

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Ninth
Legislature***

OF THE

STATE OF MAINE

SECOND REGULAR SESSION

January 2 to April 3, 1980

THIRD SPECIAL SESSION

May 22, 1980

THIRD CONFIRMATION SESSION

July 17, 1980

FOURTH CONFIRMATION SESSION

July 24, 1980

FIFTH CONFIRMATION SESSION

September 12, 1980

**REPORT, HEARING TRANSCRIPT AND
RELATED MEMORANDA OF THE JOINT
SELECT COMMITTEE ON INDIAN LAND
CLAIMS**

under the Lottery Law." (H. P. 1692) (L. D. 1802)

Which was Read a Second Time.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Katz.

Senator KATZ: Mr. President L. D. 1802, has to do with the confidentiality of the identification of winners of lottery prizes. This surprises me because I was not certain that there were any winners of the Lottery in the State of Maine. The idea that we are casting some kind of confidentiality over any of the operation, any of the operation, of the lottery disturbs me. I just wanted to call the Senate's attention to it and perhaps a more sober reflection might be in order.

On Motion by Senator Shute of Waldo, tabled for 2 Legislative days, pending Passage to be Engrossed.

Bill, "An Act Authorizing the Bureau of Consumer Protection to Inform and Advise the Public and to Investigate and Prosecute Complaints Under the Fair Credit Reporting Act." (H. P. 1814) (L. D. 1926)

Which was Read a Second Time.

On Motion by Senator Katz, of Kennebec, Tabled, for 2 Legislative Days, pending Passage to be Engrossed.

House — As Amended

Bill, "An Act Providing for Return of Patients to Mental Health Institutions." (H. P. 1683) (L. D. 1792)

Bill, "An Act Relating to Suspension on Non-appearance under the Motor Vehicle Laws." (H. P. 1644) (L. D. 1753)

Bill, "An Act Amending the Charter of the York Sewer District." (H. P. 1740) (L. D. 1858)

Bill, "An Act Relating to Hunter Safety." (H. P. 1612) (L. D. 1722)

Bill, "An Act to Eliminate the Requirement for Certain Adjudicatory Proceedings before the Board of Registration in Medicine." (H. P. 1642) (L. D. 1751)

Which were Read a Second Time and Passed to be Engrossed, as amended, in concurrence.

Enactors

The Committee on Engrossed Bills reported as truly and strictly engrossed the following: An Act Relating to Winter Closing of Town Ways. (S. P. 673) (L. D. 1777)

An Act to Amend the Provisions of the Maine Certificate of Need Act Governing the Issuance of an Emergency Certificate of Need. (S. P. 697) (L. D. 1833)

An Act to Clarify the Statutes Relating to Natural Gas Pipeline Companies. (H. P. 1593) (L. D. 1704)

An Act to Amend the Laws Relating to the Maine Student Incentive Scholarship Program. (H. P. 1622) (L. D. 1732)

An Act to Limit the Activities Authorized by the Wholesale Seafood License. (H. P. 1625) (L. D. 1735)

An Act Concerning the Brake Requirements on Farm Registered Vehicles under the Motor Vehicle Laws. (H. P. 1627) (L. D. 1737)

An Act Concerning Recording, Comments and Notice Dates Under Administrative Procedure Laws. (H. P. 1643) (L. D. 1752)

An Act to Increase the Debt Limit of the Kingfield Water District from \$80,000 to \$350,000. (H. P. 1660) (L. D. 1769)

An Act to Amend the Capitol Planning Commission Law. (H. P. 1669) (L. D. 1786)

An Act to Amend the Law Dealing with the Identity of Fish Produced by Aquaculture. (H. P. 1710) (L. D. 1815)

Which were Passed to be Enacted and having been signed by the President, were by the Secretary presented to the Governor for his approval.

An Act to Increase Real Estate Broker and Salesman License and Examination Fees. (S. P. 705) (L. D. 1841)

The PRESIDENT: The Chair recognizes the

Senator from York, Senator Hichens.

Senator HICHENS: Mr. President and Members of the Senate. This is an emergency session, so to speak, or the Second Regular Session, with emergency bills, and here we have "An Act to Increase Real Estate Broker and Salesman License and Examination Fees", we are also considering "An Act to Increase Barbers Fees," An Act to increase fees for something else here and there and I think that we are going too far out of bounds.

