

MAINE STATE LEGISLATURE

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ONE HUNDRED AND FIFTH LEGISLATURE

Legislative Document

No. 1232

S. P. 417

In Senate, March 5, 1971

Referred to Committee on Judiciary. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Tanous of Penobscot.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-ONE

AN ACT Relating to Claims Against the State and Immunity of
State Officers and Employees.

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

R. S., T. 5, c. 154, additional. Title 5 of the Revised Statutes is amended by adding a new chapter 154 to read as follows:

CHAPTER 154

**CLAIMS COMMISSION LIABILITY OF STATE OFFICERS AND
EMPLOYEES**

§ 1781. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings:

1. Claim. "Claim" means a petition for the payment or refund of money by the State or for permission to sue the State;
2. Person. "Person" means any individual, firm, partnership, corporation, association or other group, including political subdivisions of the State;
3. State agency. "State agency" includes every department, bureau, division, board, office, commission, agency and institution of the State Government, whatever its title or function;
4. State officers and employees. "State officers and employees" includes every person elected or appointed to, or employed in any office, position or post in the State Government, whatever his title, classification or function.

§ 1782. Claims commission; excepted claims

The Claims Commission, established by this chapter, hereinafter called the "commission," shall hear and determine all claims against the State, except:

1. Disability. Claims for the periodic payment of disability, pension, retirement or other employment benefits;
2. Suits. Claims upon which suit otherwise is authorized by law;
3. Administrative hearings. Claims for which an administrative hearing procedure otherwise is established by law;
4. Taxes. Claims for the refund of taxes;
5. Insurance. Claims arising from acts or occurrences with respect to which a state agency is covered by liability insurance.

§ 1783. Appointment, removal, compensation of commission

The commission shall be composed of 3 members, residents of the State, who shall be appointed by the Governor, as follows:

The initial appointments shall be one member for a term of 2 years, one member for a term of 3 years, one member for a term of 5 years and until their successors are duly appointed and qualified. Appointment thereafter shall be for terms of 5 years and until their successors are duly appointed and qualified. Of the members appointed one shall be an attorney licensed to practice law in this State who shall be the chairman of the commission. The Governor may remove any member for incompetence, misconduct or material neglect of duty.

The members of the commission shall receive as compensation for their services \$40 a day for the time actually spent in the discharge of their duties, and shall be reimbursed for necessary expenses incurred in the discharge of their duties at the same rates as would apply to employees of the State of Maine. Compensation of commission members and their expenses shall be paid pro rata from appropriations to the state agencies against which claims are brought, and are acted upon by the commission.

§ 1784. Chairman; office

The chairman shall be the presiding officer and chief administrative officer of the commission. The Executive Secretary of the Maine Insurance Advisory Board shall be the executive secretary of the commission. The executive secretary shall be responsible for carrying out the administrative duties of the commission imposed by this chapter, with the advice of the commission. The executive secretary shall be the clerk of the commission. The Office of the Maine Insurance Advisory Board located in Augusta shall be the office of the commission, to which all papers required to be filed with the commission shall be addressed or delivered.

§ 1785. Quorum; all members to participate in claim disposition

Two members of the commission shall constitute a quorum to do business and the commission may act upon the vote of 2 members of the commission

but all members shall participate in the disposition of each claim and any member absent during the hearing of a claim shall study the evidence adduced at such hearing.

§ 1786. Notice of claim

Any person presenting a claim against the State shall file with the office of the commission a notice of claim, in triplicate, containing the following information:

1. Names and addresses. The name and address of the claimant; the name and address of his principal, if the claimant is acting in a representative capacity, and the name and address of his attorney, if the claimant is so represented;
2. Basis of claim. A concise statement of the basis of the claim, including the date, time, place and circumstances of the act or event complained of;
3. Amount. A statement of the amount demanded;
4. Permission to sue. A request for permission to sue the State, if such permission is sought.

