

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

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
 46th Legislative Day
 Thursday, March 17, 1988

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

Prayer by Father Frank Murray, Our Lady of Wisdom Parish - The Newman Center at the University of Maine, Orono.

The Journal of Wednesday, March 16, 1988, was read and approved.

Quorum call was held.

SENATE PAPERS

Bill "An Act to Provide Regulatory Oversight of Over-the-Road and Over-the-Rail Transportation of Hazardous Materials and to Increase Revenue to the Maine Hazardous Waste Fund and the Maine Coastal and Inland Surface Oil Clean-up Fund" (S.P. 955) (L.D. 2533)

Came from the Senate, referred to the Committee on Energy and Natural Resources and Ordered Printed.

Was referred to the Committee on Energy and Natural Resources in concurrence.

Unanimous Ought Not To Pass

Report of the Committee on Judiciary reporting "Ought Not to Pass" on Bill "An Act to Remove the Issue of Parental Rights and Responsibilities from the Divorce Monetary Settlement Process" (S.P. 801) (L.D. 2102)

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

Ought to Pass in New Draft

Report of the Committee on Judiciary on Bill "An Act to Reform Provisions of the Civil Justice System" (S.P. 192) (L.D. 539) reporting "Ought to Pass" in New Draft (S.P. 952) (L.D. 2520)

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

Report was read.

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

Representative PARADIS: Mr. Speaker, I move that the House accept the unanimous "Ought to Pass" Report in New Draft.

Mr. Speaker, Men and Women of the House: I wanted to explain the work of the Judiciary Committee. First of all, just let me say that I appreciate the irony this morning when the Chair mentioned the fact that the priest, Father Murray, was a former member of this body. I met Father Murray when I was a seminarian and he was Representative Frank Murray and now he is here in this body this morning as a priest and I am the legislator -- if you can appreciate that irony.

On this beautiful St. Patrick's Day, I would like to explain briefly the work that some 40 of you, our colleagues in this chamber, sponsored and cosponsored legislation dealing with some form of tort liability and requested that we take a look at this.

After review this past winter, we came out with a unanimous report that included about 90 percent of the requests that were presented to the Judiciary Committee. I will just deal -- in about two minutes time -- section by section on what we have done so that you can explain to your people back home that we have worked on this diligently and made great progress.

Section one of the bill eliminated the ad danum clause. The ad danum clause is the one that made all the headlines. When you would file suit against someone and say, I am filing a \$90 million suit against John Doe for pain and suffering and so on, that was what usually made the headlines. We eliminated that clause at the request of insurance companies and others because it caused havoc with them having to reserve millions of dollars (possibly) of liability to them but, when the claims were adjusted, very, very little was ever compensated for. So, we eliminated that suggestion with the hope that it would cause fewer headlines and less notoriety for this type of action and take away one avenue of people really not wanting justice but wanting revenge.

Section two of the bill gave immunity to all of those groups that came before our committee (through your diligence) and asked us, the directors, the officers and the volunteers of nonprofit organizations -- what types of nonprofits, religious, charitable, scientific, public safety, literary, educational, civic, the Chamber's of Commerce, the fraternal societies, credit unions, patriotic, political, social, cultural, athletic and the list went on but all those groups that did request of us, genuinely, that they had a problem with securing insurance because of the liability problem, received immunity from liability through this legislation.

Section three and four of the bill -- dealt with the pre and post-judgment interests. We are now going to use the federal judicial system of using and employing post and pre-judgment hoping that it would mean less money to be paid and less cost to the insurance companies because of that while this is still being litigated through the appeals process.

Section six of the bill dealt with the cost of attorney's who are successful for litigating for their clients. The attorney award is not automatic under this bill. It would have to be screened by the judge who would set the final compensation rate, it would no longer be automatic at a third or 25 percent or 20 percent or whatever agreement was made with his client, that would not automatically be compensated. In small cases, it might not mean anything but in the case of an award of \$100,000 and \$200,000, it may mean something. Now this is to be reviewed on a line by line basis by the judge to see if the charges that he has made for his client are indeed reasonable.

Section seven, eight, twelve and thirteen provide immunity to members of the peer groups. Now, the chiropractors, the dentists, the podiatrists, the psychologists and their staff, the witnesses and consultants to these peer review groups came and said that they would like to screen their members more responsibly but they feared being brought into suit, into court, because of charges that might be made. They feared being thrown into court situations because they were trying to remove someone from the profession that was, indeed, lacking in his professional qualifications and administration of his duties. We thought that if they came to us and requested that and were sincere about it and honest, as they were, then we would grant them that power of immunity so that they can police themselves a great deal more. They told us there was a great deal more that needed to be done in that area, that there were some doctors in their profession that were lacking in their professional conduct.

That concludes my remarks on this bill this morning. It is a unanimous committee bill. Representative MacBride can tell you in the next moment how long we did work on the bill and how much unanimity we did have.

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

Representative MACBRIDE: Mr. Speaker, Ladies and Gentlemen of the House: As the Representative from Augusta has just told you, this is a unanimous report out of the committee. He has given you a good overview of the various issues that this bill does contain. We did work long and hard because we had so many requests and we had so much concern particularly in the areas of immunity and confidentiality with peer review. It did take many, many hours to sift through all of the issues and all of the laws. We really are pleased with the bill. We call it the big bill for it contains many of the issues which all of the committee members agreed upon.

We used this for a vehicle for this bill L.D. 539 since it was the one comprehensive tort bill which we had. However, this bill little resembles the original L.D. 539.

I am sure most of you have received calls or letters over the last two years saying, please vote for 539 because this became a very popular bill since it was supported by a coalition of 68 or 70 businesses and physicians and so forth.

This draft, as I said, has little resemblance of that original bill for we removed all of the controversial issues from that bill -- those that we have been debating in the House and some of the issues that the committee decided not to support.

I do want to emphasize, however, that this really is a good bill. It accomplishes many things. Your physicians, your business people, your constituents will be pleased with the immunities and peer review confidentialities which we have provided. Your volunteers, officers and directors of charitable organizations and non-profit organizations greatly need immunity from civil liability when working in that capacity in their organization. This bill does give them that.

Peer review confidentiality should help physicians and health care professionals to police themselves, a problem that exists throughout the country. But, if you tell your physician when you go home that you voted for L.D. 539, he will probably tell you that you did not, and he will be right, vote today for a unanimous committee agreement in this bill but you are not voting for the original bill.

Subsequently, the House accepted the unanimous "Ought to Pass" Report, the New Draft read once and assigned for second reading Friday, March 18, 1988.

Ought to Pass in New Draft

Report of the Committee on Labor on Bill "An Act to Include Certain Prisoners within the Provisions of the Workers' Compensation Act" (S.P. 781) (L.D. 2038) reporting "Ought to Pass" in New Draft (S.P. 953) (L.D. 2525)

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 Friday, March 18, 1988.

Divided Report

Later Today Assigned

Majority Report of the Committee on Judiciary reporting "Ought to Pass" as amended by Committee Amendment "A" (S-336) on Bill "An Act Amending the Workers' Compensation Laws Exempting Design Professionals from General Civil Liability for

Injuries on Construction Projects" (S.P. 238) (L.D. 657)

Signed:

Senators:

BRANNIGAN of Cumberland
BLACK of Cumberland
GAUVREAU of Androscoggin
THISTLE of Dover-Foxcroft
MacBRIDE of Presque Isle
HANLEY of Paris
MARSANO of Belfast
BEGLEY of Waldoboro
COTE of Auburn
VOSE of Eastport

Representatives:

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

Signed:

Representatives:

PARADIS of Augusta
CONLEY of Portland
WARREN of Scarborough

Came from the Senate with the Majority "Ought to Pass" as amended Report read and accepted and the Bill passed to be engrossed as amended by Committee Amendment "A" (S-336)

Reports were read.

Representative Vose of Eastport moved that the House accept the Majority "Ought to Pass" Report.

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

COMMUNICATIONS

The following Communication:

DEPARTMENT OF LABOR
Bureau of Labor Standards
Station 45
Augusta, Maine 04333

March 15, 1988

Honorable John L. Martin
Speaker of the House
House of Representatives
State House Station 2
Augusta, Maine 04333

Dear Speaker Martin:

I am pleased to submit the enclosed annual report on Chapter 22, Title 26, Maine Revised Statutes Annotated, 1984 Public Law, Chapter 823.

This past year has been the most active and productive to date for the program. A strong emphasis on education and training resulted in the direct training of over 3,000 individuals since September 1987. We plan to continue the emphasis on training of workers in higher risk groups in the coming year.

Please do not hesitate to contact me directly with any questions or comments regarding this program or the report.

Sincerely,
S/James H. McGowan
Director

Was read and with accompanying report ordered placed on file.

The following Communication:

STATE OF MAINE
DEPARTMENT OF HUMAN SERVICES
AUGUSTA, MAINE 04333

March 14, 1988

TO: John L. Martin, Speaker of the House
FROM: s/Rollin Ives, Commissioner, Department of Human Services
SUBJECT: Findings of Study to Set Standards for Driving when Under the Influence of Drugs Other than Alcohol.

Attached please find the OUI-Drugs Other than Alcohol Study which has also been submitted to the Legal Affairs Committee. The report is pursuant to Resolve of 1987, Chapter 21, "To Establish a Study to Set Standards for Driving when Under the Influence of Drugs Other than Alcohol", L.D. No. 964.

Was read and with accompanying report ordered placed on file.

PETITIONS, BILLS AND RESOLVES
REQUIRING REFERENCE

Reported Pursuant to Resolve

Representative FARNUM for the Commission to Study the Use of Involuntary Services for Substance Abusers, pursuant to Resolve 1987, Chapter 72 ask leave to submit its findings and report that the accompanying Bill "An Act to Amend the Statutes Pertaining to the Emergency Treatment and Continuing Supervision of Chemically Dependent Persons" (H.P. 1857) (L.D. 2542) be referred to the Joint Standing Committee on Human Resources for Public Hearing and printed pursuant to Joint Rule 18.

