

MAINE STATE LEGISLATURE

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PL 100

L.D. 1132

DATE: 5-15-03

(Filing No. H-393)

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STATE OF MAINE
HOUSE OF REPRESENTATIVES
121ST LEGISLATURE
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 835, L.D. 1132, Bill, "An Act To Simplify Calculation of Legal Interest"

Amend the bill by inserting after the title and before the enacting clause the following:

'Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the unification of the District Court and the Superior Court became effective on January 1, 2001; and

Whereas, since that date, there has been ambiguity and confusion regarding the proper methodology for calculating prejudgment and post-judgment interest; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore, '

Further amend the bill by striking out everything after the enacting clause and before the summary and inserting in its place the following:

'Sec. 1. 10 MRSA §1113, sub-§4, as enacted by PL 1993, c. 461, §1, is amended to read:

4. Delayed payments. Except as otherwise agreed, if any progress or final payment to a contractor is delayed beyond the

COMMITTEE AMENDMENT

2 due date established in subsection 3, the owner shall pay the
contractor interest on any unpaid balance due beginning on the
4 21st day, at an interest rate equal to that specified in Title
14, section ~~1602-A, subsection 2~~ 1602-C.

6 **Sec. 2. 10 MRSA §1114, sub-§4**, as enacted by PL 1993, c. 461,
§1, is amended to read:

8
10 **4. Delayed payments.** Notwithstanding any contrary
agreement, if any progress or final payment to a subcontractor or
12 material supplier is delayed beyond the due date established in
subsection 2 or 3, the contractor or subcontractor shall pay its
14 subcontractor or material supplier interest on any unpaid balance
due beginning on the next day, at an interest rate equal to that
16 specified in Title 14, section ~~1602-A, subsection 2~~ 1602-C.

18 **Sec. 3. 14 MRSA §1502-D**, as amended by PL 1989, c. 360, is
further amended to read:

20 **§1502-D. Taxing of costs; hearing**

22 The clerk shall set costs under section 1502-B and interest
under section ~~1602~~ 1602-B to the extent they appear from the
24 record. The prevailing party or the prevailing party's attorney
may submit a bill of costs for all other costs or interest to the
26 court not later than 10 days after entry of judgment and serve
copies on all parties who have appeared and may be required to
28 pay these costs. Any party required to pay all or any part of
these costs, except a party who is defaulted and has not
30 appeared, may, within 10 days after the date of service,
challenge any items of cost or interest and request review by the
32 court. The prevailing party shall, within 10 days after a
challenge, submit to the court any vouchers or other records
34 verifying any challenged items of cost or interest. Either side
may request oral argument and submit affidavits and briefs. An
36 evidentiary hearing on the reasonableness of costs or interest
will be held only when the judge determines that there exists a
38 substantial need for the hearing and the amount of challenged
costs or interest are substantial. If the presiding judge
40 determines that the imposition of costs will cause a significant
financial hardship to any party, the judge may waive all or part
42 of the costs with respect to that party.

44 **Sec. 4. 14 MRSA §1602**, as amended by PL 2001, c. 471, Pt. D,
§13, is repealed.

46
48 **Sec. 5. 14 MRSA §1602-A**, as amended by PL 2001, c. 471, Pt.
D, §14, is repealed.

50 **Sec. 6. 14 MRSA §§1602-B and 1602-C** are enacted to read:

2 **§1602-B. Interest before judgment**

4 **1. Rate.** In all civil and small claims actions,
prejudgment interest is allowed at a rate equal to:

6
8 **A.** In actions involving a contract or note that contains a
provision relating to interest, the rate set forth in the
contract or note; and

10
12 **B.** In all other actions, the bank prime loan interest rate,
as published by the Board of Governors of the Federal
Reserve System, on the first business day in January of the
14 year in which prejudgment interest begins to accrue pursuant
to subsection 2, plus 3%.

16
18 The applicable prejudgment interest rate must be stated in the
judgment.

20 **2. Accrual; suspension; waiver.** Prejudgment interest
accrues from the time of notice of claim setting forth under oath
22 the cause of action, served personally or by registered or
certified mail upon the defendant until the date on which an
24 order of judgment is entered. If a notice of claim has not been
given to the defendant, prejudgment interest accrues from the
26 date on which the complaint is filed. In actions involving a
contract or note that contains a provision relating to interest,
28 the rate of interest is fixed as of the time the notice of claim
is given or, if a notice of claim has not been given, as of the
30 date on which the complaint is filed. If the prevailing party at
any time requests and obtains a continuance for a period in
32 excess of 30 days, interest is suspended for the duration of the
continuance. On petition of the nonprevailing party and on a
34 showing of good cause, the trial court may order that interest
awarded by this section be fully or partially waived.

36
38 **3. Effect on post-judgment interest.** This section does not
affect post-judgment interest imposed by section 1602-C.
Prejudgment interest may not be added to the judgment amount in
40 determining the sum upon which post-judgment interest accrues.

42 **§1602-C. Interest after judgment**

44 **1. Rate.** In all civil and small claims actions,
post-judgment interest is allowed at a rate equal to:

46
48 **A.** In actions involving a contract or note that contains a
provision relating to interest, the rate set forth in the
contract or note or the rate in paragraph B, whichever is
50 greater; and

2 B. In all other actions, the bank prime loan interest rate,
4 as published by the Board of Governors of the Federal
6 Reserve System, on the first business day in January of the
 year in which post-judgment interest begins to accrue
 pursuant to subsection 2, plus 6%.

