

# MAINE STATE LEGISLATURE

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**LEGISLATIVE RECORD**  
OF THE  
**One Hundred And Thirteenth Legislature**  
OF THE  
**State Of Maine**

**VOLUME III**

**FIRST CONFIRMATION SESSION**

August 21, 1987  
Index

**FIRST SPECIAL SESSION**

October 9, 1987 to October 10, 1987  
Index

**SECOND SPECIAL SESSION**

October 21, 1987 to November 20, 1987  
Index

**SECOND REGULAR SESSION**

January 6, 1988 to March 24, 1988

**ONE HUNDRED AND THIRTEENTH MAINE LEGISLATURE**  
**SECOND REGULAR SESSION**  
 45th Legislative Day  
 Wednesday, March 16, 1988

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

Prayer by Reverend Samuel Najjar, Saint Joseph's Maronite Catholic Church, Waterville.

The Journal of Tuesday, March 15, 1988, was read and approved.

Quorum call was held.

At this point, Representative Zirkilton of Mt. Desert was appointed to act as Speaker pro tem.

The House was called to order by the Speaker pro tem.

SENATE PAPERS

Bill "An Act to Correct Errors and Inconsistencies in the Laws of Maine" (Emergency) (S.P. 950) (L.D. 2521)

Came from the Senate, referred to the Committee on Judiciary and Ordered Printed.

Was referred to the Committee on Judiciary in concurrence.

Later Today Assigned

Bill "An Act to Assure Adequate Housing for the People of Maine" (S.P. 954) (L.D. 2526)

Came from the Senate, referred to the Committee on State and Local Government and Ordered Printed.

On motion of Representative Diamond of Bangor, tabled pending reference in concurrence and later today assigned.

Unanimous Leave to Withdraw

Report of the Committee on Appropriations and Financial Affairs reporting "Leave to Withdraw" on Bill "An Act to Appropriate Funds for Additional Staff for Licensing Bureau of the Department of Human Services" (S.P. 812) (L.D. 2126)

Report of the Committee on Appropriations and Financial Affairs reporting "Leave to Withdraw" on Bill "An Act to Enhance Adult Literacy Services" (S.P. 836) (L.D. 2170)

Report of the Committee on Appropriations and Financial Affairs reporting "Leave to Withdraw" on Bill "An Act to Provide More Positions in the District Attorney's Office in Cumberland County" (S.P. 859) (L.D. 2247)

Report of the Committee on Agriculture reporting "Leave to Withdraw" on Bill "An Act to Regulate Marketing and Bargaining in the Maine Blueberry Industry" (S.P. 918) (L.D. 2394)

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

Refer to the Committee on Appropriations and Financial Affairs

Report of the Committee on Human Resources on Bill "An Act to Improve Personal Care Attendant Services under the Home-Based Care Laws" (S.P. 884) (L.D. 2296) reporting that it be referred to the Committee on Appropriations and Financial Affairs.

Came from the Senate with the report read and accepted and the bill referred to the Committee on Appropriations and Financial Affairs.

Report was read and accepted and the bill referred to the Committee on Appropriations and Financial Affairs in concurrence.

Ought to Pass in New Draft

Report of the Committee on Energy and Natural Resources on Bill "An Act Relating to Development Along the St. Croix River" (S.P. 854) (L.D. 2230) reporting "Ought to Pass" in New Draft (S.P. 949) (L.D. 2508)

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

Report was read and accepted, the New Draft read once and assigned for second reading Thursday, March 17, 1988.

Non-Concurrent Matter

RESOLVE, Regarding the Study of Low-Level Radioactive Waste in the Town of Greenbush (H.P. 1794) (L.D. 2458) which was passed to be engrossed in the House on March 7, 1988.

Came from the Senate passed to be engrossed as amended by Senate Amendment "A" (S-338) in non-concurrence.

The House voted to recede and concur.

Non-Concurrent Matter

Bill "An Act to Establish the Strategic Training for Accelerated Reemployment Program" (Emergency) (S.P. 946) (L.D. 2494) which was passed to be engrossed as amended by House Amendment "A" (H-478) in the House on March 14, 1988.

Came from the Senate with that Body having insisted on its former action whereby the Bill was passed to be engrossed in non-concurrence.

On motion of Representative McHenry of Madawaska, the House voted to Insist and ask for a Committee of Conference in non-concurrence and sent up for concurrence.

PETITIONS, BILLS AND RESOLVES

REQUIRING REFERENCE

Study Report-Committee on State and Local Government

Representative CARROLL from the Committee on State and Local Government to which was referred by the Legislative Council the Study Relative to Recodification of Title 30, Maine Revised Statutes Annotated have had the same under consideration and ask leave to submit its findings and to report that the accompanying Bill "An Act to Recodify the Laws on Municipalities and Counties" (H.P. 1855) (L.D. 2538) be referred to this Committee for public hearing and printed pursuant to Joint Rule 19.

Report was read and accepted, and the bill referred to the Committee on State and Local Government, ordered printed and sent up for concurrence.

ORDERS

REPORTS OF COMMITTEES

Unanimous Ought Not to Pass

Representative MICHAUD from the Committee on Energy and Natural Resources on Bill "An Act to Remove Caps from the Maine Low-Level Radiation Waste Authority Act" (H.P. 1714) (L.D. 2353) reporting "Ought Not to Pass"

Was 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 RICHARD from the Committee on Aging, Retirement and Veterans on Bill "An Act to Ensure the Complete Payment of Health Insurance Premiums for Teachers over a Certain Age" (H.P. 1490) (L.D. 2040) reporting "Ought to Pass" in New Draft (H.P. 1852) (L.D. 2535)

Report was read and accepted, the New Draft read once and assigned for second reading Thursday, March 17, 1988.

Ought to Pass in New Draft

Representative LACROIX from the Committee on State and Local Government on Bill "An Act to Clarify the Authority of Harbor Masters" (H.P. 1493) (L.D. 2043) reporting "Ought to Pass" in New Draft (Emergency) (H.P. 1853) (L.D. 2536)

Report was read and accepted, the New Draft read once and assigned for second reading Thursday, March 17, 1988.

Ought to Pass in New Draft

Representative WENTWORTH from the Committee on State and Local Government on Bill "An Act to Provide for Effective and Timely Public Notice of Hearings Conducted by State Boards and Agencies" (Emergency) (H.P. 1511) (L.D. 2061) reporting "Ought to Pass" in New Draft (Emergency) (H.P. 1854) (L.D. 2537)

Report was read and accepted, the New Draft read once and assigned for second reading Thursday, March 17, 1988.

Ought to Pass in New Draft/New Title

Representative MICHAUD from the Committee on Energy and Natural Resources on RESOLVE, to Develop a Plan to Minimize and Dispose of Household Hazardous Waste (H.P. 1596) (L.D. 2182) reporting "Ought to Pass" in New Draft under New Title Bill "An Act to Develop a Plan to Minimize and Dispose of Household Hazardous Waste" (Emergency) (H.P. 1850) (L.D. 2532)

Report was read and accepted, the New Draft read once and assigned for second reading Thursday, March 17, 1988.

Divided Report

Majority Report of the Committee on Judiciary reporting "Ought Not to Pass" on Bill "An Act to Create a Noneconomic Damages Award Act" (H.P. 217) (L.D. 269)

Signed:

Senators: BRANNIGAN of Cumberland  
GAUVREAU of Androscoquin  
THISTLE of Dover-Foxcroft  
Representatives: PARADIS of Augusta  
MARSANO of Belfast  
VOSE of Eastport  
COTE of Auburn  
CONLEY of Portland  
WARREN of Scarborough

Minority Report of the same Committee reporting "Ought to Pass" in New Draft under New Title Bill "An Act to Establish a Limit on Noneconomic Damages" (H.P. 1843) (L.D. 2523) on same Bill.

Signed:

Senator: BLACK of Cumberland

Representatives: MacBRIDE of Presque Isle  
HANLEY of Paris  
BEGLEY of Waldoboro

Reports were read.

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

Representative PARADIS: Mr. Speaker, Men and Women of the House: I move that the House accept the Majority "Ought Not to Pass" Report.

Before I begin my debate, I would like to say that I don't know who is more nervous this morning -- the gentleman from Augusta, District 89, or the Speaker pro tem, the distinguished Representative from Mt. Desert.

It is perhaps best to take a step back two years and to recall what the House did in the 112th Legislature regarding this issue of tort reform. The Judiciary Committee, of which I was then a member, worked all session long and came out (practically unanimously) reporting a bill that everyone had worked long and hard on. It was a product of work by attorneys and doctors, hospital administrators and health care providers. We were in the midst of a crisis in insurance rates, availability, and health care. We worked hard and produced a bill that passed both the House and the other body and was signed by the Governor into law.

Many of the provisions went into effect immediately, some are going to go into effect in just a short while. In the American Medical News, dated April 25, 1986, shortly after we adjourned sine die, the doctors said of that bill, "The new provision on the Statute of Limitation gives Maine one of the toughest standards in the nation." That bill and that part of the bill that we enacted two years ago gave us one of the strongest tort reform bills ever to be passed in any legislature in this country.

Today we are faced again with a series of questions -- why, two years hence, do we have to face the bill again? Why should we not be working on insurance reform, economic development, roads, education and so on that this state desperately needs? I don't believe for one moment that we have a severe crisis in our insurance and liability and health care provision. If anything, it is partly a created crisis. It was so urgent that we had to be here today and pass another series of so-called reforms and I will quote from the same journal of two years ago. An Attorney representing the association, a Mr. Gordon Smith said, "As far as caps on damages and other reforms concerned, that legislation can wait for the next session in 1988. We really have never had a problem with the big awards in Maine and this legislation authorizes the Study Commission to look into caps." After this session, we will be looking into those proposals as well as changes in joint and several.

When the Governor addresses us and says that there is an emergency, we usually act on it quite quickly and thoroughly. Take for instance, Workers' Comp in Special Session -- we didn't wait two years to work on Workers' Comp, we had a Special Session of this Legislature.

The group that is asking us and telling us that there is a dire emergency told their own professionals, two years ago, "There is no emergency, we can wait, we've got everything we want this session, we will come back in two years and ask again."

We instituted some real reforms but this bill I am asking you to kill this morning, the majority of the Judiciary Committee has studied for two months. First, the Trafton Commission, which was created two years ago as part of the same reform, looked into

every facet. It had subpoena powers, conducted a thorough and impressive look into the system. It did not recommend that we pass a cap on economic damages. Never.

The Judiciary Committee held two days of hearings in January and have been working ever since to report these bills out. We (the majority of us) are not recommending that you pass this cap for a very simple reason, caps will not solve the insurance dilemma that physician's face.

We asked insurance companies during our hearings and in work sessions, (they were asking for a quarter of a million dollar cap) if we put a cap on, will that mean relief for the doctors? St. Paul and others told us that there is no way that we can assure, with any degree of honesty, that caps will mean a lowering of rates or freezing of rates. The only thing that they could tell us was that the rates of increase may, within two or three years, level off. That has been repeated by others associated with the group that is bringing you this bill this morning.

They will not look at you, either face to face or under oath, and tell you that if you put a cap on it will mean a reduction in the rates because that will never happen. It hasn't happened in any state that has done so. When the issue has been brought before the Supreme Courts of several states, it has been found to be unconstitutional. It is against the 14th Amendment, the equal protection clause. Equal treatment, the people ought to be equal under their state constitution's in their state court. That is a fundamental precept in our constitutional system that we don't arbitrarily set what the award is going to be before a case is heard by the judiciary.

What makes us think, ladies and gentlemen of this House, that we in this chamber this morning on April 16, 1988, elected Representatives, know more, have greater knowledge, have greater rationality than the juries that hear these cases set up by our Constitution. The people of this state voted for our Constitution years ago. They set up a jury system. The Constitution of the United States guarantees a jury system. The 200th anniversary of the Constitution was last year but they are asking us today to arbitrarily rearrange that jury system by saying, no, the jury ought not to be able to decide what award a person who has been found to be harmed and a defendant who is found to be guilty of damages -- that that jury ought not to be able to assess an award over \$500,000 in noneconomic damages. That is ludicrous. We are not the fountain of knowledge in this chamber.

I respect every one of you. We are elected by those same people that sit on juries. They hear the case, they are the finder of fact, and they ought to make the decision. If they can find someone guilty of murder and put that person in prison in a criminal trial, don't they have the same wisdom to be able to assess the type of damages after they have heard the evidence?

It seems to me that it is fundamentally wrong. In other states that have been forced by special interests of past legislation, under the guise of emergencies and crises -- thank God the courts, acting free of that type of interference, have said resoundingly, no, to that type of disintegration of the legal system.

I would ask you on this beautiful March morning to take that into consideration. The groups that oppose this type of legislation range from the Maine State Nurses' Association, the Maine AFL-CIO, other public interest groups, citizens' lobbys, perhaps over a dozen of them who attended the work sessions,

petitioned us over and over again, and refuted much of the testimony that was given to us. The Natural Resources Council of Maine, the Building and Construction Trade Councils, the Maine Association of Handicapped Persons, the Maine Audubon Society, the Maine Head Injury Foundation, all of these groups know what it is to be faced with an injury, go to trial and be found that they have recourse under the law and then to seek damages.

Toxic waste is a prime example -- there are several communities in this state that face severe problems down the road with the drinking water, well water, and other dangers to their immediate environment. If those cities and towns and the people who live in them cannot get redress, real redress, then you and I, the taxpayers, are going to have to foot the bill. If some plant, some business, pollutes a stream or well or river, and down stream a community gets water from that stream or river, and they find they can no longer drink that water and they have to reinstitute a new way, it will cost millions of dollars. The person polluting will be liable for those damages. If you say \$500,000 is the most that can happen, wouldn't it be a nice world? Every garbage disposal person, every landfill operator, every maker of hazardous waste will look to Maine as a haven -- "Come to Maine, you will never have to pay more than \$500,000. We will know exactly what our liabilities are." I don't want that message sent out from this chamber this morning. It won't do the people of Augusta any good and it won't do the people of your communities any good either.

I urge you this morning to please look carefully at what the ramifications of this bill are, to consider the long-term objectives of this state and its people and vote resoundingly to support the Majority "Ought Not to Pass" Report.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Presque Isle, Representative MacBride.

Representative MACBRIDE: Mr. Speaker, Men and Women of the House: I hope you will not accept the "Ought Not to Pass" Report so we can go on and accept the "Ought to Pass" Report so we can establish a limit on noneconomic damages.

Noneconomic damages are jury awards for intangible items such as pain and suffering, mental anguish, emotional stress, and so forth, that is all.

Under this bill, economic damages would have no caps. Medical dispensers, lost wages, future earnings would not be changed one bit but there would be a \$500,000 cap limitation for pain and suffering.

Furthermore, the jury would not be informed of the damage award limitations during its deliberations but, if the award exceeded \$500,000, the court shall reduce the award to the capped amount. Furthermore, there is a 5 year sunset, this law would be examined by the legislature in five years. If it has not controlled malpractice costs, if it is not effective, it would cease to exist. Isn't it worth a try?

Medical malpractice costs have skyrocketed in the past few years especially in the field of obstetrics and gynecology, surgery, pediatrics. The doctors are giving up their practices of delivering babies -- their insurance costs are too high.

In January of 1986, 60 percent of Maine family practitioners were delivering babies. By January of 1987, one year later, the figure was down to 50 percent. As of August of 1987, there had been a 20 percent drop in the practice of obstetrics. That is an alarming figure and, if it continues, it will greatly affect our health care in the state, particularly in rural areas.

The insurance for obstetricians has increased from \$14,000 in 1983 to \$50,000 in 1988 for many, many doctors.

I do have a letter here from a gynecologist in East Wilton and he says: "When I went to pay my medical malpractice premium in December, I wondered how many more years I might be able to raise the premium. It was \$33,026 for a \$500,000 to \$1.5 million coverage for this year. In 1975, when I began, it cost \$3,000. In the last two or three years, many physician's have left the practice of obstetrics and family practitioners. As you may know, all the family practitioners in obstetric practice at Franklin Memorial Hospital are stopping this Summer, save one." That situation exists in many places.

