

# MAINE STATE LEGISLATURE

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**LEGISLATIVE RECORD**

OF THE

***One Hundred and Eleventh  
Legislature***

OF THE

STATE OF MAINE

**Volume II**

**FIRST REGULAR SESSION**

**May 16, 1983 to June 24, 1983**

**INDEX**

**FIRST CONFIRMATION SESSION**

**August 4, 1983**

**INDEX**

**FIRST SPECIAL SESSION**

**September 6 and 7, 1983**

**INDEX**

**SECOND CONFIRMATION SESSION**

**September 23, 1983**

**INDEX**

**THIRD CONFIRMATION SESSION**

**October 28, 1983**

**INDEX**

**SECOND SPECIAL SESSION**

**November 18, 1983**

**INDEX**

possible. So that its my understanding that with the support of leadership this amendment will not jeopardize the original bill and I would urge you to support its passage and if it's necessary later to take this amendment off that will be done.

On motion by Senator Trafton of Androscoggin, the Senate voted to Reconsider its action whereby LD 1657 was Passed to be Engrossed.

The PRESIDENT: The Senator has the floor. Senator TRAFTON: Mr. President, I present an amendment and move its Adoption.

The PRESIDENT: The Senator from Androscoggin, Senator Trafton offers Senate Amendment "A" and moves its Adoption.

Senate Amendment "A" (S-163) was Read and Adopted.

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

Senator CARPENTER: Mr. President, Ladies and Gentlemen of the Senate, I certainly have no objections to the amendment. I originally had intended to attempt to amend the final results of the Committee on Judiciary. First of all I want to commend what they did in their work session because they certainly did a great deal of work and put a great deal of time into this Bill and did come out with, as the Senator from Knox, Senator Collins said, a significant change in the statutes. The one thing that I was concerned about, that a group of constituents of mine seemed to be concerned about, was that in spite of things such as, the Equal Rights Amendment, and decisions of Maine Supreme Judicial Court, that it did not seem to be followed in all the courts of the State of Maine in divorce proceedings, that the man and the woman entered the court house door on an equal footing, as far as custody of the children was concerned. It is my belief that the Supreme Court of Maine has squarely said that is the case, but that is in fact I don't believe followed in all cases. It was my hope that I could amend this bill or at least have it included in some way a reaffirmation of that position put into this bill. Out of deference to the Committee and their hard work I agreed not to attempt not to amend the bill. So my only purpose in standing here today is to put my own personal understanding of the law into the Record in case some judge who is unsure of the law ever happens to check this particular section of the Legislative Record, which I admit is doubtful. But it is settled law in Maine that the man and women enter the court house on equal footing in terms of custody. And that is something that I would hope the Joint Standing Committee on Judiciary or whatever group decides to study this issue, over the summer would look at very carefully and in fact determine if some further reaffirmation in the statutes is needed. Thank you.

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

Senator TRAFTON: Thank you, Mr. President. There is no question that divorce and divorce law, and particularly child custody within divorces is one of the most pressing social issues in the State at this point in time. It's a complex issue, it's an issue which many people have different views, and many people have personal involvement. The purpose of this study proposed by this amendment with the filing number of S-163 is to study this issue and report back to the Legislature with recommendations to address some of the concerns that the good Senator from Aroostook, Senator Carpenter indicated. It's our hope that this study will be a productive study addressing the concerns he has, as well as, the other concerns that rest within this Legislature. Thank you.

Which was Passed to be Engrossed, as amended, in non-concurrence.

Sent down for concurrence.

#### Emergency

An Act to Incorporate Bills Passed in the Se-

cond Regular Session of the 110th Legislature into Title 20-A (H. P. 1145) (L. D. 1517)

#### Emergency

An Act to Permit Municipalities to Regulate Shellfish Harvesting Within State Park Lands. (H. P. 1037) (L. D. 1362)

These being emergency measures and having received the affirmative votes of 31 members of the Senate, with No Senators having voted in the negative, were Passed to be Enacted and having been signed by the President, were by the Secretary presented to the Governor for his approval.

