

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

ment No. 1 was taken up out of order by unanimous consent:

The following Joint Order: (S. P. 505)

ORDERED, the House concurring, that a Joint Select Committee on Commercial Whitewater Rafting be established pursuant to Joint Rule 16.

Came from the Senate read and passed.

In the House, the Order was read and passed in concurrence.

The Chair laid before the House the following matter:

Bill "An Act to Revise Laws Concerning Commercial Whitewater Rafting" (S. P. 478) (L. D. 1453) which was tabled and later today assigned pending further consideration. (In House, referred to the Committee on Fisheries and Wildlife—In Senate, adhered to its action whereby the Bill was referred to the Committee on Energy and Natural Resources)

Thereupon, the House voted to recede and concur.

The Chair laid before the House the following matter:

Bill "An Act to Regulate Commercial Whitewater Rafting" (Emergency) (S. P. 479) (L. D. 1454) which was tabled and later today assigned pending further consideration. (In House, referred to the Committee on Fisheries and Wildlife—In Senate, adhered to its action whereby the Bill was referred to the Committee on Energy and Natural Resources)

Thereupon, the House voted to recede and concur.

The following paper appearing on Supplement No. 3 was taken up out of order by unanimous consent:

The following Joint Order: (S. P. 507)

ORDERED, the House concurring, that 2 bills, "AN ACT to Revise Laws Concerning Commercial Whitewater Rafting," S. P. 478, L. D. 1453 and "AN ACT to Regulate Commercial Whitewater Rafting," S. P. 479, L. D. 1454 be referred to the Joint Select Committee on Whitewater Rafting, as established by Joint Order of the Legislature S. P. 505.

Came from the Senate read and passed.

In the House, the Order was read and passed in concurrence.

Pursuant to the passage of Senate Joint Order (S. P. 505) creating a Joint Select Committee on Commercial Whitewater Rafting, the Chair appointed the following members on the part of the House:

Representatives:

McGOWAN of Pittsfield, Chair
JACQUES of Waterville
CLARK of Millinocket
MICHAUD of East Millinocket
MURRAY of Bangor
KIESMAN of Fryeburg
RODERICK of Oxford

The following papers appearing on Supplement No. 4 were taken up out of order by unanimous consent:

Divided Reports

Eleven Members of the Committee on Transportation on Bill "An Act Requiring Motorists to Protect Children in Motor Vehicles by Use of Approved Child Safety Seats" (H. P. 719) (L. D. 910) report in Report "A" that the same "Ought to Pass" in New Draft (H. P. 1149) (L. D. 1514)

Report was signed by the following members:

Senators:

DANTON of York
DIAMOND of Cumberland
EMERSON of Penobscot

— of the Senate.

Representatives:

MOHOLLAND of Princeton
McPHERSON of Eliot

THERIUALT of Fort Kent
MACOMBER of South Portland
REEVES of Pittston
NADEAU of Lewiston
CALLAHAN of Mechanic Falls
CAHILL of Woolwich

— of the House.

One Member of the same Committee on the same Bill reports in Report "B" that the same "Ought Not to Pass"

Report was signed by the following member: Representative:

STROUT of Corinth

— of the House.

One member of the same Committee on the same Bill reports in Report "C" that the same "Ought to Pass" in New Draft under New Title Bill "An Act Requiring the Use of Child Restraint Seats and the State Police to Loan Restraint Seats to Persons in Violation" (H. P. 1150) (L. D. 1515)

Report was signed by the following member: Representative:

CARROLL of Limerick

— of the House.

Reports were read.

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

Mr. CARROLL: Mr. Speaker, I now move we accept Report A.

The SPEAKER: The gentleman from Limerick, Mr. Carroll, moves that Report A, "Ought to Pass" in New Draft, be accepted.

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

Mr. STROUT: Mr. Speaker, Ladies and Gentlemen of the House: I want to make it very clear today that I am in no way opposed to using child safety seats. I am a parent, the father of six children, and my wife and I believe strongly, and always have used child safety seats. However, this bill in new draft requires car seats to be used when in some cases, which we believe strongly, would not be in the most safe way of protecting the children of this state.

