

MAINE STATE LEGISLATURE

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1 SECOND REGULAR SESSION
2

3 ONE HUNDRED AND TWELFTH LEGISLATURE
4

5 Legislative Document

No. 2065

6
7 S.P. 820

In Senate, February 24, 1986

8 Approved for introduction by a majority of the Legislative Council
9 pursuant to Joint Rule 26.

10 Reference to the Committee on Legal Affairs suggested and ordered
printed.

JOY J. O'BRIEN, Secretary of the Senate

Presented by President Pray of Penobscot.

11 Cosponsored by Representative Kane of So. Portland, Senator Gill of
Cumberland and Representative Hayden of Brunswick.

12 STATE OF MAINE
13

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

17 AN ACT to Expedite the Resolution of
18 Professional Negligence Claims, to Amend
19 Selective Provisions of the Maine Health
20 Security Act and to Abolish the
21 Discovery Rule in Claims Against
22 Health Practitioners, Health Providers
23 and Attorneys.
24

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

27 Sec. 1. 14 MRSA §753 is amended to read:

28 §753. Two years

29 Actions for assault and battery, and for false
30 imprisonment, slander, and libel and malpractice of
31 physicians and all others engaged in the healing art
32 shall be commenced within 2 years after the cause of
33 action accrues.

34 Sec. 2. 14 MRSA §753-A is enacted to read:

1 §753-A. Actions against attorneys

2 In all actions alleging professional negligence
3 or breach of contract by a licensed attorney, the
4 statute of limitations shall start to run from the
5 date of the act or omission giving rise to the injury
6 and not from the discovery of the malpractice, negli-
7 gence or breach of contract, except as the statute of
8 limitations may be suspended by other laws.

9 Sec. 3. 24 MRSA §2502, sub-§1-A is enacted to
10 read:

11 1-A. Health care practitioner. "Health care
12 practitioner" means physicians and all others certi-
13 fied, registered or licensed in the healing arts, in-
14 cluding, but not limited to, nurses, podiatrists, op-
15 tometrists, chiropractors, physical therapists, den-
16 tists, psychologists and physicians' assistants.

17 Sec. 4. 24 MRSA §2502, sub-§2, as enacted by PL
18 1977, c. 492, §3, is amended to read:

19 2. Health care provider. "Health care provider"
20 means any hospital, clinic, nursing home or other fa-
21 cility in which skilled nursing care or medical ser-
22 vices are prescribed by or performed under the gener-
23 al direction of persons licensed to practice medi-
24 cine, dentistry or surgery in this State and which is
25 licensed or otherwise authorized by the laws of this
26 State.

27 Sec. 5. 24 MRSA §2502, sub-§§6 and 7 are enacted
28 to read:

29 6. Actions for professional negligence. "Ac-
30 tions for professional negligence" means any action
31 for damages for injury or death against any health
32 care provider, its agents or employees, or health
33 care practitioner, his agents or employees, whether
34 based upon tort or breach of contract or otherwise,
35 arising out of the provision or failure to provide
36 health care services.

37 7. Professional negligence. "Professional neg-
38 ligence" means a deviation from the applicable stan-
39 dard of care by the professionals or providers

1 charged with that care that proximately causes, by a
2 reasonable professional probability, the injury or
3 damage to the claimant.

4 Sec. 6. 24 MRSA §2506, as enacted by PL 1977, c.
5 492, §3, is amended to read:

6 §2506. Provider reports

7 A health care provider shall, within 60 days, re-
8 port in writing to the appropriate board or authority
9 the name of any member of the medical staff or any
10 other physician practicing in the facility licensed,
11 certified or registered employee or person privileged
12 by the provider whose employment or privileges have
13 been revoked, suspended, limited or terminated, or
14 who has been otherwise formally disciplined by the
15 provider or the provider's medical staff, together
16 with pertinent information relating to such that action,
17 if such revocation, limitation, termination or
18 discipline is the result of negligence, habitual
19 drunkenness, addiction to the use of drugs, profes-
20 sional incompetence or repeated acts of professional
21 incompetence. Any reversal, modification or change of
22 action reported pursuant to this section shall be re-
23 ported immediately to the board or authority, togeth-
24 er with a brief statement of the reasons for such
25 that reversal, modification or change. The failure of
26 any such health care provider to report as required
27 is a civil violation for which a fine of not more
28 than \$1,000 may be adjudged.

29 Sec. 7. 24 MRSA §2511, as amended by PL 1985, c.
30 185, §4 and PL 1985, c. 193, is repealed and the fol-
31 lowing enacted in its place:

32 §2511. Immunity

33 Any person, physician, health care provider, pro-
34 fessional society or member of a professional compe-
35 tence committee or of any board or authority acting
36 without malice, in making any report or other infor-
37 mation available to any appropriate board or authori-
38 ty pursuant to law or in assisting in the origina-
39 tion, investigation or preparation of that informa-
40 tion or in assisting the board or authority in carry-
41 ing out any of its duties or functions provided by

1 law, shall be immune from civil or criminal liability,
2 except as provided in section 2510, subsection 4,
3 for any such actions.

