatrick, Gean, Gould, R. A.; Hale, Hatch, Heesch, Hichborn, Hoglund, Holt, Hussey, Jalbert, Johnson, Joseph, Kerr, Ketterer, Kilkelly, Kontos, Larrivee, Lemke, Lipman, Lord, Marshall, Martin, J.; Michael, Michaud, Mitchell, J.; Morrison, Murphy, Nadeau, O'Gara, Oliver, Ott, Pendleton, Pfeiffer, Pineau, Pinette, Plourde, Poulin, Rand, Reed, W.; Richardson, Rotondi, Rowe, Rydell, Saint Onge, Simonds, Skoglund, Stevens, K.; Strout, Sullivan, Swazey, Townsend, E.; Townsend, L.; Tracy, Treat, Wentworth, Whitcomb, Winn.

NAY - Aikman, Aliberti, Anderson, Ault, Bailey, H.; Bailey, R.; Barth, Bennett, Birney, Campbell, Carleton, Carr, Cloutier, Clukey, Cote, Donnelly, Dore, Driscoll, Farren, Foss, Gamache, Gray, Greenlaw, Jacques, Joy, Kneeland, Lemont, Libby Jack, Lindahl, Look, MacBride, Marsh, Melendy, Mitchell, E.; Nash, Nickerson, Norton, Paradis, P.; Pendexter, Plowman, Pouliot, Reed, G.; Robichaud, Saxl, Simoneau, Small, Stevens, A.; Taylor, Townsend, G.; Tufts, Vigue, Walker, Young, Zirnkilton.

ABSENT - Cashman, Cathcart, DiPietro, Farnsworth, Hillock, Kutasi, Libby James, Martin, H.; Ricker, Ruhlin, Tardy, Thompson, True, The Speaker.

PAIRED - Spear (Yea)/ Heino (Nay).

Yes, 81; No, 54; Absent, 14; Paired, 2; Excused, 0.

81 having voted in the affirmative and 54 in the negative, with 14 being absent and 2 paired, the Majority "Ought to Pass" Report was accepted.

The Bill read once. Committee Amendment "A" (S-454) was read by the Clerk.

Senate Amendment "B" (S-513) to Committee Amendment "A" (S-454) was read by the Clerk and adopted.

On motion of Representative JACQUES of Waterville, tabled pending adoption of Committee Amendment "A" (S-454) as amended by Senate Amendment "B" (S-513) thereto and later today assigned.

The Chair laid before the House the following items which were tabled earlier in today's session:

Bill "An Act to Clarify the Maine Banking Code as it Pertains to Service Corporation Serving Credit Unions" (S.P. 555) (L.D. 1591) which was tabled by Representative PINEAU of Jay pending further consideration.

On motion of Representative TRACY of Rome the House voted to Recede.

Committee Amendment "A" (S-537) was read by the Clerk.

Representative TRACY of Rome presented House Amendment "B" (H-1055) to Committee Amendment "A" (S-537) which was read by the Clerk.

Representative JOSEPH of Waterville requested a division on adoption of House Amendment "B" (H-1055) to Committee Amendment "A" (S-537).

The SPEAKER: The Chair will order a vote. The pending question is adoption of House Amendment "B" (H-1055) to Committee Amendment "A" (S-537). Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

88 voted in favor of the same and 9 against, subsequently, House Amendment "B" (H-1055) was adopted.

Committee Amendment "A" (S-537) as amended by House Amendment "B" (H-1055) thereto was adopted.

Under suspension of the rules, the Bill was given its second reading without reference to the Committee on Bills in the Second Reading.

Under further suspension of the rules, the Bill was passed to be engrossed as amended by Committee Amendment "A" (S-537) as amended by House Amendment "B" (H-1055) thereto in non-concurrence and sent up for concurrence.

Bill "An Act to Protect the Rights of Employees and to Ensure the Proper Expenditure of Public Funds" (H.P. 1303) (L.D. 1758)(H."A" H-1013 to C."A" H-865) which was tabled by Representative RUHLIN of Brewer pending his motion that the House Adhere.

-In Senate passed to be engrossed as amended by Committee Amendment "A" (H-865) as amended by Senate Amendment "B" (S-575) thereto.

Subsequently, the House voted to Recede and Concur.

By unanimous consent, all matters having been acted upon were ordered sent forthwith.

Resolve, to Establish a Commission on the Future of Maine's Paper Industry (EMERGENCY) (S.P. 773) (L.D. 1996) which was tabled by Representative JACQUES of Waterville pending final passage.

On motion of Representative PINEAU of Jay, under suspension of the rules, the House reconsidered its action whereby L.D. 1996 was passed to be engrossed.

The same Representative presented House Amendment "A" (H-1048) which was read by the Clerk and adopted.

The Resolve was passed to be engrossed as amended by House Amendment "A" (H-1048) in non-concurrence and sent up for concurrence. Ordered sent forthwith.

BILL HELD

Resolve, to Clarify the Transfer of Certain State Lands to the Maine Veterans' Homes (EMERGENCY) (H.P. 1465) (L.D. 1991) (Governor's Bill)

- In House, Finally Passed.

HELD at the Request of Representative JALBERT of Lisbon.

On motion of Representative JALBERT of Lisbon, the House reconsidered its action whereby L.D. 1991 was finally passed.

On further motion of the same Representative, under suspension of the rules, the House reconsidered its action whereby the Resolve was passed to be engrossed.

The same Representative presented House Amendment "A" (H-1035) which was read by the Clerk and adopted.

The Resolve was passed to be engrossed as amended by House Amendment "A" (H-1035) in non-concurrence and sent up for concurrence.

Representative Campbell of Holden was granted unanimous consent to address the House.

Representative CAMPBELL: Mr. Speaker, Men and Women of the House: My vote was not recorded on Roll Call No. 307. I wish to have my vote recorded as a nay.

On motion of Representative KETTERER of Madison adjourned at 9:00 p.m. until 8:30 a.m., Wednesday, April 6, 1994 in memory of Alexander Richard of Madison a former member of the Maine House of Representatives.