

MAINE STATE LEGISLATURE

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119th MAINE LEGISLATURE

FIRST REGULAR SESSION-1999

Legislative Document

No. 1795

S.P. 630

In Senate, March 9, 1999

**An Act to Validate Pierringer Releases and Reform Procedures in
Multiparty Lawsuits.**

Reference to the Committee on Judiciary suggested and ordered printed.

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator MILLS of Somerset.

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

4 **Sec. 1. 14 MRSA §156, as amended by PL 1971, c. 8, is**
6 **repealed.**

8 **Sec. 2. 14 MRSA §163, as enacted by PL 1969, c. 19, is**
10 **repealed.**

12 **Sec. 3. 14 MRSA §165, sub-§3, ¶B, as enacted by PL 1995, c.**
14 **299, §1, is amended to read:**

16 B. Fault of the plaintiff to the extent that the
18 plaintiff's fault bars or reduces the plaintiff's recovery
20 under section ~~156~~ 183; or

22 **Sec. 4. 14 MRSA c. 8 is enacted to read:**

24 **CHAPTER 8**

26 **CONTRIBUTORY FAULT, CONTRIBUTION**
28 **AND SETTLEMENT**

30 **§181. Definitions**

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

36 **1. Equitable share.** "Equitable share" means a party's
38 percentage share of the total combined fault allocable to all
40 parties to the claim excluding the plaintiff, when 2 or more
42 parties are jointly or severally liable upon the same indivisible
44 claim for the same harm. When 2 or more parties are jointly and
46 severally liable upon the same indivisible claim for the same
48 harm, a party's equitable share of fault is that party's
percentage share of the total combined fault allocable to all
parties to the claim excluding the plaintiff. A party's
equitable share is determined by the trier of fact in percentage
terms based on the relative blameworthiness of each party's
conduct and on each party's relative causal contribution to the
plaintiff's harm. The conduct of a party who is strictly liable
to the plaintiff may be compared to and apportioned with the
conduct of a party who is liable to the plaintiff for negligence
or recklessness.

2. Fault. "Fault" has the meaning set out in this
subsection.

A. "Fault" means negligence, breach of statutory duty or
other act or omission that creates a liability in tort or

2 that would, apart from this chapter, give rise to the
3 defense of contributory negligence.

4 B. "Fault" includes acts or omissions that are in any
5 measure negligent or reckless toward person or property, or
6 that subject a party to strict tort liability. "Fault" also
7 includes breach of warranty, unreasonable assumption of risk
8 not constituting an enforceable express consent, misuse of a
9 product for which a party otherwise would be liable and an
10 unreasonable failure to avoid harm.

11 In determining relative fault, in percentages or otherwise, the
12 trier of fact shall consider both the nature of the conduct of
13 each party at fault and the extent of the causal relation between
14 the conduct and the damages claimed. Legal requirements for
15 causal relation apply both to fault as the basis for liability
16 and to contributory fault.

17 3. Harm. "Harm" means injury, death, damage or loss
18 sufficient to sustain a legal action based on fault.

19 4. Plaintiff. "Plaintiff" means a party entitled to make a
20 claim for damages regardless of whether suit is actually filed
21 and regardless of the procedure by which the claim may be
22 asserted in court, including, but not limited to, in a
23 counterclaim or cross-claim.

24 5. Parties. In addition to the plaintiff, "parties" means
25 those who are, at the time that plaintiff's right of action
26 accrues, potentially liable on the basis of fault to pay damages
27 either to the plaintiff directly or in contribution to another
28 for the same harm. "Parties" includes not only those who are
29 before the court but also those who might without immunity have
30 been brought before a court with jurisdiction to impose a
31 fault-based award for the plaintiff's harm.

32 6. Right of contribution. "Right of contribution means the
33 sharing of a loss or payment by 2 or more parties.

34 7. Tortfeasor. "Tortfeasor" means a party liable on the
35 basis of fault to pay damages either to the plaintiff directly or
36 in contribution to another for the same harm. "Tortfeasor"
37 includes a party whose fault-based liability arises in contract
38 from breach of warranty or the like.

39 **§182. Effect of plaintiff's fault**

40 1. Bar. In a claim for harm that results partly from fault
41 attributable to the plaintiff and partly from fault attributable
42 to another party, the plaintiff's recovery is reduced by the
43 percentage of fault attributable to the plaintiff.

2 to other parties, the claim is barred if the plaintiff's fault is
3 equal to or greater than that of all other parties to the claim.

