

CHAPTER 7**DEFENSES GENERALLY****§151. Partial failure of consideration of note**

In any civil action in which the amount due on a promissory note given for the price of land conveyed is in question and a total failure of consideration would be a defense, partial failure of consideration may be shown in reduction of damages.

§152. Truth justifies libel unless malice

(REPEALED)

SECTION HISTORY

PL 1985, c. 290, §1 (RP).

§153. Mitigation of damages in action for libel

The defendant in an action for libel may prove in mitigation of damages that the charge was made by mistake or through error or by inadvertence and that the defendant has in writing, within a reasonable time after the publication of the charge, retracted the charge and denied its truth as publicly and as fully as the defendant made the charge. The defendant may prove in mitigation of damages that the plaintiff failed to notify the defendant of the libel in a timely fashion and that the defendant was therefore unable to lessen damage to the plaintiff's reputation. The defendant may prove in mitigation of damages that the plaintiff has already recovered or has brought action for damages for, or has received or has agreed to receive compensation for, substantially the same libel. [RR 2009, c. 2, §30 (COR).]

SECTION HISTORY

PL 1979, c. 663, §74 (AMD). PL 1985, c. 290, §2 (AMD). RR 2009, c. 2, §30 (COR).

§153-A. Defense in action based on misuse of legal identification

It is a defense to a civil action for monetary damages that the damages arose from the misuse of a form of legal identification and the use of that identification has resulted in the conviction of a person other than the defendant under Title 17-A, sections 354 and 905-A. The defense may be raised only by the person whose identification was misused. [PL 1999, c. 190, §1 (NEW).]

SECTION HISTORY

PL 1999, c. 190, §1 (NEW).

§154. Unproved allegations

(REPEALED)

SECTION HISTORY

PL 1985, c. 290, §3 (RP).

§155. No action on demands discharged by partial payment

No action shall be maintained on a demand settled by a creditor or his attorney entrusted to collect it, in full discharge thereof, by the receipt of money or other valuable consideration, however small.

§156. Comparative negligence

When any person suffers death or damage as a result partly of that person's own fault and partly of the fault of any other person or persons, a claim in respect of that death or damage may not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof

must be reduced to such extent as the jury thinks just and equitable having regard to the claimant's share in the responsibility for the damage. [PL 1999, c. 633, §1 (AMD); PL 1999, c. 633, §3 (AFF).]

When damages are recoverable by any person by virtue of this section, subject to such reduction as is mentioned, the court shall instruct the jury to find and record the total damages that would have been recoverable if the claimant had not been at fault, and further instruct the jury to reduce the total damages by dollars and cents, and not by percentage, to the extent considered just and equitable, having regard to the claimant's share in the responsibility for the damages, and instruct the jury to return both amounts with the knowledge that the lesser figure is the final verdict in the case. [PL 1999, c. 633, §1 (AMD); PL 1999, c. 633, §3 (AFF).]

Fault means negligence, breach of statutory duty or other act or omission that gives rise to a liability in tort or would, apart from this section, give rise to the defense of contributory negligence. [PL 1999, c. 633, §1 (AMD); PL 1999, c. 633, §3 (AFF).]

If such claimant is found by the jury to be equally at fault, the claimant may not recover. [PL 1999, c. 633, §1 (AMD); PL 1999, c. 633, §3 (AFF).]

In a case involving multiparty defendants, each defendant is jointly and severally liable to the plaintiff for the full amount of the plaintiff's damages. However, any defendant has the right through the use of special interrogatories to request of the jury the percentage of fault contributed by each defendant. If a defendant is released by the plaintiff under an agreement that precludes the plaintiff from collecting against remaining parties that portion of any damages attributable to the released defendant's share of responsibility, then the following rules apply. [PL 1999, c. 633, §1 (AMD); PL 1999, c. 633, §3 (AFF).]

1. General rule. The released defendant is entitled to be dismissed with prejudice from the case. The dismissal bars all related claims for contribution assertable by remaining parties against the released defendant.

[PL 1999, c. 633, §1 (NEW); PL 1999, c. 633, §3 (AFF).]

2. Post-dismissal procedures. The trial court must preserve for the remaining parties a fair opportunity to adjudicate the liability of the released and dismissed defendant. Remaining parties may conduct discovery against a released and dismissed defendant and invoke evidentiary rules at trial as if the released and dismissed defendant were still a party.

[PL 1999, c. 633, §1 (NEW); PL 1999, c. 633, §3 (AFF).]

3. Binding effect. To apportion responsibility in the pending action for claims that were included in the settlement and presented at trial, a finding on the issue of the released and dismissed defendant's liability binds all parties to the suit, but such a finding has no binding effect in other actions relating to other damage claims.

[PL 1999, c. 633, §1 (NEW); PL 1999, c. 633, §3 (AFF).]

SECTION HISTORY

PL 1965, c. 383 (NEW). PL 1965, c. 424 (NEW). PL 1965, c. 513, §27 (RP). PL 1969, c. 399, §§1,2 (AMD). PL 1971, c. 8 (AMD). PL 1999, c. 633, §1 (AMD). PL 1999, c. 633, §3 (AFF).

§157. Government agencies

(REPEALED)

SECTION HISTORY

PL 1965, c. 425, §§8-A (NEW). PL 1969, c. 428 (RPR). PL 1977, c. 2, §1 (RP). PL 1977, c. 78, §§111,111-A (REEN).

§158. Damages for tortious conduct of charitable organizations

A charitable organization is considered to have waived its immunity from liability for negligence or any other tort during the period a policy of insurance is effective covering the liability of the charitable organization for negligence or any other tort. Each policy issued to a charitable organization must contain a provision to the effect that the insurer is estopped from asserting, as a defense to any claim covered by the policy, that the organization is immune from liability on the ground that it is a charitable organization. Except as provided in section 158-C, subsection 2, the amount of damages in any such case may not exceed the limits of coverage specified in the policy, and the courts shall abate any verdict in any such action to the extent that it exceeds the limits. [PL 2023, c. 351, §1 (AMD).]

SECTION HISTORY

PL 1965, c. 513, §28 (NEW). PL 2023, c. 351, §1 (AMD).

