

(a) Annual charges, not to exceed ~~\$15~~ \$50 per annum, payable in advance, for the privilege of using a bank credit card ~~which entitled the debtor to purchase goods or services from merchants, under an arrangement pursuant to which the debts resulting from the purchases are paid or satisfied by the bank or savings bank and charged to the debtor's open end loan account with the bank or savings bank;~~

(b) Charges for premiums on credit life and credit accident and health insurance if:

(1) The insurance is not required by the ~~bank or savings bank~~ financial institution and this fact is clearly disclosed in writing to the debtor; and

(2) The debtor is notified in writing of the cost of the insurance and affirmatively elects, in writing, to purchase the insurance.

Sec. 4. **REPEALER.**

Minnesota Statutes 1984, section 48.185, subdivision 4a, is repealed.

Sec. 5. **EFFECTIVE DATE.**

Sections 1 to 4 are effective the day following final enactment.

Approved March 19, 1986

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**CHAPTER 377—S.F.No. 1848**

*An act relating to costs and attorney fees; providing for recovery of costs and attorney fees by prevailing parties in civil actions and contested case proceedings involving the state; amending Minnesota Statutes 1984, section 14.62, by adding a subdivision; proposing coding for new law in Minnesota Statutes, chapter 3.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. **[3.761] DEFINITIONS.**

Subdivision 1. TERMS DEFINED. For purposes of this section and sections 2 to 5, the terms defined in this section have the meanings given them.

Subd. 2. ADMINISTRATIVE LAW JUDGE. "Administrative law judge" means the official assigned to conduct a contested case hearing under chapter 14.

Subd. 3. CONTESTED CASE. "Contested case" means a proceeding defined in section 14.02, subdivision 3, in which the position of the state is represented by counsel, but excludes a contested case for the purpose of establishing or fixing a rate or for granting or renewing a license.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

Subd. 4. EXPENSES. "Expenses" means the costs incurred by the party in the litigation, including:

- (1) filing fees;
- (2) subpoena fees and mileage;
- (3) transcript costs and court reporter fees;
- (4) expert witness fees;
- (5) photocopying and printing costs;
- (6) postage and delivery costs; and
- (7) service of process fees.

Subd. 5. FEES. "Fees" means the reasonable attorney fees or reasonable fees by a person not an attorney who is authorized by law or rule to represent the party and may include reasonable charges by the party, the party's employee, or agent. The amount of fees must be based upon prevailing market rates for the kind and quality of the services furnished, subject to the following limitations:

(a) In a court action, an expert witness may not be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the United States.

(b) In a contested case proceeding, an expert witness may not be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the state agency involved.

(c) Attorney or agent fees may not be awarded in excess of \$100 per hour unless the court or administrative law judge determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys or agents for the proceedings involved, justifies a higher fee.

Subd. 6. PARTY. (a) Except as modified by paragraph (b), "party" means a person named or admitted as a party, or seeking and entitled as of right to be admitted as a party, in a court action or contested case proceeding, or a person admitted by an administrative law judge for limited purposes, and who is:

(1) an unincorporated business, partnership, corporation, association, or organization, having not more than 50 employees at the time the civil action was filed or the contested case proceeding was initiated; and

(2) an unincorporated business, partnership, corporation, association, or organization whose annual revenues did not exceed \$4,000,000 at the time the civil action was filed or the contested case proceeding was initiated.

(b) "Party" also includes a partner, officer, shareholder, member, or owner of an entity described in paragraph (a), clauses 1 and 2.

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(c) "Party" does not include any person providing services pursuant to licensure or reimbursement on a cost basis by the department of health or the department of human services, when that person is named or admitted or seeking to be admitted as a party in any matter which involves the licensing or reimbursement rates, procedures, or methodology applicable to those services.

Subd. 7. STATE. "State" means the state of Minnesota or an agency or official of the state of Minnesota acting in an official capacity.

