

# MAINE STATE LEGISLATURE

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NEW DRAFT

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EIGHTY-FOURTH LEGISLATURE

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House Document

No. 732

H. P. 1680      House of Representatives, March 22, 1929.

Reported by a majority of the Committee on Judiciary. Read twice, under suspension of the rules, tomorrow assigned.

CLYDE R. CHAPMAN, Clerk.

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STATE OF MAINE

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IN THE YEAR OF OUR LORD ONE THOUSAND NINE  
HUNDRED AND TWENTY-NINE

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AN ACT Relating to Declarations upon a Contract in Writing.

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

Chapter eighty-seven of the revised statutes is hereby  
2 amended by striking out all of section thirty-eight thereof  
3 and substituting therefor the following: 'No declaration in  
4 an action at law upon any contract in writing shall be ad-  
5 judged insufficient if it sets forth the making of said con-  
6 tract, the full contract relied upon with an allegation that  
7 the plaintiff has complied with all the terms and conditions  
8 thereof and the further allegation of the specific breach or  
9 breaches upon which the plaintiff relies, and that the plain-  
10 tiff is thereby damaged. In all actions at law on insurance

11 policies a declaration in indebitatus assumpsit on an ac-  
12 count annexed, with an allegation that the plaintiff has com-  
13 plied with all conditions of the policy of insurance, men-  
14 tioned in the account annexed, shall be deemed sufficient.  
15 The account annexed shall state the number of the policy  
16 and the amount claimed as due, both as principal sum, and  
17 interest, if any. The fact that the amount claimed in the  
18 account annexed varies, from the amount found to be due  
19 the plaintiff shall not defeat the action unless there be a  
20 fraudulent claim of an excessive amount. If in any action  
21 upon any written contract the defendant relies for his de-  
22 fense upon the breach by the plaintiff of any promise or  
23 condition of said contract he shall set the same up by brief  
24 statement or special plea at his election; and all promises  
25 and conditions of said contract the breach of which is  
26 known to the defendant and not so specially pleaded shall  
27 be deemed to have been complied with by the plaintiff. The  
28 plaintiff by counter brief statement or replication may set  
29 up any matter waiving or legally excusing his non-com-  
30 pliance with promises or conditions as alleged by the de-  
31 fendant. Nothing herein shall be construed as changing in  
32 any way the common law burden of proof as to such mat-  
33 ters as are so put in issue under the pleadings.'