

REFERENCE TITLE: cost recovery; contingency fee case

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

SB 1556

Introduced by
Senator Leach

AN ACT

AMENDING TITLE 12, CHAPTER 3, ARTICLE 5, ARIZONA REVISED STATUTES, BY
ADDING SECTION 12-341.03; RELATING TO 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. Title 12, chapter 3, article 5, Arizona Revised
3 Statutes, is amended by adding section 12-341.03, to read:

4 12-341.03. Contingency fee lawsuit; defendant's recovery of
5 costs; definitions

6 A. IN AN ACTION THAT INVOLVES A TORT CLAIM OR CONTRACT, A
7 PREVAILING DEFENDANT IS ENTITLED TO RECOVER A PERCENTAGE OF THE
8 DEFENDANT'S COSTS FROM THE PLAINTIFF'S ATTORNEY THAT IS COMMENSURATE WITH
9 THE CONTINGENCY PERCENTAGE, IF ANY, THAT THE PLAINTIFF'S ATTORNEY WOULD
10 HAVE RECEIVED HAD THE PLAINTIFF PREVAILED.

11 B. TO BE ELIGIBLE TO RECEIVE REIMBURSEMENT FROM THE PLAINTIFF'S
12 ATTORNEY, THE DEFENDANT MUST NOTIFY THE PLAINTIFF'S ATTORNEY IN THE
13 DEFENDANT'S INITIAL RESPONSE TO THE PLAINTIFF'S COMPLAINT OF THE
14 DEFENDANT'S INTENTION TO REQUEST PREVAILMENT PERCENTAGE COSTS PURSUANT TO
15 THIS SECTION. IF THE DEFENDANT PREVAILS, THE PREVAILING DEFENDANT IS
16 ENTITLED TO REIMBURSEMENT FROM THE PLAINTIFF'S ATTORNEY FOR THE PREVAILING
17 DEFENDANT'S COSTS MULTIPLIED BY THE DEFENDANT'S PREVAILMENT PERCENTAGE
18 MULTIPLIED BY THE ATTORNEY'S CONTINGENCY PERCENTAGE. THE COURT MAY NOT
19 AWARD AN AMOUNT THAT EXCEEDS THE PLAINTIFF'S CLAIM LIMIT, EXCEPT THAT THIS
20 LIMITATION DOES NOT APPLY IF THE PLAINTIFF'S CLAIM LIMIT DOES NOT EXIST.

21 C. THE PLAINTIFF'S ATTORNEY MUST PROVIDE THE COURT WITH
22 DOCUMENTATION OF THE ATTORNEY'S FEE ARRANGEMENT WITHIN SIXTY DAYS AFTER
23 THE LAWSUIT IS DISPOSED OF. IF THE PLAINTIFF'S ATTORNEY DOES NOT PROVIDE
24 THIS DOCUMENTATION WITHIN SIXTY DAYS, THE COURT, NOTWITHSTANDING
25 SUBSECTION F, PARAGRAPH 1 OF THIS SECTION, SHALL DEEM THE CONTINGENCY
26 PERCENTAGE TO BE AT LEAST FORTY PERCENT.

27 D. EXCEPT AS PROVIDED IN SUBSECTION E OF THIS SECTION, THE
28 PLAINTIFF AND THE PLAINTIFF'S ATTORNEY ARE NOT ELIGIBLE TO RECEIVE
29 ATTORNEY FEES FOR ANY FEES THAT ARE DETERMINED TO BE CONTINGENT ON THE
30 OUTCOME OF THE CASE.

31 E. IF THE DEFENDANT MAKES A COUNTERCLAIM IN THE LAWSUIT, THE
32 DEFENDANT'S ATTORNEY IS SUBJECT TO THE SAME REQUIREMENTS IN THIS SECTION
33 AS IF THE COUNTERCLAIM IS AN INDEPENDENT CLAIM WITH A COUNTER-DEFENDANT
34 OFFER TO THE PLAINTIFF'S CLAIM LIMIT.

35 F. THIS SECTION DOES NOT APPLY:

36 1. TO AN ATTORNEY WHO IS SOLELY CHARGING AN HOURLY RATE, A
37 NONWAIVABLE FLAT FEE OR PASS-THROUGH NONCONTINGENT EXPENSES.

38 2. IF THE REQUIREMENTS OF THIS SECTION CONFLICT WITH A CLAUSE IN AN
39 ENFORCEABLE CONTRACT BETWEEN THE PLAINTIFF AND THE DEFENDANT.

