

MAINE STATE LEGISLATURE

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(New Draft of S.P. 192, L.D. 539)
SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

No. 2520

S.P. 952

In Senate, March 14, 1988

Reported by Senator BRANNIGAN of Cumberland for the
Committee on Judiciary and printed under Joint Rule 2.
Original Bill sponsored by Senator TWITCHELL of Oxford.
Cosponsored by: Senator PERKINS of Hancock and Representative
VOSE of Eastport.

JOY J. O'BRIEN, Secretary of the Senate

STATE OF MAINE

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

1 **AN ACT to Reform Provisions of the Civil**
2 **Justice System.**
3

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

6 Sec. 1. 14 MRSA §52 is enacted to read:

7 §52. Ad damnum clause

1 No dollar amount or figure may be included in the
2 demand in any civil case filed in Superior Court, but
3 the prayer shall be for such damages as are reasonable
4 in the premises. This section shall not apply to a
5 demand for liquidated damages.

6 Sec. 2. 14 MRS-A §158-A is enacted to read:

7 §158-A. Immunity for charitable directors, officers
8 and volunteers

9 1. Definitions. As used in this section, unless
10 the context otherwise indicates, the following terms
11 have the following meanings.

12 A. "Charitable organization" means any nonprofit
13 organization organized or incorporated in this
14 State or having a principal place of business in
15 this State:

16 (1) That is exempt from federal income
17 taxation under the United States Internal
18 Revenue Code, Section 501(a), because it is
19 described in Section 501(c)(3), (4), (6) as
20 it pertains to chambers of commerce only,
21 (10), (13) or (14)(A), including all
22 subsequent amendments to those paragraphs.
23 An organization is included in this
24 subparagraph if it would be exempt from
25 taxation under Section 501(c)(3) but for its
26 engaging in attempting to influence
27 legislation to the extent that it is
28 disqualified from tax exemption under Section
29 501(c)(3); or

30 (2) That is:

31 (a) Organized under the Maine Nonprofit
32 Corporation Act for any of the purposes
33 listed in Title 13-B, section 201,
34 subsection 1, paragraph A;

35 (b) Organized under the provisions set
36 forth in Title 13-B, section 201,
37 subsection 2,

1

paragraph A; or

2

(c) Organized under the provisions of
3 Title 13-B, section 201, subsection 3,
4 paragraph D or E.

5

This subparagraph applies to all subsequent
6 amendments to the statutes covered by
7 divisions (a), (b) and (c).

8

B. "Director" means a person who serves without
9 compensation, except that the person may be paid
10 for expenses, on the board of trustees or board of
11 directors of a charitable organization.

12

C. "Officer" means a person who serves without
13 compensation, except that the person may be paid
14 for expenses, as an officer of a charitable
15 organization.

16

D. "Volunteer" means a person who provides
17 services without compensation, except that the
18 person may be paid for expenses, to a charitable
19 organization.

20

2. Immunity. A director, officer or volunteer is
21 immune from civil liability for personal injury, death
22 or property damage, including any monetary loss:

23

A. When the cause of action sounds in negligence
24 and arises from an act or omission by the
25 director, officer or volunteer which occurs within
26 the course and scope of the activities of the
27 charitable organization in which the director,
28 officer or volunteer serves; or

29

B. Arising from any act or omission, not personal
30 to the director, officer or volunteer, which
31 occurs within the course and scope of the
32 activities of the charitable organization in which
33 the director, officer or volunteer serves.

34

Sec. 3. 14 MRSA §1602, sub-§1, as amended by
35 PL 1983, c. 583, §7, is further amended to read:

1 1. Prejudgment interest; rate; avoidance. In all
2 civil actions, except those actions involving a
3 contract or note which contains a provision relating
4 to interest, prejudgment interest shall be assessed
5 at the a rate of-8%-per-year-:

6 A. For actions in which the damages claimed or
7 awarded do not exceed the jurisdictional limit of
8 the District Court set forth in Title 4, section
9 152, subsection 2, of 8% per year; and

10 B. For other actions, equal to the coupon issue
11 yield equivalent, as determined by the United
12 States Secretary of the Treasury, of the average
13 accepted auction price for the last auction of
14 52-week United States Treasury bills settled
15 immediately prior to the date from which the
16 interest is calculated under section 1602-A, plus
17 1%.