#### Emergency

RESOLVE, Reimbursing Certain Municipalities on Account of Taxes Lost Due to Lands being Classified under the Tree Growth Tax Law. (S. P. 580) (L. D. 1676)

This being an emergency measure and having received the affirmative votes of 31 members of the Senate, with No Senators having voted in the negative, was Finally Passed, and having been signed by the President, was by the Secretary presented to the Governor for his approval.

#### Orders of the Day

The President laid before the Senate the first Tabled and specially assigned matter:

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

Tabled—May 27, 1983 by Senator CARPENTER of Aroostook.

Pending—Passage to be Enacted.

(In House May 26, 1983 Passed to be Enacted)

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

Senator MINKOWSKY: Mr. President and Members of the Senate, I happened to be in the town of Richmond, yesterday, and spoke to several people about this piece of legislation. And one of the most significant points that came across was very simply, that you people in Augusta are infringing and over-regulating our lives as citizens. One gentleman went on to state further, "You trusted us at the polls in making a decision sending you to Augusta, then trust us that we are capable, as a people and as a society, to protect our own personal well-being insofar as riding motorcycles."

I looked over very closely the Committee of Conference Report that was placed by the Transportation Committee and its conferee's and one thing came to mind. In one particular part of the Committee of Conference it says, "every person who operates a motorcycle or motor driven cycle for a period of one year following successful completion of a motorcycle or motor driven cycle driving test shall wear protective headgear." This Ladies and Gentlemen of the Senate is going to be a nightmare for the enforcement people out there. They are going to be compelled to try to make a decision of who has been driving a motorcycle in excess of one year, and who have not, because everyone who drives motorcycles are not teenagers.

It is going to cause a lot of intimidation and embarrassment by the general public against law enforcement personnel, and God knows how much they face at the present time.

We are in a regulated, or I might say an over-regulated society. I think this is the first time in my seventeen years that I have ever witnessed so many pieces of legislation going through this Legislature that directly impacts our lifestyle and says that maybe as a society, or as a people in the State of Maine, we're not capable of making their own decisions.

When this Bill first came out I referred to, and I hold in my hand, a study of the repeal of the helmet law in the State of Wisconsin. The study was Wisconsin's Motorcycle Helmet Law a Before and After Study on Helmet Law Re-

peal. Not to rehash all the different points we have gone through previously, two points, I think should be in the Record relevant to this Bill. This report states after three years of documenting helmet usage and injury we are now able to statistically establish a trend relative to injury, severity of riders wearing helmets versus those who do not. Now bear in mind we are not advocating people not to wear helmets. That's been made very very clear. Fatal injuries to the head which may or may have not been the primary cause of death are still not based on physical documentation. Not based upon physical documentation! Often times with multiple trauma although a head injury may cause a fatality, massive injuries to the body would, also, result in a fatality if the head had not been injured at all.

Another point, and finally accidents and fatality rates based on motorcycle registrations are subject to many variables to be a reliable method of evaluating accident trends. Geographic location and temperature differences directly affect cycle operation and askew data. For example in 1979 Louisiana had one thousand sixty-five accidents per ten thousand registrations, where this report was compiled had two hundred fifty-five accidents. The difference being, the cycle season in Louisiana is virtually twelve months, while Wisconsin which is similar latitude as Maine has six or seven months of comfortable cycling.

The point we tried to stress in earlier debate is not mandation of helmets on people's heads by this Legislature, but by advocating and encouraging education. There's a lot of these accidents that are not primarily the fault of the motorcyclist, even though we proved and brought out clearly that many of the accidents, that happened in Maine last year, were not because they were wearing a helmet, but they were driving under the influence of liquor or drugs or high rates of speed, were the three primary causes in Maine.

What we're saying is allow the people who operate these vehicles, or motorcycles on a seasonal basis, in Maine, to make that decision themselves. If they feel comfortable and more secure by wearing that helmet and feel protected, then that's the freedom of choice they should have.

Mr. President and Members of the Senate ever since 1977 I voted for the repeal of the helmet law and statistically which we brought forth earlier in this Session proved that Maine's rate of fatalities has not increased. That should be documentation enough that people do not want to go out and injure themselves deliberately or purposely. Allow us as individuals in a society to have the freedom of choice to make our own decisions.

When the vote is taken Mr. President and Members of the Senate, I would simply like to have this on a Roll Call vote, and I would request a Roll Call. So basically I can vote against Enactment of this particular Bill.