4 Sec. 8. 24 MRSA §2601, as enacted by PL 1977, c.
5 492, §3, is amended by adding at the end a new para-
6 graph to read:

7 The failure of any insurer providing professional
8 liability insurance in this State to a person li-
9 icensed by the Board of Registration in Medicine or
10 the Board of Osteopathic Examination and Registration
11 or any health care provider to report as required is
12 a civil violation for which a fine of not more than
13 \$1,000 may be adjudged.

14 Sec. 9. 24 MRSA §2602, sub-§3 is enacted to
15 read:

16 3. Fine. The failure of any insurer providing
17 professional liability insurance in this State to a
18 person licensed by the Board of Registration in Medi-
19 cine or the Board of Osteopathic Examination and Reg-
20 istration or any health care provider to report as
21 required is a civil violation for which a fine of not
22 more than \$1,000 may be adjudged.

23 Sec. 10. 24 MRSA §2607 is enacted to read:

24 §2607. Claims paid information

25 When any person licensed by the Board of Regis-
26 tration in Medicine or the Board of Osteopathic Exam-
27 ination and Registration has 3 professional liability
28 claims that have resulted in a monetary judgment,
29 award or settlement over a 10-year period, the boards
30 shall treat that situation as a complaint against the
31 providers and shall initiate a review consistent with
32 Title 32, sections 3282 to 3289.

33 Sec. 11. 24 MRSA c. 21, sub-c. IV, as amended,
34 is repealed.

35 Sec. 12. 24 MRSA c. 21, sub-c. IV-A is enacted
36 to read:

37 SUBCHAPTER IV-A

1 MANDATORY PRELITIGATION SCREENING AND MEDIATION PANELS

2 §2851. Purpose and definitions

3 1. Purpose. The purpose of mandatory
4 prelitigation screening and mediation panels is:

5 A. To identify claims of professional negligence
6 which merit compensation and to encourage early
7 resolution of those claims prior to commencement
8 of a lawsuit; and

9 B. To identify claims of professional negligence
10 which do not merit compensation and to encourage
11 early withdrawal or dismissal of those claims.

12 2. Definitions. As used in this subchapter, un-
13 less the context otherwise indicates, the following
14 terms have the following meanings. The definition of
15 a "claim of professional negligence" is limited to
16 any written notice of claim served pursuant to sec-
17 tion 2903 against physicians, dentists, health care
18 providers as defined by section 2502 or any employee
19 or agent acting within the scope of their authority.

20 §2852. Formation and procedure

21 1. Creation of panels. There are created 3 or
22 more regional panels of 3 or 4 persons of whom one
23 shall be a retired judge or a person with judicial
24 experience, one an attorney and one a physician. If
25 the person accused of negligence is a hospital or
26 other provider, a hospital or provider representative
27 shall be a member. All of these persons may vote.
28 If the claim is against a dentist, then a dentist
29 shall be added to the panel in place of a physician,
30 except in cases where a physician is also included in
31 the claim, in which case, a dentist shall be added to
32 the panel as a 4th member. These persons shall be
33 known as, and serve as, the Regional Panel for
34 Prelitigation Screening and Mediation of Professional
35 Negligence. The judge shall be the chairman of the
36 board and all his procedural rulings shall be final.
37 The chairman may extend any of the time periods in
38 this subchapter for good cause.

1 2. Selection of panel members; compensation.
2 Selection of the panel members shall be made as fol-
3 lows: The panel members shall be chosen by the Chief
4 Justice of the Supreme Judicial Court; and the panel
5 members, other than the chairman, shall be chosen
6 from pools of attorneys, physicians, dentists and
7 providers provided by the professions involved. The
8 compensation of the panel chairman shall be paid from
9 a filing fee of \$250 paid by each party to each
10 claim. The service of the other members of the panel
11 may be voluntary, except that expenses may be paid.
12 No volunteer member of the panel may be asked to sit
13 on a panel more than once a year, without his con-
14 sent.

15 3. Challenges; replacements. If any panel mem-
16 ber other than the judge is unable or unwilling to
17 serve in any matter or is challenged for cause by any
18 person who is a party to a proceeding before a panel,
19 the respective party challenging the member shall re-
20 quest a replacement from the pool chosen by the judge
21 who shall so notify the parties. There shall only be
22 challenges for cause allowed. The chairman shall in-
23 quire as to any bias on the part of a panel member or
24 as requested by any party.

25 4. Experts; costs. If the parties or the panel
26 request it, the chairman shall draw upon a pool of
27 experts in the field or fields involved to assist the
28 panel in its determination of the health care stan-
29 dards involved, the negligence and causation. These
30 experts shall be compensated, if not voluntary, by
31 the panel. Costs may be apportioned among the par-
32 ties by the chairman as he sees fit.

33 5. Subpoena power. The panel, through the
34 chairman, shall have the same subpoena power as ex-
35 ists for a Superior Court Judge.

36 6. Discovery. The chairman, upon application of
37 a party, may permit limited discovery if necessary
38 for the party to prepare for the hearing.

39 §2853. Submission of claims

40 1. Notice of claim; filing fee. Any person
41 -serving a notice of claim of professional negligence

1 pursuant to section 2903 shall also serve a copy upon
2 the regional panel in the region where a complaint is
3 filed within 10 days of serving the notice of claim
4 upon the professional, with ordinary mail notice of
5 service to the professional. At the time of filing
6 the notice, the complainant shall also pay a filing
7 fee of \$250 per notice filed.

