

# MAINE STATE LEGISLATURE

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1 (New Draft of S.P. 820, L.D. 2065)  
2 (New Title)  
3 SECOND REGULAR SESSION  
4

5 ONE HUNDRED AND TWELFTH LEGISLATURE  
6

7 Legislative Document

No. 2400  
8

9 S.P. 958

In Senate, April 13, 1986  
10

11 Reported by the Majority Report from the Committee on Judiciary and  
12 printed under Joint Rule 2. Original bill sponsored by President Pray of  
Penobscot. Cosponsored by Representative Kane of So. Portland, Senator  
Gill of Cumberland and Representative Hayden of Brunswick.

JOY J. O'BRIEN, Secretary of the Senate

13  
14 STATE OF MAINE  
15

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

19 AN ACT Relating to Medical and Legal  
20 Professional Liability.  
21

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

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

25 §753. Two years

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

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

32 §753-A. Actions against attorneys

1       Except in actions based on an allegedly negligent  
2 title search and in actions based on an allegedly  
3 negligent will draft, actions alleging professional  
4 negligence or breach of contract by a licensed attor-  
5 ney, the statute of limitations shall start to run  
6 from the date of the act or omission giving rise to  
7 the injury and not from the discovery of the malprac-  
8 tice, negligence or breach of contract, except as the  
9 statute of limitations may be suspended by other  
10 laws.

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

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

19       Sec. 4. 24 MRSA §2502, sub-§2, as enacted by PL  
20 1977, c. 492, §3, is amended to read:

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

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

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

39       7. Professional negligence. "Professional neg-  
40 ligence" means that:

1           A. There is a reasonable medical or professional  
2           probability that the acts or omissions complained  
3           of constitute a deviation from the applicable  
4           standard of care by the health care practitioner  
5           or health care provider charged with that care;  
6           and

7           B. There is a reasonable medical or professional  
8           probability that the acts or omissions complained  
9           of proximately caused the injury complained of.

10           Sec. 6. 24 MRSA §2506, as enacted by PL 1977, c.  
11           492, §3, is amended to read:

12           §2506. Provider reports

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

35           Sec. 7. 24 MRSA §2511, as amended by PL 1985, c.  
36           185, §4 and PL 1985, c. 193, is repealed and the fol-  
37           lowing enacted in its place:

38           §2511. Immunity

39           Any person, physician, health care provider, pro-  
40           fessional society or member of a professional compe-

1 tence committee or of any board or authority acting  
2 without malice, in making any report or other infor-  
3 mation available to any appropriate board or authori-  
4 ty pursuant to law or in assisting in the origina-  
5 tion, investigation or preparation of that informa-  
6 tion or in assisting the board or authority in carry-  
7 ing out any of its duties or functions provided by  
8 law, shall be immune from civil or criminal liabili-  
9 ty, except as provided in section 2510, subsection 4,  
10 for any such actions.

11       Sec. 8. 24 MRSA §2601, as enacted by PL 1977, c.  
12 492, §3, is amended by adding at the end a new para-  
13 graph to read:

14       The failure of any insurer providing professional  
15 liability insurance in this State to a person li-  
16 censed by the Board of Registration in Medicine or  
17 the Board of Osteopathic Examination and Registration  
18 or any health care provider to report as required is  
19 a civil violation for which a fine of not more than  
20 \$1,000 may be adjudged.

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

23       3. Fine. The failure of any insurer providing  
24 professional liability insurance in this State to a  
25 person licensed by the Board of Registration in Medi-  
26 cine or the Board of Osteopathic Examination and Reg-  
27 istration or any health care provider to report as  
28 required is a civil violation for which a fine of not  
29 more than \$1,000 may be adjudged.

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

31       §2607. Claims paid information

32       When any person licensed by the Board of Regis-  
33 tration in Medicine or the Board of Osteopathic Exam-  
34 ination and Registration has 3 professional liability  
35 claims that have resulted in a monetary judgment,  
36 award or settlement over a 10-year period, the boards  
37 shall treat that situation as a complaint against the  
38 licensee or practitioner and shall initiate a review  
39 consistent with Title 32, sections 3282 to 3289.