§158-A. Immunity for charitable directors, officers and volunteers

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Charitable organization" means any nonprofit organization organized or incorporated in this State or having a principal place of business in this State:

(1) That is exempt from federal income taxation under the United States Internal Revenue Code, Section 501(a), because it is described in Section 501(c)(3), (4), (6) as it pertains to chambers of commerce only, (10), (13), (14)(A) or (19), including all subsequent amendments to those paragraphs. An organization is included in this subparagraph if it would be exempt from taxation under Section 501(c)(3) but for its engaging in attempting to influence legislation to the extent that it is disqualified from tax exemption under Section 501(c)(3); or

(2) That is:

(a) Organized under the Maine Nonprofit Corporation Act for any of the purposes listed in Title 13-B, section 201, subsection 1, paragraph A;

(b) Organized under the provisions set forth in Title 13-B, section 201, subsection 2, paragraph A;

(c) Organized under the provisions of Title 13-B, section 201, subsection 3, paragraph D or E;

(d) Organized in Maine as a nonprofit corporation before January 1, 1978, for any of the purposes listed in Title 13-B, section 201, subsection 1, paragraph A, and to which the Maine Nonprofit Corporation Act applies; or

(e) Organized as a rural electrification cooperative under the provisions of Title 35-A, chapter 37.

This subparagraph applies to all subsequent amendments to the statutes covered by divisions (a), (b), (c), (d) and (e). [PL 2007, c. 366, §1 (AMD).]

B. "Director" means a person who serves without compensation, except that the person may be paid for expenses, on the board of trustees or board of directors of a charitable organization. [PL 1987, c. 646, §2 (NEW).]

C. "Officer" means a person who serves without compensation, except that the person may be paid for expenses, as an officer of a charitable organization. [PL 1987, c. 646, §2 (NEW).]

D. "Volunteer" means a person who provides services without compensation, except that the person may be paid for expenses, to a charitable organization. [PL 1987, c. 646, §2 (NEW).]
[PL 2007, c. 366, §1 (AMD).]

2. Immunity. A director, officer or volunteer is immune from civil liability for personal injury, death or property damage, including any monetary loss:

A. When the cause of action sounds in negligence and arises from an act or omission by the director, officer or volunteer which occurs within the course and scope of the activities of the charitable organization in which the director, officer or volunteer serves; or [PL 1987, c. 646, §2 (NEW).]

B. Arising from any act or omission, not personal to the director, officer or volunteer, which occurs within the course and scope of the activities of the charitable organization in which the director, officer or volunteer serves. [PL 1987, c. 646, §2 (NEW).]

[PL 1987, c. 646, §2 (NEW).]

3. Limited waiver of immunity while operating vehicles, vessels or aircraft. Notwithstanding any immunity granted in subsection 2, a director, officer or volunteer is considered to have waived immunity from liability when the cause of action arises out of the director's, officer's or volunteer's operation of a motor vehicle, vessel, aircraft or other vehicle for which the operator or the owner of the vehicle, vessel or craft is required to possess an operator's license or maintain insurance. The amount of damages in an action authorized by this section may not exceed the combined limits of coverage of any applicable insurance policies other than umbrella insurance coverage and the courts shall abate a verdict in an action to the extent that it exceeds such limits. A provision in a policy of insurance that attempts to exclude coverage for claims that are authorized by this section is void as contrary to public policy.

[PL 1999, c. 572, §1 (NEW); PL 1999, c. 572, §2 (AFF).]

SECTION HISTORY

PL 1987, c. 646, §2 (NEW). PL 1989, c. 389 (AMD). PL 1991, c. 795, §1 (AMD). PL 1999, c. 572, §1 (AMD). PL 1999, c. 572, §2 (AFF). PL 2007, c. 366, §1 (AMD).

§158-B. Limited liability of charitable organizations

1. Liability limited. A charitable organization or other entity approved pursuant to Title 15, section 3301 or 3314 or pursuant to Title 17-A, section 2031 is not liable for a claim arising from death or injury to a person or damage to property caused by a juvenile or adult participating in a supervised work or service program, performing community service or providing restitution under Title 15, section 3301 or 3314 or under Title 17-A, section 2031, including a claim arising from death or injury to the juvenile or adult or damage to the adult's or juvenile's property.

[PL 2019, c. 113, Pt. C, §26 (AMD).]

2. No effect on other liability or immunity. Nothing in this section creates liability for any claim or waives any immunity otherwise available.

[PL 1997, c. 619, §1 (NEW).]

3. Charitable organization defined. For the purposes of this section, "charitable organization" means any nonprofit institution or organization organized or incorporated in this State or having a principal place of business in this State that is exempt from federal income taxation under the United States Internal Revenue Code, Section 501(a) because the nonprofit organization is described in the United States Internal Revenue Code, Section 501(c)(3).

[PL 2007, c. 275, §1 (AMD).]

SECTION HISTORY

PL 1997, c. 619, §1 (NEW). PL 2007, c. 275, §1 (AMD). PL 2019, c. 113, Pt. C, §26 (AMD).

§158-C. Limitation on immunity of charitable organizations

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Charitable organization" has the same meaning as in section 158-B, subsection 3. [PL 2023, c. 351, §2 (NEW).]

B. "Minor" means an individual who has not attained 18 years of age. [PL 2023, c. 351, §2 (NEW).]

C. "Sexual assault or sexual exploitation of a minor" means any crime described in Title 17-A, chapters 11 or 12 against a minor. [PL 2023, c. 351, §2 (NEW).]

[PL 2023, c. 351, §2 (NEW).]

2. Recoverable damages. Notwithstanding section 158, the amount of any insurance coverage specified in any policy issued to a charitable organization does not limit the amount of damages recoverable for any torts described in subsection 3.

[PL 2023, c. 351, §2 (NEW).]

3. Immunity not available for sexual assault or sexual exploitation of a minor. Notwithstanding any provision of law to the contrary, a charitable organization is not immune from liability for any tort alleging negligent hiring, supervision or retention of an employee, agent or servant that arises out of sexual assault or sexual exploitation of a minor.

[PL 2023, c. 351, §2 (NEW).]

4. Immunity not available for intentional torts. A charitable organization is not immune from liability for intentional torts.

[PL 2023, c. 351, §2 (NEW).]

SECTION HISTORY

PL 2023, c. 351, §2 (NEW).

