

# 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**

items were passed to be engrossed or passed to be engrossed as amended and sent up for concurrence.

#### Passed to Be Engrossed

Bill "An Act Concerning State Assistance to Areas Affected by Non-English Speaking Immigrants and Refugees" (S. P. 532) (L. D. 1555)

Bill "An Act Relating to Attendants for Power Boilers" (H. P. 1180) (L. D. 1572)

Bill "An Act Concerning Solids in Milk" (H. P. 1181) (L. D. 1573)

Bill "An Act to Suspend Operation Authority on Motor Vehicles which Fail to Comply with the Gasoline Reporting Law" (Emergency) (H. P. 1183) (L. D. 1576)

Bill "An Act to Amend the Unfair Trade Practices Law" (H. P. 1178) (L. D. 1567)

Were reported by the Committee on Bills in the Second Reading, read the second time, passed to be engrossed and sent to the Senate.

#### Amended Bill

Bill "An Act to Revise the Statutes relating to Radiation Control" (S. P. 395) (L. D. 1195) (S. "A" S-92 to C. "A" S-89)

Was reported by the Committee on Bills in the Second Reading, read the second time and passed to be engrossed in concurrence.

#### Passed to Be Enacted Emergency Measure

An Act to Override the Federal Preemption of State Authority to Regulate Alternative Mortgage Transactions (H. P. 790) (L. D. 1082)

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

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

Mr. SCARPINO: Mr. Speaker, is the House in possession of House Paper 1097, L. D. 1445, Bill "An Act to Allow Retailers to Sell Prison Made Items?"

The SPEAKER: The Chair would answer in the affirmative, having been held at the gentleman's request.

Mr. SCARPINO: Mr. Speaker, I now move that we reconsider our action whereby L. D. 1445 was passed to be engrossed and further move that this be tabled one legislative day.

Thereupon, tabled pending the motion of Mr. Scarpino of St. George to reconsider and tomorrow assigned.

The SPEAKER: The Chair recognizes the gentleman from Portland, Mrs. Nelson.

Mrs. NELSON: Mr. Speaker, is the House in possession of House Paper 836, L. D. 1072, Bill "An Act to Require the Wearing of Protective Headgear by all Motorcycle, Motor Driven Cycle and Moped Riders?"

The SPEAKER: The Chair would answer in the affirmative, having been held at the gentleman's request.

Mrs. NELSON: I now move that we reconsider our action whereby we all voted to adhere so that we could insist and ask for a committee of conference.

Mr. Racine of Biddeford requested a vote.

The SPEAKER: The pending question is on the motion of the gentleman from Portland, Mrs. Nelson, that the House reconsider its action whereby it voted to adhere. All those in favor of reconsideration will vote yes; those opposed will vote no.

A vote of the House was taken.

Whereupon, Mr. Manning of Portland requested a roll call vote.

The SPEAKER: 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 Chair recognizes the gentleman from Portland, Mrs. Nelson.

Mrs. NELSON: Mr. Speaker, Men and Women of the House: I will be very brief. I simply want the opportunity for us to reconsider so that we could then move on the motion which I would like to make for us to insist and ask for a committee of conference.

There are many people here in this House who came up to me and said, if you were to change this bill, perhaps to exclude Mopeds, perhaps to just insist that motorcyclists wear a helmet to the age of 20, we are also concerned about the insurance program, people could indeed take out more insurance if they don't wear a helmet, and the point was, if we could do that and have the opportunity to have a committee of conference with the other body who has passed this bill, we could then go with it, and that is why I ask that you please vote in favor of the motion.

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

Mr. MOHOLLAND: Mr. Speaker, Ladies and Gentlemen of the House: We have debated this bill to death and this House has chosen to kill this bill twice. I hope that you will for the third time give this bill its last rights and vote against the motion to reconsider.

I could get up and talk here all night on this bill. I have so many things in the back of my head that I could say, but I don't want to bother you nice people with all that talk tonight.

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

Mr. MANNING: Mr. Speaker, Ladies and Gentlemen of the House: I am not quite sure whether it was brought up this morning, but a week or so ago, the model state legislature was up here and they voted to put the helmet law back on. These are people who are 16, 17 and 18 years old.

Another thing, when Margaret Chase Smith was here, I asked her a question about nuclear power. Margaret Chase Smith is apparently quite familiar with this and said—I would rather be in a room full of nuclear power than on a motorcycle.

Ladies and gentlemen, before we give last rights to somebody out there who hasn't had a motorcycle helmet on because they have crashed and they are on their way, either up or down, let's give this one more try and let's try to come up with a compromise that we can all live with and not die with.

