

# MAINE STATE LEGISLATURE

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1 (EMERGENCY)  
2 (New Draft of H.P. 1303, L.D. 1819)  
3 (New Title)  
4 SECOND REGULAR SESSION  
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6 ONE HUNDRED AND TWELFTH LEGISLATURE  
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8 Legislative Document

No. 2289

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10 H.P. 1624 House of Representatives, March 31, 1986  
11 Reported by the Majority from the Committee on Judiciary and printed  
12 under Joint Rule 2. Original bill sponsored by Representative Theriault of  
Paradis of Augusta and Representative Ingraham of Houlton.

13 EDWIN H. PERT, Clerk

14  
15 STATE OF MAINE  
16

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

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20 Resolve, to Establish a Commission to Examine  
21 Problems of Tort Litigation and  
22 Liability Insurance in Maine.  
23

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

28 Whereas, many concerns about problems of tort  
29 litigation and liability insurance have been pre-  
30 sented to the Legislature; and

31 Whereas, individual problems with tort litigation  
32 and insurance cannot be addressed by the Legislature  
33 until an examination of the relationship among tort  
34 law, tort litigation and liability insurance has been  
35 undertaken; and

1           Whereas, in the judgment of the Legislature,  
2 these facts create an emergency within the meaning of  
3 the Constitution of Maine and require the following  
4 legislation as immediately necessary for the preser-  
5 vation of the public peace, health and safety; now,  
6 therefore, be it

7           **Study commission created. Resolved:** That there  
8 is created the Commission to Examine Problems of Tort  
9 Litigation and Liability Insurance in Maine; and be  
10 it further

11           **Appointment. Resolved:** That the commission  
12 shall consist of 11 members, as follows: Three Sena-  
13 tors appointed by the President of the Senate, pro-  
14 vided that there shall be one member of the Joint  
15 Standing Committee on Judiciary, one member of the  
16 Joint Standing Committee on Business and Commerce and  
17 one member of the Joint Standing Committee on Legal  
18 Affairs among the Senators appointed; 3 Representa-  
19 tives appointed by the Speaker of the House of Repre-  
20 sentatives, provided that there shall be one member  
21 of the Joint Standing Committee on Judiciary, one  
22 member of the Joint Standing Committee on Business  
23 and Commerce and one member of the Joint Standing  
24 Committee on Legal Affairs among the Representatives  
25 appointed; one member of the Maine Trial Lawyers As-  
26 sociation, appointed by the president of that associ-  
27 ation; one member of the Maine State Bar Association,  
28 appointed by the president of that association; and 2  
29 members representing insurance providers, appointed  
30 by the Governor; and one member of the public, ap-  
31 pointed by the Governor. The Superintendent of In-  
32 surance shall advise the commission upon request.  
33 The commission shall ask the Chief Justice of the Su-  
34 preme Judicial Court to appoint a judge or justice to  
35 serve as an advisor to the commission. The commis-  
36 sion shall select a chairman from among its members.

37           Each person required to make an appointment or  
38 appointments under this resolve shall make the ap-  
39 pointment or appointments by June 2, 1986, and shall  
40 inform the Executive Director of the Legislative  
41 Council upon making the appointment or appointments.

42           A commission member who is not a Legislator shall  
43 serve until he becomes unable to do so by death or

1 resignation or by no longer being a member of the  
2 group he was appointed to represent. A commission  
3 member who is a Legislator shall serve until he be-  
4 comes unable to do so by death or resignation, but  
5 shall continue to serve even if he is not elected to  
6 a term in the 113th Legislature. When any commission  
7 member vacates his commission membership, the author-  
8 ity who appointed the member shall appoint a new mem-  
9 ber to take his place; and be it further

10 **Duties. Resolved:** That the commission shall in-  
11 vestigate and propose recommendations to address  
12 problems of the tort system in Maine and other prob-  
13 lems of the insurance industry that affect the avail-  
14 ability of liability insurance in Maine. The goal of  
15 the commission's recommendations shall be to assure  
16 the reasonable availability in Maine of liability in-  
17 surance at a reasonable cost. In its investigation,  
18 the commission shall emphasize questions of liability  
19 insurance and the tort system as they relate to non-  
20 governmental entities.

