

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Ninth
Legislature***

OF THE

STATE OF MAINE

Volume I

FIRST REGULAR SESSION

January 3, 1979 to May 4, 1979

the Chair to order a Roll Call it requires the affirmative vote of at least one-fifth of those Senators present and voting.

Will all those Senators in favor of ordering a Roll Call, please rise and remain standing until counted.

Obviously more than one-fifth having arisen a Roll Call is ordered.

The pending question before the Senate is the Motion by the Senator from Cumberland, Senator Gill, that S. P. 263 be Passed.

A Yes vote will be in favor of Passage.

A No vote will be opposed.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEA—Ault, Chapman, Collins, Devoe, Emerson, Gill, Hichens, Huber, Katz, Lovell, McBreairty, Perkins, Pierce, Redmond, Shute, Silverman, Sutton, Trafton

NAY—Carpenter, Clark, Conley, Cote, Martin, Minkowsky, Najarian, O'Leary, Pray, Usher

ABSENT—Danton, Farley, Teague, Trozky
A Roll Call was had.

18 Senators having voted in the affirmative and 10 Senators in the negative, with 4 Senators being Absent, the Order Received Passage.

Sent down for concurrence.

Committee Reports

House

Divided Report

The Majority of the Committee on Legal Affairs on, Bill, "An Act Relating to Payment for Sales in Retail Stores under the Liquor Laws." (H. P. 6) (L. D. 12)

Reported that the same Ought to Pass as amended by Committee Amendment "A" (H-37)

Signed:

Senators:

FARLEY of York

COTE of Androscoggin

Representatives:

McSWEENEY of Old Orchard

DELLERT of Gardiner

GAVETT of Orono

CALL of Lewiston

VIOLETTE of Van Buren

SOULAS of Bangor

MAXWELL of Jay

The Minority of the same Committee on the Same subject matter Reported that the same Ought Not to Pass.

Signed:

Senator:

SHUTE of Waldo

Representatives:

STOVER of West Bath

BROWN of Gorham

DUDLEY of Enfield

Comes from the House, Bill and Papers, Indefinitely Postponed.

Which Reports were Read.

On Motion by Senator Katz of Kennebec, Tabled 1 Legislative Day, pending Acceptance of Either Committee Report.

Senate

Change of Reference

Senator Cote for the Committee on Local and County Government on, Bill, "An Act to Authorize County Appointment of Electrical Inspectors." (S. P. 248) (L. D. 698)

Reported that the same be referred to the Committee on Business Legislation.

Which Report was Read and Accepted and the Bill, Referred to the Committee on Business Legislation.

Sent down for concurrence.

Leave to Withdraw

Senator Ault for the Committee on State Government on, Bill, "An Act Relating to Compensation of the Secretary of the Public Utilities Commission." (S. P. 146) (L. D. 323)

Reported that the same be granted Leave to

Withdraw.

Which Report was Read and Accepted.

Sent down for concurrence.

Ought to Pass — As Amended

Senator Teague for the Committee on Taxation on, Bill, "An Act Relating to Supplemental Assessments under the Taxation Statutes." (S. 68) (L. D. 105)

Reported that the Same Ought to Pass as amended by Committee Amendment "A" (S-19)

Which Report was Read and Accepted and the Bill Read Once. Committee Amendment "A" was Read and Adopted and the Bill, as amended, Tomorrow Assigned for Second Reading.

Second Readers

The Committee on Bills in the Second Reading reported the following:

House

Bill, "An Act Relating to the Small Grants Program for Municipal Conservation Commissions." (H. P. 266) (L. D. 343)

Which was Read a Second Time and Passed to be Engrossed, in concurrence.

Senate

Bill, "An Act to Strengthen Regional Library Systems." (S. P. 77) (L. D. 166)

Which was Read a Second Time and Passed to be Engrossed.

Sent down for concurrence.

Orders of the Day

The President the Chair laid before the Senate the First Tabled and specially assigned matter;

Bill, "An Act to Require Motorcycle Operators and Passengers and Motor Driven Cycle Operators and Passengers to Wear Helmets if they are Minors." (H. P. 114) (L. D. 123)

Tabled—February 27, 1979 by Senator Minkowsky of Androscoggin.