§159. Social and business invitees, standards of care

The standards of care for a social invitee shall be the same as that of a business invitee. [PL 1967, c. 366 (NEW).]

SECTION HISTORY

PL 1967, c. 366 (NEW).

§159-A. Limited liability for recreational or harvesting activities

1. Definitions. As used in this section, unless the context indicates otherwise, the following terms have the following meanings.

A. "Premises" means improved and unimproved lands, private ways, roads, any buildings or structures on those lands and waters standing on, flowing through or adjacent to those lands. "Premises" includes railroad property, railroad rights-of-way and utility corridors to which public access is permitted. [PL 2005, c. 375, §1 (AMD).]

B. "Recreational or harvesting activities" means recreational activities conducted out-of-doors, including, but not limited to, hunting, fishing, trapping, camping, environmental education and research, hiking, rock climbing, ice climbing, bouldering, rappelling, recreational caving, sight-seeing, operating snow-traveling and all-terrain vehicles, skiing, hang-gliding, noncommercial aviation activities, dog sledding, equine activities, boating, sailing, canoeing, rafting, biking, picnicking, swimming or activities involving the harvesting or gathering of forest, field or marine products. It includes entry of, volunteer maintenance and improvement of, use of and passage over premises in order to pursue these activities. "Recreational or harvesting activities" does not include commercial agricultural or timber harvesting. [PL 2015, c. 20, §1 (AMD).]

C. "Occupant" includes, but is not limited to, an individual, corporation, partnership, association or other legal entity that constructs or maintains trails or other improvements for public recreational use. [PL 2003, c. 509, §1 (NEW).]

[PL 2015, c. 20, §1 (AMD).]

2. Limited duty. An owner, lessee, manager, holder of an easement or occupant of premises does not have a duty of care to keep the premises safe for entry or use by others for recreational or harvesting activities or to give warning of any hazardous condition, use, structure or activity on these premises to persons entering for those purposes. This subsection applies regardless of whether the owner, lessee, manager, holder of an easement or occupant has given permission to another to pursue recreational or harvesting activities on the premises.

[PL 1995, c. 566, §1 (AMD).]

3. Permissive use. An owner, lessee, manager, holder of an easement or occupant who gives permission to another to pursue recreational or harvesting activities on the premises does not thereby:

A. Extend any assurance that the premises are safe for those purposes; [PL 1979, c. 253, §2 (NEW).]

B. Make the person to whom permission is granted an invitee or licensee to whom a duty of care is owed; or [PL 1979, c. 253, §2 (NEW).]

C. Assume responsibility or incur liability for any injury to person or property caused by any act of persons to whom the permission is granted even if that injury occurs on property of another person. [PL 2007, c. 260, §1 (AMD).]

[PL 2007, c. 260, §1 (AMD).]

4. Limitations on section. This section does not limit the liability that would otherwise exist:

A. For a willful or malicious failure to guard or to warn against a dangerous condition, use, structure or activity; [PL 1979, c. 253, §2 (NEW).]

B. For an injury suffered in any case where permission to pursue any recreational or harvesting activities was granted for a consideration other than the consideration, if any, paid to the following:

(1) The landowner or the landowner's agent by the State; or

(2) The landowner or the landowner's agent for use of the premises on which the injury was suffered, as long as the premises are not used primarily for commercial recreational purposes and as long as the user has not been granted the exclusive right to make use of the premises for recreational activities; or [PL 1995, c. 566, §1 (AMD).]

C. For an injury caused, by acts of persons to whom permission to pursue any recreational or harvesting activities was granted, to other persons to whom the person granting permission, or the owner, lessee, manager, holder of an easement or occupant of the premises, owed a duty to keep the premises safe or to warn of danger. [PL 1995, c. 566, §1 (AMD).]

[PL 1995, c. 566, §1 (AMD).]

5. No duty created. Nothing in this section creates a duty of care or ground of liability for injury to a person or property.

[PL 1993, c. 622, §1 (AMD).]

6. Costs and fees. The court shall award any direct legal costs, including reasonable attorneys' fees, to an owner, lessee, manager, holder of an easement or occupant who is found not to be liable for injury to a person or property pursuant to this section.

[PL 1995, c. 566, §1 (AMD).]

SECTION HISTORY

PL 1979, c. 253, §2 (NEW). PL 1979, c. 514, §1 (AMD). PL 1979, c. 663, §75 (AMD). PL 1983, c. 297, §2 (AMD). PL 1985, c. 762, §25 (AMD). PL 1993, c. 622, §1 (AMD). PL 1995, c. 566, §1 (AMD). PL 2001, c. 113, §2 (AMD). PL 2003, c. 509, §1 (AMD). PL 2005, c. 375, §1 (AMD). PL 2007, c. 260, §1 (AMD). PL 2009, c. 156, §1 (AMD). PL 2015, c. 20, §1 (AMD).

§159-B. Limited liability for recycling activities by municipalities and regional associations

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Premises" means improved and unimproved lands upon which recycling activities are conducted. [PL 1991, c. 487, §1 (NEW).]

B. "Recycling activities" means collection or separation or both of materials on the property of a municipality or in containers:

(1) Owned by a municipality or regional association as defined in Title 38, section 1303-C, subsection 24; and

(2) Located on the premises of the owner, lessee or occupant under an agreement between the municipality or regional association and the owner, lessee or occupant of the premises. [PL 2023, c. 350, §1 (AMD).]

[PL 2023, c. 350, §1 (AMD).]

2. No remuneration. The owner, lessee or occupant of the premises may not receive any remuneration from the municipality or regional association for allowing recycling activities to be conducted on the premises.

[PL 1991, c. 487, §1 (NEW).]

3. Limited liability. An owner, lessee or occupant of the premises is not liable for personal injury, property damage or death caused by recycling activities within 20 feet of the containers used in recycling activities. The containers used in recycling activities are considered other machinery or equipment, whether mobile or stationary, under Title 14, section 8104-A, subsection 1, paragraph G for which the municipality or regional association is liable as provided by the Maine Tort Claims Act. [PL 1991, c. 487, §1 (NEW).]

4. Limitations. This section does not limit any liability that may otherwise exist for a willful or malicious failure to guard or warn against a dangerous condition on the premises related to the recycling activities.

