

# MAINE STATE LEGISLATURE

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# 117th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1995

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Legislative Document

No. 452

H.P. 331

House of Representatives, February 8, 1995

**An Act Regarding Recovery from Members of the Tobacco Industry of  
Medicaid and Maine Health Program Health Care Costs for  
Tobacco-related Illness, Disease or Disability.**

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Received by the Clerk of the House on February 6, 1995. Referred to the Committee on Human Resources and ordered printed pursuant to Joint Rule 14.

A handwritten signature in cursive script, reading "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative TOWNSEND of Portland.  
Cosponsored by Representative BRENNAN of Portland, Senator MILLS of Somerset and  
Representatives: ADAMS of Portland, BERRY of Livermore, CHIZMAR of Lisbon,  
FITZPATRICK of Durham, HEESCHEN of Wilton, JOHNSON of South Portland,  
MITCHELL of Portland, MORRISON of Bangor, RICHARDSON of Portland, SHIAH of  
Bowdoinham, THOMPSON of Naples, TREAT of Gardiner, Senators: FAIRCLOTH of  
Penobscot, PARADIS of Aroostook.

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

Sec. 1. 22 MRSA §14-A is enacted to read:

**§14-A. Recovery for health care for tobacco-related illness,  
disease or disability**

**1. Recovery authorized.** When benefits are provided or will be provided under the Medicaid program administered by the department pursuant to the United States Social Security Act, Title XIX or under the Maine Health Program for the health care costs of illness, disease or disability of a recipient that is caused by smoking or using tobacco or exposure to tobacco smoke, the commissioner may recover from any members of the tobacco industry the reasonable value of the benefits provided.

**2. Legal proceedings.** To enforce rights under this section, the Attorney General may institute and prosecute legal proceedings against any members of the tobacco industry in the appropriate court. Recovery may be sought that provides for the following:

**A. Payment of the expenses of health care and related costs due to illness, disease or disability;**

**B. Release of information and research on health, smoking and using tobacco; and**

**C. Payment for smoking and tobacco use cessation clinics.**

**3. Principles and theories.** Principles of law and equity as to assignment, subrogation, comparative negligence, assumption of risk and all other affirmative defenses normally available to a party are abrogated to the extent necessary to ensure full recovery by the commissioner. The concept of joint and several liability applies to any recovery by the commissioner. Common law theories of recovery must be liberally construed to accomplish the purposes of this section.

**4. Rules.** The Attorney General may elect to seek recovery in one action for expenses incurred or to be incurred on behalf of more than one recipient from more than one member of the tobacco industry due to actions by them. The rules of evidence must be liberally construed regarding the issues of causation and aggregate damages. The issues of causation and damages in any such action may be proven by use of statistical analysis.

**5. No limitations of action.** In any action brought pursuant to this section, the limitations of action specified in Title 14, chapter 205 do not apply.

2       6. Compromise; settlement. The commissioner may compromise  
or settle any claim or waive any portion of a claim if the  
4       commissioner determines the compromise or settlement to be in the  
interest of the State.

6       7. Apportionment of liability. In any court order  
8       apportioning liability among defendants in an action, liability  
must be apportioned according to the following formula.

10       A. Among defendants that manufacture tobacco products for  
12       smoking or other use by persons, liability must be  
apportioned in accordance with their shares of the tobacco  
14       product market for such products in Maine.

16       B. Among defendants that engage in research, the collection  
or dissemination of information, lobbying or public  
18       relations on behalf of manufacturers of tobacco products for  
smoking or other use by persons, liability must be  
20       apportioned in accordance with their gross receipts from all  
sources that are related to the smoking or other use of  
22       tobacco products by persons.

24       C. Among defendants from paragraph A and defendants from  
paragraph B, liability must be apportioned in accordance  
26       with a comparison of the market shares determined in  
paragraph A with the gross receipts determined in paragraph  
28       B.

30       8. Disbursement. If a recipient of health care assistance  
receives a settlement or award from a member of the tobacco  
32       industry for the payment of health care costs due to  
tobacco-related illness, disease or disability, the settlement or  
34       award is subject to all rights and obligations provided in  
section 14 and to disbursement as provided in section 14,  
36       subsection 2-F.

38       9. Definitions. For purposes of this section, "member of  
the tobacco industry" means any entity that manufactures tobacco  
40       products for smoking or other use by persons and any association  
or other group of manufacturers engaged in research, the  
42       collection or dissemination of information, lobbying or public  
relations on behalf of manufacturers of tobacco products for  
44       smoking or other use by persons.

## 48                               STATEMENT OF FACT

50       This bill allows the Commissioner of Human Services to  
recover from members of the tobacco industry the costs of health

2 care for Medicaid recipients and members of the Maine Health  
Program. It allows for recovery of costs of health care  
4 expenses, payment for smoking and tobacco use cessation clinics  
and release of information and research on smoking and tobacco  
6 use. It abrogates certain defenses to the extent necessary to  
ensure full recovery by the commissioner. It allows suit to be  
8 brought for the costs for a number of recipients at once and  
against a number of defendants at once. It frees these actions  
from the standard statutes of limitations. It allows compromise  
10 and settlement in the best interests of the State. It provides  
for disbursement to the State of any expenses for health care  
12 costs that might be recovered by the recipient. It defines  
"member of the tobacco industry" as any entity that manufactures  
14 tobacco products for smoking or other use by persons and any  
association or other group of manufacturers engaged in research,  
16 the collection or dissemination of information, lobbying or  
public relations on behalf of manufacturers of tobacco products  
18 for smoking or other use by persons.