Report was read and accepted, and the Bill referred to the Committee on Human Resources, ordered printed and sent up for concurrence.

ORDERS

REPORTS OF COMMITTEES

Unanimous Ought Not to Pass

Representative CARROLL from the Committee on Economic Development on Bill "An Act to Incorporate Economic Growth and Development and Growth Management in Transportation Planning" (H.P. 1614) (L.D. 2207) reporting "Ought Not to Pass"

Representative CARROLL from the Committee on Economic Development on Bill "An Act to Provide Challenge Grants for the Development of Municipal and Regional Economic Development Strategies" (H.P. 1590) (L.D. 2171) reporting "Ought Not to Pass"

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

Unanimous Leave to Withdraw

Representative JACQUES from the Committee on Fisheries and Wildlife on Bill "An Act to Permit Fly-Fishing Only on a Portion of the St. Croix River" (H.P. 1704) (L.D. 2341) reporting "Leave to Withdraw"

Representative RICHARD from the Committee on Utilities on Bill "An Act Regarding Security Deposits for Cable Television" (H.P. 1709) (L.D. 2346) reporting "Leave to Withdraw"

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

Ought to Pass in New Draft

Representative PRIEST from the Committee on Legal Affairs on Bill "An Act to Clarify Reporting Requirements under the Campaign Finance Laws" (H.P. 1549) (L.D. 2109) reporting "Ought to Pass" in New Draft (H.P. 1856) (L.D. 2541)

Report was read and accepted, the New Draft read once and assigned for second reading Friday, March 18, 1988.

Ought to Pass in New Draft/New Title

Representative BOST from the Committee on Education on Bill "An Act to Provide for

Identification and Application to Appropriate Accounts of School Reimbursement Funds" (H.P. 1452) (L.D. 1963) reporting "Ought to Pass" in New Draft under New Title Bill "An Act to Provide for Identification and Application of School Bus Purchase Reimbursement Funds" (H.P. 1858) (L.D. 2543)

Report was read and accepted, the New Draft read once and assigned for second reading Friday, March 18, 1988.

Divided Report

Majority Report of the Committee on Labor on Bill "An Act to Ensure Family Medical Leave in the State" (H.P. 1473) (L.D. 1984) reporting "Ought to Pass" in New Draft (H.P. 1851) (L.D. 2534)

Signed:

Senators:

COLLINS of Aroostook
DUTREMBLE of York
ANDREWS of Cumberland
JOSEPH of Waterville
RUHLIN of Brewer
TAMMARO of Baileyville
McHENRY of Madawaska
WILLEY of Hampden
BEGLEY of Waldoboro
HALE of Sanford
ZIRNKILTON of Mount Desert
RAND of Portland

Representatives:

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

Signed:

Representative: HEPBURN of Skowhegan

Reports were read.

Representative McHenry of Madawaska moved that the House accept the Majority "Ought to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Yarmouth, Representative Foss.

Representative FOSS: Mr. Speaker, I request permission to pose two questions through the Chair.

I would like to ask the chair of the committee or any of the committee members two questions. Since state government is specifically included in the bill, why is there no fiscal note for future costs? Obviously, any impacted positions would have to be filled on a temporary basis.

My second question is, since the city/town or municipal agencies are included, what are the projected costs of this bill to our municipalities? I would hope that we have considered the fiscal impact of this bill in hiring substitute teachers, for example.

The SPEAKER: Representative Foss of Yarmouth has posed two questions through the Chair to any member of the committee who may respond if they so desire.

The Chair recognizes the Representative from Madawaska, Representative McHenry.

Representative MCHENRY: Mr. Speaker, Ladies and Gentlemen of the House: There is no fiscal note because we are not going to be paying the benefits of the employees. If an employee wishes to continue his or her benefits, they must pay them themselves. If the company or if it is the state and they wish to make arrangements with the employees, they may do so.

There is no fiscal note at all. That is the reason it came out of committee almost unanimous because of no fiscal note at all on it.

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

Representative MURPHY: Mr. Speaker, Men and Women of the House: Permission to pose a question? When the original bill was first presented, there was a concern down our way with the impact it would have on seasonal businesses. Could we have someone from

the majority report or the chairman please indicate, will this bill have any impact upon seasonal businesses?

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

The Chair recognizes the Representative from Madawaska, Representative McHenry.

Representative MCHENRY: Mr. Speaker, Ladies and Gentlemen of the House: Every employer that appeared before the committee indicated that they are granting leave to their employees presently, small business as well as large business. They did not like the way we had the original bill with 18 weeks, we brought it down to eight weeks. Therefore, I don't see any problem with small business as well as large business. The majority of the businesses indicated that, rather than retraining a person on a job, most of them, probably 90 percent, do hold that job open. Those that do not hold that job open are those that are really the bad employer. As some employee's indicated to us, the employer would let someone go and not rehire that employee whose child is suffering from cancer or whatever it is and would not grant that person a couple of weeks off to be with that child or his or her spouse at the time of a grave illness.

Before these people can receive this time off, they must also have a doctor's certificate indicating that that person's immediate relative is ill and it must be by mutual agreement. I believe that most of the problems have been addressed.

I had some problems myself. At first glance, it appeared as if we were going to grant Dad's to be with the wife for 18 weeks, but that is not the case. The case is, if the spouse or the child is sick and the doctor sees where the husband (in this case where it is childbirth) is needed, the doctor will grant a certificate and that will be presented to the employer. It is not that wide open.

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

Representative MURPHY: Mr. Speaker, Men and Women of the House: I think the committee Chairman has done a very good job of explaining the good work the committee has done in terms of working on the original bill that was presented.

If I could pose another question?

Could we still have clarification, does this bill distinguish between businesses that are year-round and those businesses that are seasonal?

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

The Chair recognizes the Representative from Waterville, Representative Joseph.

Representative JOSEPH: Mr. Speaker, Men and Women of the House: This Family Medical Leave Law only applies to those persons who have been employed by that employer for 12 consecutive months. That person must also give his or her employer 30 days notice regarding this particular leave.

Also, I should make it very clear that this is unpaid leave.

Subsequently, the Majority "Ought to Pass" Report was accepted, the New Draft read once and assigned for second reading Friday, March 18, 1988.

CONSENT CALENDAR

First Day

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

(H.P. 1811) (L.D. 2479) Bill "An Act to Require Audit Review of the Bureau of Capitol Security in 1989" Committee on Audit and Program Review reporting "Ought to Pass"

(S.P. 771) (L.D. 2028) Bill "An Act to Appropriate Funds for Structural Repairs to the Woodbury Pond Dam" Committee on Appropriations and Financial Affairs reporting "Ought to Pass" as amended by Committee Amendment "A" (S-337)

(H.P. 1724) (L.D. 2367) Bill "An Act to Amend the Charter of the Portland Water District" (Emergency) Committee on Utilities reporting "Ought to Pass" as amended by Committee Amendment "A" (H-487)

There being no objections, the above items were ordered to appear on the Consent Calendar of Friday, March 18, 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:

(H.P. 1728) (L.D. 2371) Bill "An Act to Appropriate Funds to Conduct a Marine Pollution Monitoring Program"

(H.P. 1524) (L.D. 2077) Bill "An Act to Implement Uniform Federal Lien Registration" (Emergency) (C. "A" H-482)

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

PASSED TO BE ENGROSSED

Bill "An Act Relating to Development Along the St. Croix River" (S.P. 949) (L.D. 2508)

Bill "An Act to Ensure the Complete Payment of Health Insurance Premiums for Teachers over a Certain Age" (H.P. 1852) (L.D. 2535)

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

PASSED TO BE ENGROSSED

As Amended

Bill "An Act to Clarify the Authority of Harbor Masters" (Emergency) (H.P. 1853) (L.D. 2536)

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

Representative Brown of Gorham offered House Amendment "A" (H-489) and moved its adoption.

House Amendment "A" (H-489) was read by the Clerk and adopted.

The Bill was passed to be engrossed as amended by House Amendment "A" (H-489) and sent up for concurrence.

PASSED TO BE ENGROSSED

Bill "An Act to Provide for Effective and Timely Public Notice of Hearings Conducted by State Boards and Agencies" (Emergency) (H.P. 1854) (L.D. 2537)

Bill "An Act to Develop a Plan to Minimize and Dispose of Household Hazardous Waste" (Emergency) (H.P. 1850) (L.D. 2532)

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.

Indefinitely Postponed

Bill "An Act to Establish a Limit on Noneconomic Damages" (H.P. 1843) (L.D. 2523)

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

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

Representative PARADIS: Mr. Speaker, Ladies and Gentlemen of the House: I move indefinite postponement of L.D. 2523 and all its accompanying papers.

We had a rather extended debate yesterday morning on this particular legislation. I don't intend to debate this bill ad infinitum again this morning. I would like to leave you with a couple of points, however, that were not mentioned in any great detail yesterday that I think deserves to be mentioned.

As I mentioned earlier, on another bill that we accepted in first reading this morning, that the doctors have told us in the many different medical societies that they do believe there is a professional disciplinary problem and they are asking for greater peer review. In this legislation presently before us, there is no mention of the need or no mention as to what this bill, if passed, would impact on greater professionalism in the medical society because it is, in fact, only the doctors who are really doing the advocating. The calls that you are getting at home come from physician's, not from the Credit Union Board of Directors and the fraternal societies and so on.

There is a study that was done in another state similar to Maine and they found that one percent of the physicians caused 54 percent of all the law suits in that state. One percent, several dozen doctors, caused over half of all the malpractice suits. The legislation which we considered earlier addresses that problem in detail. It was the unanimous report of the committee that we do address the problem but by putting a cap on noneconomic damages, we do not in any way send a message to the medical society that they better police themselves with a lot greater responsibility and diligence.

I cannot believe that we have let that type of a system fester in this state. We need to upgrade and give more teeth to the Board of Registration of Medicine. We need to encourage them to look more professionally at their peer review committees and the profession and find out who amongst them is causing the problems that the others must suffer. I don't think it is fair and I don't think any of you believe it is fair, that your physician who has never had a problem, has never had a malpractice suit against him or her, has to pay a premium because of a successful litigant being hurt, being adjudicated, and being awarded a sum of money.