Pending—Passage to be Engrossed

The PRESIDENT: The Chair recognizes the Senator from Oxford, Senator O'Leary.

Senator O'LEARY: Mr. President and Members of the Senate: Those of you, who have served either of the last two sessions with me, know how I feel about the constitutional rights of an individual's freedom of choice.

Mr. President when I have finished my presentation here today, I would like someone to table this Bill, and ask the question of the Attorney General about the constitutionality?

Can we restrict ones right to operate a certain motor vehicle in a manner that is different from others? Whether it be because of age, or color or sex or religion? In the state of Illinois the question was asked and the Helmet Law in its entirety was found unconstitutional.

Mr. President and Members of the Senate, I would submit to you that most Motorcyclists are proud of the machines, whether they be 16, 17, 18 or 60 and we do have them operators over the age of 60. They keep them highly polished, finely tuned and mechanically perfect. A Motorcyclist is more aware, more cautious than any motorist, any automobile operator. They are more aware of the danger that may be encountered by mechanical troubles, or reckless use of their machines. The ability of a motorcyclist to avoid an accident, is far beyond that of auto-operator. His visibility is unhindered, and his maneuverability is exceptional.

You heard the good Senator from Androscoggin, Senator Minkowsky tell you tests have conclusively proven that these helmets will only stand an impact of 4 miles per hour. So if you really want to do something amend the Bill making it to read, that those under the age of 18 will wear a helmet when their motorcycle is either in the process of starting or stopping, otherwise you will never see a motorcycle doing 4 miles per hour.

Mr. President and Members of the Senate:

Especially those of you who have never owned or operated a motorcycle. Let me tell you that there is a loss of peripheral vision with a helmet. There is a gain however, and it is of false security.

There is one important loss and that is the loss of hearing. As you know Mr. President and Members of the Senate, the Blue Knight Motorcycle Club is composed of men who are Law Enforcement Officers. One member riding with a friend of his, related to the Committee on Transportation, two years ago, that his friend through the loss of hearing swerved in the wrong direction and went under a Tractor Trailer.

To give you an example of what the real hard facts are, and the point to be made is that helmets can and do kill.

In the State of New York, there was an increase of 38% of those killed on motorcycles, because of broken necks. The helmet hits between the 3rd and 4th vertebra. A broken neck is clean, it is quick, it is certain, is it what you really want?

You heard the good Senator from Penobscot, Senator Trozky, tell you about those who may become welfare cases, if they do not wear a helmet, did he mention those in autos that do not wear safety belts? You heard the good Senator from Cumberland Senator Conley, express his concern for the lives of these young motorcyclists.

I signed Ought to Pass, on a Bill that he vibrantly supported in these Chambers, that would remove the School Bus lettering and the flashing red lights from the Portland Transit Company buses, that transport school children, believe me they are a lot less guarded than the age 18. The Senator from Waldo, Senator Shute described to me yesterday the tragic events of his daughter in a motorcycle accident. The broken leg, the surgery, the costs settlement and so on. She was wearing a helmet, the helmet was great and saved her from scrapes and scratches which helped preserve her beauty, I am sure.

However, there is uncontested testimony from doctors and I think that this is the key, by doctors that if there is a head injury from impact, and the helmet is not removed immediately, so that the brain and skull can expand, the victim is sure to die. Is that what we are trying to do here, kill our youngsters?

Mr. President and Members of the Senate. I was the sponsor of L. D. 9, An Act to Repeal the Requirement for Wearing Motorcycle Helmets. The governor chose to Veto this Bill, with certain reservations. At that time I addressed each of these issues and the vote to override in this body was 26 to 5. Mr. President, I do not think that at this time, that it is necessary to address all the same issues, but perhaps inject here some of my own thoughts.

Mr. President and Members of the Senate. I am going to unbare here today just a little for you to understand me and how I believe. When it seemed certain that I was taking that long journey, I became a believer in the hereafter. I have been part way there and back, every day is a beautiful day, especially when you awaken in the morning, Mr. President. If it is the desire of those here today, that we would much rather kill our kids quick, then I say pass this bill, if we would rather have them scarred and maimed, perhaps, but still alive, then we ought to kill this bill.