1 The clerk of each judicial region of the Superior  
2 Court shall maintain lists of health care practition-  
3 ers, health care providers and attorneys recommended  
4 by the professions involved to serve on screening  
5 panels under this subchapter.

6 2. Selection of panel members; compensation.  
7 Screening panel members shall be selected as follows.

8 A. Upon receipt of a notice of claim under sec-  
9 tion 2853, the clerk of the Superior Court who  
10 receives the notice shall notify the Chief Jus-  
11 stice of the Superior Court. The Chief Justice  
12 shall choose a retired judge or person with judi-  
13 cial experience from the list maintained by the  
14 clerk to serve as chairman of the panel to screen  
15 the claim. The Chief Justice shall attempt to  
16 choose a chairman who is a resident of the judi-  
17 cial region in which the notice of claim was  
18 filed. If no resident chairman is available or  
19 appropriate, the Chief Justice shall choose a  
20 chairman from the lists maintained by clerks of  
21 other judicial regions.

22 B. Upon notification of the Chief Justice's  
23 choice of chairman, the clerk who received the  
24 notice of claim under section 2853 shall notify  
25 that person and provide that person with the  
26 clerk's lists of health care practitioners,  
27 health care providers and attorneys created under  
28 subsection 1. The chairman shall choose from  
29 those lists 2 or 3 additional panel members as  
30 follows:

31 (1) The chairman shall choose one attorney;

32 (2) The chairman shall choose one health  
33 care practitioner. If possible, the chairman  
34 shall choose a practitioner who practices in  
35 the specialty or profession of the person  
36 accused of professional negligence; and

37 (3) Where the claim involves more than one  
38 person accused of professional negligence  
39 the chairman may choose a 4th panel member  
40 who is a health care practitioner or health  
41 care provider. If possible, the chairman

1                   shall choose a practitioner or provider in  
2                   the specialty or profession of a person ac-  
3                   cused.

4                   The Chief Justice of the Superior Court shall es-  
5                   tablish the compensation of the panel chairman.  
6                   Other panel members shall serve without compensa-  
7                   tion or payment of expenses. No uncompensated  
8                   panel member may serve on a panel more than once  
9                   a year without his consent.

10                  The clerk of the Superior Court in the judicial  
11                  region in which the notice of claim is filed un-  
12                  der section 2853 shall, with the consent of the  
13                  Chief Justice of the Superior Court, provide  
14                  clerical and other assistance to the panel chair-  
15                  man.

16                  3. Challenges; replacements. If any panel mem-  
17                  ber other than the chairman is unable or unwilling to  
18                  serve in any matter or is challenged for cause by any  
19                  person who is a party to a proceeding before a panel,  
20                  the party challenging the member shall request a re-  
21                  placement from the lists maintained by the clerk un-  
22                  der subsection 1, chosen by the chairman who shall so  
23                  notify the parties. There shall only be challenges  
24                  for cause allowed. The chairman shall inquire as to  
25                  any bias on the part of a panel member or as re-  
26                  quested by any party.

27                  4. Experts; costs. If at least half of the pan-  
28                  el members so request, the chairman shall draw upon a  
29                  pool of experts in the field or fields involved to  
30                  assist the panel in its determination of the health  
31                  care standards involved, the negligence and  
32                  causation. The chairman shall apportion costs of the  
33                  expert among the parties as he sees fit.

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

37                  6. Discovery. The chairman, upon application of  
38                  a party, may permit reasonable discovery.

39                  §2853. Submission of claims



1           1. Notice of claim; filing fee. Any person  
2 -serving a notice of claim of professional negligence  
3 pursuant to section 2903 shall also serve a copy upon  
4 the clerk of the Superior Court in the judicial re-  
5 gion where a complaint based on the claim would be  
6 filed within 10 days of serving the notice of claim  
7 under section 2903, with ordinary mail notice of ser-  
8 vice to the person or persons accused of professional  
9 negligence in the notice. At the time of filing the  
10 notice, the claimant shall also pay to the clerk a  
11 filing fee of \$200 per notice filed.

12           2. Appearance; filing fee. Within 20 days of  
13 receipt of notice of service upon the clerk, the per-  
14 son or persons accused of professional negligence in  
15 the notice or his representative shall file an ap-  
16 pearance before the panel with a copy to the com-  
17 plainant. At the time of filing an appearance, the  
18 person or persons accused of professional negligence  
19 in the notice shall each pay a filing fee of \$200 per  
20 notice filed.

