

# MAINE STATE LEGISLATURE

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# 122nd MAINE LEGISLATURE

## FIRST REGULAR SESSION-2005

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Legislative Document

No. 1378

S.P. 476

In Senate, March 17, 2005

### **An Act To Preserve the Medical Liability Climate in the State by Capping Noneconomic and Punitive Damages**

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Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN  
Secretary of the Senate

Presented by Senator TURNER of Cumberland.

Cosponsored by Representative McKANE of Newcastle, Representative SAVIELLO of Wilton and

Senators: DIAMOND of Cumberland, WESTON of Waldo, Representatives: CURLEY of Scarborough, DRISCOLL of Westbrook, DUGAY of Cherryfield, MARRACHÉ of Waterville, NASS of Acton, WOODBURY of Yarmouth.

Be it enacted by the People of the State of Maine as follows:

2  
3       **Sec. 1. 14 MRSA §156**, as amended by PL 1999, c. 63, §1 and  
4 affected by §3, is repealed.

6       **Sec. 2. 14 MRSA §156-A** is enacted to read:

8       **§156-A. Comparative negligence**

10       When a person suffers death or damage as a result partly of  
11 that person's own fault and partly of the fault of any other  
12 person or persons, a claim in respect of that death or damage may  
13 not be defeated by reason of the fault of the person suffering  
14 the damage, but the damages recoverable in respect thereof must  
15 be reduced to such extent as the jury thinks just and equitable  
16 having regard to the claimant's share in the responsibility for  
17 the damage.

18       When damages are recoverable by a person by virtue of this  
19 section, subject to such reduction as is mentioned, the court  
20 shall instruct the jury to find and record the total damages that  
21 would have been recoverable if the claimant had not been at  
22 fault, and further instruct the jury to reduce the total damages  
23 by dollars and cents, and not by percentage, to the extent  
24 considered just and equitable, having regard to the claimant's  
25 share in the responsibility for the damages, and instruct the  
26 jury to return both amounts with the knowledge that the lesser  
27 figure is the final verdict in the case.

30       As used in this section, "fault" means negligence, breach of  
31 statutory duty or other act or omission that gives rise to a  
32 liability in tort or would, apart from this section, give rise to  
33 the defense of contributory negligence.

34       If a claimant is found by the jury to be equally at fault,  
35 the claimant may not recover.

38       In a case involving multiparty defendants, the liability of  
39 each defendant for damages is several only and not joint except  
40 as otherwise provided in this section. Each defendant is liable  
41 only for the amount of damages allocated to that defendant in  
42 direct proportion to that defendant's percentage of fault. A  
43 party is responsible for the fault of another person, or for  
44 payment of the proportionate share of another person, if:

46       1. Actions in concert. Both the party and the other person  
47 were acting in concert; or

48       2. Agent or servant. The other person was acting as an  
49 agent or servant of the party.  
50

2           **Sec. 3. 14 MRSA §165, sub-§3, ¶B,** as enacted by PL 1995, c.  
299, §1, is amended to read:

4           B. Fault of the plaintiff to the extent that the  
6           plaintiff's fault bars or reduces the plaintiff's recovery  
          under section ~~156~~ 156-A; or

8           **Sec. 4. 24 MRSA §2855, sub-§1,** as amended by PL 1999, c. 668,  
10          §103, is further amended to read:

12          **1. Negligence and causation.** At the conclusion of the  
          presentations, the panel shall make its findings in writing  
14          within 30 days by answering the following questions:

16          A. Whether the acts or omissions complained of constitute a  
          deviation from the applicable standard of care by the health  
18          care practitioner or health care provider charged with that  
          care;

20          B. Whether the acts or omissions complained of proximately  
22          caused the injury complained of; and

24          C. If negligence on the part of the health care  
          practitioner or health care provider is found, whether any  
26          negligence on the part of the patient was equal to or  
          greater than the negligence on the part of the practitioner  
28          or provider.

30          If negligence on the part of the health care practitioner or  
32          health care provider is found and that negligence is determined  
34          to have caused injury to the patient, the panel shall specify the  
          damages attributable to the health care practitioner or health  
          care provider or to each in an action involving multiple health  
          care practitioners or health care providers.

36          **Sec. 5. 24 MRSA §§2907 and 2908** are enacted to read:

38          **§2907. Damages in actions for professional negligence**

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

44          A. "Compensatory damages" means damages to compensate an  
46          injured party. There are 2 types of compensatory damages:

48                 (1) Economic damages, which consist of:

2                   (a) Current and future medical expenses,  
3                   including the cost of medical care, medicines and  
4                   medical supplies; and

5                   (b) Employment-related damages, including lost  
6                   wages, lost or diminished earning capacity and  
7                   lost earning opportunity; and

8                   (2) Noneconomic damages, which are damages for  
9                   physical and emotional pain, suffering, inconvenience,  
10                   physical impairment, mental anguish, disfigurement,  
11                   loss of enjoyment of life, loss of society and  
12                   companionship, loss of consortium, hedonic damages,  
13                   injury to reputation and all other nonpecuniary losses  
14                   of any kind or nature.

15                   B. "Punitive damages" means damages intended to punish  
16                   willful, malicious or fraudulent behavior and to discourage  
17                   similar behavior by others.

18                   2. Damages recoverable. In an action for professional  
19                   negligence, the following damages are recoverable:

20                   A. Compensatory damages. Economic damages are recoverable  
21                   as proven without limit. Recoverable noneconomic damages  
22                   are limited to \$250,000; and

23                   B. Punitive damages. Recoverable punitive damages are  
24                   limited to \$75,000.

25                   3. Application. This section applies to all cases in which  
26                   notices of claim are filed after the effective date of this  
27                   section.

28                   **§2908. Communications of sympathy or benevolence**

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

32                   A. "Relative" means an alleged victim's spouse, parent,  
33                   grandparent, stepfather, stepmother, child, grandchild,  
34                   brother, sister, half brother, half sister or spouse's  
35                   parents. "Relative" includes these relationships that are  
36                   created as a result of adoption. In addition, "relative"  
37                   includes any person who has a domestic partner relationship  
38                   with an alleged victim. As used in this paragraph,  
39                   "domestic partner" is a person who has registered or is  
40                   eligible to register as a domestic partner pursuant to Title  
41                   22, section 2710.

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

10           2. Evidence of admissions. In any civil action brought by  
12           an alleged victim of an unanticipated outcome or in any  
14           arbitration proceeding related to such civil action, any  
16           statement, affirmation, gesture or conduct expressing apology,  
18           fault, sympathy, commiseration, condolence, compassion or a  
20           general sense of benevolence that is made by a health care  
22           practitioner or health care provider or an employee 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.

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## SUMMARY

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              This bill establishes the types of and limit of damages  
available in medical malpractice action in the State.  
30           Compensatory damages that are economic damages are unlimited.  
32           Compensatory damages that are noneconomic damages are limited to  
              \$250,000. Punitive damages are limited to \$75,000.

34

              This bill prevents a health care practitioner's or health  
care provider employee's statement of sympathy or apology to a  
36           patient who has suffered an unanticipated medical outcome from  
              being used against the practitioner or employee in a medical  
38           malpractice action.

40

              The bill requires the findings of the prelitigation  
screening panels to specify the damages attributable to the  
42           defendant or defendants in a medical malpractice action.

44

              The bill provides that each defendant in a civil action is  
liable only for damages in direct proportion to the defendant's  
46           percentage of fault.