

# MAINE STATE LEGISLATURE

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ONE HUNDRED AND SEVENTH LEGISLATURE

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**Legislative Document**

**No. 387**

H. P. 318

House of Representatives, January 28, 1975

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

EDWIN H. PERT, Clerk

Presented by Mr. Morton of Farmington.

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STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED  
SEVENTY-FIVE

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**RESOLVE, Authorizing Sherman Collins, Francis Fitzmaurice, the Estate of Durward G. Turner, Durward G. Turner, Jr., David G. Turner and Ellen S. Turner to Bring Civil Action Against the State of Maine.**

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**Emergency preamble.** Whereas, Acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, there is now pending in the Superior Court of the County of Franklin a lawsuit filed by Eleanor Turner as administratrix of the estate of Durward Turner, Durward G. Turner, Jr., David G. Turner and Ellen S. Turner and naming as defendants Sherman Collins and Francis Fitzmaurice and being Civil Action Docket No. 2513 on the docket of said court; and

Whereas, delay of the trial of said matter would work a hardship on the parties plaintiff; and

Whereas, trial of the matter without the relief herein requested would be a great hardship upon all parties; and

Whereas, it has been alleged in said civil actions that the State of Maine caused, in whole or in part, the damages complained of; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

**Sherman Collins of Farmington, County of Franklin and State of Maine, Francis Fitzmaurice of New Vineyard. County of Franklin and State of**

**Maine, the estate of Durward G. Turner and Durward G. Turner, Jr., David G. Turner and Ellen S. Turner, all of North Chesterville, County of Franklin and State of Maine, to bring civil action against State of Maine.**

**RESOLVED:** That Sherman Collins of Farmington, County of Franklin, who is named as a party defendant in the above described actions and who will suffer damages in the event liability is found as against him, and Francis Fitzmaurice of New Vineyard, County of Franklin, who suffered severe and permanent injuries to his person and to his property on July 7, 1971 in a traffic accident on that date, allegedly caused by negligent conduct on the part of agents, servants, or employees of the State of Maine Highway Department and negligence of the State of Maine in allowing a dangerous condition to exist on a state highway, to wit, Chesterville Road, so called, in Farmington, in the County of Franklin and both of whom are subject to liability arising out of said accident because of injuries to Durward G. Turner, Jr., David G. Turner, and Ellen S. Turner all of North Chesterville, in the County of Franklin and because of the death of Durward G. Turner, late of North Chesterville in the County of Franklin, such liability now at issue in a lawsuit styled Eleanor Turner as administratrix of the estate of Durward Turner, Durward G. Turner, Jr., David G. Turner, and Ellen S. Turner versus Sherman Collins and Francis Fitzmaurice and being Docket Number 2513 in the Superior Court for the County of Franklin, are authorized to bring a 3rd party complaint in the aforementioned lawsuit or are authorized to initiate a complaint in the Superior Court for the County of Franklin, within one year from the effective date of this resolve, at any time thereof against the State of Maine for damages, if any, sustained by the said Sherman Collins and Francis Fitzmaurice and for contribution and idemnification for any judgment which may be obtained against the said Sherman Collins and Francis Fitzmaurice by Eleanor Turner as administratrix of the Durward Turner Estate, Durward G. Turner, Jr., David G. Turner or Ellen S. Turner all of Chesterville, County of Franklin and State of Maine, and the said Eleanor Turner as administratrix of the Durward Turner estate, Durward G. Turner, Jr., David G. Turner or Ellen S. Turner all of Chesterville, County of Franklin and Sate of Maine, are authorized within one year from the effective date of this Resolve, to join the State of Maine as a party defendant in Civil No. 2513 or to institute a separate civil action in the Superior Court of Franklin County against the State of Maine for damages sustained by the said Durward G. Turner, the Estate of Durward G. Turner, Eleanor Turner, Durward G. Turner, Jr., David G. Turner and Ellen S. Turner as a result of a traffic accident on July 7, 1971; and aforesaid parties being further authorized to assert any and all causes of action against the State of Maine, arising out of said accident, including, without limitation, a claim for contribution and idemnification. A complaint or 3rd party complaint and summons issuing out of said Superior Court under the authority of this resolve shall be served on the Secretary of State by attested copy 30 days before a term of said court by the Sheriff or either of his deputies of the County of Kennebec, State of Maine; and the conduct of said action shall be according to the practices of actions and proceedings between parties in the said Superior Court and the liabilities of the parties and elements of damage. if any, shall be the same as the liabilities

and elements of damages between individuals. The Attorney General or one of his assistants is authorized and designated to appear, answer and defend said action and if said action is brought within one year from the effective date of this resolve, he shall not raise any defense based on any statute of limitations. Any judgment that may be recovered against the State of Maine in said civil action shall be payable from the State Treasury on final process issued by said Superior Court or, if appealed, the Supreme Judicial Court, and costs may be taxed for the parties as they may recover in said action. Any recovery in said action, including any adjudicated right of contribution or indemnification, shall not be in excess of \$505,000 including costs. Hearing thereon shall be before a justice, with jury; said justice to be the regularly scheduled justice presiding in the Franklin County Superior Court when this matter is scheduled for trial.

**Emergency clause.** In view of the emergency cited in the preamble, this resolve shall take effect when approved.

#### STATEMENT OF FACT

The purpose of this resolve is reflected in the emergency preamble.