WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 342

By Senators RUCKER, AZINGER, BLAIR, MAYNARD,

OJEDA, MULLINS, CLINE AND UNGER

[Introduced February 17, 2017; 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 attorney's 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:

1   That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new

2   section, designated §56-4-72, to read as follows:

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), the court shall give a party notice and

13   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).

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) or not

22   award attorney's fees and costs if:

23   (1) The party or attorney upon who fees and costs are to be imposed shows that the award

24   would impose an unreasonable burden on that party or attorney and would be unjust, and the

25   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 twenty days

29   of 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 shall 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 shall take effect on January 1, 2018, and apply to claims filed on or after

37   that 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.