

1 HB618  
2 151506-1  
3 By Representatives Williams (J), Greer and Henry  
4 RFD: Commerce and Small Business  
5 First Read: 16-APR-13

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8 SYNOPSIS: Under existing law, a court may award  
9 attorneys' fees and costs against any attorney or  
10 party who has brought a civil action or asserted a  
11 civil claim or defense without substantial  
12 justification.

13 This bill would specify that the costs that  
14 may be awarded along with attorneys' fees are  
15 litigation expenses.

16 This bill would allow a court to award  
17 litigation expenses against a party who is  
18 appearing without an attorney and brings a civil  
19 action or asserts a civil claim or defense without  
20 substantial justification.

21 This bill would no longer allow a court to  
22 consider the relative financial position of the  
23 parties involved when determining whether to award  
24 attorneys' fees or litigation expenses.

25 This bill would also allow for the appeal of  
26 a court order granting or refusing to grant an  
27 award of attorneys' fees or litigation expenses.

1  
2 A BILL  
3 TO BE ENTITLED  
4 AN ACT

5  
6 Relating to civil actions; to amend Sections  
7 12-19-271, 12-19-272, and 12-19-273, Code of Alabama 1975, by  
8 specifying that a court may award attorneys' fees and  
9 litigation expenses against any attorney or party who has  
10 brought a civil action or asserted a civil claim or defense  
11 without substantial justification; by allowing the awarding of  
12 such attorneys' fees and litigation expenses against a party  
13 who is not represented by an attorney who brings such a civil  
14 action or makes such a claim; and to add a new Section  
15 12-19-273.1 to the Code of Alabama 1975, to provide an appeal  
16 process for a court order to grant or refuse to grant  
17 attorneys' fees or litigation expenses.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. Sections 12-19-271, 12-19-272, and  
20 12-19-273, Code of Alabama 1975, are amended to read as  
21 follows:

22 "§12-19-271.

23 "The following words and phrases as used in this  
24 article, have the meaning ascribed to them in this section,  
25 unless the context clearly requires otherwise:

26 "~~(3)~~ (1) ACTION. Any suit, counterclaim, crossclaim  
27 or third party claim filed at law or in equity, including any

1 claim therein asserted by one or more parties or against one  
2 or more parties in a multi-party action or suit, or an appeal  
3 thereof.

4 ~~"(2) PERSON. Any individual, corporation, company,~~  
5 ~~association, firm, partnership, society, joint stock company,~~  
6 ~~or any other entity, including any governmental entity or~~  
7 ~~unincorporated association of persons.~~

8 ~~"(4) (2) DEFENSE.~~ Any affirmative defense under Rule  
9 8(c), Alabama Rules of Civil Procedure, filed in any action at  
10 law or in equity.

11 ~~"(1) (3) WITHOUT SUBSTANTIAL JUSTIFICATION.~~ The  
12 phrase "without substantial justification", when used with  
13 reference to any action, claim, defense or appeal, including  
14 without limitation any motion, means that such action, claim,  
15 defense or appeal (including any motion) is frivolous,  
16 groundless in fact or in law, or vexatious, or interposed for  
17 any improper purpose, including without limitation, to cause  
18 unnecessary delay or needless increase in the cost of  
19 litigation, as determined by the court.

20 "§12-19-272.

21 "(a) Except as otherwise provided in this article,  
22 in any civil action commenced or appealed in any court of  
23 record in this state, the court shall award, as part of its  
24 judgment and in addition to any other costs otherwise  
25 assessed, reasonable attorneys' fees and ~~costs~~ any other  
26 litigation expenses against any attorney or party, or both,  
27 who has brought a civil action, or asserted a claim therein,

1 or interposed a defense, that a court determines to be without  
2 substantial justification, either in whole or part;

3 "(b) When a court determines reasonable attorneys'  
4 fees or ~~costs~~ litigation expenses should be assessed it shall  
5 assess the payment thereof against the offending attorneys or  
6 parties, or both, and in its discretion may allocate among  
7 them, as it determines most just, and may assess the full  
8 amount or any portion thereof to any offending attorney or  
9 party;

