

By Mr. Karol of Attleboro, petition of Stephen J. Karol, Joan M. Menard, Robert A. Antonioni and another for legislation to regulate the awarding of fees and other expenses relative to small businesses in judicial proceedings. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Two.

AN ACT RELATIVE TO SMALL BUSINESSES REGARDING THE AWARDING OF FEES AND OTHER EXPENSES IN JUDICIAL PROCEEDINGS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Section 14 of chapter 30A of the General Laws, as appearing
2 in the 1990 Official Edition, is hereby amended by adding at the
3 end thereof the following paragraph: —

4 (8) The court may award to the prevailing party a judgment
5 for costs incurred in appealing the decision of the agency, if the
6 court finds that —

7 (a) the position of the commonwealth was not substantially
8 justified; or,

9 (b) the agency acted in bad faith.

10 The court may not award costs under this section in an amount
11 greater than required to reimburse the prevailing party for the
12 costs incurred by said party with respect to the action. In addition
13 to costs awarded under this section the court may award fees and
14 other expenses to the prevailing party other than the common-
15 wealth or its agencies. The agency against which such an award
16 is ordered shall be liable to the same extent that a private party
17 would be liable under the law.

18 The court is not required to make an award under this section
19 if it finds that special circumstances exist which make such an
20 award unjust.

21 A party seeking an award for fees and other expenses under
22 this section shall, not later than thirty days after final judgment,

23 submit to the court an application which provides evidence of
24 eligibility for an award under this section and specifies the amount
25 sought. If the amount sought includes an attorneys' fee or fees
26 for an expert, the application must include an itemized statement
27 for such fees indicating the actual time expended in representing
28 the party and the rate at which the fees were computed.

29 The agency over which the party in question prevails shall pay
30 the fees and other expenses awarded under this section from the
31 moneys appropriated to that agency. Each agency that pays fees
32 or other expenses awarded under this section shall report annually
33 to the house and senate committees on ways and means the
34 amount of fees and other expenses paid during the preceding fiscal
35 year by that agency. In its report, the agency shall describe the
36 number, nature and amount of the awards, the claims involved
37 in the controversy, and any other relevant information which
38 might aid in evaluating the scope and impact of the awards.

39 For the purposes of this section, the term "party" shall mean
40 an individual, partnership, corporation, association, or public or
41 private organization other than an agency, but shall not include —

42 (1) a sole proprietorship, partnership, or corporation which is
43 not in compliance with the standards for small businesses as
44 defined in chapter four hundred and thirty-four of the acts of
45 nineteen hundred and seventy-six; or

46 (2) an association or organization whose net worth exceeded
47 five million dollars at the time the action was commenced.