Will a cap on noneconomic damages help? No one knows for sure but the problem is not unique to Maine. It has been a problem for the whole country and, in trying to solve that, 28 states have passed a law putting caps on various kinds of damages. Only four of those 28 states, the laws that they passed were declared unconstitutional. But in 24, they have not. In those various states, their caps range from \$177,000 to \$1 million. I thought that \$500,000 seemed like a fair cap, low enough to be effective and high enough to be fair.

Two years ago, the legislature passed a medical malpractice bill but defeated a cap on noneconomic damages for liability suits. I was a member of the Judiciary Committee at that time too and worked very hard on that bill and I am a strong supporter of that bill. I have high hopes for it. It really is a very good law. But, in spite of that, insurance costs have skyrocketed further in two years. If something isn't done, we stand to lose doctors and quality care, especially in rural areas.

The Medical Insurance Company of Maine, which insures two-thirds of the doctors says: "Passage of a meaningful law, tort reform, will have a positive effect on the medical malpractice premiums as well as moderate the upward spiral of rates."

Businesses have the same response. In 1987, the National Foundation of Independent Business sent questionnaires to their 500 members in Maine -- 90 percent say put a cap on noneconomic damages and liability suits. You will hear arguments that there should be no limit on the awards of pain and suffering but, what is the limit? There is no amount of money that will compensate the loss of an arm, a serious impairment, a life. All economic damages must be paid, there is no doubt about that but how much can we, the people, pay? How much can physician's and businesses pay for pain and suffering? What is the price tag? Is it too much if we no longer have an adequate number of doctors to deliver babies, to do surgery, to care for our children? Think about it. It is a serious decision. Nothing else has worked.

Ladies and gentlemen, let's give the \$500,000 cap on economic damages a try. Let's preserve quality health care. We will have 5 years to see if it works. Isn't it really worth a try?

Mr. Speaker, I request a roll call.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Washington, Representative Allen.

Representative ALLEN: Mr. Speaker, Men and Women of the House: Two years ago, I had the privilege of serving on the Judiciary Committee and arguing on this very floor in favor of the medical malpractice bill that passed this House by a significant majority. Shortly after that, I was also privileged to serve on the Trafton Commission, which over the past year, has delved into all of these issues raised

in the medical malpractice bill and also looked into the issues involved both in insurance reforms and what we might call tort reforms. We made several recommendations and most of those recommendations have been implemented or will be implemented by the members of the Judiciary Committee and that have hit and will hit this floor.

One of the issues that we came away divided on on the Trafton Commission was this issue of noneconomic damage caps. In order to understand the whole crisis that came to us and why we acted two years ago the way we did on medical malpractice and why we are being asked the way we are today -- you have to understand that this state as well as the rest of the country is facing an insurance crisis. That insurance crisis was brought about, in most part, by poor investments by insurance companies that no longer pay dividends. When those investments were no longer paying dividends and making up for their profits, the insurance companies were not satisfied to say, "Well gee, we made a bad investment, we are going to have lower profits and so be it." What they said is, "Well, we have been offering lower insurance rates to all sorts of consumers including the medical profession and, in order to make up for our lost profits, which we are not going to stand for, we are going to charge higher rates." In some cases, that meant clients could not even afford to buy insurance. Insurance was no longer available. We had to react to that crisis. As legislators, numerous constituents came to us and asked us, begged us, to do something.

With regard to the medical profession, we did react, in fact, we reacted promptly. We enacted the changes that became law, both in 1986 and continued to become law here in 1988. We made significant changes in our tort system to accomplish that and those changes were made as a result of studies that were conducted between lawyers, doctors, all aspects of the medical profession and insurance companies. That package passed and we are living to find out what the results will be.

When doctors went to insurance companies, as well as other constituents went to insurance companies and said, "Why are you raising our rates?" Insurance companies did not say to them, "Gee, we have made some bad investments, we don't want to lose our profits so you guys are going to have to pay for it." They looked for someone to blame it on and they blamed it on the tort system. They said, "It is the tort system's fault. People are making all sorts of money as a result of high jury awards so what you really need to do, doctors and other constituents, is change the tort system." That sounded like a good idea and so we, as a legislature, took the prudent role, I believe, and formed a commission, a commission made up of insurance carriers, insurance agents, lawyers, members of the public and legislators. For the most part, the legislators appointed to that commission, neither represented lawyers nor insurance companies. We tended to be more consumers of those products rather than representatives of those specific industries.

When we were studying that, we found that it was the investment practices of insurance companies that, in fact, created the crisis. It happened then and frankly, I think it is going to happen again unless we make some serious changes in our insurance laws. That is still pending in front of the insurance committee. So, the crisis came, it was created because of bad investments by the insurance companies, it wasn't a purposeful event, but it happened.

In some states, the insurance companies decided that we needed to make tort reforms and some states, in fact, did that but they also tied it to insurance rates. They said, "Yes, we will make reforms, we will reform our tort system, but you are also going to have to reduce your rates. There has to be a tie-in." Shortly, the insurance companies realized that that could not happen. In some states, such as Florida, they realized that and a lot of the initial tort reforms were repealed. They could not tie the fact that we were making significant changes in our tort system to either reduce rates or just a stabilization of rates so, about a year ago, I attended a conference that was pretty much sponsored by the insurance industry. Back a year ago, the insurance industry, within and amongst themselves, were saying that tort reform really isn't the way to go and we really ought to back off.

But, what has happened is that the consumers have been led to believe that tort reform is the answer and they are still moving in that direction. A prime example is the Maine Medical Association, which has taken on tort reform as their primary objective. They came to us as a working group two years ago saying, "If you do all this, you will really have done great wonderful things for us." Now they are back again trying to get the same thing they didn't get the first time.

When we were studying the tort issue and the issue of caps in the Trafton Commission, we were broken up into two groups, one group studied tort reform; the other studied insurance. The chair of the tort reform group was a person from the Aetna Insurance Company. Chairman Trafton made a real effort to try to get the lawyers to study the insurance issues and for the insurance people to study the tort issues. So our chair was a gentleman from Aetna Insurance Co.

In our initial deliberations of caps, we had a unanimous subcommittee report against any caps on noneconomic damages. We pretty much agreed that you couldn't establish that, that you can't make one general rule. How can we, as legislators, sit in this body today and look into the future and foresee every single solitary case where a person might be permanently injured, where a two year old child goes through innumerable pain -- how can you quantify that? How can we sit here without hearing the specifics of the case and adopt an arbitrary cap?

The initial recommendation of that subcommittee chaired by an insurance industry representative was, "No, no caps on noneconomic damages." What happened from there, folks, was politics. A few well-placed calls and the report changed. As that information hit the full committee, it came out as a political decision, not as a practical decision.

The fact is that caps on noneconomic damages are not going to reduce the rates the doctors pay for their medical malpractice insurance. They are not even going to stabilize them and, from what we could learn in the Trafton Commission, is that most jury awards in Maine on noneconomic damages don't even exceed \$250,000. Now if we sit here in the legislature and say, "Well, we think they shouldn't exceed \$500,000" -- in my mind, that sends a message to the jury of our peers making these decisions that the legislature thinks perhaps they ought to be higher, not lowered or capped. So, what you are trying to achieve by placing a cap that is unnecessary is the exact opposite, the cap becomes the norm.

There is absolutely no proof to anybody on the committee or the commission that an arbitrary, artificial cap is going to lower or reduce or even

stabilize anybody's liability insurance, doctors or anybody elses.

I would urge this House to accept the Majority "Ought Not to Pass" Report.

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

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

The SPEAKER: The Chair recognizes the Representative from Belfast, Representative Marsano.

Representative MARSANO: Mr. Speaker, Men and Women of the House: I am seldom in disagreement with the Representative from Presque Isle as to matters before the Judiciary Committee. Today I do disagree with her and I want to speak to the reasons for that.

I do that because the bill on caps on economic damages is a philosophical not a practical question. If I wanted to deal practically, as the Representative from Presque Isle would like us do, I might be inclined to think about that bill. But this bill is flawed and it is flawed because of the fact that as a matter of philosophy, its purpose and intent is to pick upon categories of people that this House should be protecting. The people that this bill will pick upon are the old, especially the old, the young, the crippled and the poor. You should have no doubts but that this bill attacks the rights of cripples. Cripples may be crippled in any kind of way -- they can lose an arm, a leg, an eye, an ear, or they can be horribly burned. They can be tortured in any number of ways and their damages can be capped. The older person who no longer has any opportunity to earn, the older person whose few days left on earth are less, are evaluated by a jury of their peers taken from the citizens of the State of Maine to evaluate the loss that they have sustained. That is the purpose of the jury as the learned Representative from Augusta said.

The point that bothers me the most about this is that four members of the Judiciary Committee have gotten together to say that a cap is fair at \$500,000. We don't know whether or not it is fair. In the many hours of discussion before the Judiciary Committee, people would pull figures out of the air and say, "This was the results in that case, how can you justify that?" In every instance, I could answer honestly and say, "I don't know and neither do you because you did not hear the evidence."

As the Representative from Washington has said, we cannot sit here and superimpose our will upon those citizens of ours who are disadvantaged the most. If your interest is on picking on the old, the crippled, the poor and the women of this state who have no economic earnings to get to a jury because they are mothers and housewives, then this is your kind of bill.

The philosophy that underlies the "Ought Not to Pass" Report is the one that I urge you to adopt and I hope that this bill will not receive passage this morning.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Waldoboro, Representative Begley.

Representative BEGLEY: Mr. Speaker, Men and Women of the House: This bill, I believe, has the potential of assuring many people equal justice. It is simply asking for a ceiling or a cap on the amount allowed for noneconomic damages.

I asked a question concerning this issue on my questionnaire and I received a strong response in

favor of the cap. Now some people are going to want to say that they really didn't understand the issue but I say, I think they knew what they were saying in my district. I am going to bet that a good percentage of them knew and understood what they were saying.

It is my belief that many in the public realize that we need to evaluate, very seriously, our willingness to fund large awards because, make no mistake, all of society pays for large awards for noneconomic damages.

Representative Paradis has said that the Trafton Commission did not recommend the cap and Representative Allen has explained to you that that did come out a Divided Report and I would say to you that four members of that Commission did come out recommending a cap on noneconomic damages.

There are many factors to consider in being fair. For example, high medical malpractice bills are a burden to all of us. We experience this burden through more expensive tests, through more expensive office visits, and through more expensive surgery. One obstetrician who testified before our committee pays \$40,000 a year for medical malpractice. This is absolutely reprehensible to me, that any doctor should have to pay that amount to be able to stay in practice, a practice aimed at helping women in such a natural process as delivering babies.

This past weekend I spoke with a young woman obstetrician in our area. Right now she is paying \$25,000 a year in medical malpractice but it will go up. She anticipates \$40,000 in a very few years. My thoughts go to what a strain it must be to face each day wondering if someone will sue you. As I talked with this young woman doctor, I could sense that strain.

I have often thought about this as we have been discussing this problem. For example, I do believe that a teacher, a lawyer, or a legislator has the potential of having a devastating impact on someone's life. Since they are human, they will make error's in judgment. Those three kinds of people, but probably not any one of the three will ever have to pay \$40,000 a year in insurance to get off and go forth with their profession.

The young woman doctor who delivers babies and loves her work told me that medical malpractice costs are discouraging some young people from entering the profession. Four doctors in our area have retired in recent years and, each one of the four has listed medical malpractice costs, as a decisive factor.

I would now like to join the liability crisis allowance which represents 70 organizations in believing that a cap in noneconomic damages is a positive step to take and one that will stabilize rates eventually and I encourage you to vote for the cap and vote against the pending motion.

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

Representative ROLDE: Mr. Speaker, Ladies and Gentlemen of the House: I rise with some trepidation to speak on this issue because I am not a member of the Judiciary Committee but, as a member of the Human Resources Committee. I have been involved and concerned with the question of health and health costs in the State of Maine.

As you know, this legislature has been very interested in the question of health costs. We began trying to deal with that problem by establishing a law on Certificate of Need because, at that time, the culprit for health costs was perceived to be equipment, capital expenditures in hospitals. That simply did not work so then we established a humongous bureaucracy, very expensive, called the

Maine Health Care Finance Commission. That has been working with the idea that it is the costs of hospitals that are causing the increase in the costs. That apparently has not worked either although that Commission has gone and established a policy that they won't allow any increases beyond the increases in people's personal income in Maine.

We learned the other day in our committee that Blue Cross-Blue Shield will be coming in for a raise for its non-group rate equaling 22 percent. The argument is, since hospitals are in such a tight bind that the reason for that increase is that non-hospital costs or costs of doctors' visits are going up. It struck me, in looking at the problem on a statewide basis, that the biggest costs for doctors in this state is dealing, not with diseases like cancer, AIDS, heart disease, it is something called posterior protectivitis; in other words, ordering every possible test to cover yourself because you are always aware that you are going to be sued. Maine physician's have one of the highest rates of claims in the nation, 17 claims per 100 physicians. This means that, theoretically, every physician in Maine could be sued once every five years.

As a layman in this area, I would also like to ask one question because I don't know the answer -- in these cases, the poor and the cripple, how much do these victims get and how much of that settlement goes to the lawyer? I just don't happen to know that figure.

I would also leave you with one final thought -- it is always a reminder that has stuck in my mind and made by Jean Meyer, who is the President of Tufts University and a universally recognized nutritionist and he said, "The world will not end with a bang or a whimper but it will end in one great class-action suit."

The SPEAKER PRO TEM: The Chair recognizes the Representative from St. George, Representative Scarpino.

Representative SCARPINO: Mr. Speaker, Men and Women of the House: I am neither a member of Judiciary or the Human Resources Committee but I am a consumer of insurance. The condition that I have been placed in as a consumer of insurance and as a small businessman is one that I don't appreciate. To be quite frank about it, my heart doesn't bleed for either the insurance companies or the doctors. The doctors should be grateful that they can get liability insurance. If you are in my business, you can't.

My good friend from Waldoboro, Representative Begley, said that she wondered how it felt when you work every day and wonder if someone is going to sue you -- come on down to my shipyard, there is a tanker sitting there being rebuilt, it will be licensed by the coast guard to operate and, if it goes out and has an accident and I can be shown to be at fault or a contributing factor in that accident, regardless of coast guard inspection, I am liable for suit. There is not an insurance company in the world, because we have tried to go through Lloyds of London, every place, there is not an insurance company in the world that will give me liability insurance.

What it comes down to, folks, is, if the individual or the company that is providing a product or a service is a responsible individual and is a responsible company, they should need have no fear or a minor fear of suit. If you do your work right, the odds are that it is not going to happen. If you do your work right in your business, whether it is a doctor or a boatyard, will justify what your insurance costs are, if you happen to be one of the lucky one's that can get the insurance.



You ask me, how do I feel on caps? I feel, as a responsible person, that if I, through intent, do something or through lack of responsibility do something that causes severe harm or damage to someone. I should be responsible to compensate that individual. Remember, I don't have the insurance company to say that they will pay for it. I am saying, me. Everyday I go to work, I put everything I own for the rest of my life on the line. I am still willing to stand here and say, I do not support caps. I am willing to accept my responsibility and I think the doctor's, the insurance companies, and everyone else in this state ought to be willing to accept their responsibility to the people of this state.

If this legislature is going to take an action that is going to cover the tails of the insurance companies that don't want to make payments on people who do not want to be responsible, I am ashamed.

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

Representative STEVENS: Mr. Speaker, Men and Women of the House: If today we could guarantee that doctors could get liability insurance, I would say, support caps. It is a cruel deception if any of you think that we can pass this cap and insurance rates are going to go lower and insurance is going to be more available. If the Tort Commission had been convinced in any way that that would happen, I think we would have very seriously and perhaps supported caps.

Representative Begley's physician's are not going to be one bit better off if we pass this cap on damages. It was shown in other states, it was shown repeatedly before the Commission.

