

MAINE STATE LEGISLATURE

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R. of S.

L.D. 1729

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DATE: 3/21/96 (Filing No. H- 821)

JUDICIARY

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**STATE OF MAINE
HOUSE OF REPRESENTATIVES
117TH LEGISLATURE
SECOND REGULAR SESSION**

COMMITTEE AMENDMENT "A" to H.P. 1257, L.D. 1729, "Resolve, to Require the Study of the Medical Liability Prelitigation Screening Panels"

Amend the resolve by striking out everything after the title and before the statement of fact and inserting in its place the following:

Emergency preamble. Whereas, Acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, analysis of existing data on the use of mandatory prelitigation screening and mediation panels is necessary in order for the Legislature to make informed decisions regarding the panel process; and

Whereas, compilation of that data must begin promptly so that a qualified researcher can analyze the data and make recommendations on future data collection to the First Regular Session of the 118th Legislature; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, be it

Sec. 1. Data assembly. Resolved: That the Bureau of Insurance shall collect and compile data related to the number

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2 and disposition of malpractice claims over the past 5 calendar
years from the records of the Bureau of Insurance and, if
4 necessary, the records of medical malpractice insurers. The
Bureau of Insurance, referred to in this resolve as "the bureau,"
6 shall request that the Chief Justice of the Superior Court assist
in providing data or access to data concerning the use of
8 mandatory prelitigation and mediation screening panels and the
final disposition of cases over the same period. The bureau is
10 authorized to collect this data notwithstanding any applicable
confidentiality provisions in the Maine Revised Statutes, Title
24, sections 2853 and 2857. The bureau shall compile this data
12 into a summary report; and be it further

14 **Sec. 2. Study; future data collection. Resolved:** That the
Superintendent of Insurance shall retain a research consultant to
16 analyze the data compiled under section 1 of this resolve and to
make recommendations for the collection of data for future study.

18 **1. Study.** The research consultant shall use the data
20 compiled by the bureau under section 1 of this resolve as the
basis for a study on the effectiveness of the prelitigation
22 screening panel process required by the Maine Health Security
Act. The results of this study and the summary report prepared
24 by the bureau must be submitted to the joint standing committee
of the Legislature having jurisdiction over judiciary matters by
26 February 15, 1997.

28 **2. Subject.** To the extent possible, but subject ultimately
to the discretion of the bureau, this study must, without
30 limitation, measure whether the prelitigation screening panel
process:

- 32 A. Effectively promotes early recovery for those injured by
34 professional negligence;
- 36 B. Effectively promotes early withdrawal or dismissal of
nonmeritorious claims;
- 38 C. Reduces the value of recovery or impairs access to
40 recovery for meritorious claimants; and
- 42 D. Has an impact on the cost of health care or medical
44 liability insurance.

46 **3. Additional data and future study design.** In addition,
the research consultant shall provide a written report to the
48 bureau by March 1, 1997 containing recommendations for the
collection of data to be used for future analysis of the
effectiveness of the panels. These recommendations may involve
50 changes to the confidentiality provisions regarding panel

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proceedings, requiring the parties to submit additional information and other changes necessary for collecting data relevant to the effectiveness of the panels. The bureau shall draft the legislation necessary to implement the consultant's recommendations. The bureau shall submit copies of the consultant's report and the necessary implementing legislation to the joint standing committee of the Legislature having jurisdiction over judiciary matters by March 15, 1997.

4. Confidentiality. Notwithstanding the Maine Revised Statutes, Title 24, sections 2853 and 2857, the research consultant may review any pleadings, findings, writings, statements, evidence or discovery retained by the Superior Court. The research consultant may also review any information received by the bureau under Title 24, chapter 21, subchapter II and data collected by the bureau pursuant to section 1 of this resolve. The research consultant may not disclose any information that directly or indirectly identifies or permits identification of the provider or the claimant. The bureau shall ensure that the research consultant has an established protocol for maintaining the confidentiality of all information obtained in the course of developing the study design. The research consultant may not review or retain any confidential information after March 1, 1997; and be it further

Sec. 3. Advisory committee. Resolved: That the Superintendent of Insurance shall convene an advisory committee made up of interested parties including, but not limited to, representatives of consumer, medical and legal interest groups and medical malpractice insurers to provide advice on the subject of the study and the data requirements for future study. Members of the advisory committee serve without compensation and are not entitled to reimbursement for expenses; and be it further

Sec. 4. Allocation. Resolved: That the following funds are allocated from the Insurance Regulatory Fund to carry out the purposes of this resolve.

1996-97

PROFESSIONAL AND FINANCIAL REGULATION, DEPARTMENT OF

Bureau of Insurance

All Other \$35,000

Allocates funds for the costs of privately contracting for a study on the effectiveness

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2 of medical liability prelitigation screening panels.

4 **Emergency clause.** In view of the emergency cited in the preamble, this resolve takes effect when approved.'

6 Further amend the resolve by inserting at the end before the statement of fact the following:

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FISCAL NOTE

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1996-97

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APPROPRIATIONS/ALLOCATIONS

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Other Funds \$35,000

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REVENUES

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Other Funds \$35,000

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24 The Bureau of Insurance, within the Department of Professional and Financial Regulation, will require an Other Special Revenue allocation of \$35,000 in fiscal year 1996-97 for the costs of conducting a study pertaining to the effectiveness of medical liability prelitigation screening panels. Under its current statutorily authorized assessment cap, the bureau has the authority to collect the additional revenues necessary to cover the additional costs for fiscal year 1996-97.

32 The Judicial Department will incur some minor additional costs to gather and provide data concerning prelitigation screening panels. These costs can be absorbed within the Judicial Department's existing budgeted resources.'

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STATEMENT OF FACT

40 This amendment replaces the resolve entirely but retains the objective of conducting a study of the effectiveness of the prelitigation screening panels. The amendment requires the Bureau of Insurance to provide a summary report to the Legislature on claims data and the panel process over the past 5 years compiled from data currently held by the bureau, the courts and the insurers. The amendment also requires the bureau to retain a research consultant to analyze the data compiled by the bureau and to make recommendations for the collection of data for future study. The bureau's summary report, the consultant's analysis, the consultant's recommendations and any necessary

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2 legislation must be submitted to the Judiciary Committee during
the First Regular Session of the 118th Legislature. The
4 amendment requires the bureau to convene an advisory panel to
provide advice on the subject of the study. The amendment also
6 adds an emergency preamble, an emergency clause, an allocation
section and a fiscal note to the resolve.

COMMITTEE AMENDMENT