I would like to share with you briefly the Rand Corporation Study and it is called, "Special Report Trends in Tort Litigation - the Story Behind the Statistics." It was done nationally. Maine is part of the union so it does reflect what is going on in the State of Maine as well.

On page 25 of the report it says, "Although plaintiff attorney's get the most bad press, defense costs also draw their share of criticism. Defense attorney's charge by the hour and there are no standards to suggest how many hours are appropriate for a case unless the defendant provides limits."

Now what we have done in the earlier report is to make substantial changes in the way plaintiff's attorneys, those who are harmed, who are bringing action, who are bringing cause for action, can be

awarded their fees. We have practically, completely rewritten the way an attorney, who is successful on behalf of his client, your constituent and my constituent, can receive an award. But, on the other side of the line, which you are not hearing from the group that is bringing you this bill, is the attorneys for the insurance company who can charge whatever they want to their clients and you pay it in higher rates and you will continue to pay it in higher rates because nothing has been done and nothing can be done to change their system.

What is good for the goose ought to be good for the gander -- there is an old saying -- I don't believe it correct to always put the onus on the citizens of this state, our constituents, who have a right to bring cause under our constitution for a redress of grievance. Yet their attorneys have their claims impacted and yet the defense counsel, the defense attorneys for the large insurance corporations that are housed in New York and Connecticut and Chicago, have no limit as to what they can charge. The testimony before the Trafton Commission was -- they build the clock just as diligently as they can and no judge will ever review their award, none whatsoever.

In fairness, I think we ought to consider that. This bill before us this morning does nothing to limit the amount of money that insurance companies have to spend on behalf of their attorneys and they are very, very well paid.

I urge indefinite postponement of this bill, ladies and gentlemen of the House, and all of its papers.

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

Representative MACBRIDE: Mr. Speaker, Ladies and Gentlemen of the House: This bill indeed was thoroughly debated yesterday. Both sides quoted many figures and presented many arguments. However, there is one inescapable fact in spite of all that has been said. We have a real problem in Maine with doctors and business people having problems with their work because of high insurance costs.

At the rate obstetricians and surgeons are retiring from their practices and family practitioners are refusing to deliver babies, we are going to have a real health care problem in the State of Maine. You and I, your children and mine, particularly if we live in a rural area, may not have the proper services of doctors when we need them.

No one is sure if this cap will help lower rates or maintain them at the present level or whether it will not. The cap has been successful in a number of states but we do not know what will happen here. But, we can know if we will support this bill. It has a sunset of five years. So, at the end of that time, the law will cease to exist, it will automatically cease to exist unless the legislature votes to reinstate it. If it has not been effective, it will be gone. Let's give this a try, ladies and gentlemen, I think it will help.

One thing that we do know, if we do nothing, our situation will only get worse. I am sure none of us want this to happen.

I hope you will vote against the motion to indefinitely postpone this bill.

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

Representative JOSEPH: Mr. Speaker, may I pose a question through the Chair.

My question is to the Representative from Presque Isle, is there something in this bill that guarantees that insurance premiums to the those physicians and

all those concerned will be reduced if we support this bill?

The SPEAKER: Representative Joseph of Waterville has posed a question through the Chair to Representative MacBride of Presque Isle, who may respond if she so desires.

The Chair recognizes that Representative.

Representative MACBRIDE: Mr. Speaker, Ladies and Gentlemen of the House: No, Representative Joseph, there is no guarantee. I don't think that there are guarantees in many of the bills that we pass in this House. But there has been enough background material from various other states that have tried a cap and their rates have gone down. We feel it is certainly worth a try here. I think that we do need to go forward. We do need to do something to protect our physicians and our doctors.

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

Representative JOSEPH: Mr. Speaker, Men and Women of the House: I can't agree more with Representative MacBride that doctors and other professionals are having difficulty paying premiums. It must be a burden to all of them to pay premiums. Just prior to my leaving for the session yesterday morning, I spoke to an anesthetist who claimed that four years ago she was paying \$600 for insurance and is presently paying \$6,000 for her insurance.

But, as you have heard the good Representative say, there are no guarantees in this bill that insurance premiums to those people who seek medical advice from and professional advice from that insurance premiums will be reduced. Therefore, how can we sit here as caring and humane persons and ask those persons who are injured and otherwise crippled to have their awards be capped at any particular dollar amount?

I am very concerned that we are ignoring the Majority Report of the Trafton Committee Report. I am very concerned that this bill has a five year sunset because for five years (if we were to pass this bill) those persons would not be receiving fair awards.

Another question I have for this body, how often are we going to allow ourselves to be misled or deceived by insurance carriers or duped into believing that we are accomplishing something by passing legislation? How often are we going to let these insurance carriers tell the public that all good things will happen if we pass a bill? We recently had that experience in November and we have been talking about that particular issue for six years and yet, what do they do? 125 percent or 130 percent rate increase. I am sorry folks, this bill should not pass.

The SPEAKER: The Chair recognizes the Representative from Bath, Representative Holt.

Representative HOLT: Mr. Speaker, Men and Women of the House: I had not wished to speak on this bill but find that I must. I want to share with you a personal experience.

After hoping for years to find a spot to practice anesthesiology in my home state of Maine in 1968, my wonderful husband brought me and our five children home to Maine to practice. He had been at Mary Hitchcock Hospital in Hanover, New Hampshire and had set up the first anesthesia department at the Princeton Hospital in Princeton, New Jersey.

High income has never been his priority and do not believe it is true of most physicians. Most physicians go into medicine because they want to help people. He was urged to go to Florida where he could make \$100,000 at that time but he was content to make

what nurse anesthetists were making in some other states.

Now the high rate of insurance kept my good husband from having any days off. For seven years, he worked day and night. He was on call 24 hours a day, seven days a week. There was a wonderful doctor who wanted to do part-time anesthesiology -- she offered her services so that he could have a little time off from time to time, so my husband and I could see each other and perhaps take the kids fishing once in a while. He couldn't even go to the beach and that was only a few miles away. But she could not practice because she would have had to pay nearly what she would have earned and it just wasn't possible.

Now the cost of insurance has become very burdensome indeed. It became burdensome for us and they are burdensome now. After over 30 years of unstinting service to his fellow human beings, my husband would like to work part-time now but he is in the same spot that that good doctor was in all those years ago.

A few years ago, a crushing operating room case occurred. There was no fault. There were years of grief and distress. If you practice long enough in a high risk medical specialty, you know the odds are great that such a tragedy will occur, it is always waiting in the wings. About a year before this tragedy occurred, my husband sat up in bed one night and said, "Maria, it will happen and I don't know how I will face it." I remember well that night. Well of course, you guessed, there was a law suit against my husband, the hospital and the surgeon, and millions of dollars were on the line. But there was one brain-dead young mother, there were three bereft and sad children. And there was a young father who was near dead from grief. My husband and I will carry that grief to our graves. The settlement allowed for long-term care and care of the children.

I did not come to Augusta to legislate the morality of my constituents. We are all distressed with the greed that seems rampant in our society. It concerns us much of late when we deal with over-development and pollution and wastage of human resources. But I firmly believe that government's purpose is to do for people what they cannot do for themselves to achieve the common good.

In the face of the catastrophies we are talking about today, most of the people we represent are helpless. I urge you to vote green on the motion before us now.

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

Representative JACQUES: Mr. Speaker, Men and Women of the House: If I might, I would like to pose a question through the Chair to one of the members of the legal profession that serve on the Judiciary Committee. Could you please define, on the Record for us, noneconomic damages, please?

The SPEAKER: Representative Jacques of Waterville has posed a question through the Chair to any member of the Committee on Judiciary who may respond if they so desire.

The Chair recognizes the Representative from Portland, Representative Conley.

Representative CONLEY: Mr. Speaker, Men and Women of the House: In answer to the question from the good gentleman from Waterville -- noneconomic damages, probably the best way to explain that would be to use an example of a burn patient. Noneconomic damages to that person would be associated with the type of an award a jury could give for the pain and suffering that that person went through for treatment

of their burns. Burns are probably a good example because we are all familiar with the stories of how painful those particular types of injury would be. It would also allow the jury to consider the psychological, the emotional anguish, that that person might have to go through for the rest of their life if, for example, they had serious disfigurement associated with the burn, particularly to their face. That would give people here an idea of the psychological harm that somebody would suffer and the jury would be free to consider awarding the person money damages for that disfigurement and the psychological harm they would suffer.

A final thing, it would just let the jury award that person anything it felt fair for the discomfort, inconvenience, distress associated with that particular type of injury. In the type of case that the good Representative from Bath discussed, it would allow the jury to consider the pain and suffering that that family would have gone through for the loss of that mother. I hope that answers the good gentleman's question.

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

Representative JACQUES: Mr. Speaker, Men and Women of the House: I thank the Representative from Portland for his answer.

Somebody asked me yesterday why I didn't get up and speak on this matter the first time. Quite frankly, men and women of the House, I did not believe for one moment that this bill was going to pass.

Last evening, I went to Norridgewock and talked to a group of concerned citizens who live around the CWS landfill, a landfill where 93 percent of the garbage being brought in comes from outside the State of Maine, where 93 percent of the garbage goes under no scrutiny from the Department of Environmental Protection from the State of Maine and where 93 percent of the garbage is coming from New Jersey, New York and Rhode Island where they don't want it. They have wells, they have children, they have farms -- one of them has a dairy farm that abutts that landfill and they asked about this particular piece of legislation. I told them that this House had passed it by 10 votes.

This particular lady said, "I am sorry but you have to be kidding." I said, "Unfortunately ma'am, I am not. You are now going to be capped for noneconomic damages at \$500,000." She said, "You mean if my three children develop leukemia and die or develop a disease that they will live with for the rest of their life, you are prepared to tell me that CWS and their insurance is going to be capped at the total amount of damages they can pay at \$500,000?" I said, "Yes and that is if you get the maximum amount of money awarded."

