

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Eleventh
Legislature***

OF THE

STATE OF MAINE

Volume I

FIRST REGULAR SESSION

December 1, 1982 to May 13, 1983

HOUSE

Monday, May 9, 1983

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

Prayer by the Reverend Winifred Reynolds, Pastor Emeritus, Windsor Memorial Baptist Church.

The members stood at attention during the playing of the National Anthem by Mount View High School Band, Thorndike.

The journal of the previous session was read and approved.

Papers from the Senate Reports of Committees

Unanimous Ought Not to Pass

Report of the Committee on Judiciary reporting "Ought Not to Pass" on Bill "An Act to Provide Court Jurisdiction over Juvenile Run-aways" (S. P. 408) (L. D. 1256)

Was placed in the Legislative Files without further action pursuant to Joint Rule 15 in concurrence.

Unanimous Leave to Withdraw

Report of the Committee on Judiciary reporting "Leave to Withdraw" on Bill "An Act Relating to Criminal Offenses by Indians on the Penobscot Reservation" (S. P. 80) (L. D. 191)

Report of the Committee on Judiciary reporting "Leave to Withdraw" on Bill "An Act Relating to Penobscot Game and Conservation Wardens" (S. P. 93) (L. D. 224)

Report of the Committee on Judiciary reporting "Leave to Withdraw" on Bill "An Act Relating to Probate Proceedings" (S. P. 169) (L. D. 524)

Report of the Committee on Audit and Program Review reporting "Leave to Withdraw" on Bill "An Act to Include Legislative Services under the Maine Sunset Act" (S. P. 434) (L. D. 1346)

Report of the Committee on Judiciary reporting "Leave to Withdraw" on Bill "An Act Relating to Criminal Offenses on Penobscot Reservation" (S. P. 168) (L. D. 523)

Report of the Committee on Transportation reporting "Leave to Withdraw" on Bill "An Act Concerning Posted Roads" (S. P. 230) (L. D. 674)

Report of the Committee on Health and Institutional Services reporting "Leave to Withdraw" on Bill "An Act to Establish and Provide Reimbursement for a Hospice Care Program" (S. P. 394) (L. D. 1194)

Report of the Committee on Business Legislation reporting "Leave to Withdraw" on Bill "An Act Relating to Additional Charges in Connection with Consumer Credit Transactions" (S. P. 139) (L. D. 431)

Were placed in the Legislative Files without further action pursuant to Joint Rule 15 in concurrence.

Ought to Pass in New Draft/New Title

Report of the Committee on Education on Bill "An Act Concerning State Assistance to Areas Affected by Indochinese Immigrants" (S. P. 424) (L. D. 1286) reporting "Ought to Pass" in New Draft under New Title Bill "An Act Concerning State Assistance to Areas Affected by Non-English Speaking Immigrants and Refugees" (S. P. 532) (L. D. 1555)

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

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

Ought to Pass as Amended

Report of the Committee on Energy and Natural Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (S-89) on Bill "An Act to Revise the Statutes relating to Radiation Control" (S. P. 395) (L. D.

1195)

Came from the Senate with the Report read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (S-89) as amended by Senate Amendment "A" (S-92) thereto.

In the House, the Report was read and accepted in concurrence and the Bill read once. Committee Amendment "A" (S-89) read. Senate Amendment "A" (S-92) to Committee Amendment "A" (S-89) read and adopted. Committee Amendment "A" (S-89) as amended by Senate Amendment "A" (S-92) thereto adopted in concurrence and the Bill assigned for second reading later in the day.

Non-Concurrent Matter

Bill "An Act to Establish a Workers' Compensation Hearing Exemption for Agricultural Employers' Liability Insurance Claim Disputes" (S. P. 358) (L. D. 1079) on which the Bill and Accompanying Papers were Indefinitely Postponed in the House on May 5, 1983.

Came from the Senate passed to be engrossed as amended by Senate Amendment "A" (S-98) in non-concurrence.

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

Non-Concurrent Matter

Bill "An Act to Create a Student Seat on the Board of Trustees of the University of Maine" (H. P. 24) (L. D. 29) on which the Minority "Ought Not to Pass" report of the Committee on Education was read and accepted in the House on May 3, 1983.

Came from the Senate with the Majority "Ought to Pass" as amended report of the Committee on Education read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (H-177) and Senate Amendment "A" (S-91) in non-concurrence.

In the House:

The SPEAKER: The Chair recognizes the gentlewoman from Sebec, Mrs. Locke.

Mrs. LOCKE: Mr. Speaker, I move that the House recede and concur.

The SPEAKER: The gentlewoman from Sebec, Mrs. Locke, moves that the House recede and concur.

The Chair recognizes the gentleman from Kennebunk, Mr. Murphy.

Mr. MURPHY: Mr. Speaker, Men and Women of the House: The student trustee issue is before us again and it is in non-concurrence. Ladies and gentlemen, this would be the beginning of a quota system for this particular board.

Additionally, another weakness is that the Governor is limited to nominating a person from out of a list of five names submitted by the organization of student governments. Any other interested students who might want to have their names placed before the Governor for consideration would be disenfranchised unless they could have their name added to that list of five.

Another weakness is that the student would serve only two years instead of the regular seven-year term. Testimony before our committee indicated by past and present members that it takes at least two years to learn the background and duties of the University trustees.

This student trustee could very well be an out-of-state student and the language that they must be a permanent resident, we all know that takes about five minutes to obtain.

Appointment to the board could possibly place a heavy strain on a full-time student's schedule, since there are background visits, subcommittee work, student forums and the regular meetings at the far-flung university campuses.

I am afraid, again, that this is a first step toward quotas on the university board of trustees and would open it up to further consideration in the future for additional quo-

tas based on age, occupation or special interest groups, and I think good government subscribes that it should be the best person appointed rather than to go to quotas.

I could understand this bill if current law prohibits students serving on the board of trustees, but the current law doesn't. A student can apply like any other Maine citizen for a vacancy. I have checked with the Governor's office as to why there isn't any student serving on the board, and the reason is that no student has applied until last week for any of the openings that have been under consideration. They can't consider them if they don't apply. The constituency is not there, and if I could read into the record a letter from Rodney Labbe, March 7, 1983, and in the letter, this is from the student government at the University of Maine at Orono in reference to a February 27, 1983 meeting where they met, discussed and voted on two topics, one of those topics being L. D. 29, the bill to institute a voting student seat on the board of trustees.

They say, "Our conclusion on both issues were not favorable." And to go into the next paragraph: "On the subject of L. D. 29, we were more adamant. There are too many unanswered questions concerning the mechanics of the bill and accordingly we cannot support it. I will be informing Representative James Handy, the sponsor of the bill, of our position."

That was reaffirmed Thursday with a phone call from President Rodney Labbe, who indicated in April that 14 people representing all branches of that student government were unanimous in their vote of not supporting this particular L. D.

I think a student could be valuable on that board of trustees, but it should be a seven-year term so that there is a transition from the end of graduate world to the work place so that individual can be a very effective voice in terms of what that University of Maine education did or didn't do for them as they go out and compete in the work place. But I think what we need to keep in mind is that the people who serve on that board should represent all the citizens of this state and not a special interest group.

I would urge members to defeat the motion to recede and concur so that we might adhere to our position that we took last week.

The SPEAKER: The Chair recognizes the gentlewoman from Sebec, Mrs. Locke.

Mrs. LOCKE: Mr. Speaker, Men and Women of the House: I would especially like to address the subject of the quota system. Right now on the university board of trustees, we have a member of the board that comes from the agricultural community. He is a potato farmer and we just confirmed him a few weeks ago. The fellow who preceded him was a dairy farmer. The reason that both of these gentlemen are members of the board of trustees is because they represent the agricultural points of view. If this isn't a quota system, or the beginning of, I don't know what is.

The question I would like to ask is, do we feel that the member of the board of trustees that was a dairy farmer came with only the interest of dairy farmers in mind? Or was that fellow only interested in the college of agriculture? I don't think so. I don't think he was biased when he had to cast his vote for something that concerns the University of Maine Law School, and we have four attorneys on that board of trustees at the University of Maine, and I don't believe that they are biased when they cast their vote on a subject that concerns the University of Maine campus at Farmington. I don't really think that the quota system is an issue at all; I think it is a red herring.

The other thing is that if we have a member, or if it is possible to have a member, a student member, on the board now, then I can't see why that student member can't have voting rights. In fact, if the person was able to vote, perhaps more students would be interested.

The SPEAKER: The Chair recognizes the gentleman from Kittery, Mr. Soucy.

Mr. SOUCY: Mr. Speaker, Ladies and Gentlemen of the House: Last week, I stood up and I opposed this bill, I still oppose this bill. I was informed by the proponents of this bill that the students at the various colleges in the University of Maine system wanted this bill. As a matter of fact, when I was informed last week that the government organization had voted 14 to 0, and that means that there are two representatives from each of the 7 campuses, so you can see how they felt about it, but the proponents indicated to me that I didn't know what I was talking about, that the students really wanted this bill. I don't believe that that is true and I would urge you to defeat the motion.

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

Mr. MURPHY: Mr. Speaker, I request a roll call, please.

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

Mr. BOTT: Mr. Speaker and Members of the House: I would just like to respond to some of the statements that the students at the various universities do not support this bill. Indeed, at this moment I can only speak for Orono and to say that the University of Maine at Orono Student Senate overwhelmingly supported this measure. Indeed, the president and vice president of student government felt so strongly about this bill that they showed up to testify at the hearing. So I would hope you would all support this bill. I think it is a good piece of legislation.

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

Mr. HANDY: Mr. Speaker, Men and Women of the House: Basically, the real question we have to answer today is whether or not we want consumers of the product of education in the State of Maine on the Board of Trustees of the University. We should place a great deal of weight in whether or not the students want it, whether or not the faculty wants it, or whether or not we as individuals, not as sitting members of the State Legislature want it, but what is the best form of government and the best form of education we can provide for the people of the State of Maine and those who attend our university system. I submit to you, ladies and gentlemen, that putting a consumer on the board of trustees will bring new life to the board and inject in that board a new sense of vitality and the needs of the students who will be greatly represented and at least considered in the various duties of the board of trustees.

The SPEAKER: The Chair recognizes the gentleman from Stockton Springs, Mr. Crowley.

Mr. CROWLEY: Mr. Speaker, Ladies and Gentlemen of the House: I think there is a great deal of thought to be put into this bill today and I think we should recede and concur and go along to put a student member on the board of trustees at the Super U.

Now the Super U, at the time when I was working at the state college level, before they became the Super U, we had a much tighter system for academic, financial, everything else, because we had someone looking over our shoulder, we had line control budgets and so forth in the state colleges.

The University of Maine at Orono had a board of trustees on campus who knew what was going on, knew the faculty and had some idea of what was happening within the University of Maine at Orono.

The Super U concept brings in a whole ivory tower situation where we have trustees sitting down there in Bangor fed all kinds of information by the central staff that gets paid forty, fifty, sixty, even seventy thousand dollars a year, and they have reams of paper to go over and I say they are far removed from the decision making on the campuses.

When the board of trustees visits a campus, as they tell you they do, I witnessed this because I was there when they organized this thing and I was there after they organized the Super U, they know about a month in advance that they are coming to your campus so you get ready and you wine and dine them, and I mean we wine and dine them when they come to our campus, we want to put our best foot forward. We have the right faculty members and the right students talk to them. They really don't get a picture of what is happening at that campus. So I say the trustees in the Super U situation are far removed from what is going on on that campus.

We say that our education is going down hill—I think it is going down hill real fast because we don't have the right kind of representation.

One student selected from 20,000 youngsters—I am saying people 20 and 21 years old, the youngsters, they are when you look at my age—but to take one student, one outstanding student from the cream of the crop of 20,000 students and put him on the board of trustees, you are going to get one outstanding person, and there are many outstanding persons age 20 and so forth. The age is young, yes, but you can be a legislator here at 21, which I believe happened to some people, I think the Speaker was here at age 21. Age 21 doesn't mean a person can't make good decisions. I think the students should have one vote, one voice, in this board of trustees to make them privy to not only what goes on at the meetings and all the literature in their executive sessions, I think it is very important.

The University of Maine lost this when they lost their board of trustees. By putting the student in there, I think there is nothing to be afraid of. One student may get the message across to the members of the board of trustees about what is really happening in the classroom, what is really happening in the residence halls.

I would vote to recede and concur.

The SPEAKER: The Chair recognizes the gentleman from Washburn, Mr. Crouse.

Mr. CROUSE: Mr. Speaker, Men and Women of the House: I just called the Student Senate president at the University of Maine at Presque Isle and asked her why the University of Maine student governments voted against this particular bill. The reason she gave me was that the 14 representatives felt that they were going to lose the seven non-voting seats now on the University of Maine board of trustees. They felt that seven positions on the board were better than one student voting seat on the board of trustees.

When we discussed this in our hearing, we had some concerns about the seven non-voting seats, one representing each of the campuses, and we wanted to make sure that the legislative intent was very clear that the students would not lose these seven seats on the board of trustees. What we intend to do, and I am sure the University of Maine board of trustees will not go ahead once we put the student seat on the board of trustees, and eliminate these seven seats. It wouldn't be politically wise, it wouldn't be wise for the representation from each of the campuses and it will not happen, I can assure you of that, but it is something that has been an implied threat, has been a threat going around the seven campuses, that they are going to lose those seven seats on the board, and that is not the case. That is why they voted against the student seat when it came before them at the student government meetings. It is very important that you remember that when you vote on this student seat today.

Another concern I have on this particular issue, it is a very important issue as far as I am concerned, as far as a lot of students are concerned. I was an administrator for five years at one of the campuses and the students had very little input on policy decisions. They had very

little input into the administration, they had very little input into the board of trustees' policy, the final policy, and it is very important that you understand that, it is very important that you vote that way today, to put a student seat on the board of trustees.

In the hearing, I spoke to a couple of the trustee members and I told them directly, I said, the trustees provide the input, they provide the opportunity for the students, for the faculty, for people to speak to them. The problem is lack of response; they do not respond to the issues that are concerning the students at the seven campuses. A prime example that I mentioned the other day was the transfer of credit policy, a policy that should have been implemented a long time ago. They promised this in 1978, that it was going to be implemented and it wasn't implemented. In 1980, they promised us again that it was going to be implemented; it was not implemented. In 1982, we finally had to put it through the Legislature, had to pass a bill to establish a uniform transfer of credit policy in the University of Maine system. That is really a concern of mine, the lack of response, and this student voting seat on the board is very important for the students of the University of Maine system.

One other concern, there are numerous student seats throughout the country. In New England, for example, there is one at U. of Mass., Amherst, there is one at B.C., Boston College, that student seat was established as a result of Tip O'Neill leading the fight, leading the effort and saying that we really need a student representative, voting member, on our board of trustees. So it is not going to be a precedent set by any means in New England or in the country.

I do hope you support the motion to recede and concur.

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

Mr. BOST: Mr. Speaker, Men and Women of the House: The trustees at the University of Maine are comprised of 15 members who are legally responsible for governing the University of Maine system. The bill before us, L. D. 29, would increase the trustee by one. The new member would be a student or a consumer of education, who would be nominated by the Governor from a list of five submitted by the student government association and would then be reviewed by the appropriate legislative committee and confirmed by this body.

The idea of having a student member on the board of trustees is not a new or unusual concept. Many states have one or more students on the board of trustees of their state university, and in Maine, as I mentioned last week, Governor Kenneth Curtis appointed a student to the first board of trustees in 1968. This student served with distinction for seven years.

L. D. 29 provides for a student position, rotated every two years, as does our Legislature, with the purpose of providing new and fresh student perspective to this board of trustees.

The University of Maine board of trustees is filled by sincere and public spirited individuals; however, the board has only limited contact with the actual education process and the living environment of students.

A student member would enhance both the board's image and I believe effectiveness. No quota systems would occur here. And once the process is opened to student participation, I believe there will be many qualified students attracted to serving in this capacity. A two-year term would be plenty of time to learn the ropes and certainly plenty of time to broaden the perspective of those already serving.

Scare tactics such as denial of students to various subcommittees should be seen for what they are, just that. They will not lose their seven seats, as Representative Crouse has already stated.

In brief, this board is bureaucratically far removed from the educational process and

from what is happening on campus. There is indeed a need for the real world input of the student body, nearly 27,000 consumers of educational process.

There are those who will say that students represent a special interest group, that they will not be able to learn the trustee system in two years, that they are too young to have such responsibility and that they will have nothing to offer. To these criticisms, I say they lack a great deal of merit. Our young people who attend the University of Maine are intelligent and responsible, they are the future decision makers of our state. Their energy, their spirit and their input will in no way diminish the quality of the trustees; in fact, it may be just Elixir or Geritol that this board needs.

I strongly urge you to support the motion to recede and concur.

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

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

The SPEAKER: The pending question is on the motion of the gentlewoman from Sebec, Mrs. Locke, that the House recede and concur.

The Chair recognizes the gentlewoman from Rockland, Mrs. Melendy.

Mrs. MELENDY: Mr. Speaker, I wish to pair my vote with Representative Rotondi. If she were here, she would be voting yea; if I were voting, I would be voting nay.

The SPEAKER: The pending question is on the motion of the gentlewoman from Sebec, Mrs. Locke, that the House recede and concur. All those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA—Ainsworth, Allen, Andrews, Baker, Beaulieu, Benoit, Bost, Bott, Brannigan, Brodeur, Cahill, Carroll, D.P.; Carroll, G.A.; Cashman, Chonko, Clark, Conners, Cooper, Cox, Crouse, Crowley, Daggett, Dexter, Diamond, Erwin, Gauvreau, Gwadodsky, Hall, Handy, Hayden, Hickey, Higgins, L.M.; Ingraham, Joseph, Kelleher, Kelly, Ketover, LaPlante, Lisnik, Locke, MacBride, Matthews, K.L.; Matthews, Z.E.; Maybury, McGowan, McHenry, Michael, Michaud, Mitchell, E.H.; Mitchell, J.; Murray, Nadeau, Paradis, P.E.; Paul, Pines, Reeves, P.; Richard, Roberts, Rolde, Smith, C.B.; Soule, Stevens, Stevenson, Telow, Theriault, Thompson, Tuttle, Webster, Weymouth, Zirkilton, The Speaker.

NAY—Anderson, Armstrong, Bell, Bonney, Brown, D.N.; Brown, K.L.; Callahan, Carrier, Carter, Conary, Cote, Curtis, Davis, Day, Dillenback, Drinkwater, Dudley, Foster, Greenlaw, Holloway, Jackson, Joyce, Kiesman, Lebowitz, Lehoux, Lewis, Livesay, MacEachern, Macomber, Manning, Martin, A.C.; Masterman, Masterton, McCollister, McSweeney, Moholland, Murphy, E.M.; Murphy, T.W.; Nelson, Norton, Paradis, E.J.; Parent, Perkins, Perry, Racine, Reeves, J.W.; Ridley, Roderick, Salisbury, Scarpino, Sherburne, Small, Smith, C.W.; Soucy, Sproul, Stover, Strout, Swazey, Tammaro, Vose, Walker, Wentworth.

ABSENT—Brown, A.K.; Connolly, Higgins, H.C.; Hobbins, Jacques, Jalbert, Kane, Kilcoyne, Mahany, Martin, H.C.; McPherson, Pouliot, Randall, Seavey, Willey.

PAIRED—Melendy, Rotondi.

Yes, 71; No, 62; Absent, 15; Paired, 2; Vacant 1.

The SPEAKER: Seventy-one having voted in the affirmative and sixty-two in the negative, with fifteen being absent, two paired and one vacant, the motion does prevail.

Non-Concurrent Matter

Bill "An Act to Reestablish the Energy Test-

ing Laboratory of Maine as a Part of Southern Maine Vocational-Technical Institute" (Emergency) (H. P. 1104) (L. D. 1492) which was passed to be engrossed in the House on May 4, 1983.

Came from the Senate passed to be engrossed as amended by Senate Amendment "A" (S-97) in non-concurrence.

In the House: On motion of Mrs. Locke of Sebec, the House voted to recede and concur.

Non-Concurrent Matter

Bill "An Act Concerning Confidentiality of Information" (H. P. 998) (L. D. 1306) which was passed to be engrossed in the House on May 4, 1983.

Came from the Senate passed to be engrossed as amended by Senate Amendment "A" (S-100) in non-concurrence.

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

Non-Concurrent Matter

An Act Concerning the Distribution of Table Wines (H. P. 833) (L. D. 1070) which was passed to be enacted in the House on May 5, 1983.

Came from the Senate with the Bill and Accompanying Papers Indefinitely Postponed in non-concurrence.

In the House:

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

Mr. ZIRKILTON: Mr. Speaker, Ladies and Gentlemen of the House: I move that the House recede and concur and I wish to briefly speak to my motion.

The SPEAKER: The gentleman from Mount Desert, Mr. Zirkilton, moves that the House recede and concur.

The gentleman may proceed.

Mr. ZIRKILTON: Mr. Speaker, Ladies and Gentlemen of the House: L. D. 1070 was submitted because there was a problem that restaurants and other people as the licensee, as the various different wholesalers were experiencing. The Bureau of Alcoholic Beverages has addressed this problem. I had a memorandum from Mr. Marcotte and I would like to briefly read a statement from this letter.

"The Bureau is willing to grant permission as of now to a retail licensee to purchase wine from other wholesalers when the licensee can demonstrate that he or she has had difficulty with the wholesaler assigned the exclusive territory."

