

REFERENCE TITLE: attorney fees; costs; recovery

State of Arizona
Senate
Fifty-fifth Legislature
Second Regular Session
2022

SB 1158

Introduced by
Senator Leach

AN ACT

AMENDING SECTIONS 12-341.01 AND 12-348, ARIZONA REVISED STATUTES; RELATING
TO COURT FEES AND COSTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 12-341.01, Arizona Revised Statutes, is amended
3 to read:

4 12-341.01. Recovery of attorney fees; exception

5 A. In any contested action arising out of a contract, express or
6 implied, the court may award the successful party reasonable attorney
7 fees. If a written settlement offer is rejected and the judgment finally
8 obtained is equal to or more favorable to the offeror than an offer made
9 in writing to settle any contested action arising out of a contract, the
10 offeror is deemed to be the successful party from the date of the offer
11 and the court may award the successful party reasonable attorney fees.
12 This section ~~shall~~ DOES not ~~be construed as altering, prohibiting~~ ALTER,
13 PROHIBIT or ~~restricting~~ RESTRICT present or future contracts BETWEEN
14 PRIVATE PARTIES or OTHER statutes that may provide for attorney fees.

15 B. The award of reasonable attorney fees pursuant to this section
16 should be made to mitigate the burden of the expense of litigation to
17 establish a just claim or a just defense. It need not equal or relate to
18 the attorney fees actually paid or contracted, but the award may not
19 exceed the amount paid or agreed to be paid.

20 C. The court and not a jury shall award reasonable attorney fees
21 under this section.

22 D. UNLESS THE ACTION IS GROUNDLESS OR FRIVOLOUS, THIS SECTION DOES
23 NOT APPLY TO EITHER OF THE FOLLOWING:

24 1. AN ACTION IN WHICH A CONTRACT OR A PROVISION IN A CONTRACT IS
25 ALLEGED TO VIOLATE THE CONSTITUTION OF THE UNITED STATES, THE CONSTITUTION
26 OF THIS STATE OR A STATE LAW.

27 2. AN ACTION THAT SEEKS ONLY EQUITABLE RELIEF AGAINST A GOVERNMENT
28 ENTITY.

29 Sec. 2. Section 12-348, Arizona Revised Statutes, is amended to
30 read:

31 12-348. Award of fees and other expenses against the state or
32 a city, town or county; reduction or denial of
33 award; application; basis for amount of award;
34 source of award; definitions

35 A. In addition to any costs that are awarded as prescribed by
36 statute, a court shall award fees and other expenses to any party other
37 than this state or a city, town or county that prevails by an adjudication
38 on the merits in any of the following:

39 1. A civil action brought by this state or a city, town or county
40 against the party.

41 2. A court proceeding to review a state agency decision pursuant to
42 chapter 7, article 6 of this title or any other statute authorizing
43 judicial review of agency, city, town or county decisions.

44 3. A proceeding pursuant to section 41-1034.

1 4. A special action proceeding brought by the party to challenge an
2 action by this state or a city, town or county against the party.

3 5. An appeal by this state to a court of law from a decision of the
4 personnel board under title 41, chapter 4, article 6.

5 6. A civil action brought by the party to challenge the seizure and
6 sale of personal property by this state or a city, town or county.

7 7. A civil action brought by the party to challenge a rule,
8 decision, guideline, enforcement policy or procedure of a state agency or
9 commission that is statutorily exempt from the rulemaking requirements of
10 title 41, chapter 6 on the grounds that the rule, decision, guideline,
11 enforcement policy or procedure is not authorized by statute or violates
12 the Constitution of the United States or this state.

13 8. A CIVIL ACTION BROUGHT BY THE PARTY FOR DECLARATORY OR
14 INJUNCTIVE RELIEF AGAINST THIS STATE OR A CITY, TOWN, COUNTY OR OTHER
15 POLITICAL SUBDIVISION OF THIS STATE FOR AN ACTION THAT VIOLATES THE
16 CONSTITUTION OF THE UNITED STATES, THE CONSTITUTION OF THIS STATE OR A
17 STATE LAW.

18 B. In addition to any costs that are awarded as prescribed by
19 statute, except as provided in subsection C of this section, a court may
20 award fees and other expenses to any party, other than this state or a
21 city, town or county, that prevails by an adjudication on the merits in an
22 action brought by the party against this state or a city, town or county
23 challenging:

24 1. The assessment, collection or refund of taxes or in an action
25 brought by this state or a city, town or county against the party to
26 enforce the assessment or collection of taxes or the denial of a refund.

27 2. The adequacy or regularity of notice of delinquent taxes.

28 3. The regularity of sales of property for delinquent taxes.

