

MAINE STATE LEGISLATURE

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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 1371

S.P. 512

Received by the Secretary, April 14, 1995

An Act Relating to Civil Actions, Providing for the Defense of Assumption of Risk, Providing for Standards of Liability in Product Liability Actions and Providing for Standards and Procedures in Awarding Punitive Damages.

Referred to the Committee on Judiciary and ordered printed pursuant to Joint Rule 14.

A handwritten signature in cursive script that reads "May M. Ross".

MAY M. ROSS
Secretary of the Senate

Presented by Senator CIANCHETTE of Somerset.

Cosponsored by Senators: BUTLAND of Cumberland, CAREY of Kennebec, FERGUSON of Oxford, HARRIMAN of Cumberland, KIEFFER of Aroostook, Representatives: CAMERON of Rumford, KERR of Old Orchard Beach, PLOWMAN of Hampden, WHITCOMB of Waldo.

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

2 Sec. 1. 14 MRSA §157-A is enacted to read:

4 **§157-A. Assumption of risk**

6 In any action seeking damages for death, personal injury or
8 property damage, whether based in tort, strict liability or any
10 other theory or combination of theories, including product
12 liability actions as defined in section 222, the claimant is
barred from recovering damages if the trier of fact finds that
the claimant:

14 1. Awareness of risk. Was aware of a risk to the
16 claimant's safety or the claimant's property; and

18 2. Voluntary exposure to risk. Voluntarily exposed the
claimant or the claimant's property that risk.

20 Sec. 2. 14 MRSA §222 is enacted to read:

22 **§222. Nonliability for inherent characteristics of goods;**
24 **requirement of safer alternative design**

26 1. Defective in design, warning or instruction. In any
product liability action:

28 A. A product is not defective in design, warning or
30 instruction if the harm for which the claimant seeks to
32 recover was caused by an inherent characteristic of the
34 product that is a generic aspect of the product that can not
be eliminated without substantially compromising the
product's usefulness or desirability and that is recognized
by the ordinary person with the ordinary knowledge common to
the community; and

36 B. A product is not defective in design unless the claimant
38 proves by a preponderance of the evidence that there was a
40 product design other than the one actually used that in
reasonable probability:

42 (1) Would have prevented or significantly reduced the
44 risk of the claimant's personal injury, property damage
or death without substantially impairing the product's
usefulness; and

46 (2) Was economically and technologically feasible at
48 the time the product left the control of the
50 manufacturer or seller by the application of existing
scientific and technical knowledge.

2 2. Product liability action defined. For purposes of this
3 section, "product liability action" means any action against a
4 manufacturer or seller for recovery of damages arising out of
5 personal injury, death or property damage allegedly caused by a
6 defective product whether the action is based in strict
7 liability, negligence, misrepresentation, breach of warranty or
8 any other theory or combination of theories.

9 Sec. 3. 14 MRSA c. 310 is enacted to read:

10 **CHAPTER 310**

11 **PUNITIVE DAMAGES**

12 **§1461. Definitions**

13 As used in this chapter, unless the context otherwise
14 indicates, the following terms have the following meanings.

15 1. Claimant. "Claimant" means any party claiming punitive
16 damages.

17 2. Clear and convincing evidence. "Clear and convincing
18 evidence" means evidence that leaves no serious or substantial
19 doubt about the correctness of the conclusion drawn from the
20 evidence. It is more than a preponderance of evidence but less
21 than beyond a reasonable doubt.

22 3. Compensatory damages. "Compensatory damages" means
23 damages intended to make good the loss of an injured party and no
24 more. The term includes economic and noneconomic damages and
25 does not include nominal, exemplary or punitive damages.

26 4. Defendant. "Defendant" means any party against whom
27 punitive damages are sought.

28 5. Malice. "Malice" means either conduct that is
29 specifically intended by the defendant to cause tangible or
30 intangible serious injury to the plaintiff and is in fact
31 motivated by ill will toward the plaintiff, or conduct so
32 outrageous that intent to cause tangible or intangible serious
33 injury to that plaintiff and ill will toward the plaintiff can be
34 implied.

35 6. Nominal damages. "Nominal damages" means damages that
36 are not designed to compensate a plaintiff and are less than \$500.

