

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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August 29, 1985

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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

in the country has a law that does this, no other state, Maine would be the first. I have no problems with being the first state to legislate things, we have done that many times but I don't think this is the appropriate bill to take that step on.

Another thing that I would like to add, this is not a simple issue, I won't get into the many complicating factors that might occur if you went to court in a jury trial. The only people that could possibly benefit from this bill are insurance companies. You are going to be paying 100 percent of your premiums for 20 years, 10 years, whatever, but when it comes time for them to award damages, they are not going to award them on 100 percent basis so the only people that can possibly benefit from this are insurance carriers.

The Representative from Buxton referred to a letter that he received from the Professional Insurance Agents of New England in which they very politically said, it really wouldn't reduce rates but you would see a slower increase. This is from Paul J. Conley, who is the Maine Steering Committee Chair. He says, in reaction to this bill, "it therefore seems inconceivable to me that the legislature could fathom supporting a law which could even suggest that a Maine citizen could not collect 100 percent of a coverage for which he or she has paid a premium." He continued, "surcharges and penalties are really nothing more than first party punitive damages punishment of insurers and claimants for the perceived lack of safety consciousness. I seriously question factoring the concept of indemnity to make whole by imposing punishment on Maine citizens through the insurance mechanism." These words are from an insurance representative in this state. That is what the insurance people have to say about this bill.

Ultimately, what you have to ask yourself is, who benefits?

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

Representative STETSON: Mr. Speaker, Ladies and Gentlemen of the House: I would like to answer the last question, who benefits? We benefit.

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

Representative KIMBALL: Mr. Speaker, Ladies and Gentlemen of the House: While the reduction in damages is certainly something that would take place in each one of those cases, that is exactly true. One of the things that I think we ought to take a look at is that there are lots of different bills that we talk about in this House, we talk about lawyers bills, doctor bills, we talk about psychologists bills for that matter. I think that the Representative from Damariscotta is right, this is our bill.

There are going to be situations where people are going to be injured, that is the nature of what we are talking about in terms of accidents. We are not talking about a person turning 100 percent of their benefits over, we are not saying that at all. We are saying 20 percent of the benefits are going to be reduced. We are also saying that where that money will go is into reducing the cost of that you and I are going to be looking at terms of increasing costs of people who are not choosing to wear those items. Certainly, it is an issue where a person has a choice whether or not they choose to do that. I am of the opinion that the expectation that we have for people sometimes is just as important as mandating the way that things are going to be. I believe that by doing this, we will not be or perhaps in the cases of the critically ill or damaged, we might be able to do something with an amendment there. I am looking at the fact that we are really not talking about 100 percent of a person's coverage. I got to tell you that I think the insurance companies stand to lose a little bit too if it passes. I think that

part of the issue of them not being able to negotiate any longer, back and forth, the issue of the 20 percent reduction in damages that we created as a standard plays a part in that letter.

The SPEAKER: The Chair recognizes the Representative from Augusta, Representative Hickey.

Representative HICKEY: Mr. Speaker, Ladies and Gentlemen of the House: I would like to ask the sponsor, how many insurance companies have agreed to support this legislation?

The SPEAKER: Representative Hickey of Augusta has posed a question through the Chair to the sponsor who may respond if he so desires.

The Chair recognizes the Representative from Buxton, Representative Kimball.

Representative KIMBALL: Mr. Speaker, Ladies and Gentlemen of the House: None of the insurance companies came out either for nor against.

The SPEAKER: The Chair will order a vote. The pending question before the House is the motion of Representative from Augusta, Representative Paradis, that the House accept the Majority "Ought Not to Pass" Report. Those in favor of that motion will vote yes; those opposed will vote no.

A vote of the House was taken.

74 having voted in the affirmative and 24 in the negative, the motion to accept the Majority "Ought Not to Pass" Report did prevail.

Consent Calendar

First Day

In accordance with House Rule 49, the following items appeared on the Consent Calendar for the First Day:

(S.P. 486) (L.D. 1314) Bill "An Act to Facilitate Detection of Drivers Operating under the Influence of Intoxicating Liquor or Drugs" Committee on Legal Affairs reporting "Ought to Pass" as amended by Committee Amendment "A" (S-131)

Under suspension of the rules, Second Day Consent Calendar notification was given.

The Bill was passed to be in engrossed as amended in concurrence.