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

Senator DIAMOND: Thank you, Mr. President, and Members of the Senate, I'll be very brief. This is a result of the Committee of Conference, in this end of the hall in the Maine State Senate we had supporters of this original idea, and the other end of the hall we had members who were violently opposed as you've heard the good Senator from Androscoggin, Senator Minkowsky, articulate this morning.

This was a unanimous Committee of Conference Report and it does three things. One, it requests that helmets be worn during the permit stage of one driving a motorcycle. Two, it requests that that same helmet be worn for the first year of driving after receiving your license. I would interject here and say that this is not going to be a nightmare. The Secretary of State Office has already indicated that he is going to simply put on the license the month that the license was issued. Enforcement is not

going to be a problem. That has all been worked out.

Also, the third thing that this Committee of Conference came up with in a unanimous report was that the Bureau of Safety would do a public awareness program, a public awareness for the people about wearing helmets the same thing that the good Senator talked about just minutes before.

So it is a good program. It is a good Bill, and we feel that it has been worked out that the contentment of those who were violently opposed to this Legislation. It is now unanimous. It has passed in the other Body, and I would hope that you would not vote against this because it has been worked on long and hard. I think that there has been no real issue raised this morning, not one new bit of information that would have anything to do with why this Committee of Conference shouldn't be adopted.

I would point out that the reasons that we choose to have one the first year, when one would wear a helmet, is because that is when people who all testified against this Bill and for, all agreed that that was when most of the accidents took place. During the first year. So that is why everyone on the Committee agreed that this was the way that it should be.

I would, also, add that I would hope that if any, anybody including the good Senator from Androscoggin, Senator Minkowsky he could have come to us we would have explained to him some of the things that he has already said this morning, which really are no longer pertinent.

I would ask for your support. Thank you.

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

Senator BUSTIN: Mr. President, Women and Men of the Senate, I couldn't resist standing up and expressing to you the opinion of my son, who I sent the amendment to, and ask him what he thought of it. He is completely pleased with it. If you'll remember I told you that he wasn't going to let me see my grandchild, if I voted for the helmet law. Now he says that this compromise is fine, he likes it and to go with it. Thank you.

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 Enactment of LD 1072.

A Yes vote will be in favor of Enactment.

A No vote will be opposed.

The Doorkeepers will secure the Chamber.

The Secretary will call the Roll.

#### ROLL CALL

YEA—Baldacci, Brown, Bustin, Carpenter, Charette, Clark, Collins, Danton, Diamond, Dumtreble, Emerson, Erwin, Gill, Hayes, Kany, Najarian, Pearson, Perkins, Pray, Teague, Traf-ton, Violette, Wood, The President-Gerard P. Conley.

NAY—Dow, Hichens, Minkowsky, Sewall, Shute, Twitchell, Usher.

ABSENT—McBreairty, Redmond.

A Roll Call was had.

24 Senators having voted in the affirmative and 7 Senators in the negative, with 2 Senators being absent, the Bill was Passed to be Enacted and having been signed by the President, was by the Secretary presented to the Governor for his approval.

The President laid before the Senate the second Tabled and specially assigned matter:

SENATE REPORTS—from the Committee on Legal Affairs on BILL, "An Act to Provide for

Licensing of Bottle Clubs" (S. P. 509) (L. D. 1535)

Majority Report—Ought to Pass in New Draft under New Title, BILL, "An Act to Provide for Local Option Voting on Bottle Clubs" (S. P. 584) (L. D. 1694)

Minority Report—Ought to Pass as Amended by Committee Amendment "A" (S-155)

Tabled—May 27, 1983 by Senator CARPENTER of Aroostook.

Pending—The motion of Senator CHAR-ETTE of Androscoggin to Accept the Majority Report.

(Roll Call Ordered)

On motion by Senator Pray of Penobscot, Re-tabled until later in today's session.

Under Suspension of the Rules, on motion by Senator Pray of Penobscot, there being no objections, all items previously acted upon were sent forthwith.

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

#### Order Joint Order

On motion of Senator PRAY of Penobscot, the following Joint Order: (S. P. 594)

ORDERED, the House concurring, that the Joint Standing Committee on Judiciary report out a bill relating to the manner of approval of amendments to the Maine Indian Claims Settlement.