The SPEAKER: A roll call has been ordered. The pending question is on the motion of the gentleman from Portland, Mrs. Nelson, that the House reconsider its action whereby it voted to adhere. All those in favor will vote yes; those opposed will vote no.

#### ROLL CALL

YEA—Ainsworth, Andrews, Beaulieu, Benoit, Bost, Brannigan, Brodeur, Carrier, Carroll, D.P.; Carroll, G.A.; Chonko, Connolly, Cooper, Cox, Crouse, Curtis, Daggett, Diamond, Drinkwater, Foster, Hall, Handy, Hickey, Higgins, H.C.; Hobbins, Ingraham, Jacques, Joseph, Joyce, Kane, Kelly, Ketover, Kilcoyne, LaPlante, Lehoux, Lisnik, Locke, MacBride, Macomber, Manning, Martin, A.C.; Masterton, Matthews, K.L.; Matthews, Z.E.; McCollister, McGowan, McPherson, Melendy, Mitchell, E.H.; Mitchell, J.; Murphy, T.W.; Nadeau, Nelson, Paradis, P.E.; Paul, Perry, Pines, Reeves, P.; Richard, Roberts, Rolde, Soule, Sproul, Stevenson, Theriault, Thompson, Tuttle, Walker, Zirnkilton, The Speaker.

NAY—Allen, Anderson, Armstrong, Bell, Bonney, Bott, Brown, A.K.; Brown, D.N.; Cahill, Callahan, Carter, Cashman, Clark, Conary,

Cote, Crowley, Davis, Day, Dexter, Dillenback, Dudley, Erwin, Gauvreau, Greenlaw, Gwadosky, Higgins, L.M.; Holloway, Jackson, Kiesman, Lebowitz, Lewis, Livesay, MacEachern, Martin, H.C.; Masterman, Maybury, McHenry, Michael, Michaud, Moholland, Murphy, E.M.; Norton, Paradis, E.J.; Parent, Perkins, Pouliot, Racine, Randall, Reeves, J.W.; Ridley, Roderick, Rotondi, Salsbury, Scarpino, Sherburne, Small, Smith, C.B.; Smith, C.W.; Soucy, Stevens, Stover, Strout, Swazey, Tammaro, Telow, Vose, Webster, Wentworth, Weymouth.

ABSENT—Baker, Brown, K.L.; Conners, Hayden, Jalbert, Kelleher, Mahany, McSweeney, Murray, Seavey, Willey.

Yes, 70; No, 69; Absent, 11; Vacant, 1.

The SPEAKER: Seventy having voted in the affirmative and sixty-nine in the negative, with eleven being absent and one vacant, the motion does prevail.

The Chair recognizes the gentleman from Portland, Mrs. Nelson.

Mrs. NELSON: Mr. Speaker, I now move that we insist and ask for a committee of conference.

Whereupon, Mr. Racine of Biddeford requested a division.

The SPEAKER: The pending question is on the motion of Mrs. Nelson of Portland that the House insist and ask for a Committee on Conference. All those in favor will vote yes; those opposed will vote no.

A vote of the House was taken.

70 having voted in the affirmative and 69 having voted in the negative, the motion did prevail.

The SPEAKER: The Chair recognizes the gentleman from Biddeford, Mr. Racine.

Mr. RACINE: Mr. Speaker, I move we reconsider whereby we voted to insist and ask for a committee on conference.

Mr. McGowan of Pittsfield requested a roll call vote.

The SPEAKER: 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 Biddeford, Mr. Racine, that the House reconsider its action whereby it voted to Insist and ask for a Committee of Conference. All those in favor will vote yes; those opposed will vote no.

#### ROLL CALL

YEA—Allen, Anderson, Armstrong, Bell, Bonney, Bott, Brown, A.K.; Brown, D.N.; Callahan, Carrier, Carter, Cashman, Clark, Conary, Cote, Davis, Day, Dexter, Dillenback, Erwin, Gauvreau, Greenlaw, Gwadosky, Higgins, L.M.; Holloway, Jackson, Kiesman, Lewis, Livesay, MacEachern, Martin, H.C.; Masterman, Maybury, McCollister, McHenry, Michael, Michaud, Moholland, Murphy, T.W.; Norton, Paradis, E.J.; Parent, Paul, Perkins, Racine, Reeves, J.W.; Ridley, Roberts, Roderick, Rotondi, Salsbury, Scarpino, Sherburne, Small, Smith, C.B.; Smith, C.W.; Soucy, Soule, Sproul, Stover, Strout, Swazey, Tammaro, Telow, Vose, Webster, Wentworth, Weymouth.

