

State of Arkansas

76th General Assembly

Regular Session, 1987

AS ENGROSSED 1/30/87

HOUSE BILL 1223

By: Representatives Wilson, Shaver and Beatty

"AN ACT TO PROVIDE FOR THE AWARDING OF REASONABLE ATTORNEY'S FEES TO THE PREVAILING PARTY IN ANY CIVIL ACTION IN WHICH THE COURT FINDS THAT THERE WAS A COMPLETE ABSENCE OF A JUSTICIABLE ISSUE OF EITHER LAW OR FACT RAISED BY THE LOSING PARTY; AND FOR OTHER PURPOSES."

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

SECTION 1. In any civil action in which the court having jurisdiction finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party or his attorney, the court shall award an attorney's fee in an amount not to exceed five thousand dollars (\$5,000.00), or ten percent (10%) of the amount in controversy, whichever is less, to the prevailing party unless a voluntary dismissal is filed, or the pleadings are amended, as to any such non-justiciable issue within a reasonable time after the attorney or party filing the dismissal or the amended pleadings knew, or reasonably should have known, that he would not prevail.

SECTION 2. In awarding attorneys' fees, the court may pronounce its decision on the fees at the conclusion of the trial or special proceedings without written motion and with or without presentation of additional evidence. The judgment for attorneys' fees, if any, shall be included in the final judgment entered in the action.

SECTION 3. In order to find an action, claim, setoff, counterclaim or defense to be lacking a justiciable issue of law or fact, the court must find that the action, claim, setoff, counterclaim or defense was commenced, used or continued in bad faith, solely for purposes of harassing or maliciously injuring another, or delaying adjudication without just cause, or the party or

the party's attorney knew, or should have known, that the action, claim, setoff, counterclaim or defense was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.

SECTION 4. This Act shall not apply to actions arising out of a written instrument or agreement which entitles the prevailing party to an award of reasonable attorney's fees.

SECTION 5. On appeal the question as to whether there was a complete absence of a justiciable issue shall be determined de novo on the record of the trial court alone.

SECTION 6. All laws and parts of laws in conflict with this Act are hereby repealed.