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

32 **Sec. 4.** 14 M RSA §1602-A, as enacted by PL 1983,
33 c. 427, §2, is repealed and the following enacted in
34 its place:

35 §1602-A. Interest after judgment

36 From and after the date of entry on an order of
37 judgment, including the period of the pendency of an
38 appeal, interest shall be allowed at a rate:

1 1. For actions in which the damages claimed or
2 awarded do not exceed the jurisdictional limit of the
3 District Court set forth in Title 4, section 152, of
4 15% per year; and

5 2. For other actions, equal to the coupon issue
6 yield equivalent, as determined by the United States
7 Secretary of the Treasury, of the average accepted
8 auction price for the last auction of 52-week United
9 States Treasury bills settled immediately prior to the
10 date from which the interest is calculated, plus 3%.

11 If the prevailing party at any time requests and
12 obtains a continuance for a period in excess of 30
13 days, interest shall be suspended for the duration of
14 the continuance. On petition of the nonprevailing
15 party and on a showing of good cause, the trial court
16 may order that interest awarded by this section shall
17 be fully or partially waived.

18 **Sec. 5.** 24 MRSA §2511, as repealed and replaced
19 by PL 1987, c. 402, Pt. B, §20, is repealed and the
20 following enacted in its place:

21 §2511. Immunity

22 Any person acting without malice, physician,
23 health care provider, professional society or member
24 of a professional competence committee, professional
25 review committee or any board or appropriate authority
26 is immune from civil liability:

27 1. Reporting. For making any report or other
28 information available to any board, appropriate
29 authority, professional competence committee or
30 professional review committee pursuant to law;

31 2. Assisting in preparation. For assisting in
32 the origination, investigation or preparation of the
33 report or information described in subsection 1; or

34 3. Assisting in duties. For assisting the board,
35 authority or committee in carrying out any of its
36 duties or functions provided by law.

1 Sec. 6. 24 MRSA §2961, sub-§3, as enacted by PL
2 1985, c. 804, §§16, 22, is repealed and the following
3 enacted in its place:

4 3. Review. If the plaintiff prevails in the
5 action for professional negligence, the plaintiff's
6 attorney may petition the court to review the
7 reasonableness of the fees permitted under subsection
8 1. The court may award a greater fee than that
9 permitted by subsection 1, provided that:

10 A. The court, considering the factors established
11 in Maine Bar Rule 3 as guides in determining the
12 reasonableness of a fee, finds that the fees
13 permitted by subsection 1 are inadequate to
14 compensate the attorney reasonably for the
15 attorney's services; and

16 B. The court finds that the fee found reasonable
17 under paragraph A does not exceed the percentages
18 set forth in the contingent fee agreement between
19 the attorney and plaintiff as the maximum amount
20 of compensation the attorney may receive.

21 An attorney may petition the court under this
22 subsection only if, prior to the signing of a
23 contingent fee agreement by the attorney and client,
24 the attorney informs the client, orally and in
25 writing, of the provisions of this section.

26 Sec. 7. 32 MRSA §455 is enacted to read:

27 §455. Review committee immunity

28 Any member of a peer review committee of a state
29 association composed of chiropractors licensed under
30 this chapter, any staff member of such an association
31 assisting a peer review committee and any witness or
32 consultant appearing before or presenting information
33 to the peer review committee is immune from civil
34 liability for, without malice, undertaking or failing
35 to undertake any act within the scope of the function
36 of the committee.

1 Sec. 8. 32 MRSA §1094-A, as enacted by PL 1975,
2 c. 484, §11, is repealed and the following enacted in
3 its place:

4 §1094-A. Review committee immunity

5 Any dentist who is a member of a peer review
6 committee of a state or local association or society
7 composed of doctors of dentistry, any staff member of
8 such an association or society assisting a peer review
9 committee and any witness or consultant appearing
10 before or presenting information to the peer review
11 committee is immune from civil liability for, without
12 malice, undertaking or failing to undertake any act
13 within the scope of the function of the committee.

14 Sec. 9. 32 MRSA §2596, as repealed and replaced
15 by PL 1975, c. 83, §1, is repealed and the following
16 enacted in its place:

17 §2596. Review committee member immunity

18 Any physician licensed under this chapter who is a
19 member of a utilization review committee or a peer
20 review committee that is a requirement of
21 accreditation by the American Osteopathic Association
22 or is established and operated under the auspices of
23 the physician's respective state or county
24 professional society or the Board of Osteopathic
25 Examinations and Registration is immune from civil
26 liability for undertaking or failing to undertake any
27 act within the scope of the function of the committee.

