

Senate Bill 225

By: Senators Thompson of the 33rd, Tanksley of the 32nd, Meyer von Bremen of the 12th and Harp of the 16th

A BILL TO BE ENTITLED
AN ACT

1 To enact the "Frivolous Litigation Prevention Act"; to provide for legislative findings; to
2 amend Title 9 of the Official Code of Georgia Annotated, relating to civil practice, so as to
3 change provisions relating to signing of pleadings and other documents, representation to the
4 court, and sanctions; to change provisions relating to failure to make discovery, sanctions,
5 and expenses; to change provisions relating to litigation costs and attorney's fees in frivolous
6 actions and defenses; to provide for related matters; to repeal conflicting laws; and for other
7 purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 This Act shall be known and may be cited as the "Frivolous Litigation Prevention Act."

11 **SECTION 2.**

12 The legislature finds that frivolous claims and defenses are detrimental to the prompt and
13 efficient administration of justice and shall be prohibited according to the specific provisions
14 contained in this Act.

15 **SECTION 3.**

16 Title 9 of the Official Code of Georgia Annotated, relating to civil practice, is amended by
17 striking Code Section 9-11-11, relating to signing of pleadings and verification, and inserting
18 in lieu thereof the following:

19 "9-11-11.

20 (a) Signature. Every pleading and other document of a party represented by an attorney
21 shall be signed by at least one attorney of record in his the attorney's individual name;
22 whose or, if the party is not represented by an attorney, shall be signed by the party. Each
23 pleading or document shall state the signer's address shall be stated and telephone number,
24 if any. A party who is not represented by an attorney shall sign his pleading and state his

1 ~~address. The signature of an attorney constitutes a certificate by him that he has read the~~
2 ~~pleading and that it is not interposed for delay.~~

3 (b) Except when otherwise specifically provided by rule or statute, pleadings need not be
4 verified or accompanied by affidavit. An unsigned pleading or document shall be stricken
5 unless omission of the signature is corrected promptly after being called to the attention of
6 the attorney or party.

7 (c) The rule in equity that the averments of an answer under oath must be overcome by the
8 testimony of two witnesses or of one witness sustained by corroborating circumstances is
9 abolished.

10 (b) Representation to court. By presenting to the court, whether by signing, filing,
11 submitting, or later advocating, a pleading or other document, an attorney or unrepresented
12 party is certifying that to the best of the person's knowledge, information, and belief:

13 (1) It is not being presented for any improper purpose, such as to harass or to cause
14 unnecessary delay or needless increase in the cost of litigation;

15 (2) The claims, defenses, and other legal contentions therein are warranted by existing
16 law or by a nonfrivolous argument for the extension, modification, or reversal of existing
17 law or the establishment of new law;

18 (3) The allegations and other factual contentions have evidentiary support or, if
19 specifically identified, are likely to have evidentiary support after a reasonable
20 opportunity for further investigation or discovery;

21 (4) The denials of factual contentions are warranted on the evidence or, if specifically
22 identified, are reasonably based on a lack of information or belief;

23 (5) It was formed after an inquiry reasonable under the circumstances, which inquiry
24 shall include, but shall not be limited to, determining the validity of any action, claim, or
25 defense before asserting it; and

26 (6) The attorney or unrepresented party has made all reasonable efforts to reduce the
27 number of claims or defenses that have been found not to be valid upon a reasonable
28 investigation under the circumstances.

29 (c) Sanctions. If, after notice and a reasonable opportunity to respond, the court
30 determines that subsection (b) of this Code section has been violated, the court shall,
31 subject to this subsection, impose an appropriate sanction upon the attorneys, law firms,
32 or parties that have violated subsection (b) of this Code section or are responsible for the
33 violation. Sanctions may be initiated:

34 (1) BY MOTION. A motion for sanctions under this subsection shall be made separately
35 from other motions or requests and shall describe the specific conduct alleged to violate
36 subsection (b) of this Code section. It shall not be filed with or presented to the court
37 unless, within 21 days after the nonmovant has received written notice of the movant's

1 intent to file the motion or such other period as the court may prescribe, the challenged
 2 pleading, document, claim, defense, contention, allegation, or denial is not withdrawn or
 3 appropriately corrected. If warranted, the court shall award to the party prevailing on the
 4 motion the reasonable expense and attorney's fees incurred in presenting or opposing the
 5 motion. Absent exceptional circumstances a law firm shall be held jointly responsible
 6 for violations committed by its partners, associates, and employees; or

7 (2) ON COURT INITIATIVE. On its own initiative, the court may enter an order describing
 8 the specific conduct that appears to violate subsection (b) of this Code section and may
 9 direct an attorney, law firm, or party to show cause why it has not violated subsection (b)
 10 of this Code section.

