

# MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 268

H.P. 216 House of Representatives, February 5, 1987  
Reference to the Committee on Judiciary suggested and  
ordered printed.

EDWIN H. PERT, Clerk  
Presented by Representative HILLOCK of Gorham.  
Cosponsored by Senator COLLINS of Aroostook.

STATE OF MAINE

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

AN ACT to Create the Litigation  
Accountability Act.

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

14 MRSA c. 742 is enacted to read:

CHAPTER 742

LITIGATION ACCOUNTABILITY ACT

§8151. Short title

This Act shall be known and may be cited as the  
"Litigation Accountability Act."

§8152. Definitions

1           As used in this Act, unless the context otherwise  
2 indicates, the following terms have the following  
3 meanings.

4           1. Person. "Person" means any individual, corpo-  
5 ration, company, association, firm, partnership, so-  
6 ciety, joint stock company or any other entity, in-  
7 cluding any governmental entity or unincorporated as-  
8 sociation of persons.

9           2. Substantial justification. "Substantial jus-  
10 tification" means the case is not frivolous,  
11 groundless in fact or in law or vexatious, as deter-  
12 mined by the court.

13 §8153. Costs and attorneys fees

14           1. Costs awarded. Except as otherwise provided,  
15 in any civil action commenced or appealed in any  
16 court of record in this State, the court shall award,  
17 as part of its judgment and in addition to any other  
18 costs otherwise assessed, reasonable attorneys fees  
19 and court costs against any attorney or party who has  
20 brought or defended a civil action that the court de-  
21 termines lacks substantial justification either in  
22 whole or part.

23           2. Allocation of payment. When a court deter-  
24 mines reasonable attorneys fees or costs should be  
25 assessed, it shall allocate the payment among the of-  
26 fending attorneys and parties as it determines most  
27 just and may charge such amount or portion of such  
28 amount to any offending attorney or party.

29           3. Actions requiring the payment of costs. The  
30 court shall assess attorneys fees and costs if, upon  
31 the motion of any party or the court itself, it finds  
32 that an attorney or party brought or defended an ac-  
33 tion or any part of any action which:

34           A. Lacks substantial justification;

35           B. Was interposed for delay or harassment; or

36           C. Was unnecessarily expanded by other improper  
37 conduct on the part of the attorney or party, in-  
38 cluding, but not limited to, abuses of discovery

1 procedures available under the State's rules of  
2 civil procedures.

3 4. Voluntary dismissal. No attorneys fees or  
4 costs may be assessed if, after filing suit, a volun-  
5 tary dismissal is filed as to any claim or action  
6 within a reasonable time after the attorney or party  
7 filing the dismissal knew or reasonably should have  
8 known that they would not prevail on the claim or ac-  
9 tion.

10 5. Party appearing without an attorney. No party  
11 who is appearing without an attorney may be assessed  
12 attorneys fees, unless the court finds that the party  
13 clearly knew or reasonably should have known that his  
14 action or defense or any part of his action or de-  
15 fense lacked substantial justification.

16 This subsection does not apply to situations in which  
17 an attorney licensed to practice law in the State is  
18 appearing without an attorney, in which case he shall  
19 be held to the standards for attorneys set forth in  
20 this section.

21 §8154. Procedure for determining costs and reason-  
22 able fees

23 In determining the amount of a cost or an attor-  
24 ney fee award the court shall exercise its sound dis-  
25 cretion. When granting an award of costs and attor-  
26 neys fees, the court shall specifically set forth the  
27 reasons for the award and shall consider the follow-  
28 ing factors, among others, in determining whether to  
29 assess attorneys fees and costs and the amount to be  
30 assessed against offending attorneys:

31 1. Validity of claim. The extent to which any  
32 effort was made to determine the validity of any ac-  
33 tion or claim before the action was asserted;

34 2. Reduction of claim. The extent of any effort  
35 made after the commencement of an action to reduce  
36 the number of claims or defenses being asserted or to  
37 dismiss claims or defenses that have been found not  
38 to be valid;

1           3. Available facts. The availability of facts to  
2 assist the party to determine the validity of a claim  
3 or defense;

4           4. Financial position of involved parties. The  
5 relative financial position of the parties involved;

6           5. Bad faith. Whether or not the action was  
7 prosecuted or defended in whole or in part in bad  
8 faith;

9           6. Issues of fact. Whether or not issues of  
10 fact, determinative of the validity of a parties'  
11 claims or defense, were reasonably in conflict;

12           7. Number of claims. The extent to which the  
13 party prevailed with respect to the amount of and  
14 number of claims in controversy;

15           8. Good faith attempt. The extent to which any  
16 claim or defense was asserted by an attorney or party  
17 in a good-faith attempt to establish a new theory of  
18 law in the State;

19           9. Offer of judgment or settlement. The amount  
20 or conditions of any offer of judgment or settlement  
21 in relation to the amount or conditions of the ulti-  
22 mate relief granted by the court;

23           10. Reasonable effort made. The extent to which  
24 a reasonable effort was made to determine prior to  
25 the time of filing of a claim that all parties sued  
26 or joined were proper parties owing a legally defined  
27 duty to the plaintiff or defendant; and

28           11. Reduce number of party in action. The extent  
29 of any effort made after the commencement of an ac-  
30 tion to reduce the number of parties in the action.

1

STATEMENT OF FACT

2           The purpose of this bill is to provide that any  
3 attorney and party which brings a suit which is ad-  
4 judged by the court as being frivolous should have to  
5 pay the costs of litigation.

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