

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 636

S.P. 239

In Senate, February 23, 1995

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, reading "May M. Ross".

MAY M. ROSS
Secretary of the Senate

Presented by Senator RUHLIN of Penobscot.

Cosponsored by Senators: BEGLEY of Lincoln, BERUBE of Androscoggin, CAREY of Kennebec, CIANCHETTE of Somerset, FERGUSON of Oxford, HARRIMAN of Cumberland, KIEFFER of Aroostook, PENDEXTER of Cumberland, Representatives: AULT of Wayne, DONNELLY of Presque Isle, GOULD of Greenville, HARTNETT of Freeport, LINDAHL of Northport, MADORE of Augusta, NASS of Acton, PLOWMAN of Hampden, SIMONEAU of Thomaston, VIGUE of Winslow.

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

Sec. 1. 14 MRSA §156, last ¶, as enacted by PL 1969, c. 399, §2, is amended to read:

In ~~Except as provided in Title 24, chapter 21, subchapter XII, in~~ a case involving multi-party defendants, each defendant ~~shall-be~~ is jointly and severally liable to the plaintiff for the full 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.

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

SUBCHAPTER XII

JOINT AND SEVERAL LIABILITY

§2997. Joint and several liability

1. **Definitions.** As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

A. "Economic damages" means objectively verifiable pecuniary damages arising from medical expenses and care, rehabilitation services, custodial care, loss of earnings 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.

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

C. "Noneconomic damages" means subjective, nonpecuniary damages, including punitive damages or damages arising from pain, suffering, inconvenience, physical impairment, disfigurement, mental anguish, emotional distress, loss of 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.

2. **Joint and several liability.** In an action for 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 damages. Each defendant has the right through the use of special

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

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

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

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

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

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

STATEMENT OF FACT

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