28 Sec. 10. 32 MRSA §3293, as repealed and
29 replaced by PL 1975, c. 83, §2, is repealed and the
30 following enacted in its place:

31 §3293. Review committee member immunity

32 Any physician licensed under this chapter who is a
33 member of a utilization review committee, medical
34 review committee, surgical review committee, peer
35 review committee or disciplinary committee that is a
36 requirement of accreditation by the Joint Commission
37 on Accreditation of Hospitals or is established and

1 operated under the auspices of the physician's
2 respective state or county professional society or the
3 Board of Registration in Medicine is immune from civil
4 liability for undertaking or failing to undertake any
5 act within the scope of the function of the committee.

6 Sec. 11. 32 MRSA §3296, as enacted by PL 1975,
7 c. 137, §2, is amended to read:

8 §3296. Records of proceedings of medical staff review
9 committees confidential

10 All proceedings and records of proceedings
11 concerning medical staff reviews and, hospital
12 reviews and other reviews of medical care conducted by
13 committees of physicians and other health care
14 personnel on behalf of hospitals located within the
15 State or on behalf of individual physicians, when
16 such the reviews are required by state or federal
17 law, rule or regulations or as a condition of
18 accreditation by the Joint Commission on Accreditation
19 of Hospitals or the American Osteopathic Association
20 Committee on Hospital Accreditation or are conducted
21 under the auspices of the state or county professional
22 society to which the physician belongs, are
23 confidential and shall be exempt from discovery
24 without-a-showing-of-good-cause.

25 Sec. 12. 32 MRSA §3555 is enacted to read:

26 §3555. Review committee immunity

27 Any member of a peer review committee of a state
28 association composed of podiatrists licensed under
29 this chapter, any staff member of such an association
30 assisting a peer review committee and any witness or
31 consultant appearing before or presenting information
32 to the peer review committee is immune from civil
33 liability for, without malice, undertaking or failing
34 to undertake any act within the scope of the function
35 of the committee.

36 Sec. 13. 32 MRSA §3819 is enacted to read:

37 §3819. Review committee immunity

1 Any member of a peer review committee of a state
2 association composed of psychologists licensed under
3 this chapter, any staff member of such an association
4 assisting a peer review committee and any witness or
5 consultant appearing before or presenting information
6 to the peer review committee is immune from civil
7 liability for, without malice, undertaking or failing
8 to undertake any act within the scope of the function
9 of the committee.

10 Sec. 14. Effective date. Section 6 of this Act
11 shall take effect on August 1, 1988.

12 Sec. 15. Application. Except for section 6,
13 this Act applies to causes of action that accrue on or
14 after the effective date of this Act. Section 6
15 applies to contingent fee agreements entered into on
16 or after August 1, 1988.

17 STATEMENT OF FACT

18 Section 1 of this new draft eliminates ad damnum
19 clauses from many pleadings in civil cases filed in
20 Superior Court. The "ad damnum clause" is the portion
21 of the complaint or other pleading which states the
22 amount of damages the party is seeking. Section 1
23 requires that parties to most civil cases in Superior
24 Court now ask for "reasonable damages" rather than for
25 a specific dollar amount in damages.

26 The provisions of section 1 do not apply to
27 Superior Court cases in which the request for damages
28 is for a definite sum, for example when the lawsuit is
29 based on a promise to pay a specific amount and that
30 promise has allegedly been broken. The provisions
31 also do not apply to civil cases in District Court.
32 District Court may not hear a civil case if the
33 damages sought exceed \$30,000; therefore, pleadings
34 filed in District Court must state a specific amount
35 of damages sought so that it is clear that the
36 District Court has jurisdiction.

37 By eliminating the ad damnum clause from most

1 Superior Court pleadings under section 1, public focus
2 will be on the amount of damages actually awarded in a
3 civil case, rather than on the amount claimed, an
4 amount that may greatly exceed the actual damages.
5 Focus on excessive claims, rather than actual
6 outcomes, may inflate the public's and potential
7 jurors' perceptions of what is a generally reasonable
8 damage award.