The commission shall cause a copy of a notice of the claim to be forwarded promptly to the Attorney General. The notice shall be for informational purposes only and shall not be subject to any formal or technical requirements, except as may be necessary for clarity of presentation and facility of understanding.

§ 1787. Limitation on presentation of claim

No claim shall be presented under this chapter beyond one year after it accrues. Claims for injury to person or damage to property shall be deemed to accrue on the date when the damage or injury is sustained, or discovered, or in the exercise of reasonable care should have been discovered, provided no claim shall be presented more than 3 years from the date of the act or event complained of. No claim cognizable by the commission shall be presented against the State except under this chapter. Except as provided in section 1795, no claim once considered by the Claims Commission, by the Legislature or in a judicial proceeding shall again be presented against the State in any manner.

§ 1788. Attorney General

The attorney general shall represent the state agency against which a claim is filed before the commission. When the attorney general opposes a claim he shall file with the commission a notice of opposition, in triplicate, containing a concise statement of his objections. He shall promptly forward a copy of the notice of opposition to the claimant.

§ 1789. Service on or delivery to commission of subpoenas and papers

Any subpoena or other paper required to be served upon or delivered to the commission or to any person or official may be served or delivered in person

or by certified mail. Service or delivery by certified mail shall be deemed complete upon the certification and deposit of such subpoena or paper at a United States post office. Proof of deposit and the return receipt, shall be sufficient proof of service or delivery.

Any such service or delivery required between the commission and any state agency or any state officer or employee may be made through the inter-departmental mailing system of the State, provided reasonable means are taken to ascertain that the subpoena or paper was received by the addressee.

§ 1790. Hearings

Claims shall be heard as soon as practicable after they are filed. Hearings may be held at the office of the commission at any available hearing facility in the State Capitol, or State Office Building, upon request at any county courthouse in the State, or at such other suitable place as the commission finds is convenient and just to the claimant and to the state agency.

The commission may call witnesses, require information not offered by the claimant or the state agency and stipulate matters to be argued. Any member may examine and cross-examine any witness. The commission shall not be bound by any law or rule of evidence, except as it may provide by its rules.

Any member of the commission may administer oaths, cause depositions to be taken, issue subpoenas, and order inspection and disclosure of books, papers, records and documents. Upon good cause shown any such order or subpoena may be quashed by the commission or by the member who issued it.

If any person fails to respond to a subpoena the chairman may issue a *capias*, directed to the sheriff of the county in which such person resides, to arrest such person and bring him before the commission to testify.

If any person refuses to testify or to produce any relevant, unprivileged book, paper, record or document the chairman shall certify such fact to the Attorney General, who shall apply to the Superior Court for the county in which such person resides for an order compelling compliance. Further refusal of such person shall be punished as for contempt. If such person is the claimant, the commission shall summarily dismiss his claim and order it forfeited to the State.

When subpoenaed by the commission, witnesses shall be offered the fees and mileage allowances authorized for attendance of witnesses in the District Court, provided no such fee or allowance shall be paid to any state officer or employee who appears on behalf of the State.

§ 1791. Waiver of hearings

On its own motion and at the request of the claimant and the Attorney General, the commission may waive the hearing of any claim for \$250 or less, and proceed upon affidavits filed by the claimant and the state agency concerned.

§ 1792. Records of claims

The commission shall cause a record to be made of each claim. Such record shall be retained in the files of the commission. Copies of such record and of the hearing transcript, if any, shall be made available upon request to the claimant and to the Attorney General and as the commission otherwise may direct.

§ 1793. Decision; finding of fact

Within 90 days after hearing a claim, the commission shall render its decision. It shall make a finding of fact on each claim and file such finding with its order or recommendation disposing of the claim. A copy of such finding and order or recommendation shall be forwarded to the claimant and to the Attorney General.

