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117th MAINE LEGISLATURE

FIRST REGULAR SESSION-1995

Legislative Document

No. 791

S.P. 293

In Senate, March 14, 1995

An Act Requiring Unsuccessful Parties in Civil Suits to Pay Costs.

Reference to the Committee on Judiciary suggested and ordered printed.

jus May M. ?

MAY M. ROSS Secretary of the Senate

Presented by Senator HATHAWAY of York. Cosponsored by Senators: BENOIT of Franklin, HARRIMAN of Cumberland, KIEFFER of Aroostook, Representative: AULT of Wayne.

2	Be it enacted by the People of the State of Maine as follows:
2 4	Sec. 1. 14 MRSA §1502-B, sub-§§4 and 5, as enacted by PL 1985, c. 384, §4, are amended to read:
6 8	4. Travel expenses. Reasonable expenses of travel within the State to the place of trial for the prevailing party or his <u>the prevailing party's</u> attorney of record, as provided by rule of
10	the Supreme Judicial Court, or as directed by court, in the absence of that rule; and
12	5. Other costs. Such other costs as the Supreme Judicial Court may direct by rule.; and
14 16	Sec. 2. 14 MRSA §1502-B, sub-§6 is enacted to read:
18	6. Attorney's fees. The reasonable attorney's fees incurred by the prevailing party in prosecuting or defending the
20	action.
22	A. This subsection does not apply to the following: (1) Class action cases;
24	(2) Cases seeking redress for violations of
26 28	<u>constitutional rights or cases brought under any civil</u> rights or human rights law;
30	(3) Tort cases;
32	(4) Cases in which the State or any of its officers or agencies are parties;
34	(5) Cases where attorney's fees are governed by a separate provision of the laws; and
36	(6) Cases in which the party against whom attorney's
38 40	fees would be assessed is proceeding in forma pauperis, pursuant to the Maine Rules of Civil Procedure, Rule 91, or is otherwise indigent.
42	B. A party seeking attorney's fees pursuant to this
44	subsection shall file affidavits setting forth the applicable fee arrangement and itemizing the legal services
46	performed by activity, date and number of hours. Upon 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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C. For purposes of this section, if a party obtains less 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.

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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.

STATEMENT OF FACT

This bill applies the English rule, which means the losing party in civil litigation should pay the attorney's fees of the winning party, to many forms of civil litigation. Existing laws allow a prevailing party to recover certain minor costs and exclude attorney's fees, which are the largest and most significant costs.

24 This bill includes specific exemptions from the English rule in certain cases, such as cases where the English rule might 26 discourage litigation that is important to society and cases where the existing economic incentives to prevent unnecessary 28 litigation may be adequate.

30 This bill also provides a mechanism to address the problem that may be created when a party prevails on only a small portion 32 of the case. This bill allows the court to allocate the attorney's fees based on the extent to which specific parties 34 prevailed on different issues.

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.

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