

TESTIMONY OF MICHAEL BIGOS, ESQ.,
IN OPPOSITION TO
LD 434, An Act To Promote Equity in the Joint and Several Liability Law in Maine
March 10, 2015
Judiciary Committee

Senator Burns, Representative Hobbins, and Honorable Members of the Joint Standing Committee on Judiciary my name is Michael Bigos, and I live in Auburn. I am a private trial attorney at Berman & Simmons law firm in Lewiston, Bangor and Portland (800-244-3576). I represent victims of serious injury and wrongful death.

LD 434 is the most harmful bill in the last decade that I have seen that would hurt thousands of Mainers injured, maimed, disabled, and the survivors of those killed by the negligence of others.

Joint and several liability is a principle established long ago to fairly apportion responsibility between multiple parties who owe an obligation. It arises most frequently in tort cases. Joint and several liability is premised on the theory that the defendants are in the best position to apportion damages amongst themselves. Once liability has been established and damages awarded, the defendants are free to litigate amongst themselves to better divide liability. The plaintiff no longer needs to be involved in the litigation and can avoid the cost of continuing litigation.

The current law protects victims from being under-compensated if one of the defendants cannot pay his or her share of proportionate liability.

In the United States, 46 of the 50 states have a rule of joint and several liability.

The argument against J&S liability is that the injury victim should bear the loss even if the loss is through no fault of their own.

Joint and Several liability is a better policy than leaving victims without compensation. The policy leaves some defendants with the ability to pursue “under-paying” defendants for their proportionate share of damages, rather than making the injury victim pursue them. Joint and several liability is the most fair policy to apply in those limited circumstances – when they arise.

LD 434 would shift costs from wrongdoers and their insurers to health insurers and workers compensation insurers, eventually raising premiums. It would also shift costs onto taxpayers. The bill is also flawed in that it does not address the situation in which a plaintiff is found comparatively at fault – would defendants always be found to be under 50% liable in those situations?

Please oppose LD 434. Thank you.