21           3. Waiver. Any party may, at the time of fil-  
22 ing, apply to the chairman of the panel for a waiver  
23 of the filing fee. The chairman shall grant the  
24 waiver if the party is indigent. In determining in-  
25 digency of the party, the chairman shall consider the  
26 factors contained in the Maine Rules of Criminal Pro-  
27 cedure, Rule 44(b).

28           4. Filing of records; time for hearing; exten-  
29 sions. Within 20 days of entry of appearance, the  
30 person or persons accused shall contact the claim-  
31 ant's counsel and by agreement shall designate a  
32 timetable for filing all the relevant medical and  
33 provider records necessary to a determination of the  
34 panel and for completing discovery. If the parties  
35 are unable to agree on a timetable within 60 days of  
36 the entry of appearance, the claimant shall notify  
37 the chairman of the panel. The chairman shall then  
38 establish a timetable for the filing of all relevant  
39 records and reasonable discovery, which shall be  
40 filed at least 30 days before any hearing date. The  
41 hearing shall not be later than 120 days from the  
42 service of the notice of claim upon the panel.

1           5. Lawsuits. The pretrial screening may be by-  
2 passed if all parties agree upon a resolution of the  
3 claim by lawsuit. All parties to a claim may, by  
4 written agreement, submit a claim to the binding de-  
5 termination of the panel, either prior to or after  
6 the commencement of a lawsuit. Both parties may  
7 agree to bypass the panel and commence a lawsuit for  
8 any reason, or may request that certain preliminary  
9 legal affirmative defenses or issues be litigated  
10 prior to submission of the case to the panel. The  
11 panel has no jurisdiction to hear or decide, absent  
12 the agreement of the parties, dispositive legal af-  
13 firmative defenses, except comparative negligence.

14           6. Combining hearings. Except as otherwise pro-  
15 vided in this subsection, there shall be one combined  
16 hearing or hearings for all claims under this section  
17 arising out of the same set of facts. Where there is  
18 more than one person accused of professional neglig-  
19 ence against whom a notice of claim has been filed  
20 based on the same facts, the parties may, upon agree-  
21 ment of all parties, require that hearings be sepa-  
22 rated. The chairman may, for good cause, order sepa-  
23 rate hearings.

24           7. Extensions of time. All requests for exten-  
25 sion of time under this subchapter shall be made to  
26 the panel chairman. The chairman may extend any time  
27 period under this subchapter for good cause.

28    §2854. Hearing

29           1. Procedure. The claimant or a representative  
30 of the claimant shall present the case before the  
31 panel. The person accused of professional negligence  
32 or his representative shall make a responding presen-  
33 tation. Wide latitude shall be afforded the parties  
34 by the panel in the conduct of the hearing including,  
35 but not limited to, the right of examination and  
36 cross-examination by attorneys. The chairman shall  
37 make all procedural rulings and his rulings shall be  
38 final. A tape recorded record shall be maintained by  
39 the panel for its purpose only. The record shall be  
40 maintained until 30 days after its decision and then  
41 destroyed pursuant to section 2856. The record shall  
42 not be made public and the hearings are not to be  
43 public without the consent of both or all parties.

1 The Maine Rules of Evidence shall not apply, but the  
2 panel shall make such findings upon such evidence as  
3 is presented at the hearing, the records and any ex-  
4 pert opinions provided by or sought by the panel or  
5 the parties.

6 After presentation by the parties, as provided in  
7 this section, the panel may request from either party  
8 additional facts, records or other information to be  
9 submitted in writing or at a continued hearing, which  
10 continued hearing shall be held as soon as possible.  
11 The continued hearings shall be attended by the same  
12 members of the panel who have sat on all prior hear-  
13 ings in the same claim, unless otherwise agreed by  
14 all parties.

15 2. Settlement; mediation. The chairman of the  
16 panel shall explore whether possibilities of settle-  
17 ment exist and attempt to mediate the differences of  
18 the parties before proceeding to findings if such  
19 possibilities are found to exist.

