

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
SENATE  
114TH LEGISLATURE  
SECOND REGULAR SESSION

SENATE AMENDMENT " A" to H.P. 1842, L.D. 2513, Bill, "An Act to Establish the Rural Medical Access Program and the 5-year Medical Liability Demonstration Project and to Revise the Discovery Rule without Imposing Caps on Damages and the Rules Regarding Collateral Sources"

Amend the bill by inserting after section 4 the following:

'Sec. 5. 24 MRSA c. 21, sub-c. X is enacted to read:

SUBCHAPTER X

LIMITS ON NONECONOMIC DAMAGES

§2991. Limits on noneconomic damages

1. Limitation. In an action for professional negligence as defined in section 2502, the noneconomic damages awarded to a prevailing party may not exceed \$250,000. If the trial of the action is to a jury, the jury may not be informed of the damage award limitation established in this subsection. If the jury awards total damages in excess of \$250,000, the court shall direct the jury to establish the portion of the total damages awarded that is noneconomic damages. If the portion that is noneconomic damages exceeds \$250,000, the court shall reduce the noneconomic damages awarded to that amount, unless a further reduction is warranted by exercise of the powers described in subsection 3.

The limit of \$250,000 on noneconomic damages is a single limit applicable to all causes of action, by one or more parties, arising out of the same occurrence or circumstances. The noneconomic damages limitation established by this subchapter does not apply to claims for punitive damages.

2. Definition. As used in this subchapter, unless the context otherwise indicates, "noneconomic damages" means subjective, nonpecuniary damages arising from pain, suffering, inconvenience, physical impairment, disfigurement, mental

anguish, emotional stress, loss of society and companionship,  
loss of consortium, injury to reputation, humiliation, other  
nonpecuniary damages and any other theory of damages such as fear  
of loss, illness or injury.

3. Court's powers. Nothing in this section is intended to  
eliminate the court's powers of additur and remittitur with  
regard to all damages, except to the extent that the power of  
additur is limited with regard to noneconomic damages beyond the  
limitation established in subsection 1.

4. Adjustment of cap. Effective February 1st of every  
year, beginning in the year 1992, the Superintendent of Insurance  
shall automatically increase the cap on noneconomic damages by a  
percentage amount equal to the percentage rise in the federal  
Consumer Price Index for January 1st of that year over the level  
of the index for January 1st of the previous year. The  
superintendent shall report the adjustment and the actual change  
in the index to the Legislature every February 1st.

For purposes of this subsection, "Consumer Price Index" means the  
Consumer Price Index for Urban Wage Earners and Clerical Workers:  
United States City Average, All items, 1967=100, as compiled by  
the United States Department of Labor, Bureau of Labor Statistics  
or, if the index is revised or superseded, the Consumer Price  
Index is the index represented by the Bureau of Labor Statistics  
as reflecting most accurately changes in the purchasing power of  
the dollar by consumers.

5. Application. This section applies to all cases in which  
notices of claim are filed after the effective date of this  
section.'

Further amend the bill in section 5 by striking out all of  
that part designated "\$6305." and inserting in its place the  
following:

'\$6305. Amount of assessment determined

1. Determination of assessment based on anticipated  
savings. This subsection governs the determination and payment  
of assessments.

A. Beginning September 1, 1991, the superintendent shall  
determine the savings in professional liability insurance  
claims and claim settlement costs to insurers anticipated in  
each 12-month period as a result of imposition of a legal  
limit on noneconomic damages, as established in Title 24,  
section 2991, and reform of the collateral source rule.

2       B. The superintendent shall order a total assessment to be  
3       collected each year beginning September 1, 1991, equal to  
4       the lesser of 1/2 of the savings determined or \$1,000,000,  
5       but not less than \$500,000.

6       C. The superintendent shall order each insurer to assess  
7       its policyholders the percentage of the total assessment  
8       ordered that the insurer's Maine premium volume for  
9       professional liability insurance for physicians, surgeons,  
10       osteopaths and hospital bears to the total Maine premium  
11       volume of all insurers and self-insureds for that coverage.

12       D. Each insurer shall assess the surcharge against its  
13       insureds as a percentage of premium unless the  
14       superintendent prescribes a different basis by rule or order.

15       E. Every self-insured allopathic or osteopathic physician  
16       and every self-insured hospital shall remit the assessment  
17       required by this section to the principal writer of  
18       physicians and surgeons malpractice insurance in this  
19       State. Remittance by self-insured physicians or hospitals  
20       may be made on their behalf by a self-insurer. The  
21       superintendent shall prescribe by rule a method to calculate  
22       and collect the assessment from self-insured physicians and  
23       hospitals.

24       2. Final evaluation of savings in 1995. The final  
25       evaluation of the savings in professional liability insurance  
26       claims and claim settlement costs to insurers must be determined  
27       by the superintendent in 1995. Insurers shall continue to assess  
28       policyholders after 1995 based on the final determination, but  
29       the total assessment may not be more than \$1,000,000 per year.'

30       Further amend the bill in section 5 in that part designated  
31       "**§6308.**" by striking out all of subsection 1 and inserting in its  
32       place the following:

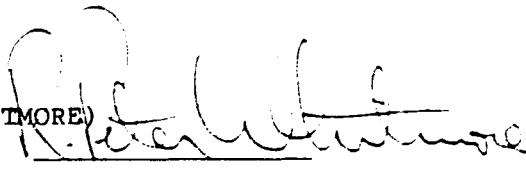
33       '1. Available funds. The amount available for premium  
34       assistance for policy years beginning on or after September 1,  
35       1991, is the amount of the assessment determined under section  
36       6305.'

37       Further amend the bill by renumbering the sections to read  
38       consecutively.

STATEMENT OF FACT

This amendment establishes a cap of \$250,000 on noneconomic damages in medical malpractice liability actions and adds the savings from this cap to the formula for calculating assessments for physician premium assistance.

The amendment also requires that the Rural Medical Access Fund be funded in an amount of at least \$500,000 but not more than \$1,000,000. The effective date of the fund is changed from July 1, 1990, to September 1, 1991.

(Senator WHITMORE)  
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