I would like to interpret how I would define "difficulty" at this time. I would hope that that would include a price discrepancy between the various different wholesalers, lack of service, difference in selection between the wholesalers or other conflicts that might exist, and I hope this will address the problem we have been having.

Thereupon, the House voted to recede and concur.

Petitions, Bills and Resolves Requiring Reference

The following Bills were received and referred to the following Committees:

Education

Bill "An Act to Clarify the Authority and Responsibility of School Boards in Disciplining Students" (H. P. 1184) (Presented by Representative Rolde of York)

(Ordered Printed)

Sent up for concurrence.

Indefinitely Postponed

Bill "An Act to Permit Appointment of a Register of Deeds and Provide Civil Service Standards for the Register of Deeds and the County Treasurer" (H. P. 1185) (Presented by Representative Vose of Eastport)

Committee on Local and County Government was suggested.

The SPEAKER: The Chair recognizes the gentleman from Eastport, Mr. Vose.

Mr. VOSE: Mr. Speaker, Ladies and Gentle-

men of the House: I move the indefinite postponement of L. D. 1185.

This is my bill and I found out that there is a similar bill already in committee and there is no need to proceed further on this one, they can address the issue now.

Thereupon, the Bill was indefinitely postponed.

Public Utilities

Bill "An Act to Establish Time Limits for the Eminent Domain Procedures for Sanitary and Sewer Districts" (H. P. 1186) (Presented by Representative Vose of Eastport) (Cosponsors: Representatives Roderick of Oxford, Lewis of Auburn and Senator Baldacci of Penobscot) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27)

(Ordered Printed)

Sent up for concurrence.

State Government

Bill "An Act Relating to Major Policy-Influencing Positions in Various State Agencies" (H. P. 1187) (Presented by Speaker Martin of Eagle Lake) (Cosponsor: Senator Conley of Cumberland) (Submitted by the Department of Personnel pursuant to Joint Rule 24)

(Ordered Printed)

Sent up for concurrence.

House Reports of Committees Unanimous Ought Not to Pass

Representative McCollister from the Committee on Agriculture on Bill "An Act Concerning the Use of Sludge for Agricultural Purposes" (H. P. 1007) (L. D. 1332) reporting "Ought Not to Pass".

Representative Brown from the Committee on Energy and Natural Resources on RESOLVE, Authorizing the State to Convey its Interest in the Public Lots in the Town of Great Pond to the Inhabitants of Great Pond. (H. P. 994) (L. D. 1304)

Were placed in the Legislative Files without further action pursuant to Joint Rule 15 and sent up for concurrence.

Unanimous Leave to Withdraw

Representative Livesay from the Committee on Judiciary on Bill "An Act to Improve Motor Vehicle Laws Regarding Pedestrian Safety" (H. P. 784) (L. D. 1013) reporting "Leave to Withdraw".

Representative Soule from the Committee on Judiciary on Bill "An Act to Establish the Maine Natural Death Act" (H. P. 924) (L. D. 1203) reporting "Leave to Withdraw".

Representative Lebowitz from the Committee on State Government on Bill "An Act to Establish Standards of Conduct for Employees of the Maine Guarantee Authority" (H. P. 1004) (L. D. 1312) reporting "Leave to Withdraw".

Representative Hobbins from the Committee on Judiciary on Bill "An Act Relating to Motor Vehicle Violations within the Penobscot Nation" (H. P. 221) (L. D. 269) reporting "Leave to Withdraw".

Representative Hobbins from the Committee on Judiciary on Bill "An Act Relating to Motor Vehicle Violations" (H. P. 222) (L. D. 270) reporting "Leave to Withdraw".

Were placed in the Legislative Files without further action pursuant to Joint Rule 15 and sent up for concurrence.

Ought to Pass in New Draft

Representative Beaulieu from the Committee on Labor on Bill "An Act Relating to Attendants for Power Boilers" (H. P. 404) (L. D. 487) reporting "Ought to Pass" in New Draft (H. P. 1180) (L. D. 1572).

Report was read and accepted. The New Draft given its first reading and assigned for second reading later in the day.

Representative McCollister from the Committee on Agriculture on Bill "An Act Concerning Solids in Milk" (H. P. 694) (L. D. 883) reporting "Ought to Pass" in New Draft (H. P. 1181) (L. D. 1573).

Report was read and accepted, the New Draft given its first reading and assigned for second reading later in the day.

Representative Strout from the Committee on Transportation on Bill "An Act to Suspend Operation Authority on Motor Vehicles which Fail to Comply with the Gasoline Reporting Law" (H. P. 886) (L. D. 1140) reporting "Ought to Pass" in New Draft (Emergency) (H. P. 1183) (L. D. 1576).

Report was read and accepted, the New Draft given its first reading and assigned for second reading later in the day.

Consent Calendar First Day

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

(H. P. 1083) (L. D. 1429) Bill "An Act to Establish a State Standard for Funding Certain Workers' Compensation Commission"—Committee on Labor reporting "Ought to Pass" as amended by Committee Amendment "A" (H. 205).

(H. P. 850) (L. D. 1100) Bill "An Act Concerning Right-of-way for Emergency Vehicles"—Committee on Transportation reporting "Ought to Pass" as amended by Committee Amendment "A" (H. 206).

(H. P. 1115) (L. D. 1473) Bill "An Act Repealing the Law on the Effect of Bail Following Conviction and Commitment"—Committee on Judiciary reporting "Ought to Pass".

(H. P. 750) (L. D. 962) Bill "An Act to Authorize the Maine Turnpike Authority to Receive Application and Approve Descriptive and Directional Signs on the Maine Turnpike"—Committee on Transportation reporting "Ought to Pass".

There being no objections, these items were ordered to appear on the Consent Calendar, Second Day, later in the day.

Consent Calendar Second Day

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

(H. P. 1097) (L. D. 1445) Bill "An Act to Allow Retailers to Sell Prison Made Items" (Emergency).

(H. P. 996) (L. D. 1329) Bill "An Act Relating to the Licensing of Dental Radiographers" (C. "A" H-200).

(H. P. 932) (L. D. 1177) Bill "An Act to Amend the Protection and Advocacy Agency for the Developmentally Disabled in Maine Statutes" (C. "A" H-203).

(H. P. 864) (L. D. 1113) Bill "An Act to Amend Certain Provisions of the Laws Defining Sex Offenses" (C. "A" H-204).

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

Passed to Be Engrossed

Bill "An Act to Amend the Law Governing Traveling Shows" (H. P. 1179) (L. D. 1569)

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

Amended Bill Tabled and Assigned

Bill "An Act Relating to Agricultural Contracts" (S. P. 272) (L. D. 835) (C. "A" S-81)

Was reported by the Committee on Bills in the Second Reading and read the second time. On motion of Mr. Michael of Auburn, tabled

pending passage to be engrossed and tomorrow assigned.

Bill "An Act Relating to Drinking in Public" (S. P. 420) (L. D. 1273) (H. "A" H-201 to C. "A" S-86)

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

Passed to Be Enacted Emergency Measure

An Act to Make Allocations from the Maine Nuclear Emergency Planning Fund for the Fiscal Years Ending June 30, 1984, and June 30, 1985 (H. P. 478) (L. D. 575)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure and a two-thirds vote of all the members elected to the House being necessary, a total was taken. 119 voted in favor of same and none against, and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

An Act to Allocate Moneys for the Administrative Expenses of the State Lottery Commission for the Fiscal Years Ending June 30, 1984, and June 30, 1985 (H. P. 515) (L. D. 640)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure and a two-thirds vote of all the members elected to the House being necessary, a total was taken. 118 voted in favor of same and none against, and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

An Act to Regulate Interstate Bank Ownership (H. P. 768) (L. D. 998) (C. "A" H-175)

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

The SPEAKER: The Chair recognizes the gentleman from Wilton, Mr. Armstrong.

Mr. ARMSTRONG: Mr. Speaker, I would like to pose a question through the Chair. Could either the sponsor of the bill or the committee just briefly say what this does and how it changes the current law?

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

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

Mr. BRANNIGAN: Mr. Speaker, Men and Women of the House: This bill puts into law certain powers given to the Superintendent of Banking dealing with interstate banking. As interstate banking becomes a reality under the law that we have had since 1975, it now becomes a reality because of laws passed in other states which lock into our reciprocity, the Superintendent of Banking needs certain discretionary powers to decide whether or not capitalization is available, whether these banks are strong enough and so forth. So with several laws on the books, this strengthens his power, strengthens his hand as these new mergers are happening.

The SPEAKER: The Chair recognizes the gentleman from Monmouth, Mr. Davis.

Mr. DAVIS: Mr. Speaker, Ladies and Gentlemen of the House: I have read the bill and I would like to refer to it as a David and Goliath Bill, because our Superintendent of Insurance and his department or bureau will be attempting to deal with the legal staff of some of the larger money centers in the United States. I am going to vote for this bill because it does give our state at least a little clout, and I admire the superintendent and the staff for their structuring of this bill but to think that our people can match wits with a full-time legal staff of these large banks is, I think, fallacy.

As I said, I am going to vote for it, but I think that it is a rough situation wherein—a good ex-

ample, those of us who have been listening out in the hall here recently when we discussed credit cards, they said, all right, if you don't let us have a fee for these credit cards, we will just move the operation out of state, and this is what they can do.

The SPEAKER: The pending question is on passage to be enacted. This being an emergency measure, it requires a two-thirds vote of all the members elected to the House. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken. 124 having voted in the affirmative and none in the negative, the Bill was passed to be enacted.

Signed by the Speaker and sent to the Senate.

An Act to Improve the Price and Availability of Radio Paging Services (H. P. 894) (L. D. 1159) (C. "A" H-179)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure and a two-thirds vote of all the members elected to the House being necessary, a total was taken. 122 voted in favor of same and 2 against, and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

Emergency Measure Tabled and Assigned

An Act to Clarify Certain Provisions of the Marine Resources Law (H. P. 987) (L. D. 1292) (S. "A" S-79 to C. "A" H-157)

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

On motion of Mr. Crowley of Stockton Springs, tabled pending passage to be enacted and tomorrow assigned.

Passed to Be Enacted

An Act to Promote Work-site High Blood Pressure Programs for Maine Workers (S. P. 284) (L. D. 872) (C. "A" S-78)

Was 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.

Enactor Tabled and Assigned

An Act to Establish New Selection Procedures for the Maine Indian Tribal-State Commission Chairmanship (S. P. 342) (L. D. 1016) (C. "A" S-76)

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

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

An Act for the Town of Bethel to Acquire the Assets and Liabilities of the Bethel Water District and for the Dissolution of the Bethel Water District (S. P. 410) (L. D. 1258)

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

An Act to Promote the Development of Human Resources in Rural Areas of Maine (S. P. 441) (L. D. 1348) (C. "A" S-38)

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

The SPEAKER: The Chair recognizes the gentleman from Wilton, Mr. Armstrong.

Mr. ARMSTRONG: Mr. Speaker, I would like to pose a question through the Chair to either of the cosponsors of this bill or anyone that can tell us what it is about. I did read the intent of the bill, and if any of you want to refer to the bill, read the statement of intent, if you can tell me what it is supposed to do to benefit the people of the rural areas of the state, the expenditure of, I guess, roughly \$20,000, I would

be happy to vote for it. I would like a little explanation.

The SPEAKER: The gentleman from Wilton, Mr. Armstrong, has posed a question through the Chair to anyone who may care to answer. The Chair recognizes the gentleman from Auburn, Mr. Michael.

Mr. MICHAEL: Mr. Speaker and Members of the House: This bill is designed to increase the awareness of Maine's agricultural presence in the state, and we thought that modest appropriation would serve well. It was a very popular bill and had a wide range of support. No one was against it and a lot of people were very excited over it.

It requires the Department of Education to create a curriculum on agricultural views so that the students do develop an awareness of that whole area.

Whereupon, Mr. Armstrong of Wilton requested a vote.

The SPEAKER: The pending question is on passage to be enacted. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

77 having voted in the affirmative and 30 having voted in the negative, the bill was passed to be enacted.

Signed by the Speaker and sent to the Senate.

An Act to Amend the Laws Governing the Administration of Medications in Group Home Intermediate Care Facilities for the Mentally Retarded (S. P. 466) (L. D. 1420)

Was 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.

Later Today Assigned

An Act to Clarify, Simplify and Improve Certain Sections of the Labor Laws of Maine (S. P. 497) (L. D. 1503) (H. "A" H-185)

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

The SPEAKER: The Chair recognizes the gentleman from Wilton, Mr. Armstrong.

Mr. ARMSTRONG: Mr. Speaker, I would like to pose a question through the Chair to the sponsors of or the committee that heard this bill. I have read the Statement of Fact on the bill, but either I am dense this morning or these statements of fact just don't seem to convince me of the necessity of the bill or really tell me what it does, so I would appreciate a little information.

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

On motion of Mr. MacEachern of Lincoln, tabled pending passage to be enacted and later today assigned.

An Act Concerning Transient Sellers who Offer Merchandise as Free of Charge (S. P. 508) (L. D. 1522)

Was 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.

Indefinitely Postponed

An Act to Require Swimming Pools to be Enclosed (S. P. 511) (L. D. 1528)

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

The SPEAKER: The Chair recognizes the gentlewoman from Cape Elizabeth, Mrs. Masterton.

Mrs. MASTERTON: Mr. Speaker, Ladies and Gentlemen of the House: This bill has been sailing along merrily, and I think at this point I would like to capsize it and hope it will sink to the bottom of the deep blue sea, or the swimming pool.

If you take a look at L.D. 1528, it is a new draft and it says: "A Fence: Enclosure of

swimming pools requires a fence shall be erected and maintained around every swimming pool except the portable, above ground swimming pools with sidewalls of at least 24 inches in height are exempted. A dwelling house or accessory building may be used as part of this enclosure. All gates or doors opening through this enclosure shall be capable of being securely fastened at all times when not in actual use.

A fence is defined as a good quality fence or wall, not less than 4 feet in height above ground surface and of a character to exclude children. The fence shall be so constructed as not to have openings, holes or gaps larger than four square inches, except for fences constructed of vertical posts or louvers, in which case the openings shall not be greater than four inches in width with no horizontal members between the top and bottom plate. Doors and gates are excluded from the minimum dimension requirements.

There is a penalty here. Any person who does not comply with this chapter within 30 days after receiving written notice that he is in violation of its provisions commits a civil violation for which a forfeiture of not more than \$500 may be adjudged. Each day a violation continues shall be a separate violation.

Then there is a section on municipal ordinances—nothing in this chapter may be construed as a preemption by the state. Municipalities may adopt and enforce swimming pool enclosure ordinances that are as stringent or more stringent than this chapter.

Ladies and gentlemen of the House, I maintain that this is a typical example of a state mandate being laid on municipalities to enforce.

There is perhaps a need for fences around swimming pools in thickly settled areas where there are children wandering around. In most situations, I am sure that you will find that there are local ordinances. We have one in our town, I know of one in Portland, you check on your community, you probably have one if you live in a city or a suburban area.

You are asking owners to go to a considerable expense to put a fence around that pool, and notice that existing pools are not grandfathered and perhaps someone has built a lovely landscaping scheme around their swimming pool and now they have to put in an ugly chainlink fence or an expensive stockade fence around that pool. I ask you, if we are going to require chainlink fences around swimming pools out in the country, perhaps, where there is no one around, on those lonely rural roads, are we going to require that farmers fence in their farm pond or their manure pond? Are we going to fence in streams, lakes, the ocean? You can see who far this kind of thinking can carry us, so I urge you today to vote with me and, Mr. Speaker, I move indefinite postponement of this bill.

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

Mr. DILLENBACK: Mr. Speaker, Ladies and Gentlemen of the House: This swimming pool bill came to us in the Legal Affairs Committee. We analyzed it very carefully, looked it over and we find that most communities have a law but some of the suburban communities perhaps farther out in the country do not have a law.

The deaths every year from toddlers falling into pools, you will read it in the papers, you will know about it, and if you don't vote for this, then you can take some of the responsibility next year. But as far as having this around what we call fire ponds or manure ponds or whatever you want to call them, a swimming pool is itemized here as a body of water enclosed in an artificial receptacle or other container, and I don't think your farm ponds are in a container or an artificial receptacle. It doesn't include brooks, it doesn't include lakes, it doesn't include anything such as this. As far

as putting a chainlink fence up, that isn't necessary either. A four inch square hole can be done by any method or manner that you wish.

We just thought it was a reasonable law. We feel that people should put a fence around their pools, we think it is there only to protect the toddlers. The little pool you buy in Sears & Roebuck or some other store which is two feet high does not require a fence. The little pool that has two feet of water in it does not require a fence, so I just think it is a reasonable law and hope you will vote for it.

The SPEAKER: The Chair recognizes the gentleman from Fryeburg, Mr. Kiesman.

Mr. KIESMAN: Mr. Speaker, Ladies and Gentlemen of the House: I regret that I must disagree with Mr. Dillenback. I am concerned about the definition of a swimming pool because I think it does apply to some farm ponds. It says: a swimming pool means an outdoor body of water enclosed in an artificial receptacle or other container. It is not unusual for a farm pond to be dug in gravel or sand base and lined with clay or to be lined with hypolon, which is a type of plastic material that is impervious and has a great life when it is buried. It is not unusual for farm ponds to be lined with that type of material and I think this does apply in the case of other containers. It says: "Whether used or intended to be used for swimming." Well, I think most farm ponds get swimmers in them, so I think it does apply to a farm pond and I am going to vote to indefinitely postpone this. I think it is too broad and reaches far beyond what was intended. It is regrettable if some child drowns, I would feel just as strongly about it as anyone else but I can also see the way this would be used in a suit against somebody that owned a body of water that might have some kind of a liner put into it of any type, and I wouldn't want that to happen.

The SPEAKER: The Chair recognizes the gentleman from Skowhegan, Mr. Walker.

Mr. WALKER: Mr. Speaker, Ladies and Gentlemen of the House: I am against this for a very simple reason. This Spring, this same bill was presented to many towns as an ordinance proposal. I know my town, for one, defeated this overwhelmingly and I would suggest that before anyone votes for this passage of this bill, he or she should check to see what his or her folks back home want him to do.

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

Mr. DAY: Mr. Speaker, Ladies and Gentlemen of the House: I did some pricing of fences over the weekend and a chainlink fence for 20 by 34 with an area around it so you can walk around it is around \$1500; a good redwood treated stockade fence is around \$2500, and I estimated what a do-it-yourself fence would be with one inch turkey wire, posts, and so forth, you could probably buy all those materials for around \$250.

The SPEAKER: The Chair recognizes the gentleman from Brewer, Mr. Cox.

Mr. COX: Mr. Speaker, Ladies and Gentlemen of the House: I must confess that I am rather upset this morning at implications that for aesthetics of someone's yard is more important than the life of a toddler and that the possibility that it might cost someone money to put a fence around this attractive danger is a little too expensive, and that some towns have voted against this ordinance, so since these towns don't seem to care whether children drown in the swimming pools or not, we should not pass it.

As to whether it includes farm ponds, let me say for the record that it only includes swimming pools, things that have a receptacle or an artificial lining that provides for straight walls that one cannot get hold of to climb out of. The farm pond that has been treated with clay to make it impermeable is still not going to have a straight wall. If it has a straight wall, it won't last long, it will cave in, so it does not include

farm ponds.

As far as responsibility, I see this as much protection for the owner of the swimming pool as it does for the child, because whether you have a law requiring you to have a fence around your swimming pool or not, a swimming pool unfenced is an attractive nuisance and if a child falls into your unfenced swimming pool, you are, I believe, going to be just as liable for a law suit as if this law required you have the fence.

One of the towns that I represent has no ordinance. I was visiting a friend of mine briefly Friday afternoon, he has a swimming pool there with no fence. I told him we were passing a law that is probably going to cost him money. He said, the fence is already on order, it probably will be erected before you get the law passed. In any event, he said, the fence is for my own protection as well as the protection of the children and I have absolutely no objection to your law.

I hope you do not vote for the indefinite postponement of this bill which conceivably and very likely will save the lives of a number of toddlers.

The SPEAKER: The Chair recognizes the gentleman from Winslow, Mr. Carter.

Mr. CARTER: Mr. Speaker, Ladies and Gentlemen of the House: This bill, to me, is another form of mandation, and I think if we continue at the pace we are going, the 111th Legislature will be known as the Mandating Legislature. If we are going to mandate, I would suggest that we try to be consistent.

This bill is telling us that a 24 inch pool is a safety factor and does not require a fence. I submit to you that any toddler can drown in 24 inches of water just as easily as he can in a foot of water or four feet of water. If you are going to mandate, let's mandate everybody, let's not leave anybody out.

Furthermore, while we are at it, go ahead and repeal the home rule law because we seem to be ignoring it.

Mr. McHenry of Madawaska requested a roll call.

