

State of Arizona  
House of Representatives  
Fiftieth Legislature  
Second Regular Session  
2012

House Engrossed  
**FILED**  
**KEN BENNETT**  
**SECRETARY OF STATE**

CHAPTER 305

# HOUSE BILL 2544

AN ACT

AMENDING SECTIONS 12-341.01, 12-349 AND 39-121.02, ARIZONA REVISED STATUTES;  
RELATING TO ATTORNEY FEES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 12-341.01, Arizona Revised Statutes, is amended to  
3 read:

4 12-341.01. Recovery of attorney fees

5 A. In any contested action arising out of a contract, express or  
6 implied, the court may award the successful party reasonable attorney fees.  
7 If a written settlement offer is rejected and the judgment finally obtained  
8 is equal to or more favorable to the offeror than an offer made in writing to  
9 settle any contested action arising out of a contract, the offeror is deemed  
10 to be the successful party from the date of the offer and the court may award  
11 the successful party reasonable attorney fees. This section shall ~~in no~~  
12 ~~manner~~ NOT be construed as altering, prohibiting or restricting present or  
13 future contracts or statutes that may provide for attorney fees.

14 B. The award of reasonable attorney fees pursuant to ~~subsection A~~ THIS  
15 SECTION should be made to mitigate the burden of the expense of litigation to  
16 establish a just claim or a just defense. It need not equal or relate to the  
17 attorney fees actually paid or contracted, but the award may not exceed the  
18 amount paid or agreed to be paid.

19 ~~C. The court shall award reasonable attorney fees in any contested~~  
20 ~~action upon clear and convincing evidence that the claim or defense~~  
21 ~~constitutes harassment, is groundless and is not made in good faith. In~~  
22 ~~making the award, the court may consider any evidence it deems appropriate~~  
23 ~~and shall receive this evidence during a trial on the merits of the cause, or~~  
24 ~~separately, regarding the amount of fees it deems in the best interest of the~~  
25 ~~litigating parties.~~

26 ~~D.~~ C. The court and not a jury shall award reasonable attorney fees  
27 under this section.

28 Sec. 2. Section 12-349, Arizona Revised Statutes, is amended to read:

29 12-349. Unjustified actions; attorney fees, expenses and double  
30 damages; exceptions; definition

31 A. Except as otherwise provided by and not inconsistent with another  
32 statute, in any civil action commenced or appealed in a court of record in  
33 this state, the court shall assess reasonable attorney fees, expenses and, at  
34 the court's discretion, double damages of not to exceed five thousand dollars  
35 against an attorney or party, including this state and political subdivisions  
36 of this state, if the attorney or party does any of the following:

37 1. Brings or defends a claim without substantial justification.  
38 2. Brings or defends a claim solely or primarily for delay or  
39 harassment.

40 3. Unreasonably expands or delays the proceeding.

41 4. Engages in abuse of discovery.

42 B. The court may allocate the payment of attorney fees among the  
43 offending attorneys and parties, jointly or severally, and may assess  
44 separate amounts against an offending attorney or party.

1 C. Attorney fees shall not be assessed if after filing an action a  
2 voluntary dismissal is filed for any claim or defense within a reasonable  
3 time after the attorney or party filing the dismissal knew or reasonably  
4 should have known that the claim or defense was without substantial  
5 justification.

6 D. This section does not apply to the adjudication of civil traffic  
7 violations or to any proceedings brought by this state pursuant to title 13.

8 E. Notwithstanding any other law, this state and political  
9 subdivisions of this state may be awarded attorney fees pursuant to this  
10 section.

11 F. ~~IN~~ FOR THE PURPOSES OF this section, "without substantial  
12 justification" means that the claim or defense ~~constitutes harassment,~~ is  
13 groundless and is not made in good faith.

14 Sec. 3. Section 39-121.02, Arizona Revised Statutes, is amended to  
15 read:

16 39-121.02. Action on denial of access; costs and attorney fees;  
17 damages

18 A. Any person who has requested to examine or copy public records  
19 pursuant to this article, and who has been denied access to or the right to  
20 copy such records, may appeal the denial through a special action in the  
21 superior court, pursuant to the rules of procedure for special actions  
22 against the officer or public body.

23 B. The court may award attorney fees and other legal costs that are  
24 reasonably incurred in any action under this article if the person seeking  
25 public records has substantially prevailed. Nothing in this ~~paragraph~~  
26 SUBSECTION shall limit the rights of any party to recover ~~attorney fees~~  
27 ~~pursuant to section 12-341.01, subsection C,~~ or attorney fees, expenses and  
28 double damages pursuant to section 12-349.

29 C. Any person who is wrongfully denied access to public records  
30 pursuant to this article has a cause of action against the officer or public  
31 body for any damages resulting from the denial.

32 Sec. 4. Effective date

33 This act is effective from and after December 31, 2012.

APPROVED BY THE GOVERNOR MAY 7, 2012.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 8, 2012.

Passed the House February 29, 20 12

Passed the Senate April 19, 20 12

by the following vote: 54 Ayes,

by the following vote: 29 Ayes,

0 Nays, 5 Not Voting  
1 vacant

0 Nays, 1 Not Voting

[Signature]  
Speaker of the House

[Signature]  
President of the Senate

[Signature]  
Chief Clerk of the House

[Signature]  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill received by the Governor this

30<sup>th</sup> day of April, 20 12

at 4:30 o'clock P M.

[Signature]  
Secretary to the Governor

Approved this 7<sup>th</sup> day of

May

at 4:35 o'clock P. M.

[Signature]  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 8<sup>th</sup> day of May, 20 12

at 9:25 o'clock a M.

[Signature]  
Secretary of State

H.B. 2544