MAINE STATE LEGISLATURE

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118th MAINE LEGISLATURE

FIRST REGULAR SESSION-1997

Legislative Document

No. 1384

S.P. 438

In Senate, March 5, 1997

An Act to Reform Procedure in Multiparty Lawsuits.

Reference to the Committee on Judiciary suggested and ordered printed.

JOY J. O'BRIEN Secretary of the Senate

Presented by Senator MILLS of Somerset.

	Be it enacted by the People of the State of Maine as follows:
2	Sec. 1. 14 MRSA §156, as amended by PL 1971, c. 8, is
4	repealed.
6	Sec. 2. 14 MRSA §163, as enacted by PL 1969, c. 19, is
8	repealed.
10	Sec. 3. 14 MRSA §165, sub-§3, ¶B, as enacted by PL 1995, c. 299, §1, is amended to read:
12	B. Fault of the plaintiff to the extent that the plaintiff's fault bars or reduces the plaintiff's recovery
14	under section 156 173; or
16	Sec. 4. 14 MRSA c. 8 is enacted to read:
18	CHAPTER 8
20	CONTRIBUTORY NEGLIGENCE, CONTRIBUTION AND SETTLEMENT
22	
24	§171. Definitions
26	As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.
28	1. Equitable share. "Equitable share" means a party's
3.0	percentage share of the total combined fault allocable to all
30	parties to the claim excluding the plaintiff, when 2 or more parties are jointly or severally liable upon the same indivisible
32	claim for the same harm. A party's "equitable share" is
34	determined by the trier of fact in percentage terms based on the relative quilt of each party's relative causal contribution to
34	the plaintiff's harm. The conduct of the party who is strictly
36	liable to the plaintiff may be compared to and apportioned with
38	the conduct of a party who is liable to the plaintiff for negligence or recklessness.
40	2. Fault. "Fault" has the following meanings.
42	A. "Fault" means negligence, breach of statutory duty or other act or omission that creates a liability in tort or
44	that, apart from this chapter, would give rise to the
	defense of contributory negligence.
46	B. "Fault" includes acts or omissions that are in any
48	measure negligent or reckless toward person or property or
	that subject a party to strict tort liability. "Fault" also
50	includes breach of warranty, unreasonable assumption of risk

	not constituting an enforceable express consent, misuse of a
2	product for which a party otherwise is liable and an
	unreasonable failure to avoid harm.
4	
	C. In determining relative fault, in percentages or
6	otherwise, the trier of fact must consider both the nature
	of the conduct of each party at fault and the extent of the
8	causal relation between the conduct and the damages claimed.
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10	D. Legal requirements for causal relation apply both to
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7.0	fault as the basis for liability and to contributory fault.
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	3. Harm. "Harm" means an injury, death, damage or loss
14	sufficient to sustain a legal action based on fault.
16	4. Party. "Party" means a person, who at the time the
	plaintiff's right of action accrues, is potentially liable on the
18	basis of fault to pay damages either to the plaintiff directly or
	in contribution to another for the same harm. "Party" includes
20	not only those who are before the court but also those who may
20	have been brought without immunity before a court with
22	jurisdiction to impose a fault-based award for the plaintiff's
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	harm.
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	5. Plaintiff. "Plaintiff" means the party that is entitled
26	to make a claim for damages and is so identified in this chapter
	regardless of whether suit is actually filed and regardless of
28	the procedure by which the claim may be asserted in court, such
	as, in a counterclaim or cross-claim.
30	,
	6. Settling defendant. "Settling defendant" means a
32	defendant that is released by the plaintiff under an agreement
J.4	that precludes the plaintiff from collecting against that
2.4	
34	defendant.
36	7. Tort-feasor. "Tort-feasor" means a party that is liable
	on the basis of fault to pay damages either to the plaintiff
38	directly or in contribution to another for the same harm.
	"Tort-feasor" may include, when the context requires, a party
40	whose fault-based liability arises in contract from breach of
-	warranty or under similar circumstances.
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4.4	§172. Plaintiff's fault; effect
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	1. Bar. In a claim for harm that results partly from fault
46	attributable to the plaintiff and partly from fault attributable
	to other parties, the claim is barred if the plaintiff's fault is
48	equal to or greater than that of all other parties to the claim

- 2. Reduce recovery. When fault of the plaintiff is less
 than that of the other parties, the plaintiff's recovery must be reduced to the extent that is just and equitable regarding the plaintiff's share of fault for the harm.
- 3. Failure to mitigate. The plaintiff's failure to mitigate damages after a wrong has occurred is not contributory fault, but such failure may reduce the total damages that plaintiff can claim that were proximately caused by those found liable for the initial harm.

