

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)



122nd MAINE LEGISLATURE

FIRST REGULAR SESSION-2005

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**

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4 affected by §3, is repealed.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.

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.

