

CIVIL PRACTICE AND REMEDIES CODE

TITLE 5. GOVERNMENTAL LIABILITY

CHAPTER 105. FRIVOLOUS CLAIM OR REGULATORY ACTION BY STATE AGENCY

Sec. 105.001. DEFINITIONS. In this chapter:

(1) "Fees and other expenses" means:

(A) the reasonable expenses of witnesses incurred in preparing to testify or in attending or testifying;

(B) a reasonable fee for the professional services of an expert witness; and

(C) the reasonable costs of a study, analysis, engineering report, test, or other project the court finds to be necessary for the preparation of the party's case.

(2) "Party" means an individual, partnership, corporation, association, or public or private organization other than a state agency.

(3) "State agency" means a board, commission, department, office, or other agency that:

(A) is in the executive branch of state government;

(B) was created by the constitution or a statute of this state; and

(C) has statewide jurisdiction.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 105.002. RECOVERY OF FEES, EXPENSES, AND ATTORNEY'S FEES FOR FRIVOLOUS CLAIM. A party to a civil suit in a court of this state brought by or against a state agency in which the agency asserts a cause of action against the party, either originally or as a counterclaim or cross claim, is entitled to recover, in addition to all other costs allowed by law or rule, a total amount not to exceed \$1 million for fees, expenses, and reasonable attorney's fees incurred by the party in defending the agency's action if:

(1) the court finds that the action is frivolous; and

(2) the action is dismissed or judgment is awarded to the party.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 504 (S.B. 27), Sec. 2, eff. September 1, 2019.

Sec. 105.003. MOTION OF FRIVOLOUS CLAIM. (a) To recover under Section 105.002, the party must file a written motion alleging that the agency's claim is frivolous. The motion may be filed at any time after the filing of the pleadings in which the agency's cause of action is alleged.

(b) The motion must set forth the facts that justify the party's claim.

(c) The motion must state that if the action is dismissed or judgment is awarded to the party, the party intends to submit a motion to the court to recover fees, expenses, and reasonable attorney's fees.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 504 (S.B. 27), Sec. 3, eff. September 1, 2019.

Sec. 105.004. PAYMENT OF COSTS. The agency shall pay the fees and expenses from funds appropriated for operation of the agency, funds appropriated for the payment of fees and expenses under this chapter, or other funds available for that purpose.

Acts 1985, 69th Leg., ch. 959, Sec. 1, eff. Sept. 1, 1985.

Sec. 105.005. RECOVERY OF ATTORNEY'S FEES AND COSTS IN FRIVOLOUS REGULATORY ACTION. The court reviewing a decision in a contested case under Chapter 2001, Government Code, may award a person, in addition to all other costs allowed by law or rule, an amount not to exceed \$1 million for reasonable attorney's fees and costs incurred in defending against a frivolous regulatory action during the contested case and judicial review of the decision in the contested case if:

(1) the person prevails on review; and

(2) there is a final determination that the regulatory action is frivolous.

Added by Acts 2019, 86th Leg., R.S., Ch. 504 (S.B. [27](#)), Sec. 4, eff.
September 1, 2019.