8 2. Appearance; filing fee. Within 20 days of
9 receipt of notice of service upon the panel, the pro-
10 fessional or his representative shall file an appear-
11 ance before the panel with a copy to the complainant.
12 At the time of filing an appearance, the profession-
13 als and providers named in the notice shall each pay
14 a filing fee of \$250 per notice filed.

15 3. Waiver. Any party may, at the time of fil-
16 ing, apply to the chairman of the panel for a waiver
17 of the filing fee. The chairman shall grant the
18 waiver if the party is indigent. In determining in-
19 digency of the party, the chairman shall consider the
20 factors contained in the Maine Rules of Criminal Pro-
21 cedure, Rule 44(b).

22 4. Filing of records; time for hearing; exten-
23 sions. Within 20 days of entry of appearance, the
24 defendant shall contact plaintiff's counsel and by
25 agreement shall designate a timetable for filing all
26 the relevant medical and provider records necessary
27 to a determination of the panel, to be filed at least
28 30 days before any hearing date, and when the parties
29 will be ready and available for a hearing before the
30 panel, which time for hearing shall not be later than
31 120 days from the service of the notice of claim upon
32 the panel. All requests for extension shall be made
33 to the chairman of the panel, unless agreed upon by
34 the parties.

35 5. Lawsuits. The pretrial screening may be by-
36 passed if all parties agree upon a resolution of the
37 claim by lawsuit. All parties to a claim by agree-
38 ment may submit a claim to the binding determination
39 of the panel by written agreement, either prior to or
40 after the commencement of a lawsuit. Both parties
41 may agree to bypass the panel and commence a lawsuit
42 for any reason, or may request that certain prelimi-
43 nary legal affirmative defenses or issues be liti-

1 gated prior to submission of the case to the panel.
2 The panel has no jurisdiction to hear or decide, ab-
3 sent the agreement of the parties, dispositive legal
4 affirmative defenses, except comparative negligence.

5 6. Combining hearings. There shall be one com-
6 combined hearing or hearings for all claims arising out
7 of the same set of facts, but where there is more
8 than one professional served under the same facts the
9 parties may request that hearings be separated or the
10 parties may agree to sever those hearings or any par-
11 ty may request the chairman to order separate hear-
12 ings.

13 §2854. Hearing

14 1. Procedure. The claimant or a representative
15 of the claimant shall present the case before the
16 panel. The professional, provider or attorney shall
17 likewise make a responding presentation. Wide lati-
18 tude shall be afforded the parties by the panel in
19 the conduct of the hearing including, but not limited
20 to, the right of examination and cross-examination by
21 the attorneys. A tape recorded record shall be main-
22 tained by the panel for its purpose only. The record
23 shall be maintained until 30 days after its decision
24 and then destroyed pursuant to section 2856. The
25 record shall not be made public and the hearings are
26 not to be public without the consent of both or all
27 parties. The Maine Rules of Evidence shall not ap-
28 ply, but the panel shall make such findings upon
29 such evidence as is presented at the hearing, the
30 records and any expert opinions provided by or sought
31 by the panel or the parties.

32 After presentation by the parties, as provided in
33 this section, the panel may request from either party
34 additional facts, records or other information to be
35 submitted in writing or at a continued hearing, which
36 continued hearing shall be held as soon as possible.
37 The continued hearings shall be attended by the same
38 members of the panel who have sat on all prior hear-
39 ings in the same claim, unless otherwise agreed by
40 all parties.

41 2. Questions of procedure; extensions. The
42 chairman shall rule on all questions of procedure

1 during the hearings and all requests of extensions of
2 time for good cause shown or by agreement and the
3 chairman's ruling shall be final.

4 3. Settlement; mediation. The chairman of the
5 panel shall explore whether possibilities of settle-
6 ment exist and attempt to mediate the differences of
7 the parties before proceeding to findings if such
8 possibilities are found to exist.

9 4. Failure to comply. Failure of either party
10 to attend a properly scheduled hearing to participate
11 in authorized discovery, or otherwise substantially
12 comply with this subchapter without a showing of good
13 cause, shall result in a finding against that party,
14 and that finding shall have the same effect as a
15 finding against the parties under section 2857.

16 §2855. Findings by panel

17 At the conclusion of the presentations, the panel
18 shall make its findings in writing within 30 days by
19 answering the following questions:

20 1. Professional negligence. Whether there is a
21 reasonable medical or professional probability that
22 the acts or omissions complained of or found by the
23 panel to exist, or as agreed by the parties, consti-
24 tute professional negligence as defined by this sub-
25 chapter; and

26 2. Causation. Whether there is a reasonable
27 medical or professional probability that the negli-
28 gence proximately caused the injury complained of or
29 as found by the panel or as agreed by the parties.

30 §2856. Notification and effect of findings

31 The panel's findings, signed by the panel mem-
32 bers, indicating the panel's number vote, shall be
33 served by registered or certified mail on the parties
34 within 7 days of their date. The findings and the
35 notice of claim, and the record of the hearing shall
36 be preserved until 30 days after final judgment or
37 the case is finally resolved, after which time it
38 shall be destroyed. All medical and provider records
39 shall be returned to the party providing them to the
40 panel.

