

# MAINE STATE LEGISLATURE

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1 (EMERGENCY)  
2 (New Draft of H.P. 1304, L.D. 1820)  
3 (New Title)  
4 SECOND REGULAR SESSION  
5

6 ONE HUNDRED AND TWELFTH LEGISLATURE  
7

8 Legislative Document

No. 2142

9  
10 H.P. 1522

House of Representatives, March 6, 1986

11 Reported by Representative Paradis from the Committee on Judiciary  
12 and printed under Joint Rule 2. Original bill sponsored by Representative  
13 Manning of Portland. Cosponsored by Representative Allen of Washington,  
Representative Paradis of Augusta and Senator Chalmers of Knox.

EDWIN H. PERT, Clerk

14  
15 STATE OF MAINE  
16

17 IN THE YEAR OF OUR LORD  
18 NINETEEN HUNDRED AND EIGHTY-SIX  
19

20 AN ACT to Clarify the Applicability of the  
21 Maine Tort Claims Act and to Limit the  
22 Personal Liability of Governmental  
23 Entity Employees.  
24

25 Emergency preamble. Whereas, Acts of the Legis-  
26 lature do not become effective until 90 days after  
27 adjournment unless enacted as emergencies; and

28 Whereas, misunderstanding exists as to applica-  
29 tion of certain procedural provisions of the Maine  
30 Tort Claims Act to suits against governmental entity  
31 employees in certain circumstances; and

32 Whereas, this misunderstanding poses difficulties  
33 for governmental entity employees who may be sued and  
34 for claimants seeking to sue these employees; and

1           Whereas, immediately clarifying the applicability  
2 of these procedural provisions will benefit all po-  
3 tentially involved in suits against governmental en-  
4 tity employees; and

5           Whereas, in the judgment of the Legislature,  
6 these facts create an emergency within the meaning of  
7 the Constitution of Maine and require the following  
8 legislation as immediately necessary for the preser-  
9 vation of the public peace, health and safety; now,  
10 therefore,

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

13           Sec. 1. 14 MRSA §8102, sub-§2-A is enacted to  
14 read:

15           2-A. Permitted by this chapter or permitted un-  
16 der this chapter. "Permitted by this chapter" or  
17 "permitted under this chapter," as applied to claims  
18 or actions against a governmental entity or its em-  
19 ployees, shall be construed to include all claims or  
20 actions expressly authorized by this Act against a  
21 governmental entity and all common law claims or ac-  
22 tions against employees for which immunity is not ex-  
23 pressly provided by this Act.

24           Sec. 2. 14 MRSA §8103, sub-§3, as enacted by PL  
25 1977, c. 578, §1, is amended to read:

26           3. Personal liability; employee of a governmen-  
27 tal entity. Except as otherwise expressly provided by  
28 section 8111 or by any other statute law, an employee  
29 of the State a governmental entity acting within the  
30 course and scope of his employment shall be personal-  
31 ly liable for his negligent acts or omissions causing  
32 property damage, bodily injury or death in instances  
33 in which the State governmental entity is immune un-  
34 der this section only to a limit of \$10,000 for any  
35 and all such claims arising out of a single occur-  
36 rence and shall not be liable for the amount in ex-  
37 cess of that limit on any such claim.

38           Sec. 3. 14 MRSA §8116, 3rd ¶, as amended by PL  
39 1977, c. 578, §5-A, is further amended to read:

1           The State A governmental entity may purchase in-  
2    surance or may self-insure on behalf of its employees  
3    to insure them against any personal liability which  
4    they may incur out of or in the course and scope of  
5    their duties. The State A governmental entity shall  
6    purchase insurance or self-insure on behalf of its  
7    employees to insure them against their personal lia-  
8    bility to the limit of their liability under section  
9    8103, subsection 3 and, to the extent that such the  
10   insurance coverage is not available, shall assume the  
11   defense of and indemnify such those employees to the  
12   limit of their liability under section 8103, subsec-  
13   tion 3.

14           Sec. 4. Effective date. Section 1 of this Act  
15   shall be retroactive to January 31, 1977.

16           Emergency clause. In view of the emergency cited  
17   in the preamble, this Act shall take effect when ap-  
18   proved.

19                           STATEMENT OF FACT

20           Section 1 of this new draft clarifies and con-  
21   firms the applicability of the procedural protections  
22   and limitations on damages provided by the Maine Tort  
23   Claims Act to all actions brought against governmen-  
24   tal employees.

25           Recent Superior Court cases have construed the  
26   terms "permitted by this chapter" and "permitted un-  
27   der this chapter" as used in the Maine Tort Claims  
28   Act in a manner inconsistent with the Legislature's  
29   intent to make protections under the Act applicable  
30   to governmental employees. When the Legislature en-  
31   acted the Maine Tort Claims Act in 1977, it  
32   envisioned the Act as a comprehensive statement of  
33   areas in immunity from tort liability for both gov-  
34   ernmental entities and their employees. Superior  
35   Court constructions of the terms "permitted by this  
36   chapter" and "permitted under this chapter" as used  
37   in the Act have resulted in the imposition of tort  
38   liability and upon governmental employees who previ-  
39   ously were thought to have been immune from the lia-  
40   bility.

1           The purpose of section 2 of this new draft is to  
2 extend to municipal and county employees the same  
3 limits on personal liability that exist for state em-  
4 ployees.

5           Section 3 requires the State and political subdi-  
6 visions to insure its employees, either by self-  
7 insurance or by the purchase of insurance, against  
8 personal liability to a \$10,000 limit under the terms  
9 and conditions of the Maine Revised Statutes, Title  
10 14, section 8103.

11           Section 4 establishes the retroactive application  
12 of section 1. The section is retroactively effective  
13 to the date on which the Maine Tort Claims Act became  
14 effective.

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