
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1126

Session of
1981

INTRODUCED BY DORR, L. E. SMITH, ZWIKL, FLECK, DOMBROWSKI,
SERAFINI, McVERRY, McCALL, LIVENGOD, GRIECO, F. E. TAYLOR,
HEISER, MARMION, WAMBACH, DeVERTER, BURD, SIEMINSKI, GRUPPO,
FRAZIER, RASCO, POTT, RITTER, BROWN, HALUSKA, BITTLE,
KOWALYSHYN, RYBAK, CAPPABIANCA, BELFANTI, CORDISCO,
GRABOWSKI, PRATT, COCHRAN, B. SMITH, NOYE, HAYES, JOHNSON,
GEIST, PHILLIPS, CLYMER, COSLETT, EARLEY AND RAPPAPORT,
APRIL 1, 1981

REFERRED TO COMMITTEE ON BUSINESS AND COMMERCE, APRIL 1, 1981

AN ACT

1 Requiring every Commonwealth agency to award certain fees and
2 expenses in certain agency actions and providing for appeals
3 from decisions of an adjudication officer.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Findings and purpose.

7 (a) The General Assembly finds that certain individuals,
8 partnerships, corporations and labor and other organizations may
9 be deterred from seeking review of, or defending against,
10 unreasonable action of administrative agencies because of the
11 expense involved in securing the vindication of their rights in
12 administrative and review proceedings.

13 (b) The General Assembly further finds that because of the
14 greater resources and expertise of the Commonwealth, the
15 standard for an award of fees against the Commonwealth agencies

1 should be different from the standard governing an award against
2 a private litigant in certain situations.

3 (c) It is therefore the intent of the General Assembly to:

4 (1) Diminish the deterrent effect of, seeking review of
5 or defending against, administrative agency action by
6 providing in specified situations an award of attorney's
7 fees, expert witness fees, and other costs against the
8 Commonwealth.

9 (2) Deter the administrative agencies of this
10 Commonwealth from initiating substantially unwarranted
11 actions against individuals, partnerships, corporations,
12 associations and other nonpublic entities.

13 Section 2. Definitions.

14 The following words and phrases when used in this act shall
15 have, unless the context clearly indicates otherwise, the
16 meanings given to them in this section:

17 "Adversary adjudication." An adjudication as defined in 2
18 Pa. C.S. § 101 (relating to definitions). The term does not
19 include an adjudication for the purpose of establishing or
20 fixing a rate or for the purpose of granting or reviewing a
21 license.

22 "Adjudication officer." The deciding official, without
23 regard to whether the official is designated as an
24 administrative law judge, a hearing officer, examiner, referee,
25 or otherwise, who presided at the adversary adjudication.

26 "Commonwealth agency." Any of its principal departments of
27 the Executive Branch of State Government and all bureaus,
28 boards, divisions, commissions, councils, authorities or
29 agencies thereunder and any independent commission, board or
30 agency of State Government.

1 "Fees and expenses." The reasonable expenses of expert
2 witnesses, the reasonable cost of any study, analysis,
3 engineering report, test or project which is found by the
4 adjudicative officer or the court to be necessary for the
5 preparation of the party's case, reasonable attorney's fees and
6 any fee or charge required by law, rule or regulation to be paid
7 to the agency, court or officer of the agency or court. The
8 amount of fees awarded under this section shall be based upon
9 prevailing market rates for the kind and quality of the services
10 furnished, except that:

11 (1) no expert witness shall be compensated at a rate in
12 excess of the highest rate of compensation for expert
13 witnesses paid by the agency involved; and

14 (2) attorney fees shall not be awarded in excess of \$75
15 per hour unless an increase in the cost of living or a
16 special factor, such as the limited availability of qualified
17 attorneys for the proceeding, justifies a higher fee. No
18 award of fees and expenses shall be made where such fees and
19 expenses are less than \$250, and no award shall be greater
20 than \$10,000.

21 "Party." A party, as defined in 2 Pa. C.S. § 101, which is
22 an individual, partnership, corporation, association or public
23 or private organization other than an agency. The term does not
24 include:

25 (1) any individual whose net worth exceeded \$1,000,000
26 at the time the adversary adjudication was initiated and any
27 sole owner of an unincorporated business, or any partnership,
28 corporation, association, association or organization whose
29 net worth exceeded \$5,000,000 at the time the adversary
30 adjudication was initiated; and

(2) any sole owner of an unincorporated business, or any partnership, corporation, association or organization having more than 500 employees at the time the adversary adjudication was initiated.

Section 3. Award of fees and expenses in certain agency actions.

(a) A Commonwealth agency that initiates an adversary adjudication shall award to a prevailing party, other than the Commonwealth, fees and other expenses incurred by that party in connection with that proceeding, unless the adjudicative officer finds that the position of the agency, as a party to the proceeding, was substantially justified or that special circumstances make an award unjust.

(b) A party seeking an award of fees and expenses shall submit an application for such award to the adjudicative officer and a copy to the Commonwealth agency within 30 days after the entry of final order in the adversary adjudication. The application shall include:

(1) A showing that the applicant is a prevailing party and is eligible to receive an award under this section.

(2) A clear statement of the total amount sought, including:

(i) an itemized list of fees from any attorney, agent or expert witness representing or appearing in behalf of the party;

(ii) the actual time expended by such agent or expert witness; and

(iii) the rate at which the fees and other expenses were computed.

(3) An allegation that the position of the Commonwealth agency was not substantially justified.

1 (c) The adjudicative officer shall make a finding of what
2 fees and expenses to be awarded, if any, within 30 days of
3 receipt of the application and may reduce the amount to be
4 awarded, or deny an award, to the extent that the party during
5 the course of the proceedings engaged in conduct which unduly
6 and unreasonably protracted the final resolution of the matter
7 in controversy. The decision of the adjudicative officer under
8 this section shall be made a part of the record containing the
9 final decision in the adversary adjudication and shall include
10 written findings and conclusions and the reasons or basis
11 therefor.

12 (d) Any party to an adversary adjudication may submit a
13 brief to the adjudicative officer in support of its position as
14 to whether fees and expenses should be awarded.

15 (e) A party dissatisfied with the fee determination made
16 under subsection (a) may petition for leave to appeal such fee
17 determination to the court having jurisdiction to review final
18 orders of a Commonwealth agency under 42 Pa.C.S. (relating to
19 judiciary and judicial procedure). If the court denies the
20 petition for leave to appeal, no appeal may be taken from the
21 denial. If the court grants the petition, it may modify the fee
22 determination only if the court finds that the failure to make
23 an award or the calculation of the amount was an abuse of
24 discretion by the adjudicative officer.

25 (f) In the event a party appeals the underlying decision of
26 the adversary adjudication, the court having jurisdiction over
27 appeals from that Commonwealth agency shall forward fees and
28 expenses to a prevailing party, other than the Commonwealth,
29 unless the court finds that during such adversary adjudication
30 the position of the Commonwealth agency was substantially

1 justified, or that special circumstances make an award unjust.

2 (g) A judgment of fees and expenses awarded to a prevailing
3 party under this section shall be payable by the Commonwealth
4 agency out of its annual General Fund appropriation for general
5 government.

6 Section 4. Effective date.

7 This act shall take effect July 1, 1982.