

# MAINE STATE LEGISLATURE

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learn that 1% of the people who take this medication that saves lives could die from a bad side effect. If that is what you want to know it is already available. It is available from AARP as you heard earlier. It is available on the websites. It is available from Consumer Reports. So, if you don't have a computer and you don't have a library you must have a pharmacy because we haven't managed to put all of them out of business yet, just most of them. You can go and get this information for nothing.

I think that I know the results of how we are going to vote tonight and I don't hope to change that. I just hope to give you an idea that the solution is not to create a new bureaucracy to take money away from the drug manufacturers and, therefore, increase what they need to charge us for the medications that keep us well and keep us alive. The solution is much more simple. If we like this approach with drugs maybe we will like it with something else. Maybe we will like it about soft drinks or beer or automobiles. Do we consider that we might charge automobile manufacturers? There aren't as many of those so instead of \$1,000 let's charge them \$100,000 and we will create an agency and a website and on that website we will explain the crash test results and show pictures of the crash test dummies. Is that where we want to go? I know it is popular to beat up the drug companies and I don't always agree with the drug companies. I think there are lots of things that they can do different and if they asked me I would help them, but this isn't a productive use of our time.

Last night I was struck when somebody says that with all that we have to do and the budget problems that we have are we spending all this time on something that really doesn't amount to much? I think that may have been true last night and I assure you that it is certainly true this evening. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Augusta, Representative Lerman. Having spoken twice now requests unanimous consent to address the House a third time. Is there objection? Chair hears no objection, the Representative may proceed.

Representative **LERMAN**: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. With all due respect to the fine Representative from Oakland, Representative Nutting I just want to clarify one thing. There is no question that there is a lot of information available. I do agree that some of it is in very small print and not easy to read, but at the same time you need to understand that the basis of that information is not the result of all clinical trials. The basis of that information is simply the result of those clinical trials that the pharmaceutical companies have chosen to publicly disclose. So, it is not complete information.

Just so we are all clear, let me say that this is not about creating a bureaucracy. We have gone out of our way to keep this very simple. If the pharmaceutical companies come forward and do what they said they would do that would be all that would be necessary. There would be no additional requirement except for them to stand by the word that they gave to the consumers of pharmaceuticals in this country that they would disclose. They have not done that and if they do that then they will comply with this law just by doing what they said that they would do.

The third thing and last thing that I will say is this. This is not a solution looking for a problem. Unlike some legislation that we debate here this is not speculating on what might happen at some point in the future. All you have to do is go back over the last few years and read numerous newspaper articles and see that this issue has affected thousands of people in this country. The failure on the part of the pharmaceutical companies in the past to not fully disclose has resulted in thousands of people being affected by their medications in a way that was absolutely unexpected by pharmacists, by doctors, by consumers, by

patients and, in fact, some people have died as a result of the failure to fully disclose. This is not a solution looking for a problem. This is, in fact, a problem that has affected many, many people in our country and this is an effort to try to create very modest accountability so that our constituents are protected and the pharmaceutical companies are held to their word. Thank you Mr. Speaker.

The SPEAKER: A roll call has been ordered. The pending question before the House is Acceptance of the Majority Ought to Pass as Amended Report. All those in favor will vote yes, those opposed will vote no.

**ROLL CALL NO. 288**

YEA - Adams, Ash, Babbidge, Barstow, Beaudette, Blanchard, Blanchette, Bliss, Brannigan, Brautigam, Bryant, Burns, Cain, Campbell, Canavan, Clark, Craven, Cummings, Driscoll, Duchesne, Dudley, Dunn, Duplessie, Eberle, Eder, Faircloth, Farrington, Finch, Fisher, Gerzofsky, Goldman, Grose, Hanley S, Harlow, Hutton, Jackson, Jennings, Koffman, Lerman, Lundeen, Marley, Mazurek, Merrill, Miller, Mills, Moody, Norton, O'Brien, Paradis, Patrick, Pelletier-Simpson, Percy, Perry, Pineau, Pingree, Piotti, Rines, Schatz, Smith N, Smith W, Thompson, Tuttle, Twomey, Valentino, Walcott, Watson, Webster, Wheeler, Woodbury, Mr. Speaker.