1 §2857. Confidentiality and admissibility

2 All proceedings before the panel, including its
3 final determinations, shall be treated in every re-
4 spect as private and confidential by the panel and
5 the parties to the claim. No findings or other writ-
6 ings of the panel, nor any evidence or statements
7 made by any party or his representative during a
8 panel hearing may be admissible or otherwise submit-
9 ted or used in any way for any purpose in any subse-
10 quent court action or any other public disclosure
11 made, unless otherwise agreed by the party who made
12 the statement or presented the evidence. Notwith-
13 standing the prohibition in this section, if the
14 findings of the panel are unanimous as to both ques-
15 tions in section 2855, the findings, without explana-
16 tion, shall be admissible in any subsequent court
17 action. This section does not apply if the findings
18 were influenced by fraud.

19 The deliberations and discussion of the panel and
20 the testimony of any expert, whether called by any
21 party or the panel, shall be privileged and confiden-
22 tial, and no such person may be asked or compelled to
23 testify at a later court proceeding concerning the
24 deliberations, discussions, findings or expert testi-
25 mony or opinions expressed during the panel hearing,
26 unless by the party who called and presented that
27 nonparty expert, except such deliberation, discussion
28 and testimony as may be required to prove an allega-
29 tion of fraud.

30 §2858. Effect of findings by panel

31 In fulfillment of the statement of purpose con-
32 tained in section 2851, a finding by the panel of any
33 claim under this subchapter shall be implemented as
34 follows.

35 1. Payment of claim; determination of damages.
36 If the findings of the panel as to section 2855, sub-
37 sections 1 and 2 are in the affirmative, the profes-
38 sional or provider must promptly enter into negotia-
39 tions to pay the claim or liability may be admitted
40 and the claim submitted to the panel for determina-
41 tion of damages. If suit is brought to enforce the
42 claim, the findings of the panel are admissible as
43 provided in section 2857.

1 2. Release of claim without payment. If the
2 findings of the panel as to either section 2855, sub-
3 section 1 or 2, are in the negative, the claimant
4 must release the claim or claims based on the find-
5 ings without payment or be subject to the admissibil-
6 ity of those findings under section 2857 in any sub-
7 sequent court action.

8 §2859. Statute of limitations

9 The applicable statute of limitations under Title
10 14, section 753-A shall be tolled from the date upon
11 which notice of claim is served until 30 days follow-
12 ing the day upon which the claimant receives notice
13 of the findings of the panel pursuant to section 2856
14 or 175 days after service of the notice of claim pur-
15 suant to section 2903, whichever first occurs. After
16 the passage of 175 days, the plaintiff may bring suit
17 if the panel has not rendered a decision; but after
18 filing, all further proceedings in the case shall be
19 stayed until a decision of the panel is made.

20 Sec. 13. 24 MRSA §2902, as enacted by PL 1977,
21 c. 492, §3, is repealed and the following enacted in
22 its place:

23 §2902. Statute of limitations for health care
24 providers and health care practitioners

25 Actions for professional negligence shall be com-
26 menced within 3 years after the cause of action ac-
27 crues. For the purposes of this section, a cause of
28 action accrues on the date of the act or omission
29 giving rise to the injury. Notwithstanding the pro-
30 visions of Title 14, section 853, relating to minori-
31 ty, these actions for professional negligence by a
32 minor shall be commenced within 6 years after the
33 cause of action accrues or within 3 years after the
34 minor reaches the age of majority, whichever first
35 occurs. This section does not apply where the cause
36 of action is based upon the leaving of a foreign ob-
37 ject in the body, in which case the cause of action
38 shall accrue when the plaintiff discovers or reason-
39 ably should have discovered the harm. For the pur-
40 poses of this section, the term "foreign object" does
41 not include a chemical compound, prosthetic aid or
42 object intentionally implanted or permitted to remain

1 in the patient's body as a part of the health care or
2 professional services.

3 If the provision in this section reducing the
4 time allowed for a minor to bring a claim is found to
5 be void or otherwise invalidated by a court of proper
6 jurisdiction, then the statute of limitations for
7 professional negligence shall be 2 years after the
8 cause of action accrues, except that no claim present
9 under the 3-year statute may be extinguished by the
10 operation of this paragraph.

11 Sec. 14. 24 MRSA §2903, as enacted by PL 1977,
12 c. 492, §3, is repealed and the following enacted in
13 its place:

14 §2903. Notice of claim before suit

15 No action for death or injuries to the person
16 arising from any medical, surgical or dental care,
17 treatment, omission or operation may be commenced un-
18 til the plaintiff has complied with the provisions of
19 subchapter 4 and the time periods provided in section
20 2859 have expired after written notice of claim set-
21 ting forth under oath the act or omission to act of
22 negligence alleged and the nature and circumstances
23 of the injuries and damages alleged is served person-
24 ally or by registered or certified mail upon the per-
25 son or persons accused of wrongdoing. Any applicable
26 statute of limitations shall be tolled until the time
27 periods provided in section 2859 have expired.