I believe that parents should have the option of knowing when and when not to use a child safety seat.

Two years ago, we passed legislation in this body encouraging the use of safety seats. I believe it is working as organizations, hospitals and groups are making the seats available on a rental or purchase basis. I believe that is the procedure that we should use, and I would ask the members today to look at the new draft that came out this morning. I specifically would like to bring to your attention Section 2 of the bill. I want to read to you, in case many of you members have not read it, what it says concerning a non-parent or non-guardian.

"When such a child safety seat is not available," when a safety seat is not available for that non-parent, "the operator shall have the child properly secured in a seat belt."

At the hearing, doctors testified on a bill sponsored by Representative MacBride which would require seat belts after one year of age. Doctors opposed using seat belts on children zero to two years of age. This is one reason that I oppose this section.

When you do not have a child safety seat available, you are asking non-parents and non-guardians to have that child locked in with a seat belt. I don't think that that is in the best interest of the child's health.

I go on to read further in that paragraph and it says "except when all seating positions equipped with seat belts are occupied." They are going to exempt them if all of the seat belts are occupied. Let me explain to you about an automobile that holds six adults, all the seat belts are occupied, what are you going to do with that child? You are going to hold it in your lap.

Members, we are trying to pass a bill here today that requires child safety seats on the one hand; on the other hand, you are going to

allow them to sit in their parent's lap. Then you go on to read further and it says—"no exceptions may apply if the child is less than one year of age." Now, if they are less than one year of age, zero to one year, you are going to require that baby to be in a seat belt. How are you going to do it if all the seat belts are used? I don't understand what they are trying to do here.

Then in Section 3 of the bill, it goes on to give exceptions. It says: "The requirements in Subsections 1 and 2 shall not apply to any person over one year of age when the number of passengers exceeds the seating capacity of the vehicle. Who is going to determine the seating capacity of a vehicle? You have some vehicles out here that have five passengers, some six, some nine passengers. I know why this was put in, for the person with the large family like us, I guess. What I see happening is that an officer is going to stop families across this state, there is not going to be any available space and there is going to be exemptions out there that I feel I can't live with.

I want to go to one more section of this new draft and it is Section 6. If you read that, it tells how the court is going to waive any fine or penalty when a guardian or a parent, after the six months' trial period, and the first time you are picked up and you don't have a child safety seat in the vehicle, what the officer will tell you is that you are going to be summoned to court. The time between your summons to court and your court appearance, if you acquire a safety seat or you borrow one from a neighbor, then the court is going to throw this out.

I have another concern with this L.D., what are you going to do about handicapped children? I am going to relate to you a little experience of a boy that I had at 18 months of age—he was not handicapped but he had a body cast at 18 months—this would restrict parents from taking this child for his checkup or not allowing us to take this boy out for a Sunday afternoon ride.

I do feel that if you are going to pass legislation to require the child safety seats, that we ought to make it so that all parents or non-parents or guardians and non-guardians can stay within the law. I think what you are talking about here today is, you are putting a law on the books that is going to make people violate the law in order to transport their children or go for a family ride.

The SPEAKER: The Chair recognizes the gentlewoman from Pittston, Mrs. Reeves.

Mrs. REEVES: Mr. Speaker, Men and Women of the House: I hope that you will support the Majority "Ought to Pass" Report on this bill. The purpose of this law is to prevent death and serious injury to small children in car crashes by requiring that infants and children under four be buckled into car safety seats. These federally approved safety seats are miraculously effective. Their use prevents 80 percent of the deaths and 90 percent of the serious injuries to little children in auto accidents.

The protection of children who can't decide for themselves is an important function of our law. When immunizations and vaccinations against deadly childhood diseases became available, we didn't hesitate to require by law that children be protected. Now car crashes have been established as the leading cause of death for children under four and these tragedies can be prevented by the use of safety seats.

The Transportation Committee has worked hard on this new draft of the law which is an effort to improve on our existing law which has not been effective, it hasn't decreased the injury and death rate.

