MAINE STATE LEGISLATURE

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115th MAINE LEGISLATURE

FIRST REGULAR SESSION-1991

Legislative Document

No. 1503

H.P. 1030

House of Representatives, April 11, 1991

Reference to the Committee on Judiciary suggested and ordered printed.

EDWIN H. PERT, Clerk

Presented by Representative RICHARDSON of Portland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED AND NINETY-ONE

An Act to Adopt the English Rule, With Exceptions, for Attorney's Fees in Litigation.



	Be it enacted by the People of the State of Maine as follows:
2	C 4 44 B 5 D C 4 04 5 A D 7 V C 6 4 1 5
4	Sec. 1. 14 MRSA §1502-B, sub-§§4 and 5, as enacted by PL 1985, c. 384, §4 are amended to read:
б	4. Travel expenses. Reasonable expenses of travel within the State to the place of trial for the prevailing party or his
8	the prevailing party's attorney of record, as provided by rule of the Supreme Judicial Court, or as directed by court, in the
10	absence of that rule; and
12	5. Other costs. Such other costs as the Supreme Judicial Court may direct by rule : and
14	Sec. 2. 14 MRSA §1502-B, sub-§6 is enacted to read:
16	Sec. 2. 14 Marsh gasva-p, sun-gu is enacted to read:
10	6. Attorney's fees. The reasonable attorney's fees
18	incurred by the prevailing party in prosecuting or defending the
20	action.
	A. This subsection does not apply to the following:
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	(1) Class action cases;
24	(2) Cases seeking redress for violations of
26	constitutional rights or cases brought under any civil
	rights or human rights law;
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	(3) Tort cases;
30	(4) Corre in which the Chate on two of the officers on
32	(4) Cases in which the State or any of its officers or agencies are parties;
J 2	
34	(5) Cases where attorney's fees are governed by a
	separate provision of the laws; and
36	
38	(6) Cases in which the party against whom attorney's fees would be assessed is proceeding in forma pauperis
30	pursuant to the Maine Rules of Civil Procedure, Rule
40	91, or is otherwise indigent.
42	B. A party seeking attorney's fees pursuant to this
	subsection shall file affidavits setting forth the
44	applicable fee arrangement and itemizing the legal services performed by activity, date and number of hours. Upon
46	motion by the party against whom attorney's fees are to be
- •	assessed, the court shall determine the amount of attorney's
48	fees that are reasonable.
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50	C. For purposes of this section, if a party obtains less
52	than the full amount of relief sought or prevails on less than all the claims asserted, the court may allocate

attorney's fees between the parties based on the extent to which specific parties have prevailed on different issues.

D. If a party makes an offer of judgment pursuant to the Maine Rules of Civil Procedure, Rule 68, and the relief ultimately obtained is not more favorable than the offer, the offeree shall pay the reasonable attorney's fees of the offeror from the date of the offer regardless of who otherwise prevails in the action.

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STATEMENT OF FACT

This bill makes the "English rule," that is, that the losing party in civil litigation should pay the attorney's fees of the winning party, applicable to many forms of civil litigation in Maine. The rationale for this rule is based on the proposition that the party who prevails should be entitled to recover the actual cost of litigation. While existing Maine law allows a prevailing party to recover certain costs, these are generally limited to such minor costs as filing fees and exclude attorney's fees, which are the largest and most significant costs.

Under the current system, the so-called "American rule," where parties bear their own attorney's fees, a party may prevail in litigation and nevertheless realize a net loss as a result of having to pay attorney's fees. Under the English rule, the risk of this result is reduced. In addition, the institution of the English rule will raise the stakes for litigants who wish to go to trial and will provide a further incentive for settlements.

This bill includes specific exemptions from the English rule in certain cases. Among these are cases where the English rule might overly discourage litigation that is important to society and cases where the existing economic incentives to prevent unnecessary litigation may be adequate.

This bill also contains provisions designed to protect against 2 of the perceived abuses of the English rule. The first situation is that the losing party could be forced to pay excessive fees if the prevailing party has spared no expense in litigating the case. This bill instructs the court to award attorney's fees only to the extent that such fees are reasonable.

This bill also provides a mechanism to address the problem that may be created when a party prevails on only a small portion of the case. This bill allows the court to allocate the attorney's fees based on the extent to which specific parties prevailed on different issues. In a case where a party prevailed on a small part of the relief requested, the court could determine that the other party was entitled to attorney's fees on

the major part of the case and could allocate the fee award based on the extent to which each party prevailed. A party who prevailed on only a small part of the case, therefore, could be required in an appropriate case to pay most of the opposing party's attorney's fees.

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Finally, the bill also preserves and strengthens the offer of judgment procedure in the Maine Rules of Civil Procedure, Rule 68, by providing that a party who declines an offer of judgment that is equal to or more favorable than the relief actually obtained has to pay the opposing party's attorney's fees from the date of the offer.