

Maine's "defect law"

Road defects can happen in a roadway itself or on an adjacent sidewalk. Liability created by defects in a road is governed by several provisions in Maine Law and is explained below. Liability due to defects in a sidewalk is also governed by several provisions and that is [explained here](#).

In Maine law under [23 MRSA, Chapter 313](#), which covers local highway law, it says "*Highways, town ways and streets legally established shall be opened and kept in repair so as to be safe and convenient for travelers with motor vehicles.*" This law is commonly called the "pothole law" or the "24 hour law" by many Mainers. The interpretation of this can be quite broad. It is referenced when someone claims their vehicle was damaged because of a pothole or similar road defect such as a defective culvert, or muddy road, or a "deadly fixed object" (DFO) such as heavy mailbox posts or other solid objects in the town right-of-way.

The pothole law requires municipalities to keep town ways (and state roads under municipal control) in good repair. The town's liability arises from the physical condition of the road itself, not the town's negligent use of vehicles or equipment. Three facts must be established before a municipality can be held liable under the pothole law. First, the defect which caused the injury must be in a town way. Second, the injury or damage must be the result of a highway defect. Third, the town must have had at least 24 hours prior notice of the defect in question and failed to correct it.

It is important for towns and cities to have a written process for recording when notice was received, where the defect is located and when the road defect was fixed. After the notice is received, the "24 hour clock" has started and the town/city needs to take action to provide a reasonable repair of the defect. The time of repair needs to be logged along with the type of repair (gravel, cold patch) and any comments. This log should be retained for at least 180 days since that is the amount of time the public has to report the defect to the municipality. If there is more than one report for the same location and/or there is a recurring pothole from a problem area, the use of a sign and/or cone may help motorists to avoid the defect until a reasonably satisfactory repair can be completed. The statute does not specify what type of repair must be made. The repair will be judged by a reasonableness standard.

The frequency of defects rises usually in March and April as the frost leaves the ground and potholes and/or mud is prevalent on many roads. Potholes are usually more frequent during and after heavy rain fall in these same months especially in areas that do not drain well.

The limit for any damage claim when the municipality is found liable is \$6,000. There is also a 180 day notice requirement. The claimant is required to specify his/her claim for damages, nature of his/her injuries, and the nature and location of the defect which caused the injury within 180 days of the incident. The damage cap for any one wrongful death arising out of a road defect is \$25,000 and \$300,000 for any and all claims arising out of a single occurrence.

Adapted from MMA's "Risk Manager" article, April 2013