

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 76

BY SENATOR RUCKER

[Introduced February 10, 2021; referred
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §56-4-72, relating to providing compensation to victims of abusive lawsuits;
 3 and providing that a party in a civil action is entitled to recover attorneys' fees and costs
 4 after a court dismisses a claim as lacking any basis in law or fact.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. RULES AND PLEADING.

§56-4-72. Compensation to victims of abusive lawsuits.

1 (a) Upon dismissal of a civil action, a prevailing party may request that the court award
 2 reasonable and necessary attorney's fees and costs.

3 (b) The court shall award a prevailing party its reasonable and necessary attorney's fees
 4 and costs if it finds:

5 (1) A claim was presented for an improper purpose, such as to harass or to cause
 6 unnecessary delay or needless increase in the cost of litigation;

7 (2) A claim was not warranted by existing law or by a nonfrivolous argument for the
 8 extension, modification, or reversal of existing law or the establishment of new law; or

9 (3) A claim was based on allegations or other factual contentions that lacked evidentiary
 10 support and, after the lack of evidentiary support became apparent, the party failed to promptly
 11 withdraw the claim.

12 (c) Prior to making a finding under subsection (b) of this section, the court shall give a
 13 party notice and a reasonable opportunity to respond.

14 (d) The amount of attorney's fees awarded shall be no more than that which was incurred
 15 as a direct result of conduct provided in subsection (b) of this section.

16 (e) An award of attorney's fees and costs under this section shall be imposed on the
 17 attorney of a represented party. Absent exceptional circumstances, a law firm shall be held jointly
 18 responsible for violations committed by its partners, associates, and employees. This section
 19 does not apply to a pro se litigant, except where the court also finds that the pro se litigant acted

20 unreasonably in bringing, or refusing to voluntarily withdraw, the dismissed claim.

21 (f) A court has discretion to award less than the amount required by subsection (d) of this
22 section, or not award attorney's fees and costs if:

23 (1) The party or attorney upon whose fees and costs are to be imposed shows that the
24 award would impose an unreasonable burden on that party or attorney and would be unjust, and
25 the failure to make such an award would not impose a greater burden on the party in whose favor
26 fees and costs are to be imposed; or

27 (2) The party against whom a motion to dismiss was filed withdrew the claim, or in good
28 faith amended the complaint to state a claim upon which relief may be granted, within 20 days of
29 service of the motion to dismiss; or

30 (3) The violation was *de minimis*.

31 (g) The award of attorney's fees and costs pursuant to this section shall be stayed until a
32 final judgment that is not subject to appeal is rendered.

33 (h) This section may not be construed to limit the ability of any court to dismiss a claim,
34 assess costs against a party whose claim has been dismissed, or impose sanctions where
35 permitted or required by other law, court rule or at common law.

36 (i) This section takes effect on January 1, 2022, and applies to claims filed on or after that
37 date.

NOTE: The purpose of this bill is to provide compensation to victims of abusive lawsuits; and provide that a party in a civil action is entitled to recover attorney's fees and costs after a court dismisses a claim as lacking any basis in law or fact.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.