

# MAINE STATE LEGISLATURE

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**LEGISLATIVE RECORD**

OF THE

***One Hundred and Eleventh  
Legislature***

OF THE

STATE OF MAINE

**Volume I**

**FIRST REGULAR SESSION**

**December 1, 1982 to May 13, 1983**

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

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

A vote of the House was taken.

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

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

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

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

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

The SPEAKER: The Chair recognizes the same gentleman.

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

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

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

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

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

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

The gentleman may proceed.

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

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

I hope that you will defeat this amendment.

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

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

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

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

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

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

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

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

A vote of the House was taken.

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

Thereupon, Committee Amendment "A" was adopted.

The Bill was passed to be engrossed as amended.

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

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

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

#### Later Today Assigned

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

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

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

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

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

#### Tabled and Assigned

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

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

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

#### Tabled and Assigned

RESOLVE, Authorizing and Directing the

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

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

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

#### Finally Passed

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

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

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

#### Orders of the Day

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

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

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

Pending—Further Consideration.

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

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

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

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

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

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

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

Pending—Further Consideration.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I hope you vote against the pending motion. The SPEAKER: The Chair recognizes the gentleman from Sanford, Mr. Tuttle.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**ROLL CALL**

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

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

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

PAIRED—Hobbins-Rotondi, Joseph-Mac-Eachern.

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

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

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

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

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

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

Pending—Passage to be Engrossed.

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

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

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

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

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

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

Pending—Acceptance of Either Report.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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