

[First Reprint]
ASSEMBLY, No. 71

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman KAVANAUGH and Assemblywoman CRECCO

1 AN ACT concerning frivolous lawsuits and amending P.L.1988, c.46.

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3 **BE IT ENACTED** by the Senate and General Assembly of the State
4 of New Jersey:

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6 1. Section 1 of P.L.1988, c.46 (C.2A:15-59.1) is amended to read
7 as follows:

8 1. a. (1) A party who prevails in a civil action, either as plaintiff
9 or defendant, against any other party may be awarded all reasonable
10 litigation costs and reasonable attorney fees, if the judge finds at any
11 time during the proceedings, **[or]** upon judgment or following the
12 judgment that a complaint, counterclaim, cross-claim, **[or]** defense,
13 motion or cross-motion of the nonprevailing person was frivolous.

14 (2) When a public entity is required or authorized by law to
15 provide for the defense of a present or former employee, the public
16 entity may be awarded all reasonable litigation costs and reasonable
17 attorney's fees if the individual for whom defense was provided is the
18 prevailing party in a civil action, and if there is a judicial determination
19 at any time during the proceedings ¹**[or]**,¹ upon judgment ¹or
20 following the judgment¹ that a complaint, counterclaim, cross-claim,
21 ¹**[or]**¹ defense ¹, motion or cross-motion¹ of the nonprevailing party
22 was frivolous.

23 b. In order to find that a complaint, counterclaim, cross-claim, **[or]**
24 defense, motion or cross-motion of the nonprevailing party was
25 frivolous, the judge shall find on the basis of the pleadings, discovery,
26 or the evidence presented that either:

27 (1) The complaint, counterclaim, cross-claim, **[or]** defense, motion
28 or cross-motion was commenced, used or continued in bad faith, solely
29 for the purpose of harassment, delay or malicious injury; or

30 (2) The nonprevailing party knew, or should have known, that the
31 complaint, counterclaim, cross-claim, **[or]** defense, motion or

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SWF committee amendments adopted June 19, 1997.

1 cross-motion was without any reasonable basis in law or equity and
2 could not be supported by a good faith argument for an extension,
3 modification or reversal of existing law.

4 c. A party or public entity seeking an award under this section shall
5 make application to the court which heard the matter. The application
6 shall be supported by an affidavit stating in detail:

7 (1) The nature of the services rendered, the responsibility assumed,
8 the results obtained, the amount of time spent by the attorney, any
9 particular novelty or difficulty, the time spent and services rendered by
10 secretaries and staff, other factors pertinent in the evaluation of the
11 services rendered, the amount of the allowance applied for, an
12 itemization of the disbursements for which reimbursement is sought,
13 and any other factors relevant in evaluating fees and costs; and

14 (2) How much has been paid to the attorney and what provision,
15 if any, has been made for the payment of these fees in the future.
16 (cf: P.L.1995, c.13, s.1)

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18 2. This act shall take effect immediately.

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23 Expands frivolous lawsuit statute to allow recovery for frivolous
24 motions in civil actions, including family court motions.