Ever since the passage of the helmet Repeal Law I have suffered a little bit, in my mind and my heart, because of the newspaper stories, that I would pick up and read where someone was killed and not wearing a helmet. I was bothered, I was prepared in my own thoughts, of reintroducing a mandatory helmet bill. However, on November 16, 1978 on the front page of my newspaper, an article appeared in the top left hand portion, entitled "Cycle deaths up, but not linked to the helmet repeal". As I read the article I was convinced in my own mind

that perhaps, I had done the right thing. I do sometimes question whether I had done right or wrong, but I am convinced, in my own mind that what I had done is right.

Also, Mr. President there was an increase in those who died of cervical fracture and internal injuries, which corresponded with the year that we had a helmet law, so everything balanced out.

I would like to sum it all up, Mr. President with the words of our former governor. In his veto message he said, "If L. D. 9 should become Law, we in the Executive shall closely monitor this situation and if there is any evidence of an increase in serious injuries due to the lack of helmets, we will propose Legislation to reinstate the helmet requirements.

Mr. President and Members of the Senate. Although I did not have much communication with our former governor, I know that he would have directed his aids to follow it up. Where is no recommendation it seems asinine that here today we are attempting to pass a Bill requiring those under the age of 18 to wear helmets. The best part of it is that since the repeal of the Helmet Law Bill there has not been one, not one accidental death of a person under the age of 18.

Mr. President, I know that I perhaps bored the members of this body, however I feel that I have an obligation to defend that freedom of choice, without any through ado I move that this Bill and all of its accompanying papers be Indefinitely Postponed.

The PRESIDENT: The Chair recognizes the Senator from Aroostook, Senator Carpenter.

Senator CARPENTER: Mr. President and Ladies and Gentlemen of the Senate: Just briefly, I would hope that we would oppose the Motion pending before the body, to kill this Bill, I spoke on the issue earlier this week and indicated my support.

I think that we do a lot of things, here in Augusta, which we do not know what the ramifications will be, on down the road a little ways. This Bill, simply stated will require anyone under the age of 18 on a Motorcycle either driver or passenger, shall wear a helmet.

Now I realize that in terms of balancing the Federal Budget it is a bit mundane. But I think that probably, in terms of the people of the State of Maine, especially our young people, this issue which the good Senator from Oxford Senator O'Leary, has already debated and I am sure, will see more debate this morning. Probably is more important than the debate that took place a few moments ago in this chamber.

I would hope that this morning, that we would keep the Bill as it is, I would hope that you would oppose the motion, to kill the Bill, and also oppose any amendment, such as the one that I am looking at under filing of S 20, that may be coming along later, which would negate the entire effect of the bill.

I do not think that it is too much to require, if we do not allow persons under the age of 18 to do a lot of things in this State. Why don't we, is it because we are scared of them? Do we not allow persons under the age of 20 to drink alcoholic beverages because we are afraid of them or what they will do to our State? Do we not allow persons under the age of 16 to drive a motor vehicle because we are afraid what they are going to do to the State economy or to the State?

I would maintain that primarily the laws that are on the books, for guarding the move from a minor to adulthood, are on the books primarily because the Legislature has felt in its collective wisdom, that it was for the good of the child. This is the reason that most of these laws are on the books. I would hope that we could go ahead and put, this particular statute into the books, also for the good of the child. Thank you.

The PRESIDENT: The Chair recognizes the Senator from York Senator Hichens.

Senator HICHENS: Mr. President and Members of the Senate: As related the other day, I

did vote for repeal of the helmet law. Mainly on the situations which have just been explained, by the good Senator from Androscoggin.

I felt that people, at times, could not hear with helmets on; at times their helmets got blurred and their vision was impaired, so I voted to repeal the Helmet Law.

But I am very concerned, about the passengers especially on cycles as I also explained the other day. I have just sent a note to the Senator and asked that we might change it to include just passengers. He informs me that if we go along with the Second Reading he has an amendment all written out. I hope you will vote against his proposal. Send this along to the Second Reading and have it changed to include, just the passengers so that the persons operating the motorcycle will not have their vision or their hearing impaired, as they ride with a helmet on.

