

# MAINE STATE LEGISLATURE

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

COMMITTEE AMENDMENT "*B*" to H.P. 943, L.D. 1365, Bill, "An Act to Provide Good Cause Basis for Extending the Notice of Claim Period"

Amend the bill by striking out the title and substituting the following:

'An Act Concerning Extension of the Notice of Claim Period and Inclusion of Affirmative Defense Consideration in Medical Malpractice Proceedings'

Further amend the bill by striking out all of section 1 and inserting in its place the following:

'Sec. 1. 24 MRSA §2853, sub-§1, as amended by PL 1989, c. 827, §1, is repealed and the following enacted in its place:

1. Notice of claim. A person may commence an action for professional negligence by:

A. Serving a written notice of claim, setting forth, under oath, the professional negligence alleged and the nature and circumstances of the injuries and damages alleged, on the person accused of professional negligence. The notice of claim must be filed with the Superior Court within 20 days after completion of service; or

B. Filing a written notice of claim, setting forth, under oath, the professional negligence alleged and the nature and circumstances of the injuries and damages alleged, with the Superior Court. The claimant must serve the notice of claim on the person accused of professional negligence. The return of service must be filed with the court within 90 days after filing the notice of claim.

Service must be made in accordance with the Maine Rules of Civil Procedure, Rule 4.

2  
3 **Sec. 2. 24 MRSA §2853, sub-§§1-A and 1-B** are enacted to read:

4 1-A. Confidentiality. The notice of claim and all other  
5 documents filed with the court in the action for professional  
6 negligence during the prelitigation screening process are  
7 confidential.

8 1-B. Fee. At the time of filing notice of claim with the  
9 court, the claimant shall pay to the clerk a filing fee of \$200  
10 per notice filed.

11 **Sec. 3. 24 MRSA §2853, sub-§5,** as amended by PL 1989, c. 361,  
12 **§§6 and 10,** is further amended to read:

13  
14 **5. Lawsuits.** The pretrial screening may be bypassed if all  
15 parties agree upon a resolution of the claim by lawsuit. All  
16 parties to a claim may, by written agreement, submit a claim to  
17 the binding determination of the panel, either prior to or after  
18 the commencement of a lawsuit. Both parties may agree to bypass  
19 the panel and commence a lawsuit for any reason, or may request  
20 that certain preliminary legal affirmative defenses or issues be  
21 litigated prior to submission of the case to the panel. The panel  
22 has no jurisdiction to hear or decide, absent the agreement of  
23 the parties, dispositive legal affirmative defenses, except:  
24 compliance with practice parameters or risk management protocols  
25 adopted under section 2973 if the defendant is a participant in  
26 the medical liability demonstration project established under  
27 subchapter IX and intends to introduce evidence of compliance at  
28 trial; and comparative negligence. The panel chair may require  
29 the parties to litigate, by motion, dispositive legal affirmative  
30 defenses in the Superior Court prior to submission of the case to  
31 the panel. Any such defense, as well as any motion relating to  
32 discovery that the panel chair has chosen not to rule on may be  
33 presented, by motion, in Superior Court without the necessity of  
34 a complaint having first been filed.'

35  
36 Further amend the bill by striking out all of section 3 and  
37 inserting in its place the following:

38  
39 **'Sec. 3. 24 MRSA §2855, sub-§1, ¶A-1** is enacted to read:

40  
41 A-1. If the defendant is a participant in the medical  
42 liability demonstration project established under subchapter  
43 IX and has raised as an affirmative defense compliance with  
44 the practice parameters or risk management protocols adopted  
45 under section 2973, whether the defendant complied with an  
46 applicable parameter or protocol establishing the applicable  
47 standard of care;

48  
49 **Sec. 4. 24 MRSA §2903, sub-§1, ¶A,** as amended by PL 1989, c.  
50 **827, §5,** is further amended to read:

2 A. Served and filed written notice of claim setting forth,  
under oath, ~~the professional negligence alleged and the~~  
4 ~~nature and circumstances of the injuries and damages~~  
alleged, ~~personally or by registered or certified mail on~~  
6 ~~the person accused of professional negligence. Personal~~  
service or service by registered or certified mail shall be  
8 completed on the person accused within 30 days of filing.  
In the event service cannot be obtained within 30 days, the  
10 plaintiff may file a motion in Superior Court for an  
extension on a showing of good cause, including the efforts  
12 that have been made for service. In addition to granting  
the extension, the court may provide for alternate service  
14 in accordance with the Maine Rules of Civil Procedure, Rule  
4- in accordance with section 2853;

16 Further amend the bill by renumbering the sections to read  
consecutively.

18  
20 **STATEMENT OF FACT**

22 This amendment replaces sections 1 and 3 of the bill. It  
revises the procedure for commencing a medical malpractice action  
24 to more closely resemble the commencement of any other civil  
action as provided by the Maine Rules of Civil Procedure, Rule 3.

26 This amendment allows the process to be commenced by either  
28 filing the notice of claim of professional negligence with the  
Superior Court or by serving the notice of claim on the person  
30 accused of professional negligence. If the notice of claim is  
filed with the court first, the return of service, showing that  
32 the person accused of professional negligence has been served  
with the notice of claim, must be filed with the court within 20  
34 days after the notice is filed with the court. If the action is  
commenced by the claimant serving the notice of claim on the  
36 person accused of professional negligence, the notice of claim  
must be filed with the court within 90 days. Service of process  
38 is governed by the Maine Rules of Civil Procedure, Rule 4.  
Either method of commencing the action is the first step in the  
40 prelitigation screening panel process.

42 This amendment retains the confidentiality of the notice of  
claim and all other documents filed with the court. The \$200  
44 filing fee per notice of claim is also retained.

46 This amendment eliminates the confusion in the current law  
between filing a notice of claim with the court and serving a  
48 notice of claim on the person accused of professional  
negligence. The Maine Revised Statutes, Title 24, section 2903,  
50 subsection 1, paragraph A is amended to reference the procedures  
for commencing an action as provided in Title 24, section 2853.

COMMITTEE AMENDMENT "B" to H.P. 943, L.D. 1365

2           This amendment gives the prelitigation screening panels the  
4 authority to hear and rule on the affirmative defense that the  
6 defendant, as a physician participating in the medical liability  
8 demonstration project, complied with the applicable practice  
parameters and risk management protocols. This makes the  
prelitigation screening panel process consistent with the  
litigation of professional negligence actions under the medical  
liability demonstration project.

Reported by the Minority of the Committee on Judiciary  
Reproduced and distributed under the direction of the Clerk of the  
House

(6/6/91)

(Filing No. H-587)