NAY - Austin, Berube, Bierman, Bishop, Bowen, Bowles, Browne W, Bryant-Deschenes, Carr, Cebra, Churchill, Clough, Collins, Cressey, Crosby, Crosthwaite, Curley, Curtis, Daigle, Davis G, Davis K, Dugay, Duprey, Edgecomb, Fitts, Fletcher, Flood, Glynn, Greeley, Hall, Hamper, Hanley B, Jacobsen, Jodrey, Joy, Kaelin, Lansley, Lewin, Lindell, Marean, McCormick, McFadden, McKane, McKenney, McLeod, Millett, Moulton, Muse, Nass, Nutting, Ott, Pinkham, Plummer, Rector, Richardson D, Richardson E, Richardson W, Robinson, Rosen, Saviello, Seavey, Sherman, Shields, Stedman, Sykes, Tardy, Thomas, Trahan, Vaughan.

ABSENT - Annis, Brown R, Emery, Fischer, Hogan, Hotham, Makas, Marraché, Moore G, Pilon, Richardson M, Sampson.

Yes, 70; No, 69; Absent, 12; Excused, 0.

70 having voted in the affirmative and 69 voted in the negative, with 12 being absent, and accordingly the Majority Ought to Pass as Amended Report was **ACCEPTED**.

The Bill was **READ ONCE**. **Committee Amendment "A" (H-661)** was **READ** by the Clerk and **ADOPTED**. The Bill was assigned for **SECOND READING** Thursday, June 9, 2005.

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By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH**.

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The Chair laid before the House the following item which was **TABLED** earlier in today's session:

Bill "An Act To Amend the Maine Tort Claims Act"  
(H.P. 655) (L.D. 936)  
(C. "A" H-657)

Which was **TABLED** by Representative **DUPLESSIE** of Westbrook pending the motion of Representative **CARR** of Lincoln to **ADOPT** House Amendment "A" (H-666) to **Committee Amendment "A" (H-657)**.

Representative **PELLETIER-SIMPSON** of Auburn moved that **House Amendment "A" (H-666)** to **Committee Amendment "A" (H-657)** be **INDEFINITELY POSTPONED**.

The SPEAKER: The Chair recognizes the Representative from Lincoln, Representative Carr.

Representative **CARR**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I am sure that

you want this to be fast and I will try to comply with that. I know that you have heard quite a few stories about this, but basically, there are already plenty standards for the term recklessness in Maine law. It is a standard in the New York code under the tort bill, as it deals with immunity for emergency responders. Reckless or gross negligence is a standard for civil liability in Maine and it is frequently found in situations as an exception to immunity. I will give you a few examples. In Maine, harbormasters are protected under civil liability for negligence, recklessness or bad faith. In addition, teachers are immune from civil liability under the same terms. A medical examiner is also exempt under the same terms. These are some of the examples.

This morning or yesterday we heard that there may be a problem as far as getting insurance coverage under the term recklessness. In the State of Maine, the Maine Municipal Association provides insurance coverage for 480 of the 492 towns and Maine Municipal Association can see no reason why they would not cover it whether it was called reckless or negligent under the present law.

Mr. Speaker this is a very important bill. It is very important to a very small class of people. Those are the people who respond to emergency situations and I would ask that when you cast your vote that you think about that and try to protect those people and, at the same time, protect the Nortons and similar people affected by this. This does still give those people an avenue to the court system. The only thing it does is that it also gives some assistance to those people who have to drive in adverse conditions and at times at high speeds.

Although there is plenty of coverage here, having been on the other side of receiving these summonses as a principal in a lawsuit before that generally happens by you receiving a call from the deputy sheriff that you know pretty well and he wants to meet you somewhere and he serves those papers on you. The last time that I was sued was because I was a supervisor and I was in charge on the night that an accident happened. Not only was I sued, but my lieutenant was sued, the State Police Chief was sued and the Commissioner of Public Safety was sued. This case went on for three years. Although it didn't cost me anything other than the cost of defense there was a lot of cost to myself, to my family and we had to live through this for three years.

The reason that I have taken the time to do this is that I just want to make sure that other people who get caught up in these situations don't have to go through this as well. I would ask that you follow my light. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Frankfort, Representative Lindell.

Representative LINDELL: Mr. Speaker, point of order.

The SPEAKER: The Representative may proceed.

Representative LINDELL: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I have been reading Mason's and according to Mason's the motion to indefinitely postpone is only to be made on the main motion and also defines a motion to amend as a subsidiary motion so my question to the Speaker is whether a motion to indefinitely postpone is properly made on a motion to amend a bill?