The SPEAKER: For the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. All 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 having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending question before the House is on the motion of the gentlewoman from Cape Elizabeth, Mrs. Masterton, that this Bill be indefinitely postponed in non-concurrence. Those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA—Allen, Anderson, Armstrong, Baker, Bell, Benoit, Bonney, Bost, Bott, Brodeur, Brown, D.N.; Brown, K.L.; Cahill, Callahan, Carrier, Carroll, G.A.; Carter, Cashman, Chonko, Conary, Connors, Crouse, Crowley, Curtis, Daggett, Davis, Day, Dexter, Diamond, Drinkwater, Dudley, Erwin, Gauvreau, Greenlaw, Gwadosky, Hall, Hayden, Higgins, L.M.; Hobbins, Holloway, Ingraham, Jackson, Jacques, Joseph, Joyce, Kelly, Kiesman, Lebowitz, Lehoux, Lewis, Lisnik, Livesay, Locke, MacBride, MacEachern, Macomber, Martin, H.C.; Masterton, Masterton, Maybury, McCollister, McGowan, Melendy, Michael, Michaud, Mitchell, J.; Moholland, Murphy, E.M.; Murphy, T.W.; Norton, Paradis, E.J.; Parent, Paul, Perkins, Pines, Pouliot, Racine, Reeves, J.W.; Reeves, P.; Richard, Ridley, Roberts, Roderick, Rolde, Salsbury, Sherburne, Small, Smith, C.W.; Soucy, Soule, Sproul, Stevens, Stevenson, Strout, Tammaro, Telow, Theriault, Walker, Webster, Wentworth, Weymouth, Zirnkilton.

NAY—Ainsworth, Andrews, Beaulieu, Brannigan, Carroll, D.P.; Clark, Cooper, Cote, Cox, Dillenback, Foster, Handy, Hickey, Kane,

Ketover, LaPlante, Manning, Martin, A.C.; Matthews, K.L.; Matthews, Z.E.; McHenry, McSweeney, Mitchell, E.H.; Murray, Nadeau, Nelson, Paradis, P.E.; Perry, Scarpino, Smith, C.B.; Stover, Swazey, Thompson, Tuttle.

ABSENT—Brown, A.K.; Connolly, Higgins, H.C.; Jalbert, Kelleher, Kilcoyne, Mahany, McPherson, Randall, Rotondi, Seavey, Vose, Willey, The Speaker.

Yes, 102; No, 34; Absent, 14; Vacant, 1.

The SPEAKER: One hundred and two having voted in the affirmative and thirty-four in the negative, with fourteen being absent and one vacant, the motion does prevail. Sent up for concurrence.

An Act Concerning Smoking in Nursing Homes (S. P. 517) (L. D. 1538)

An Act to Authorize Group Self-insurers to Add Participating Employers (H. P. 120) (L. D. 128) (C. "A" H-176)

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.

Tabled and Assigned

An Act Regulating the Activities of Political Action Committees (H. P. 306) (L. D. 365) (C. "A" H-174)

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

Thereupon, on motion of Mr. Diamond of Bangor, tabled pending passage to be enacted and tomorrow assigned.

An Act to Increase the Damages Jurisdiction of the Maine District Court to \$30,000 (H. P. 400) (L. D. 483)

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

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

Mr. CARRIER: Mr. Speaker, Members of the House: When this bill was in committee, it must have been one of my weaker resistance days because I signed the "Ought to Pass" Report. But I have had many talks about this because of what will eventually happen; you will probably be told differently though.

This bill will actually change the amount in dollars of the cases that can be heard in district courts. It does change it from \$20,000 to \$30,000. My concern about this is that I believe from the experience we have had and the demands that we have had for new judges, and because of the overload in the district court at the present time, we will have more of an overload by changing the actual amount to be allowed at the district court instead of the superior court.

Also, the Chief Judge from Lewiston indicated that the case load at the superior court is very low and fair enough. As a matter of fact, it is so fair that the court at Brunswick or Bath, they are only using the superior court over there six months out of the year, so the need doesn't seem to be there, so they just want to transfer some of the work from the superior court to the district courts, which are apparently already overloaded. We have had a demand for new judges which apparently have voted down some of the demands and I just want to make you aware that if this bill passes, it will demand new judges, even though some of the judges say it will not. I cannot see any different solution. They are overloaded already at the \$20,000 limit; this \$30,000 limit can only bring more cases and ask for more judges.

I am against this bill and I ask for a roll call.

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

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

ordered.

The SPEAKER: The pending question is on passage to be enacted. All those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA—Ainsworth, Anderson, Andrews, Armstrong, Baker, Beaulieu, Bell, Benoit, Bott, Brannigan, Brodeur, Brown, K.L.; Cahill, Carroll, D.P.; Carroll, G.A.; Carter, Cashman, Chonko, Cooper, Cote, Crouse, Curtis, Daggett, Davis, Diamond, Drinkwater, Erwin, Foster, Gauvreau, Greenlaw, Gwadosky, Hall, Handy, Hayden, Hickey, Higgins, L.M.; Hobbins, Holloway, Ingraham, Jacques, Joseph, Joyce, Kane, Kelleher, Kelly, Ketover, Kiesman, LaPlante, Lehoux, Lisnik, Livesay, Locke, MacBride, MacEachern, Macomber, Manning, Masterton, Matthews, K.L.; Matthews, Z.E.; Maybury, McGowan, Melendy, Mitchell, E.H.; Mitchell, J.; Moholland, Murphy, E.M.; Murphy, T.W.; Murray, Nadeau, Nelson, Norton, Paradis, E.J.; Paradis, P.E.; Paul, Perkins, Perry, Pines, Pouliot, Racine, Reeves, P.; Richard, Roberts, Roderick, Rolde, Salsbury, Small, Smith, C.B.; Soucy, Soule, Sproul, Stevens, Stover, Strout, Swazey, Tammaro, Telow, Theriault, Thompson, Tuttle, Vose, Walker, Weymouth, Zirnkilton.

NAY—Allen, Bonney, Brown, D.N.; Callahan, Carrier, Clark, Conary, Connors, Crowley, Day, Dexter, Dillenback, Dudley, Jackson, Lebowitz, Lewis, Martin, A.C.; Martin, H.C.; Masterman, McCollister, McHenry, Michael, Michaud, Parent, Reeves, J.W.; Ridley, Scarpino, Sherburne, Smith, C.W.; Stevenson, Webster, Wentworth.

ABSENT—Bost, Brown, A.K.; Connolly, Cox, Higgins, H.C.; Jalbert, Kilcoyne, Mahany, McPherson, McSweeney, Randall, Rotondi, Seavey, Willey, The Speaker.

Yes, 103; No, 32; Absent, 15; Vacant, 1.

The SPEAKER: One hundred three having voted in the affirmative and thirty-two in the negative, with fifteen being absent and one vacant, the Bill is passed to be enacted.

Signed by the Speaker and sent to the Senate.

An Act to Clarify the Maine Motor Vehicle Habitual Offender Statute (H. P. 577) (L. D. 725) (C. "A" H-172)

Was 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.

Later Today Assigned

An Act to amend the Reporting Requirements in Cases of Death Due to Abuse or Neglect (H. P. 715) (L. D. 906) (C. "A" H-173)

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

On motion of Mr. Diamond of Bangor, tabled pending passage to be enacted and later today assigned.

An Act to Create a Revolving Fund for Publications of the Department of Marine Resources (H. P. 778) (L. D. 1027)

An Act to Strengthen the Penalties for Misuse of Narcotics by Health Professionals (H. P. 858) (L. D. 1108)

An Act to Allow Domestic Mutual Assessment Companies to Appoint Agents (H. P. 899) (L. D. 1178) (C. "A" H-180)

An Act to Authorize Coverage of Medical Supplies Under the Low Cost Drugs for the Elderly Program (H. P. 997) (L. D. 1330) (C. "A" H-178)

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

An Act to Revise the Composition of the Marine Resources Advisory Council (H. P. 1038) (L. D. 1363) (C. "A" H-182)

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

Mr. Scarpino of St. George moved that the rules be suspended for the purpose of reconsideration.

The SPEAKER: The Chair hears objection and the Chair will order a vote. This requires a two-thirds vote of all those present and voting. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

105 having voted in the affirmative and 13 having voted in the negative, the rules were suspended.

On motion of Mr. Scarpino of St. George, the House reconsidered its action whereby the Bill was passed to be engrossed.

On motion of the same gentleman, under suspension of the rules the House reconsidered its action whereby Committee Amendment "A" was adopted.

The same gentleman offered House Amendment "A" (H-199) to Committee Amendment "A" (H-162) and moved its adoption.

House Amendment "A" to Committee Amendment "A" was read by the Clerk.

The SPEAKER: The Chair recognizes the same gentleman.

Mr. SCARPINO: Mr. Speaker, Ladies and Gentlemen of the House: This amendment is a very simple amendment. It would merely change the wording from "selected persons who represent recreational fishing interests" to "a public member."

Quite simply, in speaking with the commissioner, they had a tremendous amount of difficulty in defining what a recreational fisherman was. Was the recreational fisherman the man that operated the party boat or was it the individual who fished upon the party boat? Seeing as the Marine Advisory Council deals strictly with salt water fisheries, is it an individual that solely recreational fishes in the salt water, is it one that fishes in combination with fresh water and salt water, or does it include one that solely fishes in the salt water? We come to these definitional problems and because of the fact that recreational use of the salt water is the privilege of every citizen in this state and therefore that individual would, in effect, be representing the interest of the citizens of the state, it was recommended that this wording be changed to a public member.

To be quite frank, while I opposed the original bill with the wording of "a recreational fisherman," I am in full support of the bill with the change in wording to "public member" and would urge your support of this amendment.

The SPEAKER: The Chair recognizes the gentleman from Eastport, Mr. Vose.

Mr. VOSE: Mr. Speaker, I move the indefinite postponement of this amendment.

The SPEAKER: The gentleman from Eastport, Mr. Vose, moves the indefinite postponement of House Amendment "A" to Committee Amendment "A".

The gentleman may proceed.

Mr. VOSE: Mr. Speaker, Ladies and Gentlemen of the House: This amendment would destroy the bill itself. The bill was put in by Representative Carter and myself primarily for the purpose of allowing somebody that is fishing for recreational purposes, for tourists, for people who are buying boats, etc., to have some representation on the advisory board. I don't imagine that this one person is going to be an earth shaker on the board. There are nine members on the board, this would make it eight members that are concerned with commercial and one member that is concerned with the recreational use of our sea.

I think this is a reasonable bill. I don't see anything wrong with allowing somebody to represent the people who are using our waters, our ocean, for recreational purposes in the State of Maine.

I hope that you will defeat this amendment.

The SPEAKER: The Chair recognizes the gentleman from Winslow, Mr. Carter.

Mr. CARTER: Mr. Speaker, Ladies and Gen-

tlemen of the House: I would also hope that you would vote to indefinitely postpone this amendment for one simple reason—what we are dealing with here is a public board to begin with, and the public board is composed of nine commercial fishermen. If you change this to read "a public member," what are you doing? You are doing nothing more than just making a sham out of the original bill and allowing again nine commercial fishermen.

I would hope that you would support the motion to indefinitely postpone.

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

Mr. ZIRKILTON: Mr. Speaker and Members of the House: I would urge your support of this amendment, and my reasoning is that I feel a public member would quite adequately represent both sides, both the recreational fishermen and also the commercial fishermen, somebody who is going to look at this objectively and evaluate what is before them and hopefully what is best as opposed to putting one member on who is obviously going to do nothing more than represent the recreational side and going to be voted down.

To me, the person that represents nothing but the recreational fishing is going to accomplish absolutely nothing. Hopefully, the public member will be able to decide what is best and what is most sensible.

The SPEAKER: The Chair will order a vote. The pending question is on the motion of the gentleman from Eastport, Mr. Vose, that House Amendment "A" to Committee Amendment "A" be indefinitely postponed. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

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

Thereupon, Committee Amendment "A" was adopted.

The Bill was passed to be engrossed as amended.

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

An Act to Provide that an Absentee Ballot for a Municipal Election may be Issued Pursuant to an Application for an Absentee Ballot for a State Election (H. P. 1157) (L. D. 1527)

Was 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.

Later Today Assigned

An Act to Amend the Mandatory Zoning and Subdivision Control (H. P. 1160) (L. D. 1531)

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

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

An Act to Clarify Legislative Intent Concerning Funding of the Maine State Retirement System (H. P. 1155) (L. D. 1525)

Was 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.

Tabled and Assigned

An Act to Maximize the Availability of Certain Social Services by Providing for Income from Fees and Remove References to Federal Requirements which no Longer Exist (H. P. 1161) (L. D. 1533)

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

On motion of Mr. Carter of Winslow, tabled pending passage to be enacted and tomorrow assigned.

Tabled and Assigned

RESOLVE, Authorizing and Directing the

Commissioner of Agriculture, Food and Rural Resources to Promote Regional and International Cooperation in the Development of Agricultural Programs Designed to Encourage Greater Food Production, Marketing and Food Self-sufficiency Among the States of New England and Quebec and the Maritimes (S. P. 324) (L. D. 969) (C. "A" S-82)

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

On motion of Mr. Michael of Auburn, tabled pending final passage and tomorrow assigned.

Finally Passed

RESOLVE, to Authorize the Commissioners of Cumberland County to Reimburse the Town of Harpswell \$9,781.22 Unexpended Retirement Funds (S. P. 464) (L. D. 1413)

RESOLVE, Appropriating \$15,000 for Maine Poison Control Center (H. P. 376) (L. D. 459)

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

Orders of the Day

The Chair laid before the House the first item of Unfinished Business:

An Act to Amend Maine's Wrongful Death Law (H. P. 398) (L. D. 481) (C. "A" H-141)

Tabled—May 6, 1983 (Till Later Today) by Representative Mitchell of Vassalboro.

Pending—Further Consideration.

Ms. Benoit of South Portland moved that the House adhere.

On motion of Mr. Soule of Westport, tabled pending the motion of Ms. Benoit of South Portland to adhere and later today assigned.

The Chair laid before the House the second item of Unfinished Business:

Bill "An Act to Require the Wearing of Protective Headgear by All Motorcycle, Motor Driven Cycle and Moped Riders" (H. P. 836) (L. D. 1072)

— In House, Minority "Ought Not to Pass" Report of the Committee on Transportation read and accepted on May 2, 1983.

— In Senate, Majority "Ought to Pass" Report of the Committee on Transportation read and accepted and the Bill passed to be engrossed in non-concurrence.

Tabled—May 6, 1983 (Till Later Today) by Representative Mitchell of Vassalboro.

Pending—Further Consideration.

The SPEAKER: The Chair recognizes the gentleman from Limerick, Mr. Carroll.

Mr. CARROLL: Mr. Speaker, Ladies and Gentlemen of the House: I now move that we recede and concur.

The SPEAKER: The gentleman from Limerick, Mr. Carroll, moves that the House recede and concur.

The Chair recognizes the gentleman from Corinth, Mr. Strout.

Mr. STROUT: Mr. Speaker, I would ask for a division.

The SPEAKER: The Chair recognizes the gentleman from Belfast, Mr. Drinkwater.

Mr. DRINKWATER: Mr. Speaker, Ladies and Gentlemen of the House: On March 22, 1983, the Highway Safety Committee met at the Policy Academy in Waterville and all those present voted to support L.D. 1072, the so-called helmet law.

The SPEAKER: The Chair recognizes the gentleman from St. George, Mr. Scarpino.

Mr. SCARPINO: Mr. Speaker, Ladies and Gentlemen of the House: I would just like to address a handout that was passed out this morning by Representative Nelson from Portland, and my assumption is that it was intended to indicate how the use of helmets does, indeed, protect individuals. Well, not having my calculator with me, I couldn't do a real statistical analysis, but just in a quick breakdown of what I found from this is that of the accidents presented, three happened between the hours of four thirty in the morning and

four thirty in the afternoon and the remainder happened between four thirty in the afternoon and four thirty at night. A total of approximately 91 percent of the accidents happened between four thirty in the afternoon and four thirty in the night, so perhaps if our true intent is to protect the individuals riding motorcycles, we should modify this legislation to not allowing them to ride a motorcycle between four thirty in the afternoon and four thirty at night. It would be a much more effective method.

In going a little further with it, I found that 60 percent of the accidents, for a total of 18 of the fatal accidents, happened to riders who were under 23 years of age. Going a little further, 25 of the drivers were under 30 years of age, for a total of 83 percent of the riders who were under 30 years of age. Once again, perhaps we should ban the riding of motorcycles by people under 30 years of age in order to protect them. It would be much more effective than the helmets.

Secondly, there is a previous handout that was put out by Representative Carroll that gives a pie graph showing the breakdown on expenses for accidents of motorcycles and relating it to the cost of hospital bills. While pie graphs are a very real part of statistical analysis, they are only a very small part and when taken out of context are just like words being taken out of context, it can be extremely misleading.

For example, this pie graph, just a quick look at it, could deal with anywhere from three to an infinite number of individuals. We have got no sample size. It doesn't deal with the full season; it deals from January to June in 1977 instead of a full annual riding season. It deals with an area that is not really comparable with the area that we live in. It also gives no indication of how many of those bills were caused by the wearing or non-wearing of helmets. It doesn't give you a breakdown of how many injuries and medical costs incurred were due to injuries that had absolutely nothing to do with the wearing of a helmet. I, myself, am the perfect example. I was in a motorcycle accident about 20 years ago and spent six days short of a year in the hospital. Needless to say, my medical expenses were rather high. I also wasn't wearing a helmet; I also had no injuries to my head. My medical expenses were totally due to internal and extremity injuries, none of them involved the head. They would be included in this.

Going back to the first handout, once again we get no indication of how many of the fatalities were caused by head injuries and how many of the fatalities were caused by extreme internal injuries. Without this breakdown, it is impossible to really say if the amount of good that would be done by the passing of this law is worth the mandating of another instance of the personal liberties and freedom of the people of this state.

I would urge you not to support this bill, to support the "ought not to pass" report and would request a roll call.

The SPEAKER: The Chair recognizes the gentleman from Sabattus, Miss LaPlante.

Miss LaPLANTE: Mr. Speaker, Men and Women of the House: How long do we want to continue experimenting with motorcyclists' heads and prove over and over again the same thing? The results are in, ladies and gentlemen. How many riders win? How many riders receive less injuries than the unprotected riders?

Mr. Scarpino discussed part of the handout. Please turn that over and look at the other part. The percentage increased in the post-helmet repeal injuries 103 percent; therefore, let us not debate the fact which both organizations are opposed and support of a helmet law is agreed to.

Helmet use is the most effective means of reducing head injury and severity of injury and death. Let us discuss individual rights and arguments opposed to the helmet law.

Thirty court cases in 25 states have upheld the constitutionality of this law and the rights of the states to uphold their responsibility to the citizens, and I quote from a Massachusetts Supreme Court decision upheld by the U.S. Supreme Court—"Although the police power does not extend to overcoming the rights of individuals to risk that involves only himself, the public has a legitimate interest if public resources are directly involved in these risks." The court noted that it is society that picks up the person off the street, delivers him to municipal hospitals and municipal doctors. The public provides him with unemployment compensation and must support the family for its continued sustenance. Ladies and gentlemen, how can this affect only an individual when your constituents pay for that individual?

The SPEAKER: The Chair recognizes the gentleman from Yarmouth, Mr. Ainsworth.

Mr. AINSWORTH: Mr. Speaker, Ladies and Gentlemen of the House: Today I am speaking to you as an owner and an operator of a motorcycle. Do I like wearing a helmet? Quite frankly, the answer is a resounding no. Am I tempted to take a short ride on occasion without a helmet? The answer is yes.

One thing the key spokesman for the motorcycle lobby did say at the Transportation Committee hearing was that riders need education. He was referring, among other things, to the many blind spots that riders find themselves in relation to an operator of an automobile. We here today can take the first step in that educational process by passing the helmet law.

A few days ago, a very dear friend of mine phoned seeking my help in trying to help pass this law. This same person agonized for three months while his son was hospitalized and in a coma due to a motorcycle accident. Yes, his son did live, but the damage done restricts his life and that of his parents.

I am not going to bore you with the grim details. Let it suffice that my heart dictates my words and hopefully will help in dictating your vote here today.

Ladies and gentlemen, when you pick up the morning paper and see that another life has been snuffed out riding a motorcycle, be assured in your vote today that you did all you could to prevent that one more horrible statistic.

The SPEAKER: The Chair recognizes the gentleman from Falmouth, Mr. Bonney.

Mr. BONNEY: Mr. Speaker and Members of the House: Last evening, I had the pleasure of having dinner with a man who has ridden a motorcycle from the time he was 15 and he is presently 55 years of age. I asked his opinion on this bill because he has ridden thousands and thousands of miles in this country and Canada. It was his opinion that you can't legislate brains; therefore, I am against the bill.

The SPEAKER: The Chair recognizes the gentleman from Fryeburg, Mr. Kiesman.

Mr. KIESMAN: Mr. Speaker, Ladies and Gentlemen of the House: I oppose this bill and I oppose the method by which the attempts are being made to pass it. There is such hypocrisy in this House. I used to ride a motorcycle a long time ago, when I was young and foolish, and I didn't wear a helmet either. (Due to mechanical problems, the remainder of Mr. Kiesman's remarks could be not transcribed; however, he spoke against the motion to recede and concur on this Bill).

The SPEAKER: The Chair recognizes the gentleman from Bucksport, Mr. Swazey.

Mr. SWAZEY: Mr. Speaker, Ladies and Gentlemen of the House: This is a do-gooder bill—do everything for everyone from the cradle to the grave.

I was in favor of child restraint seats for children up to four years old and I voted for it. I'm in favor of helmets on adolescents up to 15 years of age when operating or riding a motorcycle, but now we are talking about adults.

I have three sons and a son-in-law who now or in the past owned and operated motorcycles. They all wear helmets and I don't feel as adults I should mandate them as a legislator to wear a helmet as if they were still a child.

This is a systematic attempt to destroy your individual freedom, a freedom which has been fought for every 25 years since our country was declared a free nation.