37 7. Punitive damages. "Punitive damages" means damages
38 awarded against a party in civil action because of aggravating
39 circumstances for the purposes of penalizing the defendant and
40 providing additional deterrence to discourage similar conduct in
41 the future.

2 the future. Punitive damages include exemplary damages but do
3 not include compensatory damages or nominal damages.

4 **§1462. Procedures for trial of punitive damages claim**

6 **1. Pleadings.** An award of punitive damages must be
7 specifically prayed for in the complaint. The claimant may not
8 plead for a specific amount of punitive damages.

10 **2. Bifurcated trial upon request.** Any actions tried before
11 a jury involving punitive damages must be conducted in a
12 bifurcated trial before the same jury if requested by any
13 defendant.

14 **A.** In the first stage of a bifurcated trial, the jury shall
15 determine liability for compensatory damages and the amount
16 of compensatory damages or nominal damages. Evidence
17 relevant only to the issue of punitive damages is not
18 admissible in the first stage.

19 Punitive damages may be awarded only if compensatory damages
20 have been awarded in the first stage of the trial. An award
21 of nominal damages does not support an award of punitive
22 damages.

23 **B.** In the 2nd stage of a bifurcated trial the jury shall
24 determine if a defendant is liable for punitive damages and,
25 if so, the amount of punitive damages.

26 **3. Determination of amount of punitive damages.** In all
27 cases involving an award of punitive damages, the trier of fact,
28 in determining the amount of punitive damages, may consider only
29 evidence relating to:

30 **A.** The reprehensibility of the defendant's motives;

31 **B.** The likelihood, measured at the time of the harmful
32 conduct, of serious harm resulting from that conduct;

33 **C.** The degree of the defendant's awareness, at the time of
34 the harmful conduct, of the likelihood of serious harm;

35 **D.** The duration of the defendant's conduct;

36 **E.** The actual damages suffered by the claimant;

37 **F.** Prior damages awards for the same wrongful act;

38 **G.** The effect on other potential claimants of a punitive
39 damages award;

2 H. The deterrent provided by compensatory damages in the
3 case; and

4 I. The potential or prior criminal and administrative
5 penalties against the defendant for the same wrongful act.

6
7 The trier of fact may not consider evidence regarding the
8 defendant's net worth, gross or net revenues or any other indicia
9 of wealth or ability to pay.

10
11 4. Comparative fault; attribution of fault. The amount of
12 punitive damages must be reduced pursuant to the comparative
13 fault principles of the law of this State. In any action in
14 which there are 2 or more defendants, an award of punitive
15 damages must be specific as to a defendant and each defendant is
16 liable only for the amount of the award made against that
17 defendant.

18 **§1463. Requirement of malice**

19
20 Before a claimant may recover punitive damages in any civil
21 action, that claimant must establish, by clear and convincing
22 evidence, that the defendant's actions were the result of
23 malice. This burden of proof may not be satisfied by proof of
24 any degree of negligence, including gross negligence or
25 recklessness.

26
27 **§1464. Limitation on amount of recovery**

28
29 Punitive damages awarded against a defendant may not exceed
30 2 times the amount of compensatory damages, or \$350,000,
31 whichever is greater. The provisions of this section may not be
32 made known to the jury through any means, including voir dire,
33 introduction into evidence, argument or instruction.

34
35 **§1465. Multiple punitive damages awards against defendant**

36
37 1. Previous award against defendant. Except as provided by
38 subsection 4, a court may not award punitive damages to a
39 claimant if:

40
41 A. Punitive damages have been previously awarded against
42 the defendant by a court in any jurisdiction; and

43 B. The harm with respect to which the claimant seeks
44 recovery of punitive damages resulted from the same or
45 substantially similar act or course of conduct that formed
46 the basis of the previous punitive damages award.

47
48 2. Pretrial hearing on previous punitive damages awards.
49 On request of a defendant, the court shall conduct a pretrial
50 hearing at which the defendant may present evidence that punitive
51 damages are warranted.

2 damages have been previously awarded against the defendant based
3 on the same or substantially similar act or course of conduct for
4 which the claimant seeks punitive damages.

6 3. Claim for punitive damages precluded. Except as
7 provided by subsection 4, if the defendant at the pretrial
8 hearing presents prima facie evidence of a previous award of
9 punitive damages as described by subsection 1, the claimant may
10 not present a claim for punitive damages during the trial of the
11 action.