Maine's actuarial results are so small for the whole nation -- if we pass a \$500,000 cap, do you think the great big, multi-national insurers are going to lower their rates because of what Maine says? Do you realize how few suits there are in the State of Maine? It is not going to make any difference. You are going to take away the right of a Maine citizen for a national insurance company and it is not going to make one bit of difference. It is not going to help your local physician's, it is not going to reduce their rates. Our sample is too small, our statistics are too limited to have any affect on the rates.

So, what you are doing is taking away a right that Maine citizens have had for 200 years to tell their story to the jury to tell how they have been hurt. Let the jury decide. But you are going to say, no, the jury can decide only up to \$500,000 because the legislature says that is right because we are going to make medical malpractice insurance more available to physicians. That is not going to be the result. You are trading off a very important value, the right to have the jury decide and you are not getting anything in return. If you were getting something back, maybe you could consider that it had merit but you are not getting anything back. I would like the body to remember that.

Insurance rates are going to float with the cyclical nature of that business. Every seven years, all you have to do is look at all the data that the Trafion Commission looked at -- every six or seven years, they make these wide, dip, and swing in rates of insurance. It is a cyclical business. They have predatory pricing on insurance when interest rates are high and when interest rates are low, they raise the premiums to recoup their losses. It is done that way every seven years. All you have to do is look at the data that we had to look at and you can see it. It has nothing to do with caps on damages.

I want you also to remember that the judges in the State of Maine are fully able to lower or raise an award, right there on the spot. They don't have to appeal to the Supreme Court, the judge has heard all that evidence and is fully able to say, "That award is too high." They can lower it, additur and remittitur, they are fully able to do that. The judges in the State of Maine can listen to the evidence, the jury can listen to the evidence -- why do we want to take away that authority and that right in that job that they do so well for this pie-in-the-sky dream that insurance is going to be more available. It is not going to happen.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Limestone, Representative Pines.

Representative PINES: Mr. Speaker, Ladies and Gentlemen of the House: I am speaking as a nurse that has had 23 active years in rural health delivery and a few years doing the same thing in an inactive status. I would like to say it is not the doctors that I worry about, it is the patients out there that we should be concerned about, and last but not least, those working people out there who need the health care delivery. Our family practitioners are giving up obstetrics in Maine every year. That is 20 doctors serving rural areas. Some areas, including northern Maine, rely wholly upon family practitioners to deliver babies. There is not an obstetrician north of Caribou, Maine. Obstetrician's are giving up deliveries.

My last grandchild came to serve here as an honorary page a few weeks ago. He was born in this area -- a high risk delivery -- by a 39 year old obstetrician. After losing three children, I am proud to say that that little boy was brought into the world by one of the local obstetricians. Several months after that delivery, due to the increase in the cost of insurance and the lack of time that that gentleman had to spend with his family in order to add that much income, he decided no longer would he be an obstetrician. Those are the people that I am worried about that are losing that quality health care. They are relying just on their gynecology patients or they retire early.

An obstetrician in Aroostook County pays \$40,000 for his insurance -- that is for a \$1 million coverage. Medicaid pays \$500 for nine months of care and delivery. As you can see, the economics of running a medical practice are just not there.

I am disappointed that this Minority Report is as weak as it is. I would prefer \$250,000 as a cap on noneconomic damages. \$500,000 is twice as much as California and Indiana have. A half a million dollars in my district is a lot of money just for pain and suffering. This cap is better than no reform at all.

We are told by the doctors' own insurance companies that this is necessary and we will have a positive impact on rates. These are Maine doctors running a Maine insurance company and I believe them.

One thing we know for sure, if we don't do anything, the problem is not going to get better. I do not want to leave this chamber next month and go home and tell the professional and business community of Maine that, after two years of study, we concluded there was no need for any change, nor do I want to be the one in the near future to tell the pregnant mother's in my district that, down the road, if this increase continues, they may have to endure a three hour ambulance trip to Bangor to have their baby delivered by an obstetrician. A cap may not be the only answer but it is one of the concrete things we can do. It has clearly helped in California and

Indiana. There is no reason to believe it won't help here.

I urge you to vote against the Majority Report.

Mr. Speaker, may I pose a question through the Chair?

The SPEAKER PRO TEM: The Representative may pose her question.

Representative PINES: I would like to ask some member who has spoken about insurance in this state, how many physician's in this state are insured for medical malpractice through a multi-national insurance company?

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

The Chair recognizes the Representative from Kingfield, Representative Dexter.

Representative DEXTER: Mr. Speaker, Men and Women of the House: I guess this is my first time up this year -- I don't know if I even got up last year. But, this uneducated woodsman has listened to experts here about long enough. I really can't add anything because everyone else knows so much about this subject.

Let me tell you something. Back in the boondocks where I live in Franklin County and Franklin County Hospital was mentioned here, I believe, about not having anybody who wants to deliver babies. I go back a good many years and I helped deliver my two oldest girls. Frankly, if I wasn't so old, I would go into the midwife business up in my area. But I can't afford the insurance so I guess I will have to give it up. So, I am asking for volunteers to come up in my area and serve as midwives and, after the session, please leave your name with me, we need help desperately up there.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Paris, Representative Hanley.

Representative HANLEY: Mr. Speaker, Ladies and Gentlemen of the House: Much has been said here this morning, all of it well thought out, some of it emotional. This is not an easy issue to pin down. Each side has their conflicting studies on this matter as the good Representative from Bangor, Representative Stevens, has pointed out. As she has also pointed out, the courts do have the power of additur and remittitur. They have had this power in the other states though but it hasn't worked on keeping the liability insurance rates down.

The Rand Corporation Institute, the Pat Danson Study and the General Accounting Office have shown that a damage cap will decrease the severity of claims by 23 percent.

As the gentlelady from Limestone, Representative Pines pointed out, California and Indiana have proven this. Their rates on liability insurance have increased their rates that is half the national average.

I would like to make a simple statement here as far as the differences -- I don't think it has been pointed out -- what the difference is between economic and noneconomic damages. We are not talking about putting a cap on any economic damages here this morning. These economic damages are those that are objectively verifiable. This would include their loss of income, their loss of use of property, their loss of earnings or their earning capacity, any custodial care, all medical expenses, rehabilitation services, loss of business or employment opportunity. Those are economic damages. We are not going to put a cap on economic damages. We, too, would like to follow, as 28 other states in this nation have, in putting some form of cap on our noneconomic damages.

As Representative Allen pointed out, the Trafton Commission did have this to study for a year. I think what she neglected to point out was that this Trafton Commission was divided. There was a strong minority of four, including a majority of the public members on this commission that supported a cap of \$250,000, not the \$500,000 that we are proposing today.

Also Representative Allen's remarks concerning the insurance companies investments do not relate to the doctors. Two-thirds of all Maine doctors are insured by their own company and their rates are equal to or higher than St. Paul's because of their needs to collect enough premiums to pay their claims. That is the reason.

Like I said, this is not an easy issue. I just hope before everyone votes, they do a lot of soul searching and make a decision that will come down that will benefit the people of Maine.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Monmouth, Representative Davis.

Representative DAVIS: Mr. Speaker, Ladies and Gentlemen of the House: It is interesting to note that the majority of the speakers here seem to feel that the insurance industry is all at fault. Although I am no longer involved in the insurance industry, I have lived for quite a while with that industry and I can remember way back when we were heavy in the poultry industry in the State of Maine. We were really heavy with one of our major enterprises. Well, many, many, poultry houses burned. Therefore, the rates went up on poultry houses because rates are based on experience in a given field or a given class. Well, then there was a group who came along among the poultry men and said, they are ripping us off, they are ripping us off, let's form our own insurance company and we will show them.

Well, you know ladies and gentlemen, they did form their own insurance company. They got enough capital investment so that the insurance department allowed them to form. Do you know what happened to them? They went belly up.

Now we hear about the medical people. Well, the medical people went through the same cycle. They formed the Maine Medical Insurance Company, commonly known as the bedpan mutual. They were going to show the insurance industry that they were being ripped off. But, do you know what happened to the Maine Medical Insurance Company? They found that they have got problems too, serious problems.

Ladies and gentlemen, we had a vote on a cap back here in the last session and the first time it went through this House 113 to, I believe, 26. 113 of our membership here voted for that cap. You know what happened the next day? The trial attorneys came around here like termites out of a rotten log and they turned that thing around down in the other body so we lost it.

Ladies and gentlemen, in California there are 27 million people plus or minus compared to our one million. They have found, even though they have a full-time legislature, many of whom are attorneys, they have found that the cap works.

Also, ladies and gentlemen, my good friend Representative Paradis mentioned five or six organizations which support the defeat of this bill. There are 68 different business and professional organizations who support the passage of this bill, 68, most of whom are small business people. I think you are making a great, great mistake if you don't at least give this cap a try. I hope you vote against the pending motion.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Buxton, Representative Kimball.

Representative KIMBALL: Mr. Speaker, Ladies and Gentlemen of the House: In the four years I have been in the legislature and a part of this body, I have come to understand something and that is that there is never really a simple answer to any question that is posed here. So, when I sat here this morning and I listened to the debate, I think I began to understand that even though the insurance companies may have made bad investments with their money, and that may be a reason for why the rates are so high when it comes to malpractice, and even though perhaps the legal profession's involvement in the so-called deep pockets syndrome of physicians and other health care providers, that could be the issue as well. I am not so sure that the debate of whether or not it falls on either one of those sides is actually important at all.

I do think that Representative Rolde is correct when he states that the amount of involvement in health care today, whether or not we are talking about the Health Care Finance Commission or the CON's or physicians' offices, is that the impact that all of these different agencies and pulls and pushes are having on the health care delivery system is extremely important for us to look at because it is making health care delivery to you extremely hard to do. Whether or not you live, as Representative Dexter does in Franklin, whether you live in Aroostook or wherever you live, it is making the availability of those services to you extremely difficult.

It has been mentioned here before that probably your first line of physicians in your communities are your family practice physicians. Family practice physicians have taken the place of your general practitioners, those are the people that are making house calls. Believe it or not, physician's still make house calls in the State of Maine. Those are also the people who are providing the majority of obstetric care here in the State of Maine. The family practice physicians in my area, who I happen to know very well, are having a difficult time paying their malpractice premiums. If they can't pay their malpractice premiums, the general public and we are talking general public here, people who are not making the trip to Portland, people who are not making the trip to Bangor, people who are not making the trip to Lewiston, people who are not making the trip to Biddeford, are not going to be receiving the kind of health care services that they deserve. This cap is one way of being able, as a legislature, to state our intent, to let the people and the insurance companies and the lawyers and the medical professions know what it is that we are supporting.

Ladies and gentlemen of the House, over the last four years that I have been here, whenever this body has voted, the majority of times (in my opinion) we have always voted in support of the people of the State of Maine. I request that you do that again when you think about the delivery of health care service.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Lewiston, Representative Alberti.

Representative ALIBERTI: Mr. Speaker, Men and Women of the House: I think many of us remember the highly respected name of Theodore "Ted" Briggs, who for many years acted as the administrator of insurance. I had the unique experience of coming in contact with him many times as a member of the Banking and Insurance Committee, a bureaucrat to be sure, but also a benevolent despot. He made quite a point to emphasize the need of a three year period.

He always said, don't overreact when you brought in a major change on insurance whatever category it fell under. That was three years ago and it did not do the job.

Now we have an opportunity to address that three year concern and the way it should be done is to vote against this bill, allow a cap to come in and then reanalyze it according to a person that is highly knowledgeable and respected and had a great reputation and see if this does address the problem. It won't resolve it, but it sure ought to make it easier for the people involved.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Brunswick, Representative Rydell.

Representative RYDELL: Mr. Speaker, Men and Women of the House: This appears to be a very complicated issue. But if we look at it in relation to Maine experience, it really isn't. The question each one of us needs to ask ourselves is, at the time of injury, is it always possible to determine what the ultimate cost and ramifications of that injury will be for the individual and his or her family? I believe each case must be examined individually and that we, as legislators, are not capable of making, in one feld swoop the decisions for every one of those injured persons and their families for the future.

I could provide you with many cases and case studies in 20 years of experience in working with families of severely damaged children. I could talk about what the noneconomic damages for these families have been and will be in the course of a life time.

But it has already been a long debate here this morning and we do need to move on. We need to move on to deal with the rising health care cost in our society but not on the backs of the people who are most injured, not by placing a cap on noneconomic damages. We should not make a decision that none of us are really capable of making because we don't know the people who will be injured or the types of injuries that they will suffer in the coming years.

Also, in relation to Maine experience, may I remind you that we have not had a whole long list of cases that have gone over the proposed cap here. What kind of a precedent do we want to set? Do we want to encourage people to seek what that noneconomic damage cap might be if we were to set it here today? Do we want to encourage more people to seek higher damages than they have been seeking? I believe that is a real question and, if we look at past experience in other areas, very often a ceiling has a tendency to become the floor. I don't believe we want to do that here.

With regard to insurance rates, putting this cap on here in Maine makes no sense in relation to insurance rates because it makes no sense in relation to Maine experience. Without that history of cases over that cap, we do not have the basis for saying that that kind of a cap will help to reduce our insurance rates.

We must deal with insurance rates but, again, not on the backs of the people who will be most injured, not on the backs of those people who we do not know what kinds of needs they will have. We must deal with insurance rates by proper regulation of the insurance industry. We must try to gain better control of that seven year cycle that Representative Stevens talked about. That is a very complicated issue, many states have been trying to deal with it and no state has, as of yet, found a satisfactory solution. I assure you that in the Banking and Insurance Committee, we are struggling with that problem and we will continue to struggle with that and we will probably be presenting solutions to this

legislature, not sure solutions, but the kind of solutions that we hope will help us in controlling these spiraling insurance rates. Caps will not stop medical malpractice, just as they will not stop the rise of medical malpractice rates.

We have already seen that in a recent study by the Rand Corporation that there are very few of the hospital patients actually injured, who do sue.

We also know the peer review of doctors must be strengthened. I believe the Judiciary Committee has included that in one of their other bills.

For the present, in answer to Representative Pines' question about medical malpractice insurance and multi-national companies, as I thought about it, it is important to recognize that there is only one type of insurance for which Maine experience determines Maine's rates. I probably don't need to remind you that that one type of insurance is Workers' Compensation Insurance. Medical Mutual is a Maine company but its actuary uses national figures. In fact, when we are talking about our property and casualty insurance, our insurance companies insuring people here in the State of Maine, insuring businesses here in the State of Maine, use national figures. We have had lower awards in Maine, we have had fewer suits. But we are being charged for what is happening in other states. Yes, the rates are too high for our physicians and they are too high for many of our other types of businesses. We must work on that through proper insurance regulation. But we must remember that we have no way of knowing the types of injuries and persons who will be injured in the future. That is data and material that, unfortunately, is not and cannot be made available to us ahead of time. We need to be fair to those people, we need to allow their cases to be judged by the court system that we have in this state. We need to believe in the honesty and in the integrity of the jury system and of our judges. I believe that we can do that and we can do that best by supporting the "Ought Not to Pass" Report on this bill.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Shapleigh, Representative Ridley.

Representative RIDLEY: Mr. Speaker, Ladies and Gentlemen of the House: I would like to look at another side of this that I haven't heard too much about, at least by any of the previous speakers.

As I understand the bill, it is going to affect all types of insurance as far as liability is concerned. I have been involved in one part of it that was very upsetting to me. As most of you know, I ran a machine shop for many, many years and retired from it. In the manufacturing of parts, I made a considerable number of parts for an aircraft factory and, all of the parts that I made, I had to give a certificate of compliance which was notarized that it was made from the material that was specified on the drawing and furnished to me by the manufacturer. That somewhat relieved me of liability in case of a plane crash and they traced it back to the wrong material being used. But, the manufacturer that I made these parts from was really plagued with this and the insurance that he had to carry. I might add that I did carry insurance myself for this because the cost of defending yourself would be prohibitive.

