

IN THE SENATE

SENATE BILL NO. 1071

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

1 RELATING TO FEES AND EXPENSES; AMENDING SECTION 12-117, IDAHO CODE, TO RE-
2 VISE THE DEFINITION OF "LICENSING AUTHORITY" AND TO MAKE TECHNICAL COR-
3 RECTIONS.
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5 Be It Enacted by the Legislature of the State of Idaho:

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

8 12-117. ATTORNEY'S FEES, WITNESS FEES AND EXPENSES AWARDED IN CER-
9 TAIN INSTANCES. (1) Unless otherwise provided by statute, in any proceeding
10 involving as adverse parties a state agency or a political subdivision and
11 a person, the state agency, political subdivision or the court hearing the
12 proceeding, including on appeal, shall award the prevailing party reason-
13 able attorney's fees, witness fees and other reasonable expenses, if it
14 finds that the nonprevailing party acted without a reasonable basis in fact
15 or law.

16 (2) If a party to a proceeding prevails on a portion of the case, and
17 the state agency or political subdivision or the court hearing the proceed-
18 ing, including on appeal, finds that the nonprevailing party acted without a
19 reasonable basis in fact or law with respect to that portion of the case, it
20 shall award the partially prevailing party reasonable attorney's fees, wit-
21 ness fees and other reasonable expenses with respect to that portion of the
22 case on which it prevailed.

23 (3) Expenses awarded against a state agency or political subdivision
24 pursuant to this section shall be paid from funds in the regular operating
25 budget of the state agency or political subdivision. If sufficient funds are
26 not available in the budget of the state agency, the expenses shall be con-
27 sidered a claim governed by the provisions of section 67-2018, Idaho Code.
28 If sufficient funds are not available in the budget of the political subdivi-
29 sion, the expenses shall be considered a claim pursuant to chapter 9, ti-
30 tle 6, Idaho Code. Every state agency or political subdivision against which
31 litigation expenses have been awarded under this act shall, at the time of
32 submission of its proposed budget, submit a report to the governmental body
33 which appropriates its funds in which the amount of expenses awarded and paid
34 under this act during the fiscal year is stated.

35 (4) In any civil judicial proceeding involving as adverse parties a
36 governmental entity and another governmental entity, the court shall award
37 the prevailing party reasonable attorney's fees, witness fees and other rea-
38 sonable expenses. For purposes of this subsection, "governmental entity"
39 means any state agency or political subdivision.

40 (5) Notwithstanding any other provision of law, in any administrative
41 proceeding or administrative judicial proceeding involving as adverse par-
42 ties a licensing authority and a licensee, the prevailing party shall be en-

1 titled to recover its reasonable attorney's fees and reasonable investiga-
2 tive or defense costs, as the case may be, necessarily and actually incurred.
3 "Prevailing party," for the purpose of this subsection, means a party that
4 prevailed on the claims or allegations that constituted the gravamen of the
5 claims and allegations as a whole. An assessment of fees and costs made pur-
6 suant to this section is subject to judicial review. Notwithstanding any
7 other provision of law, the failure of a licensee to pay an award of costs
8 or attorney's fees awarded under this subsection shall not be deemed a vio-
9 lation of a licensure requirement, as long as the licensee is in compliance
10 with a payment arrangement made with the licensing authority.

11 (6) For purposes of this section:

12 (a) "Licensee" means any person holding a license, registration, cer-
13 tificate, permit or other authorization to practice a profession or oc-
14 cupation.

15 (b) "Licensing authority" means any agency, bureau, commission, de-
16 partment, division, or professional or occupational licensing board
17 charged with granting, suspending or revoking the license, certifi-
18 cate, registration, permit or other authorization of any person to
19 practice a profession or occupation.

20 (c) "Person" means any individual, partnership, limited liability
21 partnership, corporation, limited liability company, association or
22 any other private organization.

23 (d) "Political subdivision" means a city, a county, any taxing district
24 or a health district.

25 (e) "Proceeding" means any administrative proceeding, administrative
26 judicial proceeding, civil judicial proceeding or petition for judi-
27 cial review or any appeal from any administrative proceeding, adminis-
28 trative judicial proceeding, civil judicial proceeding or petition for
29 judicial review.

30 (f) "State agency" means any agency as defined in section 67-5201,
31 Idaho Code.

32 (7) If the amount pleaded in an action by a person is twenty-five thou-
33 sand dollars (\$25,000) or less, the person must satisfy the requirements of
34 section 12-120, Idaho Code, as well as the requirements of this section be-
35 fore he or she may recover attorney's fees, witness fees or expenses pursuant
36 to this section.