[PL 1991, c. 487, §1 (NEW).]

4-A. Municipal immunity. Except as provided in subsection 4, a municipality performing recycling activities in accordance with this subsection is performing a discretionary function pursuant to section 8104-B, subsection 3 and is immune from liability for personal injury, property damage or death, including of a member of the public, caused by recycling activities of the municipality on property owned by the municipality or on the premises of another person. A municipality is immune from liability under this subsection only if the municipality has adopted and regularly enforces a written policy establishing reasonable safety standards applicable to the premises where the municipality performs recycling activities. A written policy adopted under this subsection must be developed by a credentialed industrial hygienist and must comply with United States Department of Labor, Occupational Safety and Health Administration requirements. As used in this subsection, "credentialed industrial hygienist" means an industrial hygienist certified by a national association of industrial hygiene professionals.

[PL 2023, c. 350, §2 (NEW).]

5. No duty created. Nothing in this section creates a duty of care or ground of liability for injury to a person or property.

[PL 1991, c. 487, §1 (NEW).]

6. Costs and fees. The court may award any direct legal costs, including reasonable attorney's fees, to an owner, lessee or occupant who is found not to be liable for injury to a person or property pursuant to this section.

[PL 1991, c. 487, §1 (NEW).]

7. Repeal.

[PL 1993, c. 598, §1 (RP).]

SECTION HISTORY

PL 1991, c. 487, §1 (NEW). PL 1993, c. 598, §1 (AMD). PL 2023, c. 350, §§1, 2 (AMD).

§159-C. Liability related to placement of navigational aids in great ponds

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Great pond" has the meaning given in Title 38, section 480-B, subsection 5. [PL 1997, c. 739, §10 (NEW).]

B. "Lake association" means a nonprofit organization incorporated under state law whose corporate purpose includes maintenance or improvement of water quality or public safety on a great pond, management of water levels or other social, educational, stewardship or advocacy efforts to benefit users of or the natural environment of a great pond. [PL 1997, c. 739, §10 (NEW).]

C. "Navigational aid markers" means navigational aids that conform to rules governing the State's marking of waterways. [PL 1997, c. 739, §10 (NEW).]

[PL 1997, c. 739, §10 (NEW).]

2. Limited liability. A lake association that has obtained a permit from the former Department of Conservation or the Department of Agriculture, Conservation and Forestry to place navigational aid markers in great ponds is not liable for personal injury, property damage or death caused by placement or maintenance of those navigational aid markers as long as the lake association has placed or maintained the markers in conformance with the terms and conditions of the permit.

[PL 2013, c. 405, Pt. D, §12 (AMD).]

3. No remuneration. In order to qualify for the immunity granted in subsection 2, a lake association may not receive any remuneration from the State or otherwise for placing navigational aid markers in great ponds.

[PL 1997, c. 739, §10 (NEW).]

4. Limitations. This section does not limit any liability that may otherwise exist for willful or malicious actions or failures to guard or warn against a known dangerous condition related to the navigational aid markers.

[PL 1997, c. 739, §10 (NEW).]

5. No duty created. Nothing in this section creates a duty of care or ground for liability.

[PL 1997, c. 739, §10 (NEW).]

6. Costs and fees. The court may award any direct legal costs, including reasonable attorney's fees, to a lake association against which a tort or related action is brought when the lake association is found not liable pursuant to this section.

[PL 1997, c. 739, §10 (NEW).]

SECTION HISTORY

PL 1997, c. 739, §10 (NEW). PL 2013, c. 405, Pt. D, §12 (AMD).

§159-D. Liability related to a bicyclist using a drive-up window

1. Limited liability. An establishment that has a drive-up window is not liable for personal injury, property damage or death caused to a bicyclist who uses that establishment's drive-up window. [PL 2007, c. 400, §1 (NEW).]

2. Limitations. This section does not limit any liability that may otherwise exist for willful or malicious actions or failures to guard or warn against a known dangerous condition related to the use of the drive-up window. [PL 2007, c. 400, §1 (NEW).]

3. No duty created. This section does not create a duty of care or ground for liability. [PL 2007, c. 400, §1 (NEW).]

4. Costs and fees. The court may award any direct legal costs, including reasonable attorney's fees, to an establishment that is found not to be liable for injury to a bicyclist pursuant to this section. [PL 2007, c. 400, §1 (NEW).]

SECTION HISTORY

PL 2007, c. 400, §1 (NEW).

§160. Certain cases of negligence

In actions to recover damages for negligently causing the death of a person or for injury to a person who is deceased at the time of trial of such action, the person for whose death or injury the action is brought shall be presumed to have been in the exercise of due care at the time of all acts in any way related to his death or injury, and if negligence of the deceased is to be relied on as a defense, it shall be pleaded and proved by the defendant. [PL 1967, c. 494, §15-A (NEW).]

SECTION HISTORY

PL 1967, c. 494, §§15-A (NEW).

§161. When lack of privity no defense in action against manufacturer, seller or supplier of goods

Lack of privity between plaintiff and defendant shall be no defense in any action brought against the manufacturer, seller or supplier of goods under Title 14, section 221 or for negligence, although the plaintiff did not purchase the goods from the defendant, if the plaintiff was a person whom the manufacturer, seller or supplier might reasonably have expected to use, consume or be affected by the goods. [PL 1973, c. 788, §57 (AMD).]

SECTION HISTORY

PL 1969, c. 327, §2 (NEW). PL 1973, c. 441, §2 (RPR). PL 1973, c. 788, §57 (AMD).

§162. Settlement or release of claims

Whenever a person seeks to recover against another person for both personal injury and property damage, settlement or release of either the personal injury or property damage claim shall not be a bar to a subsequent action upon the other claim. [PL 1969, c. 230 (NEW).]

SECTION HISTORY

PL 1969, c. 230 (NEW).

§163. Release of joint tortfeasors

Whenever a person seeks recovery for a personal injury or property damage caused by 2 or more persons, the settlement with or release of one or more of the persons causing the injury is not a bar to a subsequent action against the other person or persons also causing the injury. [PL 1999, c. 633, §2 (AMD); PL 1999, c. 633, §3 (AFF).]