29 C. The court in its discretion may deny the award provided for in
30 this section or may reduce the award if it finds that any of the following
31 applies:

32 1. During the course of the proceeding the prevailing party unduly
33 and unreasonably protracted the final resolution of the matter.

34 2. The reason that the party other than this state or a city, town
35 or county has prevailed is an intervening change in the applicable law.

36 3. The prevailing party refused an offer of civil settlement that
37 was at least as favorable to the party as the relief ultimately granted.

38 D. A party may apply pursuant to the applicable procedural rules
39 for an award of attorney fees and other expenses authorized under this
40 section and shall include as part of the application evidence of the
41 party's eligibility for the award and the amount sought, including an
42 itemized statement from the attorneys and experts stating the actual time
43 expended in representing the party and the rate at which the fees were
44 computed.

1 E. The court shall base any award of fees as provided in this
2 section on prevailing market rates for the kind and quality of the
3 services furnished, except that:

4 1. The award of attorney fees may not exceed the amount that the
5 prevailing party has paid or agreed to pay the attorney or a maximum
6 amount of \$350 per hour.

7 2. An award of fees against this state or a city, town or county
8 shall not exceed \$125,000 for fees incurred at each level of judicial
9 appeal.

10 3. For each calendar year beginning from and after December 31,
11 2015, the attorney general shall adjust the income dollar amounts for
12 maximum awards made pursuant to subsection B of this section according to
13 the average annual change in the metropolitan Phoenix consumer price index
14 published by the United States bureau of labor statistics. The revised
15 dollar amounts shall be raised to the nearest whole dollar. The income
16 dollar amounts may not be revised below the amounts prescribed in the
17 prior calendar year.

18 F. The particular state agency over which a party prevails shall
19 pay the fees and expenses awarded as provided in this section from any
20 monies appropriated to the agency for that purpose. If no agency is
21 involved or if an agency fails or refuses to pay fees and other expenses
22 within thirty days after demand by a person who has received an award
23 pursuant to this section, and if no further review or appeals of the award
24 are pending, the person may file a claim for the fees and other expenses
25 with the department of administration, which shall pay the claim within
26 thirty days, in the same manner as an uninsured property loss under title
27 41, chapter 3.1, article 1. If, at the time the agency failed or refused
28 to pay the award, it had appropriated monies either designated or
29 assignable for the purpose of paying awards, the legislature shall reduce
30 the agency's operating appropriation for the following year by the amount
31 of the award and shall appropriate the amount of the reduction to the
32 department of administration as reimbursement for the loss.

33 G. A city, town or county shall pay fees and expenses awarded as
34 provided in this section within thirty days after demand by a party who
35 has received an award if no further review or appeal of the award is
36 pending.

37 H. This section does not:

38 1. Apply to an action arising from a proceeding before this state
39 or a city, town or county in which the role of this state or a city, town
40 or county was to determine the eligibility or entitlement of an individual
41 to a monetary benefit or its equivalent, to adjudicate a dispute or issue
42 between private parties or to establish or fix a rate.

43 2. Apply to proceedings brought by this state pursuant to title 13
44 or 28.

1 3. Entitle a party to obtain fees and other expenses incurred in
2 making an application for an award pursuant to this section for fees and
3 other expenses.

4 4. Apply to proceedings involving eminent domain, foreclosure,
5 collection of judgment debts or proceedings in which this state or a city,
6 town or county is a nominal party.

7 5. Personally obligate any officer or employee of this state or a
8 city, town or county for the payment of an award entered under this
9 section.

10 6. Apply, except as provided in subsection A, paragraph 5 of this
11 section, to proceedings involving the personnel board under title 41,
12 chapter 4, article 6.

13 7. Apply to proceedings brought by a city, town or county pursuant
14 to title 13 or 28.

15 8. Apply to proceedings brought by a city, town or county on
16 collection of taxes or pursuant to traffic ordinances or to criminal
17 proceedings brought by a city, town or county on ordinances that contain a
18 criminal penalty or fine for violations of those ordinances.

19 I. For the purposes of this section:

20 1. "Fees and other expenses" means the reasonable expenses of
21 expert witnesses, the reasonable cost of any study, analysis, engineering
22 report, test or project that the court finds to be directly related to and
23 necessary for the presentation of the party's case and reasonable and
24 necessary attorney fees, and in the case of an action to review an agency
25 decision pursuant to subsection A, paragraph 2 of this section, all fees
26 and other expenses that are incurred in the proceedings in which the
27 decision was rendered.

28 2. "Party" means an individual, partnership, corporation, limited
29 liability company, limited liability partnership, association or public or
30 private organization.

31 3. "State" means this state and any agency, officer, department,
32 board or commission of this state.

33 4. "Taxes" includes all taxes and related levies and assessments
34 addressed in section 12-163.