The original bills that were presented to the committee have been considerably modified to respond to issues that were raised during the public hearing and to the concerns of members of the committee.

Representative MacBride presented a child safety seat bill which was very helpful to the

committee, and this new draft has been approved 11-1 because it approaches this very serious problem in a step-by-step reasonable way, phasing in the use of seats with flexibility and allowances for unusual circumstances. For example, when a large family or large carload of people are being transported and there are not enough spaces in the car for safety seats and other passengers, these situations are exempted because the purpose of this law is to help people protect their small children, not to cause hardships to families or to be punitive. Every effort is going to be made to give people a chance to get safety seats, and when they do so, all fines will be waived. A six month phase-in period is provided after the law goes into effect in which only warnings will be issued to people to let them know that the law now requires them to buckle up their small children.

Most of the accidents that kill or maim these small children occur in the day time on good roads, in good cars, with no alcohol involved. What might have just been a minor mishap becomes a tragedy when a child is turned into a projectile and hurled against the dashboard or at a window.

We have tried a voluntary public education law and it has not decreased the deaths and serious injuries. Requiring that they be buckled in will stop these deaths and injuries. Twenty-three states have now passed legislation similar to our proposal and passage of this law in Maine will complement our strong drunk driving law and help maintain our leadership in highway safety.

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

Ms. THOMPSON: Mr. Speaker, Men and Women of the House: Legislation that we debate sometimes does not offer us a really clear-cut choice; the issues are in a gray area. We can debate either pro or con, maybe yes, maybe no, but with this bill, if we stick to the bottom line, the issue is very clear cut. The essential issue, the bottom line, is the safety of children. You have heard and you will hear peripheral arguments that seem to muddy the issue. For instance, parents' rights—well, children, however, are not property, they are human beings. Government has the responsibility of protecting those who are not adequately protected and who cannot protect themselves.

Another argument that muddies the issue—it is a financial burden. This argument is not valid, however. There are many opportunities to rent safety seats at minimal cost, affordable to everyone. The cost of a safety seat is a fraction of the cost of a color TV or a month's worth of cigarettes or soda.

Another argument that we heard two years ago and passed a bill on—well, we just need to educate people more and parents will respond. However, this is not true; this has been tried, yet we still face some grim statistics. The statistics in 1982 that measure the effect of the voluntary restraint bill we passed in 1981 for death and injuries to small children and infants who were involved in car crashes and who were not protected in safety seats are as follows: Two deaths, 650 minor injuries, almost 300 serious injuries. The statistics show that 90 percent of the deaths and 80 percent of the injuries would have been prevented if these same children had been riding in safety seats.

Unfortunately, the voluntary restraint bill is not working. Based on spot checks of traffic during 1982, we see that only 10 percent of young children were riding in secured seats. This shows that there have been no increases in the percentage of children in car seats since the voluntary law was passed in 1981.

Another argument that we often hear that muddies the central issue of this bill is the following: The insulating argument that trage-

dies we read about in the paper just will not happen to us. This is a common statement made by victims who feel—"I never thought it would happen to me." We always feel protected and immune from the statistics. It is our instinctive sense of self-preservation. However, the physicians who care for the child victims of car accidents assure us that no family is free from the hazards of the road. Statistics do not discriminate.

I would like to read to you some statements that were made by neighbors of mine when I asked them about this bill and how they reacted to it. "What if my child is smashed against the dashboard and I survive? How do I relate to my child, to the rest of my children?" Another quote: "Holding my child while traveling is as ineffective as if I were a drunk driver." Another quote: "The young unrestrained child is distracting to the driver, it is like having a bee in the car with you." Another quote: "Sure, it is a bother to put my son in a toddler seat, but what would happen if we stopped fast or stopped on impact? My child has not way of bracing himself, it would be havoc." Another quote: "I see children belted in with their parents, the child becomes a buffer zone for the parent's safety." Another quote: "The child who is handicapped from a car injury becomes a terrible cost to the state." The cost of special education is very high. Most of us are parents and grandparents and I think we can relate very well to this last quote: "An accident to a child becomes an injury to the whole family, not only to the child. The effects are very far reaching." When a parent knows they could have protected their child but neglected to do so, how does one measure their grief and guilt?