Yesterday, I spoke on a different aspect of this whole thing. I would like to have you go back and tell your constituents that, yes indeed, you voted for a \$500,000 cap and you did it for them because you were going to save them money on their doctors bills, because this is going to save their doctors money and they are going to keep their fees down.

I would urge you today to call your people back home, your businesses who pay workers' comp and ask them what the effect of the workers' comp reform package we passed in this legislature has had on them. They will tell you that they have been informed that they will have a minimum 50 percent rate hike, minimum. We can argue, oh yes, if we hadn't passed that reform package, you would have had 150 percent rate hike. But I doubt very much, ladies

and gentlemen of this House, if they will find solace in that information that you give them.

What we are voting here today -- and you go back and tell your constituents this, you are doing it for their own good because you are going to help them out in the long run. You are going to allow us, you are going to allow insurance companies to pay a maximum of \$500,000 for the noneconomic damages they are going to receive. That could be a pair of eyes, ladies and gentlemen. That could be a leg, it could be both legs. You ask yourself would you trade your eyes for \$500,000? Would you? I doubt it very much. You tell them that you did it for their own good so these insurance companies can go out and invest in shopping malls, in mining rights, in oil rights, so they can have nice high profits so they will continue to do you the favor of doing business in your state and looking out for your people. You go back and tell them you did it for their own good.

Five years from now, most of you in this body right now won't be here, at least that is the experience I have had in the ten years I have been here with a one-third turnover every session. And the people that are here are not going to remember today, St. Patrick's Day, this wonderful sunny day, and the day that we, men and women of the House, once again, sold our people down the river because we were held hostage by insurance companies and greedy insurance companies. How many times will this body be duped by the insurance companies at the expense of the people we are elected to represent?

The lady in Norridgewock is a perfect example of every constituent you and I have. She was shocked, she was grieved, and she could not believe that this thinking, caring, people's body would allow such a thing to happen with no guarantee that we are going to watch out for the doctors and professionals in this state.

I have friends that are doctors, they are very dedicated. Representative Holt is exactly right, they work long hours. I have a doctor, a guy that you can call up at three o'clock in the morning and he is at your house for your sick child. You don't think I want to help this man? Of course I do, but we are not going to help this man, we are going to help the insurance company, one more time.

I have a friend that lost a leg at Scott Paper in 1971, 19 years old, one child. That marriage ended up in divorce because of the change in that man's personality. This guy was one of the fun loving, joking type of guy you ever met, always wisecracking, everybody liked him. He went through that experience, he lost the leg, the other leg isn't worth a darn. This kid was an outdoor guy, hunted, fished, snowmobiled and that was almost curtailed. The pressures and changes he went through almost drove all his friends and family away and it was only those that loved him the strongest that were able to put up with his frustration and his attempts to deal with what he had. When the final decision was made, yes indeed, his lawyer got 35 percent of the settlement. We are not doing anything to solve that. That man, 19 years old, got less than a half a million dollars to last him for the rest of his life for everything he went through.

He had 17 operations on one leg and 16 on the other. Every time they operated on the leg, they told him, we think you should know that you could die today because, if the bone marrow gets into your blood stream, you are going to die, but we are going to operate to try to repair this leg. After 17 operations, the doctor had to come back and say, I am sorry we cannot save the leg, we are going to take it. But 17 times they told him in that hospital room

that he could die when they operated on that leg. Now we want to put a \$500,000 cap on all of these effects and we are doing it for one reason, so the insurance companies can increase their profits and look better on an accountant's sheet.

I couldn't believe we were going to do it yesterday. Men and women of the House, I still cannot believe we are going to do it today because this House has had a tradition of being the people's body and looking out for the people. But, you go back and you tell your people that you did this for them. You did them a favor, you did their families a favor and their children a favor, you tell them that!

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

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

Representative BEGLEY: Mr. Speaker, Men and Women of the House: In response to Representative Paul Jacques from Waterville, I would like to say, as I mentioned yesterday, that I had a very, very strong response on my questionnaire on this question of caps. So I feel in a very good position to go back and talk to those people and say that I listened to what they were telling me and, in the long run, I really feel that we are going to help all of society.

I would like to read to you a couple of things. In 1975, California adopted a Comprehensive, Medical, Injury Compensation Act. When that bill was enacted with a \$250,000 cap and again, we are talking noneconomic damages, medical malpractice rates in California were roughly equivalent to those being paid by doctors in other industrial states. Since 1975, rate increases for medical malpractice insurance in California have been roughly one-half of the national average.

I also would like to refer to the Rand Corporation Institute for Civil Justice that Representative Paradis referred to earlier. They conducted an extensive examination of claims filed and claims closed with or without payment to the claimant from states that did and did not enact medical malpractice reforms. Among the reforms enacted in several states, the evidence demonstrates that a cap on awards had the greatest effect reducing the severity of medical malpractice by 23 percent.

I urge you to vote against the pending motion.

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

Representative DEXTER: Mr. Speaker, Men and Women of the House: I am going to go back and tell my constituents that I voted for this and I will tell you why. because I come from a poor area, we probably are one of the lowest income areas in the state, and they do get pregnant in my area and they do not have adequate care by doctors at the moment.

I told you a story yesterday about assisting two of my daughters' delivery. I did not tell you that, in the second delivery, a little girl came into the world blue with the cord wrapped around her neck -- now what if she hadn't been saved? It was close. She is now married, graduated from college, I have two fine grandchildren, a son-in-law, but what if she had died? How do you measure the loss there?

While we are speaking of loss, no amount of money will compensate for an eye, a leg, or whatever, I don't care if it is \$10 billion dollars, it is not going to compensate. However, we do not have to compound the problem by perhaps denying some little child a life, like my daughter, -- how do you measure those things? Yes, I will go back and tell my people that I voted for this because the people that are telling me to vote this way are not insurance people. I have no love for insurance people either.

Those are not the people. Those are the young women that are coming to me, obviously in the family way as we say back in the sticks, "I can't find a doctor. What am I going to do? You are my Representative, what am I going to do?" That prenatal care is essential.

Let's get away from the emotional issue, let's face the facts. Let's separate the emotions from the rhetoric around here.

The SPEAKER: The Chair recognizes the Representative from Eastport, Representative Vose.

Representative VOSE: Mr. Speaker, Men and Women of the House: When I first went on the Judiciary Committee and was informed that we would be doing some tort reform, I was very, very happy about that because I, too, am afraid that doctors have spent an extremely high amount of money on insurance and should not have to do that. Therefore, I made up my mind that I was going to vote for everything that I thought would lower the rates.

When the cap was first introduced to our committee, I felt that it was the right way to go. I went out with two of the insurance agents that were there and asked them specifically, "Would this lower the insurance premiums?" "We can't guarantee that it will, we think it will, but we really can't guarantee that it will." I said, "I am in there trying to vote on something that will help the insurance rates so my doctors will remain in my area and you are telling me that this isn't really going to do any good. Then tell me why I should be voting for this." "Well, this cap may have an effect of lowering the rates but we still can't guarantee it." Yet, even on that term "may" I still felt that I could probably go along with it and was ready and willing to sign the jacket.

That evening when I got home, I received a phone call from a Stuart Ferguson, who represents the elderly in this area. I have known him for about 7 years now and is a frequent visitor to our Committee on Utilities. He is a fine gentleman and I trust him thoroughly, especially on matters of the elderly. He said, "Harry, are you really seriously contemplating voting for a cap on this?" I said, "Yes, I am Stu, maybe it will lower it and help everybody out, the doctors and the people in the area." He said, "No, nobody can assure you that that is going to lower the insurance premiums and he said I bet you that they haven't." I said, "That is true." He said, "I'll tell you what it will do. It certainly will hurt the elderly." I said, "How in the dickens will it do that, Stu?" He said, "Let me put it to you this way, there are two ways that you receive money on this liability insurance. One is the noneconomic and the other is the economic. One is based upon future earning power. My wife has a story to tell and I will tell you the story. She was forced, after the second time, to enter into a suit, and she is not really a trouble maker and she didn't want to do that." I didn't question him as to what the suit was. But he said, "When she went to an attorney, the attorney told her in no uncertain terms to forget the economic part of it because you don't have a prayer. The reason for that was being because you don't have any more earning power." I thought to myself, I am beginning to follow that category too. I am retired, -- where the heck is my earning power? I have some potential left but I am not so sure it is in the earning power. Anyway I said, "Stu, where is your other alternative?" He said, "Only in the noneconomic part. Now you are trying to put a cap on it." I said, "I was told in committee by some of these people that these suits in this particular area have never even reached \$250,000, let alone \$500,000, very, very few of them." He said, "What you are

doing is cutting off the possibility of maybe just one or two that really deserve that extra amount. You are just saying, no, there is no way, you can't have it and you are also saying that a jury is certainly not capable of making that decision. If it is over \$500,000, they can't make that, you've got a cap on it. \$500,000 is it."

I realized at that time, that unless somebody could stand up here today and say to me that the insurance rates are going to be lowered if we do this today, then I certainly am not going to vote for this bill.

I signed the Majority "Ought Not to Pass" Report and I hope that you will support the motion to indefinitely postpone this bill.

The SPEAKER: The Chair recognizes the Representative from Jay, Representative Bickford.

Representative BICKFORD: Mr. Speaker, Men and Women of the House: Representative Jacques made some comments regarding insurance companies which simply does not apply. Over two-thirds of the physicians in the State of Maine are insured by the doctors' own insurance company, Medical Mutual Insurance Company of Maine. This is a Maine company owned by the physicians themselves who pay the premiums. Their rates are set by the doctors. The basic rates are based on the experience of Maine doctors. Everyone has a letter from the company and I would like to have you read that. They all say that this will have a positive impact on the rates.

The SPEAKER: The Chair recognizes the Representative from South Portland, Representative Anthony.