Evidence of settlement with a release of one or more persons causing the injury is not admissible at a subsequent trial against the other person or persons also causing the injury. After the jury has

returned its verdict, the trial judge shall inquire of the attorneys for the parties whether such a settlement or release has occurred. If such settlement or release has occurred, the trial judge shall reduce the verdict by an amount equal to the settlement with or the consideration for the release of the other persons. With regard to a settlement in which the plaintiff has entered into an agreement that precludes the plaintiff from collecting against remaining parties that portion of any damages attributable to the settling defendant's share of responsibility, the judge shall reduce the plaintiff's judgment by either the amount determined at trial to be attributable to the settling defendant's share of responsibility, if any was found, or, if no such finding is made, by the value of the consideration given to the plaintiff for the settlement. [PL 1999, c. 633, §2 (AMD); PL 1999, c. 633, §3 (AFF).]

SECTION HISTORY

PL 1969, c. 19 (NEW). PL 1999, c. 633, §2 (AMD). PL 1999, c. 633, §3 (AFF).

§164. Immunity from civil liability

Notwithstanding any inconsistent provisions of any public or private and special law, any person who voluntarily, without the expectation of monetary or other compensation from the person aided or treated, renders first aid, emergency treatment or rescue assistance to a person who is unconscious, ill, injured or in need of rescue assistance, shall not be liable for damages for injuries alleged to have been sustained by such person nor for damages for the death of such person alleged to have occurred by reason of an act or omission in the rendering of such first aid, emergency treatment or rescue assistance, unless it is established that such injuries or such death were caused willfully, wantonly or recklessly or by gross negligence on the part of such person. This section shall apply to members or employees of nonprofit volunteer or governmental ambulance, rescue or emergency units, whether or not a user or service fee may be charged by the nonprofit unit or the governmental entity and whether or not the members or employees receive salaries or other compensation from the nonprofit unit or the governmental entity. This section shall not be construed to require a person who is ill or injured to be administered first aid or emergency treatment if such person objects thereto on religious grounds. This section shall not apply if such first aid or emergency treatment or assistance is rendered on the premises of a hospital or clinic. [PL 1977, c. 69 (AMD).]

SECTION HISTORY

PL 1969, c. 565 (NEW). PL 1975, c. 452, §1 (RPR). PL 1975, c. 679, §1 (AMD). PL 1977, c. 69 (AMD).

§164-A. Maine Assistance Program for Lawyers; immunity

1. Definition. As used in this section, unless the context otherwise indicates, the following term has the following meaning.

A. "Program" means the Maine Assistance Program for Lawyers established by court order pursuant to Title 4, section 421 to provide help to lawyers and judges who suffer from the effects of chemical dependency or mental conditions that result from disease, disorder, trauma or other infirmity and that impair a lawyer's or judge's ability to practice law or serve in a judicial capacity. [PL 2003, c. 148, §1 (NEW).]

[PL 2003, c. 148, §1 (NEW).]

2. Receive or report information; take or not take action. A person or an organization receiving information, reporting information, taking action or taking no action on behalf of or in connection with the activities of the program is immune from all civil liability. The immunity provided by this subsection must be liberally construed to accomplish the purposes of the program. The immunity provided by this subsection is in addition to any other immunity provided by law.

[PL 2003, c. 148, §1 (NEW).]

3. Information confidential. All proceedings, communications and records, including the identity and treatment of a person seeking or being furnished assistance, connected in any way with the program are confidential and are not subject to compulsory legal process or otherwise discoverable or admissible in evidence in any civil action unless the confidentiality is waived by the affected person. Statistical data not identifying a person involved in the program may be made available for statistical evaluation as a professional aid in furtherance of the goals of the program.

[PL 2003, c. 148, §1 (NEW).]

SECTION HISTORY

PL 2003, c. 148, §1 (NEW).

§164-B. Immunity from civil liability for assistance given to law enforcement dogs, search and rescue dogs and service dogs

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Emergency medical services person" has the same meaning as "emergency medical services' person" in Title 32, section 83, subsection 12. [PL 2017, c. 338, §1 (NEW).]

B. "Law enforcement dog" means a dog trained for law enforcement use that is actively certified pursuant to federal, national, regional or state standards and that is owned or maintained by a law enforcement agency or other governmentally funded agency for law enforcement or security services. [PL 2017, c. 338, §1 (NEW).]

C. "Law enforcement officer" means a person who by virtue of public employment is vested by law with a duty to maintain public order, to prosecute offenders and to make arrests for crimes. [PL 2017, c. 338, §1 (NEW).]

D. "Search and rescue dog" means a dog that is certified as a search and rescue dog by the Department of Inland Fisheries and Wildlife, Bureau of Warden Service or that is in training to become a search and rescue dog with an organization recognized by the Bureau of Warden Service to provide such training. [PL 2017, c. 338, §1 (NEW).]

E. "Security services dog handler" means a security professional who is trained to partner with a law enforcement dog in the performance of the security professional's duties, who is actively certified pursuant to federal, national, regional or state standards and who is qualified to train, care for and work with a law enforcement dog. [PL 2017, c. 338, §1 (NEW).]

F. "Service dog" has the same meaning as "service animal" in Title 5, section 4553, subsection 9-E. [PL 2017, c. 338, §1 (NEW).]

[PL 2017, c. 338, §1 (NEW).]

2. Immunity. Notwithstanding any provision of any public or private and special law to the contrary, an emergency medical services person, a security services dog handler or a law enforcement officer who voluntarily, without the expectation of monetary or other compensation, renders first aid, emergency treatment or rescue assistance to a law enforcement dog, search and rescue dog or service dog that is unconscious, ill, injured or in need of rescue assistance is not liable for damages for an injury alleged to have been sustained by the dog nor for damages for the death of the dog alleged to have occurred by reason of an act or omission in the rendering of the first aid, emergency treatment or rescue assistance unless it is established that the injury or the death was caused willfully, wantonly or recklessly or by gross negligence on the part of the emergency medical services person, security services dog handler or law enforcement officer.

[PL 2017, c. 338, §1 (NEW).]

3. Application. This section applies to a member or employee of a nonprofit volunteer or governmental ambulance, rescue or emergency unit, whether or not a user or service fee may be charged

by the nonprofit unit or the governmental entity and whether or not the member or employee receives a salary or other compensation from the nonprofit unit or the governmental entity.