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

Representative MILLS: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. Let me address the issues raised by the good Representative from Lincoln's proposed amendment. He suggested that in other parts of the law the term recklessness is used. In terms of the operation of a motor vehicle the only time the term recklessness is used is in the context of criminal law. The inconsistency posed by this amendment, with understanding of the good intentions behind it,

is that under the Tort Claims Act if a person who is a government official is operating a motor vehicle in a reckless manner they are committing a crime if you incorporate the definition from the criminal statute and I know of no other that applies to the operation of motor vehicles. If they are committing a crime then there is no indemnification. The Tort Claims Act does not provide that their employer indemnifies the officer or other official. That raises an inconsistency.

Recklessness is an extreme kind of conduct. It is basically criminal conduct in the context of motor vehicles. It is the kind of conduct that warrants, under other statutes, you're being denied insurance if you are found to have committed reckless driving for instance.

Let me go back to the term negligent because in terms of this statute negligent behavior is, by definition, unreasonable behavior. It is not the normal behavior in responding to an emergency call. It is not normal driving. It is not normal emergency response. It is an abhorration by definition. It is not the kind of conduct that most good law enforcement officers and other emergency responders engage when responding to an emergency call. Most officers – probably 99.9% of them – comply with their training and with the protocols and policies that we have on the books and in the official manuals that they are trained by. In very rare occasions there is negligent conduct and those occasions are when somebody violates the policy to such an egregious extent that it becomes unreasonable behavior causing a collision like in the case we are talking about and causing serious bodily injury or death to another person. That is what we are talking about. In fact, in the testimony in the hearing questions were asked about whether, prior to the Maine Supreme Court's decision the governmental entities, police departments and others were, in fact, insured for such conduct and the answer was that they had in fact paid claims for the negligent operation of a motor vehicle in occasional emergency situations and very, very small numbers of them.

The point that I raise in the use of the term reckless is one that I raised in the committee and that is that I find it difficult to believe that a governmental entity covered by the Tort Claims Act would be able to find insurance in the normal market for reckless behavior. It is not the kind of behavior that you can insure for as a matter of public policy just like insurance policies won't cover you if you are caught for OUI, driving under the influence. Your insurance policy won't cover you if you are convicted of motor vehicle manslaughter or some such conduct or driving to endanger, but the negligent standard is a standard that has meaning in the law. I am afraid that if you open it up and change the standard to something called reckless, which we don't really know the meaning of, than you are inviting more litigation and not preventing more litigation and you are posing a question of the insurability of this conduct for the municipalities, counties, state government and other governmental entities that fall within the tort claims act. We are talking about a very small number of cases where negligence may be found. Can we, at all costs, prevent lawsuits from being brought at all? Of course not, but can we allow a compromise here where victims of serious bodily injury or death, victims of egregious, negligent, unreasonable conduct in which an officer does not put on their siren and does not engage in proper emergency conduct and conduct in which a person goes through an intersection and hits school children walking to school. That is negligent behavior and that is what we are trying to capture and put back into the law, the same kind of conduct that was covered prior to the law court decision in Horton less than two years ago. I ask you to vote to indefinitely postpone the amendment with all due respect to the Representative from

Lincoln. I share his purposes and I think that the bill as we voted on it last night accomplishes the same purposes. Thank you.

The SPEAKER: The Chair recognizes the Representative from Lincoln, Representative Carr.

Representative CARR: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I just want to go over some of the things that were just brought up. I want to repeat that I have checked and spent time while others were caucusing to obtain this information. This is information because I have talked to people to get this information and I am not just making it up. Maine Municipal Association provides insurance coverage for 480 of the 492 towns so they are the people who cover and the information that I got is that it would not make a difference whether the term was used in the tort claims whether reckless or negligent. The State of Maine is self-insured through a risk pool, as are the counties. As far as getting insurance that really should not be a major problem by changing the term.

The term reckless is definitely used in the Civil Code in Maine law through court decisions and the way that it is written and I have given reference to that in the areas in which that is covered and that term is used. Mr. Speaker when the vote is taken I would ask for a roll call.

Representative CARR of Lincoln REQUESTED a roll call on the motion to INDEFINITELY POSTPONE House Amendment "A" (H-666) to Committee Amendment "A" (H-657).

More than one-fifth of the members present expressed a desire for a roll call which was ordered.