9 Section 2 of this new draft provides some immunity
10 from civil liability for certain directors, officers
11 and volunteers of certain nonprofit organizations.
12 The types of nonprofit organizations described in
13 section 2 include religious, charitable, scientific,
14 public safety, literary and educational organizations;
15 civic organizations; chambers of commerce; certain
16 fraternal societies; certain cemetery companies;
17 credit unions; patriotic, political, social, cultural,
18 athletic, agricultural and horticultural
19 organizations; and certain other nonprofit
20 organizations with a charitable or civic purpose.

21 Uncompensated directors, officers and volunteers
22 of any of the organizations described in section 2 are
23 given immunity from civil liability for their own
24 actions if the lawsuit that could be brought is one
25 for the tort of negligence and the action, or failure
26 to act, by the director, officer or volunteer on which
27 the lawsuit could be based occurred within the course
28 and scope of the activities of the nonprofit
29 organization. These directors, officers and
30 volunteers are also given immunity from any vicarious
31 liability connected with their service; vicarious
32 liability is civil liability based on any act, or
33 failure to act, by any other person acting within the
34 course and scope of the nonprofit organization's
35 activities.

36 With the immunity provided to uncompensated
37 directors, officers and volunteers of certain
38 nonprofit organizations under section 2, these
39 organizations should be saved the expense of
40 directors' and officers' liability insurance. Also,
41 charitable and civic organizations in Maine should
42 continue to be served by people willing to give of

1 their time without the fear of being sued personally
2 in connection with many of their charitable or civic
3 duties.

4 Sections 3 and 4 of this new draft amend the
5 existing provisions for prejudgment and post-judgment
6 interest in civil cases. Currently, prejudgment
7 interest for a party who prevails in seeking a damage
8 award in Maine is set in statute at 8%, and
9 post-judgment interest is set at 15%. Sections 3 and
10 4 leave these interest amounts in place for cases in
11 which the claim or award is \$30,000 or less. For
12 civil cases in which a greater amount is sought or
13 awarded, sections 3 and 4 set new interest rates. In
14 these larger cases, the interest rates will be
15 calculated based on recent interest rates being given
16 for United States Treasury bills, plus 1% for
17 prejudgment interest and 3% for post-judgment interest.

18 Thus, under sections 3 and 4, for the larger
19 cases, the interest rates judgment debtors and their
20 insurers will pay will reflect the current value of
21 money in society, rather than a specific statutory
22 rate that may be high, given current economic
23 conditions. In this way, insurance payments for large
24 damage awards will not be artificially inflated so
25 that an unnecessary cost may be reflected in increased
26 insurance premiums for all.

27 Section 5 of this new draft revises a provision of
28 the Maine Health Security Act. Under existing law,
29 immunity from civil and criminal liability is accorded
30 in certain circumstances to any person, physician,
31 health care provider, physicians' professional
32 society, physicians' professional competence committee
33 member or member of the medical or osteopathic board
34 or related health care authority. The immunity
35 applies if an individual or organization in the list
36 above acts without malice in reporting information to
37 an appropriate health care board or authority, in
38 assisting in preparing information to be so reported,
39 or in assisting the board or authority to carry out
40 its duties with regard to the health care profession.

41 Section 5 makes 3 substantive changes in the

1 existing law. First, it adds to the circumstances in
2 which immunity is accorded those of reporting to and
3 assisting a physicians' professional competence
4 committee or a physicians' professional review
5 committee. The competence committees are composed of
6 physicians who evaluate medical care. The review
7 committees are composed of physicians who work with
8 physicians who are disabled or impaired. Second,
9 section 5 deletes immunity from criminal liability.
10 Third, section 5 accords physicians and the listed
11 health care organizations immunity for reporting to
12 and assisting a pertinent health care board, authority
13 or committee without regard to whether the actions
14 were with malice. This blanket immunity is not
15 accorded to other persons reporting to or assisting
16 the health care boards, authorities or committees; the
17 "malice" standard remains for these persons.

18 The changes in section 5 have 3 purposes. First,
19 the work of physicians' professional competence and
20 review committees is important to the policing of the
21 medical profession so that good health care is
22 delivered by all physicians. Better health care may
23 lead to fewer malpractice claims and lower medical
24 malpractice insurance. Second, immunity from criminal
25 liability is not appropriate despite the goal of
26 enhancing professional competence and discipline
27 within the health care profession. Third, blanket
28 civil immunity, as opposed to immunity applying a
29 "malice" standard, is accorded physicians and the
30 listed health care organizations because they, as
31 opposed to other persons, have certain duties to
32 report imposed by the Maine Health Security Act.

