



# 126th MAINE LEGISLATURE

## FIRST REGULAR SESSION-2013

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Legislative Document

No. 635

S.P. 225

In Senate, February 21, 2013

**Resolve, Authorizing the Estate of Mitchell A. Kessler To Bring Suit  
against the Department of Health and Human Services**

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Reference to the Committee on Veterans and Legal Affairs suggested and ordered printed.

A handwritten signature in black ink, appearing to read 'D M Grant'.

DAREK M. GRANT  
Secretary of the Senate

Presented by Senator BOYLE of Cumberland.  
Cosponsored by Senators: GERZOFKY of Cumberland, MILLETT of Cumberland,  
Representative: CAMPBELL of Orrington.

1           **Sec. 1. Authorization to sue State. Resolved:** That, notwithstanding any  
2 statute or common law to the contrary, the estate of Mitchell A. Kessler is authorized to  
3 bring a civil action against the Department of Health and Human Services for damages  
4 claimed to have been suffered in connection with actions taken by the Riverview  
5 Psychiatric Center. This resolve is a waiver of the State's defense of immunity under the  
6 Maine Revised Statutes, Title 14, chapter 741.

7           Notwithstanding the application of any statute of limitations barring this action, this  
8 action must be brought in the Cumberland County Superior Court within one year from  
9 the date this resolve takes effect. Liability and damages, including punitive damages,  
10 must be determined according to state law as in litigation between individuals. This  
11 action may be heard by a Justice of the Superior Court or by a jury. The Maine Rules of  
12 Civil Procedure govern the conduct of the action. The Attorney General shall appear,  
13 answer and defend the action. To the extent possible, the Attorney General shall conduct  
14 negotiations in good faith to resolve this action by settlement.

15           The Treasurer of State shall pay any settlement determined by agreement of the  
16 parties or any judgment, including costs and interest, on final process issued by the  
17 Superior Court or, if applicable, the Supreme Judicial Court. Recovery may not exceed  
18 \$400,000 including costs, interest and punitive damages.

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#### **SUMMARY**

20           This resolve authorizes the estate of Mitchell A. Kessler to bring suit against the  
21 Department of Health and Human Services for damages in connection with actions taken  
22 by the Riverview Psychiatric Center and constitutes a waiver of the State's defense of  
23 sovereign immunity. The resolve provides that the maximum amount of any recovery is  
24 \$400,000, pursuant to the limits of the Maine Tort Claims Act.