The SPEAKER: The Chair recognizes the Representative from Turner, Representative Bryant-Deschenes.

Representative BRYANT-DESCHENES: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I just wanted to say on the record that I was away last week having surgery and I had joined Representative Carr on this bill when this amendment had been proposed in committee and I would like to also say that I join him in that tonight. I would like to say as well that I disagree with one of his statements a few moments ago when he said that this would affect a very small class of people. I think that what this is going to do is create a lot more litigation. It is going to create a lot of settlements because money will be paid to avoid long protracted lawsuits. It will have a chilling effect on response times and it will have a chilling effect on responders doing these jobs.

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

Representative MILLS: Mr. Speaker, point of order.

The SPEAKER: The Representative may proceed

Representative MILLS: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I hate to interrupt but I would like to know whether or not the Gentlewoman is addressing the amendment or whether she is addressing the underlying bill, which we debated last night. I think that the only proper points of debate relate to this amendment and the Indefinite Postponement motion.

On POINT OF ORDER, Representative MILLS of Farmington asked the Chair if the remarks of Representative BRYANT-DESCHENES of Turner were germane to the pending question.

The Chair reminded Representative BRYANT-DESCHENES of Turner to stay as close as possible to the pending question.

Representative BRYANT-DESCHENES: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I guess the statement that I was making was that if we leave this as it was that is what I feel the effect would be.

I have been someone who has had people in my family who have benefited from very fast response times. Last session when I missed the first couple of months because my husband had five

heart attacks and were told a couple of times he wasn't going to make it through getting from here to Maine Medical Center and it was only because there was a quick response time that he did make it. I think that this amendment is going to prevent some of the consequences that we would find taking place if we do not pass this. As far as whether or not there is a remedy and whether or not there is litigation and whether or not people like he Nortons have any remedy available to them, is something that we did discuss in committee and I think in their case the Legislature could have provided an opportunity for them to file a lawsuit. To create something that does affect a large class of people because of one incident would be a mistake. Thank you.

The SPEAKER: The Chair recognizes the Representative from Bangor, Representative Faircloth.

Representative FAIRCLOTH: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I have great respect for Representative Carr. He is a person of steady judgment and I want to offer a couple of distinct reasons why I support indefinite postponement. This would apply, even in the amended version that we are discussing, not just to law enforcement officers, but it would apply in a whole myriad of situations involving government employees. Consider this example. Let's say a Department of Human Services employee makes a decision about whether or not to remove a child from the home in a child protective case. The decision whether or not to do so is discretionary and would be immune and would remain immune. However, if that child protective worker drives the child away from the home and does so in a negligent way in which the child is terribly injured or killed that would also be a situation where we would be saying that we would not hold them responsible for their negligent acts. That doesn't make sense to me. It doesn't make sense at all.

With regard to law enforcement officers, I have great respect for them, but the concept applies equally. Every law enforcement officer that I have spoken to about the case that prompted this legislation has agreed with me that that conduct, unlike the great majority of law enforcement officers, that conduct in that case was negligent and I have talked to several officers about it and they all concur. Should the municipality in that case be held responsible for their actions? I think that they should be held responsible and if the DHS worker drives a child negligently and the child is injured and if in the context of a case a law enforcement officer is negligent then the municipality should take that responsibility. Bear in mind that I said municipality because in earlier discussion of this Representative Greeley expressed concerns that I understand, but would be covered by insurance and wouldn't be coming out of the individual officer's pocket. It would simply mean that the municipality would assume that responsibility. That is the reasonable way to hold people responsible for those actions because I can tell you, looking at the mother in this case, where she saw with her own eyes her two sons die right in front of her, that some responsibility should be assumed. That doesn't denigrate a DHS worker, it doesn't denigrate a law enforcement officer, it is simply applying responsibility as it should and won't chill conduct.

The last point I have heard is that it will chill conduct in the future and create litigation in the future. From the 1940's up until this case, this was the understanding and it was rarely that it came up, but in those cases where it does come up it is reasonable. It is reasonable that people should be held responsible for negligent acts. That is all it does and we will just be going back to the situation that we had for 40 or 50 years. I thank the Men and Women of the House.

The SPEAKER: The Chair recognizes the Representative from Sanford, Representative Tuttle.