28 Sec. 15. 24 MRSA §2903-A is enacted to read:

29 §2903-A. Notice of expert witnesses

30 1. Plaintiff to supply list; 90 days. Every
31 plaintiff in an action arising from any medical, sur-
32 gical or dental care, treatment, omission or opera-
33 tion by a health care provider or its agents or em-
34 ployees or health care practitioner, his agents or
35 employees, shall within 90 days of the filing of the
36 complaint serve upon the defendant, as provided in
37 the Maine Rules of Civil Procedure, Rule 5, a list of
38 the names of expert witnesses he intends to call at
39 trial on the issues of liability and proximate
40 causation, the subject matter on which the expert is

1 expected to testify, the substance of the facts and
2 opinions to which the expert is expected to testify
3 and a summary of the grounds for each opinion.

4 2. Defendant to supply list; 60 days. Within 60
5 days of receipt of the plaintiff's notice of expert
6 witness, the defendant shall serve upon the plaintiff
7 a list of the expert witnesses he intends to call at
8 trial on the issues of liability and proximate
9 causation, the subject matter on which the expert is
10 expected to testify, the substance of the facts and
11 opinions to which the expert is expected to testify
12 and a summary of the grounds for each opinion.

13 3. Extension. The time periods may be extended
14 or the names of expert witnesses added to the lists
15 only by motion upon a showing of good cause, includ-
16 ing, but not limited to:

17 A. Unavailability of complete, legible medical
18 records; or

19 B. Joining of an additional party.

20 Sec. 16. 24 MRSA c. 21, sub-c. VI and VII, are
21 enacted to read:

22 SUBCHAPTER VI

23 PROHIBITION OF CLAIMS BASED UPON WRONGFUL
24 BIRTH AND WRONGFUL LIFE FOR BIRTH OF A
25 HEALTHY CHILD

26 §2931. Wrongful birth; wrongful life

27 1. Intent. It is the intent of the Legislature
28 that the birth of a normal, healthy child does not
29 constitute a legally recognizable injury and that it
30 is contrary to public policy to award damages for the
31 birth or life of a healthy child.

32 2. Birth of healthy child; claim for damages
33 prohibited. No person may maintain a claim for re-
34 lief or receive an award for damages based on the
35 claim that the birth of a healthy child resulted in
36 damages to him.

1 3. Birth of unhealthy child; damages limited.
2 Damages for the birth of an unhealthy child born as
3 the result of professional negligence shall be lim-
4 ited to damages associated with the disease, defect
5 or handicap suffered by the child.

6 4. Other causes of action. This section shall
7 not preclude causes of action based on claims that,
8 but for a wrongful act or omission, maternal death or
9 injury would not have occurred or handicap, disease,
10 defect or deficiency of an individual prior to birth
11 would have been prevented, cured or ameliorated in a
12 manner that preserved the health and life of the af-
13 ected individual.

14 SUBCHAPTER VII

15 STRUCTURED AWARDS

16 §2951. Provision for structured awards

17 1. Definition. As used in this subchapter, the
18 term "health care services" means acts of diagnosis,
19 treatment, medical evaluation or advice or such other
20 acts as may be permissible under the health care li-
21 censing, certification or registration laws of this
22 State.

23 2. Structured awards; periodic payments. In any
24 action for professional negligence, the court in
25 which the action is brought shall, at the request of
26 either party, enter a judgment ordering that money
27 damages or its equivalent for future damages of the
28 judgment creditor be paid in whole or in part by
29 periodic payments rather than by a lump-sum payment
30 if the award equals or exceeds \$250,000 in future
31 damages exclusive of litigation expenses, including,
32 but not limited to, expert witness fees, attorneys'
33 fees and court costs.

34 A. In the case of a jury trial, prior to the
35 case being presented to the jury, the judge shall
36 make a preliminary determination as to whether or
37 not a verdict is likely to result in an award for
38 future damages in excess of the threshold set out
39 in this subsection. If such a determination is
40 made, the judge shall instruct the jury to appor-

1 tion damages between past and future in those
2 categories of damages required under this sub-
3 chapter to be structured. In entering a judgment
4 ordering the payment of future damages by
5 periodic payments, the court shall make a specif-
6 ic finding as to the dollar amount of periodic
7 payments which will compensate the judgment cred-
8 itor for those future damages. In determining
9 the amount of the periodic payment, the court
10 shall consider the amount of interest that would
11 be earned on the amount had it been paid present-
12 ly. As a condition to authorizing periodic pay-
13 ments of future damages, the court must be satisf-
14 ied that there are adequate financial resources
15 available to the judgment debtor. If not so satis-
16 fied, the judge may either deny structuring the
17 award or require adequate security to be depos-
18 ited with the court. Upon termination of
19 periodic payments of future damages, the court
20 shall order the return of the security, or so
21 much as remains, to the judgment debtor.

22 B. The judgment ordering the payment of future
23 damages by periodic payment shall specify the reci-
24 ipient or recipients of the payments, the dollar
25 amount of the payments, the interval between pay-
26 ments and the number of payments or the period of
27 time over which payments shall be made. The pay-
28 ments shall only be subject to modification in
29 the event of death of the judgment creditor.