This section applies to a law enforcement officer, security services dog handler or emergency medical services person who voluntarily renders first aid, emergency treatment or rescue assistance to a law enforcement dog, search and rescue dog or service dog, to the extent the officer, handler or person has received training in the medical stabilization of dogs.

This section does not apply if the first aid, emergency treatment or rescue assistance is rendered on the premises of a veterinary hospital or clinic.

[PL 2017, c. 338, §1 (NEW).]

SECTION HISTORY

PL 2017, c. 338, §1 (NEW).

§165. Liability of those who store or distribute natural gas

1. Liability without proof of negligence. A natural gas company or an intrastate or interstate natural gas pipeline company that stores, transports or distributes natural gas is liable for all acts and omissions of its servants and agents that cause death or injury to persons or damage to property resulting from explosions or fire caused by natural gas escaping from the natural gas storage, transportation or distribution system under its control or from explosions or fire caused by defects in the natural gas storage, transportation and distribution systems under its control.

[PL 1997, c. 222, §1 (AMD).]

2. Rebuttable presumption. When there is death or injury to persons or damage to property resulting from explosions or fire caused by escaping natural gas, there is a rebuttable presumption that the gas escaped because of a defect in a portion of the storage, transportation or distribution system under the company's control.

[PL 1997, c. 222, §1 (AMD).]

3. Exceptions. The company is not liable for death or injury to persons or damage to property caused by:

A. An act of God or war; [PL 1995, c. 299, §1 (NEW).]

B. Fault of the plaintiff to the extent that the plaintiff's fault bars or reduces the plaintiff's recovery under section 156; or [PL 1995, c. 299, §1 (NEW).]

C. Intervening fault of a 3rd party for whose actions the company is not legally liable. If death or injury to persons or damage to property is caused by the combined fault of the company and other parties, the liability of the company is joint and several with those other parties. [PL 1995, c. 299, §1 (NEW).]

[PL 1995, c. 299, §1 (NEW).]

4. Indemnity. In the event that the company is exposed to liability under this section because of the negligence of a 3rd party, the 3rd party shall indemnify the company for the company's losses, including any damages awarded or negotiated through settlement to any party, and costs and attorney's fees.

[PL 1995, c. 299, §1 (NEW).]

SECTION HISTORY

PL 1975, c. 186 (NEW). PL 1995, c. 299, §1 (RPR). PL 1997, c. 222, §1 (AMD).

§166. Immunity for certain food donations

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Canned food" means any food commercially processed and prepared for human consumption. [PL 1981, c. 300 (NEW).]

B. "Perishable food" means any food which may spoil or otherwise become unfit for human consumption because of its nature, type or physical condition. It includes, but is not limited to, fresh and processed meats, poultry, seafood, dairy products, bakery products, eggs in the shells, fresh fruits and vegetables and foods which have been packaged, refrigerated or frozen. [PL 1981, c. 300 (NEW).]

[PL 1981, c. 300 (NEW).]

2. Immunity for donor. Notwithstanding any other provision of law, a good faith donor of canned or perishable food, which is apparently fit for human consumption at the time it is donated, to a bona fide charitable or not-for-profit organization for free distribution, is immune from civil liability arising from injury or death due to the condition of the food, unless the injury or death is a direct result of the gross negligence, recklessness or intentional misconduct of the donor.

[PL 1981, c. 300 (NEW).]

3. Immunity of distributor. Notwithstanding any other provision of law, a bona fide charitable or not-for-profit organization and any employee or volunteer of that organization who in good faith receive and distribute food, which is apparently fit for human consumption at the time it is distributed, without charge, are immune from civil liability arising from an injury or death due to the condition of the food, unless the injury or death is a direct result of the gross negligence, recklessness or intentional misconduct of the organization.

[PL 1981, c. 300 (NEW).]

4. Application. This section applies to all good faith donations of perishable food that is not readily marketable due to appearance, freshness, grade, surplus or other conditions, including food that is beyond the date by which the manufacturer recommends that the food be sold, but nothing in this section restricts the authority of any appropriate agency to regulate or bar the use of that food for human consumption.

[PL 2009, c. 168, §1 (AMD).]

5. Immunity of facilities and establishments. Notwithstanding any other provision of law, a hospital or other health care facility licensed by the Department of Health and Human Services, or an eating establishment licensed under Title 22, chapter 562 that, in good faith and in accordance with guidelines established by the recipient organization, donates food that is apparently fit for human consumption at the time it is donated to a bona fide charitable or nonprofit organization for free distribution is immune from civil liability arising from injury, illness or death due to the condition or content of the food, unless the injury, illness or death is a direct result of intentional misconduct of the donor. Nothing in this subsection prevents a licensed hospital, health care facility or eating establishment from receiving the immunity provided in subsection 2 if the donor qualifies for immunity under the terms of that subsection.

[PL 1991, c. 739, §1 (NEW); PL 2003, c. 689, Pt. B, §6 (REV).]

SECTION HISTORY

PL 1981, c. 300 (NEW). PL 1991, c. 739, §1 (AMD). PL 2003, c. 689, §B6 (REV). PL 2009, c. 168, §1 (AMD).

§167. Insurance inspections

1. Exemption. Subject to subsection 2, the furnishing of, or failure to furnish, insurance inspection services related to, in connection with or incidental to the issuance or renewal of a policy of property or casualty insurance shall not subject the insurer, its agents, employees or service contractors to liability for damages from injury, death or loss occurring as a result of any act or omission by any person in the course of such services.

[PL 1981, c. 698, §86 (AMD).]

2. Notice required. Subsection 1 shall not apply or be effective unless the insurer notifies the insured in writing of the provisions of this section whenever the policy is issued or renewed. The Superintendent of Insurance shall adopt a regulation specifying the contents of the notice required by this subsection and the manner in which it shall be given.

[PL 1981, c. 380, §1 (NEW).]

3. Exceptions. This section shall not apply:

A. If the injury, loss or death occurred during the actual performance of inspection services and was proximately caused by the negligence of the insurer, its agent, employees or service contractors; [PL 1981, c. 380, §1 (NEW).]

B. To any inspection services required to be performed under the provisions of a written service contract or defined loss prevention program; and [PL 1981, c. 380, §1 (NEW).]

