

SENATE, No. 1491

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 19, 1996

By Senators MARTIN, EWING and Cafiero

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 or upon judgment that a complaint,  
20 counterclaim, cross-claim, or defense of the nonprevailing party was  
21 frivolous.

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

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

29 (2) The nonprevailing party knew, or should have known, that the  
30 complaint, counterclaim, cross-claim, [or] defense, motion or  
31 cross-motion was without any reasonable basis in law or equity and  
32 could not be supported by a good faith argument for an extension,  
33 modification or reversal of existing law.

34 c. A party or public entity seeking an award under this section shall

**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 make application to the court which heard the matter. The application  
2 shall be supported by an affidavit stating in detail:

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

10 (2) How much has been paid to the attorney and what provision,  
11 if any, has been made for the payment of these fees in the future.

12 (cf: P.L.1995, c.13, s.1)

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14 2. This act shall take effect immediately.

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#### STATEMENT

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19 This bill would allow judges to impose sanctions against parties  
20 who file frivolous motions in civil actions, including family court  
21 motions.

22 Under current law, the "frivolous lawsuit" statute,  
23 N.J.S.A.2A:15-59.1, allows a prevailing party in a civil action to  
24 recover attorney fees and costs from the nonprevailing party when the  
25 judge determines that a complaint, counterclaim, cross-claim or  
26 defense filed by the nonprevailing party was frivolous.

27 However, the New Jersey Supreme Court, in McKeown-Brand v.  
28 Trump Castle Hotel & Casino, 132 N.J. 546, 562 (1993) and Lewis v.  
29 Lewis, 132 N.J. 541, 545 (1993), held that by the terms of  
30 N.J.S.A.2A:15-59.1, the statute does not apply to motions. In Lewis  
31 v. Lewis, which involved post-judgment matrimonial motions, the  
32 family court awarded attorney fees to Joanne Lewis because it  
33 determined that a motion by her ex-husband to reduce his payment of  
34 alimony arrearages was frivolous under the standards set by  
35 N.J.S.A.2A:15-59.1. However, the attorney fee award was overturned  
36 by the New Jersey Supreme Court on the grounds that the statute only  
37 covers a frivolous "complaint, counterclaim, cross-claim or defense,"  
38 and not a frivolous motion.

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43 Expands frivolous lawsuit statute to allow recovery for frivolous  
44 motions in family court.