30 C. In the event that the court finds that the
31 judgment debtor has exhibited a continuing pat-
32 tern of failing to make the payments, as speci-
33 fied in paragraph B, the court shall find the
34 judgment debtor in contempt of court and, in ad-
35 dition to the required periodic payments, shall
36 order the judgment debtor to pay the judgment
37 creditor all damages caused by the failure to
38 make these periodic payments, including court
39 costs and attorneys' fees.

40 D. Money damages awarded for loss of future
41 earnings and loss of services shall not be re-
42 duced or payments terminated by reason of the
43 death of the judgment creditor, but shall be paid
44 to persons to whom the judgment creditor owed a

1 duty of support, as provided by law, immediately
2 prior to his death. In those cases, the court
3 which rendered the original judgment may, upon
4 petition of any party in interest, modify the
5 judgment to award and apportion the unpaid future
6 damages in accordance with this subchapter.

7 E. Following the occurrence or expiration of all
8 obligations specified in the periodic payment
9 judgment, any obligation of the judgment debtor
10 to make further payments shall cease and any se-
11 curity given, pursuant to paragraph A shall re-
12 vert to the judgment debtor.

13 F. As used in this section:

14 (1) "Future damages" includes damages for
15 future medical treatment, care or custody,
16 loss of future earnings and loss of the eco-
17 nomiic value of services.

18 Sec. 17. 32 MRSA §2562-A is enacted to read:

19 §2562-A. Adequacy of budget

20 The budget submitted by the board to the Commis-
21 sioner of Human Services shall be sufficient to en-
22 able the board to comply with this subchapter. The
23 fiscal resources available to the board should enable
24 it to strengthen its staffing capabilities and those
25 of the Department of Attorney General's legal and in-
26 vestigative staff so that complaints, including the
27 professional liability related complaints detailed in
28 Title 24, section 2607, can be resolved in a timely
29 fashion, including the professional liability related
30 complaints. The board shall engage in a collabora-
31 tive effort with the Board of Registration in Medi-
32 cine so that the Department of Attorney General's le-
33 gal and investigative staff resources can be shared.
34 At a minimum, staff resources shall be increased to
35 include an additional staff member to handle com-
36 plaint processing and licensure problems, a full-time
37 investigator and a full-time attorney, those staff
38 positions to be shared with the Board of Registration
39 in Medicine, if necessary.

40 Sec. 18. 32 MRSA §2581, 2nd ¶, as enacted by PL
41 1973, c. 374, §1, is amended to read:

1 Every osteopathic physician legally licensed to
2 practice in this State, shall, on or before the first
3 day of January of each year, pay to the secretary of
4 the board a fee as stipulated by the board not to ex-
5 ceed ~~\$25~~ \$125 for the renewal of his or her certifi-
6 cate to practice. In addition to the payment of such
7 renewal fee, each licensee so applying for the renew-
8 al of his or her certificate shall, commencing for
9 the year 1975 and thereafter, furnish to said board
10 satisfactory evidence that he or she has attended in
11 the year preceding at least 50 hours of educational
12 programs devoted to continuing medical education ap-
13 proved by the board. Said required education must be
14 obtained from formalized programs of continuing medi-
15 cal education sponsored by recognized associations,
16 colleges or universities, hospitals, institutes or
17 groups approved by the board. A copy of the current
18 approved list shall be available in the office of the
19 secretary of the board. At least 40% of these credit
20 hours must be osteopathic medical education approved
21 in the rules and regulations established by the
22 board. The board shall have the authority to adjudi-
23 cations of illness, hardship or military service upon
24 written petition by the applicant. The secretary of
25 said board shall send a written notice of the forego-
26 ing requirements to each such osteopathic physician,
27 at least 60 days prior to each said January 1st, di-
28 rected to the last known address of the licensee en-
29 closing therewith proper blank forms for application
30 for said renewal. If any licensee shall fail to fur-
31 nish the board evidence of attendance at continuing
32 medical educational programs, as approved by the
33 board, and fails to pay the said renewal fee, he or
34 she shall automatically forfeit his or her right to
35 practice osteopathic medicine in this State and his
36 or her license, therefore, shall be cancelled. The
37 secretary of the board may reinstate him or her upon
38 the presentation of satisfactory evidence of continu-
39 ing medical education as outlined and approved by the
40 board and upon payment of the renewal fee.

42 Sec. 19. 32 MRSA §3269, sub-§15 is enacted to
43 read:

44 15. Adequacy of budget. The budget submitted by
45 the board to the Commissioner of Human Services shall

1 be sufficient to enable the board to comply with this
2 subchapter. The fiscal resources available to the
3 board should enable it to strengthen its staffing ca-
4 pacilities and those of the Department of the Attor-
5 ney General's legal and investigative staff so that
6 complaints, including the professional liability re-
7 lated complaints detailed in Title 24, section 2607,
8 can be resolved in a timely fashion. The board shall
9 engage in a collaborative effort with the Board of
10 Osteopathic Examination and Registration so that the
11 Department of Attorney General's legal and investiga-
12 tive staff resources can be shared. At a minimum,
13 staffing resources shall be increased to include an
14 additional staff member to handle complaint process-
15 ing and licensure problems, a full-time investigator
16 and a full-time attorney.

