2018 Regular Session

HOUSE BILL NO. 100

BY REPRESENTATIVE WHITE

(On Recommendation of the Louisiana State Law Institute)

DOMESTIC ABUSE: Provides with respect to attorney fees and costs in domestic abuse cases

1	AN ACT
2	To amend and reenact Civil Code Articles 2315.8(B) and 2362.1(B), Children's Code Article
3	1570.1(A), R.S. 9:367, and R.S. 46:2136.1(A), and to enact R.S. 9:314, relative to
4	the award of costs and attorney fees; to provide for the assessment of costs and
5	attorney fees in the Domestic Abuse Assistance Act and the Post-Separation Family
6	Violence Relief Act; and to provide for related matters.
7	Be it enacted by the Legislature of Louisiana:
8	Section 1. Civil Code Articles 2315.8(B) and 2362.1(B) are hereby amended and
9	reenacted to read as follows:
10	Art. 2315.8. Liability for damages caused by domestic abuse
11	* * *
12	B. Upon motion of the defendant or upon its own motion, if the court
13	determines that any action alleging domestic abuse seeking damages under this
14	Article is frivolous or fraudulent, the court shall award costs of court, reasonable
15	attorney fees, and any other related costs to the defendant and any other sanctions
16	and relief requested pursuant to Code of Civil Procedure Article 863.
17	* * *
18	Art. 2362.1. Obligation incurred in an action for divorce
19	* * *

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CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

1	B. Notwithstanding the provisions of Paragraph A of this Article, the court
2	may assess The obligation for attorney fees and costs awarded in an action for
3	divorce granted pursuant to Article 103(4) or (5) or when the court determines that
4	a party or a child of one of the spouses was the victim of domestic abuse committed
5	during the marriage by the other party, and in incidental actions thereafter against the
6	perpetrator of abuse, which shall be a separate obligation of the perpetrator.
7	Revision Comments - 2018
8 9	See R.S. 9:314, authorizing the award of attorney fees and costs in domestic abuse cases.
10	Section 2. Children's Code Article 1570.1(A) is hereby amended and reenacted to
11	read as follows:
12	Art. 1570.1. Costs paid by abuser
13	A. All court costs, attorney fees, costs of enforcement and modifications
14	modification proceedings, costs of appeals appeal, evaluation fees, and expert
15	witness fees incurred in maintaining or defending any proceeding concerning
16	domestic abuse assistance in accordance with the provisions of this Chapter shall be
17	paid by the perpetrator of the domestic violence, including all costs of medical and
18	psychological care for the abused adult, or for any of the children, necessitated by
19	the domestic violence.
20	* * *
21	Section 3. R.S. 9:367 is hereby amended and reenacted and R.S. 9:314 is hereby
22	enacted to read as follows:
23	§314. Attorney fees and court costs in domestic abuse cases
24	The court may assess all court costs, attorney fees, costs of enforcement and
25	modification proceedings, costs of appeal, evaluation fees, and expert witness fees
26	in an action for divorce granted pursuant to Civil Code Article 103(4) or (5), or when
27	the court determines that a party to a divorce or a child of one of the spouses was the
28	victim of domestic abuse committed during the marriage by the other party, and in
29	incidental actions.

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1	Revision Comments - 2018
2 3 4	(a) This provision is consistent with the Post-Separation Family Violence Relief Act (<i>see</i> R.S. 9:367) and the Domestic Abuse Assistance Act (<i>see</i> R.S. 46:2136.1 and Ch.C. Art. 1570.1).
5 6	(b) See Civil Code Article 105, detailing incidental actions in family law matters.
7	* * *
8	§367. Costs
9	In any family violence case, all court costs, attorney fees, costs of
10	enforcement and modification proceedings, costs of appeal, evaluation fees, and
11	expert witness fees incurred in furtherance of this Part shall be paid by the
12	perpetrator of the family violence, including all costs of medical and psychological
13	care for the abused spouse, or for any of the children, necessitated by the family
14	violence.
15	Section 4. R.S. 46:2136.1(A) is hereby amended and reenacted to read as follows:
16	§2136.1. Costs paid by abuser
17	A. All court costs, attorney fees, costs of enforcement and modifications
18	modification proceedings, costs of appeals appeal, evaluation fees, and expert
19	witness fees incurred in maintaining or defending any proceeding concerning
20	domestic abuse assistance in accordance with the provisions of this Part shall be paid
21	by the perpetrator of the domestic violence, including all costs of medical and
22	psychological care for the abused adult, or for any of the children, necessitated by
23	the domestic violence.
24	* * *

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 100 Original

2018 Regular Session

White

ORIGINAL

Abstract: Provides for the award of attorney fees and the assessment of court costs in domestic abuse cases.

<u>Present law</u> (C.C. Art. 2315.8) provides for the award of punitive damages in a tort action based on acts of domestic abuse and provides consequences if the action brought is frivolous.

<u>Proposed law</u> retains <u>present law</u> and clarifies that the damages and consequences of a frivolous action under <u>present law</u> only relate to tort actions and do not relate to any action in which domestic abuse may be alleged.

<u>Present law</u> (C.C. Art. 2362.1) authorizes the court to assess attorney fees and costs in a divorce based on domestic abuse and provides that they are the separate obligation of the abuser.

<u>Proposed law</u> retains <u>present law</u> that classifies an obligation of attorney fees and costs awarded pursuant to a divorce based on domestic violence as a separate obligation but moves the authorization of the assessment to <u>proposed law</u> (R.S. 9:314).

<u>Present law</u> (Ch.C. Art. 1570.1) provides that in domestic abuse assistance cases, all court costs, attorney fees, costs of enforcement and modification proceedings, costs of appeal, evaluation fees, and expert witness fees shall be paid by the perpetrator of the family violence.

Proposed law retains present law and makes grammatical corrections only.

<u>Proposed law</u> (R.S. 9:314) retains <u>present law</u> in C.C. Art. 2326.1 that authorizes the court to assess attorney fees and costs in a divorce based on domestic abuse.

<u>Present law</u> (R.S. 9:367) provides that in any family violence case, all court costs, attorney fees, evaluation fees, and expert witness fees shall be paid by the perpetrator of the family violence.

<u>Proposed law</u> retains <u>present law</u> and makes the award consistent with the Domestic Abuse Assistance Act by also including costs of enforcement and modification proceedings and costs of appeal.

<u>Present law</u> (R.S. 46:2136.1) provides that in domestic abuse assistance cases, all court costs, attorney fees, costs of enforcement and modification proceedings, costs of appeal, evaluation fees, and expert witness fees shall be paid by the perpetrator of the family violence.

Proposed law retains present law and makes grammatical corrections only.

(Amends C.C. Arts. 2315.8(B) and 2362.1(B), Ch.C. Art. 1570.1(A), R.S. 9:367, and R.S. 46:2136.1(A); Adds R.S. 9:314)