20 3. Failure to comply. Failure of a party, with-  
21 out good cause, to attend a properly scheduled hear-  
22 ing to participate in authorized discovery, or to  
23 otherwise substantially comply with this subchapter,  
24 shall result in a finding against that party and that  
25 finding shall have the same effect as a finding  
26 against that party under section 2857.

27 §2855. Findings by panel

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

31 1. Negligence. Whether there is a reasonable  
32 medical or professional probability that the acts or  
33 omissions complained of or found by the panel to ex-  
34 ist, or as agreed by the parties, constitute a devia-  
35 tion from the applicable standard of care by the  
36 health care practitioner or health care provider  
37 charged with that care; and

38 2. Causation. Whether there is a reasonable  
39 medical or professional probability that the acts or  
40 omissions complained of proximately caused the injury

1 complained of or as found by the panel or as agreed  
2 by the parties.

3 §2856. Notification and effect of findings

4 The panel's findings, signed by the panel mem-  
5 bers, indicating their vote, shall be served by reg-  
6 istered or certified mail on the parties within 7  
7 days of the date of the findings. The findings and  
8 the notice of claim and the record of the hearing  
9 shall be preserved until 30 days after final judgment  
10 or the case is finally resolved, after which time it  
11 shall be destroyed. All medical and provider records  
12 shall be returned to the party providing them to the  
13 panel.

14 §2857. Confidentiality and admissibility

15 1. Proceedings before panel confidential. Except  
16 as otherwise provided in this section and section  
17 2858, all proceedings before the panel, including its  
18 final determinations, shall be treated in every re-  
19 spect as private and confidential by the panel and  
20 the parties to the claim. No findings or other writ-  
21 ings of the panel, nor any evidence or statements  
22 made by any party or his representative during a  
23 panel hearing may be admissible or otherwise submit-  
24 ted or used in any way for any purpose in any subse-  
25 quent court action or any other public disclosure  
26 made, unless otherwise agreed by the party who made  
27 the statement or presented the evidence. If the  
28 findings of the panel are:

29 A. As to both questions under section 2855,  
30 unanimous and unfavorable to the person accused  
31 of professional negligence, the findings, without  
32 explanation, shall be admissible in any subse-  
33 quent court action for professional negligence  
34 against that person by the claimant based on the  
35 same set of facts upon which the notice of claim  
36 was filed; and

37 B. As to either question under section 2855,  
38 unanimous and unfavorable to the claimant, the  
39 findings, without explanation, shall be admissi-  
40 ble in any subsequent court action for profes-  
41 sional negligence against the person accused of

1 professional negligence by the claimant based on  
2 the same set of facts upon which the notice of  
3 claim was filed.

4 Under paragraphs A and B, the findings shall be ad-  
5 missible only against the party against whom they  
6 were made. The confidentiality provisions of this  
7 section do not apply if the findings were influenced  
8 by fraud.

9 2. Deliberations, discussions and testimony  
10 privileged and confidential. The deliberations and  
11 discussion of the panel and the testimony of any ex-  
12 pert, whether called by any party or the panel, shall  
13 be privileged and confidential, and no such person  
14 may be asked or compelled to testify at a later court  
15 proceeding concerning the deliberations, discussions,  
16 findings or expert testimony or opinions expressed  
17 during the panel hearing, unless by the party who  
18 called and presented that nonparty expert, except  
19 such deliberation, discussion and testimony as may be  
20 required to prove an allegation of fraud.

21 §2858. Effect of findings by panel

22 A finding by the panel of any claim under this  
23 subchapter shall be implemented as follows.

24 1. Payment of claim; determination of damages.  
25 If the findings of the panel as to section 2855, sub-  
26 sections 1 and 2 are in the affirmative, the person  
27 accused of professional negligence must promptly en-  
28 ter into negotiations to pay the claim or admit lia-  
29 bility. If liability is admitted, the claim may be  
30 submitted to the panel, upon agreement of the claim-  
31 ant and person accused, for determination of damages.  
32 If suit is brought to enforce the claim, the findings  
33 of the panel are admissible as provided in section  
34 2857.

