

MAINE STATE LEGISLATURE

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LEGISLATIVE RECORD

OF THE

***One Hundred and Twelfth
Legislature***

OF THE

STATE OF MAINE

Volume II

FIRST REGULAR SESSION

December 5, 1984 - June 20, 1985

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FIRST CONFIRMATION SESSION

August 29, 1985

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SECOND CONFIRMATION SESSION

October 11, 1985

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FIRST SPECIAL SESSION

November 13, 1985

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Came from the Senate, with the report read and accepted and the Bill Passed to be Engrossed as amended by Committee Amendment "A" (S-129) as amended by Senate Amendment "A" (S-144) thereto.

Report was read.

On motion of Representative Diamond of Bangor, tabled pending acceptance of the committee report and tomorrow assigned.

Ought to Pass as Amended

Report of the Committee on Human Resources reporting "Ought to Pass" as Amended by Committee Amendment "A" (S-133) on Bill "An Act to Protect Applicants and Illegal Trade Practices" (S.P. 229) (L.D. 591).

Came from the Senate, with the report read and accepted and the Bill Passed to be Engrossed as amended by Committee Amendment "A" (S-133) as amended by Senate Amendment "A" (S-143) thereto.

Report was read and accepted and the bill read once.

Committee Amendment "A" (S-133) was read by the Clerk.

Senate Amendment "A" (S-143) to Committee Amendment "A" was read by the Clerk and adopted.

Committee Amendment "A" as amended by Senate Amendment "A" thereto was adopted and the Bill assigned for second reading later in today's session.

Divided Report

Majority Report of the Committee on Education reporting "Ought Not to Pass" on Bill "An Act to Amend the Maine Education Statute to Prohibit the Teaching of Alternative Lifestyles in Maine's Public Schools" (S.P. 432) (L.D. 1199)

Signed:

Senators:

BROWN of Washington
GAUVREAU of Androscoggin

Representatives:

BROWN of Gorham
CROUSE of Caribou
BOST of Orono
HANDY of Lewiston
O'GARA of Westbrook
ROBERTS of Farmington
MATTHEWS of Caribou
SMALL of Bath
FOSS of Yarmouth
LAWRENCE of Parsonsfield

Minority Report of the same Committee reporting "Ought to Pass" as amended by Committee Amendment "A" (S-138) on same Bill.

Signed:

Senator:

HICHENS of York

Came from the Senate with the Bill and accompanying papers Indefinitely Postponed.

Reports were read.

Representative Brown of Gorham moved indefinite postponement of bill and all accompanying papers in concurrence.

The SPEAKER: The Chair recognizes the Representative from Madison, Representative Richard.

Representative RICHARD: Mr. Speaker, Members of the House: I have no qualms about being against the advocacy and the promoting of homosexuality in public schools but I do have very, very strong reservations about the intent of the backers of this bill, who have indicated to me, that this bill was primarily to be used as a vehicle to force legislators to be placed on record for the next election; therefore, I urge you to go along with the vote of indefinite postponement.

Whereupon, the Bill and all accompanying papers were indefinitely postponed in concurrence.

Non-Concurrent Matter

Bill "An Act Establish Minimum Energy Efficiency Standards for Major Appliances Sold

in Maine" (H.P. 1096) (L.D. 1589) which was Passed to be Engrossed in the House on May 28, 1985.

Came from the Senate Passed to be Engrossed as amended by Senate Amendment "A" (S-145) in non-concurrence.

The House voted to recede and concur.

Reports of Committees

Unanimous Leave to Withdraw

Representative MICHAEL from the Committee on Agriculture on Bill "An Act to Limit Parimutuel Wagering to Agricultural Fairs" (Emergency) (H.P. 1068) (L.D. 1557) reporting "Leave to Withdraw"

Was placed in the Legislative Files without further action pursuant to Joint Rule 15 and sent up for concurrence.

The following item appearing on Supplement No. 1 was taken up out of order by unanimous consent:

Divided Report

Majority Report of the Committee on Transportation reporting "Ought Not to Pass" on Bill "An Act Requiring Protective Headgear for all Motorcycle, Motor Driven Cycle and Moped Riders" (S.P. 63) (L.D. 89)

Signed:

Senators:

ERWIN of Oxford
SHUTE of Waldo

Representatives:

SOUCY of Kittery
CALLAHAN of Mechanic Falls
STROUT of Corinth
CAHILL of Woolwich
McPHERSON of Eliot
MACOMBER of South Portland
MOHOLLAND of Princeton

Minority Report of the same Committee reporting "Ought to Pass" as amended by Committee Amendment "A" (S-121)

Signed:

Senator:

DANTON of York

Representatives:

THERIAULT of Fort Kent
MILLS of Bethel
POULIOT of Lewiston

Came from the Senate with the Majority "Ought Not to Pass" Report read and accepted.

