

SENATE BILL NO. 186—SENATORS BROWER AND FORD

FEBRUARY 23, 2015

Referred to Committee on Judiciary

SUMMARY—Provides for the recovery of attorney’s fees and litigation expenses by certain prevailing parties in criminal actions. (BDR 3-205)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets **[omitted material]** is material to be omitted.

AN ACT relating to claims against the State; providing for the recovery of attorney’s fees and litigation expenses by prevailing parties in criminal actions under certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Under what is commonly called the “American Rule,” each party to a legal proceeding is generally expected to pay its own attorney’s fees and litigation expenses regardless of the outcome of the case. Federal law, however, establishes an exception to the American Rule that enables a party who is acquitted or otherwise prevails against the Federal Government in a criminal action, and who meets certain eligibility requirements, to recover some or all of the attorney’s fees and other litigation expenses incurred by the party if a court determines that the Federal Government’s position in the action was vexatious, frivolous or in bad faith. Federal law also requires that any award must be paid by the particular agency of the Federal Government over which the party prevailed. (Act Nov. 26, 1997, Pub. L. No. 105-119, § 617, 111 Stat. 2519 (codified as 18 U.S.C. § 3006A note))

This bill adopts various provisions, modeled after federal law, to enable eligible parties that prevail over the State of Nevada in a criminal action to recover some or all of their attorney’s fees and litigation expenses if a court finds that the position of the State in the criminal action was vexatious, frivolous or in bad faith.



THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 41 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A court may, in a criminal action, award to a prevailing party, other than the State, reasonable attorney's fees and litigation expenses incurred by the party in the criminal action if the court finds that the position of the State was vexatious, frivolous or in bad faith.

2. A prevailing party that wishes to obtain an award pursuant to this section must, within 30 days after final judgment in the criminal action, submit to the court an application for attorney's fees and litigation expenses. The application must include, without limitation:

(a) A showing that the party is:

(1) A prevailing party; and

(2) Eligible to receive an award as set forth in subsection 3;

(b) An allegation that the position of the State in the criminal action was vexatious, frivolous or in bad faith; and

(c) A statement of the amount sought, accompanied by an itemized statement from any attorney, expert witness or other person that represented or appeared in the criminal action on behalf of the party that states the actual time expended and the rate at which fees and other expenses were computed.

3. A prevailing party is not eligible for an award pursuant to subsection 1 if he or she was represented by a county or state public defender or by other appointed counsel whose expenses were paid by the public.

4. To determine whether or not to award attorney's fees and litigation expenses under this section, the court, for good cause shown, may receive evidence and testimony ex parte and in camera. Such evidence and testimony may include, without limitation, evidence and testimony that reveals or might reveal confidential information, the identity of an informant or undercover agent or matters occurring before a grand jury. Evidence or testimony so received must be kept under seal.

5. Attorney's fees and litigation expenses awarded pursuant to this section must be paid by the department, division, board, bureau, commission or other agency or political subdivision of the State over which the party prevailed. The award must be paid in the same manner as other claims against the department, division, board, bureau, commission or other agency or political subdivision are paid.



6. *If the State appeals an award of attorney's fees or litigation expenses made pursuant to this section and the award is affirmed in whole or in part, interest must be paid on the amount of the award as affirmed. The interest must:*

(a) *Be computed at the rate most recently established pursuant to NRS 99.040; and*

(b) *Run from the date of the award through the day before the date on which the award is affirmed.*

7. *For the purposes of this section, a party prevails over the State in a criminal action if the party:*

(a) *Is acquitted or obtains a dismissal with prejudice of all or substantially all charges brought against the party in the criminal action; or*

(b) *Obtains a dismissal without prejudice of all or substantially all charges brought against the party in the criminal action or a mistrial, so long as it is not the result of circumstances attributable to the party, but only if the court finds it unlikely that a new criminal action will be brought against the party with respect to those charges.*

8. *As used in this section:*

(a) *"Court" means a district court or justice court.*

(b) *"Final judgment" means a judgment from which no appeal may be taken or for which the time for taking an appeal has expired.*

(c) *"Litigation expenses" includes, without limitation, the reasonable expenses of expert witnesses and the reasonable cost of any study, analysis, engineering report, test or project which is found by the court to be necessary for the preparation of the prevailing party's criminal action.*

(d) *"State" means the State of Nevada and any department, division, board, bureau, commission or other agency or political subdivision of the State or an officer or employee thereof acting in his or her official capacity.*

Sec. 2. *The provisions of this act apply to any criminal action that is pending on October 1, 2015, or which is brought on or after that date.*

