

1977

Authorizing the Recovery of Expenses and Damages by Defendants who Prevail in Court Actions Brought Against Them by Public Entities, and Providing for Attorney's Fees in Certain Other Actions

Colorado General Assembly

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CHAPTER 189

COURTS AND COURT PROCEDURE

ATTORNEY FEES

HOUSE BILL NO. 1210. BY REPRESENTATIVES Hilsmeier, Hefley, Durham, DeHerrera, Dodge, Jones, Massari, Neale, Barnhill, Bledsoe, Burford, Cantrell, DeMoulin, DeNier, Kramer, Lloyd, McElderry, Schaefer, Showalter, Spano, Swalm, Tancred, Winkler, Yost, and Zakheim; also SENATORS Woodard, Alfhouse, Anderson, L. Fowler, Hughes, McCormick, Noble, Schieffelin, and Wham.

AN ACT

AUTHORIZING THE RECOVERY OF EXPENSES AND DAMAGES BY DEFENDANTS WHO PREVAIL IN COURT ACTIONS BROUGHT AGAINST THEM BY PUBLIC ENTITIES, AND PROVIDING FOR ATTORNEY'S FEES IN CERTAIN OTHER ACTIONS.

Be it enacted by the General Assembly of the State of Colorado:

Section 1. Article 16 of title 13, Colorado Revised Statutes 1973, is amended BY THE ADDITION OF A NEW SECTION to read:

13-16-121. Costs allowed to defendants who prevail against public entities. The defendant in any civil action brought in any court of this state by a public entity, as defined in section 24-10-103 (5), C.R.S. 1973, provided that the defendant is not itself a public entity, shall be entitled to recover against a public entity all court costs, all witness fees, and reasonable attorney fees as determined by the court if the court determines that said action was brought without reasonable basis or is frivolous. The provisions of this section shall not apply to traffic offenses, matters brought under the provisions of the "Colorado Children's Code" or related juvenile matters, or matters involving violations of municipal ordinances.

Section 2. Title 13, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 17

Attorney Fees

13-17-101. Attorney fees. (1) Subject to the provisions of subsections (2) and (3) of this section, in any suit involving money damages in any court of this state, the court shall award, except as this article otherwise provides, as part of its judgment and in addition to any costs otherwise assessed, reasonable attorney fees.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(2) When the court determines that a person is entitled to reasonable attorney fees under subsection (1) of this section, it shall allocate the payment thereof among the parties as it deems most just and may charge such amount or portion thereof to any party whether or not there was a money judgment rendered against such party.

(3) The court shall not award attorney fees among the parties unless it finds that the bringing, maintaining, or defense of the action against the party entitled to such award was frivolous or groundless. The court must make findings either affirmative or negative as to the matters set forth in this subsection (3).

(4) A party shall also not be charged any attorney fees under subsection (1) of this section if, after exercising reasonable and diligent efforts after filing of suit, such party files a voluntary dismissal concerning the person who may have been entitled to attorney fees within a reasonable time after determining the person would not be found to be liable for damages.

13-17-102. Procedure for determining reasonable fee — judicial discretion. (1) The determination of whether or not a person is entitled to receive reasonable attorney fees and the amount which constitutes a reasonable award of an attorney fee in a given case shall be made by the court which has granted the dismissal of a party or has entered the judgment, decree, or order disposing of the action at the time of such entry or at a subsequent time fixed by the court. The court may exercise its discretion in determining whether attorney fees are to be awarded and as to the amount thereof so that manifest injustice may be avoided. When such discretion is exercised, the reasons therefor shall be specifically stated in the judgment or order of court. The following factors among others shall be taken into consideration in making such determinations:

(a) In the case of parties claiming adversely to a person entitled to attorney fees under section 13-17-101 (1), the extent of any efforts made to determine the truth of such adverse claim before making such claim or during pretrial proceedings or both;

(b) The extent to which a party has made available facts to indicate his nonliability for any money damages;

(c) The financial conditions of the parties;

(d) That a particular party has prosecuted or defended the case in bad faith or abused the procedures set forth in the Colorado rules of civil procedure;

(e) Whether there were issues of fact determinative of such person's liability concerning which evidence was in conflict.

13-17-103. Fees on appeal. If on appeal, the appellate court determines that a party is entitled to reasonable attorney fees for any stage of proceedings prior to appellate proceedings, then, whether or not the amount of any such fees awarded is modified on appeal, that party shall also be entitled to reasonable attorney fees for the appellate proceedings. If the case is remanded for further proceedings, an award of attorney fees shall be made to any person so entitled under section 13-17-101 (1) upon a final determination by the court to which remanded.

13-17-104. Fee arrangements between attorney and client. The attorney and his client shall remain free to negotiate in private the actual fee which the client is to pay his attorney.

13-17-105. Stipulation as to fees. Parties to an action may agree, by written stipulation filed with the court or by oral stipulation in open court, to an award or no award of attorney fees in a manner different from that provided in this article.

13-17-106. Applicability. This article shall apply in all cases covered by this article unless attorney fees are otherwise specifically provided by statute, in which case the provision allowing the greater award to a dismissed or monetarily nonliable party shall prevail.

Section 3. Effective date — applicability. This act shall take effect July 1, 1977, and shall apply to proceedings commenced on or after said date.

Section 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 29, 1977