

SENATE No. 743

By Mr. Wall, a petition (accompanied by bill, Senate, No. 743) of the Massachusetts Bar Association, by Berge C. Tashjian, President, for legislation to propose a statute on allocation of counsel fees and expenses in civil cases. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Seventy-Three.

AN ACT PROPOSING STATUTE ON ALLOCATION OF COUNSEL FEES AND EXPENSES IN CIVIL CASES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

1 SECTION 1. The following shall apply to all civil cases of
2 whatever nature heard or tried before the supreme judicial
3 court and the superior and probate courts. The powers granted
4 to judges of such courts by this act with respect to the subject
5 matter hereof shall be in addition to those already established
6 by statute or judicial precedent.

1 SECTION 2. The justices of the supreme judicial court, when
2 sitting as a full court, and each justice of such court when
3 sitting as a single justice, and each judge of the superior and
4 probate courts are hereby authorized, in their or his discre-
5 tion, in any civil case in which a finding, verdict, decision,
6 award or judgment has been made by them or him or by a
7 jury, auditor, master or other finder of fact, to determine, as
8 a separate and distinct finding, that all or a substantial portion
9 of any party's or parties' claims or defenses, setoffs or counter-
10 claims, whether of a factual, legal or mixed nature, were
11 wholly insubstantial, frivolous or not advanced in good faith.
12 If such a finding is made with respect to any claim, the
13 judge(s) shall award to the party or parties against whom
14 such claim was asserted an amount representing the reason-
15 able counsel fees, costs and expenses of the party or parties

16 in defending against such claim. If such a finding is made with
17 respect to any defense, setoff or counterclaim, the judge(s)
18 shall award to the claimant or claimants against whom such
19 defense, setoff or counterclaim was asserted: (1) if the claim
20 was monetary in nature, interest at the rate of one per cent
21 per month from the date when the amount represented by
22 such claim was due to the claimant pursuant to the substan-
23 tive rules of law pertaining thereto, the date selected by the
24 judge to be stated in his award and, thereafter unless the find-
25 ing for the claimant(s) on the claim or the finding referred
26 to herein shall be reversed, said interest on any unpaid portion
27 shall continue to accrue and be payable until the claim is paid
28 in full; (2) an amount representing the reasonable counsel
29 fees, costs and expenses of the claimant or claimants in prose-
30 cuting his or their claims or in resisting and defending against
31 the setoff or counterclaim found to have been wholly insub-
32 stantial, frivolous or not advanced in good faith. In addi-
33 tion thereto, but not in duplication of any award which may
34 be made by reason of the foregoing, if the judge(s) finds that
35 any portion of a monetary claim by a party was not the sub-
36 ject of a bona fide dispute, he shall award interest to the claim-
37 ant or claimants on such portion in the same manner as spe-
38 cified hereinabove.

1 SECTION 3. Any finding and any award by a single justice of
2 the supreme judicial court or by a judge of the superior or
3 probate courts made pursuant to the provisions of section two
4 of this act shall be subject to review by the full bench of the
5 supreme judicial court, according to the principles or review
6 applicable in equity.

1 SECTION 4. If the parties to any such proceeding shall com-
2 promise and settle their differences and shall file in the ap-
3 propriate court documents adequately reflecting such compro-
4 mise and settlement, no finding and/or award may be made by
5 a justice or judge pursuant to section two of this act, and if
6 a finding and/or award has theretofore been made with re-
7 spect to counsel fees, costs and expenses or with respect to

8 interest pursuant to section two, such finding and/or award
9 shall be treated as vacated and of no further force and effect.

1 SECTION 5. A finding and award authorized by section two
2 may be made on motion of either party or by a justice or
3 judge on his own initiative. In the justice's or judge's dis-
4 cretion, a separate hearing may be held on the issue of the
5 finding, and a further hearing on the amount to be awarded,
6 or such hearings may be combined, but a hearing, if requested
7 on either or both issues, shall be mandatory. The only evi-
8 dence to be introduced at such hearing or hearings shall relate
9 to the amount, if any, of the counsel fees, costs, and expenses
10 of the parties and the amount of interest to be awarded; pro-
11 vided, however, that nothing herein shall be deemed to limit
12 or preclude the right to argument by a party or his counsel on
13 all issues involved.

It is not possible to state the exact number of cases which have been reported in the United States since the beginning of the present year, as the data are not complete. It is, however, estimated that the total number of cases is about 100,000. The following table shows the number of cases reported in each of the States and Territories during the year 1918.

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