35 2. Release of claim without payment. If the  
36 findings of the panel as to either section 2855, sub-  
37 section 1 or 2, are in the negative, the claimant  
38 must release the claim or claims based on the find-  
39 ings without payment or be subject to the admissibil-  
40 ity of those findings under section 2857, subsection  
41 1, paragraph B.

1     §2859. Statute of limitations

2             The applicable statute of limitations concerning  
3 actions for professional negligence shall be tolled  
4 from the date upon which notice of claim is served  
5 until 30 days following the day upon which the claim-  
6 ant receives notice of the findings of the panel pur-  
7 suant to section 2856 or 175 days after service of  
8 the notice of claim pursuant to section 2903, which-  
9 ever first occurs. After the passage of 175 days,  
10 the claimant may bring suit if the panel has not ren-  
11 dered a decision but after the claimant's filing of a  
12 complaint, all further proceedings in the case shall  
13 be stayed until a decision of the panel is made.

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

17     §2902. Statute of limitations for health care  
18 providers and health care practitioners

19             Actions for professional negligence shall be com-  
20 menced within 3 years after the cause of action ac-  
21 crues. For the purposes of this section, a cause of  
22 action accrues on the date of the act or omission  
23 giving rise to the injury. Notwithstanding the pro-  
24 visions of Title 14, section 853, relating to minori-  
25 ty, actions for professional negligence by a minor  
26 shall be commenced within 6 years after the cause of  
27 action accrues or within 3 years after the minor  
28 reaches the age of majority, whichever first occurs.  
29 This section does not apply where the cause of action  
30 is based upon the leaving of a foreign object in the  
31 body, in which case the cause of action shall accrue  
32 when the plaintiff discovers or reasonably should  
33 have discovered the harm. For the purposes of this  
34 section, the term "foreign object" does not include a  
35 chemical compound, prosthetic aid or object inten-  
36 tionally implanted or permitted to remain in the  
37 patient's body as a part of the health care or pro-  
38 fessional services.

39             If the provision in this section reducing the  
40 time allowed for a minor to bring a claim is found to  
41 be void or otherwise invalidated by a court of proper  
42 jurisdiction, then the statute of limitations for

1 professional negligence shall be 2 years after the  
2 cause of action accrues, except that no claim present  
3 under the 3-year statute may be extinguished by the  
4 operation of this paragraph.

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

8 §2903. Notice of claim before suit

9       1. Commencement of action. No action for profes-  
10 sional negligence may be commenced until the plain-  
11 tiff has:

12       A. Served written notice of claim setting forth,  
13 under oath, the professional negligence alleged  
14 and the nature and circumstances of the injuries  
15 and damages alleged, personally or by registered  
16 or certified mail upon the person accused of pro-  
17 fessional negligence;

18       B. Complied with the provisions of subchapter  
19 IV-A; and

20       C. Determined that the time periods provided in  
21 section 2859 have expired.

22       2. Statute of limitations. Any applicable stat-  
23 ute of limitations shall be tolled under section  
24 2859.

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

26 §2903-A. Notice of expert witnesses

27       1. Plaintiff to supply list; 90 days. Every  
28 plaintiff in an action for professional negligence  
29 shall, within 90 days of the filing of the complaint,  
30 serve upon the defendant, as provided in the Maine  
31 Rules of Civil Procedure, Rule 5, a list of the names  
32 of expert witnesses he intends to call at trial on  
33 the issues of liability and proximate causation, the  
34 subject matter on which each expert is expected to  
35 testify, the substance of the facts and opinions to  
36 which each expert is expected to testify and a summa-  
37 ry of the grounds for each opinion.





1 claim that the birth and rearing of a healthy child  
2 resulted in damages to him. A person may maintain a  
3 claim for relief based on a failed sterilization pro-  
4 cedure resulting in the birth of a healthy child and  
5 receive an award of damages for the hospital and med-  
6 ical expenses incurred for the sterilization proce-  
7 dures and pregnancy, the pain and suffering connected  
8 with the pregnancy and the loss of earnings by the  
9 mother during pregnancy.

10 3. Birth of unhealthy child; damages limited.  
11 Damages for the birth of an unhealthy child born as  
12 the result of professional negligence shall be lim-  
13 ited to damages associated with the disease, defect  
14 or handicap suffered by the child.