Which was Read and Passed.

Sent down for concurrence.

#### Divided Report

The Majority of the Committee on Agriculture on BILL, "An Act to Improve the Functioning of the Maine Milk Commission" (S. P. 133) (L. D. 426)

Reported that the same Ought to Pass.

Signed:

Representatives:

SHERBURNE of Dexter

LOCKE of Sebec

PARENT of Benton

CROUSE of Washington

MICHAEL of Auburn

SMITH of Island Falls

ANDERSON of Stockholm

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

Signed:

Senators:

ERWIN of Oxford

WOOD of York

HICHENS of York

Representatives:

STOVER of West Bath

MCCOLLISTER of Canton

Which Reports were Read.

On motion by Senator Carpenter of Aroostook, Tabled for 1 Legislative Day, pending Acceptance of Either Committee Report.

The PRESIDENT: The Chair recognizes the Senator from Oxford, Senator Twitchell.

Senator TWITCHELL: Mr. President is the Senate in possession of LD 1624?

The PRESIDENT: The Chair would respond in the affirmative.

An Act Concerning Volunteer Marine Patrol Officers (Emergency) (S. P. 558) (L. D. 1624) having been held at the request of the Senator.

On motion by Senator Twitchell of Oxford, the Senate voted to Reconsider its action whereby LD 1624 Failed of Passage to be Enacted.

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

Senator CARPENTER: Mr. President and Ladies and Gentlemen of the Senate, this is the item that we debated at some length the other day and both sides I think were fairly well aired.

I spoke to the Senator from Androscoggin, Senator Minkowsky, after the debate last week, and he indicated that it was very clearly not the position of the Department that they wished these volunteer officers to carry weapons, but if you look at the Bill, the Bill explicitly says that they may carry weapons. I am not sure whether or not the Department could then turn around and say well, we don't want you to carry weapons. The Bill explicitly, the last line I believe it is of the Bill I don't have it right here in front of me, says that they may be allowed to carry weapons. That is one of the major concerns that I had, and I think, concerns that did concern other people in this Chamber, and therefore that is the major reason that I will be voting against the Bill in its present form.

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

Senator MINKOWSKY: Mr. President and Members of the Senate, for your edification, I had distributed this morning a position paper for the Volunteer Patrol Officers by the Department. Let me say that the small allocation of twenty-two hundred dollars for the Marine Patrol Officers was to cover three basic volunteers. No utilization of state vehicles but just to pay the mileage should they be in an area like in Zone one, for example, down through Saco, or the mid-coast section where they would be assisting full-time officers.

I have found, also, that the volunteers in some cases are deputy sheriffs who already are authorized to carry weapons.

The Department intends to have only three volunteer Marine Patrol Officers this particular season.

As the item states it was the Department's position to enforce Marine Reserve Laws only while under the direct supervision of a regular Marine Patrol Officer. Volunteers will have no other law enforcement responsibilities. I see no great concern raised by the good Senator from Aroostook, insofar, as having the mandatory or have it stated in the present bill that they "may" because their responsibility falls directly under the Commissioner of the Department of Marine Resources and it's to (I'm just trying to find the section, Mr. President, which dealt with the volunteer officers, insofar as carrying weapons or the Department's position insofar as that was concerned).

Mr. President I would hope that this particular Bill would be Enacted as an emergency measure, as it has already been used a number of years by Inland Fisheries and Wildlife, even though now they are going to paid officers compared to the volunteer program.

It gives people who are concerned with the environment, especially Marine Biology, and people who are involved in law enforcement along Maine's coast, additional experience and this is really all that this boils down to, additional experience that these people could obtain.

I would hope that the Senate would support the Enactment of this particular Bill this morning as an emergency measure.

On motion by Senator Pray of Penobscot, Recessed until 4 o'clock this afternoon.

#### Recess

#### After Recess

The Senate called to order by the President.

The PRESIDENT: The Chair would advise the Senate, that we are on An Act Concerning Volunteer Marine Patrol Officers (Emergency) (S. P. 558) (L. D. 1624) pending Enactment.

The Chair recognizes the Senator from Androscoggin, Senator Minkowsky.

Senator MINKOWSKY: Mr. President and