

HB 1704 - AS INTRODUCED

2018 SESSION

18-2657  
06/01

HOUSE BILL                    ***1704***

AN ACT                    requiring court costs and attorneys fees to be paid to the prevailing party.

SPONSORS:            Rep. Murphy, Hills. 7

COMMITTEE:          Judiciary

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ANALYSIS

      This bill requires the court to award court costs and attorney fees to the prevailing party in certain civil cases.

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Explanation:            Matter added to current law appears in ***bold italics***.  
                                Matter removed from current law appears ~~[in brackets and struckthrough.]~~  
                                Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Eighteen*

AN ACT requiring court costs and attorneys fees to be paid to the prevailing party.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 1 New Subdivision; Costs and Attorney Fees Allowed to Prevailing Party. Amend RSA 507 by  
2 inserting after section 17 the following new subdivision:

3 Costs and Attorney Fees Allowed to Prevailing Party  
4 507:18 Costs and Attorney Fees.

5 I. Except as otherwise provided by law or by agreement between the parties, attorney fees  
6 shall not be awarded to a party in a civil action for personal injury, death, or property damage  
7 related to or arising out of fault.

8 II. Except as otherwise provided by law, no court shall discriminate in the award of  
9 attorney fees and costs to or against a party in a civil action or appeal based on the nature of the  
10 policy or interest advocated by the party, the number of persons affected by the outcome of the case,  
11 whether a governmental entity could be expected to bring or participate in the case, the extent of  
12 the party's economic incentive to bring the case, or any combination of these factors.

13 III. In a civil action or appeal concerning the establishment, protection, or enforcement of a  
14 right under the United States Constitution or the New Hampshire constitution, the court shall:

15 (a) Award, subject to paragraphs IV and V, reasonable attorney fees and costs to a  
16 claimant, who, as plaintiff, counterclaimant, cross claimant, or third-party plaintiff in the action or  
17 on appeal, has prevailed in asserting the right;

18 (b) Not order a claimant to pay the attorney fees of the opposing party in claims  
19 concerning constitutional rights if the claimant as plaintiff, counterclaimant, cross claimant, or  
20 third-party plaintiff in the action or appeal did not prevail in asserting the right, the action or  
21 appeal asserting the right was not frivolous, and the claimant did not have sufficient economic  
22 incentive to bring the action or appeal regardless of the constitutional claims involved.

23 IV. In calculating an award of attorney fees and costs under subparagraph III(a), the court  
24 shall:

25 (a) Include in the award only that portion of the services of the claimant's attorney fees  
26 and associated costs that were devoted to claims concerning rights under the United States  
27 Constitution or the New Hampshire constitution upon which the claimant ultimately prevailed; and

28 (b) Make an award only if the claimant did not have sufficient economic incentive to  
29 bring the suit, regardless of the constitutional claims involved.

30 V. The court, in its discretion, may abate, in full or in part, an award of attorney fees and  
31 costs otherwise payable under paragraphs III and IV if the court finds, based upon sworn affidavits

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1 or testimony, that the full imposition of the award would inflict a substantial and undue hardship  
2 upon the party ordered to pay the fees and costs or, if the party is a public entity, upon the  
3 taxpaying constituents of the public entity.

4 2 Effective Date. This act shall take effect January 1, 2019.