

MAINE STATE LEGISLATURE

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(EMERGENCY)

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 1559

H. P. 1312

House of Representatives, April 12, 1977

On Motion of Mr. Bennett of Caribou, referred to Committee on Judiciary.
Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Spencer of Standish.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-SEVEN

AN ACT Relating to Legal Representation and Idemnification of State
Officers and Employees.

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

Whereas, the Maine Supreme Judicial Court has abrogated the common law doctrine of sovereign immunity effective February 1, 1977; and

Whereas, the Legislature has enacted the Maine Tort Claims Act re-establishing immunity and defining exceptions thereto; and

Whereas, as a result employees of the State may be exposed to potential liability in areas where the State is immune from liability, the doctrine of respondeat superior therefore not applying; and

Whereas, employees of the State are, therefore, exposed to sole liability for expenses and damages from claims arising out of the good faith performance of their duties without the protection or availability of insurance; 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 enacted by the People of the State of Maine, as follows:

14 **MRSA § 8112**, as enacted by PL 1977, c. 2, § 2, is repealed and the following enacted in its place:

§ 8112. Defense and indemnification of employees

The State shall save harmless and indemnify its officers and employees from any liability and expense, including court costs and reasonable attorneys' fees, incurred as a result of any claim, demand or suit arising out of any act or failure to act occurring within the scope of their employment, except such liability and expense resulting from willful or wanton misconduct, provided that any such officer or employee shall as soon as practicable notify the State in writing of such claim, demand or suit. Upon receipt of such notice the State may, at its discretion, assume control of the defense of the officer or employee, in which event the officer or employee shall cooperate fully with the State for the purposes of such defense. Property of an officer or employee shall not be subject to attachment in any such action brought against such officer or employee.

This section shall inure to the benefit only of the officers and employees of the State and shall not enlarge or diminish the rights of any other party. This section shall not in any way impair, limit or modify the rights and obligations of any insurer under any policy of insurance.

This section shall only apply to a claim, demand or suit in which the claim for and award of damages, including costs, against both the State and its employees does not exceed \$300,000 for any and all claims arising out of a single occurrence.

Emergency; effective date. In view of the emergency cited in the preamble, this Act shall take effect when approved and shall remain effective until February 1, 1979.

STATEMENT OF FACT

It is the purpose of this bill to protect officers and employees of the State from liability and expenses resulting from claims of damages or injuries arising out of the good faith performance of duties. The bill also provides for the State, where warranted, to assume control of the defense of such officers and employees against claims arising out of the performance of their duties. This serves 2 purposes, to protect the officers or employees from the necessity of incurring legal expenses and to protect the interests of the State. It is the further intent of the bill that other rights and obligations shall not be enlarged or diminished.

The State would be able, if it so chose, to meet its indemnification obligation by the purchase of insurance to the extent available.