8 The applicable post-judgment interest rate must be stated in the
10 judgment.

12 2. Accrual; suspension; waiver. Post-judgment interest
14 accrues from and after the date of entry of judgment, including
16 during the pendency of an appeal. In actions involving a
18 contract or note that contains a provision relating to interest,
20 the rate of interest is fixed as of the date of judgment. If the
22 prevailing party at any time requests and obtains a continuance
 for a period in excess of 30 days, interest is suspended for the
 duration of the continuance. On petition of the nonprevailing
 party and on a showing of good cause, the trial court may order
 that interest awarded by this section be fully or partially
 waived.

24 **Sec. 7. 14 MRSA §7487**, as enacted by PL 1999, c. 109, §1, is
amended to read:

26 **§7487. Interest**

28 A person who is awarded a money judgment in a small claims
30 action is entitled to post-judgment interest in accordance with
section 1602-A 1602-C.

32 **Sec. 8. 14 MRSA §8115, sub-§2**, as enacted by PL 1977, c. 2,
§2, is amended to read:

34 **2. Subdivision's plan for payment.** In the event that a
36 political subdivision has not procured insurance, the trial judge
may accept a reasonable plan for the payment of the amount of the
38 judgment. A payment plan shall may not exceed 5 years, and may
include interest at the rate provided in section 1602 1602-C.

40 **Sec. 9. 18-A MRSA §3-806, sub-§(d)**, as amended by PL 1997, c.
42 202, §1, is further amended to read:

44 (d) Unless otherwise provided in any judgment in another
46 court entered against the personal representative, allowed claims
bear prejudgment interest at the rate specified in Title 14,
48 section 1602, ~~subsection 1, paragraph A~~ 1602-B for the period
commencing 60 days after the time for original presentation of
the claim has expired unless based on a contract making a

2 provision for interest, in which case they bear interest in
accordance with that provision.

4 (1) Interest may not accrue on any allowed claims, however
6 allowed, against an insolvent estate, except to the extent
that insurance coverage or other nonprobate assets are
8 available to pay the claim in full. This paragraph is
effective for estates of decedents who die on or after
10 October 1, 1997.

12 (2) To the extent that an allowed claim against an
insolvent estate is secured by property, the value of which,
14 as determined under section 3-809, is greater than the
amount of the claim, the holder of the claim may receive
16 interest on the principal amount of the claim and any
reasonable fees, costs or charges provided for under an
18 agreement under which the claim arose. This paragraph is
effective for estates of decedents who die on or after
20 October 1, 1997.

22 **Sec. 10. 22 MRSA §2172, sub-§3, ¶B**, as enacted by PL 1991, c.
837, Pt. A, §49, is amended to read:

24 B. Licensees that are fined pursuant to this chapter are
26 required to pay the department the amount of the penalties.
If a licensee has not paid any collectible fine by the time
28 of license renewal, the department may collect the fine by
requiring payment prior to the processing of any license
30 renewal application. An appeal of the department's decision
to fine a licensee stays the collection of the fine.
32 Interest accrues on a fine at the rate specified in Title
14, section ~~1602~~ 1602-B prior to the completion of any
34 appeal. After the completion of any appeal process or after
any appeal period has passed, interest accrues pursuant to
Title 14, section ~~1602-A~~ 1602-C.

36 **Sec. 11. 22 MRSA §2498, sub-§3, ¶B**, as enacted by PL 1991, c.
38 591, Pt. J, §5, is amended to read:

40 B. Licensees that are fined pursuant to this chapter are
42 required to pay the department the amount of the penalties.
If a licensee has not paid any collectible fines by the time
44 of its license renewal, the department may collect such
fines by requiring their payment prior to the processing of
46 any license renewal application. An appeal of the
department's decision to fine a licensee stays the
48 collection of any fine. Interest must accrue on fines at a
rate described in Title 14, section ~~1602~~ 1602-B prior to the
50 completion of any appeal. After the completion of any
appeal process or after any appeal period has passed,

2 interest must accrue pursuant to Title 14, section 1602-A
3 1602-C.

4 **Sec. 12. 22 MRSA §7946, sub-§2**, as amended by PL 1989, c. 747,
5 §2, is further amended to read:

6
7 **2. Collection of penalties; interest.** Long-term care
8 facilities that are fined pursuant to this chapter are required
9 to pay the department the amount of the penalties. Penalties may
10 be collected by the department by the offset of any reimbursement
11 due the facility, or by any other method authorized by law. An
12 appeal of the department's decision to penalize a long-term care
13 facility stays the collection of any penalties. All penalties
14 are to be assessed for each day that the facility is or was out
15 of compliance and are to be collected with interest accruing at
16 the rate set by Title 14, section 1602-A 1602-C. An appeal of
17 the department's decision to penalize a long-term care facility
18 does not stay the assessment of any penalties or interest as long
19 as the long-term care facility continues to be in violation of
20 any requirement of section 7943.

21 **Emergency clause.** In view of the emergency cited in the
22 preamble, this Act takes effect when approved.'
23

24 25 26 SUMMARY

27 This amendment replaces the bill and makes the bill an
28 emergency to take effect immediately.

29
30 This bill amends the judicial rates of interest to equal the
31 bank prime loan interest rate plus 3% for prejudgment interest
32 and the bank prime loan interest rate plus 6% for post-judgment
33 interest, thus resolving the current uncertainties about the
34 proper methodology for calculating prejudgment and post-judgment
35 interest. In actions involving a contract or note that contains
36 a provision relating to interest, the rate set forth in the
37 contract or note is the interest rate for prejudgment interest.
38 For post-judgment interest, the rate of interest is the rate set
39 forth in the note or the bank prime loan interest rate plus 6%,
40 whichever is greater.

41
42 Although the bank prime loan interest rate is not set by the
43 Federal Reserve, the Board of Governors of the Federal Reserve
44 System does publish the bank prime loan interest rate in weekly
45 releases. The rate as of the first business day of the year is
46 available on-line throughout the year.