

SENATE BILL 474

D4

9lr2172

By: **Senators Lenett, Frosh, Garagiola, Harrington, Madaleno, Pugh, and Raskin**

Introduced and read first time: February 4, 2009

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Courts – Family Law – Award for Reasonable and Necessary Expense for**
3 **Pro Bono Representation**

4 FOR the purpose of authorizing a court in a certain proceeding to award an amount for
5 the reasonable and necessary expense of prosecuting or defending a proceeding
6 to a lawyer, a law firm, or an organization that represents a party free of
7 charge; authorizing the court to make such an award in a proceeding relating to
8 divorce, alimony, or property or personal rights; authorizing the court to award
9 an amount for costs and counsel fees in a proceeding relating to child support,
10 custody, or visitation to a lawyer, a law firm, or an organization that represents
11 a party free of charge; and generally relating to an award for reasonable and
12 necessary expense for pro bono representation in certain proceedings.

13 BY repealing and reenacting, with amendments,
14 Article – Family Law
15 Section 7–107, 8–214, 11–110, and 12–103
16 Annotated Code of Maryland
17 (2006 Replacement Volume and 2008 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
19 MARYLAND, That the Laws of Maryland read as follows:

20 **Article – Family Law**

21 7–107.

22 (a) In this section, “reasonable and necessary expense” includes:

23 (1) suit money;

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2) counsel fees; and

2 (3) costs.

3 (b) At any point in a proceeding under this title, the court may order either
4 party to pay to the other party an amount for the reasonable and necessary expense of
5 prosecuting or defending the proceeding.

6 (c) Before ordering the payment, the court shall consider:

7 (1) the financial resources and financial needs of both parties; and

8 (2) whether there was substantial justification for prosecuting or
9 defending the proceeding.

10 (d) Upon a finding by the court that there was an absence of substantial
11 justification of a party for prosecuting or defending the proceeding, and absent a
12 finding by the court of good cause to the contrary, the court shall award to the other
13 party the reasonable and necessary expense of prosecuting or defending the
14 proceeding.

15 (e) The court may award reimbursement for any reasonable and necessary
16 expense that has previously been paid.

17 (f) As to any amount awarded for counsel fees, the court may:

18 (1) order that the amount awarded be paid directly to the lawyer; and

19 (2) enter judgment in favor of the lawyer.

20 **(G) THE COURT MAY AWARD AN AMOUNT FOR THE REASONABLE AND**
21 **NECESSARY EXPENSE OF PROSECUTING OR DEFENDING A PROCEEDING UNDER**
22 **THIS SECTION TO A LAWYER, A LAW FIRM, OR AN ORGANIZATION THAT**
23 **REPRESENTS A PARTY FREE OF CHARGE.**

24 8-214.

25 (a) In this section, “reasonable and necessary expense” includes:

26 (1) suit money;

27 (2) counsel fees; and

28 (3) costs.

(b) At any point in a proceeding under this subtitle, the court may order either party to pay to the other party an amount for the reasonable and necessary expense of prosecuting or defending the proceeding.

(c) Before ordering the payment, the court shall consider:

(1) the financial resources and financial needs of both parties; and

(2) whether there was substantial justification for prosecuting or defending the proceeding.

(d) Upon a finding by the court that there was an absence of substantial justification of a party for prosecuting or defending the proceeding, and absent a finding by the court of good cause to the contrary, the court shall award to the other party the reasonable and necessary expense of prosecuting or defending the proceeding.

(e) The court may award reimbursement for any reasonable and necessary expense that has previously been paid.

(f) As to any amount awarded for counsel fees, the court may:

(1) order that the amount awarded be paid directly to the lawyer; and

(2) enter judgment in favor of the lawyer.

(G) THE COURT MAY AWARD AN AMOUNT FOR THE REASONABLE AND NECESSARY EXPENSE OF PROSECUTING OR DEFENDING A PROCEEDING UNDER THIS SECTION TO A LAWYER, A LAW FIRM, OR AN ORGANIZATION THAT REPRESENTS A PARTY FREE OF CHARGE.

11–110.

(a) (1) In this section the following words have the meanings indicated.

(2) “Proceeding” includes a proceeding for:

(i) alimony;

(ii) alimony pendente lite;

(iii) modification of an award of alimony; and

(iv) enforcement of an award of alimony.

(3) “Reasonable and necessary expense” includes:

- 1 (i) suit money;
- 2 (ii) counsel fees; and
- 3 (iii) costs.

4 (b) At any point in a proceeding under this title, the court may order either
5 party to pay to the other party an amount for the reasonable and necessary expense of
6 prosecuting or defending the proceeding.

7 (c) Before ordering the payment, the court shall consider:

- 8 (1) the financial resources and financial needs of both parties; and
- 9 (2) whether there was substantial justification for prosecuting or
10 defending the proceeding.

11 (d) Upon a finding by the court that there was an absence of substantial
12 justification of a party for prosecuting or defending the proceeding, and absent a
13 finding by the court of good cause to the contrary, the court shall award to the other
14 party the reasonable and necessary expense of prosecuting or defending the
15 proceeding.

16 (e) The court may award reimbursement for any reasonable and necessary
17 expense that has previously been paid.

18 (f) As to any amount awarded for counsel fees, the court may:

- 19 (1) order that the amount awarded be paid directly to the lawyer; and
- 20 (2) enter judgment in favor of the lawyer.

21 **(G) THE COURT MAY AWARD AN AMOUNT FOR THE REASONABLE AND**
22 **NECESSARY EXPENSE OF PROSECUTING OR DEFENDING A PROCEEDING UNDER**
23 **THIS SECTION TO A LAWYER, A LAW FIRM, OR AN ORGANIZATION THAT**
24 **REPRESENTS A PARTY FREE OF CHARGE.**

25 12–103.

26 (a) The court may award to either party the costs and counsel fees that are
27 just and proper under all the circumstances in any case in which a person:

- 28 (1) applies for a decree or modification of a decree concerning the
29 custody, support, or visitation of a child of the parties; or
- 30 (2) files any form of proceeding:

- 1 (i) to recover arrearages of child support;
- 2 (ii) to enforce a decree of child support; or
- 3 (iii) to enforce a decree of custody or visitation.

4 (b) Before a court may award costs and counsel fees under this section, the
5 court shall consider:

- 6 (1) the financial status of each party;
- 7 (2) the needs of each party; and
- 8 (3) whether there was substantial justification for bringing,
9 maintaining, or defending the proceeding.

10 (c) Upon a finding by the court that there was an absence of substantial
11 justification of a party for prosecuting or defending the proceeding, and absent a
12 finding by the court of good cause to the contrary, the court shall award to the other
13 party costs and counsel fees.

14 **(D) THE COURT MAY AWARD COSTS AND COUNSEL FEES FOR**
15 **PROSECUTING OR DEFENDING A PROCEEDING UNDER THIS SECTION TO A**
16 **LAWYER, A LAW FIRM, OR AN ORGANIZATION THAT REPRESENTS A PARTY FREE**
17 **OF CHARGE.**

18 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
19 October 1, 2009.