

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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Sen. Henry W. Black

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* Denotes Chair

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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 Lorette 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.

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COMMITTEE REPORT

AMENDMENTS ADOPTED

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,

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;

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. The 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

