

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND TENTH LEGISLATURE

Legislative Document

No. 333

H. P. 286

House of Representatives, January 20, 1981

Referred to the Committee on Legal Affairs. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative J. Martin of Eagle Lake

Cosponsors: Representative McHenry of Madawaska and Senator
Violette of Aroostook.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND EIGHTY-ONE

**RESOLVE, Authorizing Gerald Pelletier to Bring Civil Action Against the State of
Maine.**

Gerald Pelletier; authorized to sue the State of Maine. Resolved: That Gerald Pelletier of Madawaska, County of Aroostook and State of Maine, who suffered permanent personal injuries while crossing a bridge maintained by the State, be authorized to bring suit against the State of Maine.

On July 25, 1980, Gerald Pelletier of 34 11th Avenue, Madawaska, Maine, was driving his automobile, a 1973 Oldsmobile Toronado, in a southerly direction over the International Bridge connecting Madawaska, Maine and Edmundston, New Brunswick. When he was approximately 300 feet from the American end of the bridge, he met a pulp truck, owned and operated by Federick F. Hafford of St. Francis, Maine, which was heading in a northerly direction. The truck was loaded with pulp and on top of the load of pulp there was a spare tire affixed to the load by means of a chain. As the vehicles met, one of the bridge's horizontal girders struck the chain, snapped it and dislodged the spare tire which fell on the roof of Mr. Pelletier's automobile, right over the driver's seat. That portion of the roof buckled and collapsed, striking the driver, Gerald Pelletier, and breaking his neck. Both vehicles were moving at slow rates of speed. Frederick F. Hafford testified under oath that his load, including the spare tire, did not exceed the legal limit of 14 feet. The Madawaska Town Police investigated the accident, brought

charges against Mr. Hafford, but subsequently dismissed these charges because of lack of evidence that his load exceeded the legal height and was not securely fastened. Irwin Putnam testified under oath that he works for the State of Maine, Department of Transportation, and is in charge of the maintenance of bridges in Aroostook County, Division One. He said that approximately a year prior to July of 1980, he was informed that the beam in question had been struck by loaded trucks and lowered as a result thereof. He investigated and measured the distance from the floor of the bridge to the beam and found there was a clearance of 13 feet, 11 3/4 inches. Once he heard of the accident between Mr. Hafford and Mr. Pelletier, he returned to the bridge, once again took a measurement of the height from the floor of the bridge to the beam and found the height again to be 13 feet, 11 3/4 inches. The bridge had an official clearance of 14 feet, 2 inches and there was a sign at the American end of the bridge so stating. By statute, the State of Maine, Department of Transportation, is responsible for the maintenance of that end of the bridge.

Mr. Pelletier was attended to at the scene of the accident by Dr. Fred Harrigan, M.D., of Madawaska, Maine, and immediately taken to the Regional Hospital in Edmundston, New Brunswick. On September 28, 1980, he was transferred from that hospital to the Maine Medical Center, Portland, Maine, from which he was discharged on December 19th. As a result of his injuries, he has lost the use of his legs, arms and fingers and seriously impaired and compromised other bodily functions. These functional losses are permanent in nature.

Mr. Pelletier contends that the State of Maine was negligent in regard to the maintenance of the bridge. The maintenance of bridges is not one of the exceptions to the state's general immunity provided for by the Maine Tort Claims Act. Mr. Pelletier seeks the Legislature's permission and authority to bring suit against the State in the Superior Court for a determination of whether or not the State is liable to him for the damages flowing from its alleged negligence.

Gerald Pelletier was born on June 21, 1945. For the last 12 to 14 years he has been working at Fraser Paper Ltd., in Madawaska, Maine. Until his accident, he was working as a papermaker, earning approximately \$22,000 per year.

This action, if authorized, is to be brought in the Superior Court for the County of Aroostook within one year from the passage of this resolve, against the State of Maine for damages, if any, and the conduct of this 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 on the Secretary of State by attested copy by the sheriff or his deputies in any county of the State. The Attorney General is authorized and designated to appear, answer and defend this 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 Gerald Pelletier if he recovers in the action, and his recovery shall not exceed \$3,000,000, including costs. Hearing thereon shall be before a justice, with or without jury; the justice to be the regularly scheduled justice presiding in the Aroostook County Superior Court when this matter is scheduled for trial.

STATEMENT OF FACT

The purpose of this bill is to authorize Gerald Pelletier to bring civil action against the State of Maine.