15 4. Other causes of action. This section shall  
16 not preclude causes of action based on claims that,  
17 but for a wrongful act or omission, maternal death or  
18 injury would not have occurred or handicap, disease,  
19 defect or deficiency of an individual prior to birth  
20 would have been prevented, cured or ameliorated in a  
21 manner that preserved the health and life of the af-  
22 ected individual.

23 SUBCHAPTER VII

24 STRUCTURED AWARDS

25 §2951. Provision for structured awards

26 1. Definition. As used in this subchapter, the  
27 term "health care services" means acts of diagnosis,  
28 treatment, medical evaluation or advice or such other  
29 acts as may be permissible under the health care li-  
30 censing, certification or registration laws of this  
31 State.

32 2. Structured awards; periodic payments. In any  
33 action for professional negligence, the court in  
34 which the action is brought shall, at the request of  
35 either party, enter a judgment ordering that money  
36 damages or its equivalent for future damages of the  
37 judgment creditor be paid in whole or in part by  
38 periodic payments rather than by a lump-sum payment  
39 if the award equals or exceeds \$250,000 in future  
40 damages exclusive of litigation expenses, including,

1 but not limited to, expert witness fees, attorneys'  
2 fees and court costs.

3 A. In the case of a jury trial, prior to the  
4 case being presented to the jury, the judge shall  
5 make a preliminary determination as to whether or  
6 not a verdict is likely to result in an award for  
7 future damages in excess of the threshold set out  
8 in this subsection. If such a determination is  
9 made, the judge shall instruct the jury to appor-  
10 tion damages between past and future in those  
11 categories of damages required under this sub-  
12 chapter to be structured. In entering a judgment  
13 ordering the payment of future damages by  
14 periodic payments, the court shall make a specific  
15 finding as to the dollar amount of periodic  
16 payments which will compensate the judgment cred-  
17 itor for those future damages. In determining  
18 the amount of the periodic payment, the court  
19 shall consider the amount of interest that would  
20 be earned on the amount had it been paid present-  
21 ly. As a condition to authorizing periodic pay-  
22 ments of future damages, the court must be satis-  
23 fied that there are adequate financial resources  
24 available to the judgment debtor. If not so sat-  
25 isfied, the judge may either deny structuring the  
26 award or require adequate security to be depos-  
27 ited with the court. Upon termination of  
28 periodic payments of future damages, the court  
29 shall order the return of the security, or so  
30 much as remains, to the judgment debtor.

31 B. The judgment ordering the payment of future  
32 damages by periodic payment shall specify the re-  
33 cipient or recipients of the payments, the dollar  
34 amount of the payments, the interval between pay-  
35 ments and the number of payments or the period of  
36 time over which payments shall be made. The pay-  
37 ments shall only be subject to modification in  
38 the event of death of the judgment creditor.

39 C. In the event that the court finds that the  
40 judgment debtor has exhibited a continuing pat-  
41 tern of failing to make the payments, as speci-  
42 fied in paragraph B, the court shall find the  
43 judgment debtor in contempt of court and, in ad-  
44 dition to the required periodic payments, shall

1 order the judgment debtor to pay the judgment  
2 creditor all damages caused by the failure to  
3 make these periodic payments, including court  
4 costs and attorneys' fees.

5 D. Money damages awarded for loss of future  
6 earnings and loss of services shall not be re-  
7 duced or payments terminated by reason of the  
8 death of the judgment creditor, but shall be paid  
9 to the judgment creditor's estate. In those  
10 cases, the court which rendered the original  
11 judgment may, upon petition of any party in in-  
12 terest, modify the judgment to award and appor-  
13 tion the unpaid future damages in accordance with  
14 this subchapter.

15 E. Following the occurrence or expiration of all  
16 obligations specified in the periodic payment  
17 judgment, any obligation of the judgment debtor  
18 to make further payments shall cease and any se-  
19 curity given, pursuant to paragraph A shall re-  
20 vert to the judgment debtor.

21 F. As used in this section:

22 (1) "Future damages" includes damages for  
23 future medical treatment, care or custody,  
24 loss of future earnings and loss of the eco-  
25 nommic value of services.

