

MAINE STATE LEGISLATURE

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R.O.S.

L.D. 1378

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JUDICIARY

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STATE OF MAINE
SENATE
122ND LEGISLATURE
FIRST SPECIAL SESSION

COMMITTEE AMENDMENT "A" to S.P. 476, L.D. 1378, Bill, "An Act To Preserve the Medical Liability Climate in the State by Capping Noneconomic and Punitive Damages"

Amend the bill by striking out the title and substituting the following:

'An Act To Amend the Medical Liability Laws Concerning Communications of Sympathy or Benevolence'

Further amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. 24 MRSA §2907 is enacted to read:

§2907. Communications of sympathy or benevolence

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Relative" means an alleged victim's spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half brother, half sister or spouse's parents. "Relative" includes these relationships that are created as a result of adoption. In addition, "relative" includes any person who has a domestic partner relationship with an alleged victim. As used in this paragraph, "domestic partner" is a person who has registered as a domestic partner pursuant to Title 22, section 2710.

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2 B. "Representative" means a legal guardian, attorney,
4 person designated to make decisions on behalf of a patient
 under an advance directive or any person recognized in law
 or custom as a person's agent.

6 C. "Unanticipated outcome" means the outcome of a medical
8 treatment or procedure that differs from an expected result.

10 2. Evidence of admissions. In any civil action for
12 professional negligence or in any arbitration proceeding related
14 to such civil action, any statement, affirmation, gesture or
16 conduct expressing apology, sympathy, commiseration, condolence,
18 compassion or a general sense of benevolence that is made by a
20 health care practitioner or health care provider or an employee
22 of a health care practitioner or health care provider to the
 alleged victim, a relative of the alleged victim or a
 representative of the alleged victim and that relates to the
 discomfort, pain, suffering, injury or death of the alleged
 victim as the result of the unanticipated outcome is inadmissible
 as evidence of an admission of liability or as evidence of an
 admission against interest. Nothing in this section prohibits
 the admissibility of a statement of fault.'

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SUMMARY

28 This amendment replaces the bill, but retains the bulk of
30 the proposed language on communications of sympathy or
32 benevolence. A person who is eligible to register as a domestic
34 partner but who has not is removed from the definition of
36 "relative." This amendment changes the terminology to cover
38 "civil actions for professional negligence" to be consistent with
40 the rest of the Maine Health Security Act. This amendment also
 deletes the term "fault" from the listing of subjects of
 communications expressed by a health care practitioner or provider
 or an employee of either in a medical liability case to the
 plaintiff or the plaintiff's relatives that are not admissible as
 evidence of an admission of liability or as an admission against
 interest. This amendment specifically provides that the section
 does not prohibit the admissibility of a statement of fault.