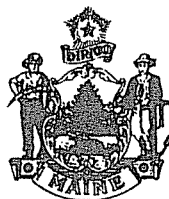


MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

FIRST REGULAR SESSION-1993

Legislative Document

No. 1186

S.P. 391

In Senate, April 6, 1993

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

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator BERUBE of Androscoggin.
Cosponsored by Senators: BEGLEY of Lincoln, BUTLAND of Cumberland, CIANCHETTE of
Somerset, Representative: WALKER of Blue Hill.

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

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 X,
8 in a case involving multi-party defendants, each defendant shall
10 be is jointly and severally liable to the plaintiff for the full
12 amount of the plaintiff's damages. However, any defendant shall
have has the right through the use of special interrogatories to
request of the jury the percentage of fault contributed by each
defendant.

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

16 SUBCHAPTER X

18 JOINT AND SEVERAL LIABILITY

20 §2997. Joint and several liability

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

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

34 B. "Fault" has the same meaning as in Title 14, section 156.

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

46 2. Joint and several liability. In an action for
48 professional negligence involving multiple defendants, each
defendant is jointly and severally liable to the plaintiff for
the full amount of the plaintiff's economic and noneconomic
50 damages. Each defendant has the right through the use of special

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

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

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

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

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

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

30 **STATEMENT OF FACT**

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