

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

Act 440 of the Regular Session

1 State of Arkansas

As Engrossed: H2/13/09 H2/25/09 H3/06/09

2 87th General Assembly

A Bill

3 Regular Session, 2009

HOUSE BILL 1326

4
5 By: Representatives L. Smith, J. Edwards

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8 **For An Act To Be Entitled**

9 AN ACT CONCERNING CLAIMS FOR ATTORNEY'S FEES AND
10 LITIGATION EXPENSES AGAINST THE STATE OF ARKANSAS
11 UNDER THE FREEDOM OF INFORMATION ACT OF 1967; AND
12 FOR OTHER PURPOSES.

13
14 **Subtitle**

15 CONCERNING CLAIMS FOR ATTORNEY'S FEES
16 AND LITIGATION EXPENSES AGAINST THE
17 STATE OF ARKANSAS UNDER THE FREEDOM OF
18 INFORMATION ACT OF 1967.

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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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23 SECTION 1. Arkansas Code § 19-10-204 is amended to add an additional
24 subsection to read as follows:

25 (d) The commission shall have jurisdiction over claims to recover
26 reasonable attorney's fees and other litigation expenses reasonably incurred
27 by plaintiffs who substantially prevailed in actions under § 25-19-107
28 against the State of Arkansas or a department, agency, or institution of the
29 state under the standard described in § 25-19-107(d)(1).

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31 SECTION 2. Arkansas Code § 25-19-107 is amended to read as follows:

32 25-19-107. Appeal from denial of rights – Attorney's fees.

33 (a) Any citizen denied the rights granted to him or her by this
34 chapter may appeal immediately from the denial to the Pulaski County Circuit
35 Court or to the circuit court of the residence of the aggrieved party, if ~~an~~



1 ~~agency the State of Arkansas or a department, agency, or institution of the~~
2 ~~state is involved, or to any of the circuit courts of the~~ appropriate
3 judicial districts when an agency of a county, municipality, township, or
4 school district, or a private organization supported by or expending public
5 funds, is involved.

6 (b) Upon written application of the person denied the rights provided
7 for in this chapter, or any interested party, it shall be mandatory upon the
8 circuit court having jurisdiction to fix and assess a day the petition is to
9 be heard within seven (7) days of the date of the application of the
10 petitioner, and to hear and determine the case.

11 (c) Those who refuse to comply with the orders of the court shall be
12 found guilty of contempt of court.

13 ~~(d)(1) In any action to enforce the rights granted by this chapter, or~~
14 ~~in any appeal therefrom, the court shall assess against the defendant~~
15 ~~reasonable attorney's fees and other litigation expenses reasonably incurred~~
16 ~~by a plaintiff who has substantially prevailed unless the court finds that~~
17 ~~the position of the defendant was substantially justified or that other~~
18 ~~circumstances make an award of these expenses unjust. However, no expenses~~
19 ~~shall be assessed against the State of Arkansas or any of its agencies or~~
20 ~~departments.~~

21 (2) If the defendant has substantially prevailed in the action,
22 the court may assess expenses against the plaintiff only upon a finding that
23 the action was initiated primarily for frivolous or dilatory purposes.

24 (e)(1) Notwithstanding subsection (d)(1) of this section, the court
25 shall not assess reasonable attorney's fees or other litigation expenses
26 reasonably incurred by a plaintiff against the State of Arkansas or a
27 department, agency, or institution of the state.

28 (2)(A) A plaintiff who substantially prevailed in an action under
29 this section against the State of Arkansas or a department, agency, or
30 institution of the state may file a claim with the Arkansas State Claims
31 Commission to recover reasonable attorney's fees and other litigation
32 expenses reasonably incurred.

33 (B) A claim for reasonable attorney's fees and litigation
34 expenses reasonably incurred in an action against the State of Arkansas or a
35 department, agency, or institution of the state shall be filed with the
36 commission pursuant to § 19-10-201 et seq. within sixty (60) days of the

1 final disposition of the appeal under subsection (a) of this section.

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/s/ L. Smith

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APPROVED: 3/18/2009

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