

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

Legislative Document

No. 795

S.P. 297

In Senate, March 15, 1989

Reference to the Committee on Judiciary suggested and ordered printed.

Joy J. O'Brien

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator TWITCHELL of Oxford.
Cosponsored by Representative WALKER of Norway.

STATE OF MAINE

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

An Act to Amend the Wrongful Death Laws to Encompass Associated Claims.



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

3 **18-A MRSA §2-804, sub-§(b)**, as amended by PL 1981, c. 213, is
5 further amended to read:

7 (b) Every such action shall be brought by and in the name
9 of the personal representative of the deceased person, and the
11 amount recovered in every such action, except as otherwise
13 provided, shall be for the exclusive benefit of the surviving
15 spouse, if no minor children, and of the children if no surviving
17 spouse, and one-half for the exclusive benefit of the surviving
19 spouse and one-half for the exclusive benefit of the minor
21 children to be divided equally among them, if there are both
23 surviving spouse and minor children, and to the deceased's heirs
25 to be distributed as provided in section 2-106, if there is
27 neither surviving spouse nor minor children. The jury may give
29 such damages as it shall deem a fair and just compensation with
31 reference to the pecuniary injuries resulting from such death to
33 the persons for whose benefit the action is brought, and in
35 addition thereto shall give such damages as will compensate the
37 estate of the deceased person for reasonable expenses of medical,
39 surgical and hospital care and treatment and for reasonable
41 funeral expenses, and in addition thereto may give damages not
43 exceeding \$50,000 for the loss of comfort, society and
45 companionship of the deceased, including any damages for
47 emotional distress arising from the same facts as those
49 constituting the underlying claim, to the persons for whose
51 benefit the action is brought, provided that the action shall be
commenced within 2 years after the decedent's death. If a claim
under this section is settled without an action having been
commenced, the amount paid in settlement shall be distributed as
provided in this subsection. No settlement on behalf of minor
children shall be valid unless approved by the court, as provided
in Title 14, section 1605.

37 **STATEMENT OF FACT**

39 The wrongful death laws have traditionally limited the
41 damages for loss of consortium in the case of death of a loved
43 one. In 1981, the \$10,000 limit was increased to \$50,000. The
45 law has been treated until recently as the exclusive remedy for
47 loss of consortium damages in the case of death. In the case of
49 Purty v. Kennebec Valley Medical Center, et al, decided December
51 22, 1988, the Supreme Judicial Court ruled that the damage cap
for the loss of consortium in the wrongful death laws of the
Maine Revised Statutes, Title 18-A, section 2-804 did not
preclude a separate action by a beneficiary under the laws for
negligent infliction of emotional distress. This decision will
permit plaintiffs to sidestep the limitations of the wrongful
death laws which were intended to establish a reasonable limit on

1 damages in wrongful death cases. This bill will reverse the
effect of the decision by clarifying that the \$50,000 damage cap
3 applies to damages for emotional distress arising from the same
facts as those facts constituting the underlying claim.