

By Mr. Buglione of Methuen, petition of Nicholas J. Buglione, Sharon M. Pollard and another relative to the awarding of fees and other expenses in judicial proceedings to small businesses. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-One.

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 is hereby amend-
2 ed by adding the following paragraphs:

3 The court may award to the prevailing party a judgement for
4 costs incurred in appealing the decision of the agency, if the court
5 finds that:

6 a. the position of the commonwealth was not substantially justi-
7 fied; or

8 b. the agency acted in bad faith.

9 The court may not award costs under this section in an amount
10 greater than required to reimburse the prevailing party for the costs
11 incurred by the prevailing party with respect to the action.

12 In addition to costs which are awarded under this section, the
13 court may award fees and other expenses to the prevailing party
14 other than the commonwealth or its agencies, and the state agency
15 against which such an award is ordered is liable to the same extent
16 that a private party would be liable under the law.

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

20 A party seeking an award for fees and other expenses under this
21 section shall, not later than thirty days after final judgement is
22 made in the action, submit to the court an application which

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

29 When awarding fees and other expenses under this section to a
30 prevailing party, the court shall include in the award the fees and
31 other expenses for services performed during any administrative
32 proceeding which constituted the cause of action under this sec-
33 tion, unless the court finds that:

- 34 1. during the proceeding the position of the agency was substan-
35 tially justified; or
- 36 2. special circumstances exist which would make an award un-
37 just.

38 The agency over which the party in question prevails shall pay
39 the fees and other expenses awarded under this section from the
40 moneys appropriated thereof to that agency.

41 Each agency that pays fees or other expenses awarded under this
42 section shall report annually to the General Court the amount of
43 fees and other expenses paid during the preceding fiscal year by
44 that agency. In its report, the agency shall describe the number,
45 nature and amount of the awards, the claims involved in the
46 controversy, and any other relevant information which might aid
47 the General Court in evaluating the scope and impact of the
48 awards.

49 For purposes of this section, "party" means a party which is an
50 individual, partnership, corporation, association, or public or pri-
51 vate organization other than an agency, but excludes:

- 52 1. any individual whose net worth exceeded one million dollars
53 at the time the action was commenced;
- 54 2. any sole proprietorship, partnership or corporation which is
55 not in compliance with the standards for small businesses as de-
56 fined in chapter four hundred and thirty-four of the acts of nine-
57 teen hundred and seventy-six; or
- 58 3. any association or organization whose net work exceeded five
59 million dollars at the time the action was commenced.