40 G. FOR THE PURPOSES OF THIS SECTION:

41 1. "CONTINGENCY PERCENTAGE" MEANS THE AMOUNT THAT, HAD THE
42 PLAINTIFF PREVAILED, WOULD BE DUE TO THE PLAINTIFF'S ATTORNEY AND THAT
43 WOULD BE BASED ON ANY OF THE FOLLOWING:

44 (a) THE STATED PERCENTAGE THAT IS DUE TO THE ATTORNEY FOR A
45 JUDGMENT, VERDICT OR SETTLEMENT.

1 (b) THE EFFECTIVE PERCENTAGE THAT IS CALCULATED BASED ON A
2 CONTINGENT FEE THAT IS DUE TO THE ATTORNEY AND THAT IS DIVIDED BY THE
3 JUDGMENT, VERDICT OR SETTLEMENT AMOUNT THAT IS REQUIRED TO TRIGGER THE
4 FEE.

5 (c) AN EFFECTIVE PERCENTAGE THAT IS CALCULATED BASED ON ANY FEES
6 THAT ARE EXPECTED TO BE WAIVABLE BASED ON THE OUTCOME OF THE LAWSUIT.

7 2. "DECISION AMOUNT" MEANS THE TOTAL AWARD THAT IS MADE TO THE
8 PLAINTIFF BY A COURT OR ARBITER.

9 3. "DEFENDANT'S COSTS" INCLUDES REASONABLE ATTORNEY FEES, COURT
10 COSTS AND THIRD-PARTY DEFENSE EXPENSES.

11 4. "DEFENDANT'S OFFER" MEANS EITHER:

12 (a) THE AMOUNT THAT IS OFFERED BY THE DEFENDANT TO END THE LAWSUIT
13 BEFORE THE COURT MAKES A DETERMINATION THAT ENDS THE LAWSUIT.

14 (b) ZERO IF THE DEFENDANT DOES NOT MAKE AN OFFER.

15 5. "MIDPOINT AMOUNT" MEANS:

16 (a) IF A PLAINTIFF'S CLAIM LIMIT EXISTS, THE AVERAGE OF THE
17 PLAINTIFF'S CLAIM LIMIT AND THE DEFENDANT'S OFFER.

18 (b) IF A PLAINTIFF'S CLAIM LIMIT DOES NOT EXIST AND THE DEFENDANT'S
19 OFFER IS GREATER THAN \$5,000, AN AMOUNT THAT IS THREE TIMES THE
20 DEFENDANT'S OFFER.

21 (c) IF SUBDIVISION (a) OR (b) OF THIS PARAGRAPH DOES NOT APPLY,
22 \$15,000.

23 6. "PLAINTIFF'S CLAIM LIMIT" MEANS THE TOTAL MONETARY DEMAND AMOUNT
24 THAT IS STATED IN THE PLAINTIFF'S COMPLAINT, EXCEPT THAT:

25 (a) IF THE PLAINTIFF AMENDS THE MONETARY DEMAND IN THE COMPLAINT,
26 THE PLAINTIFF'S CLAIM LIMIT IS THE HIGHEST TOTAL MONETARY CLAIM THAT WAS
27 LISTED IN ANY COMPLAINT.

28 (b) IF THE MAXIMUM CLAIM AMOUNT IS LIMITED BY STATUTE, THE
29 PLAINTIFF'S CLAIM LIMIT IS THE STATUTORY LIMIT.

30 (c) IF THERE IS NO STATUTORY LIMIT AND THE PLAINTIFF DOES NOT
31 PROVIDE THE COURT WITH A MONETARY CLAIM AMOUNT WITHIN SIXTY DAYS AFTER
32 FILING THE INITIAL COMPLAINT, THE PLAINTIFF'S CLAIM LIMIT DOES NOT EXIST.

33 7. "PREVAILMENT PERCENTAGE" MEANS AN AMOUNT THAT IS NOT LESS THAN
34 ZERO PERCENT OR MORE THAN ONE HUNDRED PERCENT AND TO WHICH BOTH OF THE
35 FOLLOWING APPLY:

36 (a) IF THE DECISION AMOUNT IS MORE THAN THE MIDPOINT AMOUNT, ZERO
37 PERCENT.

38 (b) IF THE DECISION AMOUNT IS LESS THAN THE MIDPOINT AMOUNT, THE
39 PERCENTAGE AMOUNT THAT IS CALCULATED BY DIVIDING THE NUMERATOR BY THE
40 DIVISOR. FOR THE PURPOSES OF THIS SUBDIVISION:

41 (i) "DIVISOR" MEANS THE DEFENDANT'S OFFER IS SUBTRACTED FROM THE
42 MIDPOINT AMOUNT.

43 (ii) "NUMERATOR" MEANS THE DECISION AMOUNT IS SUBTRACTED FROM THE
44 MIDPOINT AMOUNT.