

REFERENCE TITLE: attorney fees; public interest actions

State of Arizona  
House of Representatives  
Forty-eighth Legislature  
Second Regular Session  
2008

# HB 2532

Introduced by  
Representative Farnsworth

AN ACT

AMENDING TITLE 12, CHAPTER 3, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 12-353; RELATING TO COURT FEES AND COSTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Title 12, chapter 3, article 5, Arizona Revised Statutes,  
3 is amended by adding section 12-353, to read:

4 12-353. Attorney fees; public interest actions; definitions

5 A. NOTWITHSTANDING ANY OTHER LAW, A COURT MAY AWARD ATTORNEY FEES TO A  
6 PARTY THAT PREVAILS BY AN ADJUDICATION ON THE MERITS AGAINST ONE OR MORE  
7 OPPOSING PARTIES, INCLUDING THIS STATE OR ANY POLITICAL SUBDIVISION OF THIS  
8 STATE, IN A CIVIL ACTION THAT RESULTS IN THE ENFORCEMENT OF AN IMPORTANT  
9 RIGHT AFFECTING THE PUBLIC INTEREST IF ALL OF THE FOLLOWING APPLY:

10 1. A SIGNIFICANT BENEFIT IS CONFERRED ON THE GENERAL PUBLIC OR A LARGE  
11 CLASS OF PERSONS.

12 2. THE VINDICATION OF THE RIGHT REQUIRED PRIVATE ENFORCEMENT.

13 3. THE VINDICATED RIGHT IS ONE OF SOCIETAL IMPORTANCE.

14 B. THE COURT MAY DENY OR REDUCE ATTORNEY FEES THAT ARE PERMITTED UNDER  
15 THIS SECTION IF THE COURT FINDS THAT ANY OF THE FOLLOWING APPLIES:

16 1. DURING THE COURSE OF THE PROCEEDING THE PREVAILING PARTY UNDULY AND  
17 UNREASONABLY PROTRACTED THE FINAL RESOLUTION OF THE MATTER.

18 2. THE PARTY PREVAILED DUE TO AN INTERVENING CHANGE IN THE APPLICABLE  
19 LAW.

20 3. THE PREVAILING PARTY REFUSED A SETTLEMENT OFFER THAT WAS AT LEAST  
21 AS FAVORABLE TO THE PARTY AS THE RELIEF THAT WAS ULTIMATELY GRANTED.

22 C. A PARTY MAY APPLY FOR AN AWARD OF ATTORNEY FEES UNDER THIS SECTION  
23 PURSUANT TO COURT RULE. THE APPLICATION SHALL INCLUDE EVIDENCE OF THE  
24 PARTY'S ELIGIBILITY FOR THE AWARD AND THE AMOUNT SOUGHT, INCLUDING AN  
25 ITEMIZED STATEMENT FROM THE ATTORNEYS THAT STATES THE ACTUAL TIME EXPENDED IN  
26 REPRESENTING THE PARTY AND THE RATE AT WHICH THE FEES WERE COMPUTED.

27 D. THE COURT SHALL BASE AN AWARD OF FEES UNDER THIS SECTION ON  
28 PREVAILING MARKET RATES FOR THE KIND AND QUALITY OF SERVICES FURNISHED,  
29 EXCEPT THAT THE AWARD OF ATTORNEY FEES MAY NOT EXCEED A MAXIMUM AMOUNT OF ONE  
30 HUNDRED SEVENTY-FIVE DOLLARS PER HOUR.

31 E. THE COURT SHALL APPORTION LIABILITY FOR THE FEES IN PROPORTION TO  
32 AN OPPOSING PARTY'S PARTICIPATION IN THE ADJUDICATION, NOTWITHSTANDING THE  
33 PREVAILING PARTY'S SETTLEMENT WITH ANOTHER OPPOSING PARTY.

34 F. THIS SECTION DOES NOT DO EITHER OF THE FOLLOWING:

35 1. ENTITLE A PARTY TO OBTAIN FEES AND OTHER EXPENSES THAT ARE INCURRED  
36 IN MAKING AN APPLICATION FOR AN AWARD PURSUANT TO THIS SECTION FOR FEES AND  
37 OTHER EXPENSES.

38 2. ALLOW THE COURT TO AWARD ATTORNEY FEES TO THIS STATE OR ANY  
39 POLITICAL SUBDIVISION OF THIS STATE.

40 G. THIS SECTION DOES NOT PERSONALLY OBLIGATE AN EMPLOYEE OF THIS STATE  
41 OR ANY POLITICAL SUBDIVISION OF THIS STATE FOR THE PAYMENT OF AN AWARD THAT  
42 IS ENTERED UNDER THIS SECTION.

1 H. FOR THE PURPOSES OF THIS SECTION:

2 1. "OPPOSING PARTY" MEANS A PARTY THAT HAS TAKEN A POSITION ON THE  
3 MERITS THAT IS ADVERSE TO THE PREVAILING PARTY.

4 2. "PREVAILING PARTY" MEANS A PARTY THAT HAS SECURED A JUDGMENT ON THE  
5 MERITS IN A CIVIL ACTION.