

Amendment No. 1 to SB2638

Beavers
Signature of Sponsor

AMEND Senate Bill No. 2638*

House Bill No. 3124

by deleting the language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 20-12-119, is amended by adding the following as a new subsection thereto:

(c)

(1) Notwithstanding subsection (a) or (b), in a civil proceeding, where a trial court grants a motion to dismiss pursuant to Rule 12 of the Tennessee Rules of Civil Procedure for failure to state a claim upon which relief may be granted, the court shall award the party or parties against whom the dismissed claims were pending at the time the successful motion to dismiss was granted the costs and reasonable and necessary attorney's fees incurred in the proceedings as a consequence of the dismissed claims by that party or parties. The awarded costs and fees shall be paid by the party or parties whose claim or claims were dismissed as a result of the granted motion to dismiss.

(2) Costs shall include all reasonable and necessary litigation costs actually incurred due to the proceedings that resulted from the filing of the dismissed claims, including, but not limited to:

- (A) Court costs;
- (B) Attorneys' fees'
- (C) Court reporter fees'
- (D) Interpreter fees; and
- (E) Guardian ad litem fees;

(3) An award of costs pursuant to this subsection shall be made only after all appeals of the issue of the granting of the motion to dismiss have been

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exhausted and if the final outcome is the granting of the motion to dismiss. The award of costs and attorneys' fees pursuant to this section shall be stayed until a final decision which is not subject to appeal is rendered.

(4) Notwithstanding any other provision of this section, 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. Where multiple parties are entitled to recover their costs from a single party under this section and those parties' combined actual costs under this statute exceed ten thousand dollars (\$10,000) then the court shall apportion the awarded costs to the moving parties in proportion to the amount of each moving party's incurred costs unless agreed otherwise by the moving parties. Nothing in this section shall be construed to limit the award of costs as provided for in other sections of the code or at common law.

(5) This subsection shall not apply to:

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

(B) 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;

(C) 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; however, this subdivision (C) shall not apply unless a pleading providing notice of the withdrawal or amendment was filed with

the court and delivered to the opposing party or parties at least three 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. Nothing in this section shall be construed to prevent a party from striking its own motion to dismiss;

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

(E) Any claim which is a good faith, non-frivolous claim filed for the express purpose of extending, modifying, or reversing existing precedent, law or regulation, or for the express purpose of establishing the meaning, lawfulness or constitutionality of a law, regulation or United States or Tennessee constitutional right where the meaning, lawfulness or constitutionality is a matter of first impression that has not been established by precedent in a published opinion by the Tennessee Supreme Court, Court of Appeals, Court of Criminal Appeals, a United States District Court in Tennessee, or by the United States Supreme Court. This subdivision (E) 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 of the express purposes listed above 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); or

(F) Any claim for which relief could be granted under a law, a court precedent published by a court described in subdivision (E), or a regulation, that was in effect and applicable to the claim at the time the

motion to dismiss was filed; where that law, precedent or regulation was cited in the pleading in which the dismissed claim was made or in the response to the motion to dismiss; and where the motion to dismiss the claim was granted due to the subsequent repeal, amendment, overruling or distinguishing of that law, regulation or published court precedent.

(6) This Section shall not be construed to limit the ability of any court to dismiss a claim or assess costs against a party whose claim has been dismissed, where permitted or required by other law, court rule or at common law.

SECTION 2. This act shall take effect July 1, 2012, the public welfare requiring

it.