

# MAINE STATE LEGISLATURE

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# 114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

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Legislative Document

No. 1026

H.P. 743

House of Representatives, April 4, 1989

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads 'Ed Pert'.

EDWIN H. PERT, Clerk

Presented by Representative HANLEY of Paris.

Cosponsored by Senator HOLLOWAY of Lincoln and Representative BEGLEY of Waldoboro.

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STATE OF MAINE

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

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**An Act to Modify Joint and Several Liability in Medical Malpractice  
Actions.**

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

3 **Sec. 1. 14 MRSA §156, last ¶**, as enacted by PL 1969, c. 399,  
5 §2, is amended to read:

7 In Except as provided in Title 24, chapter 25, subchapter  
9 IX, in a case involving multi-party defendants, each defendant  
11 shall be jointly and severally liable to the plaintiff for the  
13 full amount of the plaintiff's damages. However, any defendant  
15 shall have the right through the use of special interrogatories  
17 to request of the jury the percentage of fault contributed by  
19 each defendant.

21 **Sec. 2. 24 MRSA c. 25, sub-c. IX** is enacted to read:

23 SUBCHAPTER IX

25 JOINT AND SEVERAL LIABILITY

27 §2991. Joint and several liability

29 1. Definitions. As used in this section, unless the  
31 context otherwise indicates, the following terms have the  
33 following meanings.

35 A. "Economic damages" means objectively verifiable  
37 pecuniary damages arising from medical expenses and care,  
39 rehabilitation services, custodial care, loss of earnings  
41 and earning capacity, loss of income, burial costs, loss of  
43 use of property, costs of repair or replacement of property,  
45 costs of obtaining substitute domestic services, loss of  
47 employment, loss of employment or business opportunities and  
49 other objectively verifiable monetary losses.

51 B. "Fault" has the meaning set forth in Title 14, section  
156.

C. "Noneconomic damages" means subjective, nonpecuniary  
damages, including punitive damages or damages arising from  
pain, suffering, inconvenience, physical impairment,  
disfigurement, mental anguish, emotional distress, loss of  
society and companionship, loss of consortium, injury to  
reputation, humiliation and other nonpecuniary damages,  
including those arising from theories of damages such as  
fear of loss, illness or injury.

2. Joint and several liability. Except as provided in  
Title 28-A, section 2512, in actions involving multiple  
defendants, each defendant shall be jointly and severally liable  
to the plaintiff for the full amount of the plaintiff's economic  
and noneconomic damages. Each defendant shall have the right

1 through the use of special interrogatories to request of the fact  
2 finder the percentage of fault contributed by each defendant.

3  
4 3. Several liability. If any defendant in an action  
5 involving professional negligence, as defined in section 2502,  
6 requests of the fact finder the percentage of fault contributed  
7 by each defendant, a defendant shall be severally liable for  
8 noneconomic damages if:

9  
10 A. The fact finder establishes the percentage contributed  
11 by each defendant to the aggregate fault of the defendants;  
12 and

13  
14 B. The fact finder finds that the percentage of fault  
15 contributed by a defendant under paragraph A is less than  
16 25%.

17  
18 4. Damages recoverable. In an action to which subsection 3  
19 applies, the court shall multiply the amount of noneconomic  
20 damages recoverable by the plaintiff, after the fact finder has  
21 made any reduction required by Title 14, section 156, by the  
22 percentage of fault of each defendant who meets the requirements  
23 for several liability established in subsection 3. The amount  
24 determined under this subsection shall be the maximum amount  
25 recoverable for noneconomic damages from each such defendant.

26 **Sec. 3. Application.** This Act applies to notices of claims  
27 filed after the effective date of this Act.

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### STATEMENT OF FACT

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32 This bill modifies, to a limited extent, the principle of  
33 joint liability in medical negligence cases only. Multiple  
34 defendants in such cases will remain jointly liable for all  
35 damages awarded for economic loss and will remain jointly liable  
36 for noneconomic loss unless a defendant is found to be less than  
37 25% at fault as compared with other defendants. For that  
38 defendant, liability will be several only with regard to  
39 noneconomic damages. Thus, that defendant will only be  
40 responsible for the defendant's portion of the noneconomic  
41 damages, but will remain jointly liable for all economic damages.  
42  
43