

# MAINE STATE LEGISLATURE

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# 115th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1991

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Legislative Document

No. 334

H.P. 243

House of Representatives, February 5, 1991

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 TWITCHELL of Oxford and Senator BERUBE of Androscoggin.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD  
NINETEEN HUNDRED AND NINETY-ONE

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

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

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

6 In ~~Except~~ as provided in Title 24, chapter 21, subchapter  
II-A, in a case involving multi-party defendants, each defendant  
8 shall ~~be~~ ~~is~~ jointly and severally liable to the plaintiff for the  
full amount of the plaintiff's damages. However, any defendant  
10 shall ~~---have~~ ~~has~~ the right through the use of special  
interrogatories to request of the jury the percentage of fault  
12 contributed by each defendant.

14 Sec. 2. 24 MRSA c. 21, sub-c. II-A is enacted to read:

16 SUBCHAPTER II-A

18 JOINT AND SEVERAL LIABILITY

20 §2631. Joint and several liability

22 1. Definitions. As used in this subchapter, unless the  
context otherwise indicates, the following terms have the  
24 following meanings.

26 A. "Economic damages" means objectively verifiable  
pecuniary damages arising from medical expenses and care,  
28 rehabilitation services, custodial care, loss of earnings  
and earning capacity, loss of income, burial costs, loss of  
30 use of property, costs of repair or replacement of property,  
costs of obtaining substitute domestic services, loss of  
32 employment, loss of employment or business opportunities and  
other monetary losses.

34 B. "Fault" has the meaning set forth in Title 14, section  
36 156.

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

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

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

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

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

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

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

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

30 **STATEMENT OF FACT**

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