12 4. Multiple punitive damages awards permitted. Subsections
13 1 and 3 do not apply if the claimant establishes at the pretrial
14 hearing that:

16 A. Substantial new evidence of one or more aggravating
17 factors exists, the evidence was not available at the time
18 the previous punitive damages award was entered and the
19 evidence establishes that the defendant's culpability was
20 greater in degree or kind than the culpability established
21 by the evidence available at the time the previous punitive
22 damages award was entered; or

24 B. The amount of all prior punitive damages awards
25 resulting from the same or substantially similar act or
26 course of conduct is insufficient either to punish the
27 defendant or to deter the defendant from similar behavior in
28 the future.

30 If the claimant makes either showing required by this subsection,
31 the claimant may seek punitive damages subject to all other
32 requirements of this chapter. The jury may not be informed about
33 the court's determination and action under this subsection.

34 5. Single act or course of conduct. For the purposes of
35 this section, the manufacture of multiple identical units of a
36 product line is a single act or course of conduct.

38 **§1466. Harm resulting from regulated activities**

40 1. State or federal regulation. Except as provided by
41 subsections 2 and 3, a court may not award a claimant punitive
42 damages if the harm with respect to which the claimant seeks
43 recovery of punitive damages results from:

46 A. Conduct or a product that is subject to regulation by an
47 agency of this State or the United States;

48 B. A product whose design, formulation, testing, packaging,
49 labeling or warning is subject to statutory requirements
50 enacted by this State or the United States; or
51

2 C. A product whose design, formulation, testing, packaging,
3 labeling or warning was approved or certified before sale by
4 an agency of this State or the United States.

5 2. Punitive damages allowed upon noncompliance. A court
6 may award a claimant punitive damages in the circumstances
7 described in subsection 1, paragraphs A and B if the claimant:

8 A. Proves that the defendant did not comply with the
9 applicable regulations or statutory requirements promulgated
10 by the regulating agency or legislative body; and

11 B. Otherwise satisfies the requirements of this chapter.

12 3. Punitive damages allowed if approval illegally
13 obtained. Subsection 1 does not apply if the claimant proves
14 that the defendant:

15 A. Knowingly and in violation of law withheld or
16 misrepresented material information required to be submitted
17 to the regulating agency; or

18 B. Made an illegal payment to an official of the regulating
19 agency to secure approval of the conduct or product in
20 question.

21 **Sec. 4. Effective date.** This Act takes effect on October 1,
22 1995 and applies to all civil actions pending on that date or
23 filed on or after that date.

24

25 **STATEMENT OF FACT**

26 This bill alters several related aspects of the State's
27 liability law to limit the liability exposure of manufacturing
28 companies, which will reduce the cost of doing business in Maine
29 and therefore the price of Maine-made products. First, the bill
30 establishes assumption of risk as an independent defense. Under
31 current law, assumption of risk is relevant only as a factor to
32 be considered in the comparative negligence determination.

33 Second, the bill provides that a product manufacturer or
34 seller may not be held liable for damage caused by an aspect of
35 the product that is an inherent characteristic of that type of
36 product and that is known to the ordinary consumer.

37 Third, the bill further provides that plaintiff claiming
38 that a product was defectively designed must establish that a
39 safer alternative design existed that would have avoided the
40 harm. This provision is a modification of Maine's existing
41 "danger-utility" test for product defects, under which the

2 existence of a feasible alternative design is one of three
relevant factors.

4 Fourth, the bill establishes certain procedural and
substantive rules relating to the award of punitive damages in
6 civil cases. The bill:

8 1. Bars plaintiffs from demanding a specific amount of
punitive damages in the complaint;

10 2. Permits bifurcation of civil trials into liability and
punitive damages phases;

14 3. Provides factors for consideration in determining the
appropriate level of punitive damages;

16 4. Applies existing comparative negligence principles to
punitive damages awards;

20 5. Codifies the requirement that the plaintiff prove that
the defendant acted with malice in order to sustain a punitive
damages award;

24 6. Codifies the "clear and convincing" standard of proof;

26 7. Limits the amount of punitive damages awards;

28 8. Restricts the availability of multiple punitive damages
awards for the same conduct; and

30 9. Limits the availability of punitive damages for conduct
32 regulated by the government.