We have a Governor who says that we are not going to have an increase in taxes, but if these aren't taxes which are going to be handed over to the people, I don't know anyway else that you can explain them. As a result I would like to start my first motion as I will make motions on the other bills that are going to follow increasing fees, and move that this Bill and all of it's accompanying papers, be Indefinitely Postponed.

On Motion by Senator Katz of Kennebec, Tabled, pending the Motion by Senator Hichens of York.

The PRESIDENT: The Chair recognizes the Senator from Sagadahoc, Senator Chapman.

Senator CHAPMAN: Mr. President and Members of the Senate. I would urge the Senate to vote in opposition to this motion.

I can understand the concerns expressed by the Senator from York, Senator Hichens, but we have to be realistic in addressing some of these issues we can't just turn our heads away.

In the case here, at the public hearing there was no opposition expressed by the real estate community, as a matter of fact they supported this as necessary and realistic to meet the expenses of the existing commission.

You will notice that this is the Governor's bill, it is a department bill, to address the needs to continue providing the services in the Real Estate Commission. Largely these needs have been caused by the salaries that are being granted through the contract. Therefore I see this as one issue that, as much as we wish not to increase costs is one that is essential and will be borne by the real estate people who are effected.

Senator Conley of Cumberland, was granted unanimous consent to address the Senate, On the Record.

Senator CONLEY: Mr. President and Members of the Senate. I was hoping I would have the opportunity of saying a few words before the motion was made by the good Senator from Kennebec, Senator Katz, with respect to the last item.

I think as the good Senator from Sagadahoc, Senator Chapman, pointed out these fees that are before this body and the other, are dedicated fees, for the operations of those departments, themselves.

If you want to start dipping into the General Fund to help along, and I do not think that there is anybody here who wants to do that, then they ought to come forward and say so.

My personal feeling is that I am opposed to any type of fee increase as well, or a tax increase as well. However, so long as the Legislature is going to allow dedicated funds to be set up, for these various boards and commissions to be in operation, then they also had better well make that decision as to whether or not they are going to allow them to adjust these fees to stay in operation. That's all.

An Act Providing Release Benefits for Certain Persons Discharged from the Maine Correctional Center. (H. P. 1714) (L. D. 1820)

On Motion by Senator Huber of Cumberland, placed on the Special Appropriations Table, pending Enactment.

An Act to Require that Children who are under 15 years of Age Wear Helmets when they are Passengers on Motorcycles or Operate Off-road Motorcycles or Motor Driven Cycles. (H.

P. 1590) (L. D. 1700)

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

Senator MINKOWSKY: Mr. President and Members of the Senate. Relevant to L. D. 1700 in it's final state here, I think I stated my position quite clearly with the original bill itself.

That it was unenforceable, it was a burden upon law enforcement, that the bonus should be on the insurance industry itself, if they are that concerned of children under 15 using motorcycles or driving them without head gear. That it should be an educational thing and not mandated under law, on that particular basis.

So basically from the original bill, I thought it was ludicrous, now as we analyze the amendment added onto the bill it makes the entire thing absurd. If you look at the amendment that is before us today in the enactment stage of this particular L. D., it says: every person under age 15 who rides as a passenger on motorcycles, or motor driven cycle, or on sidecars attached to a motor driven cycle, etc, etc, shall wear protective head gear conforming to those minimum standards of construction and performance which the Secretary of State may prescribe.

The Secretary of State at the present time is not in a position to lay down any rules and regulations and besides that you had better set aside an appropriation to give him to enforce, making out the rules and regulations that would be mandatory under this particular provision.

The second part of it: no operator of a motorcycle, etc, may allow a passenger under the age of 15 to ride in violation of this section. Such a broad general term which is nothing. How are you going to enforce it? Mothers going to go out and watch a kid ride around to be sure either on private property or on the road, that she or he abides by what the parents or guardians say? It is impossible to enforce.

The third section: no operator of an off-road motorcycle off-road on your own domicile, under age 15 may ride in violation of this section. How far do you think we are going to go with this stuff? This is absolutely absurd.