So if we examine this bill on the essential issue, the bottom line, we will know that we are talking about the safety of children. It is a very clear-cut decision.

I urge you to support the "Ought to Pass" Report.

The SPEAKER: The Chair recognizes the gentleman from Mt. Desert, Mr. Zirnkilton.

Mr. ZIRNKILTON: Mr. Speaker, I would like to pose a question through the Chair to anyone who would care to answer.

Initially when this bill was presented, it received quite a bit of publicity and I had a constituent come to me, not that he was against the bill, he just had a question. He apparently drives a Subaru and he has six rather young children and his question was—what if he and his wife are driving and they want to take all of their children with them, can he do it? That is my question.

The SPEAKER: The gentleman from Mt. Desert, Mr. Zirnkilton, has posed a question through the Chair to anyone who may care to respond if they so desire.

The Chair recognizes the gentlewoman from Pittston, Mrs. Reeves.

Mrs. REEVES: Mr. Speaker, Men and Women of the House: Section 3 of this bill, Exemption and Limitation: Requirements of Subsection 1 and 2 shall not apply to any person over one year of age when the number of passengers exceeds the seating capacity of the vehicle. This exemption for large carloads was put into the new draft by the committee as a result of testimony at the hearing on exactly that point. We felt that we wanted to begin to phase in the use of car seats for people who could do it without hardship on their family life first, so we are not requiring those large carloads to use car seats except for infants under one year old.

The SPEAKER: The Chair recognizes the gentleman from Skowhegan, Mr. Walker.

Mr. WALKER: Mr. Speaker, I would like to pose a question through the Chair. My concern is, how about the out-of-staters that come from the 26 states that don't have this law or somewhere in Canada who are just coming here? I understand there is a provision that if they buy a restraining seat within six months,

they are exempted, they don't have to pay the fine, but how do they prove they have that seat and how do we handle the out-of-stater?

The SPEAKER: The gentleman from Skowhegan, Mr. Walker, has posed a question through the Chair to anyone who may respond if they so desire.

The Chair recognizes the gentleman from Lewiston, Mr. Nadeau.

Mr. NADEAU: Mr. Speaker, Members of the House: First of all, the bill applies to Maine residents, for one thing, so it would not affect out-of-state travelers.

Secondly, just in general, I guess, to respond to the point of exemptions and all of that, what the committee attempted to do was design a bill that would address as many of those concerns as possible directly in the law so there would be no question, and I think we did that rather successfully. But I think the bottom line is that the aim of the state police in enforcing this law is not to collect fines or punish people who are trying to comply. Individual exceptions such as a very large three-year-old who is in a seat belt instead of a car seat will not be cited for a violation. This can be handled administratively with the police procedures manual so that there is some flexibility in the law. Law enforcement officials are not out there gunning for people, they are out there to protect them and uphold public safety, as we are attempting to do on the floor of this House today. There is some flexibility there.

There are provisions in the bill that attempt to make it easier for those people with large families. Incidentally, the situation presented by Representative Strout in terms of the six adults in the car and children on their laps, situations like that are not an every day occurrence, and I think if you are driving a car with a large number of passengers in it, I think you are a little more cautious to begin with for that reason alone—that you have more people that you are responsible for as you are driving a vehicle. There are obviously many, many situations that can occur, but I think the bill is broad enough and has enough built-in protection so that what it will do is what its intent is, and that is to assist us in encouraging people to protect the life and health of young children.

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

Mr. MACOMBER: Mr. Speaker, Ladies and Gentlemen of the House: Very briefly, I would like to read you a letter that was published in Muskegon Chronicle. It regards Public Act 117 that was passed in the state of Michigan in 1981. The letter says: "Dear Editor: I would like to tell your readers how mad I was when I was forced to go out and pay \$45 for an infant seat and to top it off, we couldn't fit everybody in my pickup truck with that big bulky thing. On April the 2nd, my wife was forced to go off the highway into a ditch to avoid a collision, 55 miles an hour to a dead stop. The back of the child's seat was facing the windshield, as I was told the law required. That seat broke off, the ashtray cracked the windshield, chipped the dashboard, our baby didn't have a scratch on her. I would like to thank God and whoever else is responsible for passing that 'stupid law'."