Representative ANTHONY: Mr. Speaker, Men and Women of the House: Like the rest of you, I would very much like to do whatever I can to reduce insurance premiums on malpractice insurance because I do agree that it affects greatly the availability of medical care especially in the prenatal area. I am sure that it is true especially in the rural areas.

We have to look realistically at whether or not this bill does that. I submit to you that it does not and for the reason that there are very, very few cases ever get up or near the \$500,000 limit that is imposed by this bill.

I would like to figure out constructive ways to address the malpractice problem but, unfortunately, I think most of them are a result in the change of our culture, a change to a more litigious society. The vast majority of those cases get nowhere near a \$500,000 settlement figure so that, by passing this bill, unfortunately we are not doing anything at all to address that problem.

I will go back and talk proudly about the other bill that we gave First Reading here today, L.D. 2520, and talk about that as a step. Unfortunately, that is not as big a step as I would like to take but a step to address the problem.

I have been struck, as I have sat here, over the fact that there has been a lot of talk about how come the insurance companies can't promise that this will reduce the rates and maybe the insurance companies are trying to rip us off and that sort of thing. In my view, the insurance companies can't promise that it will reduce the rates because it won't reduce the rates. How can it reduce the rates when you are talking about a very, very small portion of their costs going into these high payments? The vast majority of their costs go into the handling of a large number of cases. If we wanted to address the malpractice problem, we would figure out ways to reduce the number of cases, not reduce the magnitude of them.

I can't see anything in this bill that does anything positive in any real way to reduce the malpractice premiums and thus make health care more available.

I would urge support of the motion pending before you which would terminate any further discussion of this ill-advised approach to the malpractice problem.

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

Representative HANLEY: Mr. Speaker, Men and Women of the House: I did not wish for a replay of yesterday but I guess it is too late for that now.

We have hit a stone wall. We don't enjoy the luxury of a study or report, which completely refutes one side or the other. As far as Representative Vose's question, "Will this have a positive impact or will it not?" There are studies on both sides.

As the Representative from Augusta, Representative Paradis pointed out, he used the Rand Corporation's study and as Representative Begley from Waldoboro followed up, this same study that Representative Paradis used, has support on the other side that, if you do institute caps, there will be savings. California and Indiana have instituted substantial reform measures and their liability insurance has risen at a rate that is half the national average.

As to the people who would say that there are not that many awards over the \$500,000, it was just 15 days ago today that the Eastern Maine Medical Center was tagged by a jury for \$790,000 of noneconomic damages.

As Representative Jacques pointed out and made clear to us in a very emotional speech, ours is not a perfect world, that is why we are here today to make laws to even it up, to make it fair, not only for an individual but for society.

As you are well aware, this does have a sunset of five years so this proposal can be reviewed at that time.

Mr. Speaker, I would like to pose a question through the Chair.

The SPEAKER: The Representative may pose his question.

Representative HANLEY: To any attorney or financial planner on the floor of the House that could tell me how much, if I was to receive a noneconomic award of \$500,000, how much I would receive on a yearly basis, if I was 15 or the middle of my life at 30 or if I was 65?

The SPEAKER: The Representative from Paris, Representative Hanley, has posed a question through the Chair to anyone who may respond if they so desire.

The Chair recognizes the Representative from Scarborough, Representative Warren.

Representative WARREN: Mr. Speaker, Ladies and Gentlemen of the House: The answer to the question is a simple one -- in some, it has to do with what the jury decides. The jury has before it all the facts about the plaintiff's background, education, age, etcetera and if the child is under 18, generally the court will not allow the child to have any significant sum of money. The money would either have to be put into a trust for the Trustee appointed to pay such things as living expenses, reasonable medical expenses or any other necessary day-to-day expenses and then, when the child turns 18, it would be up to the Trustee to, in conjunction with the court, make decisions about what is in the best interest of the child, whether it to be for a continuing nurse care, hospital treatment, doctor care, educational expenses, whatever expenses of that nature. As far as whether the plaintiff was middle aged or older, once again, the jury would have to

decide what would be an appropriate amount to compensate the person. As far as some type of payment plan, the jury does not have authority to set the payment plan. Sometimes in a settlement between an insurance company and a plaintiff and a plaintiff's family, they can set up some type of payment plan with so many dollars per year or per month. They can provide an annuity instead of making a lump sum settlement but those are really matters for the parties to decide.

Mr. Speaker, if I could just address the House very briefly on this bill, I haven't risen before because I thought it was quite clear that this House, for the most part, had its mind made up on this bill. This has been such a well publicized issue for the last two years with a lot of facts and a lot of information and probably some misinformation so I think a debate on this topic probably doesn't serve all that much useful purpose.

I would note, however, two points. One, I was very pleased that Representative Paradis attempted to defend lawyer's yesterday, it is always rare when someone is willing to defend lawyer's publicly and I was both surprised and appreciative.

Two, concerning the comments that the good Representative from Monmouth, Representative Davis made, comparing lawyers to termites, I guess, I just want you to know -- "Lee, I don't take any offense, I have been called much worse."

There is only one point that I would like to bring to the attention of the House and that is, we might have mentioned earlier the experience of the state of Florida with this and I would just read briefly from an article dealing with the Florida Supreme Court case. In some, the legislature in the state of Florida passed a \$450,000 damage cap. Both the insurance industry and a group of trial lawyers in Florida brought this matter to the Florida Supreme Court and it was ruled unconstitutional.

As I said earlier, I have no interest in coming up and giving a song and dance on this bill because I don't think people need it or want it. I will just read from this about how that case went to the Florida Supreme Court and how that law was ruled unconstitutional. Fearing that increasing prices would make it impossible to purchase insurance and, therefore, for injured person's to recover damages, the Florida Legislature in 1986 enacted the Tort Reform and Insurance Act. This statute provided a monetary cap on noneconomic damages and insurance regulatory and rebate provisions. The insurance industry and the Trial Lawyers' Bar challenged the constitutionality. The trial court found that the tort reform changes were constitutional, such things as Joint and Several Liability. The First District Court of Appeals certified an appeal to the Florida Supreme Court, the Supreme Court affirmed; however, the court did find that the \$450,000 cap on noneconomic damages was an unconstitutional violation of the Open Courts Provision of Article I, Section 21 of the Florida Constitution. This is a provision that is similar to a term in the Maine Constitution essentially allowing a citizen for whatever reason, whether it is a civil dispute, business dispute, car accident, medical malpractice, whatever, to go to court and seek justice from a jury. It also deals with a citizens right to a trial by jury in the Constitution.

The court in Florida said that the legislature may restrict the rate of redress only if (1) provides a reasonable alternative remedy or commensurate otherwise and (2) it shows an overpowering public necessity for abolishing the right and no alternative method of meeting the public necessity. In this

case, the court found that there was no overpowering public necessity, the data was not clear, the damage cap limitation was going to result in any benefit to the parties intended, physicians and others, and also that there was no data to provide a basis for concluding that insurance premiums would go down.

For that reason, I think if this House does decide to pass this damage cap bill, as the old saying goes, "Only the lawyers will benefit." I think the trial lawyers in the State of Maine on behalf of victims will have to hire some lawyer for \$10,000 to bring an appeal, probably a number of insurance companies and the insurance industry is going to have to hire some lawyers, each at probably \$10,000 a whack, and given the language of this case, I suspect the law would be stricken down and the lawyers would end up fat and happy.

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

Representative MARSANO: Mr. Speaker, Men and Women of the House: Like some of the other speakers, I had hoped not to speak today but there are some things which have happened, which I think call for responses.

I know the hard working, sole practitioner from Bangor, who represented a grieved widow in a case to which the Representative from Paris spoke. I know that it was a large verdict. Let me tell you a little bit about the facts as it was related to me by the plaintiff's attorney.

The plaintiff's attorney outlined her situation in which a man, married for the first time, in his declining years, mid 60's, late 60's, when his working days were over and was (married to a nurse), was operated on at the Eastern Maine Hospital. The doctor instructed the nurse apparently that, in the event that there was some kind of injury, that he was to be contacted immediately.

The nurse wife, now widowed, sat there through the night and on three occasions went to the hospital people and said, "My husband is in pain, my husband is in pain." Nothing was done. The nurse said it was the right kind of pain. So finally, toward the end of the shift, the nurse called the doctor and the doctor rushed in and did an immediate operation and the man's final decline was because of the poison that entered his system during that period. He spent 73 days dying in his own excrement in that hospital.

The suit was not against the doctor, the suit was against the hospital. The hospital started a suit against him for \$221,000, the intensive care costs during that period. There was another claim by the hospital for the \$46,000 worth of drugs that they pumped into this dying individual. When the widow came to court and asked for compensation, the jury found that the hospital was wrong when it argued that this man was going to die anyway and so they evaluated the turmoil of that 73 days and they rendered a verdict. And not surprisingly when we were in committee discussion the next day, when I walked in, the Representative from Paris pulled out the newspaper and said, "Here, look at this, what do you think of that?" You know what I said to him, I said, "I don't know what to think because I didn't hear the evidence." I don't know what the evidence was and what I tell you about it today, I don't know to be true, I only know that that was told to me by the lawyer who tried the case.

I trust those 8 people to have fixed that verdict and I know, as you know, that that case is already before Justice McKinley with an eye on the damages being reduced for all of the arguments that will be made by the defense counsel, also a good friend of mine but whom I have not had a chance to talk with.

All of those arguments will be made and it will be considered by the courts of law.

Let me talk briefly about some of the things that I tried to do because I worry about this problem, I worry about my doctors, they provide the quality of care in my community and I care about them and I care about the quality of their life. I went to these doctors and I said, "The problem is that in light of the expanding hospital care costs, we can't deal with medical malpractice insurance premiums the old way by breaking it down upon those who have to suffer the system, the health care system which is exorbitantly expensive. I said, "Let's try and create some kind of way of helping doctors who have that disproportionate rate of malpractice insurance premiums to gross income." There was no interest in that. I can't understand why. I kiddingly said to the doctors, "I wish you would worry about the increasing costs of your Mercedes as much as you do about the costs of insurance, the Mercedes go up too."