C. In any action against an insurer, its agents, employees or service contractors for damages proximately caused by the act or omission of the insurer, its agents, employees or service contractors in which it is determined that such act or omission constituted a crime, actual malice or gross negligence. [PL 1981, c. 380, §1 (NEW).]

[PL 1981, c. 380, §1 (NEW).]

SECTION HISTORY

PL 1981, c. 380, §1 (NEW). PL 1981, c. 698, §86 (AMD).

§168. Day care facility immunity for certain personnel action

(REPEALED)

SECTION HISTORY

PL 1985, c. 380, §2 (NEW).

§169. Restriction of attorney's representation prohibited

A settlement of litigation may not include a condition that an attorney representing a party in that litigation is not permitted to represent other persons who are similarly situated in a related action involving a party that the attorney opposed in the settled litigation. A condition not in compliance with this section is void and unenforceable as against public policy. [PL 2001, c. 108, §1 (NEW).]

SECTION HISTORY

PL 2001, c. 108, §1 (NEW).

§170. Consumption of food

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Food product" means any product that is grown, prepared, manufactured, provided, served or sold and that is primarily intended for human consumption and nourishment. [PL 2005, c. 355, §1 (NEW).]

B. "Long-term" means consisting of multiple instances over a period of time and not a single or isolated instance. [PL 2005, c. 355, §1 (NEW).]

[PL 2005, c. 355, §1 (NEW).]

2. Liability limited. Except as provided in subsection 3, a manufacturer, distributor or seller of a food product, or an association of one or more such entities, is not liable for personal injury or death to the extent the liability is based upon a person's weight gain or obesity resulting from the person's long-term consumption of the food product.

[PL 2005, c. 355, §1 (NEW).]

3. Exception. Subsection 2 does not bar a claim for damages if otherwise available under any other provision of law against a manufacturer or distributor of food products if the manufacturer or distributor has failed to provide nutritional content information as required by any applicable state or federal statute, rule or regulation or has provided materially false or misleading information to the public.

[PL 2005, c. 355, §1 (NEW).]

SECTION HISTORY

PL 2005, c. 355, §1 (NEW).

§171. Defense of premises

It is a defense to a civil claim resulting from the use of force that the person was or would have been justified in using such force under Title 17-A, section 104. [PL 2007, c. 315, §1 (NEW).]

SECTION HISTORY

PL 2007, c. 315, §1 (NEW).

§172. Liability related to professional services for natural disaster or catastrophe

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Architect" means a person licensed as an architect under Title 32, chapter 3-A. [PL 2019, c. 49, §1 (NEW).]

B. "Building inspection official" means a public official with executive responsibility to coordinate building inspection in the jurisdiction in which a natural disaster or catastrophe has occurred. [PL 2019, c. 49, §1 (NEW).]

C. "Contractor" means a person engaged in the business of designing, developing, constructing, altering, adding to or repairing new or existing structures, buildings, facilities, project utilities, equipment, machines, processes, piping or other engineered systems or infrastructure or their appurtenances. [PL 2019, c. 49, §1 (NEW).]

D. "Engineer" means a person licensed as a professional engineer under Title 32, chapter 19. [PL 2019, c. 49, §1 (NEW).]

E. "Environmental official" means a public official with executive responsibility for coordinating an environmental response in the jurisdiction in which a natural disaster or catastrophe has occurred. [PL 2019, c. 49, §1 (NEW).]

F. "Environmental professional" means a person engaged in the business of providing hazardous waste site clean-up services. "Environmental professional" includes a hazardous waste transporter licensed according to Title 38, section 1319-O. [PL 2019, c. 49, §1 (NEW).]

G. "Land surveyor" means a person licensed as a professional land surveyor according to Title 32, chapter 141. [PL 2019, c. 49, §1 (NEW).]

H. "Landscape architect" means a person licensed as a landscape architect under Title 32, chapter 3-A. [PL 2019, c. 49, §1 (NEW).]

I. "Law enforcement official" means a public official with executive responsibility to coordinate law enforcement in the jurisdiction in which a natural disaster or catastrophe has occurred. [PL 2019, c. 49, §1 (NEW).]

J. "Natural disaster or catastrophe" means an event, whether natural or human-made, that is declared an emergency by the President of the United States or by the Governor and that results in

the deployment of emergency response personnel or the displacement of persons from the area of the event. [PL 2019, c. 49, §1 (NEW).]

K. "Planner" means a person certified by the American Institute of Certified Planners, or successor organization, as a certified planner. [PL 2019, c. 49, §1 (NEW).]

L. "Public official" means a federal, state or local appointed or elected official with executive responsibility in the jurisdiction in which a natural disaster or catastrophe has occurred. [PL 2019, c. 49, §1 (NEW).]

M. "Public safety official" means a public official with executive responsibility to coordinate public safety in the jurisdiction in which a natural disaster or catastrophe has occurred. [PL 2019, c. 49, §1 (NEW).]

[PL 2019, c. 49, §1 (NEW).]

2. Immunity. An architect, contractor, environmental professional, land surveyor, landscape architect, planner or engineer who voluntarily, without compensation other than expense reimbursement, and acting in good faith provides, under the applicable license or certification, architectural, structural, electrical, mechanical or other engineering, planning, land surveying, hazardous waste site clean-up, contracting or other professional design services related to a natural disaster or catastrophe at the request of or with the approval of a public official, law enforcement official, public safety official, building inspection official or environmental official believed by the architect, contractor, environmental professional, land surveyor, landscape architect, planner or engineer to be acting in an official capacity is not liable for any personal injury, wrongful death, property damage or other loss of any nature related to the architect's, contractor's, environmental professional's, land surveyor's, landscape architect's, planner's or engineer's acts, errors or omissions in the performance of engineering, architectural, planning, land surveying, hazardous waste site clean-up or contracting services for a site, a structure, a building, a facility, a project utility, equipment, a machine, a process, piping or some other engineered system, either publicly or privately owned.

[PL 2019, c. 49, §1 (NEW).]