The SPEAKER: The Chair recognizes the gentleman from Washington, Mrs. Allen.

Mrs. ALLEN: Mr. Speaker, I would like to pose a question through the Chair. Could I have a definition of seating capacity? Is that the same as seat belt stations in the car?

The SPEAKER: The gentlewoman from Washington, Mrs. Allen, has posed a question through the Chair to anyone who may respond if they so desire.

The Chair recognizes the gentlewoman from Pittston, Mrs. Reeves.

Mrs. REEVES: Mr. Speaker, Members of the House: Yes, it is identical as seat belts, as she said.

The SPEAKER: The Chair recognizes the gentleman from Canton, Mr. McCollister.

Mr. McCOLLISTER: Mr. Speaker, I would like to pose a question through the Chair to Representative Reeves on her previous answer.

What did she mean by "We were addressing large families this way in the beginning." You left me with the impression that this was only the beginning of the legislation.

The SPEAKER: The gentleman from Canton, Mr. McCollister, has posed a question through the Chair to the gentlewoman from Pittston, Mrs. Reeves, who may respond if she so desires.

The Chair recognizes that gentlewoman.

Mrs. REEVES: Mr. Speaker, Members of the House: I mean that this legislation is designed to help the people who can easily comply with putting their small children in seat belts to do so. We felt that the issue of large carloads and the large family was just too difficult to deal with and that we didn't want to deal with it in this legislation, and so we made the exemption for large carloads and large families. We don't have any plans for future legislation that is going to legislate how many people you have riding in your car.

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

Mr. STROUT: Mr. Speaker, I would like to ask for a roll call and I would like to remind my good friend from Lewiston, Mr. Nadeau, that he says it is not an every day occurrence that you would have six people in a vehicle. I would remind him that with myself and my wife and our six children, it is an everyday occurrence.

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 in favor of a roll call 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 before the House is on the motion of the gentleman from Limerick, Mr. Carroll, that the House accept the Report "A", "Ought to Pass." Those in favor will vote yes; those opposed will vote no.

The Chair recognizes the gentlewoman from Washington, Mrs. Allen.

Mrs. ALLEN: Mr. Speaker, I wish to pair my vote with the gentleman from Saco, Mr. Hobbins. If he were here and voting, he would be voting yea; if I were voting, I would be voting nay.

The SPEAKER: The Chair recognizes the gentlewoman from Bethel, Miss Brown.

Miss BROWN: Mr. Speaker, I wish to pair my vote with the gentlewoman from Edgecomb, Mrs. Holloway. If she were here and voting, she would be voting yea; I would be voting nay.

The SPEAKER: The Chair recognizes the gentlewoman from Sebec, Mrs. Locke.

Mrs. LOCKE: Mr. Speaker, I wish to pair my vote with the gentleman from Durham, Mr. Hayden. If he were here, he would be voting yea; I would be voting nay.

The SPEAKER: The pending question is on the motion of the gentleman from Limerick, Mr. Carroll, that the "Ought to Pass" in New Draft Report "A" be accepted. All those in favor will vote yes; those opposed will vote no.

ROLL CALL

YEA—Ainsworth, Anderson, Andrews, Baker, Beaulieu, Bost, Bott, Brodeur, Brown, A.K.; Cahill, Callahan, Carroll, D.P.; Carroll, G.A.; Carter, Cashman, Chonko, Clark, Coper, Cote, Cox, Crouse, Crowley, Daggett, Dexter, Diamond, Dillenback, Drinkwater, Erwin, Foster, Greenlaw, Gwadosky, Hall, Hickey, Higgins, H.C.; Higgins, L.M.; Ingraham, Jacques, Joseph, Joyce, Kane, Kelly, Kiesman, LaPlante, Lebowitz, Lehoux, Lisnik, Livesay, MacBride, MacEachern, Macomber, Manning, Martin, A.C.; Martin, H.C.; Matthews, K.L.; Matthews, Z.E.; Maybury, McCollister, McGowan, McHenry, McPherson, McSweeney, Melendy, Michael, Mitchell, E.H.; Mitchell, J.; Moholland, Murphy, Murray, Nadeau, Nelson, Norton, Pa-

