

ASSEMBLY, No. 1114

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1996 SESSION

By Assemblyman LANCE

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. [A party who prevails in a civil action, either as plaintiff or  
9 defendant, against any other party may be awarded all reasonable  
10 litigation costs and reasonable attorney fees,] Reasonable attorneys'  
11 fees and costs may be assessed against an attorney or litigant if the  
12 judge finds at any time during the proceedings or upon judgment that  
13 a complaint, claim, counterclaim, cross-claim, [or] defense, motion,  
14 pre-trial application, affidavit or other pleading, or any portion  
15 thereof, of the [nonprevailing person] litigant or attorney was  
16 frivolous.

17 b. In order to find that a complaint, claim, counterclaim,  
18 cross-claim, [or] defense, motion, affidavit or other pleading, or any  
19 portion thereof [of the nonprevailing party] was frivolous, the judge  
20 shall find on the basis of the pleadings, discovery, or the evidence  
21 presented that [either]:

22 (1) The complaint, counterclaim, cross-claim, [or] defense, motion,  
23 pre-trial application, affidavit or other pleading, or any portion thereof  
24 was commenced, used or continued in bad faith, solely for the purpose  
25 of harassment, delay, [or] malicious injury, retaliation against the  
26 assertion of a legitimate claim or to attack individuals or organizations  
27 who in good faith communicate information to any public entity on any  
28 issue that is reasonably of concern to the individual, to the public or  
29 to the organization; or

30 (2) The [nonprevailing] party knew, or should have known, that  
31 the complaint, counterclaim, cross-claim, [or] defense, motion,  
32 pre-trial application, affidavit or other pleading, or any portion thereof

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.

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

4 (3) The allegations and other factual contentions in the complaint,  
5 counterclaim, cross-claim, defense, motion, pre-trial application,  
6 affidavit or other pleading, or any portion thereof, did not have  
7 evidentiary support or were not likely to have evidentiary support after  
8 a reasonable opportunity for further investigation or discovery; or

9 (4) The denials of factual contentions in the defense or other  
10 pleadings are not warranted on the evidence or are not reasonably  
11 based on a lack of information or belief.

12 c. In addition to assessing reasonable attorneys' fees and costs for  
13 a violation of this act, the court may issue directives of a  
14 non-monetary nature which are intended to deter repetition of the  
15 conduct which resulted in the violation.

16 d. (1) A notice of intent to file a motion for attorneys' fees and  
17 costs, describing the specific conduct alleged to violate this act, shall  
18 be served on the party alleged to have committed the violation at least  
19 21 days prior to service of the motion for attorney's fees and costs.  
20 The notice of intent to file the motion shall not be filed with the court.  
21 If the challenged pleading is not withdrawn or appropriately modified  
22 within the 21-day period, the motion for attorneys' fees and costs may  
23 then be served on the party and filed with the court. The court may  
24 award to the party prevailing on the motion the reasonable attorneys'  
25 fees and costs incurred in filing or defending the motion.

26 (2) The court may, on its own initiative, enter an order describing  
27 the specific conduct alleged to violate this act and directing an  
28 attorney or party to show cause why it has not violated the provisions  
29 of this act.

30 (3) When imposing attorneys' fees or other sanctions, the court  
31 shall place its findings on the record describing the conduct determined  
32 to constitute a violation of this act and explaining the basis for the  
33 sanctions imposed.

34 e. A party seeking an award under this section shall make  
35 application to the court which heard the matter. The application shall  
36 be supported by an affidavit stating in detail:

37 (1) The nature of the services rendered, the responsibility assumed,  
38 the results obtained, the amount of time spent by the attorney, any  
39 particular novelty or difficulty, the time spent and services rendered by  
40 secretaries and staff, other factors pertinent in the evaluation of the  
41 services rendered, the amount of the allowance applied for, an  
42 itemization of the disbursements for which reimbursement is sought,  
43 and any other factors relevant in evaluating fees and costs; and

44 (2) How much has been paid to the attorney and what provision,

1 if any, has been made for the payment of these fees in the future.  
2 (cf: P.L.1988, c.46, s.1)

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4 2. This act shall take effect immediately.

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#### STATEMENT

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9 This bill would expand the provisions of current law concerning  
10 frivolous lawsuits. Presently, N.J.S.A.2A:15-59.1 provides that a  
11 party who prevails in a civil action against any other party may be  
12 awarded all reasonable litigation costs and attorneys' fees if the judge  
13 finds that a pleading of the nonprevailing person was "frivolous."

14 A "frivolous" pleading is currently defined as one that was  
15 commenced, used or continued in bad faith, solely for the purpose of  
16 harassment, delay or malicious injury, or a pleading filed when the  
17 nonprevailing party knew, or should have known, that it was without  
18 any reasonable basis in law or equity and could not be supported by  
19 a good faith argument for an extension, modification or reversal of  
20 existing law.

21 Under the bill, the definition of "frivolous" pleadings would be  
22 expanded to also include any pleading which was commenced, used or  
23 continued for the purpose of retaliation against the assertion of a  
24 legitimate claim or to attack individuals or organizations who in good  
25 faith communicate information to any public entity on any issue that  
26 is reasonably of concern to the individual, to the public or to the  
27 organization. The bill would also include as "frivolous" any pleading  
28 which did not have evidentiary support or was not likely to have  
29 evidentiary support after a reasonable opportunity for further  
30 investigation or discovery.

31 In addition, the bill expands the types of pleadings which would be  
32 encompassed by the statute, adding claims, motions, pre-trial affidavits  
33 or other pleadings, or portions of these, to the list. Currently, the  
34 statute only covers complaints, counterclaims, cross-claims and  
35 defenses.

36 The bill also expands the category of persons covered by the  
37 statute, allowing any party or attorney (rather than just the  
38 non-prevailing party) to be sanctioned for frivolous pleadings.

39 The bill also allows the court to order non-monetary sanctions in  
40 appropriate cases. The sanctions would be intended to deter the type  
41 of conduct which resulted in the frivolous pleading.

42 Finally, the bill specifies procedures to be followed in filing claims  
43 against parties under the statute, requiring a 21-day notice to the party  
44 before a formal motion would be filed with the court. The 21-day  
45 period would give the party an opportunity to withdraw or modify the  
46 inappropriate pleading.

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3 Expands ability of the court to order payment of attorney fees and  
4 costs by parties who file frivolous lawsuits.