26 SUBCHAPTER VIII  
27 CONTINGENT FEES

28 §8303. Contingent fees

29 1. Limitation. In an action for professional  
30 negligence, the total contingent fee for the  
31 plaintiff's attorney or attorneys shall not exceed  
32 the following amounts, exclusive of litigation ex-  
33 penses:

34 A. Thirty-three and one-third percent of the  
35 first \$100,000 of the sum recovered;

36 B. Twenty-five percent of the next \$100,000 of  
37 the sum recovered; and

1           C. Twenty percent of any amount over \$200,000 of  
2           the sum recovered.

3           2. Future damages; lump-sum value. For purposes  
4           of determining any lump-sum contingent fee, any fu-  
5           ture damages recoverable by the plaintiff in periodic  
6           installments shall be reduced to lump-sum value.

7           3. Review. The court may review contingent fee  
8           agreements for fairness. In special circumstances,  
9           where an attorney performs extraordinary services in-  
10           volving more than usual participation in time and ef-  
11           fort, the attorney may apply to the court for approv-  
12           al of additional compensation.

13           4. Definition. As used in this section, "conting-  
14           ent fee" includes any fee arrangement under which  
15           the compensation is to be determined in whole or in  
16           part on the result obtained.

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

18           §2562-A. Adequacy of budget

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

39           Sec. 18. 32 MRSA §2581, 2nd ¶, as enacted by PL  
40           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 cate continuing medical education performance in sit-  
24 uations of illness, hardship or military service upon  
25 written petition by the applicant. The secretary of  
26 said board shall send a written notice of the forego-  
27 ing requirements to each such osteopathic physician,  
28 at least 60 days prior to each said January 1st, di-  
29 rected to the last known address of the licensee en-  
30 closing therewith proper blank forms for application  
31 for said renewal. If any licensee shall fail to fur-  
32 nish the board evidence of attendance at continuing  
33 medical educational programs, as approved by the  
34 board, and fails to pay the said renewal fee, he or  
35 she shall automatically forfeit his or her right to  
36 practice osteopathic medicine in this State and his  
37 or her license, therefore, shall be cancelled. The  
38 secretary of the board may reinstate him or her upon  
39 the presentation of satisfactory evidence of continu-  
40 ing medical education as outlined and approved by the  
41 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

STATEMENT OF FACT

2           The new draft amends the definition section in  
3 the current Maine Health Security Act by including a  
4 definition of health care practitioner. The effect  
5 of this change is to broaden the application of the  
6 new provisions of the Act to all health care practi-  
7 tioners, and not just physicians as in the existing  
8 law.

9           The new draft amends the Maine Health Security  
10 Act by requiring a plaintiff in a medical liability  
11 suit to file a list of expert witnesses and the sub-  
12 stance of their testimony within 90 days from filing  
13 suit. The result will be a more expeditious handling  
14 of claims and less filing of frivolous suits. The  
15 defendant would have to file the defendant's expert  
16 witness information within 60 days of receiving the  
17 plaintiffs.

18           The new draft amends the existing statutes of  
19 limitations applicable to medical malpractice actions  
20 by:

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

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

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

27           The new draft has an effective date of August 1,  
28 1988, for the changes in these statutes of limita-  
29 tions.

30           The new draft expands the current "discovery  
31 rule" in actions against attorneys by extending it to  
32 malpractice actions involving wills as well as title  
33 searches. The "discovery rule" will not apply in any  
34 other attorney malpractice actions. This change in  
35 this statute of limitations has an effective date of  
36 August 1, 1988, in the new draft.



1           The new draft eliminates claims for damages based  
2 on the birth and rearing of a healthy child, but per-  
3 mits damages for medical expenses, pain and suffering  
4 and lost earnings where a failed sterilization re-  
5 sults in the birth of a healthy child.

6           While acknowledging that a child born with handi-  
7 caps, genetic defects or other illness should be able  
8 to sue for any damages associated with the defect  
9 caused by a physician's negligence, the new draft  
10 eliminates the child's ability to claim damages just  
11 for being alive which would require the judge or jury  
12 to determine the difference in value between nonlife  
13 and life with defects.

