

LEGISLATIVE BILL 192

Approved by the Governor February 19, 1982

Introduced by R. Maresh, 32; Remmers, 1; Vickers, 38

AN ACT relating to civil procedure; to provide for the award of attorney and expert witness fees in certain civil proceedings; to provide duties; to provide exceptions; and to provide severability.

Be it enacted by the people of the State of Nebraska,

Section 1. As used in this act, unless the context otherwise requires:

(1) Fees and other expenses shall mean reasonable attorney fees and the reasonable expense of expert witnesses plus court costs, but shall not include any portion of an attorney's fee or salary paid by a unit of local, state, or federal government in the case.

(2) State shall mean the State of Nebraska, a state agency as defined in section 60-1009, or any official of the state acting in his or her official capacity.

Sec. 2. (1) Unless otherwise provided by law, the court having jurisdiction over a civil action brought by the state or an action for judicial review brought against the state pursuant to sections 84-917 to 84-919 shall award fees and other expenses to the prevailing party unless the prevailing party is the state, except that the court shall not award fees and expenses if it finds that the position of the state was substantially justified.

(2) The court, in its discretion, may reduce the amount to be awarded pursuant to this section, or deny an award, to the extent that the prevailing party, during the course of the proceedings engaged in conduct which unduly and unreasonably protracted the final resolution of the matter in controversy or when an overriding public interest exists which would make an award unjust.

Sec. 3. (1) A party seeking an award for fees and other expenses pursuant to this act shall, not later than thirty days after final judgment is made in the action, submit to the court an application which provides evidence of eligibility for an award pursuant to this act and which specifies the amount sought. If the amount sought includes an attorney's fee or the fee for an expert witness, the application shall include an itemized

statement for each such fee indicating the actual time expended in service to the applicant and the rate at which the fees were computed.

(2) Notwithstanding any other provision of this act, fees and other expenses shall be awarded as provided in this act only to those prevailing parties who are:

(a) Natural persons; or

(b) A sole proprietorship, partnership, corporation, association, or public or private organization:

(i) That had an average daily employment of fifty persons or less for the twelve months preceding the filing of such action; and

(ii) Whose gross receipts for the twelve-month period preceding the filing of the action was two million dollars or less or whose average gross receipts for the three twelve-month periods preceding the filing of such appeal pursuant to Chapter 84, article 9, was two million dollars or less, whichever amount is greater.

Sec. 4. Fees and expenses awarded pursuant to this act may be ordered in addition to any compensation awarded in a judgment.

Sec. 5. Fees and expenses awarded by a federal court or pursuant to sections 1 to 4 of this act shall be paid from available funds in the State Civil Action Expense Fund, which is hereby created. Claims for payment from this fund shall be filed, in writing by the agency, with the State Claims Board. The board shall report each such claim to the chairperson of the appropriate committee of the Legislature at the next regular session of the Legislature convening after the filing of the claim. Such committee shall investigate each such claim and make a recommendation on the claim to the Committee on Appropriations of the Legislature. Funding for such claims shall be appropriated to the State Civil Action Expense Fund in a separate budget program through a single appropriations bill which specifies the amount awarded to each eligible claimant. Such appropriation shall be made from the General Fund or from any other fund, not otherwise appropriated, specified by the Legislature, except that payment for fees and awards in cases where the court has found that an agency has acted in bad faith in initiating an action deemed by the court to be frivolous or without merit shall be made by the agency involved to the extent such funds are not otherwise appropriated, as specified by the

Legislature.

Sec. 6. This act shall apply only to legal and administrative proceedings initiated after the effective date of this act.

Sec. 7. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.