

MAINE STATE LEGISLATURE

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(New Draft of S.P. 203, L.D. 625)

FIRST REGULAR SESSION

ONE HUNDRED AND ELEVENTH LEGISLATURE

Legislative Document

No. 1646

S.P. 570

In Senate, May 19, 1983

Reported by Majority Report from the Committee on Judiciary and printed under Joint Rule 2.

Original bill presented by Senator Clark of Cumberland. Cosponsored by Representative Kelleher of Bangor and Senator Perkins of Hancock.

JOY J. O'BRIEN, Secretary of the Senate

STATE OF MAINE

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

AN ACT to Provide Equal Access to
Justice.

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

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

§1502-B. Costs to the State

1. Attorneys' fees and expenses in civil actions involving the State. A court may award, to a prevailing private party, reasonable fees and other expenses, not to exceed \$10,000, incurred by that party in any civil action brought by or against the State in a court of the State, including the Administrative Court, if the court finds that the position of the State was not substantially justified in fact and in law or that special circumstances make an

1 award just. The court, in its discretion, may reduce
2 or deny the amount to be awarded under this section
3 if the private party, during the course of the pro-
4 ceedings, engaged in conduct which unduly and unrea-
5 sonably protracted final resolution of the matter in
6 controversy.

7 2. Civil actions excluded. This section does not
8 apply to:

9 A. Actions brought under the Maine Tort Claims
10 Act, chapter 741;

11 B. Actions involving the establishing or fixing
12 of a rate or the granting or renewing of a li-
13 cence;

14 C. Actions involving the granting or determining
15 eligibility or entitlement to a monetary benefit or
16 its equivalent; or

17 D. Actions for which payment of attorneys' fees
18 are already provided for by statute.

19 3. Payment of fees and other expenses. Fees and
20 other expenses awarded under this section shall be
21 paid in accordance with Title 5, section 1512.

22 4. Definitions. As used in this section, unless
23 the context indicates otherwise, the following terms
24 have the following meanings.

25 A. "Fees and other expenses" means the expenses
26 of expert witnesses, the cost of any study, anal-
27 ysis, test or report which is found by the court
28 to be necessary for the preparation of the
29 party's case and attorney fees.

30 B. "Party" means any individual or any partner-
31 ship, proprietorship, corporation, association,
32 organization or agricultural cooperative which
33 employs less than 100 people.

34 C. "State" means the State and any department,
35 agency, board, bureau, commission, officer or
36 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 civil court actions initiated on or after that date.

4 STATEMENT OF FACT

5 Proposed Title 14, section 1502-B, subsection 1,
6 provides that the prevailing private party in a civil
7 court action in which the State is party may be
8 awarded reasonable attorneys' fees and expenses, not
9 to exceed \$10,000, if that private party shows that
10 the state's position was not substantially justified.

11 Proposed Title 14, section 1502-B, subsection 2,
12 excludes various types of civil actions from the
13 reach of this law.

14 Proposed Title 14, section 1502-B, subsection 3,
15 refers to a current statute specifying what funds the
16 State is to use to pay attorneys' fees awarded by a
17 court against it.

18 Proposed Title 14, section 1502-B, subsection 4,
19 is a definition section.

20 Section 2 provides that this law applies to civil
21 actions begun on or after January 1, 1984.

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