If the bill passes, it will be the first of many to further take away individual rights. The next will be the mandatory life jackets for canoes, and I say, whether you wish to shoot the rapids with only your shorts on or ride a motorcycle with your hair blowing free, it is one's own business, not this body's. I believe in freedom provided it does not infringe upon the rights of others. In fact, if one has a brain and wishes to keep it, that person will wear a helmet and not have to be mandated by this body.

I hope you vote against the pending motion.

The SPEAKER: The Chair recognizes the gentleman from Sanford, Mr. Tuttle.

Mr. TUTTLE: Mr. Speaker, Ladies and Gentlemen of the House: Motorcycle use has increased dramatically since the 1960's where the growth and use became evident that head injuries have been the leading cause of death in motorcycle accidents and that safety helmets can reduce both the number and the severity of head injuries that are the most common cause of fatalities. By 1975, helmet use was required in 47 states; only four years later, because of changes in the federal law, 27 of those states had repealed their laws; Maine was one of them.

During this period, the number of deaths from motorcycle accidents nationally increased 46 percent, while the number of motorcycles registered increased only one percent. Because of these extraordinary figures, the Congress ordered the Secretary of Transportation to study and report all aspects of the problem in relationship to helmet use by motorcycle operators. The Secretary published his findings in a report to Congress and the following are some of the conclusions:

First of all, in the report it is stated that helmets are effective. Helmets do not cause neck injuries. Voluntary use of helmets is as low as 25 percent. Helmet laws are constitutional. In states where helmet laws have been repealed, there is a 300 percent increase in head injuries and a 400 percent increase in those severities. Unhelmeted riders are two times more likely to incur head injuries and three times more likely to incur a fatal head injury than an operator wearing a helmet. Brain damage—as was brought up in the public hearing by many doctors from around the state—from head injuries results in long and indefinite hospitalization and high medical and social costs.

Frequently, those who are opposed to helmet use state that the helmet use increased neck injuries. This is not true and no evidence supports these statements. Quite the contrary; most alleged neck injuries are manifested by complaints of pain but no visible signs of injury. Only two percent of all injuries to operators are neck injuries.

Also, no evidence supports the claim that helmets interfere with vision and hearing. A full coverage helmet restricts peripheral vision by only three percent, resulting in 177 degree of horizontal field in view. This is far more than the 140 degrees required by licensing agencies.

Because of the nature of the vehicle and the operator's unprotected position on it, there is little that can be done to reduce injury and fatality rates other than to require helmets, which drastically reduces the insurance rates, as was mentioned by the Commissioner of Insurance.

For these reasons, I hope that we can address this issue objectively and pass this bill on, not only for our sakes, but for the lives of the citizens of the State of Maine.

In conclusion, I guess my only question is, how many people have to die? How many figures do we need to obtain before we pass a bill of this nature?

At the public hearing, those individuals who supported this bill were the Maine State Police Association, the Maine State Department of Rehabilitation, the Emergency Medical Physicians of the State, the State Nurses Association, the Maine Emergency Medical Technicians of the State, the Maine Hospital Association, the Maine Ambulance Council, the Commissioner of Insurance said, we all pay for the biker's right of free choice.

As most of you know, before I was elected to the Legislature, I was a full-time emergency medical technician with the Sanford Fire Department. I have seen first-hand the personal injury and deaths resulting from operators and passengers of motorcycles who were not wearing helmets. If any of you have any doubts as to the effect of not wearing a helmet, I would be glad to arrange some time for any of you to accompany me on an emergency run when we pick up what is left and when we confront the parents of the victims in the emergency room of the hospital and tell them the reason why their son or daughter is dead is because they weren't wearing a helmet.

So when you vote today, vote for the lives that will be saved when this bill is passed and pray for the lives of those who are dead because something hasn't been done already.

The SPEAKER: The Chair recognizes the gentleman from Princeton, Mr. Moholland.

Mr. MOHOLLAND: Mr. Speaker, Ladies and Gentlemen of the House: I guess it is time I said a few words regarding this helmet bill. I got up last week and talked about what happened to my son that was wearing a helmet and I talked about everything you can mention, but we never talked about the children, 12 or 14 or 15 years old, that run up and down the ditches of the highways with one of those three-wheeled motor bikes. They will go down the road a couple of miles and cross the road, they don't have any helmet. They are only 14, 12, 9, 10, 11 years old. You have people riding skidoos up the highways, two or three miles at night without a helmet. So if you are going to make the motorcyclist wear these helmets, we should put them on all the dirt bikes, all the other little bikes that all the children are riding up and down the highways and in the ditches and we should also wear them in cars. We should put them on the passengers so if they went out through the windshield it would be all right.

I talked to the Commissioner of Safety and he tells me there are only two helmets that you can wear that they are going to subscribe by. I asked him how much those helmets would cost, and he said right around \$150. I don't think we have the right to mandate to people, no matter what age they are, how much it is going to cost to put a helmet on that is satisfactory.

Also, I would like to know how many more state police they are going to put on to take care of this. Are they going to drive up to a motorcyclist going along the highway and pull him over and say, "I'm sorry, I would like to check your helmet to see if it meets DOT specifications."

Also, I have a little note here and I would like to know what the fiscal note is on testing this helmet that you can wear on these motorcycles. I would also like to know what the state is going to do if somebody doesn't have one of these helmets on and they have an accident that causes death and they can prove that this helmet was tested by the state police and it doesn't come up to standards.

Ladies and gentlemen, I think the State of Maine is a nice state and I think that all the people of the State of Maine are free and they want to stay free. They don't want to be mandated with a helmet bill, and I hope you will kill the recede and concur.

The SPEAKER: The Chair recognizes the gentleman from Waterville, Mr. Jacques.

Mr. JACQUES: Mr. Speaker, Ladies and Gentlemen of the House: I haven't had the opportunity to speak on this measure, and that is my fault because I wasn't here, but I hope you will allow me that this morning.

Mr. Scarpino made mention that the majority of the accidents on motorcycles was at dusk. If you will look back, you will find out that the majority of the hunting accidents are at this same time, a majority of the driving accidents are at this same time, and if my memory is correct, the majority of boating accidents are at this same time. Obviously, dusk is a bad time of day, vision is impaired, things are different than the rest of the day.

I have had my motorcycle license for 11 years. There isn't any member of this House that is going to tell me what it is like to be on a motorcycle with or without a helmet and they are not going to tell me what it is like to see an 18-wheeler bearing down on you because he doesn't see you or he doesn't care that you are there because you are very small and insignificant and probably aren't going to make much of a dent on the front of his truck.

My good friend Representative Moholland has talked about mandating things to protect us. Do we not mandate the speed limit law in the State of Maine, 55 miles an hour? Why is that? Do we not mandate the ages that you can get a driver's license, motorcycle license? Why is that? Mandate—we mandate every time you turn around—stop signs, yield signs, right-of-way, all supposed to be to protect the people that you represent. We are not doing a very good job of that with these helmets.

If you think you have given people the freedom of choice or justice because you allow them not to wear helmets, you are very much mistaken. When you look at freedom, I think of freedom as something that is given to you when you do not take away from the rights of freedom of anyone else. But when you allow somebody to ride on the Maine highways at 80 or 90 miles an hour without a helmet, you are asking for nothing but trouble. And let me assure you that if you have got a helmet on and you are doing a hundred and you hit a tree, no matter if you have a helmet or a suit of armor, you are gone.

The problem is, when somebody is going 35, 40 or 45 miles an hour and they take a spill that normally would be, as Representative Kiesman talked about, bruises, cuts and broken bones, but they hit their head, the brains that we are all talking about here about wearing a helmet and we are trying to protect, they hit their head. I have a friend that is 33 years old right now who was a weight lifter, muscle-bound guy, horrendous guy, he is one of those fellows that will obey the law if it is there, but if you give him a chance to sneak around, then he will. He was always a hell-raiser, a go-getter, that type of fellow. He didn't have his helmet on and he was going down the street about 50 miles an hour and he flipped. Every one of his injuries, according to the doctors, would have healed with no problem—skin, scrapes, bruises, except one thing, he hit his head on a rock about the size of a softball and it caused brain damage. This guy now is in a wheelchair, his nose runs all the time, he can't tell when he has to go to the bathroom, his father has passed away, his mother has to take care of him. She has aged 10 years in the last two years. They have a hospital bed in the living room. The guy is completely helpless on his own and, unfortunately, when his mother passes away, he will become a liability of the people of the State of Maine. This is a guy that could press 400 pounds, a huge man, very strong, who now can't even wipe his own nose. In the opinion of every doctor involved, had he not been riding without a helmet, that guy would be running around raising heck, doing what he always did, just like he always has. This is one case that is

very near and dear to my heart, but how many of these people have to get their brains mashed before we wake up and realize we are not doing anybody any favors, believe me.

I ride a motorcycle, I used to race snowmobiles, I have an ATC, like Representative Moholland was talking about, and I wear my helmet on all three. That is my choice, granted, but there is a big difference when you talk about a motorcycle and a snowmobile and ATC. Number one, snowmobiles and ATC's are not supposed to be near the highways, that is against the law. An ATC, even the fastest one, can go 35 miles an hour, there is a big difference. An ATC out in the woods, you are not going to meet an 18-wheeler or a gas truck coming right at you, neither are you on a snowmobile.

You look at the professional snowmobile races and every single one of them has got a helmet on and that tells you something. You look at the professional stockcar racers and every one of them has a helmet; that should tell you something. You look at every professional motorcycle racer and he has got a helmet; that should tell you something. If they have got the brains—and it is their living—to protect their brains, why shouldn't we make sure that happens in the State of Maine.

I voted against mandating a helmet a couple of years ago but I was mistaken and I have made mistakes before. I am going to vote for it this time because I think we have done nobody any justice and we have given nobody any freedoms, because all we have done is place more burdens on the people that we represent and unfortunately the families of those who didn't have the good common sense to put that helmet on.

I may be all alone, but I am going to vote for this bill.

The SPEAKER: The Chair recognizes the gentleman from Island Falls, Mr. Smith.

Mr. SMITH: Mr. Speaker, I would like to pose a question through the Chair. We have heard about motorcycles from each and every person that has spoken this morning. I am wondering if Mopeds have been taken off this bill or is it still there?

The SPEAKER: The gentleman from Island Falls, Mr. Smith, has posed a question through the Chair to any member who may care to answer.

The Chair recognizes the gentlewoman from Woolwich, Mrs. Cahill.

Mrs. CAHILL: Mr. Speaker, Ladies and Gentlemen of the House: In answer to Mr. Smith's question, Mopeds are still included in this bill.

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

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

The SPEAKER: The pending question is on the motion of the gentleman from Limerick Mr. Carroll, that the House recede and concur. All those in favor will vote yes; those opposed will vote no.

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

Mr. HOBBS: Mr. Speaker, I request leave of the House to pair my vote with the gentlewoman from Athens, Ms. Rotondi. If she were present and voting, she would be voting no; if I were voting, I would be voting yes.

The SPEAKER: The Chair recognizes the gentleman from Lincoln, Mr. MacEachern.

Mr. MACEachern: Mr. Speaker, I would like to pair my vote with the gentlewoman from Waterville, Mrs. Joseph. If she were here and voting, she would be voting yes; I would be voting no.

ROLL CALL

YEA—Ainsworth, Andrews, Baker, Beaulieu, Benoit, Bost, Brannigan, Brodeur, Carrier, Carroll, D.P.; Carroll, G.A.; Connolly, Cooper, Cox, Crouse, Crowley, Curtis, Daggett, Diamond, Dillenback, Drinkwater, Foster, Hall, Handy, Hickey, Ingraham, Jacques, Joyce, Kane, Kelly, Ketover, LaPlante, Lebowitz, Lehoux, Lisnik, Livesay, Locke, MacBride, Macomber, Manning, Martin, A.C.; Masterton, Matthews, K.L.; Matthews, Z.E.; Melendy, Mitchell, E.H.; Mitchell, J.; Murray, Nadeau, Nelson, Paradis, P.E.; Perry, Pines, Reeves, P.; Roberts, Rolde, Sproul, Stevenson, Thompson, Tuttle, Walker, Zirkilton.

NAY—Allen, Anderson, Armstrong, Bell, Bonney, Bott, Brown, D.N.; Brown, K.L.; Cahill, Callahan, Carter, Cashman, Chonko, Clark, Conary, Conners, Cote, Davis, Day, Dexter, Dudley, Erwin, Gauvreau, Greenlaw, Gwadsky, Hayden, Higgins, L.M.; Holloway, Jackson, Kelleher, Kiesman, Lewis, Masterman, Maybury, McColister, McGowan, McHenry, McSweeney, Michael, Michaud, Moholland, Murphy, E.M.; Murphy, T.W.; Norton, Paradis, E.J.; Parent, Paul, Perkins, Pouliot, Racine, Randall, Reeves, J.W.; Richard, Ridley, Roderick, Salsbury, Scarpino, Sherburne, Small, Smith, C.B.; Smith, C.W.; Soucy, Soule, Stevens, Stover, Strout, Swazey, Tammaro, Telow, Theriault, Vose, Webster, Wentworth, Weymouth.

ABSENT—Brown, A.K.; Higgins, H.C.; Jalburt, Kilcoyne, Mahany, Martin, H.C.; McPherson, Seavey, Willey, The SPEAKER.

PAIRED—Hobbins-Rotondi, Joseph-MacEachern.

Yes, 62; No, 74; Absent, 10; Paired, 4; Vacant, 1.

The SPEAKER: Sixty-two having voted in the affirmative and seventy-four in the negative, with ten being absent, four paired and one vacant, the motion does not prevail.

Thereupon, on motion of Mr. McGowan of Pittsfield, the House voted to adhere.

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

Bill "An Act to Establish the Third-party Prescription Program Act" (S. P. 518) (L. D. 1539)

Tabled—May 5, 1983 by Representative Nelson of Portland.

Pending—Passage to be Engrossed.

On motion of Mr. Manning of Portland, retabled pending passage to be engrossed and later today assigned.

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

HOUSE DIVIDED REPORT—Majority (9) "Ought Not to Pass"

—Minority (4) "Ought to Pass" in New Draft (H. P. 1178) (L. D. 1567)

—Committee on Business Legislation on Bill "An Act to Amend the Unfair Trade Practices Law" (H. P. 570) (L. D. 718)

Tabled—May 6, 1983 by Representative Diamond of Bangor.

Pending—Acceptance of Either Report.

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

Mr. BRANNIGAN: Mr. Speaker, I move that we accept the Majority "Ought Not to Pass" Report.

The SPEAKER: The gentleman from Portland, Mr. Brannigan, moves that the Majority "Ought Not to Pass" Report be accepted.

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

Mr. MURRAY: Mr. Speaker, Men and Women of the House: As a signer of the Minority "Ought to Pass" Report, I would urge you to vote against the pending motion and vote in favor of the minority report, because I believe this bill is a very simple, straightforward bill which would assist Maine's consumers.

The bill would allow for the consumers who have been wronged by an unfair trade practice to recover nonpunitive damages. Presently under the unfair trade practices, a consumer

can recover restitution, which is the cost of the product, and reasonable attorney's fees.

Presently if a consumer would desire to recover damages, they would have to prove under a separate court action and using different violations and standards that they had been wronged in order to recover these verifiable damages. If this bill were to become law, an aggrieved consumer would only have to prove that he or she was the victim of an unfair trade practice to recover the actual damages incurred. The states of Massachusetts, New Hampshire and Vermont already allow for the recovery of these damages and in fact go even further than what this bill would require in allowing for the recovery of punitive damages as well.

This is a common sense bill which deserves to become law in order that our consumers are protected to the utmost. I would urge you to vote against the pending motion and accept the minority report.

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

Mrs. MITCHELL: Mr. Speaker, Men and Women of the House: I hope that you will heed the good advice of my colleague from Bangor, Representative Murray. I, too, think this is a very good bill and frankly I think it is one of the most important consumer bills of this entire session. It is simple, we do have in Maine the Unfair Trade Practices Act, and as Representative Murray has pointed out, if someone violates the Unfair Trade Practices Act by selling you a faulty product, whether it is a refrigerator or brake job or a toaster or whatever, then you are allowed to recover the cost of that item under the Unfair Trade Practices Act and get reasonable attorneys' fees for doing that.

This amendment simply says that in addition to getting restitution or putting you right back to where you were before you started with out-of-pocket expenses, you could also collect damages.

I have issued to you today, and I apologize for the hasty drafting, we thought this bill would be taken up on Friday—a list of some examples of what would happen if Maine should enact this piece of legislation. But very quickly I would like to run down with you exactly what this bill does so that you will see how simple it is and how important it is for us to enact.

Current law, already you get restitution or money back and reasonable attorneys' fees. How does this proposal affect consumers? Currently, in order to receive damages, Maine consumers who have been injured by unfair trade practices have to prove separately in court that they have lost some money because of buying this faulty product. The example that we used was buying the faulty freezer. Under the Unfair Trade Practices Act, you could go back and get your money for the freezer or the meat that you had lost. It could be \$300 or \$1,000, and if you wanted to get that money back, not punitive damages but just the actual meat that you lost back, you would have to go to court under a separate action, and this seems like a silly thing to do. It clogs up the court process, it seems unfair to the consumer and that is all this bill allows to do—not punitive damages, not to punish the person who sold it to you, but just the out-of-pocket expenses that you, the consumer, have suffered because of an unfair trade practice.

Another question has been raised—would this put us out of step with our neighbor states? How daring and bold is this? New Hampshire, Massachusetts and Vermont currently allow consumers to sue for damages due to an unfair trade practice. But they go further than we do, they also allow you to collect punitive damages. So, believe me, it is not a startling, new departure from the way things can be done.

Other criticisms have been leveled at the bill that it would just help attorneys. Already

under the Unfair Trade Practices Act you can get reasonable attorneys' fees. It simply allows you to consolidate your consumer claim in one court action. There really isn't anything bold or startling but it is extremely important to the consumer.

I would urge you to vote against the "ought not to pass" report.

The SPEAKER: The Chair recognizes the gentlewoman from Ellsworth, Mrs. Foster.

Mrs. FOSTER: Mr. Speaker, Ladies and Gentlemen of the House: Although I am not a member of the Business Legislation Committee, I must agree wholeheartedly with the Majority Report "Ought Not to Pass."

I followed this bill with a great deal of interest since the history behind the proposal today was decided in the Supreme Court and heard in the Superior Court in Ellsworth, Maine, and they happen to be my next door neighbors. The case was the Bartner V. Carter case and what this bill attempts to do is, I believe, reverse their decision.

To better understand the impact this bill would have, I think it is very necessary for you to understand the facts of the Bartner V. Carter. The Bartner case involved a real estate agency selling property in Bass Harbor, in Maine. The real estate agent advertised the house for sale for \$32,000, saying the property contained three quarters of an acre. An interested purchaser came to the agreement with the seller on a purchase price of \$30,000. About four days before the closing, the purchasers examined the deed to the property and noted the description indicated the property had one half an acre.

The seller of the property, the real estate agent, agreed a mistake had been made and offered to allow the purchasers to terminate the contract. They did not do so. They went ahead, they paid \$30,000 for the property. At the closing, the seller again offered to tear up the contract and return the deposit to the purchasers. The purchasers refused, accepted title and paid the \$30,000. The purchasers then sued alleging fraud and demanding damages and attorneys' fees under the Unfair Trade Practices Act.

After the trial, the Superior Court in Hancock County decided that the seller advertised the property in good faith, believing the property contained three quarters of an acre. The court also noted that the purchaser and the seller had equal opportunity to examine the land and the buildings. The court then concluded that the purchasers were not misled and were fully aware of the acreage and the value of the property well prior to purchase and under these facts, especially where an offer to return the money had been made two times, there was no fraud or unfair trade practice. Damages were not allowed and attorneys' fees were not allowed.

I would just ask the members of this body whether in that type of case, where a simple mistake was made, where everyone acted in good faith, and the purchaser bought the property knowing full well exactly what was being bought, should anyone be allowed to sue for damages?

The Unfair Trade Practices Act is designed to deal with unfair or outlandish conduct and not with damages.

On the handout that we have received on our desks, and I am all in favor of consumer protection, the consumer, under (1) is protected under the common law fraud of breach of express and implied warranty, breach of contract of sold of goods, he is completely, as far as damages, protected; (2) the illegal mobile home park evicted, he can sue for damages under breach of contract; (3) the car that cannot pass inspection can be sued with expressed warranty suit or the implied warranty suit or the breach of contract. Under No. 4, buying the eye ointment with the expiration date on the cream—who would then go on to

the Unfair Trade Practices Act and you can sue for product liability of a negligence suit.

I believe the consumer is well protected under the Unfair Trade Practices Act for restitution and attorneys' fees and that it is the way it should remain. The consumer has these other avenues for damages and I think that is the way it should remain.

Mr. Speaker, I move the indefinite postponement of this bill and all its accompanying papers and ask for a roll call.

The SPEAKER: The gentlewoman from Ellsworth, Mrs. Foster, moves the indefinite postponement of this bill and all its accompanying papers and when the vote is taken requests the yeas and nays.

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

Mrs. MITCHELL: Mr. Speaker, Men and Women of the House: I would like to respond briefly to one of the comments of Representative Foster—I think she has hit the nail on the head. Obviously, in the Bartner case which she referred to, they couldn't collect damages because the parties were not found guilty of the Unfair Trade Practices Act, so this doesn't change that. A person would have to be guilty of violating the Unfair Trade Practices Act. In that case, that did not happen so this remedy was not available.

