

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 an 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 * * *

1 B. ~~Notwithstanding the provisions of Paragraph A of this Article, the court~~
2 ~~may assess~~ The obligation for attorney fees and costs incurred by the perpetrator of
3 ~~abuse or awarded against him~~ in an action for divorce granted pursuant to Article
4 103(4) or (5) or in an action in which the court determines that a spouse or a child
5 of one of the spouses was the victim of domestic abuse committed by the perpetrator
6 during the marriage, and in incidental actions, ~~thereafter against the perpetrator of~~
7 ~~abuse,~~ which shall be a separate obligation of the perpetrator.

Revision Comments - 2018

8 R.S. 9:314 authorizes a court to exercise its discretion to assess
9 attorney fees and costs against the perpetrator of domestic abuse in divorce
10 and incidental actions. Paragraph B of this Article makes the obligation to
11 pay any fees or costs assessed under R.S. 9:314 a separate obligation of the
12 perpetrator of domestic abuse. It also makes the obligation incurred by the
13 perpetrator to pay his own attorney fees and costs the perpetrator's separate
14 obligation.
15

16 Section 2. Children's Code Article 1570.1(A) is hereby amended and reenacted to
17 read as follows:

Art. 1570.1. Costs paid by abuser

19 A. All court costs, attorney fees, costs of enforcement and ~~modifications~~
20 modification proceedings, costs of ~~appeals~~ appeal, evaluation fees, and expert
21 witness fees incurred in maintaining or defending any proceeding concerning
22 domestic abuse assistance in accordance with the provisions of this Chapter shall be
23 paid by the perpetrator of the domestic violence, including all costs of medical and
24 psychological care for the abused adult, or for any of the children, necessitated by
25 the domestic violence.

* * *

27 Section 3. R.S. 9:367 is hereby amended and reenacted and R.S. 9:314 is hereby
28 enacted to read as follows:

§314. Attorney fees and court costs in domestic abuse cases

30 The court may assess against the perpetrator of domestic abuse all court
31 costs, attorney fees, costs of enforcement and modification proceedings, costs of
32 appeal, evaluation fees, and expert witness fees in an action for divorce granted
33 pursuant to Civil Code Article 103(4) or (5), or in an action in which the court

1 determines that a party to a divorce or a child of one of the spouses was the victim
2 of domestic abuse committed by the perpetrator during the marriage, and in
3 incidental actions.

4 Revision Comments - 2018

5 (a) This provision is consistent with the Post-Separation Family Violence
6 Relief Act (*see* R.S. 9:367) and the Domestic Abuse Assistance Act (*see* R.S.
7 46:2136.1 and Ch.C. Art. 1570.1).

8 (b) *See* Civil Code Article 105, listing incidental actions in family law
9 matters.

10 * * *

11 §367. Costs

12 In any family violence case, all court costs, attorney fees, costs of
13 enforcement and modification proceedings, costs of appeal, evaluation fees, and
14 expert witness fees incurred in furtherance of this Part shall be paid by the
15 perpetrator of the family violence, including all costs of medical and psychological
16 care for the abused spouse, or for any of the children, necessitated by the family
17 violence.

18 Section 4. R.S. 46:2136.1(A) is hereby amended and reenacted to read as follows:

19 §2136.1. Costs paid by abuser

20 A. All court costs, attorney fees, costs of enforcement and ~~modifications~~
21 modification proceedings, costs of ~~appeals~~ appeal, evaluation fees, and expert
22 witness fees incurred in maintaining or defending any proceeding concerning
23 domestic abuse assistance in accordance with the provisions of this Part shall be paid
24 by the perpetrator of the domestic violence, including all costs of medical and
25 psychological care for the abused adult, or for any of the children, necessitated by
26 the domestic violence.

27 * * *

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 Engrossed

2018 Regular Session

White

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

Present law (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.

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

Present law (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.

Proposed law retains present law 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 proposed law (R.S. 9:314).

Present law (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.

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

Present law (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.

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

Present law (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)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Specify that the obligation for attorney fees and costs is a separate obligation of the perpetrator of domestic abuse.
2. Provide comments from the Louisiana State Law Institute.
3. Specify that all court costs, attorney fees, and other costs and fees are assessed against the perpetrator of domestic abuse.