There were some real ridiculous cases that came out of these planes that were manufactured in my area. It got to the point where he could no longer afford to carry the insurance. He had to make a choice -- do I keep going in business or do I drop this insurance or what do I do? To give you a classic example, this was an amphibious plane that they built. I made the landing gear for it and they made the rest of the hull, an individual bought one

of these planes and took off in the water and flew around. When he came back, I guess inadvertently somehow he lowered the landing gear which is concealed in the hull of the plane. There are adequate lights and buzzers that show that the wheels are down but he landed that plane in the water with the wheels down. I guess you probably can imagine what happened as a result. So he sued the manufacturer of the airplane and they had to go to Florida and they had a long drawn out case. In fact, it is still pending right now. But this company that makes this airplane could get awarded a claim large enough so that it is going to put him right out of business. I could cite you many, many examples of things that have happened where companies have had to go to court and they have been awarded -- I don't know where they get these figures, I used to think they got them out of the telephone book but they are bigger than that now.

In getting back to my own company that I had, this wasn't the sole reason that I retired early and closed it down but it was one of the contributing factors. The insurance on the liability, the workers' comp, insurance on the contents of the building, and other added expenses, it got to the point that, for every dollar that I took in, I had to give 50 cents of it away in either taxes or some sort of insurance premiums etcetera. Since there was just my wife and I left at home, it just wasn't worth the hassle, so I closed it down.

I only had nine people working for me, but that is nine people, and this is happening every day across the country. Even though you are trying to protect the individual that might get hurt, by having these things continue to grow as much as they do, you are hindering business so that they are either forced out of business because of a large law suit or because it just isn't worth the hassle to keep paying out all these expenses.

So, it is a complicated issue and I don't claim to know all the answers but I know that these insurance premiums keep climbing and climbing and climbing and there are a lot of companies out there that have just about reached their limit. This alone isn't what is doing them under but it is a big contributing factor.

I think we ought to give this bill a try. Let's try it and see how it works. If it doesn't prove out, I am sure we can make the necessary changes.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Waldoboro, Representative Begley.

Representative BEGLEY: Mr. Speaker, Men and Women of the House: I would just like to quote to you a statement that we received in a letter from the 10 Maine doctors who are the Directors of the Self-Insured Insurance Company that serves the doctors and this is the statement: "Passage of a meaningful law will have a positive effect on medical malpractice premiums as well as moderate the upward spiral of rates." These 10 doctors set the rates in their own self-insurance company.

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

Representative CONLEY: Mr. Speaker, Men and Women of the House: I sent the Speaker a note a short time ago (actually a long time ago saying to him that he has, without question, the best voice in the House) and to listen to the rest of the debate on this would remove the opportunity for us to hear a little bit more of it. I beg your indulgence because we have been debating this for some time.

There is an old saying in my neighborhood, one which you may have in your own, which goes something like this, "Fool me once, shame on you; fool me

twice, shame on me." Now a few short months ago we were in this body and, overwhelmingly, approved an insurance initiative to reform the Workers' Compensation Act. A short time after that legislative dust settled, we were back in our homes safely away from the insurance companies, and they were back in here looking to double their premiums. Double them. Now we are here again and the insurance industry, make no mistake about it, they are the force behind this bill.

The doctors have been asked by them to write to you to deal with this problem saying that their premiums are too high but it is the insurance industry itself that is behind this bill.

This draft, which you have before you, has only been seen, basically, by the people on the Majority Report only this last week. This draft has never even been debated in substance by the people on the Judiciary Committee. Essentially, I would ask you to take a close look at what is going on here. You do not have to be a lawyer or a rocket scientist to figure out that, when someone comes to you and asks you for major takebacks, which the insurance industry is doing on this issue, without a hint of a promise that they will do anything in return for the people who will be most affected by this bill, who are businesses and doctors and others who have to carry insurance. The insurance industry said to the Trafton Commission and before our committee that they wouldn't promise to reduce premiums one cent, if this bill passed.

I think you have to take a serious look at this. This issue is the big guy, the insurance companies, versus the injured person, the constituents in your districts.

A lot of talk has been going on about the doctors in this state and the crisis they face. I want this body to be aware that we have major legislation that is going into effect, which passed the Judiciary Committee two years ago, and at the end of this session it is supposed to help the doctors. This legislation will require structured awards in cases where there are awards given to injured patients. It will require any case that comes up for trial to go before a panel first and finally, it would severely reduce any kind of award which could go to attorney's as a result of representing these people. These are very major changes in what has been described by Representative Allen a 200 year development of the civil justice system. We are not even giving these changes a chance to go into effect to see what they are going to do. Yet, people are here saying that this is going to help the doctors. We have already tried to help them and we haven't even had a chance to see how that is going to work.

People of this body, and I know we have debated this at length, I hope you would give very, very careful consideration to what we are doing here. We are advocating a change here which is going to take away the powers that 12 people who sit on juries now have. What right do 12 people who sit up there in some committee room have to take that power away that they have had for such a long period of time and not one single shred of evidence has been shown to me or the majority of the members on the committee that they have abused that power in this state in any way.

I think we ought to accept the "Ought Not to Pass" Report.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Paris, Representative Hanley.

Representative HANLEY: Mr. Speaker, Men and Women of the House: My fellow colleague on the Judiciary Committee, Representative Conley, has made a good point. He comments that this draft in front

of us is one that he has never seen. This is true. What he has omitted though is the fact that a stronger bill, a cap for \$250,000 on noneconomic damages, came out of the Trafton Commission after 12 months of study. This was also supported by members of the committee, this \$250,000. The fact that we moved it up to \$500,000, in all honesty, was to accommodate the gentlelady from Presque Isle, Representative MacBride.

I don't know how Representative Conley can honestly say before you that you should have doubts or considerations because this is an 11th hour bill. Ladies and gentlemen, this definitely is not. We have watered it down to make it palatable to some or most. People have made comments on the floor today that they would like to see something stronger.

I, too, would support Representative Conley's idea that you take very careful consideration on this matter. You should also take careful consideration of that 113th session where this body adopted a \$250,000 cap on the Dram Shop Law. This was not per person, this was per carload. Presently, in front of the Banking and Insurance Committee, they are supporting a \$300,000 cap, not only on noneconomic damages but on all economic damages. That would be for foster parents and respite care providers.

There is precedent for this and I would ask you to support the motion to indefinitely postpone.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Presque Isle, Representative MacBride.

Representative MACBRIDE: Mr. Speaker, Men and Women of the House: I will admit my bottom line was \$500,000 on this cap and I guess that is the reason you have the \$500,000 today instead of the \$250,000 cap.

My reason for that was this -- I really felt that \$500,000 was really a good sum of money. I don't know how you feel but I think a half a million dollars is a lot of money. I felt that that would really be a fair amount. I was concerned about cutting off the cap at \$250,000 but I felt that \$500,000 was a middle-of-the-road amount.

The caps in the various other 28 states range from \$177,000 to \$1 million so that sort of puts us in the middle. I also thought that the injured person, the victim, is going to get your economic damages as I explained earlier. They are going to get those economic damages but they will get, at the most, \$500,000 in the noneconomic damages.

A point I do want to stress, the jury will not know that there is a cap, they will not know and it will not be told them until after the award is made. So you really do not have a problem there.

With a half a million dollars, if you can put that into your checking account or whatever you do with it, you are going to get a high rate of return on that in addition to your other expenses.

I think it has been said that this affects the young, old, crippled and the poor. That really is not necessarily true because they are going to get their economic damages plus up to \$500,000.

I think there has been a lot of discussion today about what we should do about the problem that exists and we all know that there is a problem that does exist. However, there are many people who don't want to do anything about it. Ladies and gentlemen, I do think the time has come to make a change to see if we can't control the skyrocketing costs of our malpractice insurance.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Monmouth, Representative Davis.

Representative DAVIS: Mr. Speaker, Men and Women of the House: Just one quick comment -- my good

friend. Representative Conley, stated that he read in the paper where the insurance rates on Workers' Comp were going up substantially after we passed the Workers' Comp Reform. Let me explain to you what happened -- the claims under the Workers' Comp accumulate and get larger, the rates that are supposed to take care of that lag two or three years behind what the experience is; therefore, it is something like trying to stop your car on an icy road. You put on the brakes but you keep going a little further and that is exactly what has happened with this. The rates lag, the claims therefore before you see the results of the legislation, it takes time.

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

Representative PARADIS: Mr. Speaker, Men and Women of the House: Briefly, I find it interesting that the proponents of the bill would try to deny that a child has any future economic earnings by making this blanket cap. We are really denying, as was said earlier by the gentleman from Belfast, those who are in the shadows of life, the handicapped and the elderly. They are denied any form of real potential earnings. We are saying in a blanket statement, since they are already handicapped, already senior citizens, they have no future economic earnings so we will just put a cap on their noneconomic awards. The very young people who are hurt in this state, they have a future earnings potential, but that is already capped.

I would like to quote for you some an ending in some testimony before the Trafton Commission which really goes to the heart of the matter and was waiting for the proponents of the legislation to mention it. Time after time, speaker's got up and never mentioned this material that was presented in testimony to the Trafton Commission. From St. Paul, the insurance carrier, "St. Paul has not joined other insurance companies or insurance trade associations in their promotion of changes in the civil justice system. It simply is not possible to predict, with any reasonable degree of accuracy, the extent of dollar savings which might result from any given change in the tort system or when that savings might be realized. Whether or not any resulting reduction in recoveries will be sufficient to produce actual rate reduction over time is uncertain." The letter goes on, "St. Paul came to the same conclusion in Florida in 1986 when it and Aetna reported to the Florida Department of Insurance that a \$450,000 cap would have zero impact on their premiums because most policyholders have less than \$450,000 worth of coverage." That was never brought to you by the proponents of this legislation. All it is is window dressing. You can feel good by voting for their bill later on this morning but it won't mean anything.

You can bash the lawyers, it is fair game, always is. The gentleman from Monmouth said something that I thought had never ever been said in this chamber -- he called a group of professional people termites in a wooden or rotten log. I think that is a sad, sad testimony from somebody who is an elected Representative in this state.

You can feel good about a lot of things but will it really make a real difference to people, the doctors? No. We prevent doctor's from getting a fair return by freezing the Medicaid reimbursement. My physician told me when I went to see him (after he wrote me a letter) that it was not the premium that he resented having to pay, it is the ability of not being able to raise the money to pay it. If I am making a \$150,000 a year, I can pay a premium of \$25,000 or \$30,000 but when you limit the amount of

money I can make, then I can't pay my premiums. That is the real argument here.

In the next few weeks, we will be considering legislation that prevents them from getting a fair return. That will do more harm than passing this bill probably ever could.

I would urge you to support the Majority "Ought Not to Pass" Report.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Dover-Foxcroft, Representative Thistle.

Representative THISTLE: Mr. Speaker, Men and Women of the House: Please allow me your indulgence, I will speak very briefly but I would like to supply a few facts that came before our committee during its deliberations on this issue and all the others involved in tort reform.

First of all, I would like to speak in response to Representative Pines' question about an hour and a half ago. I believe you do deserve an answer to your question and if I recall it accurately, Representative Pines, you asked, if we could supply you with an answer to the question -- how many of Maine's physicians have their insurance with multi-national corporations? If that is not accurate, please correct me. Unfortunately, I am not able to respond directly to that and give you an accurate number of how many are connected with multi-national corporations.

I can explain to you briefly, though, that Maine Mutual bases its rates for the physician's in Maine on the national experience, not just the Maine experience. They insure up to a \$500,000 limit and they go to reinsurers for insurance over that, catastrophic. Those reinsurers are multi-national firms and typically in the highly, sensitive, and specialized areas, our physicians are going to multi-national firms for their reinsurance.

I would like to supply a few facts to corroborate Representative Conley's eloquent speech before the House here. "First time, shame on you; second time, shame on me" is a great expression, it is one that I think we are all familiar with and we all try to avoid.

Yes, he drew your attention to Workers' Compensation but I would like to speak directly to the medical malpractice area which seems to be the gist of the concerns in this House right now. These figures were supplied to the Judiciary Committee by the Committee for Fair Rate Hikes and they list St. Paul's Insurance, 1987, rate hike percentage for medical malpractice insurance alone. It is of state's that have existing damage caps in those states. For example, Colorado has a \$250,000 cap on noneconomic damages. In 1987, St. Paul raised their rates 50.8 percent. Idaho has a \$400,000 cap on noneconomic damages applied in 1987. In 1987, St. Paul's rates increased 49.4 percent. Louisiana, which has the same cap, \$500,000, that you are considering this morning, a 25 percent increase by St. Paul in 1987. Missouri with a \$350,000 cap -- St. Paul raised the rates for medical malpractice 38.6 percent.

There are no guarantees. We asked them directly -- would you guarantee some relief in the extensive increases? We didn't ask them if they would reduce the rates, we didn't ask them to lower the premiums -- we just asked for some sense of security that by placing a cap on noneconomic damages would have some positive results. They did not assure us of that fact.

At a rate hearing held here in Maine, the actuary from Medical Mutual Insurance Company indicated that 54,000 claims were needed, that is paid claims, in



order to statistically be credible for determining rates. Since Maine's total filings for all personal injury cases are only about 1,000 per year, it would be several lifetimes before Maine would have enough experience for insurance companies to base their rates solely on our experience. So, the fact is, they are basing their rates, not just on our experience here in the State of Maine, the average suit settled in the State of Maine is in the vicinity of \$30,000, far under the \$500,000 cap you are considering here today.

These insurance rates are being based on the experience of many other neighboring states, Massachusetts, Connecticut, New York, New Jersey and our experience is far different than the experience in those states. We do not have an incidence in this state of high settlements for noneconomic damages.

As you heard from Representative Allen, the Trafton Commission could find evidence of only four such high settlements in the last four years. It is not a problem.

Do we have a litigation crisis? Looking at figures supplied by our own state judicial department, the experience in Maine the last year that I could correlate them with national figures was 1984. In that year, Maine had an incidence of suits filed of 1.02 per one thousand citizens. The national average per one thousand citizens is 6.5. We do not have a crisis in litigation in this state. What we do have is an insurance crisis and that has been amply debated here this morning.

Just let me conclude by saying that, if I felt and I indicated this to my committee early on in our deliberations, that noneconomic damage caps would substantially reduce the premiums being paid by the physicians in Dover-Foxcroft at Mayo Regional Hospital, I would support those caps. I was not convinced nor was the majority of the members of the Judiciary Committee.

Representative Hanley of Paris was granted permission to speak a third time.

Representative HANLEY: Mr. Speaker, Ladies and Gentlemen of the House: You have just received the good gentleman from Dover-Foxcroft, Representative Thistle's, fun with figures. Everyone can have fun with figures. I have studies on the other side that show caps do have an impact on the liability insurance rates.

Also, Representative Thistle made comments to the fact that there is not a litigation crisis per se, citing data that would put us well below the national average. Whether intentionally done or not, he has obfuscated the reality of the situation.

The reality is that settlements, prior to litigation, would bring our figures down so low and whatever the reason is behind these settlements, one would have to think that the possibility of an outrageous settlement would lead one party to make a settlement without going to trial.

Another thing I think should be stressed, it hasn't been stressed enough, is that there is a five year sunset on our proposed cap. So, if Representative Thistle's figures are true and they do bear out, in five years, we can say, okay this has not had a positive impact for the people in the State of Maine. Let's do away with it. I would urge you to give it a chance though.

One final comment, I was not going to bring this up but it has been mentioned a lot here -- that what we have here is an insurance company backed bill. I would just like to point out that everyone received a sheet on their desks yesterday on damage caps called discriminatory. This was passed out by FAIR, the acronym stands for Campaign for Fair Rates and Equal

Justice. It is a great acronym but when you look down and see where the money and their supporters come from, something that stands out in my mind, is the Maine Trial Lawyers' Association. In big, bold print, that is who is supporting no damage caps.

Now if we could turn our attention for just a minute (and then I will sit down) to the Maine Liability Crisis Alliance. I am just going to run down a few of these, the American Academy of Family Physicians, the American Institute of Architects, the American Pulpwood Association, Consulting Engineers of Maine, Home Builders Association, Health Care Providers, the Maine Ambulatory Care Coalition, the Maine Association of Psychologists, the Maine Association of Realtors, Maine Better Transportation Bureau, Maine Farm Bureau, Maine Dental Association, Maine Fishermen Cooperative, Maine Health Care, Maine Hospital Association, Maine Innkeepers Association -- you all have this information in front of you, the Maine Liability Crisis Alliance has not accepted any insurance money. They have not accepted any insurance money for their campaign.

