

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015

A Bill

SENATE BILL 761

4
5 By: Senator J. Hendren
6 By: Representatives D. Douglas, Bragg

For An Act To Be Entitled

9 AN ACT REGARDING THE PAYMENT OF FEES AND EXPENSES
10 RESULTING FROM CIVIL LITIGATION; AND FOR OTHER
11 PURPOSES.

Subtitle

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14 REGARDING THE PAYMENT OF FEES AND
15 EXPENSES RESULTING FROM CIVIL LITIGATION.

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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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21 SECTION 1. Arkansas Code Title 16, Chapter 55, Subchapter 1, is amended
22 to add a new section to read as follows:

23 16-55-123. Actions that fail to state a claim – Award of attorney’s
24 fees and costs.

25 (a)(1) A court that dismisses a claim on the basis set forth in a
26 motion to dismiss that the filing party has failed to state a claim under
27 Rule 12 of the Arkansas Rules of Civil Procedure shall award the party
28 against whom the dismissed claim was pending at the time the successful
29 motion to dismiss was granted the costs and reasonable attorney’s fees
30 incurred in the proceedings as a consequence of the dismissed claim by that
31 party.

32 (2) The awarded costs and reasonable attorney’s fees shall be
33 paid by the party whose claim was dismissed as a result of the granted motion
34 to dismiss.

35 (b) Costs shall include all reasonable and necessary litigation costs
36 actually incurred due to the proceedings that resulted from the filing of the



1 dismissed claim, including without limitation:

2 (1) Court costs;

3 (2) Attorney's fees;

4 (3) Court reporter fees;

5 (4) Interpreter fees; and

6 (5) Guardian ad litem fees.

7 (c)(1) An award of costs and reasonable attorney's fees under this
8 section shall be made only after all appeals of the issue of the granting of
9 the motion to dismiss have been exhausted and if the final outcome is the
10 granting of the motion to dismiss.

11 (2) The award of costs and reasonable attorney's fees under this
12 section shall be stayed until a final decision which is not subject to appeal
13 is rendered.

14 (d)(1) The court shall not require a party to pay costs under this
15 section in excess of a combined total of ten thousand dollars (\$10,000) in
16 any single lawsuit.

17 (2) When multiple parties are entitled to recover their costs
18 from a single party under this section and the multiple parties' combined
19 actual costs and reasonable attorney's fees under this section exceed ten
20 thousand dollars (\$10,000), then the court shall apportion the awarded costs
21 and reasonable attorney's fees to the moving parties in proportion to the
22 amount of each moving party's incurred costs and reasonable attorney's fees
23 unless agreed otherwise by the moving parties.

24 (C) This section shall not be construed to limit the award of
25 costs and reasonable attorney's fees as provided for by law.

26 (e) This section does not apply to:

27 (1) Actions by or against the state, other governmental
28 entities, or public officials acting in their official capacity or under
29 color of law;

30 (2) Any claim that is dismissed by the granting of a motion to
31 dismiss that was filed more than sixty (60) days after the moving party
32 received service of the latest complaint, counter-complaint, or cross-
33 complaint in which that dismissed claim was made;

34 (3)(A) Any claim that the party against whom the motion to
35 dismiss was filed withdrew or in good faith amended to state a claim upon
36 which relief may be granted.

1 (B) However, this subdivision (e)(3) shall not apply
2 unless a pleading providing notice of the withdrawal or amendment was filed
3 with the court and delivered to the opposing party at least three (3) days
4 before the date set for the hearing of the motion to dismiss or by the
5 deadline for the filing of a response to the motion to dismiss, whichever is
6 earlier.

7 (C) This subdivision (e)(3) shall not be construed to
8 prevent a party from striking its own motion to dismiss;

9 (4) Actions by pro se litigants, except when the court also
10 finds that the pro se party acted unreasonably in bringing or refusing to
11 voluntarily withdraw the dismissed claim;

12 (5)(A) Any claim which is a good faith, nonfrivolous claim filed
13 for the express purpose of extending, modifying, or reversing existing
14 precedent, law or rule, or for the express purpose of establishing the
15 meaning, lawfulness or constitutionality of a law, rule, or United States or
16 Arkansas constitutional right when the meaning, lawfulness, or
17 constitutionality is a matter of first impression that has not been
18 established by precedent in a published opinion by the Supreme Court, Court
19 of Appeals, or a federal court with jurisdiction.

20 (B) This subdivision (e)(5) shall not apply unless at the
21 time the successful motion to dismiss was filed the party that made the
22 dismissed claim had specially pleaded in its latest complaint, counter-
23 complaint, or cross-complaint that the dismissed claim was made for one (1)
24 or more of the express purposes listed in subdivision (e)(5)(A) of this
25 section and cited the contrary precedent or interpretation the party seeks to
26 distinguish or overcome, or whether the issue to be decided is a matter of
27 first impression as described in this subdivision (e)(5); or

28 (6) A claim for which relief could be granted under a law, a
29 court precedent published by a court described in subdivision (e)(5)(A) of
30 this section, or a rule that was in effect and applicable to the claim at the
31 time the motion to dismiss was filed:

32 (A) When that law, precedent, or rule was cited in the
33 pleading in which the dismissed claim was made or in the response to the
34 motion to dismiss;

35 (B) When the motion to dismiss the claim was granted due
36 to the subsequent repeal, amendment, overruling, or distinguishing of that

1 law, rule or published court precedent; and

2 (7) An action against multiple defendants in which a claim
3 against a defendant is dismissed after the formal discovery process begins.

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