

REFERENCE TITLE: **unjustified action; political action; costs**

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

SB 1541

Introduced by
Senator Leach

AN ACT

AMENDING SECTION 12-349, ARIZONA REVISED STATUTES; RELATING TO THE RECOVERY OF COSTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 12-349, Arizona Revised Statutes, is amended to
3 read:

4 12-349. Unjustified actions; attorney fees, expenses and
5 double damages; exceptions; definitions

6 A. Except as otherwise provided by and not inconsistent with
7 another statute, in any civil action commenced or appealed in a court of
8 record in this state, the court shall assess reasonable attorney fees,
9 expenses and, at the court's discretion, double damages of not to exceed
10 ~~five thousand dollars~~ \$5,000 against an attorney or party, including this
11 state and political subdivisions of this state, if the attorney or party
12 does any of the following:

13 1. Brings or defends a claim without substantial
14 justification. SPEECH OR CONDUCT THAT IS PROTECTED BY THE CONSTITUTIONS
15 OF THIS STATE AND THE UNITED STATES MAY NOT BE USED TO INFER THAT A CLAIM
16 OR DEFENSE IS NOT MADE IN GOOD FAITH.

17 2. Brings or defends a claim solely or primarily for delay or
18 harassment.

19 3. Unreasonably expands or delays the proceeding.

20 4. Engages in abuse of discovery.

21 B. The court may allocate the payment of attorney fees among the
22 offending attorneys and parties, jointly or severally, and may assess
23 separate amounts against an offending attorney or party.

24 C. Attorney fees shall not be assessed if after filing an action a
25 voluntary dismissal is filed for any claim or defense within a reasonable
26 time after the attorney or party filing the dismissal knew or reasonably
27 should have known that the claim or defense was without substantial
28 justification.

29 D. IN A POLITICAL ACTION, A MOTION FOR ATTORNEY FEES, EXPENSES OR
30 DAMAGES THAT IS FILED PURSUANT TO THIS SECTION IN THE SUPERIOR COURT MUST
31 BE HEARD AND DETERMINED BY A JUDGE WHO IS NOT DECIDING THE MERITS OF THE
32 UNDERLYING ACTION. EACH ELEMENT THAT IS REQUIRED PURSUANT TO SUBSECTION A
33 OF THIS SECTION MUST BE PROVED BY CLEAR AND CONVINCING EVIDENCE. IF THE
34 MOTION IS DENIED, THE MOVING PARTY OR THE ATTORNEY SHALL PAY THE FEES,
35 EXPENSES AND DAMAGES INCURRED BY THE PREVAILING PARTY AND ATTORNEY IN
36 DEFENDING THE MOTION. IF A MOTION IS GRANTED AND APPEALED, ALL UNDERLYING
37 FINDINGS SHALL BE REVIEWED DE NOVO.

38 ~~D.~~ E. This section does not apply to the adjudication of civil
39 traffic violations or to any proceedings brought by this state pursuant to
40 title 13.

41 ~~E.~~ F. Notwithstanding any other law, this state and political
42 subdivisions of this state may be awarded attorney fees pursuant to this
43 section.

1 ~~F.~~ G. For the purposes of this section: ~~;~~

2 1. "POLITICAL ACTION" MEANS A CLAIM OR DEFENSE THAT INVOLVES BALLOT
3 ACCESS, A POLITICAL CAMPAIGN, AN ELECTION, LEGISLATIVE PROCEEDINGS OR AN
4 ALLEGED VIOLATION OF THE CONSTITUTION OF THIS STATE OR THE UNITED STATES.

5 2. "Without substantial justification" means that the claim or
6 defense is groundless and is not made in good faith.

7 Sec. 2. Legislative Intent

8 The Legislature finds:

9 1. Parties have a substantive right to litigate good faith
10 disagreements that concern political and constitutional issues.

11 2. Threats of fee shifting and sanctions chill meritorious claims,
12 particularly by disadvantaged populations or poorly funded causes, even if
13 fee shifting is unjustified under the law.

14 3. If decided by a politically motivated judge, a motion for
15 sanctions is acutely prejudicial to the administration of justice and
16 diminishes confidence in the political and legal systems.

17 4. Procedural safeguards against abusive motions or orders for fee
18 shifting are necessary to ensure equal access to justice and confidence in
19 the integrity of the political and legal systems.

20 Sec. 3. Severability

21 If a provision of this act or its application to any person or
22 circumstance is held invalid, the invalidity does not affect other
23 provisions or applications of this act that can be given effect without
24 the invalid provision or application, and to this end the provisions of
25 this act are severable.