

MAINE STATE LEGISLATURE

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114th MAINE LEGISLATURE

FIRST REGULAR SESSION - 1989

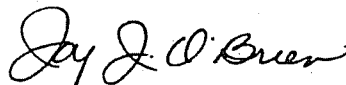
Legislative Document

No. 1075

S.P. 409

In Senate, April 6, 1989

Reference to the Committee on Judiciary suggested and ordered printed.


JOY J. O'BRIEN
Secretary of the Senate

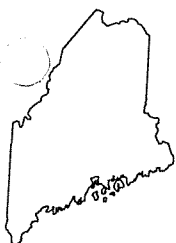
Presented by Senator TWITCHELL of Oxford.

Cosponsored by Senator KANY of Kennebec, Representative WALKER of Norway and Representative JACKSON of Harrison.

STATE OF MAINE

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

An Act to Prevent Double Recoveries in Medical Liability Actions.



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

3 24 MRSA c. 25, sub-c. IX is enacted to read:

5 SUBCHAPTER IX

7 ELIMINATION OF DOUBLE RECOVERIES

9 §2981. Elimination of double recoveries

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

17 A. "Claimant" means any person who brings a personal injury
19 action, and if the action is brought through or on behalf of
21 an estate, the term includes the decedent or, if the action
23 is brought through or on behalf of a minor, the term
25 includes the minor's parent or guardian.

27 B. "Collateral source" means a benefit paid or payable to
29 the claimant or on the claimant's behalf under, from or
31 pursuant to:

33 (1) The United States Social Security Act;

35 (2) Any state or federal income replacement,
37 disability, workers' compensation or other Act designed
39 to provide partial or full wage or income replacement;

41 (3) Any accident, health or sickness, income or wage
43 replacement insurance; income disability insurance;
45 casualty or property insurance, including automobile
47 accident and homeowners' insurance benefits; or any
49 other insurance benefits, except life insurance
51 benefits;

(4) Any contract or agreement of any group,
organization, partnership or corporation to provide,
pay for or reimburse the cost of medical, hospital,
dental or other health care services or provide similar
benefits; and

(5) Any contractual or voluntary wage continuation
plan, or payments made pursuant to such a plan,
provided by an employer or otherwise, or any other
system intended to provide wages during a period of
disability.

C. "Damages" means economic losses paid or payable by
collateral sources for wage loss, medical costs,
rehabilitation costs, services and other out-of-pocket

1 costs incurred by or on behalf of a claimant for which that
3 party is claiming recovery through a tort suit.

5 2. Admissibility of evidence. In all actions for
7 professional negligence, as defined in section 2502, the court
9 shall allow the admission into evidence of proof of collateral
11 source payments that have already been made or that are
13 substantially certain to be made to the claimant as compensation
15 for the same damages sought in the suit. Proof of such payments
17 shall be considered by the trier of fact in arriving at the
19 amount of any award and shall be considered by the court in
21 reviewing awards made for excessiveness.

23 The trier of fact shall be informed of the tax implications of
25 all damage awards. The trier of fact may hear evidence of the
27 premiums personally paid by the claimant to obtain any collateral
29 sources paid or payable.

31 3. Special damages findings required. If liability is
33 found in any professional negligence action, then the trier of
35 fact, in addition to other appropriate findings, shall make
37 separate findings for each claimant specifying the amount of:

39 A. Any past damages for:

41 (1) Medical and other costs of health care;

43 (2) Other economic loss; and

45 (3) Noneconomic loss; and

47 B. Any future damages and the periods over which they will
49 accrue, on an annual basis, for each of the following types
51 of damages:

(1) Medical and other costs of health care;

(2) Other economic loss; and

(3) Noneconomic loss.

The calculation of all future medical care and other costs of
health care and future noneconomic loss must reflect the costs
and losses during the period of time the claimant will sustain
those costs and losses. The calculation for other economic loss
must be based on the losses during the period of time the
claimant would have lived but for the injury upon which the claim
is based.

