

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 539

S.P. 192

In Senate, February 24, 1987

Reference to the Committee on Judiciary suggested and ordered printed.

JOY J. O'BRIEN, Secretary of the Senate
Presented by Senator TWITCHELL of Oxford.

Cosponsored by Senator PERKINS of Hancock, Representative VOSE of Eastport.

STATE OF MAINE

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

AN ACT to Reform Provisions of the Civil
Justice System.

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

Sec. 1. 14 MRSA c. 13 is enacted to read:

CHAPTER 13

TORT REFORM ACT

§261. Short title

This Act shall be known and may be cited as the
"Tort Reform Act."

1 §262. Definitions

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

5 1. Claimant. "Claimant" means any person who
6 brings a personal injury action, and if such an ac-
7 tion is brought through or on behalf of an estate,
8 the term includes the claimant's decedent, or if such
9 an action is brought through or on behalf of a minor,
10 the term includes the claimant's parent or guardian.

11 2. Collateral source. "Collateral source" means
12 a benefit paid or payable to the claimant or on his
13 behalf, under, from or pursuant to:

14 A. The United States Social Security Act;

15 B. Any state or federal income replacement, dis-
16 ability, workers' compensation or other Act de-
17 signed to provide partial or full wage or income
18 replacement;

19 C. Any accident, health or sickness, income or
20 wage replacement insurance, income disability in-
21 urance, casualty or property insurance, includ-
22 ing automobile accident and homeowners' insurance
23 benefits, or any other insurance benefits, except
24 life insurance benefits;

25 D. Any contract or agreement of any group, orga-
26 nization, partnership or corporation to provide,
27 pay for or reimburse the cost of medical, hospi-
28 tal, dental or other health care services or pro-
29 vide similar benefits; and

30 E. Any contractual or voluntary wage continua-
31 tion plan or payments made pursuant to such a
32 plan, provided by an employer or otherwise, or
33 any other system intended to provide wages during
34 a period of disability.

35 3. Damages. "Damages" means pain, suffering, in-
36 convenience, physical impairment, disfigurement, men-
37 tal anguish, emotional distress, loss of society and
38 companionship, loss of consortium, injury to reputa-

1 tion, humiliation, any other theory of damages such
2 as fear of loss, illness or injury, loss of earnings
3 and earning capacity, loss of income, medical ex-
4 penditures and medical care, rehabilitation services,
5 custodial care, burial costs, loss of use of proper-
6 ty, costs of repair or replacement of property, costs
7 of obtaining substitute domestic services, loss of
8 employment, loss of business or employment opportuni-
9 ties and other objectively verifiable monetary
10 losses. It does not include any punitive damages.

11 4. Damages paid by collateral sources. "Damages
12 paid by collateral sources" refers to economic losses
13 paid or payable by collateral sources for wage loss,
14 medical costs, rehabilitation costs, services and
15 other out-of-pocket costs incurred by or on behalf of
16 a claimant for which that party is claiming recovery
17 through a tort suit.

18 5. Economic damages. "Economic damages" means
19 objectively verifiable pecuniary damages arising from
20 medical expenses and medical care, rehabilitation
21 services, custodial care, loss of earnings and earn-
22 ing capacity, loss of income, burial costs, loss of
23 use of property, costs of repair or replacement of
24 property, costs of obtaining substitute domestic ser-
25 vices, loss of employment, loss of business or em-
26 ployment opportunities and other objectively
27 verifiable monetary losses.

28 6. Fault. "Fault" means an act or omission of a
29 person which is a proximate cause of injury or death
30 to another person or persons, damages to property,
31 tangible or intangible, or economic injury, includ-
32 ing, but not limited to, negligence, malpractice,
33 strict liability, absolute liability or failure to
34 warn. "Fault" does not include any tort which results
35 from an act or omission committed with a specific
36 wrongful intent.

37 7. Noneconomic damages. "Noneconomic damages"
38 means subjective, nonpecuniary damages arising from
39 pain, suffering, inconvenience, physical impairment,
40 disfigurement, mental anguish, emotional distress,
41 loss of society and companionship, loss of consorti-
42 um, injury to reputation, humiliation, other
43 nonpecuniary damages and any other theory of damages

1 based upon subjective evidence such as fear of loss,
2 illness or injury.

3 8. Person. "Person" means any individual, corpora-
4 tion, company, association, firm, partnership, so-
5 ciety, joint stock company or any other entity, in-
6 cluding any governmental entity or unincorporated as-
7 sociation of persons.

8 §263. Limitation on damages

9 In any civil action, the prevailing plaintiff may
10 be awarded:

11 1. Compensation; economic damages. Compensation
12 for economic damages suffered by the injured plain-
13 tiff; and

14 2. Compensation; noneconomic damages. Compensa-
15 tion for the noneconomic damages suffered by the in-
16 jured plaintiff not to exceed \$250,000.

