

MAINE STATE LEGISLATURE

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116th MAINE LEGISLATURE

SECOND REGULAR SESSION-1994

Legislative Document

No. 1974

H.P. 1446

House of Representatives, March 10, 1994

An Act to Change the Maine Tort Claims Act Regarding Liability with Respect to Certain Vehicles, Machinery and Equipment.

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative BAILEY of Farmington. (GOVERNOR'S BILL)

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

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3 **Sec. 1. 14 MRSA §8104-A, sub-§1**, as enacted by PL 1987, c.
4 740, §4, is amended to read:

6 **1. Ownership, lease or maintenance of vehicles, machinery**
7 **and equipment.** A governmental entity is liable for its negligent
8 acts or omissions in its ownership, lease or maintenance or use
9 of any:

10 A. Motor vehicle, as defined in Title 29, section 1,
11 subsection 7;

12 B. Special mobile equipment, as defined in Title 29,
13 section 1, subsection 14;

14 C. Trailers, as defined in Title 29, section 1, subsection
15 18;

16 D. Aircraft, as defined in Title 6, section 3, subsection 5;

17 E. Watercraft, as defined in Title 12, section 662,
18 subsection 12;

19 F. Snowmobiles, as defined in Title 12, section 7821,
20 subsection 5; and

21 G. Other machinery or equipment, whether mobile or
22 stationary.

23
24 The provisions of this section do not apply to the sales of motor
25 vehicles and equipment at auction by a governmental entity.

26
27 **Sec. 2. 14 MRSA §8112, sub-§1**, as repealed and replaced by PL
28 1987, c. 740, §10, is amended to read:

29 **1. When a governmental entity is not liable.** A
30 governmental entity, with the consent of the employee, shall
31 assume the defense of and, in its discretion, may indemnify any
32 employee against a claim which arises out of an act or omission
33 ~~occurring~~ occurring within the course and scope of employment and
34 for which the governmental entity is not liable. Except as
35 otherwise provided herein, in lieu of assuming the defense of an
36 employee, a governmental entity may pay the reasonable attorneys'
37 fees and court costs of the employee. If the defense of its
38 employee creates a conflict of interest between the governmental
39 entity and the employee, the governmental entity shall pay the
40 reasonable attorneys' fees and court costs of the employee.
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2 A governmental entity is not liable for the attorneys' fees and
4 defense costs of its employee under this subsection in the event
6 that the employee is determined to be criminally liable for the
8 acts or omissions in question. In addition, after the litigation
against the employee is concluded, a governmental entity may
recoup any attorneys' fees and costs paid to outside counsel on
behalf of the employee if the governmental entity proves that the
employee acted in bad faith.

10 This subsection does not apply if the employee settles the claim
12 without the consent of the governmental entity.

14 This subsection does not apply if notice is not required to have
16 been filed as provided in section 8107 or if the employee does
18 not notify the governmental entity within 30 days after receiving
actual written notice of the claim or within 15 days after the
service of a summons and complaint, if the governmental entity is
prejudiced by the lack of such notice.

20 Notwithstanding any other provision of law, a governmental entity
22 may not be required to assume the defense of or indemnify any
24 employee for any claim that arises out of an act or omission in
the operation, maintenance or use of any vehicle, machinery or
equipment not owned or leased by the governmental entity.

28 STATEMENT OF FACT

30 This bill amends the Maine Tort Claims Act to clarify that a
32 governmental entity is liable for its negligent acts or omissions
34 in its ownership, lease or maintenance of certain vehicles,
36 machinery and equipment and that a governmental entity may not be
required to assume the defense of or indemnify any employee for
any claim that arises out of an act or omission in the operation,
maintenance or use of any vehicle, machinery or equipment not
owned or leased by the governmental entity.

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44 This document has not yet been reviewed to determine the
46 need for cross-reference, stylistic and other technical
amendments to conform existing law to current drafting standards.