

# MAINE STATE LEGISLATURE

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**LAWS**  
OF THE  
**STATE OF MAINE**

AS PASSED BY THE  
ONE HUNDRED AND FOURTEENTH LEGISLATURE  
**FIRST REGULAR SESSION**

December 7, 1988 to July 1, 1989

Chapters 1 - 502

THE GENERAL EFFECTIVE DATE FOR  
NON-EMERGENCY LAWS IS  
SEPTEMBER 30, 1989

PUBLISHED BY THE REVISOR OF STATUTES  
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,  
TITLE 3, SECTION 163-A, SUBSECTION 4.

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J.S. McCarthy Company  
Augusta, Maine  
1989

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**PUBLIC LAWS**  
**OF THE**  
**STATE OF MAINE**

**AS PASSED AT THE**  
**FIRST REGULAR SESSION**

**of the**  
**ONE HUNDRED AND FOURTEENTH LEGISLATURE**

**1989**

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mail notice of service to the person or persons accused of professional negligence in the notice. The notice of claim and all other documents filed with the clerk in the matter during the prelitigation screening process shall be confidential. At the time of filing the notice, the claimant shall also pay to the clerk a filing fee of \$200 per notice filed.

**Sec. 5. 24 MRSA §2853, sub-§3,** as enacted by PL 1985, c. 804, §§12 and 22, is repealed and the following enacted in its place:

**3. Waiver.** Any party may, at the time of filing, apply to the chair of the panel for a waiver of the filing fee. The chair shall grant the waiver if:

**A. The party is indigent.**

(1) In determining indigency of the party, the chair shall consider the factors contained in the Maine Rules of Civil Procedure, Rule 44(b);

**B. The party is or was an employee of another party and that other party stipulates that the employee at the time of the claimed injury was acting in the course and scope of employment with that other party; or**

**C. The waiver is necessary to avoid requiring an individual who is a party to the case from paying 2 or more filing fees because a professional association or other business entity of which the individual is a member is also named as a party and has substantially the same interests as the individual in the case.**

**Sec. 6. 24 MRSA §2853, sub-§5,** as enacted by PL 1985, c. 804, §§12 and 22, is amended to read:

**5. Lawsuits.** The pretrial screening may be bypassed if all parties agree upon a resolution of the claim by lawsuit. All parties to a claim may, by written agreement, submit a claim to the binding determination of the panel, either prior to or after the commencement of a lawsuit. Both parties may agree to bypass the panel and commence a lawsuit for any reason, or may request that certain preliminary legal affirmative defenses or issues be litigated prior to submission of the case to the panel. The panel has no jurisdiction to hear or decide, absent the agreement of the parties, dispositive legal affirmative defenses, except comparative negligence. The panel chair may require the parties to litigate, by motion, dispositive legal affirmative defenses in the Superior Court prior to submission of the case to the panel. Any such defense, as well as any motion relating to discovery that the panel chair has chosen not to rule on may be presented, by motion, in Superior Court without the necessity of a complaint having first been filed.

**Sec. 7. 24 MRSA §2854, sub-§3,** as enacted by PL 1985, c. 804, §§12 and 22, is amended to read:

**3. Failure to comply.** Failure of a party, without good cause, to attend a properly scheduled hearing to participate in authorized discovery, or to otherwise substantially comply with this subchapter, shall result in a finding made by

a majority of the panel against that party and that finding shall have the same effect as a finding against that party under section 2857.

**Sec. 8. 24 MRSA §2855,** as enacted by PL 1985, c. 804, §§12 and 22, is repealed and the following enacted in its place:

**§2855. Findings by panel**

**1. Negligence and causation.** At the conclusion of the presentations, the panel shall make its findings in writing within 30 days by answering the following questions:

A. Whether the acts or omissions complained of or found by the panel to exist, or as agreed by the parties, constitute a deviation from the applicable standard of care by the health care practitioner or health care provider charged with that care;

B. Whether the acts or omissions complained of proximately caused the injury complained of or as found by the panel or as agreed by the parties; and

C. If negligence on the part of the health care practitioner or health care provider is found, whether any negligence on the part of the patient was equal to or greater than the negligence on the part of the practitioner or provider.