Subd. 8. SUBSTANTIALLY JUSTIFIED. "Substantially justified" means that the state's position had a reasonable basis in law and fact, based on the totality of the circumstances prior to and during the litigation or contested case proceeding.

Sec. 2. [3.762] FEES AND EXPENSES; CIVIL ACTION OR CONTESTED CASE PROCEEDING INVOLVING STATE.

(a) If a prevailing party other than the state, in a civil action or contested case proceeding other than a tort action, brought by or against the state, shows that the position of the state was not substantially justified, the court or administrative law judge shall award fees and other expenses to the party unless special circumstances make an award unjust.

(b) The court or administrative law judge may reduce the amount to be awarded under this section, or deny an award, to the extent that the prevailing party during the course of the proceedings engaged in conduct that unduly and unreasonably protracted the final resolution of the matter in controversy. The decision of an administrative law judge under this section must be made a part of the record containing the final decision of the agency and must include written findings and conclusions.

(c) This section does not preclude a party from recovering costs, disbursements, fees, and expenses under other applicable law.

Sec. 3. [3.763] PAYMENT OF COSTS AND FEES.

Subdivision 1. CIVIL ACTION. A judgment against the state in a civil action for fees and expenses under section 2 must be paid from funds of the agency.

Subd. 2. CONTESTED CASE PROCEEDING. Fees and other expenses awarded in a contested case proceeding under section 2 must be paid by the agency over which the party prevails from funds of the agency.

Sec. 4. [3.764] PROCEDURE FOR AWARD OF FEES; CONTESTED CASE.

Subdivision 1. APPLICATIONS. The chief administrative law judge shall by rule establish uniform procedures for the submission and consideration of applications for an award of fees and expenses in a contested case proceeding. If a court reviews the underlying decision of the contested case under sections 14.63 to 14.68, an award for fees and expenses may be made only pursuant to subdivision 3.

Changes or additions are indicated by underline, deletions by strikeout.

Subd. 2. APPEAL. A party dissatisfied with the fee determination made under subdivision 1 may petition for leave to appeal to the court having jurisdiction to review the merits of the underlying decision of the contested case. If the court denies the petition for leave to appeal, no appeal may be taken from the denial. If the court grants the petition, it may modify the determination only if it finds that the failure to make an award, or the calculation of the amount of the award, was an abuse of discretion.

Subd. 3. JUDICIAL REVIEW. (a) In awarding fees and expenses under subdivision 1 to a prevailing party in an action for judicial review of a contested case under sections 14.63 to 14.68, the court shall include in that award fees and expenses to the extent authorized in section 2.

(b) Fees and expenses awarded under this subdivision may be paid in accordance with section 3, subdivision 2.

**Sec. 5. [3.765] REPORTS ON AWARDS.**

The state court administrator and the chief administrative law judge shall report annually to the legislature on the amount of fees and expenses awarded under section 2 during the preceding fiscal year in court actions and contested case proceedings. The reports shall describe the number, nature, and amount of the awards, the claims involved in the controversy, and any other relevant information that may aid the legislature in evaluating the scope and impact of the awards. State agencies shall provide the chief administrative law judge with information needed to comply with the requirements of this section.

Sec. 6. Minnesota Statutes 1984, section 14.62, is amended by adding a subdivision to read:

Subd. 3. AWARD OF FEES AND OTHER EXPENSES. Fees and expenses must be awarded as provided in sections 1 to 5.

**Sec. 7. EFFECTIVE DATE.**

Sections 1 to 6 are effective August 1, 1986, and apply to any civil action or contested case which is pending on, or commenced on or after, that date.

Approved March 19, 1986

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**CHAPTER 378—S.F.No. 1914**

*An act relating to crimes; providing that violations involving theft of services may be aggregated for purposes of criminal prosecution; amending Minnesota Statutes 1984, section 609.52, subdivision 3.*

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Changes or additions are indicated by underline, deletions by ~~strikeout~~.