**Representative TUTTLE:** Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I have been very silent on this issue. As most of you know I have been an Emergency Medical Technician for the last 30 years and I have listened to debate very carefully. I will be supporting this amendment by Representative Carr because it may not be the best amendment, but makes the bill a little bit better. I think that as we progress in the debate there is going to be much discussion on what we should do, but I have been in those situations and I have talked to my fellow EMTs and fellow firefighters on this issue and I can remember different occasions and one in particular where I was going Code 3 from Freeport to Maine Medical Center and a car got in back of me and I was going a little over 70 and the car stayed in back and then passed me. What would have happened if the car had run into us? I mean what would be the liability then?

For any of us in this profession you don't do it for the money you do it because being a police officer or an Emergency Technician comes from somewhere in your heart. In my heart I think that the present bill without the amendment isn't the right thing to do. I am supporting the amendment and I am asking you as a 30-year member, as an EMT, to support me and to support Representative Carr.

The SPEAKER: The Chair recognizes the Representative from Van Buren, Representative Smith.

**Representative SMITH:** Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I must speak against the proposed amendment and in favor of the motion to indefinitely postpone and the reason I am doing this is because if this motion passes and the standard now becomes reckless conduct that means that we are leaving behind the standard of negligence, which is that the officer has to follow a duty of care. In other words, the officer or the governmental employee, if this amendment passes, does not have to be careful and that is the wrong message to send out. We train our governmental employees to follow standards of care and now we would be passing a law that would, in fact, tell them that they don't have to worry. If you are performing a discretionary function you don't have to be careful. Forget what we told you about your training for being careful. It only matters if you are reckless. That is not the protection that we need to give to our people in the State of Maine. That is not the kind of instruction that we need to give to our governmental employees. That is why I will be voting in favor of the motion to indefinitely postpone.

The SPEAKER: The Chair recognizes the Representative from Auburn, Representative Pelletier-Simpson.

**Representative PELLETIER-SIMPSON:** Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I don't want to belabor this, but I do want to read to you from the testimony of the Maine Chiefs of Police Association from the public hearing on this bill, "The Maine Chiefs of Police Association agrees that law enforcement officers who, although may be acting under the color of law and who are exercising discretionary functions covered by qualifying immunity under the Maine Tort Claims Act, should be held accountable for their negligent and reckless acts when operating a governmental vehicle without due regard for the safety of the public, a much higher standard established by the Legislature for operating police vehicle and responding to emergencies." Even the Chiefs of Police, though opposed to the bill, are saying that they should be held accountable for negligent operation of a government vehicle. I don't know why we are continuing to have this debate. I think that the general public would think that we expect our government employees to drive in a way, which is not negligent

and if they are negligent that they be held responsible for that action if a citizen is injured. Thank you.

The SPEAKER: The Chair recognizes the Representative from Levant, Representative Greeley.

**Representative GREELEY:** Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I hate to even get up twice and speak with regard to this issue. I am not fond of getting up and speaking and some of you probably aren't that fond of having me do so and I appreciate your patience. My concern over this personally is what is negligent because I am concerned that it is hard to compete with the good Representative from Farmington, Representative Mills, an educated person and the Representative from Bangor, Representative Faircloth. These folks are very educated and great debaters and I certainly can't compete with them. But, I can tell you what it feels like to be a cop. I can tell you what it feels like to get the call of the domestic, which in the last shift I worked was a situation that I responded to and my concern, as far as the police officers are concerned, if this amendment is postponed, is that when I get the call and I am in the car and put the lights and sirens on and start to head for the call I am being updated by the dispatcher while I am driving and the dispatcher says he is at the back door and kicking the door and I'm going 45 miles an hour, and the next transmission is that he has got her on the floor and a knife and I'm going 45 miles an hour, because what is negligence? Can someone explain to me what is negligent? Is 7 miles over the speed limit negligent? Could an expired inspection sticker by one month on my cruiser be negligence? Could a bad tire when they do the vehicle autopsy be negligent? If I am driving 10 miles an hour over to get to that emergency call and save that person's life in a domestic situation or some other emergency and somebody comes through a red light and hits me on the side and it is determined that I was going ten miles over the speed limit is that negligence? Is that contributory negligence? I am not a lawyer I don't know. Even if I win my case in court I still have to take time off from work and defend myself and somebody has to pay. That is my concern. What is negligence? Thank you.

