

TESTIMONY OF MICHAEL BIGOS, ESQ., MAINE TRIAL LAWYERS
ASSOCIATION
IN SUPPORT OF
**LD 1347, An Act to Increase the Cap on Liability for Governmental Entities
Under the Maine Tort Claims Act**
April 7, 2025
Judiciary Committee

Senator Carney, Representative Kuhn, and Honorable Members of the Joint Standing Committee on Judiciary, my name is Michael Bigos. I live in Auburn. I am a shareholder and co-owner of Berman & Simmons law firm in Lewiston, Bangor, Biddeford and Portland. The Maine Trial Lawyers Association urges you to vote LD 1347 Ought to Pass.

LD 1347, would raise the damages cap from \$400,000 per incident to \$1.25 million. This cap has been in place since 1999.

Wrongful death, paraplegia, and other catastrophic damages claims should not be limited to \$400,000 when the government causes them. Currently, \$400,000 would have to be divided-up if several people are hurt at once like a school bus full of students, or a multi-vehicle crash. Think of a bus full of children. Think of a wrongful death, where damages are usually in the \$2 – \$3.5 million range.

\$1.25 million is a reasonable number that balances fairness with risk exposure. The largest claims would still tower over this cap. LD 1347 would be a middle-ground revision to the MTCA. Modernizing this damage cap is appropriate given 26 years of changes in inflation, medical expenses, and other ways to measure lost wages and human losses in casualty cases.

These incidents are typically covered by insurance or the MMA risk pool. In the private sector, commercial general-type liability policies and reinsurance policies commonly cover \$5 million or \$10 million in liability coverage for reasonable rates. Municipal and county agencies presently pay rates for this type of coverage, but only get coverage for \$400,000. The state has been traditionally self-insured. This seems like an unfair system that could be easily fixed. Agencies could get the coverage that they deserve, and citizens would be treated much more fairly than they are now.

There are relatively few of these claims, but the current damage cap creates an overly harsh result on catastrophic and death claims.

Many states don't even have a Tort Claims Act immunity system. Those states arguably have more stringent standards to promote safety because of the financial incentive for doing so.

This is reasonable for the types of risks we are talking about.

The Maine Tort Claims Act of course gives state and local governmental entities immunity from civil liability except for 4 narrow exceptions: negligent vehicle and equipment operation; negligent building maintenance; negligent road construction and cleaning; and pollution discharge. Otherwise, government entities have immunity from civil liability. The MTCA has been around since the 1970's.

There should be no direct fiscal note because of insurance risk pools and insurance that currently exist.

Thank you very much. I urge you to vote LD 1437 Ought To Pass. Thank you.