I think you should take that into consideration when you make your vote today. We have the people of Maine, my constituents and your constituents, who realize that there is a problem. We also have FAIR that is backed by the Maine Trial Lawyers' Association, which says there is not a problem. The choice is yours, I urge that you support the motion to indefinitely postpone this bill.

The SPEAKER PRO TEM: The Chair recognizes the Representative from St. George, Representative Scarpino.

Representative SCARPINO: Mr. Speaker, Men and Women of the House: First, though you may find this rather strange, I apologize for speaking a second time. However, in listening to all of this highly technical talk and the sound of big numbers and all the rest of it, I have been sitting here doing a little mathematics in trying to bring this down to a level that I can grasp.

What I did was figure out if somebody got severely injured and they were a reasonably young person and they had roughly 50 years left of their life and we had a \$500,000 cap on damages -- figure out how much a day that compensation would be for pain and suffering. Now I want you people to sit and think what your quality of life is worth. What is it worth to you to be able to get up and walk out of this House, to be able to run to your car in the snow, to be able to see and not have to feel around for something and be confined to your house, to be able to look in the mirror and not see a disfigured face -- you think what that is worth to you. I will tell you that, based on the 50 years and \$500,000, if we pass that bill, we are saying it is worth no more than \$29 a day. Think about it. If you vote to pass this bill, you are saying to someone, if you get confined to a wheelchair, if you get blinded, if you get disfigured, if you have multiple loss of limbs, we think the impact on your quality of life is no more than \$29 a day. I think the impact is worth a little more than that.

I am not going to take a position that says, we know what that quality of life is worth because it is worth a different amount to every person in every instance, depending upon what happens. I think we ought to leave it where it belongs. The \$29 a day, in some cases, may be enough but, in others, may not. Just think about it, if you think about being in a wheelchair, picture yourself being in a wheelchair for the rest of your life, is worth \$29 a day and not anymore than that, then vote to pass this bill. Pray to God that it does not happen to you.

If you think perhaps it is worth a little more, vote to kill it and get it over with.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Belfast, Representative Marsano.

Representative MARSANO: Mr. Speaker, Men and Women of the House: I would like to make a few statements that I feel compelled to make as a result of things that have been said here on the floor.

The Representative from Paris picked out one of the several groups of the Campaign for Fair Rates and Equal Justice but he left off, for instance, the Maine State Nurses Association. We have had a long address to this House by the Representative from Limestone, who indicated that she was a nurse; yet, her State Nurses Association opposes the cap on compensation. The Maine Committee on Aging also does. The Maine AFL-CIO, the Maine National Organization of Women, the Natural Resources Council of Maine oppose the cap and there are others.

I can't help but be impressed by the usual arguments one hears from the Representative from Monmouth, a retired insurance person. Most of the insurance people are able to retire early for one of two reasons -- either they make a lot of money selling insurance, the illusory promises in the policies, or they are, in fact, tired of selling something which represents only idle paper promises until the need arises.

The insurance industry treats every legislature as a fair battle ground for the enhancement of their opportunity for corporate greed. But I don't object to that. I recognize that that is what insurance and other corporations have a tendency to do and it is up to us to protect the people who cannot protect themselves. I feel that is what this is, because I agree with Representative MacBride, that in all probability the limit to which she reluctantly came to, is probably a limit which will not be touched, mostly in Maine.

What does bother me is the philosophy that underlies it. I cannot countenance a bill which provides that physical impairment and disfigurement are not things which can be considered beyond the \$500,000 limit and, contrary to what Representative MacBride says, it does affect the old and it does affect the young.

Let me give you a hypothetical illustration. Take your Sophomore son in college, a straight A, pre-medical student who, for all of his life, wanted to be a surgeon and who, in a tragic accident as a result of the negligence of others, loses an arm. Now he has an economic future and that economic future can be measured in any number of ways. If, in addition to his arm, he is also slightly brain damaged, he may never be able to get through college and so his economic damages before a jury would be based upon what he could earn as a minimum wage laborer, all taken away from him by the hopes and aspirations that he went to school with and it is with that which this cap will deprive him of the opportunity to obtain. It is wrong. Just as it is wrong to say that, because a 50 year old person has 25 years, you can give them more money but, an older person who has a short period of time, should have the values for pain and suffering compressed because their last days are not worth as much, is the argument.

The problem with this bill is its philosophy. Its major philosophical problem lies with physical impairment and disfigurement. I cannot believe that the caring members of this body will tolerate a bill which says that loss of limb, loss of face, loss of hearing, loss of eyes, will be compressed when the facts are never known, when the facts cannot be

known, because they can only be presented when a jury of citizens hears the evidence that leads them to the conclusion of damage to which they ultimately come.

I urge you to follow Representative Paradis and the motion presently before the House that this bill be defeated.

The SPEAKER PRO TEM: The Chair recognizes the Representative from Hampden, Representative Willey.

Representative WILLEY: Mr. Speaker, Men and Women of the House: Believe me, I hate to be standing here after all this rhetoric but I just heard a comment that I have to reply to.

I heard corporate greed -- I would like to tell you about corporate greed and the subject that we are talking about. I have a son-in-law who lost a leg in an accident and he was awarded \$100,000. The lawyer took \$33,000 out of it. That, to me, is corporate greed. It is not a great deal of benevolence on the lawyer's part to take one-third of that money and stuff it in his pocket when there is a guy running down the road without any leg.

Let me tell you something else. In 1986, top liability in this country cost a total of \$39 billion dollars, \$16 billion of it went to the plaintiff's -- guess where the rest of it went, the other \$23 billion? We are talking about benevolence here and common sense -- maybe we are attacking this problem in the wrong area. If it is so rewarding to the legal profession that they are pushing this thing to this degree, then in order for the plaintiff to get a better cut of the thing, maybe the lawyers should take less.

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At this point, the Speaker resumed the Chair.

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The House was called to order by the Speaker.

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

Representative MACBRIDE: Mr. Speaker, would you please clarify the motion we are going to be voting on?

The SPEAKER: The Chair will when he places it to a vote. The pending question before the House is the acceptance of the Majority "Ought Not to Pass" Report from the Committee on Judiciary, a roll call having been ordered.

The SPEAKER: The Chair recognizes the Representative from Wilton, Representative Armstrong.

Representative ARMSTRONG: Mr. Speaker, a point of order.

The SPEAKER: The Representative may state his point of order.

Representative ARMSTRONG: I believe that it is common knowledge that the good Representative from Belfast is President of the Maine Bar Association and has spoken several times on this bill. I would ask a ruling from the Chair -- are members of the bar in violation of Joint Rule 10 if, in fact, they voted on this? I base my inquiry on the fact that most lawyers handle cases on a contingency basis and if we don't put a cap on these awards, presumably the contingency fees will go up as the awards go up.

The SPEAKER: The Chair would advise the Representative from Wilton, Representative Armstrong, that on this matter, as in previous rulings from the Chair, that there is, under the law, a provision for that process to determine whether or not someone should be voting or not voting. In addition, the Chair would rule that, under the law, an individual



who is part of a profession is to be treated as if he were part of that profession as a class and not as an individual. Unless the individual in this body gains financial profits, which would be different from other persons within that class, i.e. lawyers or insurance agents, that would be absolutely no different.

In this particular instance, if I were to make that kind of ruling, it would disallow insurance agents, insurance people who participate in owning companies as well as lawyers, there would be no one left to vote on the issue.

The Chair recognizes the Representative from Dover-Foxcroft, Representative Thistle.

Representative THISTLE: Mr. Speaker, Ladies and Gentlemen of the House: Just briefly, I failed to include in my fun with facts and figures report to you, which happened to be not of my making but of A.M. Best and others, very reliable people, what was the experience of St. Paul in Maine. I shared with you what they did in other states. Colorado, they raised the rates 58.8 percent. Here is what they did in Maine in January of 1987 -- St. Paul Insurance Company filed for a 57.5 percent rate increase. That filing was later amended to be only 50.1 percent and, finally, after hearings were initiated by the Bureau of Insurance, an agreed upon rate increase of 30 percent became effective September, 1987.

In states where a cap already exists, St. Paul's received rate increases far above that that they got in the State of Maine.

The SPEAKER: The Chair recognizes the Representative from Limestone, Representative Pines.

Representative PINES: Mr. Speaker, Men and Women of the House: The fact about the Maine Medical Mutual Insurance Company, the basic premium is based wholly on the experience of its insured doctors in Maine, while its reinsurer looks at trends across the country as well as claims in Maine, the rate insurer will consider setting its rates on the fact that a cap does exist. Whether St. Paul increased rates by 20, 30 or 40 percent after a state imposed a cap is irrelevant. The fact may be, without the caps, rates may have gone up higher in those states.

The SPEAKER: The pending question before the House is the motion of the Representative from Augusta, Representative Paradis that the House accept the Majority "Ought Not to Pass" Report.

The Chair recognizes the Representative from Leeds, Representative Nutting.

Representative NUTTING: Mr. Speaker, I request permission to pair my vote with the Representative from Millinocket, Representative Clark. If he were here and voting, he would be voting yea; I would be voting nay.

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

Representative DORE: Mr. Speaker, I request leave of the House under Joint Rule 10 to be excused from voting.

The SPEAKER: The Chair will grant the request.

The Chair recognizes the Representative from Brunswick, Representative Clark.

Representative CLARK: Mr. Speaker, I request permission to pair my vote with the Representative from Brunswick, Representative Rydell. If she were present and voting, she would be voting yea; I would be voting nay.

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

Representative CARTER: Mr. Speaker, pursuant to Joint Rule 10, I request permission to be excused from voting.

The SPEAKER: The Chair will grant the request.

The pending question before the House is the motion of the Representative from Augusta, Representative Paradis that the House accept the Majority "Ought Not to Pass" Report. Those in favor will vote yea; those opposed will vote no.

ROLL CALL NO. 202

YEA - Allen, Anthony, Baker, Bost, Carroll, Cashman, Chonko, Coles, Conley, Daggett, Diamond, Gould, R. A.; Greenlaw, Gwadosky, Hale, Handy, Hickey, Hogle, Holt, Hussey, Jacques, Jalbert, Joseph, Ketover, Kilkelly, Lacroix, Lisnik, Mahany, Manning, Marsano, Martin, H.; Mayo, McGowan, McHenry, McSweeney, Michaud, Mitchell, Moholland, Nadeau, G. G.; Nadeau, G. R.; O'Gara, Oliver, Paradis, J.; Paradis, P.; Perry, Priest, Rand, Rotondi, Ruhlman, Simpson, Smith, Stevens, P.; Swazey, Tammaro, Thistle, Tracy, Vose, Warren, Whitcomb, The Speaker.

NAY - Aliberti, Anderson, Armstrong, Bailey, Begley, Bickford, Bragg, Brown, Callahan, Curran, Davis, Dellert, Dexter, Dutremble, L.; Farnum, Farren, Foss, Foster, Garland, Glidden, Hanley, Harper, Hepburn, Hichborn, Higgins, Holloway, Jackson, Kimball, Lawrence, Lebowitz, Look, Lord, MacBride, Matthews, K.; McPherson, Mills, Murphy, E.; Murphy, T.; Nicholson, Norton, Paradis, E.; Parent, Paul, Pines, Pouliot, Racine, Reed, Richard, Ridley, Rolde, Salsbury, Scarpino, Seavey, Sheltra, Sherburne, Small, Soucy, Stevens, A.; Strout, B.; Strout, D.; Tardy, Taylor, Telow, Tupper, Walker, Webster, M.; Wentworth, Weymouth, Willey, Zirkilton.

ABSENT - Bott, Boutilier, Cote, Crowley, Duffy, Erwin, P.; Gurney, Hillock, LaPointe, Macomber, Melendy, Reeves, Rice, Stanley.

PAIRED - Clark, H.; Clark, M.; Nutting, Rydell.

EXCUSED - Carter, Dore.

Yes, 60; No, 70; Absent, 14; Vacant, 1; Paired, 4; Excused, 2.

60 having voted in the affirmative and 70 in the negative with 14 being absent, 4 paired, 2 excused and 1 vacant, the motion did not prevail.

Subsequently, the Minority "Ought to Pass" Report was accepted, the New Draft read once and assigned for second reading, Thursday, March 17, 1988.

Divided Report

Majority Report of the Committee on Judiciary reporting "Ought Not to Pass" on Bill "An Act to Abolish Joint and Several Liability" (H.P. 392) (L.D. 526)

Signed:

Senators:

BRANNIGAN of Cumberland  
GAUVREAU of Androscoggin  
BLACK of Cumberland

Representatives:

THISTLE of Dover-Foxcroft  
MacBRIDE of Presque Isle  
PARADIS of Augusta  
MARSANO of Belfast  
VOSE of Eastport  
COTE of Auburn  
CONLEY of Portland  
WARREN of Scarborough

Minority Report of the same Committee reporting "Ought to Pass" in New Draft under New Title Bill "An Act to Modify Joint and Several Liability" (H.P. 1844) (L.D. 2524) on same Bill.

Signed:

Representatives:

HANLEY of Paris  
BEGLEY of Waldoboro

Reports were read.

Representative Paradis of Augusta moved that the House accept the Majority "Ought Not to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Waldoboro, Representative Begley.

Representative BEGLEY: Mr. Speaker, Men and Women of the House: The liability crisis allowance and coalition of 70 businesses, industries and professional organizations including the Maine Medical Association presented four proposals to our Judiciary Committee to be considered in helping to bring needed reforms.

We did not even consider two of them in any serious fashion at all. The third proposal of caps we have already discussed. The fourth proposal is before you now in a much more modified form than the original.

The original was to abolish Joint and Several Liability, this is a much more modified form. The proposal before you is in conformity with the American Bar Association. Multiple defendants in most civil actions in which the defense of comparative negligence may be raised will remain jointly liable for all damages awarded unless a defendant is found to be less than 25 percent at fault as compared with other defendants. For that defendant, liability will be several only with regard to noneconomic damage. Thus, the defendant will only be responsible for his portion of noneconomic damages but will remain jointly liable for all economic damages.

If it is judged that a defendant is 25 percent or more at fault when compared to the other defendants, that defendant will be jointly liable for all economic and noneconomic damages, which means simply that even with this very modified bill, a person may be considered, for example, a quarter or 25 percent at fault and may still have to pick up the other three-quarters of the cost or may still be liable for the 100 percent of the award if the other defendants have no insurance.

We are not abolishing joint and several, and as I have mentioned, we have just presented to you a very modified version, which is accepted by the American Bar Association, which also exempts the particular version that we are submitting to you today, exempts all environmental cases.

I encourage you to support the Minority Report.

Mr. Speaker, I would request a roll call.

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

Representative PARADIS: Mr. Speaker, Men and Women of the House: Very briefly, let me give you a typical example of what would happen if the Minority Report were to be accepted.

Let me give you a typical case involving Joint and Several Liability, and if any of you are experts in this doctrine, please interrupt me at any time and correct me and add to what I am saying because I have been studying it along with other members of the committee for quite awhile and it is a difficult doctrine to understand.

Let's say that the typical case is a crib toy manufacturer and would be responsible for a dangerous design. The manufacturer may be responsible for putting the toy together in an unsafe way such that it easily fell apart. The wholesaler of the toy may be responsible for an incorrect or inadequate label. For example, labeling the toy as safe for one year olds when it isn't. Now the retailer, the storeowner may be responsible for removing the label or marketing the toy in an ad that incorrectly indicated one year olds could safely use the toy. The most efficient, fair way to handle this suit is through Joint and Several Liability. The plaintiff, the person who is bringing action, the person who has been harmed, must prove that each of the wrongdoers, in fact, were negligent and at fault for the injury to that small child. Once fault is established

through the jury, the various defendant's are responsible for apportioning their share of the damage award. Now, was 50 percent of the baby's injury caused by the inadequate label or was it 25 percent? Who is more at fault, the designer of the toy or the manufacturer of the toy? Under Joint and Several Liability, the burden of proving share of costs is on the wrongdoers who are better in a position to determine than the victim.