Reports were read.

The SPEAKER: The Chair recognizes the Representative from South Portland, Representative Macomber.

Representative MACOMBER: Mr. Speaker, Ladies and Gentlemen of the House: I move that the House accept the Majority "Ought Not to Pass" Report.

Mr. Speaker, Ladies and Gentlemen of the House: I am not going to take much of your time this afternoon. We all know what the bill is about. It is the helmet bill for motorcyclists. I think you have all heard the arguments both for and against and I am sure you may hear some more this afternoon. I would just point out to you that the other body, by a substantial margin, has already accepted the Majority "Ought Not to Pass".

The SPEAKER: The Chair would advise the Representative that he may not discuss the results of the vote of the other body even though he has already done so.

Representative MACOMBER: Mr. Speaker, I apologize.

The SPEAKER: The Chair recognizes the Representative from Portland, Representative Nelson.

Representative NELSON: Mr. Speaker, Men and Women of the House: I would like to ask for a Division on this vote and I would like to speak briefly to my motion.

Mr. Speaker, Men and Women of the House: I, too, will be brief. I was asked by the Governor of the State of Maine to be a cosponsor of this bill and I was proud to do it because I believed in it. I think it is a very modest pro-

posal. I think we all know what it means. There are over a million people in this state. There are 40,000 motorcyclists, half of them already wear a helmet. We are talking about 20,000 people, who will cost the State of Maine, if some of them are injured, over a million dollars next year.

When I sent out my questionnaire, the people in my district, when I asked the question about helmets for motorcyclists, 80 percent, 80 percent said yes. I understand that most of you who sent out your questionnaires found out that 73 percent of those people who answered the questionnaires wanted to put helmets on motorcyclists.

Now, I know this bill isn't going very far but I think we ought to make a statement. I am not afraid of any other body in this House. I think we ought to make a statement. It isn't even on the record, it is just a division.

Mr. Speaker, the motion I believe is to accept the Majority "Ought Not to Pass", I hope you people will vote against it.

The SPEAKER: The Chair recognizes the Representative from Bethel, Representative Mills.

Representative MILLS: Mr. Speaker, Ladies and Gentlemen of the House: I would just like to explain what the Minority Report does for those of you that don't know. Probably if you look at the bill you would think what it does is require helmets for everybody who rides a motorcycle and what the Minority Report does is, currently under law, right now, anyone who rides a motorcycle their first year has to wear a helmet. Committee Amendment "A" on the Minority Report says that anyone who rides a motorcycle has to ride with a helmet for the first two years. That is all that this bill does if you accept the Minority Report. It is not to make people who already do not wear helmets wear them, which a lot of people were against because they felt they were used to not wearing a helmet and if they suddenly had to wear a helmet it would suddenly throw them off and they might get in an accident. So you will know when you vote, if you want to vote with the Minority Report, many of the motorcyclists who got up there the day of the helmet bill suggested was for us to extend another year onto the time limit that they already have to wear a helmet so people could get used to it and that is what the Minority Report does. It does not require everybody to wear a helmet.

The SPEAKER: The Chair recognizes the Representative from Biddeford, Representative Racine.

Representative RACINE: Mr. Speaker, Ladies and Gentlemen of the House: I would like to pose a question to anyone who may wish to answer it.

I can see where you can enforce the wearing of a helmet for two years because motorcyclists are licensed separately, but as a moped operator, I use my driver's license for my automobile so how would that be enforceable for a moped driver since there is no separate licensing requirement?

The SPEAKER: Representative Racine of Biddeford has posed a question through the Chair to any member who may answer if they so desire.

The Chair recognizes the Representative from Bethel, Representative Mills.

Representative MILLS: Mr. Speaker, Ladies and Gentlemen of the House: The amendment is to add on a year to motorcyclists who already have to wear helmets, it does not include moped riders. So you have a good point but the point is that it doesn't have anything to do with it.

