

TESTIMONY OF MICHAEL BIGOS, ESQ., MAINE TRIAL LAWYERS ASSOCIATION
IN SUPPORT OF
**LD 1348, An Act to Increase the Limit on Damages Under the Maine Tort Claims Act
for Negligence Involving School Field Trips**
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 1348 Ought to Pass.

Schools must never needlessly endanger students on School Field trips in order to prevent death and serious injury. When they do, they should be held accountable.

You may all remember the 2018 tragedy that resulted in the loss of young Ryan Issa. <https://www.pressherald.com/2019/07/24/judge-dismisses-lawsuit-related-to-drowning-of-lewiston-student/> . Basic lifeguarding and swim skill screening on the spot would have prevented that tragedy.

Ryan Issa's father Ali Abdisamad, and his family made a claim, which was dismissed because the Maine Tort Claims Act only allows negligence claims for auto negligence, unsafe buildings, and a few other narrow exceptions. Otherwise government entities have immunity from civil liability.

You have/will also hear about Michael Strecker, who client who also experienced wrongful death at the hands of his school. <https://wgme.com/news/local/lawsuit-against-maine-school-district-over-fatal-hiking-trip-dismissed-hiking-camping-lake-region-high-south-baldface-mountain> They were also dismissed by a court.

LD 1348 would allow a legal claim to be made, instead of being shut out. Victim's families still need to be able to prove their case. It is not an entitlement or benefit. It just allows our civil justice- right to a jury trial system to decide. The right to a jury trial promotes safety and accountability for Schools that run field trips. Almost all field trips are safe. But when the school kills or seriously injures a child needlessly though negligent, preventable acts, the family should be able to seek civil damages.

These incidents are typically covered by insurance or the MMA risk pool. There are few of these, but when they happen, they tear communities apart, in part because of the harshness of the MTCA. Many states don't even have a Tort Claims Act immunity system. Those states

arguably have more stringent standards to keep students safe because of the financial incentive for doing so.

This bill would allow a \$5,000,000 cap for field trip deaths and catastrophes. This is reasonable for the types of risks we are talking about. A bus full of children. Wrongful death damages usually in the \$2 – \$3.5 million range. And commercial general-type liability policies, and reinsurance policies commonly cover \$5 million or \$10 million in liability coverage for reasonable rates. Schools presently pay rates for this type of coverage, but only get coverage for \$400,000. This seems like an unfair system that could be easily fixed.

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.

This bill would add a very narrow exception to the MTCA only for field trips.

There is the process where a victim's family can apply to the legislature for a Private and Special law for the right to sue, but the process is 99.9% impossible to win, and subject to the vagaries and unpredictability of the Maine legislature while precious time ticks away on Statutes of Limitation. Attempts at this usually fail because the claimant ends up debating whether they should win, not whether they should be allowed fair jury trial to a right to prove their case. I am not aware of any such bill ever passing.

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 1438 Ought To Pass. Thank you.