

Senate Bill 335

By: Senators Lee of the 29th, Jackson of the 50th, Shafer of the 48th and Clay of the 37th

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 15 of Title 9 of the Official Code of Georgia Annotated, relating to court  
2 and litigation costs in civil actions, so as to provide for attorney’s fees and expenses of  
3 litigation to the prevailing party in civil cases; to provide standards for awarding and  
4 declining to award fees and expenses; to revise current positions relating to award of fees and  
5 expenses for unjustified claims or positions; to provide for other related matters; to repeal  
6 conflicting laws; to provide for an effective date and applicability; to repeal conflicting laws;  
7 and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 SECTION 1.

10 Chapter 15 of Title 9 of the Official Code of Georgia Annotated, relating to court and  
11 litigation costs in civil actions, is amended by striking Code Section 9-15-14, relating to  
12 awards of attorney fees and expenses of litigation, and inserting in its place a new Code  
13 section to read as follows:

14 "9-15-14.

15 (a) In any civil action in any court of record of this state which results in a final  
16 adjudication on the merits, reasonable and necessary attorney’s fees and expenses of  
17 litigation shall be awarded to the prevailing party or parties, unless the court orders  
18 otherwise. The court may decline to award attorney’s fees and expenses of litigation, or a  
19 portion thereof, if the court determines that the claim, defense, or other position asserted  
20 by the losing party presented a justiciable issue of law or fact such that it could be  
21 reasonably believed that a court would accept the asserted claim, defense, or other position  
22 or where the court determines that the prevailing party’s conduct of some part of the case  
23 violated the standards of paragraph (1) or (2) of subsection (b) of this Code section. In a  
24 case where the damages are apportioned between or among the parties, the fees and  
25 expenses shall also be apportioned by the court, unless the court orders otherwise for good  
26 cause shown.

1 (b) In any civil action in any court of record of this state which is not subject to subsection  
 2 (a) of this Code section because there is no final adjudication on the merits:

3 (1) Reasonable, ~~reasonable~~ and necessary attorney's fees and expenses of litigation shall  
 4 be awarded to any party against whom another party has asserted a claim, defense, or  
 5 other position with respect to which there existed such a complete absence of any  
 6 justiciable issue of law or fact that it could not be reasonably believed that a court would  
 7 accept the asserted claim, defense, or other position. ~~Attorney's fees and expenses so~~  
 8 ~~awarded shall be assessed against the party asserting such claim, defense, or other~~  
 9 ~~position, or against that party's attorney, or against both in such manner as is just; and~~

10 ~~(b)~~(2) The court may assess reasonable and necessary attorney's fees and expenses of  
 11 litigation in any civil action in any court of record if, upon the motion of any party or the  
 12 court itself, it finds that an attorney or party brought or defended an action, or any part  
 13 thereof, that lacked substantial justification or that the action, or any part thereof, was  
 14 interposed for delay or harassment, or if it finds that an attorney or party unnecessarily  
 15 expanded the proceeding by other improper conduct, including, but not limited to, abuses  
 16 of discovery procedures available under Chapter 11 of this title, the 'Georgia Civil  
 17 Practice Act.' As used in this Code section, 'lacked substantial justification' means  
 18 substantially frivolous, substantially groundless, or substantially vexatious.

19 ~~(c) No attorney or party shall be assessed attorney's fees as to any claim or defense which~~  
 20 ~~the court determines was asserted by said attorney or party in a good faith attempt to~~  
 21 ~~establish a new theory of law in Georgia if such new theory of law is based on some~~  
 22 ~~recognized precedential or persuasive authority.~~

23 ~~(d)~~(c) Attorney's fees and expenses of litigation awarded under this Code section shall not  
 24 exceed amounts which are reasonable and necessary for defending or asserting the rights  
 25 of a party. Attorney's fees and expenses of litigation incurred in obtaining an order of court  
 26 pursuant to this Code section may also be assessed by the court and included in its order.  
 27 Attorney's fees awarded under this Code section shall be awarded against the party, except  
 28 that the court may award all or part of attorney's fees against counsel for the party if the  
 29 court determines that counsel violated his or her duty to determine based upon reasonable  
 30 inquiry that:

31 (1) A position asserted is not being presented for any improper purpose, such as to harass  
 32 or to cause unnecessary delay or needless increase in the cost of litigation;

33 (2) A position asserted is warranted by existing law or by a nonfrivolous argument for  
 34 the extension, modification, or reversal of existing law or the establishment of new law;

35 (3) A position asserted has evidentiary support or, if specifically so identified, is likely  
 36 to have evidentiary support after a reasonable opportunity for further investigation or  
 37 discovery; and

1 (4) A denial of factual contentions is warranted on the evidence or, if specifically so  
 2 identified, is reasonably based on a lack of information or belief.

3 ~~(e)~~(d) Attorney's fees and expenses under this Code section may be requested by motion  
 4 at any time during the course of the action but not later than 45 days after the final  
 5 disposition of the action; but no request shall be necessary under subsection (a) of this  
 6 Code section; and where there is a final adjudication on the merits, the court shall proceed  
 7 as a matter of course to determine any issues relating to attorney's fees and expenses of  
 8 litigation.

9 ~~(f)~~(e) An award of reasonable and necessary attorney's fees or expenses of litigation under  
 10 this Code section shall be determined by the court without a jury and shall be made by an  
 11 order of court which shall constitute and be enforceable as a money judgment.

12 ~~(g)~~(f) Attorney's fees and expenses of litigation awarded under this Code section in a prior  
 13 action between the same parties shall be treated as court costs with regard to the filing of  
 14 any subsequent action.

15 ~~(h)~~(g) This Code section shall not apply to proceedings in magistrate courts. However,  
 16 when a case is appealed from the magistrate court, the appellee may seek litigation  
 17 expenses incurred below if the appeal lacks substantial justification.

18 (h) In any appeal from a trial court's application of this Code section, the appellate court  
 19 shall examine the record and make its own determination with respect to the appropriate  
 20 application of this Code section; and the order of the trial court shall not be accorded  
 21 presumptive deference."

## 22 SECTION 2.

23 This Act shall become effective on July 1, 2003. This Act shall apply to actions commenced  
 24 on or after that date. The court shall seek to achieve substantial equity and justice in the  
 25 application of this Act with respect to actions pending on that date and with respect to such  
 26 actions may apply this Act in whole or in part or may apply prior law.

## 27 SECTION 3.

28 All laws and parts of laws in conflict with this Act are repealed.