

SENATE BILL 2638

By Johnson

AN ACT to amend Tennessee Code Annotated, Title 20;
Title 25; Title 27 and Title 29, relative to motions to
dismiss.

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

SECTION 1. Tennessee Code Annotated, Section 20-12-119, is amended by adding
the following text as a new subsection (c):

(c)

(1) Notwithstanding the provisions of subsections (a) and (b), in a civil proceeding, on a trial court's granting or denial, in whole or in part, of a motion to dismiss pursuant to Rule 12 of the Tennessee Rules of Civil Procedure, the court shall award costs and reasonable and necessary attorney's fees to the prevailing party.

(2) Costs shall include all reasonable and necessary litigation costs actually incurred due to the proceedings, including, but not limited to:

(A) Court costs;

(B) Attorneys' fees;

(C) Investigation expenses;

(D) Deposition costs;

(E) Reasonable fees for not more than two (2) testifying expert witnesses;

(F) Court reporter fees;

(G) Interpreter fees; and

(H) Guardian ad litem fees.

(3) An award of costs and attorneys' fees pursuant to this subsection shall be made only after all appeals have been exhausted. Attorneys' fees shall be stayed until a final decision which is not subject to appeal is rendered. The party against whom a final judgment is rendered shall be responsible for the attorneys' fees of the prevailing party.

(4) This subsection does not apply to:

(A) Actions by or against the state, other governmental entities, or public officials acting in their official capacity or under color of law; or

(B) Actions by pro se litigants, except that the court shall have discretion to award reasonable costs and attorneys' fees where the court determines that the pro se party acted unreasonably in bringing the dismissed claim.

SECTION 2. This act shall take effect July 1, 2012, the public welfare requiring it, and shall apply to the disposition of all motions to dismiss that are filed on or after such date.