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

**Representative MILLS:** Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I welcome the question because I think it is important for readers of the legislative record, courts and what not, to understand what we believe negligence is under these circumstances. I whole-heartedly agree with the folks who have spoken earlier about the need to protect law enforcement officials and other emergency responders in responding to legitimate emergencies. We are not suggesting that anyone be sued for going five or six or seven miles an hour over the limit. In fact, we already provide immunity from the criminal statutes for emergency responders when they have blue lights and sirens going, in the case of police officers. We provide the immunity from the criminal statutes for right of way purposes, for speeding purposes and that kind of thing.

Negligence, in the context of the response to an emergency or high-speed pursuit is a pretty serious breach of the duty of due care, more serious perhaps than in the context of other situations because negligence takes into account the context of a persons acts. When they are responding to an emergency situation and they are acting in an emergency fashion that is all taken into consideration. So the violation of the duty of due care is something different than a violation of due care would be in ordinary traffic circumstances. For instance, if you were responding to a minor fender bender and you were going 110 mile an hour to respond to what you understood to be a fender

bender. That might be negligent if your actions were the primary cause of somebody else's injury in a collision. If you were going ten miles an hour over the speed limit I doubt that they would be, but that is also why we have high-speed pursuit policies. If an officer is trained in accordance with the standards of the criminal justice academy and if the officer basically complies with the high speed pursuit policy or any other protocol applicable they are not going to be found negligent or sued, but if they are in egregious violation of that policy and are going 50 miles over the limit in a crowded situation like Route 302 in Raymond in the Horton matter and the officer was speeding, distracted and picking something up off the floor and did not have her siren on and was egregiously violating the protocol that 99.9% of all law enforcement officers and first responders would comply with, than that is negligence. I hope that that satisfies the inquirer's question. I would love to give more examples, but I know that people want to vote on this matter and I will leave it at that. Negligence is a pretty tough standard. It is not easy to allege or prove negligence in the situation, which involves an emergency response. Thank you.

The SPEAKER: The Chair recognizes the Representative from Falmouth, Representative Brautigam.

Representative BRAUTIGAM: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I just want to make a very quick point of clarification. Whether the standard is recklessness or negligence this is not about the liability of the individual to pay for the consequences that might result from the action at issue. This is about the Maine Tort Claims Act. It is about the liability of the state or municipality and I just want to make that clear because a number of statements have been made to suggest that the person who works for DHS or the police department would have to reach into their own pocket to pay their settlement or award and I don't believe that that is what we are talking about here and I just wanted to clarify that. Thank you.

The SPEAKER: The Chair recognizes the Representative from Westbrook, Representative Duplessie.

Representative DUPLESSIE: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I will be voting to indefinitely postpone this amendment and I do have great respect for the Representative from Lincoln, Representative Carr. But, the recommendation the committee's Majority Report used the term negligent sufficiently. We are talking about semantics I believe. You have heard it very clearly spelled out by the good Representative from Farmington, Representative Mills as to what those terms mean. The bottom line is that whatever we do will not affect response times. It should not effect response times. The bottom line is that there is a duty of care and a duty to act reasonable.

I spent twenty-eight years on the City of Portland Fire Department. It is the busiest most congested community in the State of Maine. Every time that I responded on an emergency I was usually driving a ladder truck that weights 12 to 14 tons. When I was going a little over the speed limit or possibly going through an intersection and running the light, I always knew that I could not be negligent and that I had to keep my brain engaged and pay attention to the driving and the traffic conditions and the pedestrians at those intersections, but I knew that I had a duty to act reasonable, a duty to care and that is what I did at all times because I did not want to be negligent in my response. Yes there were close calls at times, but every time you have a close call you learn from it. Believe me the bottom line is that we need to protect our citizens and the current system has not been fair to some of the citizens of Maine. There have been a few times when public employees have been negligent and they should be

found negligent. They will still not have to pay. The insurance carriers will have to pay that, but they do have a duty to act reasonable. Please support the indefinite postponement so that we can get onto the main motion. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from York, Representative Moulton.