As to the other issue, yes, indeed, the consumer has other remedies, but if I could share with you one section of a brief memo from James McKenna from the Assistant Attorney General's Office as he attempted to work with the committee in explaining this bill, it talks about the other avenues a consumer has. It says that he can, of course, look at a violation of a common law, that is a breach of contract, negligence, a tortious injury to your property, but if you have L. D. 718 in place, it would significantly simplify the consumer's task in recovering the cost of damages rather than having him bring a separate court action. Something that is important to remember is that you have to violate the Unfair Trade Practices Act first or this doesn't even come into play.

The SPEAKER: The Chair recognizes the gentleman from Madawaska, Mr. McHenry.

Mr. McHENRY: Mr. Speaker, I would like to pose a question through the Chair to anyone who may care to answer.

I had one of my constituents call me up this weekend and said to me that if we pass this bill, and I am wondering if it is true or not, the consumer's attorney would be paid for win, lose or draw, which I don't believe it is but I am asking the question on behalf of my constituent.

The SPEAKER: The gentleman from Madawaska, Mr. McHenry, has posed a question through the Chair to anyone who may respond if they so desire.

The Chair recognizes the gentleman from Durham, Mr. Hayden.

Mr. HAYDEN: Mr. Speaker, Men and Women of the House. I would like to attempt to answer that question both as a cosponsor of the bill and as an attorney.

The Unfair Trade Practice Act now, without this bill, allows that if the claimant is successful, then the court may award attorneys' fees. If the claimant is not successful, there are no attorneys' fees. That is somewhat unusual. Most of our laws, as you know, don't do that and I think the reason that that came into law was because the Legislature decided that in the case of consumer complaints were often needed and have a great deal of damage, those cases would never get to court and would never get the representation of an attorney unless there was this vehicle. Right or wrong as far as the attorneys are concerned, that is what the legislature decided to do. I think the effect was that some consumer complaints that would have just fallen beneath the cracks now do get advocated in court.

This bill which would give a person the right

to sue for damages under the Unfair Trade Practices Act would not change that whatsoever. The situation would stay exactly the same, there wouldn't be more cases, there wouldn't be more attorneys, there wouldn't be attorneys' fees awarded in more situations. That part of the law is with us already and wouldn't be affected.

Let me just tell you a little bit of what I see as the important part of this bill. When I went to the hearing on the bill, the opponents cited as an example the Bartner case and explained that if that case had been plead differently, if there had been a different mix of complaints and allegations, then the parties could have asked for damages in that case and the court would have had a right to decide whether or not they were entitled to it. But they didn't jump through the right hoops and so the court, in effect, was instructing the other people who bring this case that if you want to do damages, you have to file one type of suit; if you want to do the Unfair Trade Practices, you have to file another, and if you want to do them both, you have got to file both of those at the same time.

The design of this bill as I see it, and the advantage, is to take away those hoops, because, frankly, I don't think those hoops serve the people of the state, I don't think they serve the justice system, but they are a bunch of technical hurdles that some people are going to trip over, and to that extent they are to the advantage of the people who are being sued and they are going to protect themselves with technical defenses, technical hurdles. This bill takes away a hurdle. You still have to prove your case, but you have a right to take all your complaints to the court at one time through one complaint. I think that is just common sense. I think many of the industry opponents, not all of them, but many of the industry opponents don't want to take that hurdle away, because if you can make a simple suit complicated, then some of them aren't going to be successful and they will benefit that much by it. This makes that possible. That is why I would urge you all to vote against the Majority "Ought Not to Pass" Report so that we can have a chance to vote for any succeeding report.

The SPEAKER: The Chair recognizes the gentleman from Madawaska, Mr. McHenry.

Mr. McHENRY: Mr. Speaker, I would like an answer to the question. If a person loses his case, am I right in assuming that his attorney will not be paid? Can I have a plain yes or no.

The SPEAKER: The gentleman from Madawaska, Mr. McHenry, has restated his question through the Chair to anyone who may care to answer.

The Chair recognizes the gentleman from Durham, Mr. Hayden.

Mr. HAYDEN: No.

The SPEAKER: The Chair recognizes the gentlewoman from Presque Isle, Mrs. MacBride.

Mrs. MacBRIDE: Mr. Speaker, Ladies and Gentlemen of the House: I hope you will vote for indefinite postponement of this bill. I signed the "Ought Not to Pass" Report with the majority.

I feel this bill would create an attorney's field day and increase our court cases for our already overburdened courts today.

Furthermore, I do feel it would create more problems than it would solve. The law as it now stands does take care of unfair trade practice acts, as it should, and I certainly wholeheartedly support that. But I feel it would be a mistake to pass this additional law.

I hope you will support the Majority "Ought Not to Pass" Report.

The SPEAKER: The Chair recognizes the gentleman from Biddeford, Mr. Racine.

Mr. RACINE: Mr. Speaker, Ladies and Gentlemen of the House: I voted on the minority report because I felt that this was a bill to protect the consumer. The opponents at the hearing represented the automobile industry

primarily, and their smokescreen was that this would increase litigation, it would increase attorneys' fees and it does not because the law presently covers that.

In order to receive damages, you have got to prove that there was an unfair trade practices act that occurred. It changes nothing. This was mentioned today three or four times.

I think this is a consumers' bill, and if you have some damages that are caused as a result of a failure or a negligent act by a manufacturer, you should be entitled to collect for damages. I don't want to repeat what has been passed out, but one of my thunder here was a refrigerator, but you can all read that so I won't mention that.

I hope you will vote against the motion that is on the floor to indefinitely postpone.

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

Mr. GAUVREAU: Mr. Speaker, Men and Women of the House: I also rise this morning in opposition to the pending motion for indefinite postponement. I hadn't planned on speaking on the bill this morning, but frankly, after hearing the debate I am somewhat disturbed by the reasoning which is going on in support of indefinite postponement.

Bear in mind that under present Maine law, if there is a violation of an implied or expressed warranty which is actionable under our commercial law, a prevailing plaintiff may request the court or the jury to award consequential and incidental damages arising from the contractual breach.

A violation of a warranty is a much less serious violation than an unfair trade practice which is defined by the Federal Trade Commission as an act which has the capacity for tenacity to deceive. That is much more serious, it seems to me, than simply a minor violation of a commercial warranty. Yet, the anomaly here is that a party could secure damages for violation of a contract warranty, but a more serious violation, an unfair trade practice act, would not give rise to any damages flowing therefrom. So from my perspective, I certainly feel this is a tidy, simple little bill, it deserves your support, and I would ask the members of the body this morning to oppose the motion for indefinite postponement.

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

The SPEAKER: The pending question is on the motion of the gentlewoman from Ellsworth, Mrs. Foster, that this Bill and all its accompanying papers be indefinitely postponed. All those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA—Anderson, Armstrong, Bell, Bonney, Bott, Brannigan, Brown, D.N.; Brown, K.L.; Cahill, Callahan, Carrier, Carter, Conary, Connors, Cox, Curtis, Davis, Day, Dexter, Dillenback, Drinkwater, Dudley, Foster, Greenlaw, Higgins, L.M.; Holloway, Ingraham, Jackson, Lebowitz, Lewis, Livesay, MacBride, Martin, H.C.; Masterman, Masterton, Matthews, K.L.; Maybury, Murphy, E.M.; Murphy, T.W.; Norton, Paradis, E.J.; Parent, Perkins, Pines, Pouliot, Randall, Ridley, Roberts, Roderick, Salsbury, Scarpino, Sherburne, Small, Sproul, Stevenson, Stover, Strout, Tammaro, Telow, Walker, Webster, Wentworth, Weymouth, Zirkilton.

NAY—Ainsworth, Allen, Andrews, Baker, Beaulieu, Benoit, Bost, Brodeur, Carroll, D.P.; Carroll, G.A.; Cashman, Chonko, Clark, Connolly, Cooper, Cote, Crouse, Crowley, Daggett, Diamond, Erwin, Gauvreau, Gwadosky, Hall, Handy, Hayden, Hickey, Hobbins, Jacques, Joyce, Kane, Kelleher, Kelly, Ketover, Kiesman,

LaPlante, Lehoux, Lisnik, Locke, MacEachern, Macomber, Manning, Martin, A.C.; Matthews, Z.E.; McColister, McGowan, McHenry, Melendy, Michael, Michaud, Mitchell, E.H.; Mitchell, J.; Moholland, Murray, Nadeau, Nelson, Paradis, P.E.; Paul, Perry, Racine, Reeves, J.W.; Reeves, P.; Richard, Rolde, Smith, C.B.; Smith, C.W.; Soucy, Soule, Stevens, Swazey, Theriault, Thompson, Tuttle, Vose, The Speaker.

ABSENT—Brown, A.K.; Higgins, H.C.; Jalberty, Joseph Kilcoyne, Mahany, McPherson, McSweeney, Rotondi, Seavey, Willey.

Yes, 64; No, 75; Absent, 11; Vacant, 1.

The SPEAKER: Sixty-four having voted in the affirmative and seventy-five having voted in the negative, with eleven being absent and one vacant, the motion does not prevail.

The question now before the House is on the motion of the gentleman from Portland, Mr. Brannigan, that the Majority "Ought Not to Pass" Report be accepted. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

58 having voted in the affirmative and 79 having voted in the negative, the motion did not prevail.

Thereupon, the Minority "Ought to Pass" Report was accepted, the New Draft read once and assigned for second reading later in the day.

(Off Record Remarks)

On motion of Mr. Crowley of Stockton Springs.

Recessed until four thirty in the afternoon.

After Recess 4:30 p.m.

The House was called to order by the Speaker.

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

Bill, "An Act to Allow the Training of Bear Dogs" (S. P. 371) (L. D. 1145)

Tabled—May 6, 1983 by Representative Martin of Brunswick.

Pending—Passage to be Engrossed.

The SPEAKER: The Chair recognizes the gentlewoman from Brunswick, Mrs. Martin.

Mrs. MARTIN: Mr. Speaker, Ladies and Gentlemen of the House: I was not going to speak on this bill but my sense of guilt got the best of me for not trying. I thought that I was going to have a free meal this year. I will only say a few words because some of you know that I have been fighting for the bear since my first term. Now I am not only fighting for the bear but I am also fighting for the dogs.

Do you realize that it is not only cruel for the bear but also for the dogs? They run the bear until it gets exhausted by having fresh dogs every few miles. The bear gets angry at times, turns on the dog and mauls him, so they have to be disposed of either by the owner or someone else. So both the bear and dogs are being abused. It is one of the cruelest ways to hunt. It is not very sportsmanlike. It does show that man is more cruel than the beast that they hunt.

I have been told that it is only a training period for these dogs, but it is a training period to teach them how to kill and also maybe kill themselves.

Calling this a sport is a farce. My Speaker, I move that this bill and all its papers be indefinitely postponed and I ask for a roll call.

The SPEAKER: The gentlewoman from Brunswick, Mrs. Martin, moves that this bill and all its accompanying papers be indefinitely postponed.

The Chair recognizes the gentleman from Camden, Mr. Kelly.

Mr. KELLY: Mr. Speaker and Members of the House: The cub bear are born in their den in February and they are no bigger than a kitten when they are born. In August, when this bill is to have the dogs run them, the bear are not

more than 12 or 15 pounds. They have very little defense. Their only defense is to climb a tree when the old mother bear grunts at them.

I was on a bear hunt up in the Jackman country with a group of hunters from Pennsylvania with a pack of dogs. The dogs chased the bear and jumped it out into a big open bog. The cub bear had no tree to climb. We heard the dogs bark. By the time we arrived there, two cub bear were all torn to pieces. The old female was gone and I decided right then that that was no way to get a wild animal. I don't mind shooting a bear, but to have them torn apart by a pack of dogs is no way for any animal to meet its end.

There is no man that has any control over a pack of dogs when he is a mile away in the woods. The dogs will kill whatever it can kill after it has chased it down. Some of the dogs got lost in the woods, they stayed in the woods a couple of weeks. No dog will go hungry in the woods. It will chase everything that it can to get something to eat.

The hunters have two months to hunt their bear with dogs. Let them use those two months to their best advantage. Don't add on another month by letting them hunt in August when the cubs are so small.

There's no other states that allows the hunting with dogs. All the southern states, Kentucky, the Virginias, they have all abolished hunting bear with dogs, so now those hunters are coming up here from down there to get their sport by running our bear with dogs.

The SPEAKER: The Chair recognizes the gentleman from Lincoln, Mr. MacEachern.

Mr. MacEACHERN: Mr. Speaker, Ladies and Gentlemen of the House: This bill was asked for by a group of bear hunters from Maine who like to hunt with dogs, and the only way they can train their dogs, they can't train them while they are trying to hunt, so they wanted a little time in the summertime to educate their dogs on how to hunt bear. They don't hurt the bear, dogs don't attack them, they just chase them and tree them. It is the only way I know of that they can get these dogs trained so they can hunt with them.

I hope you don't vote for the pending motion.

The SPEAKER: The Chair recognizes the gentlewoman from Brunswick, Mrs. Martin.

Mrs. MARTIN: Mr. Speaker, Ladies and Gentlemen of the House: He says that those dogs don't hurt the bear, but it is a poor way of hunting, it is bad sportsmanship and if they don't hurt the bear, they can get them exhausted so the man, or the so-called sportsman, can point his gun at the bear and have no problems killing him. That isn't the way it should be. It should be that he should face the bear bear to bear and man to man and see how he would like it.

The SPEAKER: The Chair recognizes the gentlewoman from Rumford, Mrs. Erwin.

Mrs. ERWIN: Mr. Speaker, Ladies and Gentlemen of the House: At the hearing that we had on this particular legislation, we had no opponents. We already have a training season for fox, coon and rabbit dogs from August 1 to April 30, and I feel that owners of bear dogs should have at least one month to train the new pups in preparation for the open season.

This does not allow shooting of bear. It is merely a chance for the trainers to teach their dogs to run only bear rather than other game. It gets the dogs in shape so that they won't be overworked during the season. It also provides employment for guides who take photographers on non-consumptive hunting trips.

I would hope that you would defeat this motion to indefinitely postpone.

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

Mr. JOYCE: Mr. Speaker, Ladies and Gentlemen of the House: I remind you, this is no Portland bill, but I, like many of you, have talked out under that dome with truly great sportsmen who sit in many seats in this House, and I

recognize and admire great sportsmen. Perhaps one of the greatest that I met here is that Representative from Camden who devoted a lifetime to the woods and to the care of these animals, and I cannot, being a city boy, see where there is any sport in the action of these dogs. Mr. Kelly has told me about dogs rushing in to the bear spots in the woods where there are no trees for the cubs to run up and how two dogs would attack one baby cub and pull him apart and the intestines would drop to the ground. I don't want anybody in this House to try to tell me that that is a sport; that is no sport.

Since I have been down here, I have heard Representative Martin describe the action of these hunters. I don't think they should use our woods or our State of Maine for something like this that they call a sport.

I am going to vote to indefinitely postpone this bill, and I hope we can encourage people so they won't put it in again.

The SPEAKER: The Chair recognizes the gentlewoman from Athens, Ms. Rotondi.

Ms. ROTONDI: Mr. Speaker, Ladies and Gentlemen of the House: The issue in this bill is not whether bear should or should not be hunted with dogs. Hunting bears with dogs is a legal activity. The issue is a one-month training session, and every other hunter who hunts with dogs is allowed a training period.

In the interest of fairness, I ask you to accept the majority report.

The SPEAKER: The Chair recognizes the gentleman from Lincoln, Mr. MacEachern.

Mr. MacEACHERN: Mr. Speaker, could we have the Clerk read the Committee Report?

Thereupon, the Report was read by the Clerk.

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

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

The SPEAKER: The pending question is on the motion of the gentlewoman from Brunswick, Mrs. Martin, that this Bill and all its accompanying papers be indefinitely postponed. All those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA—Ainsworth, Anderson, Andrews, Beaulieu, Benoit, Bonney, Bost, Brodeur, Brown, A.K.; Brown, D.N.; Callahan, Carrier, Carroll, G.A.; Carter, Cashman, Chonko, Conary, Connelly, Cooper, Cote, Cox, Crowley, Curtis, Daggett, Davis, Day, Dexter, Dillenback, Dudley, Foster, Gauvreau, Greenlaw, Hall, Handy, Hickey, Higgins, H.C.; Higgins, L.M.; Holloway, Ingraham, Joseph, Joyce, Kane, Kelly, Ketover, Kilcoyne, Lebowitz, Lehoux, Lewis, Lisnik, Livesay, Locke, MacBride, Macomber, Manning, Martin, A.C.; Martin, H.C.; Masterton, Matthews, K.L.; McPherson, Melendy, Mitchell, J.; Murphy, E.M.; Murphy, T.W.; Nadeau, Nelson, Norton, Paradis, E.J.; Paradis, P.E.; Perkins, Perry, Pines, Pouliot, Racine, Randall, Reeves, J.W.; Reeves, P.; Richard, Ridley, Rolde, Salsbury, Scarpino, Small, Smith, C.W.; Stevens, Stevenson, Stover, Swazey, Tammara, Telow, Theriault, Thompson, Walker, Wentworth, Weymouth, Zirkilton.

NAY—Allen, Armstrong, Baker, Bell, Bott, Brannigan, Cahill, Carroll, D.P.; Clark, Crouse, Diamond, Drinkwater, Erwin, Gwadosky, Hobbins, Jackson, Jacques, Kiesman, LaPlante, MacEachern, Masterman, Matthews, Z.E., Maybury, McColister, McGowan, McHenry, Michael, Michaud, Mitchell, E.H.; Moholland, Parent, Roberts, Roderick, Rotondi, Sherburne, Smith, C.B.; Soucy, Soule, Sproul, Strout, Tuttle, Vose, Webster.

ABSENT—Brown, K.L.; Connors, Hayden, Jalbert, Kelleher, Mahany, McSweeney, Murray, Paul, Seavey, Willey, The Speaker.

Yes, 95; No, 43; Absent, 12; Vacant, 1.

The SPEAKER: Ninety-five having voted in the affirmative and forty-three in the negative, with twelve being absent and one vacant, the motion does prevail.

Sent up for concurrence.

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

An Act Relating to the Humane Treatment of Animals (S. P. 515) (L. D. 1530)

Tabled—May 6, 1983 by Representative Michael of Auburn.

Pending—Passage to be Enacted.

Mrs. Cahill of Woolwich requested a roll call vote.

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

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

The SPEAKER: The pending question is on passage to be enacted. All those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA—Ainsworth, Andrews, Armstrong, Baker, Beaulieu, Bell, Benoit, Bonney, Bost, Brannigan, Brodeur, Brown, A.K.; Callahan, Carrier, Carroll, D.P.; Carroll, G.A.; Carter, Cashman, Chonko, Clark, Conary, Connolly, Cooper, Cote, Cox, Crouse, Crowley, Daggett, Diamond, Dillenback, Drinkwater, Erwin, Foster, Gauvreau, Greenlaw, Gwadosky, Hall, Handy, Higgins, H.C.; Higgins, L.M.; Hobbins, Jackson, Jacques, Joseph, Joyce, Kane, Kelly, Ketover, Kiesman, LaPlante, Lewis, Lisnik, Livesay, Locke, MacEachern, Macomber, Manning, Martin, A.C.; Masterton, Matthews, K.L.; Matthews, Z.E.; McCollister, McGowan, McHenry, McPherson, Melendy, Michael, Mitchell, E.H.; Mitchell, J.; Moholland, Murphy, T.W.; Nadeau, Nelson, Paradis, E.J.; Paradis, P.E.; Parent, Paul, Perry, Pouliot, Randall, Reeves, J.W.; Reeves, P.; Richard, Ridley, Roberts, Roderick, Rolde, Rotondi, Scarpino, Sherburne, Small, Smith, C.B.; Smith, C.W.; Soucy, Stevens, Stevenson, Stover, Swazey, Tammaro, Telow, Theriault, Thompson, Zutke, Vose, Walker, Wentworth, Weymouth, Tinkilton, The Speaker.

NAY—Allen, Anderson, Bott, Brown, D.N.; Cahill, Curtis, Davis, Day, Dexter, Hickey, Holloway, Ingraham, Kilcoyne, Lebowitz, Lehoux, MacBride, Martin, H.C.; Masterman, Maybury, Michaud, Murphy, E.M.; Norton, Perkins, Pines, Racine, Salisbury, Soule, Sproul, Strout, Webster.

ABSENT—Brown, K.L.; Connors, Dudley, Hayden, Jalbert, Kelleher, Mahany, McSweeney, Murray, Seavey, Willey.

Yes, 109; No, 30; Absent, 11; Vacant, 1.

The SPEAKER: One hundred nine having voted in the affirmative and thirty in the negative, with eleven being absent and one vacant, the Bill is passed to be enacted.

Signed by the Speaker and sent to the Senate.

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

An Act to Establish a Chief Justice of the Superior Court (S. P. 146) (L. D. 437)

Tabled—May 6, 1983 by Representative Diamond of Bangor.

Pending—Passage to be Enacted.

The SPEAKER: The Chair has been provided information that there is no cost associated with this bill; therefore, the Chair would rule that no fiscal note is required.

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

Mr. CARRIER: Mr. Speaker, it was my belief

that if you look at the bill, it involves a \$500 fee, isn't that enough to require a fiscal note?

The SPEAKER: The Chair would advise the gentleman that the Chair does not make the fiscal notes up; it is made by Legislative Finance and that office has rendered the information to the Chair that no fiscal note is required.

