

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 92

FISCAL
NOTE

By Senators Phillips, Rucker, and Stuart

[Introduced January 11, 2023; referred
to the Committee on the Judiciary; and then to the
Committee on Finance]

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:

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 maliciously injure
6 another party to the litigation;

7 (2) A claim was not warranted under existing law or by a good faith argument for an
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) In making a determination under subsection (b) of this section, the court may consider
13 whether the party or attorney filing the claim has habitually, persistently, and without reasonable
14 grounds: (1) commenced similar actions which have been finally and adversely determined to be
15 frivolous or without merit; or (2) repeatedly relitigated or attempted to relitigate a cause of action,
16 claim, controversy, or any of the issues of fact or law determined or concluded by a final
17 determination against the same defendant as to whom the litigation was finally determined.

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

20 (e) The amount of attorney’s fees awarded shall be no more than that which was incurred
21 as a direct result of conduct provided in subsection (b) of this section.

22 (f) An award of attorney’s fees and costs under this section shall be imposed on the
23 attorney of a represented party. Absent exceptional circumstances, a law firm shall be held jointly
24 responsible for violations committed by its partners, associates, and employees. This section does
25 not apply to a pro se litigant, except where the court also finds that the pro se litigant acted
26 unreasonably in bringing, or refusing to voluntarily withdraw, the dismissed claim.

27 (g) A court may award less than the amount required by subsection (d) of this section or not
28 award attorney’s fees and costs if:

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

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

36 (h) The award of attorney’s fees and costs pursuant to this section shall be stayed until a
37 final judgment that is not subject to appeal is rendered.

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

41 (j) This section shall take effect on January 1, 2024, and apply to claims filed on or after that
42 date.

NOTE: The purpose of this bill is to provide compensation to victims of abusive lawsuits. It provides that a party in a civil action is entitled to recover attorney’s fees and costs in certain cases where 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.