

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 209

BY WAYS AND MEANS COMMITTEE

AN ACT

RELATING TO ATTORNEY'S FEES, WITNESS FEES AND EXPENSES AWARDED IN CERTAIN INSTANCES; AMENDING SECTION 12-117, IDAHO CODE, TO REVISE WHEN ATTORNEY'S FEES, WITNESS FEES AND EXPENSES MAY BE AWARDED, TO REVISE DEFINITIONS AND TO MAKE A TECHNICAL CORRECTION; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 12-117, Idaho Code, be, and the same is hereby amended to read as follows:

12-117. ATTORNEY'S FEES, WITNESS FEES AND EXPENSES AWARDED IN CERTAIN INSTANCES. (1) Unless otherwise provided by statute, in any administrative proceeding, administrative judicial proceeding, petition for judicial review or civil judicial proceeding, or an appeal thereof, involving as adverse parties a state agency or a political subdivision and a person, the state agency, ~~or~~ political subdivision or the court, as the case may be, shall award the prevailing party reasonable attorney's fees, witness fees and other reasonable expenses, if it finds that the nonprevailing party acted without a reasonable basis in fact or law, provided however, this subsection and subsection (2) shall not apply to allow an award of attorney's fees, witness fees or other expenses to a state agency or political subdivision in a matter which seeks: (i) to affect a professional license or an application pertaining to a professional license; or (ii) to impose civil fines or penalties.

(2) If a party to an administrative proceeding, to an administrative judicial proceeding, to a petition for judicial review or to a civil judicial proceeding, or an appeal thereof, prevails on a portion of the case, and the state agency or political subdivision or the court, as the case may be, finds that the nonprevailing party acted without a reasonable basis in fact or law with respect to that portion of the case, it shall award the partially prevailing party reasonable attorney's fees, witness fees and other reasonable expenses with respect to that portion of the case on which it prevailed.

(3) Expenses awarded against a state agency or political subdivision pursuant to this section shall be paid from funds in the regular operating budget of the state agency or political subdivision. If sufficient funds are not available in the budget of the state agency, the expenses shall be considered a claim governed by the provisions of section 67-2018, Idaho Code. If sufficient funds are not available in the budget of the political subdivision, the expenses shall be considered a claim pursuant to chapter 9, title 6, Idaho Code. Every state agency or political subdivision against which litigation expenses have been awarded under this act shall, at the time of submission of its proposed budget, submit a report to the governmental body which appropriates its funds in which the amount of expenses awarded and paid under this act during the fiscal year is stated.

1       (4) ~~For the purposes of this section:~~ In any civil judicial proceeding  
 2 involving as adverse parties a governmental entity and another governmen-  
 3 tal entity, the court shall award the prevailing party reasonable attorney's  
 4 fees, witness fees and other reasonable expenses. For purposes of this sub-  
 5 section, the term "governmental entity" means any state agency or political  
 6 subdivision.

7       (5) For purposes of this section:

8       (a) "Person" ~~shall~~ means any individual, partnership, limited liabil-  
 9 ity partnership, corporation, limited liability company, association  
 10 or any other private organization;

11       (b) "Political subdivision" ~~shall~~ means a city, a county, ~~or~~ any taxing  
 12 district ~~or a health district~~;

13       (c) "State agency" ~~shall~~ means any agency as defined in section  
 14 67-5201, Idaho Code.

15       (56) If the amount pleaded in an action by a person is ~~two~~ twenty-five  
 16 thousand ~~five hundred~~ dollars (\$~~2,500~~25,000) or less, the person must sat-  
 17 isfy the requirements of section 12-120, Idaho Code, as well as the require-  
 18 ments of this section before he or she may recover attorney's fees, witness  
 19 fees or expenses pursuant to this section.

20       SECTION 2. An emergency existing therefor, which emergency is hereby  
 21 declared to exist, this act shall be in full force and effect on and after its  
 22 passage and approval.