The PRESIDENT: The Chair recognizes the Senator from Aroostook Senator Martin.

Senator MARTIN: Mr. Speaker, Ladies and Gentlemen of the Senate: Earlier this week, I supported this Bill, I have however changed my position on it, I would like to tell you why.

I am concerned about the enforcement aspect, I had a call earlier from the Supreme Court Judge in my Senate District. He told me one thing, that if you can not enforce it do not pass it. I have had a couple of days to think about this, and I am just wondering how they will enforce it? Are they going to require minors to carry their birth certificates? Are they going to stop every motorcycle and check them out? I mean think about this, I would therefore support the pending motion.

The PRESIDENT: The Chair recognizes the Senator from Penobscot Senator Pray.

Senator PRAY: Mr. President and Members of the Senate: I rise at this time to try to dispute some of the arguments, that have been presented here.

First of all, let us start with some of the arguments, presented by the Senator from Oxford Senator O'Leary, in reference first of all, to the concerns he has that we are identifying a certain age and a question of Constitutionality.

Now I would like to be a little serious about this issue, because you require individuals over 40 to take an eye test. Is there a constitutional question there, that we are separating age?

We also in the Legislative process, through the constitution, decide that an individual must be 25 to run for the Senate, must be, I believe it is 20 to run for the House, yet the voting age is 18.

I think that we are not being inconsistent if we decide that because of a particular age, that individuals have to take additional precaution which we consider in Legislation to be, for the benefit of society, for the health and welfare of society.

In reference to the hearing loss that a helmet supposedly gives to the driver who is wearing it. Should we if we are to be concerned about hearing and motor vehicles of all sorts, perhaps band radios, or how loud a radio can be turned up? I am sure that many of the younger generation, riding around in an automobile sometimes has a radio on, today's music, sometimes blaring out to sometimes where they can not hear a horn on a vehicle coming up to pass them.

In reference to the remarks of the Senator from Aroostook Senator Martin. As to how the law can be enforced, I would suspect that it would be enforced the same way that the present motor vehicle laws are passed. If we happen to be coming down the highway and the Senator from Aroostook Senator Martin, was driving his automobile whether or not a state trooper or a law enforcement officer would know if he even has a license. Perhaps we should repeal requiring a license, because unless you were stopped and asked for a license, they are not going to see it. There is no

requirement for a Birth Certificate to show when you were born, because your drivers license on a motorcycle or an automobile has your date of birth on it.

It is the same as the decision of a Law Enforcement Official to stop somebody who is weaving around the road or the individual looks as if he is quite young, without a helmet the Enforcement Officer may then stop them and ask them, as to whether or not they have a license and whether or not they are in violation of the law.

A few years ago, we came out with the Liquor ID Card to separate the 18 and 17 year olds, when the drinking age was lowered to 17. The drinking age has been raised, but the Liquor ID Card, is still a verification of identification and age. So we commonly require for the benefit of society, identification process, which a store owner or a bartender has the ability to ask to see. I think that this law would be enforced exactly the same way as the existing statutes that we have.

The question that we are addressing, if we defeat the present motion to kill the entire Bill. I will move the Indefinite Postponement of the Amendment. Is the safety of those individuals who we through our statutes have considered to be not yet quite mature enough to make most of the time those safe decisions. We have done it in a number of other measures, and we are not fixed upon a particular age, sometime drinking it is 20, and driving at 16. I think that you can get a drivers license. Contracts we decide that it is 18 and so on, we are all over the board on it.

But this issue is a concern of safety, well being and welfare of those individuals of a younger age, which are on a very dangerous vehicle a motorcycle. I in my younger years owned one, and did some pretty foolish things with it, luckily I survived. That is the issue, that is the question, that we have to address today. Thank you.

The PRESIDENT: The Chair recognizes the Senator from Androscoggin Senator Minkowsky.

Senator MINKOWSKY: Mr. President and Members of the Senate: I will be very brief today.

As I had stressed yesterday to this body, enforcement of this particular requirement would be virtually impossible, here in the State of Maine. The good Senator from Penobscot who is debating the point that Senator Martin brought up earlier about enforcement, stated Yes the driver or operator of that motorcycle, does have a license which states his age. But if he is driving along any one of the roads in the State of Maine, and picks up a passenger, the passenger may or may not have identification verifying his age.