NAY—Ainsworth, Andrews, Beaulieu, Benoit, Bost, Brannigan, Brodeur, Carroll, D.P.; Carroll, G.A.; Chonko, Connolly, Cooper, Cox, Crouse, Crowley, Curtis, Daggett, Diamond, Drinkwater, Dudley, Foster, Hall, Handy, Hickey, Higgins, H.C.; Hobbins, Ingraham, Jacques, Joseph, Joyce, Kane, Kelly, Ketover, Kilcoyne, LaPlante, Lebowitz, Lehoux, Lisnik, Locke, MacBride, Macomber, Manning, Martin, A.C.; Masterton, Matthews, K.L.; Matthews, Z.E.; McGowan, McPherson, Melendy, Mitchell, E.H.; Mitchell, J.; Nadeau, Nelson, Paradis, P.E.; Perry, Pines, Pouliot, Randall, Reeves, P.; Richard, Rolde, Stevens, Stevenson, Theriault,

Thompson, Tuttle, Walker, Zirkilton, The Speaker.

ABSENT—Baker, Brown, K.L.; Cahill, Connors, Hayden, Jalbert, Kelleher, Mahany, McSweeney, Murphy, E.M.; Murray, Seavey, Willey.

Yes, 68; No, 69; Absent, 13; Vacant, 1.

The SPEAKER: Sixty-eight having voted in the affirmative and sixty-nine in the negative, with thirteen being absent and one vacant, the motion did not prevail.

The Chair laid before the House the following matter:

An Act to Clarify, Simplify and Improve Certain Sections of the Labor Laws of Maine (S. P. 497) (L. D. 1503) (C. "A" H-185) which was tabled and later today assigned pending passage to be enacted.

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

The Chair laid before the House the following matter:

An Act to Amend the Reporting Requirements in Cases of Death Due to Abuse or Neglect (H. P. 715) (L. D. 906) (C. "A" H-173) which was tabled and later today assigned pending passage to be enacted.

On motion of Mr. Soule of Westport, tabled pending passage to be enacted and tomorrow assigned.

The Chair laid before the House the following matter:

An Act to Amend Mandatory Zoning and Subdivision Control (H. P. 1160) (L. D. 1531) which was tabled and later today assigned pending passage to be enacted.

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

The Chair laid before the House the following matter:

An Act to Amend Maine's Wrongful Death Law (H. P. 398) (L. D. 481) (C. "A" H-141) which was tabled and later today assigned pending the motion of the gentlewoman from So. Portland, Ms. Benoit, that the House adhere to its action whereby the Bill was indefinitely postponed.

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

Mr. HOBBS: Mr. Speaker, I move that we recede and concur.

The SPEAKER: The gentleman from Saco, Mr. Hobbins, moves that the House recede and concur.

The Chair recognizes the gentlewoman from So. Portland, Ms. Benoit.

Ms. BENOIT: Mr. Speaker, Men and Women of the House: First of all, I would ask you to vote against the motion to recede and concur so that if we defeat that motion I can then make the motion that this House adhere.

Last week we voted on this issue and by a margin of 29 votes we voted to indefinitely postpone this measure. You listened to the debate and you made a decision and I hope you will do the same today.

I will try to be as brief as possible, but I know that this bill has been heavily lobbied since that time. Last week, after the vote I was asked the question, "where are you coming from on this issue?" I really had given it a lot of thought and I have given it more and I would like to try to explain my feelings.

First of all, this is an insurance issue. It deals with insurance which will cover consortium or loss of companionship or love, etc. I think and I know that I believe that insurance ought to be relevant. We ought to be able to measure that relevancy. For instance, if you are homeowners and someone has an accident in your home, you can measure it, you know what you are paying for. If you have water damage to your

home, you can collect on that and you know what you are collecting for. If you have automobile insurance, if you are in an accident you can measure that, you know what you are paying for. However, I ask you, how do you measure consortium? How would you put a value on a human life?

Two years ago, this was set at \$10,000; we increased it at that time to \$50,000 and now there is a measure to increase it to \$100,000. I would suspect that the \$10,000 amount was sort of a token amount. I don't mean token in the sense that life isn't worth more than \$10,000, a token due to the fact that you can't measure the value of life.

I would further suggest that if we raise this to \$100,000, that will not become the ceiling, that will become the minimum. Put yourself in the position of being a jury or judge. If you had to place a value on someone's life for loss of companionship or love, are you going to say to that person, "Well, we think your husband was only worth \$50,000; we think your child was only worth \$10,000. I, for sure, would not say that. I would award the \$100,000. If that happens, who pays for it? The consumer pays for it in higher insurance premiums.