17 §264. Special damages findings required

18 1. Separate findings. If liability is found in a
19 personal injury or wrongful death action, then the
20 trier of fact, in addition to other appropriate find-
21 ings, shall make separate findings for each claimant
22 specifying the amount of:

23 A. Any past damages for:

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

25 (2) Other economic loss; and

26 (3) Noneconomic loss; and

27 B. Any future damages and the periods over which
28 they accrue, on an annual basis, for each of the
29 following types of damages:

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

31 (2) Other economic loss; and

32 (3) Noneconomic loss.

1 2. Calculation; time period. The calculation of
2 all future medical care and other costs of health
3 care and any future noneconomic loss must reflect the
4 costs and losses during the period of time the claimant
5 will sustain those costs and losses. The calculation
6 for any other economic loss must be based on the
7 losses during the period of time the claimant would
8 have lived but for the injury upon which the claim is
9 based.

10 §265. Admissibility of evidence

11 1. Collateral source payments. In all tort ac-
12 tions, regardless of the theory of liability under
13 which they are brought, the court shall allow the ad-
14 mission into evidence of proof of collateral source
15 payments which have already been made or which are
16 substantially certain to be made to claimant as com-
17 penensation for the same damages sought in the suit.
18 Proof of these payments shall be considered by the
19 trier of fact in arriving at the amount of any award
20 and shall be considered by the court in reviewing
21 awards made for excessiveness.

22 2. Tax implications. The trier of fact shall be
23 informed of the tax implications of all damage
24 awards. The trier of fact may hear evidence of the
25 premiums personally paid by the claimant to obtain
26 any collateral sources paid or payable.

27 §266. Assessment of liability

28 1. Several liability. In any action for personal
29 injury, property damage or wrongful death, the lia-
30 bility of each defendant for noneconomic and economic
31 damages shall be several only and shall not be joint.
32 Each defendant shall be liable only for the amount of
33 damages allocated to that defendant in direct propor-
34 tion to that defendant's percentage of fault and a
35 separate judgment shall be rendered against the de-
36 fendant for that amount. To determine the amount of
37 judgment to be entered against each defendant, the
38 court, with regard to each defendant, shall multiply
39 the total amount of damages recoverable by the plain-
40 tiff by the percentage of each defendant's fault and
41 that amount shall be the maximum recoverable against
42 the defendant.

1 2. Fault of nonparties. In assessing percentages
2 of fault, the trier of fact shall consider the fault
3 of all persons who contributed to the alleged injury,
4 death or damage to property, tangible or intangible,
5 regardless of whether the person was, or could have
6 been, named as a party to the suit. Negligence or
7 fault of a nonparty may be considered if the plain-
8 tiff entered into a settlement agreement with the
9 nonparty or if the defending party gives notice with-
10 in 120 days of the date of trial that a nonparty was
11 wholly or partially at fault. The notice shall be
12 given by filing a pleading in the action designating
13 the nonparty and setting forth the nonparty's name
14 and last known address, or the best identification of
15 the nonparty which is possible under the circum-
16 stances, together with a brief statement of the basis
17 for believing the nonparty to be at fault.

18 Nothing in this Act is meant to eliminate or diminish
19 any defenses or immunities which currently exist, ex-
20 cept as expressly noted in this chapter. Assessments
21 of percentages of fault for nonparties are used only
22 as a vehicle for accurately determining the fault of
23 named parties. When fault is assessed against
24 nonparties, findings of such fault shall not subject
25 any nonparty to liability in this or any other action
26 or to be introduced as evidence of liability in any
27 action.

28 3. Intentional torts. Joint liability shall be
29 imposed on all who consciously and deliberately pur-
30 sue a common plan or design to commit an intentional
31 tortious act or actively take part in it. Any person
32 held jointly liable under this section shall have a
33 right of contribution from his fellow defendants act-
34 ing in concert. A defendant shall be held responsible
35 only for the portion of fault assessed to those with
36 whom he acted in concert under this section.

37 4. Burden of proof. The burden of alleging and
38 proving fault shall be upon the person who seeks to
39 establish the fault.

40 5. Limitations. Nothing in this Act creates a
41 cause of action. Nothing in this Act alters the immu-
42 nity of any person.

1 §267. Immunity

2 1. Immunity. All directors, trustees or members
3 of the governing bodies of nonprofit cooperatives,
4 corporations, associations and organizations de-
5 scribed in subsection 2, whether compensated or not,
6 shall be immune from suit arising from the conduct of
7 the affairs of the cooperatives, corporations, asso-
8 ciations or organizations, provided that immunity
9 from suit shall be removed when the conduct amounts
10 to willful, wanton or gross negligence. Nothing in
11 this Act may be construed to grant immunity to the
12 nonprofit cooperative, corporation, association or
13 organization.

14 2. Application. Subsection 1 applies to nonprof-
15 it corporations, associations and organizations which
16 are exempt from federal income taxation under the
17 United States Internal Revenue Code of 1954, Section
18 501, as amended.