This is a very important point, do we want through harassment of these people who are driving motorcycles in the State of Maine by law enforcement as a mechanism of getting at them for some particular reason. This is a very important point, to stress to you people today. We have a very short driving season here in the State of Maine. The major concern of the Motorcycle Clubs in the State of Maine has been an educational one. They stress this over and over again, at the Public Hearings which I attended, along with the members of the Transportation Committee Chaired by Senator Emerson.

It was rather interesting yesterday to note, that people who voted on the Roll Call, I requested, were approached by various members of the third house, on this particular issue. Not predicated because they were lobbying a Bill for a particular firm or organization, but individuals, as individuals. I further made inquiries about these individual lobbying efforts, by the members of the third house, and it was rather interesting to note that they matriculated down, from a member in the leadership of the second house.

Further on, I found out it was rather interesting this thing was an issue amongst the insurance carriers in the State of Maine. Amongst some of the hospitals who did not collect their bills because of injuries. This was not relevant to the kids, who are passengers on motorcycles. Any person as I said yesterday, who is concerned with the welfare, if they want the security of a helmet let it be their prerogative to place the helmet on the head of that child they want to take as a passenger. Do not mandate everything including common sense.

It is what we are asking for, in this particular measure today, to mandate common sense. I, as a father of six kids, most likely in driving a motorcycle, would put a helmet on my four year old daughter's head. I want to make that decision myself, I do not want to be told by the State of Maine or through its Law Enforcement Agencies, what I should or what I should not do.

We are going too far today, in mandating many requirements for the people of this State. If we want to maintain some degree of freedom, we better start changing our posture about mandating every single thing under a law. Which in many cases and in this particular case here is basically unenforceable.

The motorcycle organizations, who are very concerned about this, and basically as I stressed yesterday it is discrimination. You are saying to one particular class of people you are not able to make, logical, sound, intelligent decisions. To another class who may not have driven a motorcycle for more than 2 or 3 hours, because he is over 18 years of age it is perfectly OK if you do not wear a helmet, you are an expert.

As Senator O'Leary so ably pointed out the deaths that occurred in the State of Maine, there is not a single one under age 18, they are all from 19 up to 52 years of age. There are 920 youngsters who are registered to operate motorcycles in the State of Maine, there is not a single one of those people to the best of our recollection or the statistics we were able to develop that were injured or killed. I would urge this body to support the motion of the good Senator from Oxford Senator O'Leary, in the Indefinite Postponement of this particular Bill and all of its accompanying papers.

The PRESIDENT: The Chair recognizes the Senator from Oxford Senator O'Leary.

Senator O'LEARY: Mr. President would you ask the Secretary to read the Committee Report, please?

The Committee Report was Read.

The PRESIDENT: Is the Senate ready for the question? The Chair recognizes the Senator from Cumberland Senator Conley.

Senator CONLEY: Mr. President, I hope the few remarks I have to make will bring an end to the debate on this very important Bill.

I think it is an extremely important Bill, since if you are concerned really as to what happens to some young kid when he takes a trip off from a bicycle at a considerate amount of speed, I think you should vote for this Bill.

I live in an area where there are just large numbers of children, and the fact is as you see them playing inside, you just think of how beautiful it is and how lovely it is and you can cherish that nothing will ever happen to anyone.

We build contraptions like motorcycles and we put young kids on them who are not quite mature, who puts another kid on the back who is even less mature. His life is at the stake of the individual behind that wheel.

As I stated the other day we have mandated many many things with respect to putting a vehicle on the road, in an automobile to make sure it was safe. I think if we have any concern for the lives of these young kids then we should vote for this Bill and against the pending motion.

The PRESIDENT: Is the Senate ready for the question?

The Chair recognizes the Senator from York Senator Hichens.

Senator HICHENS: I am sorry to disappoint the good Senator from Cumberland, in that he was not the last speaker on this.

