

MAINE STATE LEGISLATURE

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L.D. 1132

DATE: 6/12/03

(Filing No. H-571)

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

HOUSE AMENDMENT "B" 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

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

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

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

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

§1502-D. Taxing of costs; hearing

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

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

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

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

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

4 **1. In small claims.** In small claims actions, prejudgment
6 interest is not recoverable unless the rate of interest is based
on a contract or note.

8 **2. On contracts and notes.** In all civil and small claims
10 actions involving a contract or note that contains a provision
relating to interest, prejudgment interest is allowed at the rate
12 set forth in the contract or note.

14 **3. Other civil actions; rate.** In civil actions other than
those set forth in subsections 1 and 2, prejudgment interest is
16 allowed at the one-year United States Treasury bill rate plus 3%.

18 **A.** For purposes of this subsection, "one-year United States
Treasury bill rate" means the weekly average one-year
20 constant maturity Treasury yield, as published by the Board
of Governors of the Federal Reserve System, for the last
22 full week of the calendar year immediately prior to the year
in which prejudgment interest begins to accrue.

24 **B.** If the Board of Governors of the Federal Reserve System
ceases to publish the weekly average one-year constant
26 maturity Treasury yield or it is otherwise unavailable, then
the Supreme Judicial Court shall annually establish by rule
28 a rate that most closely approximates the rate established
in this subsection.

30 **4. Stated rate.** When prejudgment interest is awarded
32 pursuant to subsection 2 or 3, the applicable rate must be stated
in the judgment.

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

2 6. Effect on post-judgment interest. This section does not
3 affect post-judgment interest imposed by section 1602-C.
4 Prejudgment interest may not be added to the judgment amount in
5 determining the sum upon which post-judgment interest accrues.

6
7 7. Rate on accrual of interest prior to July 1, 2003.
8 Notwithstanding subsection 3, for actions in which the interest
9 begins to accrue, as determined pursuant to subsection 5, prior
10 to July 1, 2003, the rate of prejudgment interest on civil
11 actions other than those set forth in subsection 2 is as follows:

12
13 A. If the judgment does not exceed \$30,000, the rate for
14 prejudgment interest is 8%; and

15
16 B. If the judgment exceeds \$30,000, the rate of prejudgment
17 interest is the one-year United States Treasury bill rate,
18 as defined in subsection 3, plus 1%.

19 §1602-C. Interest after judgment

20
21 1. Rate. In all civil and small claims actions,
22 post-judgment interest is allowed at a rate equal to:

23
24 A. In actions involving a contract or note that contains a
25 provision relating to interest, the rate set forth in the
26 contract or note or the rate in paragraph B, whichever is
27 greater; and

28
29 B. In all other actions, the one-year United States
30 Treasury bill rate plus 6%.

31
32 (1) For purposes of this paragraph, "one-year United
33 States Treasury bill rate" means the weekly average
34 one-year constant maturity Treasury yield, as published
35 by the Board of Governors of the Federal Reserve
36 System, for the last full week of the calendar year
37 immediately prior to the year in which post-judgment
38 interest begins to accrue.

39
40 (2) If the Board of Governors of the Federal Reserve
41 System ceases to publish the weekly average one-year
42 constant maturity Treasury yield or it is otherwise
43 unavailable, then the Supreme Judicial Court shall
44 annually establish by rule a rate that most closely
45 approximates the rate established in this paragraph.

46
47 The applicable post-judgment interest rate must be stated in the
48 judgment, except for judgments in small claims actions.

49
50 2. Accrual; suspension; waiver. Post-judgment interest

accrues from and after the date of entry of judgment and includes the period of any appeal. In actions involving a contract or note that contains a provision relating to interest, the rate of interest is fixed as of the date of judgment. If the 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.

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

§7487. Interest

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

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

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

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

(d) Unless otherwise provided in any judgment in another court entered against the personal representative, allowed claims bear prejudgment interest at the rate specified in Title 14, 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 provision for interest, in which case they bear interest in accordance with that provision.

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

(2) To the extent that an allowed claim against an insolvent estate is secured by property, the value of which,

as determined under section 3-809, is greater than the amount of the claim, the holder of the claim may receive interest on the principal amount of the claim and any reasonable fees, costs or charges provided for under an agreement under which the claim arose. This paragraph is effective for estates of decedents who die on or after October 1, 1997.

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

B. Licensees that are fined pursuant to this chapter are required to pay the department the amount of the penalties. If a licensee has not paid any collectible fine by the time of license renewal, the department may collect the fine by requiring payment prior to the processing of any license renewal application. An appeal of the department's decision to fine a licensee stays the collection of the fine. Interest accrues on a fine at the rate specified in Title 14, section 1602 1602-B prior to the completion of any 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.

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

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

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

2. Collection of penalties; interest. Long-term care facilities that are fined pursuant to this chapter are required to pay the department the amount of the penalties. Penalties may be collected by the department by the offset of any reimbursement due the facility, or by any other method authorized by law. An appeal of the department's decision to penalize a long-term care

facility stays the collection of any penalties. All penalties are to be assessed for each day that the facility is or was out of compliance and are to be collected with interest accruing at the rate set by Title 14, section 1602-A 1602-C. An appeal of the department's decision to penalize a long-term care facility does not stay the assessment of any penalties or interest as long as the long-term care facility continues to be in violation of any requirement of section 7943.

Sec. 13. Application. This Act applies to judgments entered on or after July 1, 2003.

Emergency clause. In view of the emergency cited in the preamble, this Act takes effect July 1, 2003.'

SUMMARY

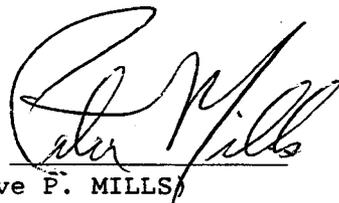
This amendment incorporates Committee Amendment "A," House Amendment "A" and Senate Amendment "B" except that this amendment amends the judicial rates of interest to equal the one-year United States Treasury bill rate for prejudgment interest and post-judgment interest rather than leaving them equal to the bank prime loan interest rate.

This amendment retains the current interest rate for prejudgment interest for complaints filed prior to July 1, 2003, applying the new prejudgment interest rate only to complaints filed after July 1, 2003.

This amendment also adds an application section to the bill, which applies to judgments entered on or after July 1, 2003.

The amendment also provides an effective date of July 1, 2003.

SPONSORED BY:



(Representative P. MILLS)

TOWN: Cornville