In any event, there isn't a problem that can be solved by this bill but I think the founding fathers of this state when they wrote Section 19 of this Constitution by which we live and by which we have all sworn to uphold, and which says: "Every person for an injury done him in his person, reputation, property or immunity shall have remedy by due course of law and right and justice shall be administered freely and without sale, completely and without denial, promptly and without delay." Against this kind of Constitutional provision, can we vote for this bill? This matter should be indefinitely postponed.

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

Representative HANLEY: Mr. Speaker, Men and Women of the House: First, I would like to point out that the Representative from Belfast's words are well taken and that due course of law should be provided.

Were we not providing due course of law when we established a \$250,000 cap on the Dram Shop Law? Is there a difference here?

As far as the question that I posed that was answered by the Representative from Scarborough, Representative Warren, I appreciate that, but I guess I didn't present the question clearly enough. The question that I had posed was, if I received an award of \$500,000, how would this be dispersed over the course of my lifetime if I was 15, 30 or 65?

I took the liberty of contacting some unbiased financial planners, attorneys -- if a person were to receive \$500,000 in noneconomic awards, this is above and beyond the economic award, a 15 year old would receive over \$25,000 a year; someone age 30 would receive over \$26,000 per year; and someone at 65 would receive over \$40,000 a year.

Ladies and gentlemen of the House, I move that you vote against the pending motion. Mr. Speaker, I would request a roll call.

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

Representative MANNING: Mr. Speaker, Men and Women of the House: A little while ago, the Representative from Paris talked about the claim that was won by a person up in Bangor against Eastern Maine Medical Center. I would just like to let this body know about somebody that I know who had his claim well in excess of a half a million dollars overturned by the Maine Supreme Court just about a month ago. This person was riding down Route 1 late Christmas Eve in Saco and was struck down by an employee of a local beer distributor in Portland. He won a case at the Supreme Court of well over a half a million dollars but when it got to the Maine Supreme

Court, it was struck down completely. I might add, word had gotten back that that attorney who, if he had won that suit and would probably have gotten a lot more than he normally put in for his services, got absolutely nothing. They estimated that that attorney probably lost \$25,000.

What I am saying is, you heard one side of Eastern Maine Medical Center getting sued; you also heard the other side where a person going home for Christmas Eve, not anticipating that he would be injured for the rest of his life (I might add that this young man who looks young but happens to be probably in his 50's ran marathons and now has a hard time swimming) this young man lost everything when it went to the Maine Supreme Court. So there are two sides of the story.

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

Representative DAVIS: Mr. Speaker, Men and Women of the House: I just wanted to make a little correction here. I did not call attorneys termites. I said they were as numerous as termites on a rotten log. I could have said the same thing about insurance agents when we dealt with L.D. 1010 or I might have said they were as numerous as ants on an anthill. That is not the point. The point is that they were out in numbers as the insurance agents were looking after their interests.

One other correction -- having been involved with the insurance industry as long as I have, the inference that all the attorneys for the insurance companies come from out-of-state with their big black hats and limousines is far from the truth. In the 35 years that I was involved in the business, the attorneys would wear black hats one day (if that is what you want to call the people who represent the insurance companies) and white hats the next day (if they were representing the claimants). That is their profession, they represent those people whom they feel are right.

I think we should defeat the pending motion and see what this bill will do for us.

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

Representative KIMBALL: Mr. Speaker, Men and Women of the House: I, too, would urge you to vote against the pending motion.

I think that there comes a time in a debate when it is important to kind of jump out of the present debate a little bit and see if you can't find another level of looking at things. I think that is also important when you take a look at the process that we are talking about here.

As I sat and listened to the various speakers here this morning, I listened to escalating insurance costs, reasons for that, why the insurance companies are having to do what they do, so on and so forth. I heard about litigation. I heard about people suing people, people suing hospitals, hospitals suing other people, people trying to figure out who is going to pay for that and insurance companies figuring out they are going to be paying, the hospital or who?

The problem is, as long as you keep revolving in that system, as long as you keep operating with the litigation on the side of the legal profession and the insurance companies, on the side of who is going to pay, I will tell you who loses and I have had a unique position to see this. As a psychologist, often times I get called in to look at disability cases, I listen to people who are in the process of ongoing litigation and battles about serious illnesses that have taken place with them, or damage to them or their families -- it doesn't help. I suggest that it makes things worse. I think at some

point, you have to jump out of the system long enough to be able to look down at it and see what it is that is happening there.

I think that what the legislature does, as a body, develops policy and makes statement -- it says, "Look this battle isn't going to go on much longer, what we need is some way of letting the battlers know that the participation in something that is ongoing and not in the best interest of the people that we represent here is not to happen anymore."

Please join me and vote against the pending motion.

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

Representative SCARPINO: Mr. Speaker, Men and Women of the House: Just a short statement in deference to my good seatmate, Representative Kimball -- while his credentials perhaps are a little greater than mine, I have a couple too, and yes, this bill will send a message about the battle. The message that it will send is the battle is over, the insurance companies have won and the people have lost.

I have been sitting here listening. I have heard a couple of problems. People are talking about this five year sunset, if we make a mistake, we can correct it in five years. What about the people who have had suits in those ensuing five years that have been compensated at a level lower than their just due? Do we just say that the sunset takes care of the law but doesn't take care of you?

In response to Representative Hanley, I didn't have time to do his figures of how much money you would get a month until he died. Well, it would depend upon how long he lived. After he dies, if I am still alive, I could tell him but, until then, I can't. What if the injury was serious enough that it shortened your life by 50 percent? Does that justify a higher monthly amount or do we keep it at the same amount?

There has been so much debate involving things here that don't really deal with the issue. Yes, I admit that we have a very real problem with medical malpractice insurance and that should be addressed.

My other seatmate notwithstanding, I have nothing against the little lawyer beating myself and yes, I think we have to address the way contingency fees are assigned. I won't argue with that at all.

I don't think this bill is the vehicle. This bill addresses a couple of things. It addressed the amount of money insurance companies are going to have to pay out and the amount of money a plaintiff may be able to receive. There are secondary issues in this but to attempt to use this bill to attack those secondary issues is liking trying to drive a nail with a screwdriver.

Let's let this bill die so we can take care of what we have to take care of in this session. There is one section that deals with insurance profits versus the injured party's compensation. We have one bill that is going to deal partially with the lawyers fees. Perhaps we need another bill that would deal specifically with medical malpractice. To attack those issues with this bill, while it may have some minor secondary effect on those issues, is going to cause more harm than it is good in the benefits the people of this state receive and is going to be far below the potential damage to be done.

Let's send this bill on its way, leave us support the indefinite postponement and then get on to dealing specifically with the other issues.

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 pending question before the House is the motion of the Representative from Augusta, Representative Paradis, that L.D. 2523 be indefinitely postponed.

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

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

The SPEAKER: The Chair will grant the request.

The Chair recognizes the Representative from Auburn, Representative Dore.

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

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 L.D. 2523 be indefinitely postponed. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 206

YEA - Allen, Anthony, Baker, Bost, Brown, Carroll, Cashman, Chonko, Coles, Conley, Cote, Crowley, Curran, Daggett, Diamond, Duffy, Dutremble, L.; Erwin, P.; Foster, Gould, R. A.; Greenlaw, Gurney, Gwadosky, Hale, Handy, Hickey, Holt, Hussey, Jacques, Jalbert, Joseph, Ketover, Kilkelly, Lacroix, LaPointe, Lisnik, Macomber, Mahany, Manning, Marsano, Martin, H.; Mayo, McGowan, McHenry, McSweeney, Michaud, Mitchell, Moholland, Murphy, E.; Nadeau, G. G.; Nadeau, G. R.; O'Gara, Oliver, Paradis, J.; Paradis, P.; Perry, Priest, Reeves, Richard, Rotondi, Ruhlin, Rydell, Scarpino, Simpson, Smith, Soucy, Strout, D.; Swazey, Tamaro, Thistle, Tracy, Vose, Walker, Warren, Zirkilton, The Speaker.

NAY - Aliberti, Anderson, Bailey, Begley, Bickford, Bott, Boutillier, Bragg, Callahan, Clark, H.; Clark, M.; Davis, Dexter, Farnum, Farren, Foss, Garland, Glidden, Hanley, Harper, Hepburn, Hichborn, Higgins, Holloway, Jackson, Kimball, Lawrence, Lebowitz, Look, Lord, MacBride, Matthews, K.; McPherson, Mills, Murphy, T.; Nicholson, Norton, Nutting, Paradis, E.; Parent, Paul, Pines, Pouliot, Racine, Reed, Rice, Ridley, Rolde, Salsbury, Seavey, Sheltra, Sherburne, Small, Stevens, A.; Strout, B.; Tardy, Telow, Webster, M.; Wentworth, Weymouth, Whitcomb, Willey.

ABSENT - Armstrong, Dellert, Hillock, Hoglund, Melendy, Rand, Stanley, Stevens, P.; Taylor, Tupper.

EXCUSED - Carter, Dore.

Yes, 76; No, 62; Absent, 10; Vacant, 1; Paired, 0; Excused, 2.

76 having voted in the affirmative and 62 in the negative with 10 being absent, 1 vacant and 2 excused, L.D. 2523 was indefinitely postponed. Sent up for concurrence.

PASSED TO BE ENACTED
Emergency Measure

An Act Providing Conformity with the United States Revenue Code Under the Maine Income Tax Law for 1987 (S.P. 868) (L.D. 2263) (S. "A" S-334)

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

FINALLY PASSED
Emergency Measure

RESOLVE, for Laying of the County Taxes and Authorizing Expenditures of Franklin County for the Year 1988 (H.P. 1831) (L.D. 2507)

Was reported by the Committee on Engrossed Bills as truly and strictly engrossed. This being an emergency measure, a two-thirds vote of all the members elected to the House being necessary, a total was taken. 111 voted in favor of the same and none against and accordingly the Resolve was finally passed, signed by the Speaker and sent to the Senate.