19 §268. Product liability

20 1. Conformation to state of art. In any action
21 brought pursuant to this chapter against an assem-
22 bler, designer, supplier of specifications, distribu-
23 tor, manufacturer or seller for damages arising from
24 an alleged defect in the design, testing, manufactur-
25 ing, formulation, packaging, warning or labeling of a
26 product, a percentage of fault shall not be assigned
27 to a person if he pleads and proves that the product
28 conformed to the state of the art in existence at the
29 time the product was designed, tested, manufactured,
30 formulated, packaged, provided with a warning or la-
31 beled. Nothing contained in this section shall dimin-
32 ish the duty of an assembler, designer, supplier of
33 specifications, distributor, manufacturer or seller
34 to warn concerning subsequently acquired knowledge of
35 a defect or dangerous condition that would render the
36 product unreasonably dangerous for its foreseeable
37 use or diminish the liability for failure to so warn.

38 2. Federal or state standards or specifications.
39 Damages shall not be awarded a plaintiff when the
40 product alleged to have caused death, personal injury
41 or property damage, at the time of manufacture, con-
42 formed with standards, conditions or specifications

1 established, adopted or approved by a cognizant fed-
2 eral or state agency responsible for the design, for-
3 mulation, labeling, packaging, performance or approv-
4 al of the product.

5 §269 Ad damnum clause

6 No dollar amount or figure may be included in the
7 demand in any civil case filed in Superior Court, but
8 the prayer shall be for such damages as are reason-
9 able in the premises.

10 Sec. 2. 14 MRSA §1602, sub-§1, as amended by PL
11 1983, c. 583, §7, is further amended to read:

12 1. Prejudgment interest; rate; avoidance. In
13 all civil actions, except those actions involving a
14 contract or note which contains a provision relating
15 to interest, prejudgment interest shall be assessed
16 at the a rate of 8% per year which is equal to 1%
17 plus the average interest rate paid at auctions of
18 5-year United States Treasury notes during the 6
19 months immediately preceding the date of entry of
20 judgment.

21 Prejudgment interest shall accrue from the time of
22 notice of claim setting forth under oath the cause of
23 action, served personally or by registered or certi-
24 fied mail upon the defendant until the date on which
25 an order of judgment is entered. If no notice of
26 claim has been given to the defendant, prejudgment
27 interest shall accrue from the date on which the com-
28 plaint is filed. If the prevailing party at any time
29 requests and obtains a continuance for a period in
30 excess of 30 days, interest shall be suspended for
31 the duration of the continuance. On petition of the
32 nonprevailing party and on a showing of good cause,
33 the trial court may order that interest awarded by
34 this section shall be fully or partially waived.

35 Sec. 3. 14 MRSA §1602, sub-§3, as enacted by PL
36 1983, c. 427, §1, is amended to read:

37 3. Limitation. Subsection 1 shall not apply to
38 judgments of less than \$5,000. For those judgments,
39 interest shall accrue only from the date on which the
40 complaint is filed and at a fixed rate of 8% per year

1 The bill repeals the common law "collateral
2 source," rule which prohibits the jury from consider-
3 ing that the plaintiff's expenses may have been paid
4 for by a 3rd-party insurance carrier or by a govern-
5 ment program. The proposed provision allows admission
6 into court of proof of collateral source payments
7 which have already been made or which are substan-
8 tially certain to be made to the plaintiff as compen-
9 sation for the same damages sought in the suit. The
10 jury may also hear evidence of the premiums paid by
11 the plaintiff to obtain any collateral source paid or
12 payable.

13 The bill abolishes the common law rule of joint
14 and several liability which currently holds each neg-
15 ligent defendant potentially liable for the entire
16 amount of damages, regardless of the percentage of
17 fault. It provides that each defendant is liable only
18 for the amount of damages allocated to that defendant
19 in direct proportion to that defendant's percentage
20 of fault. Joint liability is still imposed in the
21 case of intentional torts.

22 The bill reduces the current prejudgment and
23 post-judgment interest rates from the current fixed
24 rates, 10% and 15%, to a floating rate tied to the
25 rate paid on United States Treasury notes during the
26 preceding 6 months.

27 The bill provides immunity to officers and direc-
28 tors of nonprofit associations and corporations, as
29 long as their conduct is not willful, wanton or
30 grossly negligent. This provision responds directly
31 to the current crisis in the cost and availability of
32 D and O insurance.

33 The bill establishes a new standard of liability
34 for so-called product's liability cases. Under the
35 proposed standard, a manufacturer would be held to
36 the standards in existence at the time the product
37 was designed, tested or manufactured, rather than be-
38 ing responsible retroactively. In addition, the pro-
39 vision precludes a recovery when the product at the
40 time of manufacture, conformed with standards estab-
41 lished, adopted or approved by a federal or state
42 agency responsible for approval of the product.

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The bill prohibits the inclusion in a civil case filed in Superior Court of the amount of damages sued for, a provision which already exists in the laws governing medical malpractice cases. The amount of money sought in a complaint can be grossly overstated by the plaintiff's attorney, thus leading to sensational media headlines.

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