

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

1 FIRST REGULAR SESSION  
2

3 ONE HUNDRED AND ELEVENTH LEGISLATURE  
4

5 Legislative Document

No. 625

6  
7 S.P. 203

In Senate, February 7, 1983

8 Received by the Secretary of the Senate on February 7, 1983. Referred to  
9 the Committee on Judiciary, and ordered printed pursuant to Joint Rule 14.

10 JOY J. O'BRIEN, Secretary of the Senate

Presented by Senator Clark of Cumberland.

Cosponsors: Representative Kelleher of Bangor and Senator Perkins of  
11 Hancock.

12 STATE OF MAINE  
13

14 IN THE YEAR OF OUR LORD  
15 NINETEEN HUNDRED AND EIGHTY-THREE  
16

17 AN ACT to Provide Equal Access to  
18 Justice.  
19

20 Be it enacted by the People of the State of Maine as  
21 follows:

22 Sec. 1. 14 MRSA §1502-B is enacted to read:

23 §1502-B. Costs to the State

24 1. Attorneys' fees and expenses in civil actions  
25 involving the State. In addition to any awards made  
26 pursuant to any other statute, a court shall award  
27 reasonable attorneys' fees and expenses to a prevail-  
28 ing party other than the State in a civil action,  
29 except actions brought under the Maine Tort Claims  
30 Act, chapter 741, brought by or against the State in  
31 a court authorized to adjudicate that action.

1           2. Reduction or denial of award. The court, in  
2 its discretion, may reduce or deny the amount to be  
3 awarded under this section if:

4           A. The position of the State was substantially  
5 justified in fact or in law;

6           B. Special circumstances make an award unjust;  
7 or

8           C. The party, during the course of the proceed-  
9 ings, engaged in conduct which unduly and unrea-  
10 sonably protracted the final resolution of the  
11 matter in controversy.

12           3. Award of costs for contesting on administra-  
13 tive level. Where the action involves review of a  
14 determination of an administrative agency, the court  
15 shall include in its award under this section an  
16 amount to compensate the prevailing party for costs  
17 actually incurred by that party in contesting on the  
18 administrative level an allegation or denial made by  
19 the State without reasonable cause and found to be  
20 untrue.

21           4. Payment of fees and expenses. Fees and  
22 expenses awarded under this section shall be paid as  
23 soon as practicable by the agency represented in the  
24 action from operating funds currently available to  
25 the agency.

26           5. Definitions. As used in this section, unless  
27 the context indicates otherwise, the following terms  
28 have the following meanings.

29           A. "Administrative agency" means an agency as  
30 defined in the Maine Administrative Procedure  
31 Act, Title 5, section 8002.

32           B. "Party" means any individual, partnership,  
33 proprietorship, corporation, association, orga-  
34 nization or agricultural cooperative.

35           C. "State" means the State and any department,  
36 agency, board, bureau, commission, officer or  
37 other office of State Government.

1           Sec. 2. Effective date. This Act shall take  
2 effect on January 1, 1984, and shall apply only to  
3 actions initiated on or after that date.

4                                                 STATEMENT OF FACT

5           This bill recognizes that individuals, partner-  
6 ships, corporations, associations and labor and other  
7 organizations may be effectively deterred from  
8 seeking review of, or defending against, unreasonable  
9 governmental action because of the expense involved  
10 in securing the vindication of their rights. Because  
11 of the greater resources and expertise of the State,  
12 this bill establishes a standard for an award of  
13 reasonable attorney fees and other expenses against  
14 the State where a private party prevails and where  
15 the court finds the state's position was not substan-  
16 tially justified in fact or in law.

17           This bill is modeled on the federal Equal Access  
18 to Justice Act of 1980 and on similar laws enacted in  
19 11 states.

20

1891012783