10 "(c) The court shall assess attorneys' fees and  
11 ~~costs~~ litigation expenses against any party or attorney if the  
12 court, upon the motion of any party or on its own motion,  
13 finds that an attorney or party brought an action or any part  
14 thereof, or asserted any claim or defense therein, that is  
15 without substantial justification, or that the action or any  
16 part thereof, or any claim or defense therein, was interposed  
17 for delay or harassment, or if it finds that an attorney or  
18 party unnecessarily expanded the proceedings by other improper  
19 conduct including, but not limited to, abuses of discovery  
20 procedures available under the Alabama Rules of Civil  
21 Procedure;

22 "(d) No attorneys' fees or ~~costs~~ litigation expenses  
23 shall be assessed if a voluntary dismissal is filed as to any  
24 action, claim or defense within 90 days after filing, or  
25 during any reasonable extension granted by the court, for good  
26 cause shown, on motion filed prior to the expiration of ~~said~~  
27 the 90 day period;

1           ~~"(e) No party, except an attorney licensed to~~  
2 ~~practice law in this state, who is appearing without an~~  
3 ~~attorney shall be assessed attorneys' fees unless the court~~  
4 ~~finds that the party clearly knew or reasonably should have~~  
5 ~~known that his action, claim or defense or any part thereof~~  
6 ~~was without substantial justification.~~

7           "§12-19-273.

8           "In determining the amount of an award of ~~costs or~~  
9 ~~attorneys' fees~~ or litigation expenses, the court shall  
10 exercise its sound discretion. When granting an award of ~~costs~~  
11 ~~and attorneys' fees~~ or litigation expenses, the court shall  
12 specifically set forth the reasons for such award and shall  
13 consider the following factors, among others, in determining  
14 whether to assess attorneys' fees and ~~costs~~ litigation  
15 expenses and the amount to be assessed:

16           "(1) The extent to which any effort was made to  
17 determine the validity of any action, claim or defense before  
18 it was asserted;

19           "(2) The extent of any effort made after the  
20 commencement of an action to reduce the number of claims being  
21 asserted or to dismiss claims that have been found not to be  
22 valid;

23           "(3) The availability of facts to assist in  
24 determining the validity of an action, claim or defense;

25           ~~"(4) The relative financial position of the parties~~  
26 ~~involved;~~

1           "~~(5)~~ (4) Whether or not the action was prosecuted or  
2 defended, in whole or in part, in bad faith or for improper  
3 purpose;

4           "~~(6)~~ (5) Whether or not issues of fact,  
5 determinative of the validity of a parties' claim or defense,  
6 were reasonably in conflict;

7           "~~(7)~~ (6) The extent to which the party prevailed  
8 with respect to the amount of and number of claims or defenses  
9 in controversy;

10           "~~(8)~~ (7) The extent to which any action, claim or  
11 defense was asserted by an attorney or party in a good faith  
12 attempt to establish a new theory of law in the state, which  
13 purpose was made known to the court at the time of filing;

14           "~~(9)~~ (8) The amount or conditions of any offer of  
15 judgment or settlement in relation to the amount or conditions  
16 of the ultimate relief granted by the court;

17           "~~(10)~~ (9) The extent to which a reasonable effort  
18 was made to determine prior to the time of filing of an action  
19 or claim that all parties sued or joined were proper parties  
20 owing a legally defined duty to any party or parties asserting  
21 the claim or action;

22           "~~(11)~~ (10) The extent of any effort made after the  
23 commencement of an action to reduce the number of parties in  
24 the action; and

25           "~~(12)~~ (11) The period of time available to the  
26 attorney for the party asserting any defense before such  
27 defense was interposed."

1                   Section 2. Section 12-19-273.1 is added to the Code  
2 of Alabama 1975, to read as follows:

3                   §12-19-273.1.

4                   A court order granting or refusing to grant an award  
5 of attorneys' fees or litigation expenses pursuant to this  
6 article shall be appealable in the same manner as a final  
7 order to the appellate court which would otherwise have  
8 jurisdiction over the appeal from a final order in the  
9 underlying action, provided the appeal shall be filed not more  
10 than 42 days after the court order granting or refusing to  
11 grant an award is issued.

12                   Section 3. This act shall become effective on the  
13 first day of the third month following its passage and  
14 approval by the Governor, or its otherwise becoming law.