§ 1794. Disqualification of commission member

No member of the commission shall participate in the hearing, consideration or decision of any claim in which he is interested or in respect of which he is biased or prejudiced. Upon the disqualification of a member the chairman shall apply to the Governor for the appointment of a temporary member, who shall participate only in proceedings on the claim in respect of which the disqualification occurred.

§ 1795. Rehearings

Upon the discovery of new evidence any claimant aggrieved by an order of the commission rejecting or recommending the rejection of his claim, in whole or in part, may apply for rehearing. The claimant shall file with the commission an application for such rehearing, in triplicate, stating concisely therein the matters which he desired to submit to the commission. A copy of such application shall be forwarded promptly by the commission to the Attorney General. Each such rehearing shall be subject to this chapter and the rules made thereunder respecting the hearing and disposition of claims.

§ 1796. Rules of procedure

The commission shall make and promulgate rules not inconsistent with the policy and provisions of this chapter, governing its proceedings. Such rules shall avoid formal and technical requirements, but shall provide a simple, uniform, expeditious and economical procedure for the presentation and disposition of claims.

§ 1797. Jurisdiction of commission; payment of claim

The commission may approve immediate payment of claims not exceeding \$3,000. The commission shall deliver to the State Controller a certified copy of the commission's order and the State Controller shall authorize payment from appropriations made to the state agency against which the claim was brought, or from the Contingent Account when payment therefrom is authorized by the Governor and Council in accordance with section 1507. Within 5 days after the convening of each regular session, the commission shall report to the Legislature on all claims decided pursuant to this section. Any person who, having filed a claim for more than \$3,000, wishes to protest an

award of the commission under this section may waive immediate payment and his claim shall be submitted to the Legislature under section 1798. Such waiver shall be in writing and shall be filed with the commission within 10 days after the claimant receives a copy of the order approving payment.

§ 1798. Recommendations for payments in excess of \$3,000

After hearing, the commission shall make its recommendations to the Legislature for the payment or rejection of amounts exceeding \$3,000. Within 5 days after convening of each regular or special session the commission shall submit such recommendations to the Legislature, together with a copy of its findings and of the hearing record of each claim so reported. The Legislature may accept, alter or reject any such recommendation and shall not be required to hold public hearings thereon.

§ 1799. Authorization of actions against the State

When the commission deems it just and equitable, it may authorize suit against the State on any claim for more than \$3,000 which, in the opinion of the commission, presents an issue of law or fact under which the State, were it a private person, could be liable. In each such action the claimant shall allege such authorization and the date on which it was granted. The State waives its immunity from liability and from suit in each such action and waives all defenses which might arise from the eleemosynary or governmental nature of the activity complained of. The rights and liability of the State in each such action shall be co-extensive with and shall equal the rights and liability of private persons in like circumstances.

Action shall be brought against the State as party defendant in the Superior Court for the county in which the claimant resides, or, if the claimant is not a resident of this State, in the Superior Court for Kennebec County or the Superior Court in the county in which the claim arose.

Service of process in all such cases shall be upon the Attorney General.

Issues arising in such actions shall be tried to the court without a jury.

The laws and rules of practice governing disclosures in civil actions shall apply against state agencies and state officers and employees possessing books, papers, records, documents or information pertinent to the issues involved in any such action.

The Attorney General, with the consent of the court, may compromise or settle any such action. The terms of each such compromise or settlement shall be expressed in a judgment of the court.

Costs may be allowed against the State as the court deems just, consistent with the rules of procedure and statutes applicable to taxation of costs in the Superior Court.

The clerk of the court in which judgment is entered against the State shall forward a certified copy of such judgment to the State Controller. The Attorney General shall certify to the State Controller when the time allowed by

law for proceeding subsequent to final judgment has expired and he shall designate the state agency involved in the action. Upon receipt of such judgment and certification the State Controller shall make payment as follows: Amounts awarded shall be paid from appropriations made to the state agency involved in the action or from any special appropriation which the Legislature may have made for the payment of claims or from the Contingent Account when payment therefrom is authorized by the Governor and Council in accordance with section 1507.

