

SENATE BILL No. 340

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-6-2; IC 34-61.

Synopsis: Bad faith domestic relations actions. Defines "domestic relations action" as a civil action between adult parties sharing a defined relationship, including a family or sexual relationship. Establishes a procedure to allow a court to: (1) dismiss a domestic relations action brought in bad faith; and (2) impose sanctions against a plaintiff who brings a domestic relations action in bad faith, including a bar on filing a new domestic relations action without the prior permission of the court.

Effective: July 1, 2021.

Donato

January 11, 2021, read first time and referred to Committee on Judiciary.



First Regular Session of the 122nd General Assembly (2021)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2020 Regular Session of the General Assembly.

SENATE BILL No. 340

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 34-6-2-15.5 IS ADDED TO THE INDIANA CODE
- 2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2021]: **Sec. 15.5. "Bad faith domestic relations action", for**
- 4 **purposes of IC 34-61, has the meaning set forth in IC 34-61-2-2.**
- 5 SECTION 2. IC 34-6-2-15.6 IS ADDED TO THE INDIANA CODE
- 6 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 7 1, 2021]: **Sec. 15.6. "Bad faith domestic relations plaintiff", for**
- 8 **purposes of IC 34-61, has the meaning set forth in IC 34-61-2-3.**
- 9 SECTION 3. IC 34-6-2-33.7 IS ADDED TO THE INDIANA CODE
- 10 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 11 1, 2021]: **Sec. 33.7. "Defendant", for purposes of IC 34-61, has the**
- 12 **meaning set forth in IC 34-61-2-4.**
- 13 SECTION 4. IC 34-6-2-34.7 IS ADDED TO THE INDIANA CODE
- 14 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 15 1, 2021]: **Sec. 34.7. "Domestic relations action", for purposes of**
- 16 **IC 34-61, has the meaning set forth in IC 34-61-2-5.**
- 17 SECTION 5. IC 34-6-2-34.8 IS ADDED TO THE INDIANA CODE



1 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
2 1, 2021]: **Sec. 34.8. "Domestic relationship", for purposes of**
3 **IC 34-61, has the meaning set forth in IC 34-61-2-6.**

4 SECTION 6. IC 34-6-2-51.7 IS ADDED TO THE INDIANA CODE
5 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
6 1, 2021]: **Sec. 51.7. "Harass or maliciously injure", for purposes of**
7 **IC 34-61, has the meaning set forth in IC 34-61-2-7.**

8 SECTION 7. IC 34-6-2-109.5 IS ADDED TO THE INDIANA
9 CODE AS A NEW SECTION TO READ AS FOLLOWS
10 [EFFECTIVE JULY 1, 2021]: **Sec. 109.5. "Plaintiff", for purposes**
11 **of IC 34-61, has the meaning set forth in IC 34-61-2-8.**

12 SECTION 8. IC 34-61 IS ADDED TO THE INDIANA CODE AS
13 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
14 2021]:

15 **ARTICLE 61. BAD FAITH DOMESTIC RELATIONS**
16 **LITIGATION**

17 **Chapter 1. Application**

18 **Sec. 1. This article applies only to a domestic relations action.**

19 **Chapter 2. Definitions**

20 **Sec. 1. The definitions in this chapter apply throughout this**
21 **article.**

22 **Sec. 2. "Bad faith domestic relations action" means an action**
23 **described in IC 34-61-3-2(a).**

24 **Sec. 3. "Bad faith domestic relations plaintiff" means a plaintiff**
25 **who has filed an action that a court has found to be a bad faith**
26 **domestic relations action under IC 34-61-3-2.**

27 **Sec. 4. "Defendant" means a defendant in a domestic relations**
28 **action.**

29 **Sec. 5. "Domestic relations action" means an action filed by a**
30 **plaintiff against a defendant with whom the plaintiff has a**
31 **domestic relationship.**

32 **Sec. 6. (a) A plaintiff has a "domestic relationship" with a**
33 **defendant if the plaintiff and the defendant are at least eighteen**
34 **(18) years of age and the defendant:**

- 35 (1) is a current or former spouse of the defendant;
36 (2) is dating or has dated the defendant;
37 (3) is or was engaged in a sexual relationship with the
38 defendant;
39 (4) is related by blood or adoption to the defendant;
40 (5) is or was related by marriage to the defendant;
41 (6) has or previously had an established legal relationship:
42 (A) as a guardian of the defendant;



