

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

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ONE HUNDRED AND TENTH LEGISLATURE

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**Legislative Document**

**No. 674**

H. P. 597

House of Representatives, February 5, 1981

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

EDWIN H. PERT, Clerk

Presented by Representative Lund of Augusta.

Cosponsors: Representative Telow of Lewiston and Representative Dillenback of Cumberland.

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STATE OF MAINE

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

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**AN ACT to Establish Standards and Procedures for Allocating Responsibility among Parties to a Products Liability Action.**

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

14 MRSA §§ 222-225 are enacted to read:

**§ 222. Standard of liability of product sellers other than manufacturers**

1. **No liability. In the absence of express warranties to the contrary, product sellers other than manufacturers are not subject to liability in circumstances where they do not have reasonable opportunity to inspect the product in a manner which should, in the exercise of reasonable care, reveal the existence of the defective condition.**

2. **Exceptions. The duty limitation of subsection 1 does not apply if:**

A. **The manufacturer is not subject to service of process in the claimant's own state;**

B. **The manufacturer has been judicially declared insolvent; or**

C. **The court determines that the claimant would have appreciable difficulty enforcing a judgment against the product manufacturer.**

**§ 223. Comparative responsibility and apportionment of damages**

**1. Comparative responsibility.** All product liability actions are governed by the principles of comparative responsibility. The comparative responsibility attributed to the claimant does not bar the claimant's recovery, but the amount of compensatory damages awarded to the claimant is reduced proportionate to the responsibility attributed to the claimant.

**2. Findings by trier of fact; standard.** In all actions involving comparative responsibility, the court, unless otherwise agreed by all parties, shall instruct the jury to answer special interrogatories indicating the following; or, if there is no jury, the court shall make findings indicating the following:

**A.** The amount of damages each claimant would be entitled to recover if the comparative responsibility of each party were disregarded; and

**B.** The percentage of the total responsibility of all parties to be allocated to:

(1) Each claimant;

(2) Each defendant;

(3) Any person who misused, modified or altered a product; and

(4) Any person who voluntarily and unreasonably used or stored a product with a known defective condition.

For purposes of determinations under this paragraph, the court may determine that 2 or more persons are to be treated as a single party.

In allocating responsibility under this subsection, the trier of fact shall consider, on a comparative basis, the nature of the conduct of each person responsible for the harm of the claimant and the extent of the proximate causal relation between the conduct and the damage claimed.

**3. Judgments; collectibility.** Judgments are subject to the following provisions.

**A.** The court shall determine the award of damages to each claimant in accordance with the findings made under subsection 2 and shall enter judgment against each party determined to be liable.

**B.** In any case in which a party is responsible for a distinct harm or in which there exists some other reasonable basis for apportioning the responsibility for harm caused by a party on an individual basis, damages shall be apportioned severally.

**C.** Upon motion made by a claimant not more than one year after judgment is entered in any product liability action, the court shall determine whether any part of the obligation of a joint tortfeasor is not collectible from that person. Any amount of the obligation which the court determines to be uncollectible shall be reallocated as an obligation to be paid by the other tortfeasors involved

in the action according to the respective percentages of their responsibility, as determined under subsection 2.

**§ 224. Produce misuse**

1. **Misuse defined.** For purposes of this subsection, misuse is considered to occur when a product user does not act in a manner that would be expected of an ordinary, reasonably prudent person who is likely to use the product in the same or similar circumstances.

2. **Standard.** The following standards shall be used.

A. If the product seller proves that misuse of a product by the claimant has caused the claimant harm, the claimant's damages shall be reduced to the extent that the misuse was a cause of the harm.

B. If the product seller proves that misuse of a product by any person other than the product seller or the claimant, caused the claimant harm, the claimant's damages shall be apportioned to the extent that the misuse was a cause of the harm.

C. Under this subsection, the trier of fact may determine that the harm caused by the product occurred solely because of the misuse of the product.

**§ 225. Product alteration or modification**

1. **Definition.** For purposes of this subsection, alteration or modification shall be considered to occur:

A. When a person other than the product seller changes the design, construction or formula of the product, changes or removes warnings or instructions that accompanied or were displayed on the product; or

B. When a product user fails to observe the routine care and maintenance required for a product.

Ordinary wear and tear of a product shall not be considered to be alteration or modification of a product.

2. **Standard.** The following standards shall be used.

A. If the product seller proves that an alteration or modification of the product by the claimant has caused the claimant harm, the damages of the claimant shall be reduced to the extent that the alteration or modification was a cause of the harm.

B. If the product seller proves that an alteration or modification of the product by any person other than the product seller or the claimant has caused the claimant harm the damages of the claimant shall be apportioned to the extent that the alteration or modification was a cause of the harm.

C. Under this subsection, the trier of fact may determine that the harm arose solely because of the product alteration or modification.

**3. Exceptions. Reduction or apportionment under this section may not be made if:**

- A. The alteration or modification was in accordance with instructions or specifications of the product seller;**
- B. The alteration or modification was made with the express or implied consent of the product seller; or**
- C. The alteration or modification was reasonably anticipated conduct and the product seller failed to provide adequate warnings or instructions with respect to the alteration or modification.**

#### STATEMENT OF FACT

This bill establishes specific standards and procedures for allocating responsibility among parties to a products liability action.

The bill describes the basic standard of liability to which product sellers other than manufacturers will be held.

The bill statutorily establishes the doctrine of comparative responsibility in products liability actions. Under this doctrine, the degree of fault of all parties to the action is apportioned among those parties in order to reach a more equitable result in the action.

Currently, the doctrine applies in negligence cases, *Packard v. Whitten* 274-A 2d 169, 1971, but the law court has never squarely ruled that the concept applies to strict products liability cases.

The bill allows a product seller to be relieved from liability for harm caused by a product which has been misused, altered or modified to the extent that the misuse, alteration or modification was a cause of the harm.