

MAINE STATE LEGISLATURE

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STATE OF MAINE
ONE HUNDRED AND TWELFTH LEGISLATURE
SECOND REGULAR SESSION

JOINT STANDING COMMITTEE ON
JUDICIARY
BILL SUMMARY



MAY 1986

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ONE HUNDRED AND TWELFTH LEGISLATURE
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JOINT STANDING COMMITTEE
BILL SUMMARIES
MAY 1986

This document is a compilation of the bill summaries prepared by this office for the Joint Standing Committees and Joint Select Committees of the Maine Legislature, covering the Second Regular Session of the 112th Legislature. The summaries are arranged by LD number under each committee.

All Amendments are listed, by paper number (e.g., H-584 or S-222), together with the sponsor if it is a floor amendment or the designation "CA" if it is a committee amendment. If the amendment was adopted in the House, the letter H appears after the sponsor. If it was adopted in the Senate, the letter S appears.

Final action for each bill is listed to the right of the title. If final House action and Senate action differ, both are listed.

Key to Committee Reports and Floor Action:

OTP	Ought to Pass
OTP-ND	Ought to Pass in New Draft
OTP-ND-NT	Ought to Pass in New Draft, New Title
OTP-AM	Ought to Pass as Amended
ONTP	Ought Not to Pass
LVWD	Leave to Withdraw
INDEF PP	Indefinitely Postponed

LD AN ACT TO PROVIDE FUNDING FOR THE COURT
2398 MEDIATION SERVICE THROUGH FEES

PL 1985
c. 750

Sponsor: KANE, Carpenter
Committee Report: New Draft of LD 2332.

- H-734 FOSTER
- H-735 FOSTER
- H-742 FOSTER
- S-519 CHALMERS

SUMMARY: LD 2398 establishes a \$60 mediation fee to be paid by parties referred to the Court Mediation Service under the law requiring mediation of contested divorce, annulment, and separation cases where the parties have a minor child. The fee will be apportioned equally between the parties unless the court directs otherwise. The fee will be paid only once per case, regardless of the number of mediation sessions the parties attend.

The bill also sets a filing fee for small claims actions at \$20. The current filing fee is \$15. The increase in the fee is intended to offset costs of small claims mediations performed by the Court Mediation Service.

Finally, the bill permits the court to waive mandatory mediation in domestic relations cases for extraordinary cause established by affidavit.

LD AN ACT RELATING TO MEDICAL AND LEGAL
2400 PROFESSIONAL LIABILITY

PL 1985
c. 804

Sponsor: PRAY, Kane, Gill, Hayden
Committee Report: New Draft of LD 2065.

- H-728 STETSON
- H-731 DEXTER
- S-521 TRAFTON H S
- S-523 BALDACCI
- S-543 CARPENTER H S

SUMMARY: LD 2400 establishes mandatory prelitigation screening panels for medical malpractice actions. A plaintiff must submit his or her medical malpractice claim to such a panel prior to filing a complaint in court. The panel -- composed of a retired judge or person with judicial experience, an attorney, and one or two health care practitioners or providers -- hears both sides of the claim. If the panel unanimously finds no negligence by the professional, that finding is admissible in court if the plaintiff proceeds to court rather than dropping the action. If the panel unanimously finds that the

professional was negligent, that finding is admissible in court if the professional does not settle and forces the plaintiff to proceed with a court action.

The bill requires parties in an action for medical malpractice action to notify each other of the experts they intend to call at trial. The plaintiff must notify the defendant within ninety days of the filing of the complaint. The defendant must notify the plaintiff within sixty days of receiving the plaintiff's expert witnesses list.

The bill limits the damages recoverable in an action based on a failed sterilization, subsequent pregnancy, and birth of a healthy child to damages for medical expenses of the sterilization and pregnancy, pain and suffering during pregnancy, and loss of earnings during pregnancy. Damages for the birth of an unhealthy child are limited to those associated with the child's disease, defect, or handicap.

The bill permits payment of damages in medical malpractice actions for future medical treatment, future care or custody, and future lost earnings or services to be paid in installments if the amount exceeds \$250,000.

The bill establishes a contingent fee schedule for plaintiffs' attorneys in medical malpractice actions (no more than 1/3 of the first \$100,000 damages, no more than 1/4 of the next \$100,000, and no more than 1/5 of any damages over \$200,000). This provision is effective August 1, 1988.

The bill limits the use of the discovery rule as applied to the statute of limitations for malpractice actions against attorneys. The discovery rule permits the limitation period, during which a suit must be brought or it is barred, to run from the time the injury is discovered, rather than from the time of the act which caused the injury. The bill permits the discovery rule to be applied in only two cases: in actions alleging professional negligence in the rendering of real estate title opinions, and in actions alleging professional negligence in the drafting of a will. This provision is effective August 1, 1988.

The bill extends the statute of limitations for medical malpractice actions from two years to three years. It also eliminates the discovery rule for all medical malpractice actions except those concerning foreign objects left in the body after surgery. This provision is effective August 1, 1988.

The bill changes the statute of limitations for medical malpractice actions by minors. Instead of having two years from their eighteenth birthday to bring these actions, as under current law, minors have, under LD 2400, six years to bring the action, or three years from their eighteenth birthday, whichever is less. Thus, under the generally applicable accrual rule for determining when the limitation period starts to run, minors have, under the bill, at most, six years from the date of the negligent act to bring a medical malpractice suit. This provision is effective on August 1, 1988.

The Commission to Examine Problems of Tort Litigation and Liability Insurance in Maine (see LD 2295) is required by LD 2400 to examine medical and legal professional liability.

LD 2402	AN ACT TO CONSOLIDATE FAMILY CASES IN A FAMILY COURT WITHIN THE DISTRICT COURT AND TO ESTABLISH FULL-TIME, APPOINTED PROBATE JUDGES	HSE. ADHERED INDEF. PP
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Sponsor: Commission to Study Family Matters in Court
Committee Report: New Draft of LD 2119.

SUMMARY: LD 2402 sought to consolidate jurisdiction over family cases (excluding adoptions and guardianships) within the District Court, removing any concurrent or exclusive jurisdiction over family cases from the Superior and Probate Courts. When handling family cases, the District Court would have been known as the Family Court. Assignment of District Court judges to family cases would have required consideration of those best suited to handle family cases. The District Court would have developed a family case data system to keep track of family cases involving different members of one family. All state court facilities would have been available to the District Court for the hearing of family cases. Judges and others involved with family cases would have received annual continuing education in family matters. An advisory committee, composed of family professionals and providers, would have advised the District Court on its functioning as the Family Court.

The bill also sought to abolish elected, part-time probate judges. Six appointed, full-time probate judges would have replaced the part-time judges, with three appointed in 1987 and three appointed in 1989. The appointed probate judges would have been under the administrative supervision of the District Court. The nonprobate caseload of the appointed probate judges would have consisted primarily of family cases. Registers of probate remained elected county officers under the bill.