Mr. CARRIER: I am not against the bill, but I believe the bill says the fee will be \$500.

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

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

Bill "An Act to Improve Access to Small Claims Court" (H. P. 480) (L. D. 577)

Tabled—May 6, 1983 by Representative Mitchell of Vassalboro.

Pending—Motion of same gentlewoman to Reconsider whereby the Bill was Passed to be Engrossed.

Mrs. Mitchell of Vassalboro requested permission to withdraw her motion to reconsider, which was granted.

Sent to the Senate.

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

HOUSE DIVIDED REPORT—Majority (8) "Ought Not to Pass" — Minority (5) "Ought to Pass" — Committee on Judiciary on Bill "An Act Concerning Submerged and Intertidal Lands Owned by the State" (H. P. 952) (L. D. 1233)

Tabled—May 6, 1983 by Representative Hobbins of Saco.

Pending—Acceptance of Either Report.

On motion of Mr. Hobbins of Saco, the Majority "Ought Not to Pass" Report was accepted and sent up for concurrence.

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

Bill "An Act to Extend Maine's Returnable Deposit Law" (S. P. 512) (L. D. 1529)

Tabled—May 6, 1983 by Representative Kelleher of Bangor.

Pending—Motion of Representative Soucy of Kittery to Reconsider whereby the Bill Failed of Passage to be Engrossed.

On motion of Mr. Brannigan of Portland, retabled pending the motion of Mr. Soucy of Kittery to reconsider and tomorrow assigned.

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

Mrs. MITCHELL: Mr. Speaker, is the House in possession of House Paper 1174, L. D. 1561, Bill "An Act to Protect the Integrity of the Unemployment Compensation Fund?"

The SPEAKER: The Chair would answer in the affirmative, having been held at the gentlewoman's request.

Mrs. MITCHELL: Mr. Speaker, I now move that we reconsider whereby L. D. 1561 was passed to be engrossed and further move that the motion be tabled until later in today's session.

Thereupon, on motion of Mrs. Mitchell of Vassalboro, tabled pending her motion to reconsider and later today assigned.

The following papers appearing on Supplement No. 1 were taken up out of order by unanimous consent:

Bill "An Act to Restructure State Involvement in Liquor Sales and Enforcement" (S. P. 526) (L. D. 1549)

Came from the Senate referred to the Committee on Appropriations and Financial Affairs and ordered printed.

In the House, was referred to the Committee on Appropriations and Financial Affairs in concurrence.

Bill "An Act Relating to Forest Practice"

(Emergency) (S. P. 525) (L. D. 1548)

Came from the Senate referred to the Committee on Energy and Natural Resources and ordered printed.

(The Committee on Reference of Bills had suggested reference to the Committee on Agriculture).

In the House, the Bill was referred to the Committee on Energy and Natural Resources in concurrence.

Bill "An Act to License Home Health Care Services" (S. P. 527) (L. D. 1550)

Came from the Senate referred to the Committee on Health and Institutional Services and ordered printed.

In the House, the Bill was referred to the Committee on Health and Institutional Services in concurrence.

Bill "An Act to Create a Bill of Rights for Victims and Witnesses" (S. P. 528) (L. D. 1551)

Bill "An Act to Make Corrections of Errors and Inconsistencies in the Laws of Maine" (Emergency) (S. P. 529) (L. D. 1552)

Came from the Senate referred to the Committee on Judiciary and ordered printed.

In the House, were referred to the Committee on Judiciary in concurrence.

Bill "An Act Relating to Major Policy-influencing Positions in Certain Regulatory and Law Enforcement Agencies" (S. P. 530) (L. D. 1553)

Came from the Senate referred to the Committee on State Government and ordered printed.

In the House, was referred to the Committee on State Government in concurrence.

Bill "An Act to Value Forest Land on the Basis of Current Use" (S. P. 531) (L. D. 1554)

Came from the Senate referred to the Committee on Taxation and ordered printed.

In the House, was referred to the Committee on Taxation in concurrence.

UNANIMOUS LEAVE TO WITHDRAW

Report of the Committee on Health and Institutional Services reporting "Leave to Withdraw" on Bill "An Act to Establish Day Care Services for State Employees" (S. P. 407) (L. D. 1255)

Report of the Committee on Energy and Natural Resources reporting "Leave to Withdraw" on Bill "An Act Relating to the Cutting of Wood on Public Lots" (S. P. 444) (L. D. 1367)

Pursuant to Joint Rule 15, were placed in the Legislative Files without further action in concurrence.

UGHT TO PASS IN NEW DRAFT

Report of the Committee on Health and Institutional Services on Bill "An Act to Amend the Adult Protective Services Act" (S. P. 255) (L. D. 800) reporting "Ought to Pass" in New Draft (S. P. 536) (L. D. 1562)

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

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

UGHT TO PASS IN NEW DRAFT

Report of the Committee on Education on Bill "An Act to Increase the Compensation for Substitute Teachers" (S. P. 392) (L. D. 1192) reporting "Ought to Pass" in New Draft (S. P. 538) (L. D. 1568)

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

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

Ought to Pass in New Draft/New Title

Report of the Committee on Education on Bill "An Act to Establish a Commission to Review and Evaluate Higher Educational Needs, Services and Institutions" (S. P. 417) (L. D. 1267) reporting "Ought to Pass" in New Draft under New Title Bill "An Act to Establish a Commission to Review and Evaluate the University of Maine System" (S. P. 537) (L. D. 1566)

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

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

Non-Concurrent Matter

Bill "An Act to Increase Reimbursement for Professional Credits for Teachers" (S. P. 361) (L. D. 1074) on which the Bill and Accompanying Papers were Indefinitely Postponed in the House on May 6, 1983.

Came from the Senate with that Body having insisted on its former action whereby the Bill was passed to be engrossed as amended by Senate Amendment "A" (S-29) in non-concurrence.

In the House: On motion of Mrs. Locke of Sebec, the House voted to adhere.

**Petitions, Bills and Resolves
Requiring Reference**

Bill "An Act to Repeal the Sales Tax on Meals and Lodging and to Establish a Meals and Lodging Tax for the Purpose of Stabilizing the Property Tax" (H. P. 1188) (Presented by Speaker Martin of Eagle Lake) (Cosponsors: Senators Conley of Cumberland, Brown of Washington and Representative Livesay of Brunswick) (Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 27)

Bill "An Act to Restructure the Personal and Corporate Income Tax System" (H. P. 1189) (Presented by Representative Andrews of Portland) (Cosponsors: Representatives Kilcoyne of Gardiner, Gauvreau of Lewiston and Senator Bustin of Kennebec)

Were referred to the Committee on Taxation, ordered printed and sent up for concurrence.

Divided Report

Majority Report of the Committee on Judiciary reporting "Ought Not to Pass" on Bill "An Act to Create a Statutory Will" (H. P. 321) (L. D. 380)

Report was signed by the following members:
Senators:

COLLINS of Knox
TRAFTON of Androscoggin
VIOLETTE of Aroostook

— of the Senate.

Representatives:

REEVES of Newport
DRINKWATER of Belfast
LIVESAY of Brunswick
SOULE of Westport

— of the House.

Minority Report of the same Committee reporting "Ought to Pass" in New Draft (H. P. 1182) (L. D. 1575) on same Bill.

Report was signed by the following members:
Representatives:

JOYCE of Portland
FOSTER of Ellsworth
CARRIER of Westbrook
BENOIT of South Portland
HAYDEN of Durham
HOBBS of Saco

— of the House.

Reports were read.

On motion of Mr. Hobbins of Saco, the Minority "Ought to Pass" Report was accepted, the New Draft read once and assigned for second reading tomorrow.

Divided Report

Majority Report of the Committee on Legal Affairs reporting "Ought to Pass" on Bill "An Act to Revise the Markup Percentage for Maine Produced Products Under the Liquor Law" (H. P. 1084) (L. D. 1432)

Report was signed by the following members:
Senators:

CHARETTE of Androscoggin
DANTON of York
SHUTE of Waldo

— of the Senate.

Representatives:

HANDY of Lewiston
COTE of Auburn
DUDLEY of Enfield
DILLENBACK of Cumberland
McSWEENEY of Old Orchard Beach

— of the House.

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

Report was signed by the following members:
Representatives:

PERRY of Mexico
STOVER of West Bath
SWAZEY of Bucksport
COX of Brewer

— of the House.

Reports were read.

The SPEAKER: The Chair recognizes the gentleman from Brewer, Mr. Cox.

Mr. COX: Mr. Speaker, I move that the Minority "Ought Not to Pass" Report be accepted.

The SPEAKER: The gentleman from Brewer, Mr. Cox, moves that the Minority "Ought Not to Pass" Report be accepted.

The Chair recognizes the gentleman from Cumberland, Mr. Dillenback.

Mr. DILLENBACK: Mr. Speaker, Ladies and Gentlemen of the House: I hope that you do not accept the Minority Report. The Majority Report was passed and I think it is the report we should follow.

This bill deals with the Lawrence Distilleries of Lewiston, which is the only remaining Maine liquor manufacturer in the State. This company has had a disadvantage due to the fact that we allowed warehousing of liquor in the state last year and in doing so we allowed people to ship liquor in and not charge the freight. Consequently, this company, which buys alcohol and processes it, they make gin, whiskey, scotch and they do 50 percent of their buying in the State of Maine, they have been at a disadvantage because they have to pay freight on whatever they bring into the State. They operate in Lewiston, Maine. They operate 43 out of 52 weeks a year, they have 26 employees and they have an excellent business. They do \$4 million in taxes, most of which is federal. This is also called White Rock Distributors, or Distilleries, if you have heard of it, and their payroll was \$455,162; the payroll taxes are \$28,014; the federal taxes are \$3,571,332 and so forth; and they pay the state \$263,000 and they have a profit sharing plan and then they purchase sugar flavors and so forth, so they do quite a bit of business. I think it is unfortunate that a local company has a disadvantage in competing with the out-of-state concerns.

As you know, the State of Maine, when we purchase products from within the state, we allow a 5 percent differential to anybody that manufactures within the state, that is for state-used products, if we should buy them or have somebody do a service for us.

It seems to me that we should help this company. The state marks up liquor 75 percent and what we are asking in this bill is that we only mark up theirs 65 percent. This will allow them to compete. They will reduce their price by doing this. It is not going to cause any other problem.

There is a cost to the State of Maine of \$250,000. However, I think with the decrease in

price, this company would generate more volume and therefore will offset this cost.

This is the great bill that Mr. Jalbert suggested that I fight for and he is not here today and I would appreciate any support I could get to help a Maine industry.

The SPEAKER: The Chair recognizes the gentleman from Enfield, Mr. Dudley.

Mr. DUDLEY: Mr. Speaker and Members of the House: This seems justifiable. I think the gentleman who just spoke covered it well, but I wanted to re-emphasize that the reason for this bill is because when we let these out-of-state firms come in and built warehouses, they only bill us from the warehouse so they don't have to pay freight. This puts our local industry at a disadvantage, and I hope the House this afternoon will see fit to help save what I consider a Maine industry with quite a few employees and I am sure that they will employ more if we allow them to be in this position where they can be competitive, and they certainly are not presently.

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

Mr. HANDY: Mr. Speaker, Ladies and Gentlemen of House: The primary focus of this legislation is to place Maine-owned and operated business on a more competitive basis. This is one step that we can take toward making the business climate, particularly the small business climate, in the State of Maine more favorable.

The 110th Maine Legislature wisely enacted legislation to allow the warehousing of liquor in Maine by private sellers. Prior to this law, only the State of Maine could warehouse liquor within its own borders. The legislation allowed the importation of beer and liquor and its warehousing in Maine, thereby increasing revenues to the State of Maine. L.D. 1432, the bill before you, addresses an inequity created by the enactment of the warehousing bill.

This legislation that we passed last year can also be used by domestic manufacturers of liquor produced in other states. For example, a producer in Kentucky can warehouse his liquor in Maine and sell his product to the Liquor Commission in Maine or perhaps to other liquor commissions. Now, on its face, even this isn't bad, but what this does is allow the Kentucky manufacturer to overcome an economic obstacle as it competes with producers who are headquartered here in Maine. The competitive advantage the Kentucky producer gains is that his transportation costs of moving his product from Kentucky to the warehouse are no longer included in his price when the State Liquor Commission marks up his product.

Let me give you an example. If the Kentucky producer sells his product at wholesale at his Portland warehouse, say, for \$5 and does not include that in his price of \$1 transportation costs, and the markup is a full 75 percent at the state liquor commission, out-of-state competitors of our own Lawrence Distilleries, can gain the kind of advantage against which Lawrence Distilleries cannot compete.

You may ask this manufacturer in Kentucky, why wouldn't he include the \$1 per bottle transportation costs in his wholesale price? There are two reasons: First, most manufacturers who market on a national scale treat their transportation costs as an average cost. Thus, Kentucky bourbon selling in neighboring Tennessee has the same amount of transportation cost as it does selling in Maine. This results in the true price of the product not being reflected in the price on the shelves. It is for this reason that our liquor commission has for years directly applied the principle of adding the wholesale cost to known transportation charges for the commodity.

Second, the Kentucky company truly has an incentive in terms of competition not to include a high transportation charge if that

transportation charge is a 75 percent markup.

What this bill does is to allow the Maine competitors of the Kentucky company an opportunity to compete. It does not change the statute that we enacted last year. Instead, what this bill does, this bill does what many states have done—it reduces the maximum amount that the Maine producer's product can be marked up by the liquor commission. While this 10 percent reduction in the maximum markup amount will not place Maine manufacturers on an even footing, it will at least give them a fair opportunity to compete.

Ladies and gentlemen, I ask you today to vote for Maine's small business, and I would ask for a division, Mr. Speaker.

The SPEAKER: The Chair recognizes the gentleman from Brewer, Mr. Cox.

Mr. COX: Mr. Speaker, Ladies and Gentlemen of the House: I would like to explain some of the reasoning for the minority report.

We are told that this company is at a disadvantage. I am afraid I would dispute the claim that this company is at a disadvantage. What they have done is lost an advantage that they used to have whereby out-of-state companies had to charge more for their liquor. At that time, the advantage that they had for subsidy, if you will, was paid for by the people who bought the out-of-state liquor. Now that they have lost that advantage, we are being asked to give them another advantage which instead of being paid for by the people who choose to buy out-of-state liquor will be paid for by the taxpayers of the State of Maine because of loss of revenue.

It is plain that this would put them at a better competitive advantage, but the fact is, as I inquired from the firm when they were testifying, at present their liquor sells approximately 5 percent cheaper on the shelf than comparable brands from out of state. So if they are having difficulty selling their liquor, I would suggest that probably it is due to perhaps something other than this loss of an extra competitive advantage they had.

My chief objection, of course, is the loss of \$252,000 of revenue this year and every year. This would be a permanent loss of revenue to the state.

The amount of taxes that this firm pays to the state, I think I have some question in my mind as to the figures that were presented here. I think the figure presented was some \$200,000 in taxes paid to the state. My memory is not an amount that large that was paid but the fact would remain that the taxes they pay to the state, if this higher figure that was given to you is accurate, would be about equal to the loss of revenue which we would have under this bill. So if this legislature feels that it is important enough to give this firm the extra competitive advantage on the market and is willing to subsidize this with a loss of \$252,000 a year, based on this year's consumption, why that is something that I think is for the consciences of this legislature.

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

Mr. NADEAU: Mr. Speaker and Members of the House: I would disagree with the good gentleman from Brewer, Mr. Cox, and address this issue in this light—we are talking about under the warehousing law that we passed last session, which I think definitely put local companies at a disadvantage, are primarily owned by conglomerates and multi-national corporations. What you are talking about is the difference between these multi-national corporations and this outfit in Lewiston that employs 26 people, incidentally, owned by a very fine family and it is a father and son business pretty much. The father owns the business and his three sons help run it and they have an exceedingly good reputation and run a fine business, so the distinction is there. We have these large conglomerates versus a one and only producer in Maine.

As far as the issue of the fiscal note of \$252,000, that is the absolute worse case scenario; that is depending on the amount of liquor sold and it has a lot of variations to it.

I would also like to point out the fact that the commission has latitude in that the percentage markup is the minimum, and they have the latitude on adjusting that, depending on the amount of liquor sold in terms of the lost revenue that is experienced, so they have the flexibility to accommodate our local firms and assist one of our own businesses in a situation that I think any one of us would be remiss if didn't call it unfair, and let us pass this bill and put a local company at a competitive advantage—not advantage but basically put them at a level where they can be considered competitive, because at this point, ladies and gentlemen, it is a definite competitive disadvantage.

The SPEAKER: The Chair recognizes the gentleman from West Bath, Mr. Stover.

Mr. STOVER: Mr. Speaker, Ladies and Gentlemen of the House: I oppose this bill not because it is going to increase the consumption of liquor but I presume if you go in and buy a bottle of liquor produced by this company, you won't buy a bottle of liquor produced by somebody else. The reason I am opposed to this bill is the fact that it will be costing the general fund a quarter of a million dollars a year, and this is not a one-shot deal; this goes on ad infinitum. It would seem to me that that is asking too much from the taxpayers of the State of Maine.

I listened to the Chairman of the Appropriations Committee last week telling of the problems they are having not trying to raise money to do what they want to do, and I can't see why they would want to decrease the amount we would be taking in, which we would be doing if we pass this bill.

I questioned them on this and there is no danger of this concern going out of business. As far as I know, they are the only concern in the State of Maine that bottles and produces liquor. If that is the case, then they are selling \$9 million worth of liquor to the State Liquor Commission right now and they have an advantage. One, they don't have any distribution problem, they can take it right from Lewiston, drop it off in Hallowell and the State Liquor Commission distributes it from there around to the various stores and even now they are selling it at less money than their competitors, and I just can't see asking the taxpayers to subsidize this industry for that tremendous amount.

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

Mr. HIGGINS: Mr. Speaker, Men and Women of the House: This is not a taxation issue but I am going to speak anyhow.

What we have today is a number of comments by the opponents regarding the fiscal impact of this bill. This bill is not a subsidy. The Maine manufacturers are not going to receive any monies from the state. The state is not going to pay them any more for their product. All that is going to happen under this is that the state may charge less for the Maine produced product. This may cause more sales for the state's product in a place of foreign products. If this does pass, the state will receive back some of the money that it loses by cutting the price.

The fiscal note on this bill is \$250,000. This will only come about if the markup is decreased and Lawrence sells no more of its product here in Maine. However, if Lawrence does sell more of its product, because of this decreased price the loss will be less, it will be less than this quarter of a million dollars, or there may be no losses at all if they do sell more of the product.

Furthermore, if the commission is losing revenues of a significant nature, it can increase the markup. All we are doing is setting the min-

imum markup; the maximum is left to the discretion of the commission.

This legislature, however, will have told the commission that it can do something to help a Maine industry here. As in the past, the commission can do what we give them the tools to do, and I think that providing them with the discretion to charge a lower markup for Maine produced products is one of these tools that we should use to help Maine industry.

I hope that you will defeat the motion to accept the Minority Report and accept the Majority Report.

The SPEAKER: A vote has been requested. The pending question is on the motion of the gentleman from Brewer, Mr. Cox, that the Minority "Ought Not to Pass" Report be accepted. All those in favor will vote yes; those opposed will vote no.

A vote of House was taken.

15 having voted in the affirmative and 88 having voted in the negative, the motion did not prevail.

Thereupon, the Majority "Ought to Pass" Report was accepted, the Bill read once and assigned for second reading tomorrow.

Consent Calendar First Day

(H. P. 791) (L. D. 1032) Bill "An Act to Amend the Statutes Governing the Licensing, Approval and Registration of Adult and Child Care Programs"—Committee on Health and Institutional Services reporting "Ought to Pass" as amended by Committee Amendment "A" (H-208)

(S. P. 488) (L. D. 1481) Bill "An Act to Provide a Warden's Association Handbook"—Committee on Legal Affairs reporting "Ought to Pass" as amended by Committee Amendment "A" (S-95)

(H. P. 931) (L. D. 1210) Bill "An Act Relating to Enforcement of Handicapped Parking Zones on Turnpikes and the Interstate System by State Police"—Committee on Transportation reporting "Ought to Pass" as amended by Committee Amendment "A" (H-210)

(S. P. 357) (L. D. 1078) Bill "An Act Pertaining to License Revocation Notices Issued by the Commissioner of Inland Fisheries and Wildlife"—Committee on Fisheries and Wildlife reporting "Ought to Pass" as amended by Committee Amendment "A" (S-99)

No objections being noted, the above items were ordered to appear on the Consent Calendar of May 10, under the listing of Second Day.

Consent Calendar Second Day

(H. P. 1083) (L. D. 1429) Bill "An Act to Establish a State Standard for Funding Certain Workers under the Workers' Compensation Commission" (C. "A" H-205)

On the objection of Mrs. Mitchell of Vassalboro, was removed from the Consent Calendar.

Thereupon, the Report was accepted and the Bill read once. Committee Amendment "A" (H-205) was read by the Clerk.

On motion of Mrs. Mitchell of Vassalboro, Committee Amendment "A" was indefinitely postponed.

The Bill was assigned for second reading tomorrow.