17 Sec. 20. 32 MRSA §3280, first ¶, as amended by
18 PL 1983, c. 378, §50, is further amended to read:

19 On or before the first day of July, 1966, and on
20 or before the first day of July of every even-
21 numbered year thereafter, every physician licensed
22 under this chapter shall apply to the Board of Regis-
23 tration in Medicine for a certificate of biennial
24 registration on forms provided by the board. On or
25 before the first day of July, 1982, and on or before
26 the first day of July of every even-numbered year
27 thereafter, any applicant actively practicing medi-
28 cine in the State shall include satisfactory evidence
29 to the board that, in the preceding 2 years, the ap-
30 plicant has completed a course of continuing medical
31 education as prescribed in the rules and regulations
32 of the board. The registration fee for residents of
33 this State and for nonresidents shall in no event ex-
34 ceed the sum of ~~§100~~ \$250. This section shall not ap-
35 ply to interns or residents registered under section
36 3279 nor shall it apply to those holding temporary
37 certificates for practice in hospitals or camps as
38 provided in section 3277. The registration fees pro-
39 vided for under this section shall not be required of
40 any physician who is 70 years of age on the first day
41 of July of the year for which reregistration is made,
42 although the requirement of reregistration as pro-
43 vided for shall apply without regard to age.

1 **Sec. 21. Report.** The Superintendent of Insur-
2 ance shall report to the 114th Legislature the impact
3 of the provisions of this Act upon the premiums
4 charged to the health care practitioners and health
5 providers covered by this Act.

6 **Sec. 22. Effective date.** Sections 3, 4, 5, 6,
7 7, 8, 9, 14, 15, 16, 17, 18, and 19, take effect 90
8 days after adjournment of the session in which they
9 are enacted and apply to all notices of claim and
10 claims filed on or after that date. The application
11 of these sections shall not be prospective only, but
12 apply to claims arising prior to the effective date
13 if action is commenced after that date. Sections 1,
14 2 and 12, shall take effect on July 1, 1987, except
15 that no claims previously barred by the statute of
16 limitations shall be reviewed by sections 1 and 12.
17 Application of sections 1 and 12 shall not be pro-
18 spective only, but will apply to any notice of claim
19 or claim filed on or after July 1, 1987. The statute
20 of limitations applicable to any suit commenced on or
21 after July 1, 1987, shall be the statute of limita-
22 tions in effect when the claim is filed, and not the
23 statute in effect when the cause of action accrued.
24 Sections 10 and 11 shall be effective on January 1,
25 1987, and shall apply to any notices of claim filed
26 after that date.

27

STATEMENT OF FACT

28 The overall purpose of the bill is to expedite
29 the resolution of medical liability claims in order
30 to decrease the high cost of medical professional li-
31 ability insurance. The cost of insurance for some
32 medical specialists in Maine exceeds \$30,000 to
33 \$40,000 per year, thus resulting in both higher medi-
34 cal bills and in some cases a denial of services.
35 The problem is particularly acute in the area of
36 obstetrics where family physicians and obstetricians
37 have in some cases stopped delivering babies. All of
38 the bill's provisions touch upon the liability area,
39 and a section by section analysis follows.

40 The bill amends the definition section in the
41 current Maine Health Security Act by including a def-

1 initiation of health care practitioner. The effect of
2 this change is to broaden the application of the new
3 provisions of the Act to all health care practition-
4 ers, and not just physicians as in the existing law.

5 The bill amends the Maine Health Security Act by
6 requiring a plaintiff in a medical liability suit to
7 file a list of expert witnesses and the substance of
8 their testimony within 90 days from filing suit. The
9 result will be a more expeditious handling of claims
10 and less filing of frivolous suits. The defendant
11 would have to file the defendant's expert witness in-
12 formation within 60 days of receiving the plaintiffs.

13 The bill amends the existing statutes of limita-
14 tions by:

15 1. Eliminating the so-called "discovery rule" in
16 all cases except "foreign object" surgical cases;

17 2. Reducing the long 20-year tail on minor's
18 claims to 6 years; and

19 3. Extending the present 2-year statute for oth-
20 er than minors to 3 years.

21 The bill makes the "discovery rule" which is
22 abolished in actions against attorneys.

23 The bill eliminates as causes of action for
24 claims suits alleging "wrongful life" and "wrongful
25 birth" where the result of the birth is a healthy
26 child. The courts in several states have prohibited
27 the recovery for a claim based on the birth of a
28 healthy child believing that it would be against pub-
29 lic policy to claim that the birth of a normal
30 healthy child is an "injury" to the parents, "wrong-
31 ful birth" suits.

32 Similarly, in a "wrongful life" action, the child
33 himself claims that, but for the negligence of the
34 physician, he would not have been born. While ac-
35 knowledging that a child born with handicaps, genetic
36 defects or other illness should be able to sue for
37 any damages associated with the defect caused by a
38 physician's negligence, the proposed statute elimi-
39 nates the child's ability to claim damages just for

1 being alive which would require the judge or jury to
2 determine the difference in value between nonlife and
3 life with defects.