PASSED TO BE ENACTED

An Act Pertaining to the Establishment of Market Assistance Plans (H.P. 1820) (L.D. 2495)

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

By unanimous consent, all matters having been acted upon requiring Senate concurrence were ordered sent forthwith to the Senate.

ORDERS OF THE DAY
TABLED AND TODAY ASSIGNED

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

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

TABLED - March 16, 1988 by Representative JACQUES of Waterville.

PENDING - Final Passage.

On motion of Representative Jacques of Waterville, under suspension of the rules, the House reconsidered its action whereby L.D. 2275 was passed to be engrossed.

The same Representative offered House Amendment "A" (H-486) and moved its adoption.

House Amendment "A" (H-486) was read by the Clerk and adopted.

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

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

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)

TABLED - March 16, 1988 by Representative LISNIK of Presque Isle.

PENDING - Passage to be engrossed.

Representative Nutting of Leeds offered House Amendment "A" (H-488) and moved its adoption.

House Amendment "A" (H-488) was read by the Clerk and adopted.

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

The Chair laid before the House the third 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 16, 1988 by Representative MURPHY of Kennebunk.

PENDING - Acceptance of Committee Report.

Subsequently, the Committee Report was accepted, the New Draft read once.

Committee Amendment "A" (H-481) was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Yarmouth, Representative FOSS.

Representative FOSS: I offer House Amendment "A" (H-485) to Committee Amendment "A" (H-481) and move its adoption.

House Amendment "A" (H-485) to Committee Amendment "A" (H-481) was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Yarmouth, Representative FOSS.

Representative FOSS: Mr. Speaker, Men and Women of the House: There was some confusion in the Appropriations Committee when this held over bill was reported out last week. Several of us on the committee believe that we were specifically excluding consideration of Capitol Park as a site for the proposed Supreme Court facility. Other members thought we were simply deleting language from the original bill that clearly designated the site as Capitol Park. Those latter committee members want to allow the park to remain under consideration as a future site. In fact, it seems apparent that there is a strong commitment on the part of some members that the site will be Capitol Park if the test borings prove that the soil there is adequate.

I am at best lukewarm about a future bond issue of maybe \$15 million to build a new Supreme Court facility and parking garage in Augusta. However, I am totally opposed to building at Capitol Park where I believe the open space should be preserved.

Without this amendment, I am convinced that the \$340,000 in this bill will be spent to prove that Capitol Park is the best location. My amendment clarifies that Capitol Park shall not be considered as a location for the proposed facility.

On motion of Representative Carter of Winslow, tabled pending adoption of House Amendment "A" to Committee Amendment "A" and specially assigned for Friday, March 18, 1988.

BILL HELD

Bill "An Act to Recodify the Laws on Municipalities and Counties" (H.P. 1855) (L.D. 2538) - In House, Referred to the Committee on State and Local Government on March 16, 1988.

HELD at the request of Representative PRIEST of Brunswick.

The SPEAKER: The Chair understands that there will be no action taken on this item. It is therefore released to the other body.

BILL HELD

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

- In House, Passed to be Enacted on March 16, 1988. HELD at the request of Representative CARTER of Winslow.

On motion of Representative Carter of Winslow, under suspension of the rules, the House reconsidered its action whereby L.D. 2493 was passed to be enacted.

On motion of the same Representative, under suspension of the rules, the House reconsidered its action whereby L.D. 2493 was passed to be engrossed.

The same Representative offered House Amendment "A" (H-490) and moved its adoption.

House Amendment "A" (H-490) was read by the Clerk.

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

Representative CARTER: Mr. Speaker, Men and Women of the House: Briefly, the purpose of this amendment is to allow the commissioner to promulgate rules that will permit the acceptance of out-of-state immunization certificates for rabies in the case of a dog vaccinated outside of the state. Under the present law, they are not recognized and they are forcing constituents to go see another veterinarian. The person merely tells the vet that he had the dog immunized outside of the state and he signs the paper and they take it back to the town clerk and it is legal. I think that is a poor way of doing business and this will force the adoption of rules to correct this.

I move the adoption of this amendment. I further move that, if it is adopted, it would be sent forthwith to the Senate.

Subsequently, House Amendment "A" was adopted.

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

By unanimous consent, ordered sent forthwith to the Senate.

BILL HELD

Bill "An Act to Provide Additional Appropriations to Continue the Dioxin Study" (S.P. 818) (L.D. 2138) - In House, Passed to be Engrossed on March 16, 1988. HELD at the request of Representative DIAMOND of Bangor.

Representative Diamond of Bangor moved that the House reconsider its action whereby L.D. 2138 was passed to be engrossed.

On further motion of the same Representative, tabled pending his motion and specially assigned for Friday, March 18, 1988.

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

SENATE PAPERS

RESOLVE, to Allow Joel Batzell of West Farmington to Bring Civil Action Against the State of Maine (S.P. 957) (L.D. 2540)

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

Was referred to the Committee on Legal Affairs in concurrence.

Refer to the Committee on Human Resources

Report of the Committee on Appropriations and Financial Affairs on RESOLVE, to Fund Demonstration Projects for Day Care Services in Health Care Facilities (Emergency) (S.P. 835) (L.D. 2169) reporting that it be referred to the Committee on Human Resources.

Came from the Senate with the report read and accepted and the bill referred to the Committee on Human Resources.

Report was read and accepted and the bill referred to the Committee on Human Resources in concurrence.

(Off Record Remarks)

On motion of Representative Hickey of Augusta, Recessed until five o'clock in the afternoon in memory of Father Thomas Joyce of Augusta.

(After Recess)

The House was called to order by the Speaker.

The following items appearing on Supplement No. 2 were taken up out of order by unanimous consent:

SENATE PAPERS

The following Communication:
Maine State Senate
Augusta, Maine 04333

March 17, 1988
Honorable Edwin H. Pert
Clerk of the House
State House Station 2
Augusta, Maine 04333
Dear Clerk Pert:

Please be advised that the Senate today Insisted and joined in a Committee of Conference on the disagreeing action between the two branches of the Legislature on Bill "An Act to Establish the Strategic Training for Accelerated Reemployment Program" (Emergency) (S.P. 946) (L.D. 2494).

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

Senator PRAY of Penobscot
Senator DUTREMBLE of York
Senator PERKINS of Hancock

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

Was read and ordered placed on file.

Divided Report

Majority Report of the Committee on Labor on Bill "An Act to Promote the Prompt and Peaceful Settlement of Labor Disputes" (Emergency) (S.P. 866) (L.D. 2255) reporting "Ought to Pass" in New Draft (Emergency) (S.P. 956) (L.D. 2531)

Signed:
Senators: DUTREMBLE of York
ANDREWS of Cumberland
Representatives: RUHLIN of Brewer
McHENRY of Madawaska
RAND of Portland
HALE of Sanford
JOSEPH of Waterville
TAMMARO of Baileyville

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

Signed:
Senator: COLLINS of Aroostook
Representatives: WILLEY of Hampden
BEGLEY of Waldoboro
HEPBURN of Skowhegan
ZIRNKILTON of Mount Desert

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

Reports were read.

Representative McHenry of Madawaska moved that the House accept the Majority "Ought to Pass" Report.

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

Representative WILLEY: Mr. Speaker, Ladies and Gentlemen of the House: I think perhaps this is the fifth strikebreaker bill we have had before this body in the last several months. I don't know that I can honestly say that they are getting any better up to this point. The others, as you know, our Governor had to veto. They were passed by this body and the other body and the Governor vetoed them. He did put in a bill which is on the back of your calendar for today, it is supposed to be before the House tomorrow, which I sponsored for him, which has conditions in it under which he thinks it can pass. This one does not and I would like to briefly tell you why that I don't believe he will be interested in signing it.

In the first place, on page three of the bill, it defines what a professional strikebreaker would be. It says, "No person, partnership, union, agency, firm, corporation or other legal entity may perform strikebreaking activities if that entity has contracted on at least 3 occasions within the previous 5 years to supply 100 or more employees to an employer involved in a labor dispute to perform tasks normally assigned to employees involved in the labor dispute."

Well, if you read it casually, I guess maybe you would think it might work. But you have got to remember that this 100 employees that they are going to supply over a 5 year period is worldwide. Now, if you run a business, the employees strike -- say they are going on strike 10 days from now and you are trying to find some people to do this work and you have to check worldwide to see if they meet these requirements, if they don't happen to meet these requirements, the next section says, "Any person, corporation or labor organization with judicial standing may bring a civil action for injunctive or other relief to enforce this subchapter."

Well, you have to check pretty carefully or you are going to find yourself involved in a civil suit which can be horribly expensive, which can tie up the plant for a long time, plus civil penalties as well that may be invoked for the simple reason that you may have inadvertently hired somebody that doesn't meet the above qualifications and you simply were not able to check this condition out on a worldwide basis. We tried to get it nation wide. I even tried to get it strictly from New England so anybody would have the possibility of being able to check. But I wasn't successful in doing that, it is still worldwide. How on earth and how long would it take to see if somebody was involved in Australia five years ago? It is just a very impractical approach to the whole thing.

I urge that you defeat the motion before you so that we can consider the bill that will be before you tomorrow to see if that is somewhat more palatable.

The SPEAKER: The Chair recognizes the Representative from Brewer, Representative Ruhlin.

Representative RUHLIN: Mr. Speaker, Ladies and Gentlemen of the House: This bill before us tonight, I believe, is the ultimate compromise available on this issue. The good gentleman from Hampden has said it has been before us five times -- he has led me astray on counting before. I am not sure if it has been four or five times but certainly it has been before us enough so I don't think we have to go into the merits as such of the whole case, especially since it is quarter past five on St. Patrick's Day.

I think it is important that you recognize, every one of you, that both the D's and the R's of the Labor Committee spent hours and hours and hours attempting to reach a true compromise.

In that process, we attempted to answer all the objections of the Governor when he vetoed it. I as a member, and I think the majority of the members of the Labor Committee, felt that we had in fact done so. When we were ready for a vote on this bill and it came out eight to five along party lines, I recognized probably too late, and with a great deal of frustration that, in fact, I think the Chief Executive Officer on that coequal branch of the second floor does not want to compromise, does not in fact want to make a truly equal playing field, both for the employer and employees of this state.