21 In conducting its investigation, the commission  
22 shall gather information on the substantive law of  
23 torts in Maine, on tort litigation in Maine and on  
24 the availability of liability insurance in Maine. In  
25 gathering this information, the commission shall  
26 identify any problems in any of these 3 areas that  
27 create injustices or unreasonable costs. The commis-  
28 sion shall prepare a report presenting the informa-  
29 tion gathered. The commission shall make recommenda-  
30 tions to address any problems identified; and be it  
31 further

32 **Investigative powers. Resolved:** That the com-  
33 mission may administer oaths, issue subpoenas, compel  
34 the attendance of witnesses and the production of any  
35 papers, books, accounts, documents and testimony and  
36 cause the deposition of witnesses, whether residing  
37 within or without the State to be taken in the manner  
38 prescribed by law for taking depositions in civil ac-  
39 tions in the Superior Court. In exercising these  
40 powers, the commission is governed by the Maine Re-  
41 vised Statutes, Title 3, chapter 21; and be it fur-  
42 ther

1 Report. Resolved: That the commission shall  
2 present its report, together with any recommended  
3 legislation, to the Second Regular Session of the  
4 113th Legislature by January 15, 1988; and be it fur-  
5 ther

6 Assistance. Resolved: That the commission may  
7 request staff assistance from the Legislative Council.  
8 The commission may contract, with the approval  
9 of the Legislative Council, with an actuary, certified  
10 public accountant or other expert professional  
11 for assistance; and be it further

12 Compensation. Resolved: That the members of the  
13 commission who are Legislators shall receive the legislative  
14 per diem, as defined in the Maine Revised  
15 Statutes, Title 5, section 12002, for days of attendance  
16 at commission meetings. If the commission meets  
17 on a day when the Legislature is in session, the members  
18 of the commission who are Legislators shall receive  
19 only one legislative per diem on that day. All  
20 members of and judicial advisors to the commission  
21 shall receive expenses, as defined in the Maine Revised  
22 Statutes, Title 5, section 12002, upon application  
23 to the Executive Director of the Legislative  
24 Council for those expenses; and be it further

25 Convening of commission. Resolved: When the ap-  
26 pointment of all commission members is completed, the  
27 Executive Director of the Legislative Council shall  
28 call the commission together for its first meeting no  
29 later than July 7, 1986; and be it further

30 Appropriation. Resolved: That there is appro-  
31 priated from the General Fund for the fiscal year  
32 ending June 30, 1987, the following funds to provide  
33 for an examination of problems of tort litigation and  
34 liability insurance in Maine.

35 1986-87

36 LEGISLATURE

37	Commission to Examine Problems of	
38	Tort Litigation and Liability	
39	Insurance in Maine	
40	Personal Services	\$ 1,200

1 All Other 13,800  
2 Total \$15,000

3 Emergency clause. In view of the emergency cited  
4 in the preamble, this resolve shall take effect when  
5 approved.

6 FISCAL NOTE

7 This resolve requires a \$15,000 General Fund ap-  
8 propriation in fiscal year 1987 for per diem and oth-  
9 er related commission expenses as well as for comput-  
10 er consulting costs.

11 In fiscal year 1988, a \$7,000 General Fund appro-  
12 priation will be needed for additional commission  
13 member expenses as well as for report printing costs.

14 STATEMENT OF FACT

15 The purpose of this new draft is to establish the  
16 Commission to Examine Problems of Tort Litigation and  
17 Liability Insurance in Maine. The commission has the  
18 powers of an investigating committee. The commission  
19 must propose recommendations to assure the reasonable  
20 availability in Maine of liability insurance at a  
21 reasonable cost. The commission shall report to the  
22 Legislature by January 15, 1988.

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