Representative MOULTON: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. The starting premise for all of us is that we have accorded the municipalities sovereign immunity so that they can perform some specific functions. In this case it is responding to people in distress, whether it is for medical reasons or for public safety. It is our responsibility here in the Legislature to define that standard by which we deviate from that doctrine of sovereign immunity and we must tread very carefully. Therefore, I would encourage the body to strongly consider the amendment offered by Representative Carr from Lincoln. I have been on both sides. In an earlier life I was a reserve police officer and I received a portion of that training that is given to law enforcement personnel and more recently in civil practice. It is commonly the case nowadays to go after anyone who might have deep pockets and we find emergency response personnel being sued and having to dig into their own pockets to defend themselves in such litigation. I recognize that the Representative from Farmington was saying that we are borrowing from the criminal side. It is quite common in law to borrow from other sections of the law. That is how the law moves and the courts depend upon us, in this situation to define for them the standard that we use. Therefore, since we are in the process of loosening that sovereign immunity slightly to permit more suits of this nature we must still be very careful and I would encourage the body to think strongly against just using the simpler standard of negligence and using instead that standard suggested by the amendment that we are now voting on. I encourage you to vote against the indefinite postponement. Thank you Mr. Speaker.

The SPEAKER: The Chair recognizes the Representative from Auburn, Representative Pelletier-Simpson.

Representative PELLETIER-SIMPSON: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I have unfortunately learned a lot about the Maine Tort Claims Act in the last few months. Not being a lawyer I had to read the books and I understand that since 1977 the standard under the exception to immunity for ownership "the governmental entity is liable for property damage, bodily injury or death in the following instances; ownership, maintenance or use of vehicles, machinery and equipment. A governmental entity is liable for its negligent acts or omissions in ownership, maintenance or use of any motor vehicle." Since 1977. I don't think that there is a problem. Raising the standard to reckless is a bad precedent for the safety of the people of Maine or, more importantly, for those few individuals who are harmed by government workers negligently driving an automobile. If the rest of us negligently drive our automobiles and cause an accident and cause some injury to someone our insurance pays. Why shouldn't the municipalities pay for the negligent acts of its employees? Please join me in indefinitely postponing this amendment.

The SPEAKER: The Chair recognizes the Representative from Bath, Representative Watson.

Representative WATSON: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. I am going to try and make this as simple as possible, simple enough maybe so that the lawyers among us cannot understand it. When a judge charges a jury in a civil action involving an accident the judge delivers instructions and tells the jury what negligence is. Negligence based on the legal definition is very simple. It is

carelessness and inattention. It is wandering from the standard of care that a reasonably prudent person would do or how they would act in a similar circumstance. That is what negligence is. Recklessness, on the other hand, is wanton disregard for the dangers presented by a person's actions, so if we change the standard from negligence to recklessness what we are saying is what my colleague from Van Buren said a while ago. We are saying that it is okay to be negligent. Just because you have blue lights and are in pursuit it is okay to be inattentive. It is okay to be careless. It is okay to disregard the normal actions of a reasonably prudent person in similar circumstances. That just doesn't wash. It just doesn't wash. Recklessness is not a standard that needs to be applied in this case. Negligence is simple. It is easy to understand and it should remain so. I encourage you to vote in favor of indefinite postponement. Thank you.

The SPEAKER: The Chair recognizes the Representative from Turner, Representative Bryant-Deschenes.

Representative **BRYANT-DESCHENES**: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I have only been an attorney since 2000 and I have only done *pro-bono* practice because I have met a lot of people in my district who have needed it. I have very little experience in criminal court but I think that one thing I feel is very easy to understand and very simple to present is the fact that what we are discussing here is two different concepts. One is what is considered a matter of law, which is all the discussion about duty of care and standard of care, which is determined by the judge who would be sitting in the case. We have, in addition to that what is a question of fact and that is what happened in all of these instances? Basically, the bottom line here is that all of these things are not determined by what is said here tonight. They are going to be determined by a judge in a court of law and either a jury or the judge, depending on the way the trial is set up. We are not talking about defining this tonight and solving the problem. We are talking about laying out something that is going to be decided in more litigation and it is going to create more expensive insurance for the municipalities and not having the amendment is what I consider a cause of that. Thank you.

The SPEAKER: A roll call has been ordered. The pending question before the House is Indefinite Postponement of House Amendment "A" (H-666) to Committee Amendment "A" (H-657). All those in favor will vote yes, those opposed will vote no.