3. Voluntary services. The immunity provided in this section applies to only voluntary architectural, structural, electrical, mechanical or other engineering, planning, land surveying, hazardous waste site clean-up, contracting or other professional design services related to a natural disaster or catastrophe that are provided during the natural disaster or catastrophe, unless the period of emergency is extended by an executive order issued by the President of the United States or the Governor under the President's or Governor's emergency executive powers.

[PL 2019, c. 49, §1 (NEW).]

4. Reckless or intentional misconduct. Nothing in this section provides immunity for reckless or intentional misconduct.

[PL 2019, c. 49, §1 (NEW).]

5. Liability of governmental entities and employees not affected; existing immunity. When an architect, contractor, environmental professional, land surveyor, landscape architect, planner or engineer voluntarily renders services at the request of or with the approval of a state or local official and when such services fall within the immunity of this section, the liability, if any, of governmental entities and their employees under chapter 741 is not affected by this section. The immunity provided in this section is in addition to immunity provided in Title 37-B, section 784-A.

[PL 2019, c. 49, §1 (NEW).]

SECTION HISTORY

PL 2019, c. 49, §1 (NEW).

§173. Immunity for menstrual product donations

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Apparently usable" means, with respect to a product, that the product meets all quality and labeling standards imposed by federal, state and local laws and regulations even if the product may not be readily marketable. [PL 2021, c. 178, §1 (NEW).]

B. "Menstrual product" means a sanitary napkin, tampon, liner, cup, underwear or any similar item used by an individual with respect to menstruation. [PL 2021, c. 178, §1 (NEW).]
[PL 2021, c. 178, §1 (NEW).]

2. Immunity for donor. Notwithstanding any other provision of law, a good faith donor of menstrual products that are apparently usable at the time they are donated to a bona fide charitable or nonprofit organization for free distribution is immune from civil or criminal liability arising from injury or death due to the condition of the menstrual products, unless the injury or death is a direct result of the gross negligence, recklessness or intentional misconduct of the donor.
[PL 2021, c. 178, §1 (NEW).]

3. Immunity of distributor. Notwithstanding any other provision of law, a bona fide charitable or nonprofit organization and any employee or volunteer of that organization who in good faith receive and distribute menstrual products that are apparently usable at the time they are distributed are immune from civil or criminal liability arising from an injury or death due to the condition of the menstrual products, unless the injury or death is a direct result of the gross negligence, recklessness or intentional misconduct of the organization, employee or volunteer.
[RR 2021, c. 1, Pt. A, §11 (COR).]

4. Application. This section applies to all good faith donations of menstrual products that are not readily marketable due to appearance, grade, surplus or other conditions, but nothing in this section restricts the authority of any appropriate agency to regulate or bar the use of those menstrual products for use.
[PL 2021, c. 178, §1 (NEW).]

5. Immunity of facilities. Notwithstanding any provision of law to the contrary, a hospital or other health care facility licensed by the Department of Health and Human Services that, in good faith and in accordance with guidelines established by the recipient organization, donates menstrual products that are apparently usable at the time they are donated to a bona fide charitable or nonprofit organization for free distribution is immune from civil or criminal liability arising from injury, illness or death due to the condition of the menstrual products, unless the injury, illness or death is a direct result of intentional misconduct of the donor. Nothing in this subsection prevents a licensed hospital or health care facility from receiving the immunity provided in subsection 2 if the donor qualifies for immunity under the terms of that subsection.
[PL 2021, c. 178, §1 (NEW).]

REVISOR'S NOTE: §173. Installation of smoke and carbon monoxide detectors by fire departments (As enacted by PL 2021, c. 214, §1 is REALLOCATED TO TITLE 14, SECTION 174)

SECTION HISTORY

PL 2021, c. 178, §1 (NEW). RR 2021, c. 1, Pt. A, §11 (COR).

§174. Installation of smoke and carbon monoxide detectors by fire departments (REALLOCATED FROM TITLE 14, SECTION 173)

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Device" means a battery-operated or plug-in smoke detector, carbon monoxide detector or combination smoke and carbon monoxide detector. [PL 2021, c. 214, §1 (NEW); RR 2021, c. 1, Pt. A, §10 (RAL).]

B. "Fire department" means the State Fire Marshal, a municipal fire department as defined in Title 30-A, section 3151, subsection 1, a volunteer fire association as defined in Title 30-A, section 3151, subsection 3 or a fire district under Title 30-A, chapter 164. [PL 2021, c. 214, §1 (NEW); RR 2021, c. 1, Pt. A, §10 (RAL).]

[PL 2021, c. 214, §1 (NEW); RR 2021, c. 1, Pt. A, §10 (RAL).]

2. Immunity. Notwithstanding any provision of any public or private and special law to the contrary, a fire department or an employee or member of a fire department that delivers to or installs at residential premises a device or batteries for a device is not liable for damages for personal injury, wrongful death, property damage or other loss related to the device if:

A. The device is installed by the fire department and the device is new and meets all applicable current safety and manufacturing standards; [PL 2021, c. 214, §1 (NEW); RR 2021, c. 1, Pt. A, §10 (RAL).]

B. The device or the batteries in the device are installed by the fire department and the installation is performed in accordance with the manufacturer's instructions; and [PL 2021, c. 214, §1 (NEW); RR 2021, c. 1, Pt. A, §10 (RAL).]

C. The installation or delivery is performed in the fire department's official capacity and authorized by the municipal officers. [PL 2021, c. 214, §1 (NEW); RR 2021, c. 1, Pt. A, §10 (RAL).]

For purposes of this subsection, "installation" does not include the alteration or installation of electrical wiring.

[PL 2021, c. 214, §1 (NEW); RR 2021, c. 1, Pt. A, §10 (RAL).]

3. Records. A fire department that installs or delivers a device or batteries for a device under this section shall keep a record of the installation or delivery for a period of 5 years after the installation or delivery.

[PL 2021, c. 214, §1 (NEW); RR 2021, c. 1, Pt. A, §10 (RAL).]

4. Application. This section does not limit or otherwise affect an obligation or duty of an owner or occupier of residential premises receiving an installation or delivery of a device or batteries for a device under this section.

[PL 2021, c. 214, §1 (NEW); RR 2021, c. 1, Pt. A, §10 (RAL).]

SECTION HISTORY

PL 2021, c. 214, §1 (NEW). RR 2021, c. 1, Pt. A, §10 (RAL).

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