To do anything less than this bill does today is to pull a cruel charade upon the workers of this state, is to do nothing more than to create a whitewash of a situation which has brought economic tragedy. It has split families, it has split neighborhoods, it has split communities in our state. This bill does not address that. What it does is it prevents it from happening in the future, or hopefully will prevent it from happening in the future. To do anything less than this is to open the spread of that cancer, if you will, throughout the State of Maine.

I think as a responsible Representative of the people we must do something to prevent that from happening. Tonight, here is your opportunity to do so. I hope you will join with me in voting with the Majority "Ought to Pass" Report.

Representative Willey of Hampden 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 pending question before the House is the motion of Representative McHenry of Madawaska that the House accept the Majority "Ought to Pass" Report. Those in favor will vote yes; those opposed will vote no.

ROLL CALL NO. 207

YEA - Aliberti, Allen, Bickford, Bost, Boutilier, Brown, Carroll, Clark, H.; Clark, M.; Coles, Conley, Cote, Crowley, Daggett, Duffy, Erwin, P.; Gould, R. A.; Gwadosky, Hale, Handy, Hichborn, Hickey, Holt, Hussey, Jacques, Joseph, Ketover, Kilkelly, Lacroix, LaPointe, Macomber, Mahany, Manning, Martin, H.; Mayo, McGowan, McHenry, McSweeney, Michaud, Mitchell, Moholland, Nadeau, G. R.; Nutting, O'Gara, Paradis, J.; Paradis, P.; Paul, Perry, Pouliot, Ridley, Rolde, Rotondi, Ruhlin, Rydell, Sheltra, Simpson, Smith, Soucy, Stevens, P.; Strout, D.; Swazey, Tammaro, Tardy, Thistle, Tracy, Vose, Walker, The Speaker.

NAY - Anderson, Armstrong, Bailey, Begley, Bott, Bragg, Callahan, Curran, Davis, Dexter, Farnum, Farren, Foss, Foster, Garland, Glidden, Greenlaw, Hepburn, Higgins, Holloway, Jackson, Lawrence, Lebowitz, Look, Lord, MacBride, Matthews, K.; McPherson, Murphy, E.; Murphy, T.; Norton, Paradis, E.; Parent, Pines, Reed, Rice, Salsbury, Scarpino, Seavey, Sherburne, Small, Stevens, A.; Strout, B.; Telow, Tupper, Wentworth, Weymouth, Whitcomb, Willey, Zirnkilton.

ABSENT - Anthony, Baker, Carter, Cashman, Chonko, Dellert, Diamond, Dore, Dutremble, L.; Gurney, Hanley, Harper, Hillock, Hoglund, Jalbert, Kimball, Lisnik, Marsano, Melendy, Mills, Nadeau, G. G.; Nicholson, Oliver, Priest, Racine, Rand, Reeves, Richard, Stanley, Taylor, Warren, Webster, M..

Yes, 68; No, 50; Absent, 32; Vacant, 1; Paired, 0; Excused, 0.

68 having voted in the affirmative, 50 in the negative, with 32 being absent and one vacant, the Majority "Ought to Pass" Report was accepted, the New Draft read once and assigned for second reading Friday, March 18, 1988.

(Off Record Remarks)

PETITIONS, BILLS AND RESOLVES
REQUIRING REFERENCE

The following Resolve was received and, upon the recommendation of the Committee on Reference of Bills, was referred to the following Committee, Ordered Printed and Sent up for Concurrence:

Energy and Natural Resources

RESOLVE, Authorizing the Sale of Certain Public Lands (H.P. 1860) (Presented by Representative HIGGINS of Scarborough) (Cosponsors: Senators USHER of Cumberland, LUDWIG of Aroostook, and KERRY of York) (Submitted by the Department of Conservation pursuant to Joint Rule 24)

Ordered Printed.

Sent up for Concurrence.

By unanimous consent, was ordered sent forthwith to the Senate.

REPORTS OF COMMITTEES

Unanimous Ought Not to Pass

Representative DEXTER from the Committee on Energy and Natural Resources on Bill "An Act to Amend the Maine Low-Level Radioactive Waste Authority Liability Provisions" (H.P. 1495) (L.D. 2045) reporting "Ought Not to Pass"

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

Unanimous Leave to Withdraw

Representative TARDY from the Committee on Agriculture on Bill "An Act to Define Chemical Preservative and to Provide Alternative Labeling Requirements" (H.P. 1672) (L.D. 2290) reporting "Leave to Withdraw"

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 TARDY from the Committee on Agriculture on Bill "An Act to Assist Agricultural Employers in Complying with Federal Hazard Communication Rules" (H.P. 1515) (L.D. 2068) reporting "Ought to Pass" in New Draft (H.P. 1859) (L.D. 2545)

Report was read and accepted, the New Draft read once and assigned for second reading Friday, March 18, 1988.

Ought to Pass in New Draft

Representative HARPER from the Committee on Aging, Retirement and Veterans on Bill "An Act to Continue State Benefits to Retired Teachers who have Joined a New Insurance Plan upon Retirement" (H.P. 1563) (L.D. 2130) reporting "Ought to Pass" in New Draft (H.P. 1862) (L.D. 2547)

Report was read and accepted, the New Draft read once and assigned for second reading Friday, March 18, 1988.

CONSENT CALENDAR

First Day

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

(S.P. 821) (L.D. 2143) Bill "An Act to Expand and Clarify the Jurisdiction of the Maine State Pilotage Commission" Committee on Business Legislation reporting "Ought to Pass" as amended by Committee Amendment "A" (S-339)

(H.P. 1550) (L.D. 2110) Bill "An Act to Conform the Hospital Care Financing System to Certain Federal Requirements Concerning the Civilian Health and Medical Program of the Uniformed Services" Committee on Human Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-491)

(H.P. 1652) (L.D. 2260) Bill "An Act to Promote Solid Waste Research" Committee on Energy and Natural Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (H-492)

There being no objections, the above items were ordered to appear on the Consent Calendar of Friday, March 18, 1988, under the listing of Second Day.

The following items appearing on Supplement No. 3 were taken up out of order by unanimous consent:

CONSENT CALENDAR

First Day

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

(H.P. 1750) (L.D. 2399) Bill "An Act to Revise the Laws Concerning Cost Sharing for Maintenance of Railroad Grade and Highway Bridge Crossings" Committee on Transportation reporting "Ought to Pass"

(H.P. 1713) (L.D. 2352) Bill "An Act to Amend the Waldoboro Sewer District Charter" Committee on Utilities reporting "Ought to Pass" as amended by Committee Amendment "A" (H-493)

There being no objections, the above items were ordered to appear on the Consent Calendar of Friday, March 18, 1988, under the listing of Second Day.

(At Ease)

The House was called to order by the Speaker.

The following item appearing on Supplement No. 4 was taken up out of order by unanimous consent:

SENATE PAPER

Non-Concurrent Matter

Bill "An Act to Recodify the Laws on Municipalities and Counties" (H.P. 1855) (L.D. 2538) which was referred to the Committee on State and Local Government in the House on March 16, 1988.

Came from the Senate under suspension of the rules and without reference to a Committee, the Bill read twice and passed to be engrossed in non-concurrence.

On motion of Representative Carroll of Gray, the House voted to recede and concur.

(Off Record Remarks)

On motion of Representative Allen of Washington,
Adjourned until Friday, March 18, 1988, at twelve
o'clock noon.

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

In Senate Chamber
Thursday
March 17, 1988

Senate called to Order by the President.

Prayer by Reverend David Sparks of the First Church
of the Nazarene in Augusta.

REVEREND SPARKS: Let us pray. Father on this
morning when our minds are turned not only to the
shamrock and wearing of the green, but also to the
sainted life of a follower of Christ, we are reminded
that when Christ spoke of Himself as the way He was
speaking of not only a way to the Father, but a way
of thinking, a way of acting, a way of reacting, a
way for all of life. We pray Father this morning
that You would give to these, Your servants, Your way
for their lives this day. Give to them Your
compassion, that fatal capacity for feeling what it
is like to live in the circumstances of another, that
knowledge that there can be no peace and joy for some
if there is not peace and joy for all. Give to them
Your way of putting right before interest, putting
others before self, putting the things of the spirit
before the things of the body, Your way of putting
attainment of noble ends before enjoyment of present
pleasures. Give to them Your way of putting
principles before reputations. Give to those who
labor in this room today Yourself, that they may find
God and the ordinary events and common things of this
day, that they may know that everything good comes
from the Father, that together we may rejoice in the
opportunities to promote peace and joy in this day.
All of this we pray in the name of that Christ. Amen.

Reading of the Journal of Yesterday.

PAPERS FROM THE HOUSE
Non-concurrent Matter

Bill "An Act to Establish a Presidential Primary
in Maine"

S.P. 123 L.D. 328
(C "A" S-329)

In Senate, March 14, 1988, PASSED TO BE ENGROSSED
AS AMENDED BY COMMITTEE AMENDMENT "A" (S-329).

Comes from the House PASSED TO BE ENGROSSED AS
AMENDED BY COMMITTEE AMENDMENT "A" (S-329) AS AMENDED
BY HOUSE AMENDMENT "A" (H-484), thereto in
NON-CONCURRENCE.

The Senate RECEDED and CONCURRED.

Non-concurrent Matter

Bill "An Act to Permit Sharing of Confidential
Information between Criminal Justice Agencies at all
Governmental Levels"

H.P. 1467 L.D. 1978

In Senate, March 4, 1988, PASSED TO BE ENGROSSED,
in concurrence.

Comes from the House PASSED TO BE ENGROSSED AS
AMENDED BY HOUSE AMENDMENT "B" (H-483) in
NON-CONCURRENCE.

The Senate RECEDED and CONCURRED.

Non-concurrent Matter

Bill "An Act to Establish the Strategic Training
for Accelerated Reemployment Program" (Emergency)