Also to get into the final section, violation of this section is a civil violation for which a forfeiture of \$25. for the first and \$50 for subsequent violations shall be adjudged.

All the facts that this particular amendment spells out are totally unenforceable, which makes the entire bill invalid.

I would make the motion at the present time, Mr. President, and Members of the Senate, that this Bill and all of its accompanying papers be Indefinitely Postponed, and I ask for a Division.

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

Senator CONLEY: Mr. President and Members of the Senate. It is unfortunate that the good Senator from Androscoggin, Senator Minkowsky, did not point out some of these personal feelings the other day, when the amendment was offered in this body, and adopted by this body.

I want to commend the good Senator from Oxford, a member of my party, for making this bill as strong as it is presently. In fact I think if he could make it a little stronger I would be willing to suspend the rules, and allow him to tack on another amendment. I think it would be an excellent time for this Senate of Maine to commend Senator O'Leary for his thoughtfulness toward this particular bill, and to Enact it.

At least the message is out there as to what the Legislature of Maine feels with respect to trying to prevent bodily harm to some innocent child, or some adult who does not have the wisdom to wear a helmet.

It would be my hope the Senate would reject the pending motion and to support overwhelmingly the Enactment of this particular bill.

The PRESIDENT: The Chair recognizes the

Senator from York, Senator Hichens.

Senator HICHENS: Mr. President and Members of the Senate. There are a great many bills, that come before us I do not have much expertise on, and so I look to others who know more about the subject and ask for their advice and quite often try to follow their advice.

I have a son-in-law who has worked for many years with motorcycles. I did not realize today when I put on my Harley-Davidson tie that this was going to come up for debate, but it is very appropriate under the circumstances. I have another son-in-law, and two sons who ride motorcycles, they were very strong in their advice that the helmet law be repealed a couple of years ago. I followed their advice and I am still glad that I did, but they also advise me that passengers especially those under 15 should be required to wear helmets.

Last Sunday afternoon, I hear the sound of a motorcycle go by my home. I looked out and there was my 10 year old grandson riding his motorbike around over the lawn, through the fields and so forth. So I called up my son-in-law and told him I noticed that he did not have a helmet on, and told him about this legislation with the amendment that Senator O'Leary had presented.

A few minutes later I saw my grandson running across the fields to his aunts home and then coming back with a helmet, before he got on the cycle again he was wearing that helmet, and he wore it all the rest of the afternoon, while riding.

My son-in-law said that he was glad I called, he would have had a helmet on his son in the beginning but he did not have one that would fit him, and that is why that he had sent for one.

I explained the bill to him and he said he thought it was a marvelous idea. He felt off-road riding was sometimes more dangerous than on-road riding for these youngsters. They might hit a hole in the field or in the driveways or so forth and it would be more dangerous without a helmet than it would be on the highways. So I hope you'll vote against the pending motion and vote to pass this bill.

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

Senator O'LEARY: Mr. President, I know according to all the newspaper reports and everything they give me credit for this amendment, however, the only part of the amendment I had anything to do with was the title. I won't tell you who the person was who gave me the amendment. The morning that I offered this amendment if you'll remember back a few days ago, I rushed down to the office, picked it up, without an opportunity to read it, took it in the office to have it reproduced and we all saw it at the very last moment of the session. No one had an opportunity to read it, least of all myself, which is perhaps an error on my part.

I know that everyone has been crediting me with trying to mess up some laws, like muzzle-loaders, and the drum beaters, so I think if I don't set the record straight on this amendment, they're going to suspect every amendment I try to attach to anything is a little bit subversive. That's not my intent.

There are parts of this amendment that was brought to my attention. One of them is enforcement. I don't know how the State Police are going to go into the woods to catch these kids, I'd hate to see them with one of our newer vehicles.

However, there is another part that bothers me, in the minimum standards of construction for the helmet. I think I described what the helmet would be. It would have to be at least 4 inches thick, weigh about 14 lbs. It says the Secretary of State may prescribe the minimum standards. There's no appropriation on this to give them any assistance. I don't know where he's going to find the expertise to do it. I support the Motion to Indefinitely Postpone.

The PRESIDENT: Is the Senate ready for the question?

The Chair recognizes the Senator from Penobscot, Senator Pray.