4 2. Reduce recovery. When fault of the plaintiff is less
5 than that of the other parties, the plaintiff's recovery must be
6 reduced to the extent that is just and equitable having regard to
7 the plaintiff's share of fault for the harm.

8
9 3. Failure to mitigate. The plaintiff's failure to
10 mitigate damages after a wrong has occurred is not contributory
11 fault; but such failure may reduce the total damages that
12 plaintiff can claim were proximately caused by those found liable
13 for the initial harm.

14 §183. Procedure for reduction

15
16 1. Reduction procedure. When the plaintiff is entitled to
17 a recovery that is reduced for contributory fault, the trier of
18 fact shall, unless otherwise agreed by all parties:

19
20 A. Find the total damages that the plaintiff would be
21 entitled to recover if contributory fault were disregarded;

22
23 B. Reduce the total damages by dollars and cents to an
24 amount considered just and equitable, having regard to the
25 plaintiff's share of fault; and

26
27 C. Return both amounts with the knowledge that the lesser
28 figure is the final verdict.

29 §184. Joint and several liability; findings

30
31 When 2 or more defendants are found liable upon the same
32 indivisible claim for the same harm, each is jointly and
33 severally liable to the plaintiff for the full amount of the
34 plaintiff's recovery. Upon timely request of any party, the
35 trier of fact shall find in percentage terms the equitable share
36 of fault contributed by each tortfeasor. When the liability of
37 one party is purely vicarious to that of another or when justice
38 otherwise requires, the court may determine that 2 or more
39 parties are to be treated as one.

40 §185. Right of contribution

41
42 1. Existence of the right. Except as otherwise stated in
43 this section, when 2 or more parties are at fault for causing the
44 same harm to the same plaintiff, there is a right of contribution
45 among them, even though judgment has not been recovered against
46 all or any of them.

2 2. When assertible. The right of contribution may be
3 determined and enforced either in the original action or by a
4 separate action brought for that purpose.

6 3. Basis for contribution. The basis for contribution is
7 each tortfeasor's equitable share of the joint obligation. The
8 right of contribution exists only in favor of a tortfeasor who
9 has paid more than its equitable share of the common liability
10 and is limited to the amount of its payment in excess of such
11 share.

12 4. Insolvency. If a joint tortfeasor lacks capacity to pay
13 its equitable share, then the resulting loss is distributed among
14 those remaining in proportion to their respective equitable
15 shares.

16 5. Intentional tortfeasor. There is no right of
17 contribution in favor of any tortfeasor who has intentionally
18 caused the harm.

19 6. Arising from settlement. Right of contribution is
20 available to a joint tortfeasor that enters into a settlement
21 with the plaintiff only:

22 A. If the liability of the party against whom contribution
23 is sought has been extinguished; and

24 B. To the extent that the amount paid in settlement was
25 reasonable.

26 7. Liability insurers. A liability insurer, who by payment
27 has discharged in full or in part the liability of a tortfeasor
28 and has discharged in full its obligation as insurer, is
29 subrogated to the tortfeasor's right of contribution to the
30 extent of the amount the insurer has paid in excess of the
31 tortfeasor's equitable share of the common liability. This
32 section does not limit or impair rights of subrogation arising
33 from any other relationship.

34 8. Indemnity. When one tortfeasor has a right of indemnity
35 against another, neither has a right of contribution against the
36 other.

37 9. Breaches of trust. This section does not apply to
38 breaches of trust or to breaches of other fiduciary obligations.

39 §186. Enforcement of contribution rights

40 1. By motion. If proportionate fault among joint
41 tortfeasors has been previously established, a party paying more
42

2 than its equitable share may recover judgment for contribution
3 upon motion.

4 2. By separate action. If proportionate fault among joint
5 tortfeasors has not been established, contribution may be
6 enforced in a separate action, regardless of whether a judgment
7 has been rendered against either the party seeking contribution
8 or the party from whom contribution is sought.

10 3. When assertible after judgment. If a judgment has been
11 rendered against the tortfeasor seeking contribution, the action
12 for contribution must be commenced within one year after the
13 judgment is final.

