

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

C  
O  
M  
M  
I  
T  
T  
E  
E  
  
A  
M  
E  
N  
D  
M  
E  
N  
T

L.D. 243

(Filing No. H-127)

2  
4  
6  
8  
10  
12  
14  
16  
18  
20  
22  
24  
26  
28  
30  
32  
34  
36  
38  
40  
42  
44  
46

STATE OF MAINE  
HOUSE OF REPRESENTATIVES  
115TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 158, L.D. 243, Bill, "An Act Regarding the Operation of the Superior Court"

Amend the bill by inserting after the title and before the enacting clause the following:

**Emergency preamble.** Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

**Whereas,** there is a need for the qualifications of chairs of prelitigation screening panels to be broadened under limited circumstances; and

**Whereas,** a question has arisen regarding the involuntary dismissal of cases pending before prelitigation panels created by Public Law 1985, chapter 804; and

**Whereas,** in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Further amend the bill by striking out everything after the enacting clause and before the statement of fact and inserting in its place the following:

**Sec. 1. 24 MRSA §2852, sub-§1,** as enacted by PL 1985, c. 804, §§12 and 22, is amended to read:

1. **Creation of panel lists.** The Chief Justice of the Superior Court shall recommend to the each clerk of ~~each~~-judicial ~~region~~-of the Superior Court the names of retired justices and

2 judges and persons with judicial experience who are residents  
3 of the region and other qualified persons to serve on screening  
4 panels under this subchapter. The clerk in each judicial region  
5 shall place these names on a list from which the Chief Justice of  
6 the Superior Court will choose a panel chairman chair under  
7 subsection 2.

8 The Each clerk of each ~~judicial region~~ of the Superior Court  
9 shall maintain lists of health care practitioners, health care  
10 providers and attorneys recommended by the professions involved  
11 to serve on screening panels under this subchapter.

12 **Sec. 2. 24 MRSA §2852, sub-2, ¶A,** as enacted by PL 1985, c.  
13 804, §§12 and 22, is amended to read:

14 A. Upon receipt of a notice of claim under section 2853,  
15 the clerk of the Superior Court who receives the notice  
16 shall notify the Chief Justice of the Superior Court. The  
17 Chief Justice shall choose a retired justice or judge or a  
18 person with judicial experience or other qualified person  
19 from the list maintained by the clerk to serve as chairman  
20 chair of the panel to screen the claim. ~~The Chief Justice~~  
21 ~~shall attempt to choose a chairman who is a resident of the~~  
22 ~~judicial region in which the notice of claim was filed. If~~  
23 ~~no resident chairman is available or appropriate, the Chief~~  
24 ~~Justice shall choose a chairman from the lists maintained by~~  
25 ~~clerks of other judicial regions.~~ If at any time a chairman  
26 chair chosen under this paragraph is unable or unwilling to  
27 serve, the ~~chief justice~~ Chief Justice shall appoint a  
28 replacement following the procedure in this paragraph for  
29 the initial appointment of a chairman chair. Persons other  
30 than retired justices and judges or those with judicial  
31 experience may be appointed as chair based on appropriate  
32 trial experience. In the event that the Chief Justice seeks  
33 to appoint as chair a person who is not a retired justice or  
34 judge or does not have judicial experience, each side is  
35 entitled to exercise one challenge to the appointment of a  
36 chair by the Chief Justice.

37 **Sec. 3. 24 MRSA §2853, sub-§8, ¶B,** as enacted by PL 1989, c.  
38 827, §3, is repealed and the following enacted in its place:

39 B. Involuntary dismissal is governed as follows.

40 (1) On failure of the plaintiff to prosecute or to  
41 comply with rules or any order of the chair, and on  
42 motion by the chair or any party, after notice to all  
43 parties has been given and the party against whom  
44 sanctions are proposed has had the opportunity to be  
45 heard and show good cause, the chair may order  
46 appropriate sanctions, which may include dismissal of  
47 the case. If any sanctions are imposed, the chair

C  
O  
M  
M  
I  
T  
T  
E  
E  
  
A  
M  
E  
N  
D  
M  
E  
N  
T

2  
4  
6  
8  
10  
12  
14  
16  
18  
20  
22  
24  
26  
28  
30  
32  
34  
36  
38  
40  
42  
44  
46  
48  
50  
52

shall state the sanctions in writing and include the grounds for the sanctions.

(2) Unless the chair or the panel in an order for dismissal specifies otherwise, a dismissal under this paragraph is with prejudice for purposes of proceedings before the panel. A dismissal with prejudice is deemed to be the equivalent of a finding for the defendant on all issues before the panel.

**Sec. 4. 24 MRSA §2853, sub-§9 is enacted to read:**

9. Default. In addition to the sanctions set out in subsection 8, paragraph B, the following sanctions may be imposed against a defendant in a case pending before the panel.

A. On failure of a defendant to comply with the rules or any order of the chair, and on motion by the chair or any party, after notice to all parties has been given and the party against whom sanctions are proposed has had the opportunity to be heard and show good cause, the chair may order appropriate sanctions, which may include default. If any sanctions are imposed, the chair shall state the sanctions in writing and include the grounds for the sanctions.

B. Unless the chair or the panel in its order for default specifies otherwise, a default under this paragraph is deemed to be the equivalent of a finding against the defendant on all issues before the panel.

**Emergency clause.** In view of the emergency cited in the preamble, this Act takes effect when approved.

**FISCAL NOTE**

The additional work load and costs associated with prelitigation panels stating the sanctions in writing, including the grounds for the sanctions, can be absorbed within the Judicial Department's budgeted resources.'

**STATEMENT OF FACT**

This amendment makes specific the criteria for appointment of persons without judicial background to serve as the chair of medical malpractice screening panels. The bill allows more persons to be eligible to serve by expanding the list of persons who are qualified for selection. The amendment further

COMMITTEE AMENDMENT "A" to H.P. 158, L.D. 243

2 clarifies the procedure for imposition of sanctions when a party  
fails or refuses to comply with rules or orders of the chair.

4 This amendment deletes the section of the original bill  
6 amending the provisions regarding the use of discovery in medical  
malpractice actions.

8 This amendment adds a fiscal note to the bill.

Reported by the Committee on Judiciary  
Reproduced and distributed under the direction of the Clerk of the  
House  
(4/16/91) (Filing No. H-127)