- 1 **(B) as a ward of the defendant;**
- 2 **(C) as a custodian of the defendant;**
- 3 **(D) in a capacity with respect to the defendant similar to**
- 4 **those listed in clauses (A) through (C), not including a**
- 5 **foster parent relationship; or**
- 6 **(7) has a child in common with the defendant.**
- 7 **(b) A plaintiff has a domestic relationship with both persons to**
- 8 **whom subsection (a)(1), (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), or (a)(7)**
- 9 **applies if the plaintiff is an adult child of one (1) of the persons.**
- 10 **Sec. 7. An action is filed to "harass or maliciously injure" a**
- 11 **defendant if it was primarily filed with the intent to do one (1) or**
- 12 **more of the following:**
- 13 **(1) Exhaust, deplete, impair, or adversely impact the**
- 14 **defendant's financial resources, unless:**
- 15 **(A) the plaintiff makes a good faith request for punitive**
- 16 **damages; or**
- 17 **(B) a change in the circumstances of the parties provides a**
- 18 **good faith basis to seek a change to a financial award,**
- 19 **support, or distribution of resources.**
- 20 **(2) Prevent or interfere with the ability of the defendant to**
- 21 **raise a child in the defendant's legal custody in the manner**
- 22 **the defendant finds appropriate, unless the plaintiff has a**
- 23 **lawful right to interfere and a good faith basis for doing so.**
- 24 **(3) Coerce the defendant to make a concession concerning a**
- 25 **financial, custodial, support, or other issue, if the issue has**
- 26 **been previously litigated and decided in favor of the**
- 27 **defendant.**
- 28 **(4) Coerce the defendant to alter, engage in, or refrain from**
- 29 **engaging in lawful conduct in which the defendant has the**
- 30 **right to engage.**
- 31 **(5) Impair the health or well-being of the defendant or a**
- 32 **dependent of the defendant.**
- 33 **(6) Prevent, interfere with, or adversely affect the ability of**
- 34 **the defendant to pursue or maintain a livelihood or lifestyle at**
- 35 **the same or better standard as the defendant enjoyed before**
- 36 **the plaintiff filed the action.**
- 37 **(7) Negatively affect the defendant's reputation in the**
- 38 **community, or attempt to alienate the defendant's friends,**
- 39 **colleagues, attorneys, or professional associates by subjecting**
- 40 **persons without relevant knowledge of or reasonable**
- 41 **connection to the action to unreasonably or unnecessarily**
- 42 **complex, lengthy, or intrusive discovery.**



1 **Sec. 8. "Plaintiff" means a plaintiff in a domestic relations**
 2 **action.**

3 **Chapter 3. Procedure**

4 **Sec. 1. (a) A defendant who believes that a domestic relations**
 5 **action is a bad faith domestic relations action may seek dismissal**
 6 **of the action:**

7 **(1) in the defendant's answer; or**

8 **(2) by motion;**

9 **of the defendant's belief. The defendant shall briefly set forth the**
 10 **factual basis for the defendant's belief.**

11 **(b) Upon receipt of the defendant's request for dismissal**
 12 **described in subsection (a), the court shall set the matter for**
 13 **hearing.**

14 **Sec. 2. (a) If, after the hearing, the court finds by a**
 15 **preponderance of the evidence:**

16 **(1) that the plaintiff brought the action with the primary**
 17 **intent to harass or maliciously injure the defendant; and**

18 **(2) that:**

19 **(A) there is no basis in existing law for the relief sought by**
 20 **the plaintiff, and the plaintiff is not making a reasonable**
 21 **argument for the extension, modification, or reversal of**
 22 **existing law;**

23 **(B) the plaintiff's claims are factually groundless; or**

24 **(C) the plaintiff has previously filed a substantially similar**
 25 **action and the action was decided adversely to the plaintiff**
 26 **on the merits;**

27 **the court shall find that the action is a bad faith domestic relations**
 28 **action.**

29 **(b) Except as provided in subsection (c), the defendant has the**
 30 **burden of proving that the action is a bad faith domestic relations**
 31 **action.**

32 **(c) There is a rebuttable presumption that the action is a bad**
 33 **faith domestic relations action if one (1) or more of the following**
 34 **apply:**

35 **(1) Within the previous five (5) years, the plaintiff has filed a**
 36 **domestic relations action against the defendant alleging the**
 37 **same or a substantially similar claim and the action was**
 38 **decided on the merits.**

39 **(2) At any time, the plaintiff has filed a complaint based on**
 40 **the same or a substantially similar claim against the**
 41 **defendant before a regulatory or licensing board and the**
 42 **regulatory or licensing board decided the complaint adversely**



1 to the plaintiff on the merits.