Consent Calendar Second Day

(H. P. 850) (L. D. 1100) Bill "An Act Concerning Right-of-way for Emergency Vehicles" (C. "A" H-206)

(H. P. 1115) (L. D. 1473) Bill "An Act Repealing the Law on the Effect of Bail Following Conviction and Commitment"

(H. P. 750) (L. D. 962) Bill "An Act to Authorize the Maine Turnpike Authority to Receive Applications and Approve Description and Directional Signs on the Maine Turnpike"

No objections having been noted, the above

items were passed to be engrossed or passed to be engrossed as amended and sent up for concurrence.

Passed to Be Engrossed

Bill "An Act Concerning State Assistance to Areas Affected by Non-English Speaking Immigrants and Refugees" (S. P. 532) (L. D. 1555)
 Bill "An Act Relating to Attendants for Power Boilers" (H. P. 1180) (L. D. 1572)

Bill "An Act Concerning Solids in Milk" (H. P. 1181) (L. D. 1573)

Bill "An Act to Suspend Operation Authority on Motor Vehicles which Fail to Comply with the Gasoline Reporting Law" (Emergency) (H. P. 1183) (L. D. 1576)

Bill "An Act to Amend the Unfair Trade Practices Law" (H. P. 1178) (L. D. 1567)

Were reported by the Committee on Bills in the Second Reading, read the second time, passed to be engrossed and sent to the Senate.

Amended Bill

Bill "An Act to Revise the Statutes relating to Radiation Control" (S. P. 395) (L. D. 1195) (S. "A" S-92 to C. "A" S-89)

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

Passed to Be Enacted Emergency Measure

An Act to Override the Federal Preemption of State Authority to Regulate Alternative Mortgage Transactions (H. P. 790) (L. D. 1082)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, and a two-thirds vote of all the members elected to the House being necessary, a total was taken. 117 voted in favor of same and none against, and accordingly the Bill was passed to be enacted, signed by the Speaker and sent to the Senate.

The SPEAKER: The Chair recognizes the gentleman from St. George, Mr. Scarpino.

Mr. SCARPINO: Mr. Speaker, is the House in possession of House Paper 1097, L. D. 1445, Bill "An Act to Allow Retailers to Sell Prison Made Items?"

The SPEAKER: The Chair would answer in the affirmative, having been held at the gentleman's request.

Mr. SCARPINO: Mr. Speaker, I now move that we reconsider our action whereby L.D. 1445 was passed to be engrossed and further move that this be tabled one legislative day.

Thereupon, tabled pending the motion of Mr. Scarpino of St. George to reconsider and tomorrow assigned.

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

Mrs. NELSON: Mr. Speaker, is the House in possession of House Paper 836, L.D. 1072, Bill "An Act to Require the Wearing of Protective Headgear by all Motorcycle, Motor Driven Cycle and Moped Riders?"

The SPEAKER: The Chair would answer in the affirmative, having been held at the gentleman's request.

Mrs. NELSON: I now move that we reconsider our action whereby we all voted to adhere so that we could insist and ask for a committee of conference.

Mr. Racine of Biddeford requested a vote.

The SPEAKER: The pending question is on the motion of the gentleman from Portland, Mrs. Nelson, that the House reconsider its action whereby it voted to adhere. All those in favor of reconsideration will vote yes; those opposed will vote no.

A vote of the House was taken.

Whereupon, Mr. Manning of Portland requested a roll call vote.

The SPEAKER: For the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. All

those desiring a roll call vote will vote yes; those opposed will vote no.

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

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

Mrs. NELSON: Mr. Speaker, Men and Women of the House: I will be very brief. I simply want the opportunity for us to reconsider so that we could then move on the motion which I would like to make for us to insist and ask for a committee of conference.

There are many people here in this House who came up to me and said, if you were to change this bill, perhaps to exclude Mopeds, perhaps to just insist that motorcyclists wear a helmet to the age of 20, we are also concerned about the insurance program, people could indeed take out more insurance if they don't wear a helmet, and the point was, if we could do that and have the opportunity to have a committee of conference with the other body who has passed this bill, we could then go with it, and that is why I ask that you please vote in favor of the motion.

The SPEAKER: The Chair recognizes the gentleman from Princeton, Mr. Moholland.

Mr. MOHOLLAND: Mr. Speaker, Ladies and Gentlemen of the House: We have debated this bill to death and this House has chosen to kill this bill twice. I hope that you will for the third time give this bill its last rights and vote against the motion to reconsider.

I could get up and talk here all night on this bill. I have so many things in the back of my head that I could say, but I don't want to bother you nice people with all that talk tonight.

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

Mr. MANNING: Mr. Speaker, Ladies and Gentlemen of the House: I am not quite sure whether it was brought up this morning, but a week or so ago, the model state legislature was up here and they voted to put the helmet law back on. These are people who are 16, 17 and 18 years old.

Another thing, when Margaret Chase Smith was here, I asked her a question about nuclear power. Margaret Chase Smith is apparently quite familiar with this and said—I would rather be in a room full of nuclear power than on a motorcycle.

Ladies and gentlemen, before we give last rights to somebody out there who hasn't had a motorcycle helmet on because they have crashed and they are on their way, either up or down, let's give this one more try and let's try to come up with a compromise that we can all live with and not die with.

The SPEAKER: A roll call has been ordered. The pending question is on the motion of the gentleman from Portland, Mrs. Nelson, that the House reconsider its action whereby it voted to adhere. All those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA—Ainsworth, Andrews, Beaulieu, Benoit, Bost, Brannigan, Brodeur, Carrier, Carroll, D.P.; Carroll, G.A.; Chonko, Connolly, Cooper, Cox, Crouse, Curtis, Daggett, Diamond, Drinkwater, Foster, Hall, Handy, Hickey, Higgins, H.C.; Hobbins, Ingraham, Jacques, Joseph, Joyce, Kane, Kelly, Ketover, Kilcoyne, LaPlante, Lehoux, Lisnik, Locke, MacBride, Macomber, Manning, Martin, A.C.; Masterton, Matthews, K.L.; Matthews, Z.E.; McCollister, McGowan, McPherson, Melendy, Mitchell, E.H.; Mitchell, J.; Murphy, T.W.; Nadeau, Nelson, Paradis, P.E.; Paul, Perry, Pines, Reeves, P.; Richard, Roberts, Rolde, Soule, Sproul, Stevenson, Theriault, Thompson, Tuttle, Walker, Zirnkilton, The Speaker.

NAY—Allen, Anderson, Armstrong, Bell, Bonney, Bott, Brown, A.K.; Brown, D.N.; Cahill, Callahan, Carter, Cashman, Clark, Conary,

Cote, Crowley, Davis, Day, Dexter, Dillenback, Dudley, Erwin, Gauvreau, Greenlaw, Gwadosky, Higgins, L.M.; Holloway, Jackson, Kiesman, Lebowitz, Lewis, Livesay, MacEachern, Martin, H.C.; Masterman, Maybury, McHenry, Michael, Michaud, Moholland, Murphy, E.M.; Norton, Paradis, E.J.; Parent, Perkins, Pouliot, Racine, Randall, Reeves, J.W.; Ridley, Roderick, Rotondi, Salsbury, Scarpino, Sherburne, Small, Smith, C.B.; Smith, C.W.; Soucy, Stevens, Stover, Strout, Swazey, Tammaro, Telow, Vose, Webster, Wentworth, Weymouth.

ABSENT—Baker, Brown, K.L.; Connors, Hayden, Jalbert, Kelleher, Mahany, McSweeney, Murray, Seavey, Willey.

Yes, 70; No, 69; Absent, 11; Vacant, 1.

The SPEAKER: Seventy having voted in the affirmative and sixty-nine in the negative, with eleven being absent and one vacant, the motion does prevail.

The Chair recognizes the gentleman from Portland, Mrs. Nelson.

Mrs. NELSON: Mr. Speaker, I now move that we insist and ask for a committee of conference.

Whereupon, Mr. Racine of Biddeford requested a division.

The SPEAKER: The pending question is on the motion of Mrs. Nelson of Portland that the House insist and ask for a Committee on Conference. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

70 having voted in the affirmative and 69 having voted in the negative, the motion did prevail.

The SPEAKER: The Chair recognizes the gentleman from Biddeford, Mr. Racine.

Mr. RACINE: Mr. Speaker, I move we reconsider whereby we voted to insist and ask for a committee on conference.

Mr. McGowan of Pittsfield requested a roll call vote.

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

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

The SPEAKER: The pending question is on the motion of the gentleman from Biddeford, Mr. Racine, that the House reconsider its action whereby it voted to Insist and ask for a Committee of Conference. All those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA—Allen, Anderson, Armstrong, Bell, Bonney, Bott, Brown, A.K.; Brown, D.N.; Callahan, Carrier, Carter, Cashman, Clark, Conary, Cote, Davis, Day, Dexter, Dillenback, Erwin, Gauvreau, Greenlaw, Gwadosky, Higgins, L.M.; Holloway, Jackson, Kiesman, Lewis, Livesay, MacEachern, Martin, H.C.; Masterman, Maybury, McCollister, McHenry, Michael, Michaud, Moholland, Murphy, T.W.; Norton, Paradis, E.J.; Parent, Paul, Perkins, Racine, Reeves, J.W.; Ridley, Roberts, Roderick, Rotondi, Salsbury, Scarpino, Sherburne, Small, Smith, C.B.; Smith, C.W.; Soucy, Soule, Sproul, Stover, Strout, Swazey, Tammaro, Telow, Vose, Webster, Wentworth, Weymouth.

NAY—Ainsworth, Andrews, Beaulieu, Benoit, Bost, Brannigan, Brodeur, Carroll, D.P.; Carroll, G.A.; Chonko, Connolly, Cooper, Cox, Crouse, Crowley, Curtis, Daggett, Diamond, Drinkwater, Dudley, Foster, Hall, Handy, Hickey, Higgins, H.C.; Hobbins, Ingraham, Jacques, Joseph, Joyce, Kane, Kelly, Ketover, Kilcoyne, LaPlante, Lebowitz, Lehoux, Lisnik, Locke, MacBride, Macomber, Manning, Martin, A.C.; Masterton, Matthews, K.L.; Matthews, Z.E.; McGowan, McPherson, Melendy, Mitchell, E.H.; Mitchell, J.; Nadeau, Nelson, Paradis, P.E.; Perry, Pines, Pouliot, Randall, Reeves, P.; Richard, Rolde, Stevens, Stevenson, Theriault,

Thompson, Tuttle, Walker, Zirkilton, The Speaker.

ABSENT—Baker, Brown, K.L.; Cahill, Connors, Hayden, Jalbert, Kelleher, Mahany, McSweeney, Murphy, E.M.; Murray, Seavey, Willey.

Yes, 68; No, 69; Absent, 13; Vacant, 1.

The SPEAKER: Sixty-eight having voted in the affirmative and sixty-nine in the negative, with thirteen being absent and one vacant, the motion did not prevail.

The Chair laid before the House the following matter:

An Act to Clarify, Simplify and Improve Certain Sections of the Labor Laws of Maine (S. P. 497) (L. D. 1503) (C. "A" H-185) which was tabled and later today assigned pending passage to be enacted.

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

The Chair laid before the House the following matter:

An Act to Amend the Reporting Requirements in Cases of Death Due to Abuse or Neglect (H. P. 715) (L. D. 906) (C. "A" H-173) which was tabled and later today assigned pending passage to be enacted.

On motion of Mr. Soule of Westport, tabled pending passage to be enacted and tomorrow assigned.

The Chair laid before the House the following matter:

An Act to Amend Mandatory Zoning and Subdivision Control (H. P. 1160) (L. D. 1531) which was tabled and later today assigned pending passage to be enacted.

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

The Chair laid before the House the following matter:

An Act to Amend Maine's Wrongful Death Law (H. P. 398) (L. D. 481) (C. "A" H-141) which was tabled and later today assigned pending the motion of the gentlewoman from So. Portland, Ms. Benoit, that the House adhere to its action whereby the Bill was indefinitely postponed.

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

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

The SPEAKER: The gentleman from Saco, Mr. Hobbins, moves that the House recede and concur.

The Chair recognizes the gentlewoman from So. Portland, Ms. Benoit.

Ms. BENOIT: Mr. Speaker, Men and Women of the House: First of all, I would ask you to vote against the motion to recede and concur so that if we defeat that motion I can then make the motion that this House adhere.

Last week we voted on this issue and by a margin of 29 votes we voted to indefinitely postpone this measure. You listened to the debate and you made a decision and I hope you will do the same today.

I will try to be as brief as possible, but I know that this bill has been heavily lobbied since that time. Last week, after the vote I was asked the question, "where are you coming from on this issue?" I really had given it a lot of thought and I have given it more and I would like to try to explain my feelings.

First of all, this is an insurance issue. It deals with insurance which will cover consortium or loss of companionship or love, etc. I think and I know that I believe that insurance ought to be relevant. We ought to be able to measure that relevancy. For instance, if you are homeowners and someone has an accident in your home, you can measure it, you know what you are paying for. If you have water damage to your

home, you can collect on that and you know what you are collecting for. If you have automobile insurance, if you are in an accident you can measure that, you know what you are paying for. However, I ask you, how do you measure consortium? How would you put a value on a human life?

Two years ago, this was set at \$10,000; we increased it at that time to \$50,000 and now there is a measure to increase it to \$100,000. I would suspect that the \$10,000 amount was sort of a token amount. I don't mean token in the sense that life isn't worth more than \$10,000, a token due to the fact that you can't measure the value of life.

I would further suggest that if we raise this to \$100,000, that will not become the ceiling, that will become the minimum. Put yourself in the position of being a jury or judge. If you had to place a value on someone's life for loss of companionship or love, are you going to say to that person, "Well, we think your husband was only worth \$50,000; we think your child was only worth \$10,000. I, for sure, would not say that. I would award the \$100,000. If that happens, who pays for it? The consumer pays for it in higher insurance premiums.

It is true that claimants, if they were awarded \$100,000, obviously are going to gain more than they would at \$50,000; however, let me remind you that the trial lawyer who is getting 33-1/3 percent contingency fee is certainly also going to gain. I would remind you that last week I read from a letter which I admitted was written by New York Mutual Insurance Company of Maine but I will quote that letter again. "This is typically a trial lawyer's bill and it is clearly designed to increase their contingent fee with very little or no concern to the aggrieved person or their families. Insurance companies, by nature, are not philanthropists. If their losses increase, they will surely file for rate increases which will be passed on to the insurance buying public. That effect is that the public pays the bill and the trial lawyers reap the benefits from higher judgments and fees." You can take that for whatever it is worth.

Some of you have told me this week that you have been heavily lobbied on this issue. I certainly do not object to lobbying, everyone has a right to lobby; however, I would ask you to think about who is lobbying for this bill and why. Why did they tell you we need this bill? Who is it going to benefit? I have not heard from any of my constituents on this bill, maybe you have. If you have, perhaps you will share that with us.

Finally, I would remind you that the law does provide for an award to be made in order to cover any economic losses that a person may sustain who is a dependent of one who is killed, and the current statute provides that pecuniary damages be measured by the amount required to fairly compensate the spouse, children or heirs of the deceased for actual pecuniary losses suffered by them because of the deceased's death. There is no ceiling.

I would ask you once again to please think about how you voted last week. If there is any confusion on the issue, perhaps it could be clarified by myself or some other member of this body. I would ask you to vote against the motion to recede and concur.

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

Mr. HOBBS: Mr. Speaker, Men and Women of the House: I can see again that the good gentlelady from South Portland would like to reduce this to a typical lawyer's bill. I suppose I could get up here and I could do the same thing about the insurance companies, but I think we should look at the bill and look at its merits.

This bill changes the current law only one way; it increases the legal limit on what a jury may award from \$50,000 to \$100,000 for loss of comfort, companionship, affection and security in cases of wrongful death.

Under Maine law, wrongful death is the result of a willful or a negligent act or disregard of reasonably foreseeable circumstances causing a personal injury resulting in death. There are many examples you can give of wrongful death that can occur in automobile accidents, which I mentioned to you last week involving that 17-year-old boy who was negligently killed. It involves someone who is electrocuted, it involves someone who has fallen into an uncovered well, it could involve someone who drowned because of the negligence of someone else, many other areas. As I mentioned earlier, it could be that drunken driver who kills your spouse, your friend or loved one.

The limit of \$100,000 will not be awarded in every case. The change will only allow the family of the deceased to ask for an amount up to \$100,000. It is the jury—again, it is the jury that will make the decision.

This change helps correct a situation which now exists in Maine where families of persons severely injured but not instantly killed by a negligent act may ask for an unlimited amount for pain and suffering. Let me repeat that again—this change helps correct a situation which now exists in Maine where families of persons severely injured but not instantly killed by a negligent act may ask for unlimited amounts for pain and suffering. Thus, the person who commits the act, and this is the tragedy, ladies and gentlemen, that drunken driver on the road, he is better off killing someone instantaneously than just severely injuring that person; thus the person who commits the act is better off. If you kill someone, you had better do a good job of it because if you don't, it is an unlimited exposure.

I know that the gentlelady talked about insurance and she read a letter from the insurance industry, but I bet she didn't talk with Mr. Briggs over at the Department of Insurance, the Superintendent of Insurance, and ask him his opinion. It is easy to read a letter from an insurance company, but I bet she didn't talk to the Superintendent of the Bureau of Insurance. If she had talked with Mr. Briggs, Mr. Briggs would have told her that there is no evidence that this bill will significantly impact on auto insurance rates. His office was in contact with an actuary with the Connecticut Department of Insurance last week and they have no information concerning the impact of their wrongful death act on Connecticut insurance rates. In short, if the good gentlelady would have done her homework and called Mr. Briggs, he would have informed her that he is not especially concerned about the impact on insurance rates with the passage of this bill.

As I mentioned to you earlier last week, there is an inequity in our present system, and that is that if an individual, because of some negligent act, is not killed instantaneously, then they have a lot of other things they can collect. They can collect loss of lifetime earnings, loss of lifetime enjoyment, pain and suffering, medical bills, but if that person is killed instantaneously with dependents, the estate collects funeral bills and up to \$50,000 for loss of comfort.

I think if you look at the arguments of this bill and you look at the issue involved, I think you will come down on the side of increasing the rate from \$50,000 to \$100,000. I urge you to recede and concur.

The SPEAKER: The Chair recognizes the gentlewoman from South Portland, Ms. Benoit.

Ms. BENOIT: Mr. Speaker, Men and Women of the House: I wish to respond to one issue and that is the issue of pain and suffering. Mr. Hobbins is absolutely correct, you cannot collect for pain and suffering if you are killed instantaneously because there supposedly is no pain and suffering. That is why the law is set up that way. Consortium and an award for pain and suffering are not the same thing; they are two different issues.

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

Mr. CARRIER: Mr. Speaker, Members of the House: I spoke against this bill once last week and I am back here today to say to all of you that I did my homework on this bill and I didn't have to go see Mr. Briggs either. I can only say to you that the effect of this bill upon you people, if it happens, will increase your premiums. It has happened in other states such as New Jersey and California where there were instances known to be a trial lawyer's paradise because they received high judgments. Presently, in Maine, we enjoy reasonable rates and reasonable judgments, a realistic judgment that is below \$50,000.

I mentioned to you last time that you want to think of yourselves and you want to think of your spouse in case something happens to you in certain situations such the judgments collected under. The fact is that if you increase this from \$50,000 to \$100,000, who is going to make the money from this? The ones that will receive the benefit of the judgments will be the trial lawyer. If you got a judgment for \$90,000, they get \$30,000. How many people over here could not take \$30,000 and use that in a year's time, not in one year's time but in two years' time? Think of the ones you leave behind. They are the ones that should get the money and not the lawyers.

They don't tell you how much work there is involved on their part to do that. As a matter of fact, I have a letter that says you should have a choice to hire a lawyer by the hour to do this kind of work, and I can assure you that if you do it, in most cases it will cost you very little.

However, I am not in the mood to compromise and I very seldom compromise but the fact is, ladies and gentlemen, I will compromise on this bill, let's take out the one sentence about what the lawyers are supposed to do and I will put in an amendment in there taking that off and you pass that bill that way because it will be to your advantage and to my advantage and it would also be to be lawyers' advantage because they will still make a living out of this.

I cannot believe in the time that I have been here and associated with lawyers that somebody turns around and tell me that on an estate they get \$30,000 or \$40,000. I think it is unbelievable, I know it is true but I think it is extremely unfair for the people, unfair for you who have tried to accumulate a house, accumulate some kind of equity in your lifetime and then you die and your wife or somebody else has to go through a lawyer and pay them \$30,000 or \$40,000. I think it is ridiculous and it should be done away with.

This is a self-serving bill for the trial lawyers of this state and I don't think we should encourage them by raising the limit from \$50,000 to \$100,000; we went from \$10,000 to \$50,000 two years ago.

This is a very clear bill, easy to understand because the money is going to go into your pockets and your loved one's pocket and into the lawyer's pocket, and that is not where it should be. I think they should be paid a reasonable fee, and if they want to be sincere about this bill, let's take the contingency clause off this bill, and then we will see the lawyers holler inside this House and outside.

I hope that you move to adhere.

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

Mr. HOBBS: Mr. Speaker, Men and Women of the House: In response to the good gentleman from Westbrook, I urge all of you, if you know a lawyer, go to that lawyer's office and ask that lawyer what the office policy is in regard to such cases as wrongful death. You will be informed that the client has a choice; he can either allow the attorney to take that case on a contingency fee basis, that means if you win, there is a percentage involved; if you lose, the lawyer eats the time and the expenses.