§173. Procedure for reduction

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- 14 <u>1. Recovery reduced.</u> When the plaintiff is entitled to a recovery that is reduced for contributory fault, the trier of fact must, unless otherwise agreed by all parties:
- A. Find the total damages that the plaintiff is entitled to recover if contributory fault is disregarded;
- B. Reduce the total damages by dollars and cents to an amount determined just and equitable regarding the plaintiff's share of fault; and
- C. Return both amounts with the knowledge that the lesser figure is the final verdict.

§174. Joint and several liability; findings

When 2 or more defendants are found liable upon the same indivisible claim for the same harm, each defendant is jointly and severally liable to the plaintiff for the full amount of the plaintiff's recovery. Upon timely request of any party, the trier of fact must find in percentage terms the equitable share of fault contributed by each tort-feasor. When the liability of one party is purely vicarious to that of another or when justice otherwise requires, the court may determine that 2 or more parties are to be treated as one.

§175. Right of contribution

- 1. Existence of right. Except as otherwise stated in this section, when 2 or more parties are at fault for causing the same harm to the same plaintiff there is a right of contribution among the parties even though judgment has not been recovered against all or any of the parties.
- 2. Assertable. The right of contribution may be determined and enforced either in the original action or by a separate action brought for that purpose.

2	3. Basis for claim. The basis for contribution is each
	tort-feasor's equitable share of the joint obligation. The right
4	of contribution exists only in favor of a tort-feasor who has
	paid more than the equitable share of the common liability and is
6	limited to the amount of the payment in excess of the equitable
	share.
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	4. Insolvency. If a joint tort-feasor lacks capacity to
10	pay the equitable share, then the resulting loss is distributed
	among the parties remaining in proportion to the parties'
12	respective equitable shares.
14	5. Intentional tort-feasors. There is no right of
	contribution in favor of any tort-feasor who has intentionally
16	caused the harm.
18	6. Arising from settlement. Contribution is available to a
	joint tort-feasor that enters into a settlement with the
20	plaintiff only:
2.2	
22	A. If the liability of the party against whom contribution
2.4	is sought is extinguished; and
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26	B. To the extend that the amount paid in settlement is
26	reasonable.
28	7. Liability insurers. A liability insurer, who by payment
2.0	has discharged in full or in part the liability of a tort-feasor
30	and has by payment discharged in full its obligation as insurer,
50	is subrogated to the tort-feasor's right of contributions to the
32	extent of the amount it has paid in excess of the tort-feasor's
32	equitable share of the common liability. This provision does not
34	limit or impair rights of subrogation arising from any other
5 1	relationship.
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	8. Indemnity. When one tort-feasor has a right of
38	indemnity against another, neither has the right of contribution
	against the other.
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	9. Breaches of trust. This section does not apply to
42	breaches of trust or breaches of other fiduciary obligations.
44	§176. Enforcement of contribution rights
46	Contribution rights are enforced as follows.
48	1. Upon motion. If proportionate fault among joint
	tont forces is presidently satisfied a section in

its equitable share may recover judgment for contribution upon 2 motion. 2. Separate action. If proportionate fault among joint 4 tort-feasors is not established, contribution may be enforced in a separate action, regardless of whether a judgment is rendered 6 against either the party seeking contribution or the party from 8 whom contribution is sought. 3. Assertable after judgment. If a judgment is rendered 10 against the tort-feasor seeking contribution, the action for 12 contribution must be commenced within one year after the judgment is final. 14 4. Assertable if no judgment. If judgment is not rendered, the party bringing the action for contribution either must have: 16 18 A. Discharged by payment the common liability within the period of the statute of limitations applicable to the claimant's right of action and commenced the action for 20 contribution within one year after payment; or 22 B. Agreed while action was pending to discharge the common 24 liability and within one year after the agreement paid the liability and commenced an action for contribution. 26 5. Effect of judgment and recovery. A plaintiff's recovery of a judgment against one tort-feasor does not discharge other 28 tort-feasors from liability for the same claim unless the 30 judgment is satisfied. Satisfaction of the judgment does not impair rights of contribution. 32 Binding effect. A judgment that determines the 34 equitable shares of liability for 2 or more tort-feasors who are parties to the judgment is bonding among the tort-feasors in determining the tort-feasors' respective rights to contribution 36 for those damage claims that are the subject of the judgment. 38 §177. Release of joint tort-feasors 40 When recovery is sought for harm caused by 2 or more 42 parties, a release of one or more of the parties does not bar a claim against the other parties. Evidence of a prior release or 44 settlement is not admissible on issues of liability or damages in a subsequent trial. If the plaintiff is awarded a verdict in