14           The new draft requires that any award for future  
15 damages in a medical malpractice action equaling or  
16 exceeding \$250,000 be paid in periodic payments upon  
17 the request of either party. The court would make a  
18 specific finding as to the dollar amount of periodic  
19 payments which would compensate the creditor for fu-  
20 ture damages and any creditor not adequately insured  
21 would be required to post adequate security. In the  
22 event of the death of the judgment creditor, amounts  
23 of the award still owed for future medical expenses,  
24 care or custody would be paid to the judgment credi-  
25 tor's estate.

26           This new draft amends the provisions of the Maine  
27 Health Security Act dealing with malpractice screen-  
28 ing panels by:

29           1. Making the use of the panels mandatory;

30           2. Including in panels one attorney member, one  
31 or 2 health care practitioner or provider members and  
32 one present or former member of the judiciary as pan-  
33 el chairman; and

34           3. Increasing the incentive not to proceed to  
35 trial after screening, thus encouraging defendants to  
36 settle in cases where negligence and causation is  
37 found and by encouraging plaintiffs not to proceed  
38 where the panel makes a finding against negligence  
39 and causation.

1           The "Professional Prelitigation Mandatory Screen-  
2           ing Panels" mandate is to identify claims before suit  
3           is brought which either merit compensation or not and  
4           encourage early payment or withdrawal of those  
5           claims. The mandatory nature of the process, the new  
6           composition of the panels, headed by an  
7           active-retired judge or justice, and supported by a  
8           panel of experts, together with appropriate sanctions  
9           and incentives will discourage bringing claims to  
10          court contrary to the findings of the panel. This  
11          will institute a reduction in both frequency and se-  
12          verity of the claims thereby reducing the cost to so-  
13          ciety of the current claims resolution process.

14          This new draft amends the language relating to  
15          when a health care provider must report a physician's  
16          name whose privileges have been revoked, suspended,  
17          limited or terminated to the Board of Registration in  
18          Medicine or the Board of Osteopathic Examination and  
19          Registration in order to broaden the reporting re-  
20          quirements. The new draft also broadens the list of  
21          persons whom the provider has to report by including  
22          virtually any person in the facility providing health  
23          care services.

24          This new draft provides a penalty provision for  
25          all professional liability insurers who do not report  
26          all claims and disposition of claims information to  
27          the Superintendent of Insurance.

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

34          The new draft directs the Board of Registration  
35          in Medicine to develop an annual budget that will en-  
36          able it to strengthen its staffing capabilities and  
37          those of the Department of the Attorney General's le-  
38          gal and investigative staff, so that complaints, in-  
39          cluding professional liability related complaints,  
40          can be resolved in a timely fashion. The new draft  
41          directs the Board of Registration in Medicine to en-  
42          gage in a collaborative effort with the Board of  
43          Osteopathic Examination and Registration so that the

1 Department of the Attorney General's legal and inves-  
2 tigative staff resources can be shared. Finally, the  
3 new draft raises the ceiling for the biennial rereg-  
4 istration fee from \$100 to \$250.

5 The new draft directs the Board of Osteopathic  
6 Examination and Registration to develop an annual  
7 budget that will enable it to strengthen its staffing  
8 capabilities and those of the Department of the At-  
9 torney General's legal and investigative staff, so  
10 that complaints including professional liability re-  
11 lated complaints, can be resolved in a timely fash-  
12 ion. The new draft directs the Board of Osteopathic  
13 Examination and Registration to engage in a collabo-  
14 rative effort with the Board of Registration in Medi-  
15 cine so that Department of the Attorney General's le-  
16 gal and investigative staff resources can be shared.  
17 The new draft raises the ceiling for the initial reg-  
18 istration and the annual reregistration fee from \$25  
19 to \$125.

20 The new draft establishes a contingent fee sched-  
21 ule for plaintiff's attorneys in medical malpractice  
22 actions. The new draft establishes an August 1, 1988,  
23 effective date for this provision.

24 This new draft requires the Superintendent of In-  
25 surance to report to the 114th Legislature on the im-  
26 pact of the provisions of the Act upon premiums  
27 charged to health care practitioners and health care  
28 providers. The Commission to Examine Problems of Tort  
29 Litigation and Liability Insurance in Maine must un-  
30 der the new draft, study issues of medical and legal  
31 professional liability and report to the 113th Legis-  
32 lature.

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