Within 5 days after the convening of each regular session, the Attorney General shall report to the Legislature on the status and disposition of all actions authorized pursuant to this section.

§ 1800. Fraud in presentation of claim

Any claimant who practices or attempts to practice fraud upon the State in the statement, proof or allowance of a claim shall forfeit such claim to the State. The tribunal before which such claim is pending shall specially find such fraud and it shall enter its judgment or order of forfeiture. Any person who knowingly presents or attempts to present and any person who knowingly participates in the preparation, presentation or allowance of a false or fraudulent claim shall be punished by a fine of not more than \$200 or by imprisonment for not more than 6 months, or by both.

§ 1801. Action of commission not reviewable

The action of the commission in approving or rejecting payment of any claim or part thereof shall be final and conclusive on all questions of law and fact and shall not be subject to review by any other officer of the state or by any court by appeal, or otherwise.

§ 1802. Personal liability of state officers and employees; indemnification in federal cases; insurance

1. Personal liability of state officers and employees. No state officer or employee shall be held personally liable for damage or injury not wanton or willful, caused in the performance of his duties, and within the scope of his employment, nor shall his property, real or personal, or any interest which he may have in property be subject to attachment in any action, brought for such damage or injury, except that immunity from personal liability shall not pertain to a state officer or employee causing damage or injury in the operation of his own motor vehicle while in the performance of his duties, and within the scope of his employment. Any person having a complaint for such damage or injury, excepting damage or injury caused by a state officer or employee, in the operation of his own motor vehicle, shall present it as a claim against the State under this chapter.

2. Indemnification. The State shall protect and save harmless any state officer or employee from financial loss and expense, including legal fees and costs in connection with any action brought against any such officer or employee under the Federal Civil Rights Act, 42 United States Code, § 1981 et seq. wherein the act or acts of the state officer or employee complained of were

not wanton or willful and wherein the act or acts of the state officer or employee complained of were done in the discharge of his duties, and within the scope of his employment.

Any costs of indemnification incurred under this subsection shall be paid from appropriations made to the state agency by which the state officers or employee involved is employed, or from special appropriations made by the Legislature for the payment of such costs of indemnification or from the Contingent Account when authorized to be paid therefrom by the Governor and Council under section 1507. The payment of legal fees under this subsection shall be contingent upon the employment of legal counsel being first approved by the Attorney General.

3. Insurance. Notwithstanding any provision of this chapter any state agency may purchase liability insurance coverage indemnifying the State and its officers and employees employed by the state agency. Payment for such liability insurance coverage may be from appropriations made for that purpose or from appropriations authorized by the Governor to be expended for such purpose. During the period in which any such policy of insurance is effective the defense of sovereign immunity is abolished as to any claims or actions brought thereunder. The insurer of any such state agency, shall be estopped from asserting as a defense to any claim covered by said policy, that such state agency is immune from liability on the ground that it is a governmental agency. The amount of damages in any such case shall not exceed the limits of coverage specified in the policy, and the courts shall abate any verdict in any such action to the extent that it exceeds such policy limit.

STATEMENT OF FACT

It is the purpose of this Act to provide an efficient and expeditious procedure through a Claims Commission to hear and dispose of claims against the State, the jurisdictional amount being \$3,000.

The Claims Commission is further vested with authority to recommend to the Legislature the payment of larger claims or in appropriate cases to authorize the waiver of sovereign immunity, thus, permitting suits against the State in appropriate cases.

It is the further purpose of this Act to render state officers and employees immune from personal liability for acts and omissions to act when such acts or omissions are not wanton or willful.

It is the further purpose of this Act to provide for idemnification of state officers and employees in Federal Civil Rights cases.

It is the further purpose of this Act to provide authority for acquisition by state agencies of liability insurance coverage.