

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
90th General Assembly
Regular Session, 2015

A Bill

SENATE BILL 761

By: Senator J. Hendren
By: Representatives D. Douglas, Bragg

For An Act To Be Entitled

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

Subtitle

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

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

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

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

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

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

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



dismissed claim, including without limitation:

- (1) Court costs;
- (2) Attorney's fees;
- (3) Court reporter fees;
- (4) Interpreter fees; and
- (5) Guardian ad litem fees.

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

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

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

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

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

(e) This section does not apply to:

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

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

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

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

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

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

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

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

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

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

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

law, rule or published court precedent; and

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