If we mess around with this doctrine of Joint and Several Liability, we add a whole new concept to the legal system in this state. The person who had been injured now has an additional chore, your constituents and mine, of having to apportion what type of blame may have been. It ought to be the manufacturer's of these products and that is really what we are talking about with Joint and Several Liability, certain products. I gave you a very simple example about a crib toy.

How about asbestosis? Do we want to talk about BIW and the worker's down there with asbestosis? How about DES, a synthetic estrogen that causes birth defects? All of these people who have been wronged and this takes 6, 7 or 8 years of court litigation and they have to turn around and start adjudicating and apportioning this manufacturer, while it may be 7, 8, 10 or 12 different persons involved in the design, the manufacturing, the labeling, and the distribution of these products. Then they have to turn around and say, now tell us our apportion of blame, 5 percent, 15 percent, 35 percent, you can't do it. You would really be severely handicapping the people that the jury has said they have been wronged. They have gone through the whole system and they are not going to be able to receive justice and due compensation. I can't, in good conscience, vote to do away and limit Joint and Several Liability. It would be wrong.

I hope you will accept the Majority "Ought Not to Pass" Report as most of the committee has.

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

Representative HANLEY: Mr. Speaker, Men and Women of the House: I rise today again with much trepidation, for this time I am cast in the role of young David going up against a larger and more powerful Goliath. I am armed only with simple words and common sense argument. I hope my aim is true. We are not pioneers in this area. Twenty-three other states have taken action to reform Joint and Several Liability. Four states have totally abolished Joint and Several Liability. Four other states have abolished Joint and Several only for noneconomic damages. The final fifteen have made the rule of Joint and Several Liability limited to only certain instances.

Our modest proposal follows along these lines and is virtually identical to a proposal advanced by the American Bar Association. Our proposal would make a defendant severally liable and not joint liable for the noneconomic damages if the defendant was found to be less than 25 percent negligent.

Let me try and put this in simple terms. As the law presently stands, a plaintiff could be found to be contributorily negligent for 30 percent. You could have two defendants, one of these could be 50 percent responsible for the negligence, while the other defendant was only 20 percent negligent. The second defendant with only 20 percent negligence would be held accountable for the determined monetary award if the other defendant didn't have the assets to pay his or her share of the award.

What this comes down to is you have a defendant who is 20 percent responsible for the damage and you

have a plaintiff who has contributed to the negligence of 30 percent and yet you have whatever the court awards for monetary awards. That defendant that was 20 percent negligent would be held accountable for all the noneconomic award, if the other defendant who was 50 percent negligent didn't have assets or was indigent. Now I ask you, is it fair for the defendant who is less responsible for the accident than the plaintiff should bear the burden of the entire monetary award? No one can escape the present rule, whether you are a doctor, a businessman or, most times, an unsuspecting automobile driver. You are placed in a very dangerous position.

Our modest proposal would make this unfortunate defendant liable for 100 percent of the economic damages, that 100 percent of the economic damages, this defendant who was only 20 percent negligent, would be responsible for. Yet, when you turn to the noneconomic side of the coin, this defendant would only be responsible for his share of the noneconomic damages.

One other important aspect of our proposal is the fact that environmental actions will not be limited. We have defined environmental actions to mean a civil action seeking damages for property damage, personal injury or death where the cause of harm is use of, disposal of, handling of, storage of, treatment of, or exposure to chemicals, hazardous waste or toxic substance. That right there would address one of the concerns that the Representative from Augusta, Representative Paradis, shared with you. By including this item, you have addressed the major concern of our state's Attorney General.

Some will say that this rule of law has been around for over 200 years. This is true but some major changes have taken place over these years. Originally, Joint and Several Liability meant that people who act with a common purpose in concert to commit an unlawful action against one party should have the actions of one considered as the action of all. Juries were not allowed to apportion fault between tort cases because it was considered impossible to divide what was seen as indivisible wrong. Unfortunately, this has been greatly expanded upon. Now Joint and Several Liability has been applied in the absence of concerted action to make all those defendants who have any part in an action, now matter how minimal, Joint and Severally Liable.

Although I share disdain for such catch phrases, this has opened up the trouble and concept of deep pockets.

My fellow legislators, this is the position we are in today. I openly admit my fear of this issue on the floor of the House this morning. The state has spent a lot of time and resources to study this very complex and, often times, convoluted issue. There are no easy answers, don't look for them. This is not a black and white issue, nor is it an issue that you can follow either red or green. On this matter, I ask you to take a long and hard look at which proposal would be the most fair to you and your constituents.

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

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

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

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

Representative MACBRIDE: Mr. Speaker, Ladies and Gentlemen of the House: I think I have been much involved in these tort issues for several years now and medical malpractice and, since you find my name on the Majority "Ought Not to Pass" Report today, I do want to explain to you how I reached that conclusion and why I am there.

This bill is an entirely different bill from the one which we have just debated. The damage cap bill is a straightforward bill. This Joint and Several Liability is a very complex issue in the tort system. During my long journey back and forth to Aroostook County each weekend, I have debated these issues with myself over and over again until I find I really can debate on both sides or all sides of the issue. I came to the conclusion, finally, along with a number of my colleagues, that this law of Joint and Several Liability is not fair. It is not fair to the defendant as presently written. But, it is not fair to the plaintiff, if it were changed. My objective was to find the least unfair solution to the problem of Joint and Several Liability.

As unfair as I think it is for a defendant to have to pay more than his share of jury award, I finally decided it would be more unfair if the innocent plaintiff or victim received only a portion of his award. After all, he has done nothing. But each of the defendant's has committed part of the fault or harm. No matter how little a defendant has committed, he has been a contributor.

In the more complicated court cases, the plaintiff may have a percentage at fault and that makes this very complicated. You do get into all sorts of percentages and it does become extremely complex.

This present law, as it stands in Maine, comes down on the side of the victim in the final analysis. I decided I did too and that is the reason I supported the report not to change Joint and Several Liability.

The SPEAKER: The Chair recognizes the Representative from Belfast, Representative Marsano.

Representative MARSANO: Mr. Speaker, Men and Women of the House: I obviously share the view of the Representative from Presque Isle, Representative MacBride, but I rise because, although it would probably be better if I did not and sat down silently as the vote unfolded, there are some things that need to be said about the bill. I obviously have worked on this bill for a long period of time and I am compelled to tell you what the Representative from South Paris told you is not the law of Maine.

The Law of Maine, Section 156, Title 14 does not allow a comparison of any of the defendants' negligence with the plaintiffs negligence. The way in which comparative negligence is set up is that comparative negligence has a reduction for the plaintiff for the amount of the total gross damage for which the plaintiff is causatively responsible. Thus, in a joint liability case in which there are multiple defendants, a figure goes to the jury and the jury decides on a figure, the plaintiff's contributory share to that gross figure has already been established. What happens in this bill and why it is wrong is that then the defendants have the right to compare negligence among themselves. Since the plaintiff has already prevailed on the basis that all of the defendants are causatively responsible to him, there is no further need, under the existing law, for a comparison, nor is it allowed, for the plaintiff with each responsible defendant. That is

an important distinction and it is one that is difficult to understand. But, so that the Record on the floor at the time of the vote was accurate, I felt that I should say that.

I want to say also that I am a member of the American Bar Association but I represent the people of Belfast and Northport and I have lived in that community for 25 years. I got elected to this House because they thought I was a person who could come here and represent them. I am here for that purpose. I do not agree with the American Bar Association but I will tell you one thing, the American Bar Association's proposal in this matter is certainly better than the law that is before you. What happens with this law that does not happen with the American Bar Association's law is that, in the unfortunate event that if you had five 20 percent negligence defendant's in this situation, they would, for some purposes, escape liability totally. This bill is flawed, it is flawed legally and it is not fair.

I hope you will agree with the Representative from Presque Isle and follow her suggestions with respect to it.

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

Representative JACQUES: Mr. Speaker, Men and Women of the House: We have heard today on this beautiful day, March 16th, from the legal profession of this House and from the insurance people of this House. It has been a very good day here in this House for the insurance profession in this state but it has been a very bad day, I feel, for the people of this state.

Just recently, the people of this state were held hostage in a Workers' Compensation crisis by the insurance companies. Ladies and gentlemen of the House, whether we believe it or not, we were sold a bill of goods because what we did was we took away from the people who could have it taken away the least, those that are going to be hurt and injured and the insurance companies turn around and did the same thing they always did, they asked for a substantial rate increase.

I was elected to represent all the people not just the insurance companies and not just the doctors and the lawyers and the professional people. It seems that in our concern for the cost of liability that we are going to put a cap or we are going to put a restriction on the person who receives the damages for the best and noblest of intentions. Yet, I see no effort to put a cap on what the lawyers can charge, on what the people in the professions providing the services can charge to those very people. We are going to make everything risk free. I was under the assumption that insurance companies base their rates on risk, age risk, health risk, longevity risk, driver's record risk. I guess what we would like to do is make the insurance business in this state -- risk free.

The ultimate losers in that deal, ladies and gentlemen of this House, are the people. So, I hope that you can go back home, tell your people that, yes indeed, you did deal with liability crisis in the State of Maine and you did it taking it right out of their hide because anybody who believes that whether this bill passes or the former bill passes is going to save these professional people money, you also believe in Alice in Wonderland. The record doesn't show it and I don't believe the future is going to show it.

Remember who we were elected to serve, all the people of the State of Maine. Remember who loses in

this deal and who gains nothing in this deal, the people of the State of Maine.

As I said before, it has been a very glorious day here in this House of the people for the insurance companies -- once again who held us hostage -- once again, our people are going to pay the price.

The SPEAKER: A roll call has been ordered. The pending question before the House is the motion of Representative Paradis of Augusta that the House accept the Majority "Ought Not to Pass" Report.

The Chair recognizes the Representative from Auburn, Representative Dore.

Representative DORE: Mr. Speaker, I request leave of the House under Joint Rule 10 to be excused from voting on this matter.

The SPEAKER: The Chair would grant the request. The pending question before the House is the motion of Representative Paradis of Augusta that the House accept the Majority "Ought Not to Pass" Report. Those in favor of that motion will vote yes; those opposed will vote no.

ROLL CALL NO. 203

YEA - Allen, Anderson, Baker, Bost, Bragg, Brown, Carroll, Cashman, Chonko, Clark, M.; Coles, Conley, Crowley, Curran, Daggett, Dellert, Diamond, Dutremble, L.; Farnum, Foster, Glidden, Gould, R. A.; Greenlaw, Gwadosky, Hale, Handy, Harper, Hichborn, Hickey, Higgins, Hoglund, Holt, Hussey, Jacques, Jalbert, Joseph, Ketover, Kilkelly, Lacroix, Lisnik, Lord, MacBride, Macomber, Mahany, Manning, Marsano, Martin, H.; Matthews, K.; Mayo, McGowan, McHenry, McSweeney, Michaud, Mills, Mitchell, Moholland, Murphy, T.; Nadeau, G. G.; Nadeau, G. R.; Nutting, O'Gara, Oliver, Paradis, E.; Paradis, J.; Paradis, P.; Parent, Paul, Perry, Pines, Pouliot, Priest, Racine, Rand, Reed, Richard, Ridley, Rolde, Rotondi, Scarpino, Seavey, Sheltra, Sherburne, Simpson, Smith, Soucy, Stevens, A.; Stevens, P.; Strout, B.; Strout, D.; Swazey, Tamaro, Tardy, Taylor, Telow, Thistle, Tracy, Tupper, Vose, Walker, Warren, The Speaker.

NAY - Aliberti, Armstrong, Bailey, Begley, Bickford, Callahan, Davis, Dexter, Farren, Foss, Garland, Hanley, Hepburn, Jackson, Lawrence, Lebowitz, Look, McPherson, Murphy, E.; Nicholson, Norton, Ruhlin, Salisbury, Small, Webster, M.; Wentworth, Weymouth, Whitcomb, Willey, Zirkilton.

ABSENT - Anthony, Bott, Boutilier, Carter, Clark, H.; Cote, Duffy, Erwin, P.; Gurney, Hillock, Holloway, Kimball, LaPointe, Melendy, Reeves, Rice, Rydell, Stanley.

EXCUSED - Dore.

Yes, 101; No, 30; Absent, 18; Vacant, 1; Paired, 0; Excused, 1.

101 having voted in the affirmative, 30 in the negative, with 18 being absent, one vacant and one excused, the Majority "Ought Not to Pass" Report was accepted. Sent up for concurrence.

CONSENT CALENDAR

First Day

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

(H.P. 1728) (L.D. 2371) Bill "An Act to Appropriate Funds to Conduct a Marine Pollution Monitoring Program" Committee on Energy and Natural Resources reporting "Ought to Pass"

(H.P. 1524) (L.D. 2077) Bill "An Act to Implement Uniform Federal Lien Registration" (Emergency) Committee on Judiciary reporting "Ought to Pass" as amended by Committee Amendment "A" (H-482)

There being no objections, the above items were ordered to appear on the Consent Calendar of

Thursday, March 17, 1988 under the listing of Second Day.

CONSENT CALENDAR

Second Day

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

(S.P. 818) (L.D. 2138) Bill "An Act to Provide Additional Appropriations to Continue the Dioxin Study"

(S.P. 876) (L.D. 2279) Bill "An Act to Provide Volunteer Literacy Services for Maine Citizens" (C. "A" S-330)

(S.P. 837) (L.D. 2174) Bill "An Act to Make Allocations from the Maine Nuclear Emergency Planning Fund for Fiscal Year Ending June 30, 1989" (Emergency) (C. "A" S-331)

(S.P. 796) (L.D. 2093) Bill "An Act to Create a Single Point of Contact for the Operators of Commercial Vehicles" (C. "A" S-332)

(S.P. 795) (L.D. 2092) Bill "An Act to Prohibit the Display of Blue Lights on Vehicles Other than those Used by Authorized Law Enforcement Officers and Agencies" (C. "A" S-335)

(S.P. 745) (L.D. 2004) Bill "An Act to Make Changes to the Public Utilities Law" (C. "A" S-333)

(H.P. 1726) (L.D. 2369) Bill "An Act to Eliminate the Requirement that the Deputy Adjutant General and the Director of the Military Bureau be the Same Individual"

No objections having been noted at the end of the Second Legislative Day, the Senate Papers were Passed to be Engrossed as Amended in concurrence and the House Paper was Passed to be Engrossed and sent up for concurrence.

PASSED TO BE ENGROSSED

Bill "An Act Relating to the Weighing of Trucks" (S.P. 819) (L.D. 2139)

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

Tabled and Assigned

Bill "An Act to Promote Harmony between Agriculture and Adjacent Development and to Protect the Public Health, Safety and General Welfare" (Emergency) (H.P. 1842) (L.D. 2522)

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

On motion of Representative Lisnik of Presque Isle, tabled pending passage to be engrossed and specially assigned for Thursday, March 17, 1988.

PASSED TO BE ENGROSSED

Bill "An Act Relating to the Time Limit for Delivering the Warrant or Process by Which a Prisoner is Detained" (H.P. 1847) (L.D. 2529)

Bill "An Act to Ensure the Safe Siting of Gravel Excavation" (H.P. 1848) (L.D. 2530)

Were reported by the Committee on Bills in the Second Reading, read a second time, the House Papers were Passed to be Engrossed and sent up for concurrence.

PASSED TO BE ENGROSSED

As Amended

Bill "An Act to Establish a Presidential Primary in Maine" (S.P. 123) (L.D. 328) (C. "A" S-329)

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

On motion of Representative Racine of Biddeford, the House reconsidered its action whereby Committee Amendment "A" (S-329) was adopted.

The same Representative offered House Amendment "A" (H-484) to Committee Amendment "A" (S-329) and moved its adoption.