33 Section 6 of this new draft amends the statute
34 enacted in 1986 establishing a fee schedule for
35 attorneys' contingent fee agreements with plaintiffs
36 in medical malpractice cases. This section revises
37 the provision of that statute permitting a court to
38 review the work done by an attorney in a medical
39 malpractice case in which the plaintiff prevails to
40 determine if the statutory fee schedule provides for
41 unreasonable compensation in the particular case.
42 Section 6 gives greater direction to the attorney,
43 client and court

1 as to what factors should be reviewed to determine if
2 greater compensation is warranted.

3 Sections 7, 8, 12 and 13 provide immunity from
4 civil liability for members of, staff to or persons
5 reporting to or consulting with peer review committees
6 of professional societies for chiropractors, dentists,
7 podiatrists and psychologists. The immunity applies
8 to those listed people who act without malice and
9 within the scope of the committee's function. Similar
10 immunity already exists in law for dentists. Section
11 8 makes the terminology of the immunity consistent
12 with that supplied for chiropractors, podiatrists and
13 psychologists, and extends the immunity to staff,
14 witnesses and consultants. The immunity provided in
15 sections 7, 12 and 13 for chiropractic, podiatric and
16 psychological peer review work is new.

17 The purpose of the new immunity provisions of
18 sections 7, 8, 12 and 13 is to encourage the
19 professional societies of these health professions to
20 work to keep the abilities of their members current,
21 and to deal with problems individual health
22 professionals might encounter that interfere with
23 their ability to practice. Peer review may lead to
24 better medical care, fewer patient complaints and
25 improved liability insurance rates. Unlike
26 physicians, however, the establishment of and
27 participation in these peer review committees for
28 these health care professionals is voluntary. Thus,
29 the "malice" standard is applied to the provision of
30 immunity.

31 Sections 9 and 10 revise existing statutes that
32 provide immunity to physicians, both allopathic and
33 osteopathic, who serve on peer review committees
34 required for accreditation, established by the
35 licensing board or established by the professional
36 society. As in existing law, these peer review
37 committee members are given blanket immunity. The
38 revisions to existing law in these sections simply
39 make the language as parallel as possible with the
40 newly enacted immunities provided in this new draft.

41 Section 11 of this new draft amends existing law

1 that makes the proceedings and records of proceedings
2 of hospital medical staff reviews confidential.
3 Existing law applies to reviews conducted on behalf of
4 hospitals when the reviews are required by state or
5 federal law or for accreditation. The law makes the
6 proceedings and records confidential and exempt from
7 discovery unless good cause is shown. "Discovery" is
8 the process attorneys use to uncover information from
9 their opponents in a civil case prior to trial.

10 Section 11 provides 3 changes to the existing
11 law. First, the law is extended to apply to medical
12 care reviews done not only on behalf of hospitals, but
13 on behalf of individual physicians. Second, the law
14 is broadened so that it not only applies to reviews
15 required by law or for accreditation, but also to
16 those done under the auspices of a physicians'
17 professional society. Third, the exception that
18 permits discovery for good cause is deleted, making
19 the proceedings and records entirely nondiscoverable.

20 The purpose of section 11 is to enhance the
21 willingness of physicians to review the work of their
22 peers and to speak candidly during those reviews, and
23 to harmonize the treatment of review records with the
24 immunity provided to physicians participating in these
25 proceedings and with the treatment of similar records
26 under the Maine Health Security Act. More peer
27 review within the ranks of physicians may improve
28 health care, decrease medical malpractice claims and
29 lower doctors' liability insurance rates.

30 Section 14 of the new draft provides a delayed
31 effective date for section 6. The delay is
32 necessitated by the effective date of the statute
33 which section 6 amends. When the contingent fee
34 schedule for medical malpractice actions was enacted
35 in 1986, the effective date was delayed until August
36 1, 1988. The revision to this provision made in
37 section 6 must also have this effective date.

38 Section 15 of this new draft addresses the
39 question of retroactive or prospective application of
40 the new draft's provisions.

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