(S.P. 353) (L.D. 961) Bill "An Act to Implement the Recommendations of the Maine Land and Water Resources Council Ground Water Review Policy Committee" Committee on Energy and Natural Resources reporting "Ought to Pass" as amended by Committee Amendment "A" (S-132)

On motion of Representative Michaud of Medway, was removed from the Consent Calendar, First Day.

The Committee Report was accepted and the Bill read once.

Committee Amendment 'A' (S-132) was read by the Clerk.

Representative Michaud of Medway offered House Amendment "A" (H-244) to Committee Amendment "A" and moved its adoption.

House Amendment "A" to Committee Amendment "A" (H-244) was read by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Medway, Representative Michaud.

Representative MICHAUD: Mr. Speaker, Ladies and Gentlemen of the House: Briefly, what this amendment does is set back the date to July 1, 1985. When we originally passed out this unanimous report we thought the town of Bucksport would be included but it appears that it wasn't so this amendment takes care of that problem.

Thereupon, House Amendment "A" to Committee Amendment "A" was adopted.

Committee Amendment "A" as amended by House Amendment "A" thereto was adopted.

Under suspension of the rules the Bill was read the second time and the Bill passed to be engrossed as amended by Committee Amend-

ment "A" as amended by House Amendment "A" thereto. Sent up for concurrence.

(S.P. 251) (L.D. 646) Bill "An Act Concerning the Standards for Handicapped Restricted-use Elevators" Committee on Legal Affairs reporting "Ought to Pass" as amended by Committee Amendment "A" (S-128)

(S.P. 152) (L.D. 419) Bill "An Act to Amend the Habitual Offender Law" Committee on Legal Affairs reporting "Ought to Pass" as amended by Committee Amendment "A" (S-130)

(H.P. 225) (L.D. 259) Bill "An Act to Prohibit the Tampering of Automobile Emission Controls" Committee on Transportation reporting "Ought to Pass" as amended by Committee Amendment "A" (H-242)

(H.P. 1074) (L.D. 1563) Bill "An Act to Allow the Use of Botanical Pesticides in the Production of Foods Labeled or Advertised as Organic" (Emergency) Committee on Agriculture reporting "Ought to Pass"

(H.P. 884) (L.D. 1241) Bill "An Act Relating to Disposition of State-owned Real Estate" Committee on State Government reporting "Ought to Pass" as amended by Committee Amendment "A" (H-243)

Under suspension of the rules, Second Day Consent Calendar notification was given.

The Senate Papers were passed to be engrossed as amended in concurrence and the House Papers were passed to be engrossed as amended and sent up for concurrence.

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

Non-Concurrent Matter

Bill "An Act to Implement Teacher Recognition Grants and Establish a Minimum Salary for Teachers" (H.P. 1087) (L.D. 1580) which was referred to the Committee on Education in the House on May 24, 1985.

Came from the Senate under suspension of the rules and without reference to a Committee, the Bill read twice and passed to be engrossed in non-concurrence.

On motion of Representative Brown of Gorham, the House voted to recede

On motion of Representative Diamond of Bangor, tabled unassigned.

Non-Concurrent Matter

Bill "An Act to Implement Recognition Grants for Teachers, Establish a Minimum Salary for Teachers and Provide Money for School Administrative Units to Operate Preschool Programs for Handicapped Children" (H.P. 1088) (L.D. 1581) which was referred to the Committee on Education in the House on May 24, 1985.

Came from the Senate under suspension of the rules and without reference to a Committee, the Bill read twice and passed to be engrossed in non-concurrence.

On motion of Representative Brown of Gorham, the House voted to recede.

On motion of Representative Diamond of Bangor, tabled unassigned.

Non-Concurrent Matter

Bill "An Act to Implement Teacher Recognition Grants, Establish a Summer Grants Program for Teachers and Establish a Minimum Salary for 1986-87" (H.P. 1089) (L.D. 1582) which was referred to the Committee on Education in the House on May 24, 1985.

Came from the Senate under suspension of the rules and without reference to a Committee, the Bill read twice and passed to be engrossed in non-concurrence.

On motion of Representative Brown of Gorham, the House voted to recede.

On motion of Representative Diamond of Bangor, tabled unassigned.

Non-Concurrent Matter

Bill "An Act to Mandate a Course in Cardiopulmonary Resuscitation in High Schools"