

2016 -- S 2112

LC003962

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

A N A C T

RELATING TO STATE AFFAIRS AND GOVERNMENT -- EQUAL ACCESS TO JUSTICE
FOR SMALL BUSINESSES AND INDIVIDUALS

Introduced By: Senators Lombardi, Archambault, Conley, Lombardo, and McCaffrey

Date Introduced: January 21, 2016

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 42-92-2 of the General Laws in Chapter 42-92 entitled "Equal
2 Access to Justice for Small Businesses and Individuals" is hereby amended to read as follows:

3 **42-92-2. Definitions.** -- As used in this chapter:

4 (1) "Adjudicative officer" means the deciding official, without regard to whether the
5 official is designated as an administrative law judge, a hearing officer or examiner, or otherwise,
6 who presided at the adversary adjudication.

7 (2) "Adjudicatory proceedings" means any proceeding conducted by or on behalf of the
8 state administratively or quasi-judicially which may result in the loss of benefits, the imposition
9 of a fine, the adjustment of a tax assessment, the denial, suspension, or revocation of a license or
10 permit, or which may result in the compulsion or restriction of the activities of a party. Any
11 agency charged by statute with investigating complaints shall be deemed to have substantial
12 justification for the investigation and for the proceedings subsequent to the investigation.

13 (3) "Agency" means any state and/or municipal board, commission, council, department,
14 or officer, other than the legislature or the courts, authorized by law to make rules or to determine
15 contested cases, to bring any action at law or in equity, including, but not limited to, injunctive
16 and other relief, or to initiate criminal proceedings. This shall include contract boards of appeal,
17 tax proceedings, and employment security administrative proceedings.

18 (4) "Municipality" means the individual cities and towns in the state of Rhode Island and

1 including, but not limited to, any city or town housing authority, fire, water, sewer district, local
2 or regional school district, public building authority or other municipal financed agency or
3 department.

4 (5) "Party" means any individual whose net worth is less than five hundred thousand
5 dollars (\$500,000) at the time the adversary adjudication was initiated; and, any individual,
6 partnership, corporation, association, or private organization doing business and located in the
7 state, which is independently owned and operated, not dominant in its field, and which employs
8 one hundred (100) or fewer persons at the time the adversary adjudication was initiated.

9 (6) "Reasonable litigation expenses" means those expenses which were reasonably
10 incurred by a party in adjudicatory proceedings, including, but not limited to, attorney's fees,
11 witness fees of all necessary witnesses, and other costs and expenses as were reasonably incurred,
12 except that:

13 (i) Unless the court determines that special factors justify a higher fee, the ~~The~~ award of
14 attorney's fees may not exceed ~~one hundred and twenty five dollars (\$125)~~ one hundred fifty
15 dollars (\$150) per hour, ~~unless the court determines that special factors justify a higher fee;~~
16 provided, however, that this amount shall be adjusted annually on December 31 of each calendar
17 year by the percentage increase of the United States Department of Labor's Bureau of Labor
18 Statistics Consumer Price Index. If there are no percentage increases in this index for any
19 calendar year, there shall be no increase in the hourly amount for that year;

20 (ii) No expert witness may be compensated at a rate in excess of the highest rate of
21 compensation for experts paid by this state.

22 (7) "Substantial justification" means that the initial position of the agency, as well as the
23 agency's position in the proceedings, has a reasonable basis in law and fact.

24 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
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- 1 This act would increase awardable attorneys' fees in adjudicatory proceedings from one
- 2 hundred twenty-five dollars (\$125) to one hundred fifty dollars (\$150) per hour with an annual
- 3 increase thereafter based on the United States Department of Labor's Consumer Price Index.
- 4 This act would take effect upon passage.

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