The SPEAKER: The pending question before the House is the motion of the Representative from South Portland, Representative Macomber, that the House accept the Majority "Ought Not to Pass" Report in concurrence. Those in favor will vote yes; those opposed will vote no.

A vote of the House was taken. 73 members voted in the affirmative and 33 in the negative, the motion did prevail.

The following items appearing on Supplement No. 7 were taken up out of order by unanimous consent.

Divided Report

Majority Report of the Committee on Judiciary reportin "Ought Not to Pass" on Bill "An Act Concerning Reduction of Damages for Persons not Wearing Safety Belts or Helmets" (H.P. 586) (L.D. 856)

Signed:

Senators:

CHALMERS of Knox
CARPENTER of Aroostook

Representatives:

PAADIS of Augusta
ALLEN Of Washington
COOPER of Windham
PRIEST of Brunswick
KANE of South Portland
CARRIER of Westbrook

Minority Report of the same Committee reporting "Ought to Pass" as amended by Committee Amendment "A" (H-239) on same Bill.

Signed:

Senator:

SEWALL of Lincoln

Representatives:

MacBRIDE of Presque Isle
STETSON of Damariscotta
LEBOWITZ of Bangor
DRINKWATER of Belfast

Reports were read.

Representative Paradis of Augusta moved the House accept the Majority "Ought Not to Pass" Report.

The SPEAKER: The Chair recognizes the Representative from Damariscotta, Representative Stetson.

Representative STETSON: Mr. Speaker, Ladies and Gentlemen of the House: I hope you will vote against the Majority "Ought Not to Pass" Report and go with the Minority Report, which contains the committee amendment. I think this is a good bill. This is an effort to try to persuade people to do what they know is right but they don't want to be told by us here in Augusta that you must do it under the penalty of punishment, under the penalty of the law.

This bill simply suggests that if you are involved in a major accident and, at the time of the accident, you were not wearing your seat belt that automatically an arbitrary 20 percent will be lopped off any recovery you might get on account of not wearing the seatbelt. It has been argued that this is unfair in the case of minors. Well, that has been taken out of the original bill. This bill only applies to those who have reached maturity. It only applies to mature drivers who are not wearing their seatbelts. It does not apply in a wrongful death situation. Consequently, it would not be a penalty on the survivors whether they be widows and children or any other survivors who might be affected by virtue of such an accident.

So, it is really telling each and every one of us, you don't have to wear your seatbelt but, if you are involved in an automobile accident and you file a claim with your insurance company claiming injuries, you can expect a 20 percent deduction from that claim as a reminder that it would have been better to wear a seatbelt.

Where does the 20 percent come from? A national survey recently reporting that the wearing of seatbelts in those states where it has been mandated has reduced the damage claims somewhere between 10 and 30 percent. This 20 percent arbitray figure comes right in the middle there. So, when I say arbitrary, it is a pretty good guess, an educated guess.

Therefore, I urge you to go with the Minority, to vote against the pending motion and let's go with the Minority Report, and let's all buckle

up.

The SPEAKER: The Chair recognizes the Representative from Buxton, Representative Kimball.

Representative KIMBALL: Mr. Speaker, Ladies and Gentlemen of the House: I urge you to reject the Majority "Ought Not to Pass" Report so that we can go on to accept the Minority "Ought to Pass" in amended version.

This was my bill. I was the sponsor of L.D. 856 and I would like to explain the origin of the bill as it was an attempt to resolve a dilemma between the issues of freedom of choice and mandation and how, as responsible state government, we could go about recognizing the irrefutable evidence that seatbelts and motorcycle helmets decrease injuries and save lives, how we could go about recognizing that in statute. In an attempt to address resolution between these two issues, this bill proposed an amendment to the present comparative negligence law. At present, this law allows the examination of the degree of negligence of parties involved in accidents for the purposes of awarding damages. It should also be noted that awarding damages is all this bill would affect. It does not affect at fault issue in relationship to the accident. As in the original bill, the amended version sets a standard of 20 percent at the amount of reduction in damages for person choosing to not wear these safety devices. The amended version, however, only applies to adults who are injured in motor vehicle accidents in passenger cars. Thus, the amended bill does not affect the amounts awarded for children or to the families of those who are killed in accidents, not wanting to penalize those families.