such a case, the judge shall reduce the plaintiff's recovery by deducting, for each prior settlement, the lesser of the following:

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	1. Consideration for settlement. The value of the
2	consideration given to the plaintiff for settlement with the
	released party; or
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	2. Equitable share. The released party's equitable share
б	of the joint obligation if it was determined by the trier of fact.
8	§178. Partial proportional settlements
.0	If any defendant is released by the plaintiff under an
	agreement that precludes the plaintiff from collecting against
2	remaining parties that portion of any damages attributable to the
	settling defendant's share of responsibility, the following rules
4	apply.
5	1. General rule. A settling defendant is entitled to be
	dismissed with prejudice from the case. Unless otherwise
	ordered, this dismissal bars all related claims for contribution
	or indemnity assertable by remaining parties.
	2. Postsettlement procedures. The trial court shall
	preserve for the remaining parties a fair opportunity to
	adjudicate the liability of the dismissed defendant. Remaining
	parties may continue to conduct necessary discovery against a
	settling defendant and may invoke evidentiary rules at trial as
	though the settling defendant were still a party.
	3. Binding effect. To apportion responsibility in the
	pending action for claims that were included in the settlement
	and presented at trial, a finding on the issue of the settling
	defendant's liability binds all parties to the suit, but such a
	finding does not have a binding effect in other actions relating
	to other damage claims.
	4. Postverdict adjustments. If a plaintiff recovers a
	verdict against any of the nonsettling parties, the court shall
	reduce the plaintiff's judgment by the amount determined at trial
3	to be attributable to the settling defendant's equitable share of
	fault if any was found. If no finding was requested, the court
)	shall reduce the plaintiff's judgment by the value of the

consideration given to the plaintiff's judgment by the value of

of the settling defendant, the court may grant relief as necessary to protect the rights of the remaining parties for good

5. Exceptions. If special circumstances dictate that the issues can not be adjudicated fairly without fuller participation

the consideration given to the plaintiff for the settlement.

cause shown. An order for relief may include that:

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	A. The settling defendant shall continue to defend against
. 2	remaining cross-claims;
4	B. The parties are not bound by that portion of any verdict
	or finding that determines whether or to what extent the
6	settling defendant shares responsibility for the plaintiff's harm; or
8	C. Cross-claims against the settling defendant are severed
10	for separate trial.
12	Sec. 5. Application. The section of this Act that enacts the
	Maine Revised Statutes, Title 14, chapter 8 applies to all
14	settlements entered into, all rights of contribution that accrue and all trials that commence after the effective date of this Act.
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18	SUMMARY
20	This bill restructures the comparative negligence laws and defines how they should apply in cases with multiple defendants.
22	The bill also restructures the laws dealing with release of
24	joint tort-feasors when settlement is not reached and clarifies
	how the judge applies offsets against subsequent verdicts when
26	there have been prejudgment settlements.
28	The bill also authorizes the courts to approve Pierringer release procedures in complex litigation. In a Pierringer
30	settlement, the plaintiff gives up that share of recovery that is proportional to the settling defendant's fraction of
32	responsibility. The purpose of a Pierringer release is to permit one defendant to settle with the plaintiff and to withdraw
34	finally from the suit even when there are cross-claims against
31	the defendant.
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	The bill contains safeguards to protect nonsettling parties
38	from being prejudiced by the absence of the settling defendant. It also authorizes the court, for good cause shown, to enter
40	special orders to alter or suspend the terms of the release if
10	justice requires.