



ARIZONA HOUSE OF REPRESENTATIVES

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Senate: JUD DP 4-3-0-0 | 3rd Read DP 16-12-2-0-0

SB 1005: unjustified actions; parental rights

Sponsor: Senator Kavanagh, LD 3
Committee on Judiciary

Overview

Prohibits a court from awarding attorney fees, expenses or damages to a governmental entity or official in a proceeding based on a violation of statutory parental rights or any other governmental action that interferes with or usurps the fundamental right of parents to direct the upbringing, education, health care and mental health of their children.

History

[Laws 2010, Ch. 307, § 1](#) enacted the original version of [A.R.S. § 1-602](#) as part of the *Parents' Bill of Rights Act*. The statute currently reserves all parental rights exclusively to a parent of a minor child without obstruction or interference from the state of Arizona, its political subdivisions, any other governmental entity or other institution. The statute also enumerates various parental rights deemed to fall within this category and specifies that it does not prescribe all parental rights or preempt or foreclose claims or remedies in support of parental rights that are available under Arizona's constitution, statutes or common law.

The statute was most recently amended by [Laws 2022, Ch. 200, § 1](#) to prohibit the state of Arizona, an Arizona political subdivision, any other governmental entity or any of official of any of these entities acting under color of law from interfering with or usurping the fundamental right of parents to direct the upbringing, education, health care and mental health of their children. As most recently amended, the statute allows a parent to bring a suit against a governmental entity based on any violation of the previously mentioned parental rights or any other action that interferes with or usurps the fundamental right of parents to direct the upbringing, education, health care and mental health of their children. A parent may bring such an action as either a claim or a defense in the applicable county superior court, federal court (if authorized by federal law) or an administrative tribunal of appropriate jurisdiction. The statute also specifies that, in an action brought by a parent under this authority, the governmental entity or official has the burden of proving both of the following:

- 1) That the interference or usurpation is essential to accomplish a compelling government interest of the highest order, as long recognized in the history and traditions of Arizona in the operation of its regulatory powers; and
- 2) That the method of interference or usurpation used by the government is narrowly tailored and is not otherwise served by a less restrictive means.

A governmental entity or official may interfere with or usurp the fundamental rights of parents to direct the upbringing, education, health care and mental health of their children only if the governmental entity or official successfully demonstrates both of the above elements and, if the governmental entity or official is unsuccessful, the court is required to grant appropriate relief, such as declaratory or injunctive relief, compensatory damages and attorney fees, based on the facts of the case and law as applied to the facts ([A.R.S. § 1-602](#)).

In any civil action commenced or appealed in an Arizona state court of record, excluding civil traffic cases or criminal proceedings, the court is generally required to assess reasonable attorney fees, expenses and, at the court's discretion, double damages of no more than \$5,000 against an attorney or party, including the state of Arizona and its political subdivisions, if the attorney or party does any of the following:

- 1) Brings or defends a claim without substantial justification;
- 2) Brings or defends a claim solely or primarily for delay or harassment;
- 3) Unreasonably expands or delays the proceeding; or
- 4) Engages in abuse of discovery.

The court has discretion to jointly or severally allocate the payment of attorney fees among the offending attorneys and parties, and to assess separate amounts against the offending attorney and party. The court may not assess attorney fees, however, if a party files a voluntary dismissal for any claim or defense within a reasonable time after the attorney or party filing the dismissal knew or reasonably should have known that the claim or defense was without substantial justification. The court may award attorney fees to the state of Arizona or its political subdivisions pursuant to this authority.

A party brings a claim *without substantial justification* if the claim or defense is groundless and is not made in good faith ([A.R.S. § 12-349](#)).

Provisions

1. Specifies that, except as provided in [A.R.S. § 12-349](#), the court may not grant attorney fees, expenses or damages to a governmental entity or official for a claim or defense asserted in an action based on any violation of statutory parental rights or any other action that interferes with or usurps the fundamental right of parents to direct the upbringing, education, health care and mental health of their children pursuant to [A.R.S. § 1-602](#). (Sec. 1)