The other choice the client would have, if

you talk to your lawyers in your different areas, they will tell you they will handle a case such as a wrongful death case on an hourly rate—they will take those on an hourly rate, and I challenge all of you to talk with a lawyer in your home town or a friend who is a lawyer and ask them that question and I think they will give you that answer.

In conclusion, let me say that no money can replace a life, but it is the only remedy, the only mechanism in our society that we have to decrease the pain of such a loss on a member of the family.

The SPEAKER: The Chair recognizes the gentleman from Biddeford, Mr. Racine.

Mr. RACINE: Mr. Speaker, Ladies and Gentlemen of the House: I would like to verify one comment that was made. I went to see an attorney Friday to initiate a malpractice suit and I was given the opportunity to either take it on a contingency basis, which would be one-third, or he would work on an hourly basis, so in the case of malpractices, the attorneys do give you a choice.

The other thing that I would like to mention, if the attorney takes this on a contingency, one-third, and my mathematics may be off a little bit, but if there is an award of \$50,000, one-third would be \$16,500, which means that the client would get \$33,500, so if this is increased to \$100,000, the difference would be that the client would get \$67,000 and the attorney \$33,000, so there is some money that would be going to the client. It would not be strictly for the attorneys.

The SPEAKER: The Chair recognizes the gentleman from Newport, Mr. Reeves.

Mr. REEVES: Mr. Speaker, Ladies and Gentlemen of the House: I hesitate to rise again today; we have debated this quite lengthy last week. The vote, I thought, was quite decisive, but I must rise to comment very briefly. I don't want to rehash what we have gone over in the past. I want to comment on some of the things you have heard here this afternoon.

Representative Hobbins said that Mr. Briggs does not seem to be concerned about an insurance increase. I say to you, ladies and gentlemen on the floor of this House, maybe he is not concerned about an insurance increase but you and I should be concerned about an insurance increase on behalf of our constituents, the people of this great State of Maine. We should be thinking about them.

Mr. Hobbins also stated that you should talk to an attorney about this bill. Ladies and gentlemen, I say you don't need to talk to a lawyer about this bill, just stop and think about who has been lobbying it the last few days down here.

I am concerned and I am convinced that insurance premiums will increase and you and I and our friends and neighbors are going to be forced to pay them. It has already been stated and we hashed it over last week, two years ago we increased this from \$10,000 to \$50,000 and now they are asking for \$100,000. I think it is just too much too soon. I would remind you of what I said last week—to me, this is truly a lawyer's dream.

The SPEAKER: The Chair recognizes the gentleman from Madawaska, Mr. McHenry.

Mr. McHENRY: Mr. Speaker, Ladies and Gentlemen of the House: The way I understand it, right now the insurance commissioner charges us on a regional basis. If we pass it or not, I don't think it will affect our insurance rates because some other states in the northern region do allow this.

I would like to ask a question through the Chair.

The SPEAKER: The gentleman may pose his question.

Mr. McHENRY: Mr. Speaker, Ladies and Gentlemen of the House: How often does this happen, a wrongful death? How often does it happen in the State of Maine per year?

The SPEAKER: The gentleman from Madawaska, Mr. McHenry, has posed a question through the Chair to anyone who may respond if they so desire.

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

Mr. HOBBS: Mr. Speaker, Members of the House: It is my understanding that it does not occur that often. To give you an example, I have practiced law for five years and I have had one case. I know there is a big office in my hometown with 10 lawyers and they average about one case a year.

Mr. Mitchell of Freeport requested a roll call.

The SPEAKER: For the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. All 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 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 the gentleman from Saco, Mr. Hobbins, that the House recede and concur.

The Chair recognizes the gentleman from Bucksport, Mr. Swazey.

Mr. SWAZEY: Mr. Speaker, I request permission to pair my vote with the gentleman from Bangor, Mr. Kelleher. If Mr. Kelleher, were present and voting, he would be voting yes; I would be voting no.

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

Mr. MACOMBER: Mr. Speaker, I request permission to pair my vote with the gentleman from Franklin, Mr. Connors. If Mr. Connors were present and voting, he would be voting no; I would be voting yes.

The SPEAKER: The pending question before the House is on the motion of the gentleman from Saco, Mr. Hobbins, that the House recede and concur. Those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA—Ainsworth, Andrews, Beaulieu, Brannigan, Brodeur, Carroll, D.P.; Chonko, Clark, Connolly, Cooper, Cote, Cox, Crouse, Diamond, Erwin, Foster, Gauvreau, Gwadnosky, Hall, Handy, Higgins, H.C.; Hobbins, Holloway, Ingraham, Joyce, Kane, LaPlante, Lehoux, Lisnik, Livesay, Locke, MacEachern, Manning, Martin, H.C.; Masterman, McCollister, McGowan, McHenry, Michael, Michaud, Mitchell, E.H.; Murphy, T.W.; Nadeau, Norton, Paradis, P.E.; Paul, Perry, Racine, Randall, Reeves, P.; Richard, Rolde, Salsbury, Soule, Stevens, Tammaro, Theriault, Tuttle, Vose, The Speaker.

NAY—Allen, Anderson, Armstrong, Bell, Benoit, Bonney, Bost, Bott, Brown, A.K.; Brown, D.N.; Brown, K.L.; Cahill, Callahan, Carrier, Carroll, G.A.; Carter, Cashman, Conary, Crowley, Curtis, Daggett, Davis, Day, Dexter, Dillenback, Drinkwater, Greenlaw, Hickey, Higgins, L.M.; Jackson, Jacques, Joseph, Kelly, Ketover, Kiesman, Kilcoyne, Lebowitz, Lewis, MacBride, Martin, A.C.; Masterton, Matthews, K.L.; Matthews, Z.E.; Maybury, McPherson, Melendy, Mitchell, J.; Moholland, Murphy, E.M.; Nelson, Paradis, E.J.; Parent, Perkins, Pines, Pouliot, Reeves, J.W.; Ridley, Roberts, Roderick, Rondini, Scarpino, Sherburne, Small, Smith, C.B.; Smith, C.W.; Soucy, Sproul, Stevenson, Stover, Strout, Telow, Thompson, Walker, Webster, Wentworth, Weymouth, Zirkililton.

ABSENT—Baker, Dudley, Hayden, Jalbert, Mahany, McSweeney, Murray, Seavey, Willey.

PAIRED—Connors-Macomber; Kelleher-Swazey.

Yes, 60; No, 77; Absent, 9; Vacant, 1; Paired, 4.

The SPEAKER: Sixty having voted in the affirmative and seventy-seven in the negative, with nine being absent and one vacant and four paired, the motion does not prevail.

The Chair recognizes the gentlewoman from South Portland, Ms. Benoit.

Ms. BENOIT: Mr. Speaker, I now move that we adhere.

The SPEAKER: The gentlewoman from South Portland, Ms. Benoit, moves that the House adhere.

Mr. Hobbins of Saco requests a roll call.

The SPEAKER: For the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. All 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 having expressed a desire for a roll call, a roll call was ordered.

The SPEAKER: The pending motion before the House is on the motion of the gentlewoman from South Portland, Ms. Benoit, that the House adhere. Those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA—Allen, Anderson, Armstrong, Bell, Benoit, Bonney, Bost, Bott, Brown, A.K.; Brown, D.N.; Brown, K.L.; Cahill, Callahan, Carrier, Carroll, G.A.; Carter, Cashman, Canary, Crowley, Curtis, Daggett, Davis, Day, Dexter, Dillenback, Drinkwater, Greenlaw, Hickey, Higgins, L.M.; Hobbins, Jackson, Jacques, Joseph, Kelly, Ketover, Kiesman, Kilcoyne, Lebowitz, Lehoux, Lewis, MacBride, Martin, A.C.; Masterton, Matthews, K.L.; Matthews, Z.E.; Maybury, McPherson, Melendy, Moholland, Murphy, E.M.; Paradis, E.J.; Parent, Perkins, Pines, Pouliot, Reeves, J.W.; Ridley, Roberts, Roderick, Rotondi, Scarpino, Sherburne, Small, Smith, C.B.; Smith, C.W.; Soucy, Sproul, Stevenson, Stover, Strout, Telow, Thompson, Walker, Webster, Wentworth, Weymouth, Zirkilton.

NAY—Ainsworth, Andrews, Beaulieu, Brannigan, Brodeur, Carroll, D.P.; Chonko, Clark, Connolly, Cooper, Cote, Cox, Crouse, Diamond, Erwin, Foster, Gauvreau, Gwadosky, Hall, Handy, Higgins, H.C.; Holloway, Ingraham, Joyce, Kane, LaPlante, Lisnik, Livesay, Locke, MacEachern, Manning, Martin, H.C.; Masterman, McCollister, McGowan, McHenry, Michael, Michaud, Mitchell, E.H.; Mitchell, J.; Murphy, T.W.; Nadeau, Nelson, Norton, Paradis, P.E.; Paul, Perry, Racine, Randall, Reeves, P.; Richard, Rolde, Salsbury, Soule, Stevens, Tammaro, Theriault, Tuttle, Vose.

ABSENT—Baker, Connors, Dudley, Hayden, Jalbert, Kelleher, Macomber, Mahany, McSweeney, Murray, Seavey, Swazey, Willey, The Speaker.

Yes, 77; No, 59; Absent, 14; Vacant, 1.

The SPEAKER: Seventy-seven having voted in the affirmative and fifty-nine in the negative, with fourteen being absent and one vacant, the motion does prevail.

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

Mr. CARRIER: Mr. Speaker, having voted on the prevailing side, I now vote that we reconsider our action whereby the House voted to adhere and hope you vote against me.

The SPEAKER: The gentleman from Westbrook, Mr. Carrier, having voted on the prevailing side, now moves that the House reconsider its action whereby the House voted to adhere. Those in favor will say yes; those opposed will say no.

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

The Chair laid before the House the following matter:

Bill "An Act to Establish the Third-party Prescription Program Act" (S. P. 518) (L. D. 1539) which was tabled earlier in the day and later today assigned pending passage to be engrossed.

Mr. Manning of Portland offered House Amendment "A" (H-209) and moved its adoption.

House Amendment "A" was read by the Clerk and adopted.

The SPEAKER: The Chair recognizes the gentleman from Biddeford, Mr. Racine.

Mr. RACINE: Mr. Speaker, I would like to pose a question through the Chair. Would somebody explain what this bill does, specifically how it changes the current law and how this affects the insurance companies and whether or not this will cause an increase in insurance premiums if this bill is passed into law?

The SPEAKER: The gentleman from Biddeford, Mr. Racine, has posed a question through the Chair to anyone who may care to respond.

The Chair recognizes the gentleman from Portland, Mr. Manning.

Mr. MANNING: Mr. Speaker, Ladies and Gentlemen of the House: This bill is "An Act to Establish the Third-party Prescription Program Act." Basically what is happening right now is, there are many companies out there who go to insurance companies and establish what they call third-party prescriptions. What is happening is, for instance there is a company in Phoenix, Arizona called PCS and PCS is the third-party prescription program operator. They administer programs from all over the country and they basically walk into pharmacies and say, do you want our programs? If a pharmacy that has presently been working with somebody for 10 or 15 years and says, yes, Mr. Smith down the road will be using this program, what is happening is, this program will pay the pharmacist an amount of money that is left in the Medicaid program. The Medicaid program right now is at three twenty and is going to three thirty six this year and therefore we heard this bill in committee and we hashed it out.

The program right now, for instance, they will give anywhere from \$1.95 to say \$3.20—Blue Cross is giving \$3.40. It is against four or five or even two pharmacies to negotiate with any company because it is against the Anti-trust Law. What is happening is, your small pharmacies in the State of Maine can't band together, nor can the pharmaceutical association or the pharmacy association executive director go and negotiate with these people. Therefore, if they can't do it, then the only other alternative is for them to come into the legislature and ask for us to address this program.

This three pronged program, yes, it probably will increase the benefit packages of the companies that they are dealing with but the companies that will be dealing with this will know ahead of time what the price will be however, our committee, looking at this, realized that this is something that will hopefully stop cost shifting. In other words, if someone comes in and gets a prescription and the pharmacist is only reimbursed at \$1.90, somebody down the road has got to pick up the remainder of the profit, and that is the catch, by a customer.

This is the year of cost containment and we have heard shifting of revenues around, well this is the perfect example. A pharmacist knows what his usuary and customary prices are going to be and he charges them time and time again. However, if a company comes in and gets him into the program and he doesn't want to lose his customer, then he has to accept the lower rate. In accepting the lower rate, the person who pays the higher rate is going to be the cash paying customer, so that is why the bill has been brought into the legislature to address this area, because, as I said before, the pharmacies cannot get together and negotiate because it is against the Anti-Trust Law, nor can they get the Pharmaceutical Association executive director to negotiate because it is against the Anti-trust law. So the pharmacy is stuck in a hard spot because they could be dealing with companies all over the country or they could be dealing with companies, in this case—with Blue Cross-Blue Shield of course they would be locally, but Blue Cross and Blue Shield and others in the state are minor compared to this company in Phoenix, Arizona, called PACE that has got over 500 companies

involved and many of them are in the State of Maine. They might only be in here with a small group or they might be here with a large group.

The SPEAKER: The Chair recognizes the gentleman from Biddeford, Mr. Racine.

Mr. RACINE: Mr. Speaker, Ladies and Gentlemen of the House: I would like to pose another question through the Chair. Does this include the reimbursement that the pharmacies are getting, as an example, \$3.36 for a prescription or \$3.40 does that include packaged items or is this just the drugs that they prepare in the pharmacy?

The SPEAKER: The gentleman from Biddeford, Mr. Racine, has posed another question through the Chair to anyone who may care to respond.

The Chair recognizes the gentleman from Portland, Mr. Manning.

Mr. MANNING: Mr. Speaker, Ladies and Gentlemen of the House: This \$3.40 would be the same as what the Medicaid prescription is; in other words, they would get \$3.40 over and above what the actual cost of the prescription item is.

The SPEAKER: The Chair recognizes the gentleman from Biddeford, Mr. Racine.

Mr. RACINE: Mr. Speaker, Ladies and Gentlemen of the House: I feel that if we pass this bill, we are mandating again. I think we should let the free enterprise system take care of itself. As far as I know, pharmacies, it is on a voluntary basis—if they do not want to participate in the program, they don't have to. I guess what was mentioned today on another bill, we are in a mandating mood and I feel that this is exactly what we are doing.

I request a roll call vote.

The SPEAKER: For the Chair to order a roll call, it must have the expressed desire of one fifth of the members present and voting. All those 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 having expressed a roll call a roll call was ordered.

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

Mr. MANNING: Mr. Speaker, Ladies and Gentlemen of the House: I have heard mandate, mandate, mandate. Well, let me just say one thing about mandate. Every time we touch this green button, we are mandating, so let's forget about mandating for a change here. If you don't want to mandate, don't get elected.

What this bill basically is going to do is, in a small rural area or in an area where one company can deal with Blue Cross-Blue Shield, Unionmutual or PCS, the third party payor will go to that company and say, look we got this program, do you want to get involved? Put yourself going to your pharmacy for the last 10, 15 or 20 years and saying, do you accept a third-party program and they said yes - you know if you get involved in this program, you are going to affect the pharmacist but there is nothing you can do about it. Yes, the pharmacist has a right to say no, I don't accept the program, so you go down the road. In some cases, down the road might be 10, 15 or 20 miles and he might be losing a customer that he has had for a number of years.

This is a bill that is going to hopefully stop the cost shifting from the PCS or the Unionmutual or the Blue Cross provider to the cash-paying customers which predominantly are the ones that are going to go into the drugstore. However, this program is growing.

There are a few other things in this bill that will also help out and that is in the fact that it will be illegal for one company to go into a certain drug store and say we will give you all your business, because we feel this should be distributed amongst all the pharmacies in the area rather than just one pharmacy in the area.

I would hope that you would go along with this. If I remember right, this was a 12 to 1 decision out of our committee and we thought

about it long and hard and hopefully you will go along with engrossment.

The SPEAKER: The Chair recognizes the gentlewoman from Presque Isle, Mrs. MacBride.

Mrs. MacBRIDE: Mr. Speaker, Ladies and Gentlemen of the House: I hope you will vote for this bill today. It really is a good bill and it is a bill that is needed.

In addition to the other arguments that have been brought forth today, a situation has occurred whereby one of the third-party prescription companies would perhaps withdraw a customer from its ranks or the customer would withdraw, and then that party would not notify the pharmacist. The pharmacist would keep on dispensing drugs and would never get paid for them, so the pharmacist has been put in a hard position.

It is a fair bill, it is needed to protect our pharmacies and our consumers. I hope you will support it.

The SPEAKER: The Chair recognizes the gentleman from Auburn, Mr. Brodeur.

Mr. BRODEUR: Mr. Speaker, Members of the House: I am the one that voted against this bill and one of the reasons I voted against it is because it will raise the dispensing fee immediately for some of our in-state providers, such as Unionmutual, from \$3.30 to \$3.40. I think some of the people are working towards some arrangements in negotiating for benefits such as this, and this will make it more difficult for them to get a third-party reimbursement program or make it more expensive for that program.

I also believe that the pharmacies can negotiate, I mean they can say no and not participate in the program and/or charge more if the third-party payment doesn't make it as much, so that is why I voted against this bill in committee.

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

Mrs. NELSON: Mr. Speaker, Men and Women of the House: This is not a Portland bill, this really is a bill for the small pharmacies or a pharmacy in a small town. Yes, the pharmacists have a right to say no, but if they say no to this program, where does the customer go—20 miles, 30 miles to the nearest pharmacy?

It is not a bill that has many competing pharmacies in the same area; it is really a bill addressed to that one pharmacy in a small area.

We had a lot of concern about this bill and we worked many, many hours on it. It was the concern of the committee which we have been hearing for years now on the problem of cost shifting—somebody has to make up the difference in these programs and the cash paying customer will make up the difference. We, as a committee, believe that we should stop shifting the costs of things around. That is one of the reasons, I believe, that you have your hospital cost containment bills before us today—the concern of the cost shifting. That is what the committee addressed and that is why it came out 12 to 1.

The SPEAKER: The Chair recognizes the gentleman from Biddeford, Mr. Racine.

Mr. RACINE: Mr. Speaker, Ladies and Gentlemen of the House: Some comments have been made about cost shifting, and if I remember correctly what this bill does, it pays the pharmacy either \$3.36 or \$3.40 above its cost. Where do we get this cost shifting? There is no loss. Pharmacies are making a profit. If you go to the shelf and you pick up the package or bottle of Endirol that is already packaged and you give it to the customer and you get \$3.36, I think that is pretty good cotton-picking profit, so where is the cost shifting? I don't see any.

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

Mr. KANE: Mr. Speaker, may I ask the Clerk to read the Committee Report.

The SPEAKER: We do not have the report but it was 12 to 1 from the Committee on Health and Institutional Services. The lone signer against the bill was the gentleman from Auburn, Mr. Brodeur.

The SPEAKER: A roll call has been ordered. The pending question before the House is on passage to be engrossed. Those in favor will vote yes; those opposed will vote no, a roll call having been ordered.

ROLL CALL

YEA—Ainsworth, Allen, Anderson, Andrews, Armstrong, Beaulieu, Bell, Benoit, Bonney, Bott, Brown, D.N.; Brown, K.L.; Cahill, Callahan, Carroll, D.P.; Carroll, G.A.; Cashman, Clark, Conary, Connolly, Cooper, Cote, Cox, Crouse, Crowley, Curtis, Daggett, Davis, Day, Dexter, Diamond, Dillenback, Drinkwater, Erwin, Foster, Gauvreau, Greenlaw, Gwadosky, Hall, Handy, Higgins, H.C.; Higgins, L.M.; Hobbins, Holloway, Ingraham, Jackson, Jacques, Joseph, Joyce, Kane, Kelly, Ketover, Kiesman, Kilcoyne, LaPlante, Lebowitz, Lehoux, Lewis, Lisnik, Livesay, Locke, MacBride, MacEachern, Macomber, Manning, Martin, H.C.; Masterman, Masterton, Matthews, K.L.; Matthews, Z.E.; Maybury, McCollister, McPherson, Melendy, Michael, Michaud, Mitchell, E.H.; Mitchell, J.; Moholland, Murphy, E.M.; Murphy, T.W.; Nadeau, Nelson, Paradis, E.J.; Paradis, P.E.; Parent, Paul, Perkins, Perry, Pines, Pouliot, Randall, Reeves, J.W.; Richard, Ridley, Roberts, Roderick, Rolde, Rotondi, Salsbury, Scarpino, Sherburne, Small, Smith, C.B.; Smith, C.W.; Soucy, Soule, Sproul, Stevens, Stevenson, Stover, Strout, Swazey, Tammara, Telow, Theriault, Thompson, Tuttle, Vose, Walker, Webster, Wentworth, Weymouth, Zirkilton.

NAY—Bost, Brodeur, Brown, A.K.; McGowan, McHenry, Norton, Racine, Reeves, P.

ABSENT—Baker, Brannigan, Carrier, Carter, Chonko, Connors, Dudley, Hayden, Hickey, Jalbert, Kelleher, Mahany, Martin, A.C.; McSweeney, Murray, Seavey, Willey, The Speaker.

Yes, 124; No, 8; Absent, 18; Vacant, 1.

The SPEAKER: One hundred and twenty-four having voted in the affirmative and eight in the negative, with eighteen being absent and one vacant, the Bill is passed to be engrossed in non-concurrence.

Sent up for concurrence.

(Off Record Remarks)

On motion of Mr. Cox, of Brewer,
Adjourned until nine o'clock tomorrow morning.