

# MAINE STATE LEGISLATURE

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1 FIRST REGULAR SESSION  
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE  
4

5 Legislative Document

No. 731

6  
7 S.P. 273

In Senate, February 27, 1985

8 Reference to the Committee on Energy and Natural Resources suggested  
9 and ordered printed.

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Trafton of Androscoggin.

11 Cosponsored by Representative Mitchell of Freeport and Representative  
Warren of Scarborough.

12 STATE OF MAINE  
13

14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-FIVE  
16

17 AN ACT to Impose Liability for Interference  
18 with Ground Water Use.  
19

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

22 14 MRSA c. 743 is enacted to read:

23 CHAPTER 743

24 WATER RIGHTS

25 §8201. Statement of purpose

26 The Legislature recognizes that increased urban  
27 development and increased water use are demanding ever  
28 larger sources of clean water, that ground water  
29 sources now provide and will continue to provide a  
30 large portion of needed water, that the demand will  
31 inevitably lead to conflict between water users due  
32 to the finite water supply, and that current common  
33 law is inadequate to equitably resolve these con-

1 flicts. The Legislature recognizes that the waters  
2 of the State, including ground water, constitute a  
3 public trust, and that their equitable apportionment  
4 and efficient development is in the public interest.  
5 The purpose of this chapter is to amend the common  
6 law doctrine of ground water rights which now pro-  
7 vides no liability for a landowner's use of ground  
8 water from his own land which interferes with ground  
9 water use of others, due to lowering the water table  
10 or reducing artesian pressure.

11 §8202. Liability for use of ground water

12 1. No liability for withdrawal; exceptions. A  
13 person who is in possession of land, or the grantee  
14 of his ground water rights, who withdraws ground wa-  
15 ter from the land, is not subject to liability for  
16 interference with the use of water by another, un-  
17 less:

18 A. The withdrawal of ground water unreasonably  
19 causes harm to another through lowering the water  
20 table or reducing artesian pressure;

21 B. The withdrawal of ground water exceeds the  
22 person's reasonable share of the annual supply or  
23 total store of ground water; or

24 C. The withdrawal of the ground water has a di-  
25 rect and substantial effect upon a watercourse or  
26 lake and unreasonably causes harm to a person en-  
27 titled to the use of its water.

28 2. Determination of liability. The determina-  
29 tion of liability under subsection 1, paragraphs A to  
30 C, is governed by a consideration of the interests of  
31 the person making the use, of any other harmed by it  
32 and of society as a whole. Factors that affect the  
33 determination include the following:

34 A. The purpose of the use, giving domestic use  
35 highest priority;

36 B. The suitability of the use to the water;

37 C. The economic value of the use;

- 1           D. The social value of the use;  
2           E. The extent and amount of the harm it causes;  
3           F. The practicality of avoiding the harm by ad-  
4           justing the use or method of use of one user or  
5           the other;  
6           G. The protection of existing value of water  
7           uses, land, investments and enterprises; and  
8           H. The justice of requiring the use causing harm  
9           to bear the loss.

10           3. Reasonableness. The reasonableness of a use  
11           of water is not controlled by the use's relation to  
12           the land.

13           4. Relief. A person in possession of land who  
14           is being harmed or will be harmed by another's unrea-  
15           sonable use of ground water may be entitled to an in-  
16           junctive or other equitable relief.

1

STATEMENT OF FACT

2           Maine is one of the last states to retain the En-  
3           glish common law doctrine of absolute ownership of  
4           ground water. This doctrine permits a landowner to  
5           use ground water from that land even when such use  
6           may deprive other landowners of the use of their  
7           ground water. It also theoretically constrains  
8           ground water to use on the property where it is ex-  
9           tracted.

10           This bill is based upon the Second Restatement of  
11           Torts, Section 858. It creates liability for unrea-  
12           sonable harm to another's use of ground water. It  
13           also provides that uses of the water for purposes un-  
14           related to the land from which it is extracted are  
15           not unreasonable per se.

16           This bill requires the court to give domestic use  
17           highest priority in determining liability and appor-  
18           tioning water use. The use of water for domestic  
19           purposes is generally essential and usually involves  
20           small quantities.

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