**2. Standard of proof.** The standard of proof used by the panel shall be:

A. The plaintiff must prove negligence and proximate causation by a preponderance of the evidence; and

B. The defendant must prove comparative negligence by a preponderance of the evidence.

**Sec. 9. 24 MRSA §2903-A,** as enacted by PL 1985, c. 804, §§15 and 22, is repealed.

**Sec. 10. Application.** Notwithstanding the provision of the Maine Revised Statutes, Title 1, section 302, this Act shall apply to actions pending on its effective date.

**Emergency clause.** In view of the emergency cited in the preamble, this Act shall take effect when approved.

Effective June 19, 1989.

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## CHAPTER 362

### H.P. 503 - L.D. 683

#### An Act to Prohibit Motor Vehicle Insurers from Adjusting Personal Insurance Rates of Public Works Employees Involved in Collisions

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

24-A MRSA §2174-A is enacted to read:

§2174-A. Public works employees' insurance rates

1. Definitions. For the purposes of this section, "public works employee" means a government employee, as defined by Title 14, section 8102, subsection 1, whose employment involves the care, maintenance or construction of municipally or state-owned buildings, open space, parks, parking facilities, waste water treatment systems, sewers or other property, roads, highways or other public ways. For purposes of this section, "public works employee" also includes an individual who is an independent contractor or employee of an independent contractor, under contract to the governmental entity and whose employment involves the functions listed in this subsection.

2. Public works employees. No insurer may increase the premium for a personal insurance policy providing motor vehicle liability or collision insurance to a public works employee on the basis of one or more accidents involving a motor vehicle operated by that employee if:

A. The accident occurred while the employee was operating a motor vehicle in the course and scope of employment; and

B. There is a policy of insurance other than the personal insurance policy providing motor vehicle liability or collision coverage to the public works employee in the course and scope of employment.

3. Governmental entity. This section in no way restricts the premium an insurer may charge a governmental entity, as defined in Title 14, section 8102, subsection 2, for an insurance policy providing motor vehicle liability or collision insurance covering public works employees.

See title page for effective date.

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## CHAPTER 363

S.P. 344 - L.D. 914

### An Act to Increase the Family Allowance under the Unemployment Compensation Law

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

**Whereas,** the family allowance under the Unemployment Compensation Act has not been increased since its enactment in 1976; and

**Whereas,** an increase in this amount is urgently needed to assist unemployed persons in meeting the expense of providing food and shelter for their dependents; 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 enacted by the People of the State of Maine as follows:

**Sec. 1. 26 MRSA §1191, sub-§6,** as amended by PL 1983, c. 13, §5, is further amended to read:

**6. Supplemental benefit for dependents.** An individual in total or partial unemployment and otherwise eligible for benefits shall be paid for each week of that unemployment, in addition to the amounts payable under subsections 2 and 3, the sum of \$5 ~~\$10~~ for each unemancipated child of the individual who in any part of the benefit year and during any part of the individual's period of eligibility is, in fact, dependent upon and is being wholly or mainly supported by the individual, and who is under the age of 18, or who is 18 years of age or over and incapable of earning wages because of mental or physical incapacity, or who is a full-time student as defined in Title 39, section 2, subsection 4, paragraph C, or who is in ~~his~~ that individual's custody pending the adjudication of a petition filed by the individual for the adoption of the child in a court of competent jurisdiction and for each such child for whom ~~he~~ that individual is under a decree or order from a court of competent jurisdiction to contribute to that child's support and for whom no other person is receiving allowances hereunder. In no instance may the dependency benefits as provided in this subsection be more than 50% of the individual's weekly benefit amount.

The commission shall prescribe regulations as to who may receive a dependency allowance when both ~~the husband and wife~~ spouses are eligible to receive unemployment compensation benefits.

No individual may be eligible to receive dependency allowances as provided in this subsection for any week during which ~~his~~ that individual's spouse is employed full time provided that the spouse is contributing some support to their dependent or dependents. For purposes of this subsection, "employed full time" means the receipt of any wages, earnings, salary or other income equivalent to that amount which would be received for a 40-hour work week.

**Sec. 2. 26 MRSA §1221, sub-§3, ¶A-1,** as amended by PL 1977, c. 564, §99-A, is repealed.

**Emergency clause.** In view of the emergency cited in the preamble, this Act shall take effect on July 2, 1989.

Effective July 2, 1989.

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