House Amendment "A" (H-484) to Committee Amendment "A" (S-329) was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Brunswick, Representative Priest.

Representative PRIEST: Mr. Speaker, I would like to pose a question through the Chair to the Representative from Biddeford.

Does the Representative intend to apply the policy embodied by this amendment to any statewide election?

The SPEAKER: Representative Priest of Brunswick has posed a question through the Chair to Representative Racine of Biddeford who may respond if he so desires.

The Chair recognizes that Representative.

Representative RACINE: Mr. Speaker, I am sorry but I did not hear your question. Would you repeat it please?

The SPEAKER: The Chair recognizes the Representative from Brunswick, who may restate the question.

Representative PRIEST: Mr. Speaker, my question is, do you intend to apply the policy that is embodied in this amendment to any statewide election whether it is a presidential primary or any other statewide election?

The SPEAKER: The Chair recognizes the Representative from Biddeford, Representative Racine.

Representative RACINE: Mr. Speaker, Ladies and Gentlemen of the House: The intent of the amendment is to be applied only to the primaries that will be initiated as a result of this legislation, only the primaries.

The SPEAKER: The Chair recognizes the Representative from Brunswick, Representative Priest.

Representative PRIEST: Mr. Speaker, if I may pose a further question through the Chair. What is the reason for applying that policy to this statewide election only and not to other statewide elections?

The SPEAKER: Representative Priest of Brunswick has posed a question through the Chair to Representative Racine of Biddeford who may respond if he so desires.

The Chair recognizes that Representative.

Representative RACINE: Mr. Speaker and Members of the House: Maybe I don't understand your question. I am a little bit confused but the intent of the bill is to require that the state and not the municipalities pay for the cost of the primaries changing from a caucus to a primary. I think you are asking me if the intent of the bill is for the state to pay for all elections. If that is the question, my answer is no. The amendment pertains only to L.D. 328 and L.D. 328 establishes a primary in the State of Maine. I feel that if we are going to mandate an additional cost on the municipalities, then the state should reimburse the municipalities for any costs that may be incurred as a result of our mandation. Does that answer your question?

The SPEAKER: The Chair recognizes the Representative from Brunswick, Representative Priest.

Representative PRIEST: Mr. Speaker, Men and Women of the House: My concern with this amendment is and I would urge that the amendment not be

adopted, that we are imposing a requirement in this situation that we apply to no other statewide election nor indeed to any other statewide primary election. It seems to me that if we are going to reimburse municipalities for costs related to statewide elections under the theory that that is a state mandate that that ought to be done with all elections and not with just this one.

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

The SPEAKER: The Chair recognizes the Representative from Lisbon, Representative Jalbert.

Representative JALBERT: Mr. Speaker, Ladies and Gentlemen of the House: All this amendment does is kill the bill, that's obvious. Once it gets to the Appropriations Table, that is going to be the end of it.

As I stated yesterday, we are just going backwards, backwards. People are sick and tired of politics as usual.

I had quite an experience the Sunday of the caucus. I was sitting down with my good wife Francis and I was trying to persuade her to come to the caucus and she said, "What happens at the caucus?" I said, "People get up and speak." She said, "Do you intend to speak?" I said, "Yes." She said, "That is one good reason why I am not going." But I would say again, this is a chance for the people to vote.

The good gentleman from Biddeford said, this should be paid by the people. Why not do it for the June primary, why not do it for general election, why not do it for the local election? I would ask that you support the motion to indefinitely postpone.

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

Representative HANDY: Mr. Speaker, Men and Women of the House: I think there is a distinction here that can clearly be made and that is the fact that what we are proposing today is a presidential primary which is nothing but a beauty contest, it has no meaning. The message that is going out of this body back to the people is the supposed fact that they are going to have some kind of voice in this process. It has nothing to do with delegate selection. It is simply a state sanctioned public opinion poll.

I think that Representative Racine's amendment is well placed in this body today and should be adopted by this body. Given the fact that it is unlike the primaries that we as legislators and other office holders run through and it is unlike a general election. I think there is an absolute distinction there. I would hope we would oppose the motion to indefinitely postpone.

The SPEAKER: The Chair recognizes the Representative from Brunswick, Representative Priest.

Representative PRIEST: Mr. Speaker, Men and Women of the House: I am surprised to hear this presidential primary being called a beauty contest. In fact, that is not at all what it is. If the bill is read, if the rules are reasonable, then the effect of the presidential primary is to affect the delegate selection for the National Convention from this state in accordance with party rules. If those rules are not reasonable, then the state steps in (as it can) and says that the delegates are selected in proportion to the vote of the state presidential primary. That is hardly a beauty contest, that has a definite relationship to who gets what vote out of Maine in the national election.

I think we are talking about a very serious event here. An event which can lead, in a small way, to determining the outcome of a presidential election. I think that there is no reason to treat this primary different than any other primary election. If we are

going to reimburse all municipal costs for all primary elections, that is fine. Unfortunately that is not what this amendment does.

I would still urge you to support the motion to indefinitely postpone.

The SPEAKER: The Chair recognizes the Representative from Harrison, Representative Jackson.

Representative JACKSON: Mr. Speaker, Ladies and Gentlemen of the House: The gentleman from Lewiston raised a very interesting point. The gentleman from Lisbon countered that point. I guess the thing that concerns me is that we talk about reasonable rules. We don't have reasonable rules established where this election or primary will be a binding vote on the delegate process.

I looked at the fiscal note on the amendment, \$400,000. We are all concerned about property taxes and about property tax relief. We had a bill here two or three weeks ago that would have mandated reimbursement to communities for state mandates. Here is another state mandate or has the potential of being a state mandate without reimbursement. I think the amendment makes common sense. I think that if we are really concerned and interested in getting the people of this state involved in the political process that we as a legislature ought to be willing to fund that. We ought to be willing to cough up the \$400,000 because it is well worth it.

I certainly would vote for a state primary, presidential primary, if the reasonable rules were explicit and explained and were the foundation of this bill but they are not. What we are asking is some municipalities, maybe not all the municipalities in the State of Maine, to foot the bill for exactly what the gentleman from Lewiston said, a beauty contest.

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

Representative MURPHY: Mr. Speaker, Men and Women of the House: Speaking as the Representative from Kennebunk, we have words, buzz words, that are tossed back and forth in this chamber. I think one of the words is "mandates," another one is "local control." I guess the word "mandate" can be used by anyone in any given argument on this floor based upon any given philosophical issue or from what part of the state you are from. But where there is agreement is on unfunded mandates. We might use that term and we might be on either side of the issue on what we are going to mandate or that some mandates are good but when it comes to their being unfunded, I think that we are unanimous that there is a responsibility.

We just heard during this debate that if a state appropriation gets attached to this in terms of the state paying for it, it will kill the bill. What we are going to do is take that same cost and we are going to give it to the municipalities. That is an unfunded mandate.

Now, the bill does have an estimation in 1988 dollars of what the Secretary of State is going to have to carry this thing out, \$110,000.

I support this amendment. I would even like to go farther and say, if the political parties decide they want to have a primary, let the political parties pay for it and not the towns. But, if we are going to pass enabling legislation here, and if you read that bill, the parties are going to make the decision. Well, if we are going to let the political parties make the decision, then we should have the courage to say then we will pay for it here. But what we are doing is saying, down the road, let the political parties make the decision and let the local property taxpayer pick up the cost for what will benefit the political parties.

A good segment of those local taxpayers don't belong to a political party but they are going to pay a cost for something that is going to benefit the two political parties.

So, we do have a motion before us in terms of indefinitely postponing. This is a real clear case of an unfunded mandate. If you believe in this, then you are passing enabling legislation. Let's please have the courage to say that we will put our vote and state dollars where our convictions are. I would urge you to vote against the motion to indefinitely postpone.

The SPEAKER: The Chair recognizes the Representative from Thomaston, Representative Mayo.

Representative MAYO: Mr. Speaker, Men and Women of the House: I won't take up very much more time this morning because it is getting close to the noon hour.

I would offer a very creative solution to this problem that has been brought to light this morning. Most municipalities in the State of Maine, most small ones anyway and some of the large ones, have elections in March. It would make sense to me that this primary could be done in conjunction with those municipal elections, then there would be no additional costs. I don't think it would be an additional burden. Quite frankly, I have great faith in the municipal officers of the State of Maine. If we got to a point where we had a presidential primary on March 15th, I think every town would hold their election on March 15th. They could hold their town meeting on a different day. I don't see this as a problem and I urge you to support the good chairman of the Legal Affairs Committee.

The SPEAKER: The Chair recognizes the Representative from Biddeford, Representative Racine.

Representative RACINE: Mr. Speaker, Ladies and Gentlemen of the House: I hate to disagree with my good friend, Representative Mayo, but in the city of Biddeford which I represent, we have a primary that is scheduled in the month of June. We have the general election which is scheduled in the month of November and, in addition to that, the municipal elections are held during the month of November and that is by charter. We have no choice in the matter.

The cost, according to my city clerk, for the town of Biddeford, will be an additional \$7,000. Based on the information that I have been able to obtain from the Secretary of State's Office is that, in 1972, a survey of all municipal costs was conducted by that office when a similar bill was either introduced or in the hopper and, at that time, the actual costs were \$225,000. That was in 1972. So you have to add the inflationary costs and the change to voting machines. But there is a cost that will be incurred by municipalities and there is no way that that can be changed to coincide with what the bill calls for the caucus to be held during the month of March.

Representative Stevens of Sabattus requested a roll call vote.

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

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

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

Representative RICHARD: Mr. Speaker, I would like to pose a question to whomever might like to answer it.

Representative Priest has asked if this were to pertain to all other state elections -- is it possible to make such an amendment, and if so, would it be germane?

The SPEAKER: The Chair would advise the Representative from Madison, Representative Richard, that the Chair does not rule on perspective amendments.

The pending question before the House is the motion of Representative Priest of Brunswick that House Amendment "A" to Committee Amendment "A" be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 204

YEA - Aliberti, Baker, Diamond, Garland, Gwadosky, Harper, Hichborn, Holt, Jalbert, Joseph, Ketover, Kilkelly, Lacroix, Mahany, Martin, H.; Mayo, Mills, Moholland, Nadeau, G. G.; Perry, Pouliot, Priest, Ridley, Rolde, Seavey, Stevens, P.; Thistle, Tupper, Vose, Walker.

NAY - Allen, Anderson, Armstrong, Bailey, Begley, Bickford, Bost, Bragg, Brown, Callahan, Carroll, Carter, Cashman, Clark, M.; Coles, Conley, Crowley, Curran, Daggett, Davis, Dellert, Dexter, Dore, Farnum, Farren, Foss, Foster, Glidden, Gould, R. A.; Greenlaw, Hale, Handy, Hanley, Hepburn, Hickey, Higgins, Hoglund, Holloway, Hussey, Jackson, Jacques, Lawrence, Lebowitz, Lisnik, Look, Lord, MacBride, Macomber, Manning, Marsano, Matthews, K.; McGowan, McHenry, McPherson, McSweeney, Mitchell, Murphy, E.; Murphy, T.; Nadeau, G. R.; Nicholson, Norton, Nutting, O'Gara, Oliver, Paradis, E.; Paradis, J.; Paradis, P.; Paul, Pines, Racine, Rand, Reed, Richard, Rotondi, Ruhlin, Salsbury, Scarpino, Sheltra, Sherburne, Simpson, Small, Smith, Soucy, Stevens, A.; Strout, B.; Strout, D.; Swazey, Tamaro, Tardy, Telow, Tracy, Warren, Wentworth, Weymouth, Whitcomb, Willey, Zirkilton.

ABSENT - Anthony, Bott, Boutilier, Chonko, Clark, H.; Cote, Duffy, Dutremble, L.; Erwin, P.; Gurney, Hillock, Kimball, LaPointe, Melendy, Michaud, Parent, Reeves, Rice, Rydell, Stanley, Taylor, Webster, M.; The Speaker.

Yes, 30; No, 97; Absent, 23; Vacant, 1; Paired, 0; Excused, 0.

30 having voted in the affirmative, 97 in the negative, with 23 being absent, and one vacant, the motion to indefinitely postpone House Amendment "A" to Committee Amendment "A" did not prevail.

Subsequently, House Amendment "A" (H-484) to Committee Amendment "A" (S-329) was adopted.

Committee Amendment "A" (S-329) as amended by House Amendment "A" (H-484) thereto was adopted.

The Bill was passed to be engrossed as amended by Committee Amendment "A" as amended by House Amendment "A" thereto in non-concurrence and sent up for concurrence.

PASSED TO BE ENACTED  
Emergency Measure

An Act to Conserve Striped Bass (S.P. 780) (L.D. 2037) (C. "A" S-326)

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



PASSED TO BE ENACTED

Emergency Measure

An Act to Amend the Animal Control Laws (H.P. 1819) (L.D. 2493)

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

ENACTOR

Emergency Measure

Tabled and Assigned

RESOLVE, to Change the Reporting Date of the Commission on Sport Fisheries (H.P. 1663) (L.D. 2275)

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

On motion of Representative Jacques of Waterville, tabled pending final passage and specially assigned for Thursday, March 17, 1988.

PASSED TO BE ENACTED

An Act to Enforce 3rd-Party Liability Reimbursement for Medicaid Recipients as Required by Title XIX of the Social Security Act (S.P. 759) (L.D. 2022) (C. "A" S-325)

An Act to Study Alternative Dispute Resolution in the Superior Court (S.P. 861) (L.D. 2249) (C. "A" S-324)

An Act to Expand the Medicaid Dental Program to Include Adults (S.P. 945) (L.D. 2492)

An Act to Make Corrections in the Recodification of the Liquor Laws (H.P. 1598) (L.D. 2184) (C. "A" H-467)

An Act to Amend the Laws Governing Absentee Balloting (H.P. 1600) (L.D. 2189) (C. "A" H-468)

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.

PASSED TO BE ENACTED

An Act to Prohibit Publication of Names of Concealed Weapon Permit Holders (H.P. 1817) (L.D. 2487)

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

The SPEAKER: The Chair recognizes the Representative from Corinth, Representative Strout.

Representative STROUT: Mr. Speaker, I would like to pose a question to any of the sponsors or members of the committee.

It was my understanding that the intent was to prohibit these names from being printed in the annual report. As I read the law that is being proposed it says "The names of persons issued concealed firearms permits under Title 25, Chapter 252 may not be printed in the annual report." My question is, will this allow municipalities, if they so desire, to print the names in the annual report?

The SPEAKER: Representative Strout of Corinth has posed a question through the Chair to anyone who may respond if they so desire.

The Chair recognizes the Representative from Waterville, Representative Jacques.

Representative JACQUES: Mr. Speaker, Men and Women of the House: I am a cosponsor and the bill was designed to not allow the names to be printed in

the annual town report and that is exactly and only what the bill does.

The SPEAKER: The Chair recognizes the Representative from Corinth, Representative Strout.

Representative STROUT: Mr. Speaker, Men and Women of the House: As I read the proposal it says "may not be printed" and I would interpret that to allow us to print those if we so desire.

It says "may," it does not say "shall."

The SPEAKER: The Chair recognizes the Representative from Brunswick, Representative Priest.

Representative PRIEST: Mr. Speaker, Men and Women of the House: The "may" in this situation is clearly a prohibition and there is no intent by the committee or the drafter or anyone else to allow that to be done, it is clearly a prohibition, that is you may not do it, it may not be done. It is not a question of you have the ability or not have the ability, essentially in this situation "may" is a prohibition on doing it.

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

PASSED TO BE ENACTED

An Act Concerning Investment of State Funds in Corporations Doing Business in Northern Ireland (S.P. 757) (L.D. 2008) (C. "A" S-323)

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

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

Representative MURPHY: Mr. Speaker, Men and Women of the House: I am sorry to be speaking at this time but there is a silver lining to that that you will be spared a St. Patrick's Day speech tomorrow, I will only give this one.