Regarding the issue of 20 percent as the arbitrary figure that the good Representative from Damariscotta said, in the June edition of Changing Times magazine, the Kiplinger magazine, I was examining an article that quoted a DOT study that was done in 1984 regarding other states that do not allow seatbelt evidence in court. What they were saying was that in those states that have the comparative negligence law but do not allow that, what they tend to find is that when insurance companies go about working out the reduction in damages between those parties found who do not wear seatbelts at the time of the accident and the time of the injury, they said that the average percentage of reduction in damages for those folks was between 10 and 20 percent, that is where the figure fits in.

Ladies and gentlemen of the House, I believe that we are in a rather unique position. I think that we have got a bill in front of us that would allow us to promote personal responsibility. I think it would allow us to promote personal safety while also maintaining a certain degree of freedom of choice. I think that it is also unique in that we are actually reducing litigation rather than increasing litigation which is something that is unique for us too in terms of passing legislation.

I couldn't get the insurance companies to say that it would cause any decrease in our premiums but I did get them to say that the amount of increase would be more gradual, which I guess we would expect them to say.

I urge you to vote "Ought to Pass" on the amended version and I appreciate your time.

The SPEAKER: The Chair recognizes the Representative from Washington, Representative Allen.

Representative ALLEN: Mr. Speaker, Men and Women of the House: First of all, I would like to commend the sponsors of this legislation for their attempt to try to find a positive way or an economic incentive to encourage people to wear seatbelts. However, this bill does not accomplish that end. While certainly it involves economic incentive. There are those of us on the committee who believe in economic incentive as far as people buckling up. I, for one, firmly believe that if people are given

economic incentive to wear seatbelts, they will more than likely do that. But my idea of a positive economic incentive runs along the lines of some of the insurance carriers that I have talked to. They are talking in terms of economic incentives that say, if you were killed in an automobile accident while you were wearing a seat belt, we will double the payment, the indemnity payment to your family. As a matter of fact, I think there is an automobile manufacturer that is currently working under that policy. They are talking in terms of giving you a benefit on your rate premium when you pay for your insurance similar to if you have a smoke detector in your house, then you get a reduced premium. If you have taken driver education, then you get a reduced premium. If you are a non-smoker, then you get a reduced premium on your life insurance policy. So hopefully, the insurance industry is working toward a positive economic incentive, one that would say, your premiums rates will be reduced if you wear a seat belt. Of course, it won't be found until the accident occurs just like if there were a fire in your house they wouldn't determine whether or not you had a smoke detector in the house until after the incident occurs.

While I applaud the sponsors and their attempts to find an economic incentive, I submit to you that this is not the correct one, it is the negative one as opposed to a positive one.

This legislature has said loud and clear to the public that you do not have to buckle up and you do not have to wear a helmet. This bill, by the way, also affects helmets. You do not have to do that and we said that loud and clear. As a matter of fact, it made the front pages of most daily newspapers in this state. The headlines didn't say, legislators vote against mandation. The headlines in those papers said loud and clear to your constituents, legislators vote against seatbelts. I submit to you that this legislation, though quietly, probably not making the front pages tomorrow morning, would say to your constituents, what you probably didn't catch was, you don't have to buckle up, but if you are in an accident, your damages are going to be reduced by 20 percent. Well, that might sound good but what does it really mean?

Let's assume that on a quiet Sunday afternoon you are driving down the road with your family, in the morning and you are headed for Church, whatever, and inadvertently you forget to buckle up. Now, you wear your seatbelt 95 percent of the time, and I might add I wear mine 95 percent of the time, but on occasion, my mind wanders and I forget to buckle up right away, but I am usually a conscientious seatbelt wearer, I don't happen to wear it that one morning or that one afternoon and a car runs a stoplight and slams dead into my car. Unfortunately, I am not killed. I am permanently disabled, I am put in the hospital for months. My claims against that driver, will be reduced 20 percent even though I am clearly not at fault. Or, for instance, your next door neighbor is driving down the road and a drunk driver slams into him, crosses the lane, the median, hits him, slams into him, he and his family are seriously injured and hospitalized. He sustains a permanent loss at his job, he can no longer work for the rest of his life. Under normal situations, you would go to court and the injury would determine what the amount of those damages should be. Should he get x-amount of dollars for the rest of his life? How much should his payment be at this time etc., etc., etc.? What the jury would have to take into consideration at this point is we award you this much minus 20 percent. I say there is no basis for that. I think people should buckle up. I think we ought to have a positive incentive to do that but to punish people for not doing it, even if that one time is the one time they don't do it, is the wrong way to go.

I might add at this time that no other state