But I am still very much concerned about the passenger, and when the arguments were raised about not being able to tell their age, I am concerned about 12, 13, 14 year olds whom an officer could detect very easily. May be when they are up to 17 they could not tell if they were of age or not. The driver of that vehicle would be very certain that he knew whether they were of age or not before he let them become a passenger, both for insurance and for his own protection in case there was an accident.

A few years ago on the Radio I heard a new broadcaster finish off his news broadcast with what he thought was a humorous saying, what I thought was quite humorous at the time. He told about how "George had invited his girlfriend Ruth to go on a motorcycle ride with him. They were riding along and they went over a hump in the road, and the passenger was thrown off, George continued on his way Ruthless-ly. It sounded funny at the time, but it is not funny anymore because we have had many instances where passengers have been thrown off the bike and sometimes the driver has gone along and not even know that he was going alone. I still think that we should pass this along and have it amended to include the passengers.

The PRESIDENT: The Chair recognizes the Senator from Aroostook Senator Carpenter.

Senator CARPENTER: If it has not already been done, I would request the Yeas and Nays.

The PRESIDENT: A Roll Call has been requested. Under the Constitution in order for the Chair to order a Roll Call it requires the affirmative vote of at least one-fifth of those Senators present and voting.

Will all those Senators in favor of ordering a Roll Call, please rise and remain standing until counted.

Obviously less than one-fifth having arisen a Roll Call is not ordered.

The Chair will order a Division.

The pending question before the Senate is the Motion by the Senator from Oxford Senator O'Leary that this Bill and its accompanying papers be Indefinitely Postponed.

Will all those Senators in favor of Indefinite Postponement, please rise in their places to be counted.

Will all those Senators opposed, please rise in their places to be counted.

13 Senators having voted in the affirmative and 11 Senators in the negative, the Motion to Indefinitely Postpone does prevail.

The PRESIDENT: The Chair recognizes the Senator from Androscoggin Senator Minkowsky;

Senator MINKOWSKY: Mr. President having voted on the prevailing side, I now move that the Senate Reconsider its action and urge that you vote against me.

The PRESIDENT: The Chair recognizes the Senator from Cumberland Senator Conley.

Senator CONLEY: Mr. President, I request a Roll Call on the motion.

The PRESIDENT: A Roll Call has been requested. Under the Constitution in order for the Chair to order a Roll Call it requires the affirmative vote of at least one-fifth of those Senators present and voting.

Will all those Senators in favor of ordering a Roll Call, please rise and remain standing until counted.

Obviously more than one-fifth having arisen a Roll Call is ordered.

The pending question before the Senate is the Motion by the Senator from Androscoggin Senator Minkowsky that the Senate Reconsider its Action whereby it Indefinitely Postponed L. D. 123.

The Chair recognizes the Senator from Cumberland Senator Conley.

Senator CONLEY: Mr. President, I would

urge the Senate to vote Yes on the pending question.

The PRESIDENT: A Yes vote will be in favor of Reconsideration.

A No vote will be opposed.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEA—Carpenter, Clark, Collins, Conley, Devoe, Gill, Hichens, Najarian, Perkins, Pray, Shute, Silverman, Trafton.

NAY—Ault, Chapman, Cote, Emerson, Huber, Lovell, Martin, McBreairty, Minkowsky, O'Leary, Pierce, Redmond, Sutton, Usher.

ABSENT—Danton, Farley, Katz, Teague, Trotzky.

A Roll Call was had.

13 Senators having voted in the affirmative and 14 Senators in the negative, with 5 Senators being Absent, the Motion to Reconsider does not prevail.

Sent down for concurrence.

Out of Order and Under Suspension of the Rules, the Senate voted to consider the following:

Order

An Expression of Legislative Sentiment recognizing that:

John Fields of Auburn celebrated his 100th birthday on February 28, 1979... (S. P. 273) is presented by Senator Trafton of Androscoggin, cosponsored by Representatives Broudeur of Auburn and Michael of Auburn.

Which was Read and Passed.

Sent down forthwith for concurrence.

The PRESIDENT: The Chair congratulates the Senator from Oxford, Senator O'Leary, for having done such a fine job presiding yesterday.

On Motion by Senator Pierce of Kennebec, Adjourned until 10 o'clock tomorrow morning.