radis, E.J.; Paradis, P.E.; Paul, Perry, Pines, Pouliot, Racine, Randall, Reeves, P.; Richard, Rolde, Rotondi, Scarpino, Seavey, Small, Stevens, Stevenson, Stover, Swazey, Telow, Theriault, Thompson, Tuttle, Vose, Walker, Wentworth, Weymouth, The Speaker.

NAY—Armstrong, Bell, Bonney, Brown, D.N.; Conners, Davis, Day, Handy, Jackson, Kilcoyne, Lewis, Masterman, Michaud, Parent, Reeves, J.W.; Ridley, Roberts, Roderick, Salisbury, Sherburne, Smith, C.B.; Smith, C.W.; Soucy, Sproul, Strout, Tammaro, Webster, Willey, Zirkilton.

ABSENT—Benoit, Brannigan, Carrier, Conary, Connolly, Curtis, Dudley, Gauvreau, Jalbert, Kelleher, Ketover, Mahany, Masterton, Perkins, Soule.

PAIRED—Allen-Hobbins, Brown, K.L.-Holloway, Hayden-Locke.

Yes, 99; No, 29; Absent, 15; Paired, 6; Vacant, 2.

The SPEAKER: Ninety nine having voted in the affirmative and twenty nine in the negative, with fifteen being absent, six paired and two vacant, the motion does prevail.

Thereupon, the New Draft was read once and assigned for second reading tomorrow.

Majority Report of the Committee on Education reporting "Ought to Pass" on Bill "An Act to Allow the Department of Educational and Cultural Services to Administer the Child Nutrition Program in Private, Nonprofit Schools" (H. P. 772) (L. D. 1002)

Report was signed by the following members:

Senators:

CLARK of Cumberland
HAYES of Penobscot
HICHENS of York

— of the Senate.

Representatives:

MATTHEWS of Caribou
LOCKE of Sebec
CROUSE of Washburn
SMALL of Bath
MURPHY of Kennebunk
BOTT of Orono
RANDALL of East Machias

— of the House.

Minority Report of the same Committee reporting "Ought Not to Pass" on same Bill.

Report was signed by the following members:

Representatives:

SOUCY of Kittery
THOMPSON of South Portland
BROWN of Gorham

— of the House.

Reports were read.

The SPEAKER: The Chair recognizes the gentlewoman from Sebec, Mrs. Locke.

Mrs. LOCKE: Mr. Speaker, I move acceptance of the Majority "Ought to Pass" Report.

The SPEAKER: The gentlewoman from Sebec, Mrs. Locke, moves acceptance of the Majority "Ought to Pass" Report.

The gentlewoman may proceed.

Mrs. LOCKE: Mr. Speaker, Men and Women of the House: The federal government is not administering the child nutrition program in private schools. The United States Department of Agriculture has requested that a state agency administer these programs and will be turning the program over to the states in the near future.

The Department of Education and Cultural Services is requesting through this bill permission to administer the program in this state, and the majority of the Committee on Education felt that the Department of Education is the logical agency to do it for two reasons—the department administers the program in public schools, and the unit is already in place and functioning. The state has not administered the program in the past because of the state's federal matching requirements. Federal law was changed to eliminate the requirement for the states to raise and distribute state money

to private schools if it is prohibited to do so by state law, and this bill would prohibit the use of any state funds.

Thereupon, the Majority "Ought to Pass" Report was accepted, and the Bill read once and assigned for second reading tomorrow.

(Off Record Remarks)

On motion of Mr. Theriault of Fort Kent, Adjourned until nine o'clock tomorrow morning.