

MAINE STATE LEGISLATURE

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After Deadline
(EMERGENCY)
SECOND REGULAR SESSION

ONE HUNDRED AND EIGHTH LEGISLATURE

Legislative Document

No. 2174

H. P. 2173

House of Representatives, March 2, 1978

Referred to Committee on Judiciary. Sent up for Concurrence.

EDWIN H. PERT, Clerk

Presented by Ms. Clark of Freeport

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-EIGHT

**RESOLVE, Authorizing Beverly Mortimer and Dennis Perkins to Bring Civil
Action Against the State of Maine**

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

Whereas, if this civil suit is not authorized immediately, the plaintiff's ability to preserve evidence will be irreparably impaired as memories fail and witnesses become unavailable through death, relocation or otherwise; and

Whereas, with the passage of time, the plaintiff's ability to discover material facts, which would otherwise aid them in establishing their claim and insure that justice will be done, will be impaired; 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

Beverly Mortimer and Dennis Perkins to bring civil action against State. Resolved: That Beverly Mortimer, individually and as natural guardian and next friend of the minor child Dennis Perkins, is authorized to bring suit against the State.

Dennis Perkins is the minor child of Beverly Mortimer, both now of Freeport, Maine. While in the custody of the State of Maine, Dennis Perkins was placed by the Department of Human Services in the foster care of Boys Port, a subsidiary of New Life Farms, Inc., situated in Limerick, Maine. The Department of Human Services also placed another minor child, also in the custody of the State of Maine, at Boys Port, and while both Dennis Perkins and the 2nd minor were resident at Boys Port, the 2nd minor willfully and intentionally poured gasoline upon Dennis Perkins and ignited it, causing severe burns, and permanent injuries to Dennis Perkins.

Beverly Mortimer and Dennis Perkins contend that the State of Maine, acting by and through the Department of Human Services, was negligent in that the Department of Human Services had knowledge that the ward who caused the injuries to Dennis Perkins was dangerous to others around him, but that despite this actual knowledge, placed this ward in close proximity to Dennis Perkins; failed to properly supervise the ward, and failed to warn others having direct control of the ward and those around him of his dangerous tendencies, all of which the said Beverly Mortimer and Dennis Perkins contend constitutes negligence, for which the State of Maine should be laible.

Such action, if authorized, is to be brought in the Superior Court for the County of Cumberland within one year from the passage of this resolve against the State of Maine for damages, if any, and the conduct of such action shall be according to the practice of actions or proceedings between parties in the Superior Court. The liabilities of the parties and elements of damage, if any, shall be the same as liabilities and elements of damage as between individuals. The complaint issuing out of the Superior Court under the authority of this resolve shall be served upon the Secretary of State in attested copy of the sheriff or either of his deputies in any county of the State of Maine. The Attorney General is authorized and designated to appear, answer and defend the action.

Any judgment that may be recovered in this civil action shall be payable from the State Treasury on file process issued by the Superior Court, or, if applicable, the Supreme Judicial Court and costs may be taxed for Beverly Mortimer and Dennis Perkins if they recover in the action and their recovery shall not exceed \$250,000, including costs. Hearing thereon shall be before a Justice of the Superior Court with or without a jury, the justice to be assigned by the Chief Justice of the Supreme Judicial Court, the regularly scheduled justice presiding in the Cumberland County Superior Court when this matter is scheduled for trial.

Emergency clause. In view of the emergency cited in the preamble, this resolve shall become effective when approved.

STATEMENT OF FACT

The purpose of this resolve is to authorize Beverly Mortimer as natural guardian and next friend of the minor Dennis Perkins to bring civil suit against the State of Maine.