14 4. When assertible if no judgment. If a judgment has not
15 been rendered, the party bringing the action for contribution
16 must have either:

17 A. Discharged by payment the common liability within the
18 period of the statute of limitations applicable to the
19 claimant's right of action and commenced the action for
20 contribution within one year after payment; or
21 contribution within one year after payment; or

22 B. Agreed while action was pending to discharge the common
23 liability and within one year after the agreement have paid
24 the liability and commenced an action for contribution.
25

26 5. Effect of judgment and recovery. A plaintiff's recovery
27 of a judgment against one tortfeasor does not of itself discharge
28 other tortfeasors from liability for the same claim unless the
29 judgment is satisfied. Satisfaction of the judgment does not
30 impair rights of contribution.
31

32 6. Binding effect. A judgment that determines the
33 equitable shares of liability for 2 or more tortfeasors who were
34 parties to the judgment is binding among them in determining
35 their respective rights to contribution for those damage claims
36 that were the subject of the judgment.
37

40 §187. Release of joint tortfeasors

41 When recovery is sought for harm caused by 2 or more
42 parties, a release of one or more of them does not bar a claim
43 against the others. Evidence of a prior release or settlement is
44 not admissible on issues of liability or damages in a subsequent
45 trial. If the plaintiff is awarded a verdict in such a case, the
46 judge shall then reduce the plaintiff's recovery by deducting,
47 for each such prior settlement, the lesser of the following:
48

2 1. Value of consideration. The value of the consideration
given to the plaintiff for settlement with the released party; or

4 2. Equitable share. The released party's equitable share
of the joint obligation if it was determined by the trier of fact.

6 **§188. Partial proportional settlement**

8
10 If any defendant is released by the plaintiff under an
agreement that precludes the plaintiff from collecting against
remaining parties that portion of any damages attributable to the
settling defendant's share of responsibility, then the following
rules apply.

14 1. General rule. Such a settling defendant is entitled to
16 be dismissed with prejudice from the case. Unless otherwise
18 ordered, the dismissal bars all related claims for contribution
or indemnity assertible by remaining parties.

20 2. Post-settlement procedures. The trial court shall
22 preserve for the remaining parties a fair opportunity to
24 adjudicate the liability of the dismissed defendant. Remaining
26 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.

28 3. Binding effect. To apportion responsibility in the
30 pending action for claims that were included in the settlement
32 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 has no binding effect in other actions relating to other
damage claims.

34 4. Post-verdict adjustments. If a plaintiff recovers a
36 verdict against any of the nonsettling parties, the court shall
38 reduce the plaintiff's judgment by the amount determined at trial
40 to be attributable to the settling defendant's equitable share of
fault if any was found. If such a finding was not requested,
then the court shall reduce the plaintiff's judgment by the value
of the consideration given to the plaintiff for the settlement.

42 5. Exceptions. If special circumstances dictate that the
44 issues can not fairly be adjudicated without fuller participation
46 of the settling defendant, then for good cause shown the court
may grant relief as necessary to protect the rights of remaining
parties. Such an order for relief may include:

48 A. That the settling defendant must continue to defend
against remaining cross-claims;

50

2 B. That the parties are not bound by that portion of any
3 verdict or finding that determines whether or to what extent
4 the settling defendant shares responsibility for the
5 plaintiff's harm; or

6 C. That cross-claims against the settling defendant are
7 severed for a separate trial.

8
9 **Sec. 5. Application.** The Maine Revised Statutes, Title 14,
10 sections 182, 183 and 184 apply to causes of action that accrue
11 after the effective date of this Act. Title 14, sections 185 and
12 186 relating to contribution apply to all rights of contribution
13 that accrue after the effective date of this Act. Title 14,
14 sections 187 and 188 relating to settlement apply to all
15 settlements that are entered into after the effective date of
16 this Act.

18

SUMMARY

20

21 This bill restructures the comparative negligence laws and
22 defines how they should apply in cases with multiple defendants.

23 The bill also restructures the laws dealing with release of
24 joint tortfeasors when settlement is not reached and clarifies
25 how the judge applies offsets against subsequent verdicts when
26 there have been prejudgment settlements.

28

29 The bill also authorizes the courts to approve Pierringer
30 release procedures in complex litigation. In a Pierringer
31 settlement, the plaintiff gives up that share of recovery that is
32 proportional to the settling defendant's fraction of
33 responsibility. The purpose of a Pierringer release is to permit
34 one defendant to settle with the plaintiff and to withdraw
35 finally from the suit even when there are cross-claims against
36 the defendant.

37 The bill contains safeguards to protect nonsettling parties
38 from being prejudiced by the absence of the settling defendant.
39 It also authorizes the court, for good cause shown, to enter
40 special orders to alter or suspend the terms of the release if
41 justice requires.
42