

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1488

H.P. 1097 House of Representatives, May 8, 1987
Submitted by the Department of Defense and Veterans'
Services pursuant to Joint Rule 24.

Reference to the Committee on Judiciary suggested and
ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative GARLAND of Bangor.

Cosponsored by Representative STROUT of Windham and
Senator DILLENBACK of Cumberland.

STATE OF MAINE

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

1 AN ACT to Update References to Immunities of
2 State Military Forces under the State
3 Tort Claims Act.
4

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

7 Sec. 1. 14 MRSA §8102, sub-§1, as amended by PL
8 1977, c. 696, §165, is further amended to read:

9 1. Employee. "Employee" means a person acting on
10 behalf of the governmental entity in any official ca-
11 pacity, whether temporarily or permanently, and
12 whether with or without compensation from local,
13 state or federal funds, including elected or ap-
14 pointed officials, volunteer firefighters as defined
15 in Title 30, section 3771, rescue squad members where
16 the rescue squad receives full or partial financial

1 support from political subdivisions, Maine National
2 Guardsmen while ~~in-active-state-service-under--Title~~
3 ~~37-A, sections 57 and 207~~ receiving state active duty
4 pay under Title 37-B, section 143, in accordance with
5 Title 37-B, sections 181 to 183 and 742, and while
6 engaged in the Domestic Action Program, but the term
7 "employee" shall not mean a person or other legal en-
8 tity acting in the capacity of an independent con-
9 tractor under contract to the governmental entity.

10 Sec. 2. 14 MRSA §8103, sub-§2, ¶E, as enacted by
11 PL 1977, c. 578, §1, is repealed and the following
12 enacted in its place:

13 E. The activities of the state military forces
14 when receiving state active duty pay under Title
15 37-B, section 143, in accordance with Title 37-B,
16 sections 181 and 182, intervention in insurrec-
17 tions, and Title 37-B, section 183, human health
18 care emergency assistance.

19 STATEMENT OF FACT

20 Presently, the Maine Revised Statutes, Title 14,
21 section 8102, defines a Maine National Guardsman as
22 being "in active state service under Title 37-B, sec-
23 tions 57 and 207." Presently, Title 14, section 8103,
24 subsection 2, paragraph E, similarly grants immunity
25 from the operation of the Maine Tort Claims Act for
26 "activities of the Maine National Guard when engaged
27 in combatant activities during a time of war, or when
28 called to duty in accordance with a proclamation of
29 emergency by the Governor in accordance with Title
30 37-A, section 57 or 207."

31 A change in terminology is necessary to correct
32 the misnomer "Maine National Guard" in favor of
33 "state military forces." State military forces is
34 the status of the Maine National Guard called to
35 emergency state active duty by the Governor. State
36 military forces also include Maine Militia and Maine
37 Air National Guard (in state active duty) where ap-
38 plicable, as further defined in Title 37-B, section
39 102-A.

1 Additionally, Title 37-A has been repealed and
2 substituted in full by new subsections under Title
3 37-B. Title 37-B, section 742 (disasters) substi-
4 tutes for former Title 37-A, section 57, and Title
5 37-B, section 182 (insurrections) substitutes for
6 former Title 37-A, section 207. Additionally, Title
7 37-B, section 183 (human health emergency) should be
8 referenced due to the fact that emergency medical
9 units on state active duty can commit torts like any
10 other military unit through negligence in activities
11 more generic to the military than the providing of
12 emergency medical care protected under Title 14, sec-
13 tion 164.

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