I think in terms of those of us, in terms of this week, and the importance of this week, that this is not a Litmus Test, this bill, a yes vote in terms of people's roots. My roots are Ireland. My family was lucky that the troubles of this century, early this century, that we observed those troubles from a safe shore. The feelings in my family, having been a youngster who talked with my grandfather, who to the English were the Brits and the Brits were for shooting and not talking to, that is the climate in which my Irish heritage had been cultivated and the anger and the frustration from a previous land. No matter what you think this bill will do, the problems of Ireland are 500 and 600 years old, they are centuries old, they are older than this nation. I think as we look in terms of there is major policy decisions for this legislature to make, will we begin conducting foreign policy based upon what is in the newspapers and television in terms of using our retirement fund? Will we put in bills to divest in terms of any Latin or South American countries? You could have your pick in terms of what countries you might want to pick out now. Spain -- will there be a bill in in terms of the Basque minority in Spain? Given the troubles of the West Bank, will there be a bill to divest in terms of companies that are doing business in the nation of Israel? So once you begin to open this door in terms of the Maine Legislature conducting foreign policy, that door is wide open.

I think the other point is that I have had opportunity to talk with Representative Curran from Westbrook and I would wish that sometime in my life that I could do what he has done in terms of the children of Ireland of finding safe haven in Maine and attempting to give them some hope for the future. That is a very positive act, maybe that will



help to reverse the hatred that has been there for that five or six centuries.

We can go to parts of New England, especially to the urban centers and we will see people of good intentions, that those good intentions, by the time they arrive in Ireland, have brought death. It is not ironic that on a day when we are discussing an enactment of this bill of involving ourselves and the trouble of Ireland that today they are burying three IRA men who were killed attempting to carry out an act of violence. So, we hope that Ireland makes progress. This bill will not do it.

Someone said in the debate the other day, it is a "feel warm bill." I am sure on enactment if you turn your light on green, you will feel warm and feel that you have done something, but in reality, the troubles will go on and that vote will not change the conditions in Ireland.

I would urge you on this day in terms of the precedent we would be establishing with Maine's retirement fund and that door opening to other areas of the world, would urge you on enactment to vote no.

The SPEAKER: The Chair recognizes the Representative from Lincoln, Representative Harper.

Representative HARPER: Mr. Speaker, Ladies and Gentlemen of the House: I feel very strongly opposed to allowing this tampering with the Maine State Retirement system which already struggles with its billion dollar unfunded liability. Do we really want to take the retirement fund and turn it into a weapon to bring about social and political changes? We were assured that the divestiture in South Africa would be the only time this action would be taken, now it is in Northern Ireland. I ask you, where next Portugal, Mexico. South America? I don't know, but I am sure we are only beginning to see attempts to divert the state funds from our retirement funds to uses for which they were never intended and that of becoming a social action or a political weapon.

The Maine State Retirement System has commenced a program of initiation and support of stockholders urging corporations to implement policies to make every effort to correct any discrimination in their employment practices. I would urge that we pay attention to our trustees who are very opposed to this meddling with the Maine State Retirement System and to our own MSEA who are also strongly opposed.

Our U.S. companies are very uneasy about being brought into the political arena. The General Motors spokesman has said they would have to seriously consider whether they could stay in Northern Ireland if they are forced to sign these Principles. They are certain and it has been so ruled that they would be in conflict with the Northern Ireland Fair Employment Act which outlaws discrimination in employment on grounds of political or religious beliefs and they must conform to the laws of Northern Ireland. If we really want to bring help, peace, and unity and help alleviate the troubling situation, the very real unemployment problems, we should encourage investment of U.S. dollars in Northern Ireland and that would be a positive and decent thing to do. Our Irish friends need jobs, they need economic stability and I urge you, let us help them. I would urge you also to vote against enactment on this bill.

The SPEAKER: The Chair recognizes the Representative from Bangor, Representative Diamond.

Representative DIAMOND: Mr. Speaker, Men and Women of the House: I was interested in what my friend from Kennebunk had to say about the state involving itself in a foreign policy matter, suggesting that that is not a practice that this legislature has entertained in the past, nor should it be something that we entertain in the future.

That bothers me because I think most members here understand that we actively and regularly do just that.

We have never been a body to ignore the realities of what takes place around Maine. We have always been very sensitive of that. We have been especially sensitive to it when it involves Maine taxpayers and Maine taxpayers money. We have debated some issues that deal with resolutions memorializing Congress. Some have passed, some have failed. They deal with situations that, for the most part, don't directly affect Maine voters and Maine taxpayers but affect people who belong to our nation and belong to this world.

In this particular instance, we go a bit further. We are dealing with an issue that involves the money that the state taxpayers pump into the State Retirement System, both through their tax dollar contributions and through their private contributions. It is an issue that does, indeed, affect the people of Maine. It is not just an issue that deals with whether or not we are going to get a fair return on our dollars invested, it deals with what type of social policy is established through that investment of dollars.

We deal on a regular basis with establishing social policy through our economic and tax structure. We do it all the time with housing, passing legislation that encourages investment in low income housing.

As we know, we use our state dollars to invest in economic development as announced by the Governor just yesterday. We use our tax code to direct money in areas that is going to benefit the people of Maine in a social way dealing and establishing social policy in order to benefit those people even though, for the most part, the issues that we are dealing with immediately are of simple dollars and cents.

I am bothered that some people would oppose this legislation because they believe it is not necessarily a sound investment. Now, the question of whether or not it is a sound investment was dealt with at great length during the debate. What bothers me about it is not that issue but the fact that people would seem to take a stand against this legislation based on the economics of it. It is hard for me to accept that some people would speak out against social injustice in some settings but ignore it when there is a pocketbook issue to be dealt with. They are implying that all of a sudden the situation changes because it may not be financially beneficial to us to pursue it.

Well, if we are going to deal with social injustice in Maine and in this country and in the world, I don't think we should let our pocketbooks dictate what is fair and what is unfair. I think the approach that has been suggested by some of the opponents here, not just those in the legislature, but those in the halls as well, really sets a double standard. I don't want to see us do that. I don't think the opponents of this legislation mean to do that but I do think it is important for us to understand that, if we are going to deal with social injustice, we deal with it as an issue of social policy not of one that is of simple dollars and cents. It is not fair to lump it in with other issues of economic consequences because it goes far beyond that. It doesn't matter if we are talking about Belfast, Maine or Belfast, Ireland, the question is one of fairness. In this particular instance, it deals with one of discrimination. I think this legislature should speak very strongly and very loudly in favor of the legislation before us.

The SPEAKER: The Chair recognizes the Representative from Old Town, Representative Cashman.

Representative CASHMAN: Mr. Speaker, Men and Women of the House: This issue has been well debated and thankfully this House has spoken loudly twice in favor of this bill. I hope that we will do it again.

I don't want to prolong the debate but I do want to respond to a couple of things that was said. The question was asked, if we want to use our State Retirement System as a weapon to effect social change. I guess my answer is, yes. I think that this state's investment policy should reflect the principles by which we all live. I don't think it is unreasonable to expect that outfits that we invest in and choose to invest in should live by those same principles.

The gentleman from Kennebunk referred to the 600 years of problems in Ireland and he is right; as a matter of fact, it is 800 years. I don't want to get into a history lesson in what has gone on in Ireland in the last 800 years. The gentleman said that, whatever we do on this bill, it won't change. Maybe he is right, maybe he is right. But, in the next breath, he refers to the violence in Ireland and how we should be working to solve that problem or to take that violence out of that nation. This bill attempts to do exactly this.

The bill is intended to provide a peaceful way by which to apply pressure to change an 800 year old practice that is not changing on its own. The unemployment rates in the Catholic sections of Belfast and Derry are over 80 percent. The British government pays lip service to try to correct that. They talk about fair employment practices -- nothing has changed, nothing has changed in the Thatcher administration, nothing changed for 800 years prior to her administration and nothing is going to change. That is why they resort to violence. You don't have to read that in the paper and see it on the news, you can go over and see it. I have and it is very, very disheartening to see. You wonder why these people turn to violence? Go over there and visit and you will see why. Imagine yourself living in a place where you have to tolerate an 85 percent unemployment rate, 85 percent.

A Ford Motor Company Corporation opened up a plant in the Irish/Catholic section of Belfast and the people in that section of the city thought finally somebody has put a plant in our section of the city that will alleviate some of the unemployment. That plant sits smack dab in the middle of a Catholic section with 85 percent unemployment and 78 percent of their employees are Protestants. Nothing has changed, nothing is going to change because of actions by the British government.

We have a chance to take a small step to try to effect that change. If we don't do it, what are we saying? What are we here in this House saying? We are saying that the dollar return -- like the MSEA, the dollar return on the investment is more important than the principle. I am not going to say that. We are saying that we can decry the abuse of the Jewish population in Russia, we can talk about apartheid and we can decry that situation but when it comes to discrimination in Northern Ireland, we are going to tolerate that, we are going to allow that to be perpetrated because it is done by the British government, so it is okay. I am not going to say that either.

Like other members of this House, I try very hard to be tolerant of opposing viewpoints on every issue. This one I find very difficult to be tolerant

on. I hope this House will continue its past support of this bill.

Mr. Speaker, I request a roll call.

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

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

The SPEAKER: The Chair recognizes the Representative from Madawaska, Representative McHenry.

Representative MCHENRY: Mr. Speaker, Men and Women of the House: I do not serve on the committee that handles this but I am wondering why it is that we do not have a policy set in place that does not pinpoint South Africa or Ireland or any other community -- why don't we have a bill that says this is how we are going to invest our money and have our criteria for social justice, discrimination and all that? I would ask anybody, why is it that we can't have a bill that would do that rather than pinpointing. Next year it might be Israel, the year after, it might be Russia. Why can't we come up with one function? If that is our intent to have social justice, anti-discrimination -- why don't we have a bill that handles it all? Have one policy.

The SPEAKER: The pending question before the House is passage to be enacted. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 205

YEA - Aliberti, Allen, Anthony, Baker, Bost, Carroll, Carter, Cashman, Clark, M.; Coles, Conley, Crowley, Curran, Daggett, Diamond, Dore, Duffy, Erwin, P.; Glidden, Gwadosky, Hale, Handy, Hichborn, Hickey, Hoglund, Holt, Hussey, Jackson, Jacques, Jalbert, Joseph, Ketover, Kilkelly, Lacroix, Lisnik, Lord, Macomber, Mahany, Manning, Marsano, Martin, H.; Mathews, K.; Mayo, McGowan, McHenry, McSweeney, Michaud, Mills, Mitchell, Murphy, E.; Nadeau, G. G.; Nadeau, G. R.; Nicholson, Nutting, O'Gara, Oliver, Paradis, E.; Paradis, J.; Paradis, P.; Perry, Pouliot, Priest, Racine, Rand, Richard, Rolde, Rotondi, Ruhlin, Scarpino, Sheltra, Simpson, Smith, Soucy, Stevens, P.; Strout, D.; Swazey, Tardy, Telow, Thistle, Tracy, Walker, Warren, The Speaker.

NAY - Anderson, Bailey, Begley, Bickford, Bragg, Brown, Callahan, Davis, Dexter, Farnum, Farren, Foss, Foster, Garland, Gould, R. A.; Greenlaw, Hanley, Harper, Hepburn, Higgins, Holloway, Lawrence, Lebowitz, MacBride, Moholland, Murphy, T.; Norton, Pines, Reed, Ridley, Salsbury, Seavey, Sherburne, Small, Stevens, A.; Strout, B.; Tamaro, Tupper, Wentworth, Weymouth, Whitcomb, Willey.

ABSENT - Armstrong, Bott, Boutilier, Chonko, Clark, H.; Cote, Dellert, Dutremble, L.; Gurney, Hillock, Kimball, LaPointe, Look, McPherson, Melendy, Parent, Paul, Reeves, Rice, Rydell, Stanley, Taylor, Vose, Webster, M.; Zirkilton.

Yes, 83; No, 42; Absent, 25; Vacant, 1; Paired, 0; Excused, 0.

83 having voted in the affirmative and 42 in the negative with 25 being absent and one vacant, the Bill as passed to be enacted, signed by the Speaker and sent to the Senate.

ORDERS OF THE DAY

TABLED AND TODAY ASSIGNED

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

HOUSE REPORT - "Ought to Pass" as Amended by Committee Amendment "A" (H-481) - Committee on Appropriations and Financial Affairs on RESOLVE, Concerning a Proposed Supreme Judicial Court Facility (Emergency) (H.P. 130) (L.D. 159)

TABLED - March 15, 1988 by Representative MURPHY of Kennebunk.

PENDING - Acceptance of Committee Report.

On motion of Representative Murphy of Kennebunk, retabled pending acceptance of Committee Report and specially assigned for Thursday, March 17, 1988.

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

An Act to Permit Sharing of Confidential Information between Criminal Justice Agencies at all Governmental Levels (H.P. 1467) (L.D. 1978)

TABLED - March 15, 1988 by Representative DIAMOND of Bangor.

PENDING - Passage to be Enacted.

On motion of Representative Paradis of Augusta, under suspension of the rules, the House reconsidered its action whereby L.D. 1978 was passed to be engrossed.

The same Representative offered House Amendment "B" (H-483) and moved its adoption.

House Amendment "B" (H-483) was read by the Clerk and adopted.

The Bill was passed to be engrossed as amended by House Amendment "B" (H-483) in non-concurrence and sent up for concurrence.

The Chair laid before the House the following matter: Bill "An Act to Assure Adequate Housing for the People of Maine" (S.P. 954) (L.D. 2526) which was tabled earlier in the day and later today assigned pending reference in concurrence.

On motion of Representative Crowley of Stockton Springs, was referred to the Committee on Economic Development in non-concurrence and sent up for concurrence.

(Off Record Remarks)

On motion of Representative Ruhlin of Brewer, Adjourned until Thursday, March 17, 1988, at nine o'clock in the morning.

4

STATE OF MAINE  
ONE HUNDRED AND THIRTEENTH LEGISLATURE  
SECOND REGULAR SESSION  
JOURNAL OF THE SENATE

In Senate Chamber  
Wednesday  
March 16, 1988

Senate called to Order by the President Pro Tem  
Ronald E. Usher of Cumberland.

Prayer by Reverend Robert T. Carlson of the Congregational Church in East Orrington.

REVEREND CARLSON: Good morning ladies and gentlemen of the Senate. I spoke with Mr. Pray last week and it is my tradition to tell a brief story before the prayer that I think might illumine all of us. The story that I have for the Maine Senate this morning is this:

There was an aircraft that was flying and it ran into some trouble, as a matter of fact the trouble was very serious. The pilot and the co-pilot came back through the cabin and told the four passengers that were on the aircraft that the plane was going to go down. They, with their parachutes, jumped out. Before they jumped out they said, we need to tell you one more piece of information and that is there are only three parachutes for the four of you and the crew left. The four persons had a concerned look on their faces and you need to know who those people were. One of them was a heart surgeon, another was a member of the Maine Senate, the third was a priest and the fourth was a boy scout. So the heart surgeon said well look, I am scheduled to do five operations today and so five people's lives are depending upon me. It is necessary that I be saved. They all concurred and he took a parachute and jumped out of the aircraft. The member of the Maine Senate said, I am the most intelligent member that the Senate has ever known and we are deliberating on very important pieces of legislation and it is important to the lives of many people of this great state that I be saved. And with that, he grabbed the straps and out the door he went. The priest looked at the boy scout and said, I am middle aged, I don't have a family, I think it is more important that you with all your potential save yourself so why don't you take the last parachute and go with the rest. The boy scout looked at the priest and he said well, the most intelligent member of the Maine Senate just jumped out with my nap sack.

I think it is important that we keep all of our lives in perspective. Could we bow our heads for prayer. Almighty God, we ask for Your blessings to be upon this very special Body that has been empowered and entrusted with a great responsibility. We ask for You to guide them and we ask that as citizens we can support them and to understand the complexity of the issues that face this Body and that through the legislative process, decisions would be made that are acceptable in Your sight and that this state can be made a safer and better place in which to live and to raise our families, but most importantly to serve You. With these continued blessings and with your affirmation we will attempt to place our trust in You. Amen.

Reading of the Journal of Yesterday.

Off Record Remarks