2 (3) Within the previous ten (10) years, the plaintiff has filed a
3 domestic relations action against the defendant alleging the
4 same or a substantially similar claim and has been sanctioned
5 with respect to that action:

6 (A) for a violation of rule 11 of the Indiana rules of trial
7 procedure (good faith pleading requirement);

8 (B) for a violation of rule 3.1 of the Indiana rules of
9 professional conduct (prohibition against frivolous or bad
10 faith litigation); or

11 (C) by a court for a frivolous or groundless claim, defense,
12 or discovery violation.

13 (4) At any time, a court of record has imposed a prefiling
14 restriction on the plaintiff because the court determined that
15 an action filed by the plaintiff was a bad faith domestic
16 relations action.

17 **Chapter 4. Remedies**

18 **Sec. 1. If the court finds by a preponderance of the evidence that**
19 **the action is a bad faith domestic relations action, the court may:**

20 (1) dismiss the action;

21 (2) order the plaintiff to pay:

22 (A) court costs;

23 (B) the defendant's reasonable attorney's fees; and

24 (C) other reasonable expenses incurred by the defendant
25 as a consequence of the bad faith domestic relations action;
26 and

27 (3) impose prefiling restrictions (as described in IC 34-61-5)
28 on the plaintiff for a period of at least four (4) years and not
29 more than six (6) years.

30 **Sec. 2. If the court finds by a preponderance of the evidence that**
31 **the action is not a bad faith domestic relations action, the court**
32 **may order the defendant to pay:**

33 (1) court costs;

34 (2) the plaintiff's reasonable attorney's fees; and

35 (3) other reasonable expenses of litigation;

36 incurred by the plaintiff in defending against the allegation that the
37 action is a bad faith domestic relations action.

38 **Chapter 5. Prefiling Restrictions**

39 **Sec. 1. (a) Except as provided in section 2 of this chapter, a bad**
40 **faith domestic relations plaintiff against whom a court has imposed**
41 **prefiling restrictions under IC 34-61-4-1 may not bring a domestic**
42 **relations action against the same defendant named in the action**



1 found to be a bad faith domestic relations action during the period
2 the prefiling restrictions are in effect.

3 (b) Except as provided in section 2 of this chapter, if the bad
4 faith domestic relations plaintiff has a pending domestic relations
5 action:

6 (1) against the same defendant named in the action found to
7 be a bad faith domestic relations action; and

8 (2) that was brought before the date the plaintiff was
9 determined to be a bad faith civil action plaintiff;

10 the court shall dismiss the pending domestic relations action.

11 Sec. 2. (a) A bad faith domestic relations plaintiff against whom
12 prefiling restrictions have been imposed under IC 34-61-4-1 may
13 only file a domestic relations action against the same defendant
14 named in the action that was found to be a bad faith domestic
15 relations action if:

16 (1) the bad faith domestic relations plaintiff applies to the
17 court that imposed the prefiling restrictions for permission to
18 file the action; and

19 (2) the court, after a hearing of which the defendant has been
20 given notice and the opportunity to testify, grants the
21 application.

22 (b) A court before whom a domestic relations action described
23 in section 1(b) of this chapter is pending shall not dismiss the action
24 solely on the basis of the bad faith domestic relations plaintiff's
25 prefiling restrictions if:

26 (1) the bad faith domestic relations plaintiff applies to the
27 court that imposed the prefiling restrictions for permission to
28 continue to pursue the action; and

29 (2) the court, after a hearing of which the defendant has been
30 given notice and the opportunity to testify, grants the request.

31 Sec. 3. In a hearing described in section 2 of this chapter, the
32 bad faith domestic relations action plaintiff has the burden of
33 proving by a preponderance of the evidence that the domestic
34 relations action under consideration is not a bad faith domestic
35 relations action.

36 Sec. 4. (a) If the court finds that the domestic relations action is
37 a bad faith domestic relations action, the court shall:

38 (1) deny the bad faith domestic relations action plaintiff
39 permission to file or continue the action; and

40 (2) prohibit the bad faith domestic relations action plaintiff
41 from filing another application for permission to file a
42 domestic relations action against the same defendant for a



1 period established by the court.

2 **(b) If the court finds that the domestic relations action is not a**
3 **bad faith domestic relations action, the court shall issue an order**
4 **permitting the bad faith domestic relations plaintiff to file or**
5 **continue the action.**

6 **(c) The court shall issue its order granting or denying the**
7 **application in writing and briefly explain the court's reasons for**
8 **granting or denying the application. An order denying the**
9 **application is a final appealable order.**