**ROLL CALL NO. 289**

YEA - Adams, Ash, Babbidge, Barstow, Beaudette, Blanchard, Blanchette, Bliss, Brannigan, Brautigam, Bryant, Burns, Cain, Canavan, Craven, Crosby, Cummings, Driscoll, Duchesne, Dudley, Dugay, Dunn, Duplessie, Eberle, Eder, Faircloth, Farrington, Fischer, Fisher, Gerzofsky, Goldman, Grose, Harlow, Hutton, Jackson, Jennings, Koffman, Lerman, Lundeen, Marley, Mazurek, Merrill, Miller, Mills, Moody, Norton, O'Brien, Paradis, Patrick, Pelletier-Simpson, Percy, Perry, Pineau, Pingree, Piotti, Rines, Saviello, Schatz, Sherman, Smith N, Smith W, Thompson, Twomey, Valentino, Walcott, Watson, Webster, Wheeler, Woodbury, Mr. Speaker.

NAY - Austin, Bierman, Bishop, Bowen, Bowles, Brown R, Browne W, Bryant-Deschenes, Campbell, Carr, Cebra, Churchill, Clark, Clough, Collins, Cressey, Crosthwaite, Curley, Curtis, Daigle, Davis G, Davis K, Duprey, Edgecomb, Finch, Fletcher, Flood, Glynn, Greeley, Hall, Hamper, Hanley B, Hanley S, Jacobsen, Jodrey, Joy, Kaelin, Lansley, Lewin, Lindell, Marean, McCormick, McFadden, McKane, McKenney, McLeod, Millett, Moulton, Muse, Nass, Nutting, Ott, Pinkham, Plummer, Rector, Richardson D, Richardson E, Richardson W, Robinson, Rosen,

Seavey, Shields, Stedman, Sykes, Tardy, Thomas, Trahan, Tuttle, Vaughan.

ABSENT - Annis, Berube, Emery, Fitts, Hogan, Hotham, Makas, Marraché, Moore G, Pilon, Richardson M, Sampson.

Yes, 70; No, 69; Absent, 12; Excused, 0.

70 having voted in the affirmative and 69 voted in the negative, with 12 being absent, and accordingly **House Amendment "A" (H-666) to Committee Amendment "A" (H-657) was INDEFINITELY POSTPONED.**

Subsequently, **Committee Amendment "A" (H-657) was ADOPTED.**

The Bill was **PASSED TO BE ENGROSSED as Amended by Committee Amendment "A" (H-657)** and sent for concurrence.

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By unanimous consent, all matters having been acted upon were **ORDERED SENT FORTHWITH.**

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The Chair laid before the House the following item which was **TABLED** earlier in today's session:

**HOUSE DIVIDED REPORT - Majority (7) Ought to Pass as Amended by Committee Amendment "A" (S-283) - Minority (6) Ought to Pass as Amended by Committee Amendment "B" (S-284) - Committee on UTILITIES AND ENERGY on Bill "An Act To Amend the Maine Wind Energy Act"**

(S.P. 477) (L.D. 1379)

Which was **TABLED** by Representative BLISS of South Portland pending **ADOPTION of Committee Amendment "B" (S-284).**

Representative FLETCHER of Winslow **PRESENTED House Amendment "A" (H-667) to Committee Amendment "B" (S-284),** which was **READ** by the Clerk.

The SPEAKER: The Chair recognizes the Representative from Winslow, Representative Fletcher.

Representative FLETCHER: Thank you Mr. Speaker. Mr. Speaker, Ladies and Gentlemen of the House. I would just like to explain briefly what this amendment does. In the amendment that came from the other body there was a provision that talked about long term contracts and that could raise some concerns so to make sure that we have clarity we are taking that clause out of this amendment. The other thing was that there was some non-conformity of report dates, January 1, 2006 versus March 1, 2006 and this amendment makes that clear. Thank you very much Mr. Speaker.

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

Representative BLISS: Thank you Mr. Speaker. Mr. Speaker, Men and Women of the House. While I may obviously have preferred a different outcome on the earlier vote I want to thank my colleague the good Representative from Winslow for presenting this amendment. I think that it goes a long way to clearing up some of the issues that we were concerned about in the original amendment as it was attached. I heartily encourage my colleagues to support this and move forward with the bill. Thank you.

Subsequently, House Amendment "A" (H-667) to Committee Amendment "B" (S-284) was **ADOPTED.**

**Senate Amendment "A" (S-322) to Committee Amendment "B" (S-284) was READ** by the Clerk and **ADOPTED.**

**Senate Amendment "B" (S-341) to Committee Amendment "B" (S-284) was READ** by the Clerk and **ADOPTED.**