

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 256

H.P. 204 House of Representatives, February 5, 1987
Reference to the Committee on Judiciary suggested and
ordered printed.

EDWIN H. PERT, Clerk
Presented by Representative HILLOCK of Gorham.
Cosponsored by Representative ARMSTRONG of Wilton.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

1 AN ACT to Amend the Maine Tort Claims Act
2 Regarding Punitive Damages.
3

4 Be it enacted by the People of the State of Maine as
5 follows:

6 14 MRSA c. 742 is enacted to read:

7 CHAPTER 742

8 PUNITIVE DAMAGES LIMITATION ACT

9 §8131. Short title

10 This Act shall be known and may be cited as the
11 "Punitive Damages Limitation Act."

12 §8132. Definitions

1 As used in this Act, unless the context otherwise
2 indicates, the following terms have the following
3 meanings.

4 1. Economic damages. "Economic damages" means
5 objectively verifiable pecuniary damages arising from
6 medical expenses and medical care, rehabilitation
7 services, custodial care, loss of earnings and earn-
8 ing capacity, loss of income, burial costs, loss of
9 use of property, costs of repair or replacement of
10 property, costs of obtaining substitute domestic ser-
11 vices, loss of employment, loss of business or em-
12 ployment opportunities and other objectively
13 verifiable monetary losses.

14 2. Noneconomic damages. "Noneconomic damages"
15 means pain, suffering, inconvenience, physical im-
16 pairment, disfigurement, mental anguish, emotional
17 distress, loss of society and companionship, loss of
18 consortium, injury to reputation, humiliation, other
19 nonpecuniary damages and any other theory of damages
20 such as fear of loss, illness or injury. It does not
21 include any punitive damages.

22 3. Person. "Person" means any individual, cor-
23 poration, company, association, firm, partnership,
24 society, joint stock company or any other entity, in-
25 cluding any governmental entity or unincorporated as-
26 sociation of persons.

27 §8133. Limitation of punitive damages

28 In any action for personal injury, property dam-
29 age or wrongful death, an award for punitive damages
30 may not exceed twice the award of economic damages.

31 §8134. Burden of proof

32 The imposition of punitive damages shall require
33 a finding of actual malice or actual fraud by clear
34 and convincing evidence.

35 §8135. Bifurcated proceedings

36 Punitive damages may not be included in an ini-
37 tial request for damages, but may only be requested
38 after an initial finding of liability. The award of

1 punitive damages and the amount of any such damages
2 shall be decided by the judge and not the jury.

3 §8136. Limitation on discovery of defendant's finan-
4 cial means

5 In any action for personal injury, property dam-
6 age, economic loss or wrongful death in which puni-
7 tive damages are sought, evidence of the defendant's
8 financial means is not admissible until there have
9 been findings of liability and supportable punitive
10 damages under the facts.

11 §8137. Limitation on multiple punitive damages

12 Where punitive damages have previously been
13 awarded against a defendant in any state or federal
14 proceeding, no additional punitive damages may be
15 awarded against that defendant in subsequent proceed-
16 ing on the basis of the evidence produced in the pro-
17 ceeding in which punitive damages were awarded, un-
18 less it is established, by clear and convincing evi-
19 dence, that new evidence has been discovered which
20 would be admissible and which would have a substan-
21 tial effect on the award of additional punitive dam-
22 ages.

23 §8138. Government standards defense

24 Absent proof, by clear and convincing evidence,
25 that the defendant intentionally and fraudulently
26 withheld from or misrepresented to the state or fed-
27 eral agency information known to be material and rel-
28 evant to the harm in question, punitive damages may
29 not be awarded where the product, structure or ser-
30 vices alleged to have caused the claimant's harm com-
31 plied in material respects, at the time of manufac-
32 ture, construction or rendering of the service with
33 standards, conditions or specifications established,
34 adopted or approved by a federal or state law or by
35 an agency of the Federal Government or State Govern-
36 ment responsible for the design, formulation, label-
37 ing, packaging, performance or approval of the
38 product, structure or services.

39 §8139. Special damages findings required

1 1. Separate findings made. If liability is
2 found in a personal injury or wrongful death action,
3 then the trier of fact, in addition to other appro-
4 prate findings, shall make separate findings for
5 each claimant specifying the amount of:

6 A. Any past damages; and

7 B. Any future damages and the periods over which
8 they will accrue, on an annual basis, for each of
9 the following types of damages:

10 (1) Medical and other costs of health care;

11 (2) Other economic loss; and

12 (3) Noneconomic loss.

13 2. Calculations of medical cost. The calcula-
14 tion of all future medical care and other costs of
15 health care and future noneconomic loss must reflect
16 the costs and losses during the period of time the
17 claimant will sustain those costs and losses. The
18 calculation of other economic loss must be based on
19 the losses during the period of time the claimant
20 would have lived, but for the injury upon which the
21 claim is based.

22 §8140. Limitations

23 Nothing in this Act may be construed to create a
24 cause of action. Nothing in this Act may be con-
25 strued, in any way, to alter the immunity from civil
26 action of any unit of government, public agency, in-
27 dividual or corporation.

28 §8141. Transfer to General Fund

29 In any case where punitive damages are awarded,
30 100% of the amount awarded shall be transferred to
31 the General Fund.

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STATEMENT OF FACT

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The purpose of this bill is to limit the amount of any punitive damages awarded to twice the economic damages. Any award of punitive damages requires a funding on the part of the court of actual malice or actual fraud.

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