It is true that claimants, if they were awarded \$100,000, obviously are going to gain more than they would at \$50,000; however, let me remind you that the trial lawyer who is getting 33-1/3 percent contingency fee is certainly also going to gain. I would remind you that last week I read from a letter which I admitted was written by New York Mutual Insurance Company of Maine but I will quote that letter again. "This is typically a trial lawyer's bill and it is clearly designed to increase their contingent fee with very little or no concern to the aggrieved person or their families. Insurance companies, by nature, are not philanthropists. If their losses increase, they will surely file for rate increases which will be passed on to the insurance buying public. That effect is that the public pays the bill and the trial lawyers reap the benefits from higher judgments and fees." You can take that for whatever it is worth.

Some of you have told me this week that you have been heavily lobbied on this issue. I certainly do not object to lobbying, everyone has a right to lobby; however, I would ask you to think about who is lobbying for this bill and why. Why did they tell you we need this bill? Who is it going to benefit? I have not heard from any of my constituents on this bill, maybe you have. If you have, perhaps you will share that with us.

Finally, I would remind you that the law does provide for an award to be made in order to cover any economic losses that a person may sustain who is a dependent of one who is killed, and the current statute provides that pecuniary damages be measured by the amount required to fairly compensate the spouse, children or heirs of the deceased for actual pecuniary losses suffered by them because of the deceased's death. There is no ceiling.

I would ask you once again to please think about how you voted last week. If there is any confusion on the issue, perhaps it could be clarified by myself or some other member of this body. I would ask you to vote against the motion to recede and concur.

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

Mr. HOBBS: Mr. Speaker, Men and Women of the House: I can see again that the good gentlelady from South Portland would like to reduce this to a typical lawyer's bill. I suppose I could get up here and I could do the same thing about the insurance companies, but I think we should look at the bill and look at its merits.

This bill changes the current law only one way; it increases the legal limit on what a jury may award from \$50,000 to \$100,000 for loss of comfort, companionship, affection and security in cases of wrongful death.

Under Maine law, wrongful death is the result of a willful or a negligent act or disregard of reasonably foreseeable circumstances causing a personal injury resulting in death. There are many examples you can give of wrongful death that can occur in automobile accidents, which I mentioned to you last week involving that 17-year-old boy who was negligently killed. It involves someone who is electrocuted, it involves someone who has fallen into an uncovered well, it could involve someone who drowned because of the negligence of someone else, many other areas. As I mentioned earlier, it could be that drunken driver who kills your spouse, your friend or loved one.

The limit of \$100,000 will not be awarded in every case. The change will only allow the family of the deceased to ask for an amount up to \$100,000. It is the jury—again, it is the jury that will make the decision.

This change helps correct a situation which now exists in Maine where families of persons severely injured but not instantly killed by a negligent act may ask for an unlimited amount for pain and suffering. Let me repeat that again—this change helps correct a situation which now exists in Maine where families of persons severely injured but not instantly killed by a negligent act may ask for unlimited amounts for pain and suffering. Thus, the person who commits the act, and this is the tragedy, ladies and gentlemen, that drunken driver on the road, he is better off killing someone instantaneously than just severely injuring that person; thus the person who commits the act is better off. If you kill someone, you had better do a good job of it because if you don't, it is an unlimited exposure.

I know that the gentlelady talked about insurance and she read a letter from the insurance industry, but I bet she didn't talk with Mr. Briggs over at the Department of Insurance, the Superintendent of Insurance, and ask him his opinion. It is easy to read a letter from an insurance company, but I bet she didn't talk to the Superintendent of the Bureau of Insurance. If she had talked with Mr. Briggs, Mr. Briggs would have told her that there is no evidence that this bill will significantly impact on auto insurance rates. His office was in contact with an actuary with the Connecticut Department of Insurance last week and they have no information concerning the impact of their wrongful death act on Connecticut insurance rates. In short, if the good gentlelady would have done her homework and called Mr. Briggs, he would have informed her that he is not especially concerned about the impact on insurance rates with the passage of this bill.

As I mentioned to you earlier last week, there is an inequity in our present system, and that is that if an individual, because of some negligent act, is not killed instantaneously, then they have a lot of other things they can collect. They can collect loss of lifetime earnings, loss of lifetime enjoyment, pain and suffering, medical bills, but if that person is killed instantaneously with dependents, the estate collects funeral bills and up to \$50,000 for loss of comfort.

I think if you look at the arguments of this bill and you look at the issue involved, I think you will come down on the side of increasing the rate from \$50,000 to \$100,000. I urge you to recede and concur.

The SPEAKER: The Chair recognizes the gentlewoman from South Portland, Ms. Benoit.

Ms. BENOIT: Mr. Speaker, Men and Women of the House: I wish to respond to one issue and that is the issue of pain and suffering. Mr. Hobbins is absolutely correct, you cannot collect for pain and suffering if you are killed instantaneously because there supposedly is no pain and suffering. That is why the law is set up that way. Consortium and an award for pain and suffering are not the same thing; they are two different issues.