

MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 865

H.P. 605

House of Representatives, February 27, 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 MacBRIDE of Presque Isle.

Cosponsored by Representative PARADIS of Augusta, Senator GAUVREAU of Androscoggin and Representative RICHARDS of Hampden.

STATE OF MAINE

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

An Act to Clarify the Laws Governing Prolitigation Screening Panels.

(EMERGENCY)



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

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

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

12 Whereas, a question has arisen regarding the scope of
14 appropriate discovery during the panel proceedings and the
subsequent use of the discovery in any court proceedings; and

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

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

24 **Sec. 1. 24 MRSA §2852, sub-§2, ¶A,** as enacted by PL 1985, c.
26 804, §§12 and 22, is amended to read:

28 A. Upon receipt of a notice of claim under section 2853,
30 the clerk of the Superior Court who receives the notice
shall notify the Chief Justice of the Superior Court. The
32 Chief Justice shall choose a retired judge or person with
judicial experience from the list maintained by the clerk to
34 serve as ~~chairman~~ chair of the panel to screen the claim.
The Chief Justice shall attempt to choose a ~~chairman~~ chair
36 who is a resident of the judicial region in which the notice
of claim was filed. If no resident ~~chairman~~ chair is
38 available or appropriate, the Chief Justice shall choose a
~~chairman~~ chair from the lists maintained by clerks of other
40 judicial regions. If at any time a ~~chairman~~ chair chosen
under this paragraph is unable or unwilling to serve, the
42 ~~chief--justice~~ Chief Justice shall appoint a replacement
following the procedure in this paragraph for the initial
44 appointment of a ~~chairman~~ chair. When agreed upon by all
parties, the Chief Justice may appoint a chair who has no
46 judicial background but who has appropriate experience
otherwise.

48 **Sec. 2. 24 MRSA §2853, sub-§8, ¶B,** as enacted by PL 1989, c.
50 827, §3, is repealed and the following enacted in its place:

52 B. Involuntary dismissal is governed as follows.

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(1) On failure of the plaintiff to prosecute or to comply with 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 dismissal of the case.

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

Sec. 3. 24 MRSA §2853, sub-§9 is enacted to read:

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

A. On failure of a defendant to comply with 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.

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

Sec. 4. 24 MRSA §2857, sub-§3, as enacted by PL 1989, c. 931, §2, is amended to read:

3. Discovery; subsequent court action. The Maine Rules of Civil Procedure govern discovery conducted under this subchapter. The chair has the same authority to rule upon discovery matters as a Superior Court Justice. Notwithstanding subsection 1, in a subsequent Superior Court action all discovery conducted during the prelitigation screening panel proceedings is deemed discovery conducted as a part of that court action. Additional discovery may be conducted that involves new issues and is not duplicative of the discovery that took place in the panel proceeding.

This subsection applies to all claims of professional negligence in which the notice of claim is served or filed on or after January 1, 1991.

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

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STATEMENT OF FACT

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8 This bill clarifies 3 points regarding the operation of
prelitigation screening panels. The bill broadens the criteria
for chairs when agreed upon by all parties. The bill further
10 provides for reciprocal sanctions for failing to comply with
rules or orders of the chair. Finally, the bill clarifies that
12 discovery may be conducted in a subsequent court action as long
as the discovery is not duplicative of the discovery conducted
14 during the panel proceeding.