

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 328

S.P. 171

In Senate, February 22, 1989

Submitted by the Department of Mental Health and Mental Retardation pursuant to Joint Rule 24.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script, reading 'Joy J. O'Brien'.

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator GILL of Cumberland.

Cosponsored by Representative CARROLL of Gray, Senator BERUBE of Androscoggin and Representative PENDLETON of Scarborough.

STATE OF MAINE

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

An Act to Clarify the Applicability of the Maine Tort Claims Act to the
Consumer Advisory Board.



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

3 **Sec. 1. 5 MRSA §1510-A, sub-§1**, as amended by PL 1981, c. 493,
5 c. 101, is further amended to read:

7 1. **Claims against state agency.** A state agency may hear
9 and decide any claim of \$2,000 or less against it, ~~or any of its~~
11 ~~agents, except a claim that may be submitted under the Maine Tort~~
13 ~~Claims Act, Title 14, chapter 741, or under another specific~~
15 ~~statutory provision for which the State is otherwise immune~~
17 pursuant to Title 14, section 8103 and for which a cause of
19 action would exist if the State were a private entity. Any agency
21 paying all or part of a claim heard under this subsection shall
23 make payment as soon as practicable from currently available
25 agency funds and, if no funds are then available, from agency
27 funds from the following fiscal year. An agency deciding a claim
29 under this subsection shall make its final decision, and reasons
for the decision, in writing and shall, as soon as practicable,
send a copy of that decision to the claimant by certified mail.

21 These claims shall include, but shall not be limited to, claims
23 for damage or injury caused by patients, inmates, prisoners in
25 the care or custody of the Department of Mental Health and Mental
27 Retardation or of any institution administered by a department,
29 by children in the custody of the Department of Human Services
and for damage to sheep done by dogs or wild animals. These
claims shall not include claims for which the State, or one of
its agencies, is immune pursuant to Title 14, section 8104-B.

31 **Sec. 2. 14 MRSA §8102, sub-§1**, as repealed and replaced by PL
33 1987, c. 737, Pt. C, §§27 and 106, and c. 769, Pt. A, §52, is
repealed and the following enacted in its place:

35 1. **Employee.** "Employee" means a person acting on behalf of
37 the governmental entity in any official capacity, whether
39 temporarily or permanently, and whether with or without
41 compensation from local, state or federal funds, including
43 elected or appointed officials, volunteer firefighters as defined
45 in Title 30-A, section 3151, emergency medical service personnel,
47 members and staff of the Consumer Advisory Board pursuant to
Title 34-B, section 1216, Maine National Guardsmen while
receiving state active duty pay under Title 37-B, section 143, in
accordance with Title 37-B, sections 181 to 183 and 742, and
while engaged in the Domestic Action Program, but the term
employee does not mean a person or other legal entity acting in
the capacity of an independent contractor under contract to the
governmental entity.

49 **Sec. 3. 34-B MRSA §1216** is enacted to read:

51 **§1216. Consumer Advisory Board**

1 1. Responsibilities. The Consumer Advisory Board, as
2 established by the Pineland Consent Decree, functions as an
3 independent body which carries out responsibilities pursuant to
4 appendices A and B of the consent decree and subsequent
5 agreements approved by the United States District Court for the
6 District of Maine.

7
8 2. Maine Tort Claims Act. The Consumer Advisory Board
9 members and staff act as employees of the State, as defined in
10 Title 14, section 8102, subsection 1, when engaged in official
11 duties specified in the consent judgment or assigned by the board.

12
13
14 **STATEMENT OF FACT**

15
16 Section 1 of this bill relating to the State Claims
17 Commission is intended to remedy a situation which arose in the
18 past year concerning a claim filed against the Department of
19 Mental Health and Mental Retardation. In that case, a person who
20 successfully prosecuted a claim for unemployment compensation
21 following his discharge by the department and successfully
22 defended a criminal charge arising out of the same incident which
23 led to his discharge, brought a claim against the department
24 pursuant to the Maine Revised Statutes, Title 5, section 1510-A
25 for \$2,000 to recover a portion of his attorney's fees in the 2
26 cases. The department denied the claim but the State Claims
27 Commission and the Superior Court, finding the law unclear as to
28 the scope of claims which could be brought under it allowed the
29 claim. This bill will make it clear that claims filed under this
30 section may only be allowed in circumstances where a cause of
31 action would exist if the State were a private entity, and thus
32 would exclude claims for attorney's fees unless the claimant can
33 satisfy the common law requirement that the State's position in
34 the litigation was frivolous.

35
36 Sections 2 and 3 of this bill clarify that the members and
37 staff of the Consumer Advisory Board, as established in appendix
38 A, section T, of the consent decree entered on July 14, 1978 by
39 the United States District Court for the District of Maine in
40 Wuori v. Concannon, Civil No. 75-80-SD, also known as the
41 Pineland Consent Decree, are given the immunity afforded state
42 employees under the Maine Tort Claims Act.

43
44 Members of the Consumer Advisory Board are appointed by the
45 Commissioner of Mental Health and Mental Retardation. Its
46 composition, duties and compensation are set forth in the
47 Pineland Consent Decree and in subsequent reports of the court.
48 It submits reports to the Superintendent of the Pineland Center,
49 the Director of the Bureau of Mental Retardation and to the
50 Commissioner of Mental Health and Mental Retardation. Among its
51 other duties, the board reviews alleged violations of client

1 rights, approves severely intrusive behavior modification
2 programs and designates volunteer correspondents for Maine
3 citizens with mental retardation who have no active guardian or
4 family member.

5
6 The scope of governmental employee protection under the
7 Maine Tort Claims Act appears to include the functions of the
8 Consumer Advisory Board and its related personnel. This bill
9 does not assume that the board and its personnel are not
10 currently encompassed by the Maine Tort Claims Act. Rather, the
11 bill seeks to clarify the status of the board and its personnel.