## MAINE STATE LEGISLATURE

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#### STATE OF MAINE 113TH LEGISLATURE SECOND REGULAR SESSION



# BILL SUMMARY JOINT STANDING COMMITTEE ON JUDICIARY

MAY 1988

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#### ONE HUNDRED AND THIRTEENTH LEGISLATURE FIRST & SECOND SPECIAL SESSIONS SECOND REGULAR SESSION

JOINT STANDING COMMITTEE
BILL SUMMARIES
MAY 1988

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. The summaries are arranged by LD number under each committee.

All Adopted Amendments are listed, by paper number (e.g., H-584 or S-222), together with the sponsor for floor amendments. Final action is listed to the right of the title. If final House and Senate action differ, both are listed. Committee Reports and Floor Action are indicated as follows::

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

Each individual summary was prepared by the analyst assigned, as noted for each committee. But, this document was produced by the efforts of all the office staff, including Secretaries: Charlene Brann, Janet Jean, Earl Knox, Valarie Parlin; Research Assistant Hartley Palleschi. Finally, Secretary Laurette Knox, Legal Assistant Carolyn Chick, and Research Assistant Robert Dunn had special responsibilities in the preparation of the overall document.

Please give us your suggestions and comments on these summaries and tell us of any inaccuracies.

PUBLIC 646

2520

SPONSOR (S)

COMMITTEE REPORT AMENDMENTS ADOPTED

TWITCHELL PERKINS VOSE

#### SUMMARY

New Draft Of LD 539

The original bill, LD 539, sought to:

limit the compensation of a plaintiff in a personal injury action for noneconomic damages to \$250,000;

abolish the collateral source rule, thus permitting the admission into evidence of proof of collateral source payments made or substantially certain to be made to the plaintiff;

abolish joint and several liability, thus permitting a defendant to be liable only for the amount of damages proportionate to the defendant's percentage of the fault;

reduce current pre- and post-judgment interest rates from the current fixed rates of 8% and 15% to a floating rate tied to the rate paid on U. S. Treasury notes during the preceding 6 months;

provide immunity to officers and directors of nonprofit associations and corporations as long as their conduct is not willful, wanton, or grossly negligent;

establish a new standard of liability for product's liability cases; and

prohibit the inclusion in a civil case filed in Superior Court of the amount of damages sued for.

The new draft, LD 2520:

Eliminates ad damnum clauses from many pleadings in civil cases filed in Superior Court. The "ad damnum clause" is the portion of the complaint or other pleading which states the amount of damages the party is seeking. The bill requires that parties to most civil cases in Superior Court now ask for "reasonable damages" rather than for a specific dollar amount in damages. These provisions do not apply to Superior Court cases in which the request for damages is for a definite sum. The provisions also do not apply to civil cases in District Court;

Provides some immunity from civil liability for certain directors, officers and volunteers of certain nonprofit organizations. The types of nonprofit organizations covered in include religious, charitable, scientific, public safety, literary and educational organizations; civic organizations; chambers of commerce; certain fraternal societies; certain cemetery companies; credit unions; patriotic, political, social, cultural,

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athletic, agricultural, and horticultural organizations; and certain other nonprofit organizations with a charitable or civic purpose. Uncompensated directors, officers, and volunteers of any of the organizations described are given immunity from civil liability for their own actions if the lawsuit that could be brought is one for the tort of negligence and the action, or failure to act, by the director, officer, or volunteer on which the lawsuit could be based occurred within the course and scope of the activities of the nonprofit organization. These directors, officers, and volunteers are also given immunity from any vicarious liability connected with their service;

3

Amends the existing provisions for pre-judgment and post-judgment interest in civil cases. The bill leaves the current interest amounts in place for cases in which the claim or award is \$30,000 or less. In larger cases, the interest rates will be calculated based on recent interest rates being given for United States Treasury bills, plus 1% for pre-judgment interest and 3% for post-judgment interest;

Revises a provision of the Maine Health Security Act. Under prior law, immunity from civil and criminal liability is accorded in certain circumstances to any person, physician, health care provider, physicians' professional society, physicians' professional competence committee member or member of the medical or osteopathic board or related health care authority. The immunity applied if an individual or organization in the list above acted without malice in reporting information to an appropriate health care board or authority, in assisting in preparing information to be so reported, or in assisting the board or authority to carry out its duties with regard to the health care profession. The bill adds to the circumstances in which immunity is accorded those of reporting to and assisting a physicians' professional competence committee or a physicians' professional review committee. The competence committees are composed of physicians who evaluate medical care. The review committees are composed of physicians who work with physicians who are disabled or impaired. bill deletes immunity from criminal liability. The bill accords physicians and the listed health care organizations immunity for reporting to and assisting a pertinent health care board, authority, or committee without regard to whether the actions were with malice. This blanket immunity is not accorded to other persons reporting to or assisting the health care boards, authorities or committees; the "malice" standard remains for these persons;

Amends the statute enacted in 1986 establishing a fee schedule for attorneys contingent fee agreements with plaintiffs in medical malpractice cases. It revises the provision of that statute permitting a court to review the work done by an attorney in a medical malpractice case in which the plaintiff prevails to determine if the statutory fee schedule provides for unreasonable compensation in the particular case. The bill gives greater direction to the attorney, client, and court as to what factors should be reviewed to determine if greater compensation is warranted;

Provides immunity from civil liability for members of, staff to, or persons reporting to or consulting with peer review committees of

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professional societies for chiropractors, dentists, podiatrists, and psychologists. The immunity applies to those listed people who act without malice and within the scope of the committee's function;

Revises existing statutes that provide immunity to physicians, both allopathic and osteopathic, who serve on peer review committees required for accreditation, established by the licensing board, or established by the professional society. As in existing law, these peer review committee members are given blanket immunity. The revisions to existing law in the bill simply make the language as parallel as possible with the newly enacted immunities described above;

Amends existing law that makes the proceedings and records of proceedings of hospital medical staff reviews confidential. Existing law applies to reviews conducted on behalf of hospitals when the reviews are required by state or federal law or for accreditation. The law makes the proceedings and records confidential and exempt from discovery unless good cause is shown. The law is extended to apply to medical care reviews done not only on behalf of hospitals, but on behalf of individual physicians. The law is broadened so that it not only applies to reviews required by law or for accreditation, but also to those done under the auspices of a physicians' professional society. The exception that permits discovery for good cause is deleted, making the proceedings and records entirely nondiscoverable.

LD An Act to Correct Errors and Inconsistencies in the Laws of 2521 Maine

769 EMERGENCY

SPONSOR(S) COMMITTEE
BRANNIGAN OTP-AM

EE REPORT

AMENDMENTS ADOPTED

S-404

PARADIS P

SUMMARY

LD 2521 was the first errors bill. See also LD 2638 and LD 2657.

LD An Act to Establish a Limit on Noneconomic Damages 2523

NOT ACCEPTED

SPONSOR(S) HILLOCK COMMITTEE REPORT

AMENDMENTS ADOPTED

COLLINS

SUMMARY

ND Min Rpt of LD 269

The original bill, LD 269, sought to limit damage awards in personal injury actions to economic damages of any amount and noneconomic damages of no more than \$250,000 or the amount of economic damages awarded, whichever amount is greater.

The new draft, LD 2523, sought to set a limit of \$500,000 on noneconomic damages in personal injury actions. The jurors would not have been told of the limit, unless they returned a verdict of damages greater than \$500,000.

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