Senator PRAY: Thank you Mr. President, Mr. President, and Members of the Senate. The central theme seems to be how we're going to enforce this law. I would only point out to those who raised that question that perhaps the same way that we presently enforce the drinking age limit that we have, that people have to be of a certain age. The same way that we support the drinking age that individuals have to be of a certain age before they are allowed to drink. The same way that we enforce our Child Labor Laws, saying that children cannot work around machinery, and perhaps the same way that we enforce many of our other Maine Statutes, which have limitations upon individuals.

I would think also the question as to the expertise of the Secretary of State's Office, I have in the last year or so grown to admire his expertise in many matters which I did not think he would be capable of, but he always came through.

The PRESIDENT: The Chair recognizes the Senator from York, Senator Danton.

Senator DANTON: Mr. President, and Members of the Senate. As I look at L. D. 1700, as it originally started and now look at the amendment, that's the first thing that makes me stop and wonder about this type of legislation. No one's against safety. I wouldn't want to see any young boy or young girl fall off a motorcycle and get hurt.

But when you talk about civil violations and we have Members from our Judiciary Committee here, what you're doing is, you're stopping someone on a motorcycle, the law enforcement people are, and they go up to that person and they say how old are you? That person says I'm 16 years old. What does that law enforcement official do at that point? I'd like to have that question answered. There's nothing he can do. It's a civil violation. He can't arrest him. He can't ask him for identification. He cannot ask him for identification, I saw one Senator motion to me he can. He cannot!

Another thing, Mr. President and members of the Senate, his name can be Peter Danton. He can say his name is John Doe, and accept the summons even if he is 14 years old. There's no way he can prove whether that's Peter Danton or John Dopes.

Now if this is the type of legislation you want to pass. Fine! Let's pass it. Let's put it on the books, but I don't call this good legislation. It's very shoddy. The original bill at least started off in the right direction. I commend the person that introduced this. I know that that person was trying to do something right. Then we ended up with this amendment. Whatever the purpose was for the amendment, I wasn't here that day, I never would have voted for this amendment.

Really, Mr. President, and Members of the Senate, the best way to handle this is the way my good friend, the Senator from York, Senator Hichens, handled it. When he looked out in the yard and saw his grandson riding around without a helmet on, he picked up the phone and called his son-in-law and told him to get a helmet on that boy. That's the way it should be done. If you as parents can't tell your children that they shouldn't be on a motorcycle without helmets, then you're not doing your job as parents.

When you expect the Legislature every time you turn around to raise the drinking age, then lower the drinking age, and put helmets on and take helmets off, I think it's a sad state of affairs. Let me tell you there's an old saying: "that no man's life, liberty or property is safe while the Legislature's in session." Believe me in my 5 terms here, I've really gotten to believe that.

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

Senator HICHENS: Mr. President, in answer to a note that was just put on my desk, and to

relieve the concerns of many of us here in the Senate today, no one rides over my strawberry bed, helmet or no helmet.

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

Senator CONLEY: Mr. President, I risk the chance of being shot down by my colleague of my party, but I have no greater love for anyone in my party than I do for the good Senator from York, Senator Danton, he and I have been very close friends over a number of years. But the good Senator sometimes has a short memory. I agree with him, he was not present in the Senate and given the opportunity to vote on the amendment. But he was here when the bill first came before the Senate. The Roll Call I have before me on the acceptance of the Ought to Pass Report of the Committee, was that the good Senator didn't even like the original bill.

So the fact that it's been juiced up a little, to make it a little more, perhaps, restrictive for these youngsters, sort of further alienates and aggravates him. I'm delighted that he's here today to share with us this great moment and this great opportunity for him to give one more negative vote against a piece of legislation that may just possibly, just might, there's just that chance, that it might save some little kid from being seriously injured.

The PRESIDENT: The Chair recognizes the Senator from York, Senator Danton.

Senator DANTON: Mr. President, and Members of the Senate. My leader always has a way of trying to accuse me of doing things that I never did to begin with. True, I perhaps voted against the bill, but what I said was I can appreciate the intent of the sponsor of the original bill. I didn't say that I favored it, I just said that I appreciated it.