4 The purpose of this bill is to require that any
5 award for future damages in a medical malpractice ac-
6 tion equaling or exceeding \$250,000 be paid in
7 periodic payments upon the request of either party.
8 The court would make a specific finding as to the
9 dollar amount of periodic payments which would com-
10 pensate the creditor for future damages and any cred-
11 itor not adequately insured would be required to post
12 adequate security. In the event of the death of the
13 judgment creditor, amounts of the award still owed
14 for future medical expenses, care or custody would
15 revert to the judgment debtor, thus avoiding the
16 heirs of the injured party receiving a windfall.

17 The purpose of this bill is to amend the provi-
18 sions of the Maine Health Security Act dealing with
19 malpractice advisory panels by:

20 1. Making the use of the panels mandatory.

21 2. Changing the makeup of the panels from 2 at-
22 torneys and 2 physicians to one attorney, one physi-
23 cian and one present or former member of the judi-
24 ciary and giving the panel access to its own experts.

25 3. Increasing the incentive to not proceed to
26 trial after screening, thus encouraging defendants to
27 settle in cases where negligence and causation is
28 found and by encouraging plaintiffs not to proceed
29 where the panel makes a finding of negligence and
30 causation.

31 This bill replaces the current "Professional Mal-
32 practice Advisory Panels" with "Professional
33 Prelitigation Mandatory Screening Panels" of a dif-
34 ferent composition whose mandate is to identify
35 claims before suit is brought which either merit com-
36 pensation or not and encourage early payment or with-
37 drawal of those claims. The mandatory nature of the
38 process, the new composition of the panels, headed by
39 an active-retired judge or justice, and supported by
40 a panel of experts, together with appropriate sanc-
41 tions and incentives will discourage bringing claims

1 to court contrary to the findings of the panel. This
2 will institute a reduction in both frequency and se-
3 verity of the claims thereby reducing the cost to so-
4 ciety of the current claims resolution process.

5 This bill is a result of a review of the risk
6 management portions of the Maine Health Security Act.
7 The bill is designed to strengthen the ability of
8 relevant entities to comply with the provisions of
9 the Act so that the professional liability insurance
10 environment for physicians can be improved.

11 This bill amends the language relating to when a
12 health care provider must report a physician's name
13 whose privileges have been revoked, suspended, lim-
14 ited or terminated to the Board of Registration in
15 Medicine or the Board of Osteopathic Examination and
16 Registration in order to broaden the reporting re-
17 quirements. Currently, very few referrals to the
18 boards are made by health care providers. The bill
19 also broadens the list of persons whom the provider
20 has to report by including virtually any person in
21 the facility providing health care services.

22 This bill provides for a penalty provision for
23 all professional liability insurers who do not report
24 all claims and disposition of claims information to
25 the Superintendent of Insurance. All insurers are
26 not currently providing this information as required
27 by the law.

28 This bill requires the Board of Registration in
29 Medicine and the Board of Osteopathic Examination and
30 Registration to conduct a review of any physician who
31 in a 10-year period has 3 professional liability
32 claims that have resulted in a judgment, award or
33 settlement.

34 The purpose of this bill is to strengthen the
35 ability of the Board of Registration in Medicine to
36 comply with the provisions of its enabling legisla-
37 tion. The bill directs the Board of Registration in
38 Medicine to develop an annual budget that will enable
39 it to strengthen its staffing capabilities and those
40 of the Department of the Attorney General's legal and
41 investigative staff, so that complaints, including
42 professional liability related complaints, can be re-

1 solved in a timely fashion. The bill directs the
2 Board of Registration in Medicine to engage in a col-
3 laborative effort with the Board of Osteopathic Exam-
4 ination and Registration so that the Department of
5 the Attorney General's legal and investigative staff
6 resources can be shared. Finally, the bill proposed
7 to raise the ceiling for the biennial reregistration
8 fee from \$100 to \$250.

9 The purpose of this bill is to strengthen the
10 ability of the Board of Osteopathic Examination and
11 Registration to comply with the provisions of its en-
12 abling legislation. The bill directs the Board of
13 Osteopathic Examination and Registration to develop
14 an annual budget that will enable it to strengthen
15 its staffing capabilities and those of the Department
16 of the Attorney General's legal and investigative
17 staff, so that complaints including professional lia-
18 bility related complaints, can be resolved in a time-
19 ly fashion. The bill directs the Board of
20 Osteopathic Examination and Registration to engage in
21 a collaborative effort with the Board of Registration
22 in Medicine so that Department of the Attorney
23 General's legal and investigative staff resources can
24 be shared. Finally, the bill proposed to raise the
25 ceiling for the initial registration and the annual
26 reregistration fee from \$25 to \$125.

27 This bill contains language specifying the effec-
28 tive date of each section of the bill.

29 This bill amends the existing notice of claim
30 section to require that the act or omission to act of
31 negligence be stated. This addition is required be-
32 cause the notice of claim triggers operation of the
33 mandatory screening provision.

34 This bill requires the Superintendent of the Bu-
35 reau of Insurance to report to the 114th Legislature
36 on the impact of the provisions of the Act upon pre-
37 miums charged to health care practitioners and health
38 care providers.

39

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