So I just want to get the record clear. I'm not changing my mind. I appreciated that person's intent. I don't believe in this type of Legislation. I believe that this is something that should be handled at home. If I had a son or daughter, and I told her I didn't want her on a motorcycle without a helmet on or him, God help them if they ever got on a motorcycle.

You know, I often say this, I often wonder sometimes if my father knew there was a Maine Legislature around. I really do. You know my dad died when I was 16 years old. He came to this country in 1904. Of course, they still call me a foreigner, I was born here. He came here in 1904, learned how to read and write on his own. Some of you can remember my mother became an American citizen at the age of 85.

My father never had to worry about Senators Conley or Senators Hichens or Senators Minkowsky who come up here and pass laws for him to run his family and tell his family what to do. He could care less, because when he'd look at Pete he'd just give a little motion or nod one way or the other and that's all it required. It didn't take any laws. Believe me. It didn't take any laws whatsoever. He had his law, I knew what his law was, believe me, I obeyed it.

The PRESIDENT: The Chair recognizes the Senator from Kennebec, Senator Katz.

Senator KATZ: Mr. President, I'm going to go and tell Judge Danton this his baby brother is just absolutely so persuasive that he must surely be proud of him. Just about the time he sat down I felt myself slipping down from my appropriate position, but fortunately I was just able to hold onto my position, when you sat down.

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

Senator MINKOWSKY: Mr. President, just two very minor points. The platitudes that were bestowed upon my colleague, from Oxford, Senator O'Leary, by my illustrious Minority Leader singing the praises of us Democrats, I want to remind him I'm of the same Party persuasion even though I'm on the opposite side of the fence as to his thinking.

Secondly, Mr. President, in discussing this particular LD with whom I consider a legal expert, Senator Collins of Knox, I asked the question that sometime last October or November there was a Supreme Court Ruling which prohibited law enforcement from just stopping cars, vehicles, motorcycles, without having a justifiable cause. Of course now I think the justifiable reason is they can stop vehicles if they set up some type of a road block for inspections of vehicles, or motorcycles.

I'm wondering if the United States Supreme Court in it's wisdom voted that particular way, is law enforcement going to be in violation in trying to make a determination who is 15 or under, in stopping motorcycles? Possibly we should address this piece of legislation in another session and have that particular point more clarified?

The PRESIDENT: Is the Senate ready for the question?

The Chair will order a Division.

Will all those Senators in favor of the Motion to Indefinitely Postpone L. D. 1700, please rise in their places to be counted.

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

The Chair recognizes the Senator from Androscoggin, Senator Minkowsky.

Senator MINKOWSKY: Mr. President, I request a Roll Call.

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 Senator Minkowsky of Androscoggin, that L. D. 1700 be Indefinitely Postponed.

A Yes vote will be in favor of Indefinite Postponement.

A No vote will be opposed.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

ROLL CALL

YEA — Chapman, Cote, Danton, Emerson, Farley, McBreairty, Minkowsky, O'Leary, Pierce, Sutton.

NAY — Carpenter, Clark, Collins, Conley, Devoe, Gill, Hichens, Huber, Katz, Lovell, Najarian, Perkins, Pray, Shute, Silverman, Teague, Trafton, Trozky, Usher.

ABSENT — Ault, Martin, Redmond.

10 Senators having voted in the affirmative, and 19 Senators in the negative, with 3 Senators being absent, the Motion to Indefinitely Postpone does not prevail.

Which was Passed to be Enacted and having been signed by the President, was by the Secretary presented to the Governor for his approval.

Emergency

An Act to Eliminate Restrictions on Grants Made by the Bureau of Mental Retardation. (H. P. 1684) (L. D. 1793)

This being an emergency measure and having received the affirmative votes of 28 Members of the Senate, with No Senators voting in the negative, was Passed to be Enacted, and having been signed by the President, was by the Secretary presented to the Governor for his approval.

Orders of the Day

The Chair laid before the Senate the first tabled and specially assigned matter:

JOINT ORDER—relative to Lakeville Plantation. (H. P. 1811)

Tabled—February 12, 1980 by Senator Katz of Kennebec.

Pending—Passage.

On Motion by Senator Pierce of Kennebec, Indefinitely Postponed, in non-concurrence.

Sent down for concurrence.

On Motion by Senator Katz of Kennebec, there being no objections, all items previously acted upon were sent forthwith.

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