11 (d) Nature of sanctions; limitations. A sanction imposed for violation of subsection (b)
 12 of this Code section shall be limited to what is sufficient to deter repetition of such conduct
 13 or comparable conduct by others similarly situated. Subject to the limitations in paragraphs
 14 (1) and (2) of this subsection, the sanction may consist of or include directives of a
 15 nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and
 16 warranted for effective deterrence, an order directing payment to the movant of some or
 17 all of the reasonable attorney's fees and other expenses incurred as a direct result of the
 18 violation. Sanctions shall be limited as follows:

19 (1) Monetary sanctions may not be awarded against a represented party for a violation
 20 of paragraph (2) of subsection (b) of this Code section; and.

21 (2) Monetary sanctions may not be awarded on the court's initiative unless the court
 22 issues its order to show cause before a voluntary dismissal or settlement of the claims
 23 made by or against the party which is, or whose attorneys are, to be sanctioned.

24 (e) Order. When imposing sanctions the court shall describe the conduct determined to
 25 constitute a violation of subsection (b) of this Code section and explain the basis for the
 26 sanction imposed.

27 (f) Inapplicability to discovery. Subsections (a) and (b) of this Code section do not apply
 28 to disclosures and discovery requests, responses, objections, and motions that are subject
 29 to the provisions of Code Sections 9-11-26 through 9-11-37."

31 SECTION 4.

32 Said title is amended further by striking paragraph (4) of subsection (a) and subsections (b)
 33 and (d) of Code Section 9-11-37, relating to failure to make discovery, motion to compel,
 34 sanctions, and expenses, and inserting in their respective places the following:

1 "(4) AWARD OF EXPENSES OF MOTION.

2 (A) If the motion is granted, the court shall, after opportunity for hearing, require the
3 party or deponent whose conduct necessitated the motion or the party or the attorney
4 advising ~~such conduct or both~~ the party or the insurer who hired the attorney or all of
5 them to pay to the moving party the reasonable expenses incurred in obtaining the
6 order, including attorney's fees, unless the court finds that the opposition to the motion
7 was substantially justified or that other circumstances make an award of expenses
8 unjust.

9 (B) If the motion is denied, the court shall, after opportunity for hearing, require the
10 moving party or the attorney advising the ~~motion or both~~ party or the insurer who hired
11 the attorney or all of them to pay to the party or deponent who opposed the motion the
12 reasonable expenses incurred in opposing the motion, including attorney's fees, unless
13 the court finds that the making of the motion was substantially justified or that other
14 circumstances make an award of expenses unjust.

15 (C) If the motion is granted in part and denied in part, the court may apportion the
16 reasonable expenses incurred in relation to the motion among the parties and persons
17 in a just manner."

18 "(b) *Failure to comply with order.*

19 (1) SANCTIONS BY COURT IN COUNTY WHERE DEPOSITION IS TAKEN. If a deponent fails
20 to be sworn or to answer a question after being directed to do so by the court in the
21 county in which the deposition is being taken, the failure may be considered a contempt
22 of that court.

23 (2) SANCTIONS BY COURT IN WHICH ACTION IS PENDING. If a party or an officer, director,
24 or managing agent of a party or a person designated under paragraph (6) of subsection
25 (b) of Code Section 9-11-30 or subsection (a) of Code Section 9-11-31 to testify on
26 behalf of a party fails to obey an order to provide or permit discovery, including an order
27 made under subsection (a) of this Code section or Code Section 9-11-35, the court in
28 which the action is pending may make such orders in regard to the failure as are just and,
29 among others, the following:

30 (A) An order that the matters regarding which the order was made or any other
31 designated facts shall be taken to be established for the purposes of the action in
32 accordance with the claim of the party obtaining the order;

33 (B) An order refusing to allow the disobedient party to support or oppose designated
34 claims or defenses, or prohibiting him or her from introducing designated matters in
35 evidence;

1 (C) An order striking out pleadings or parts thereof, or staying further proceedings until
 2 the order is obeyed, or dismissing the action or proceeding or any part thereof, or
 3 rendering a judgment by default against the disobedient party;

4 (D) In lieu of any of the foregoing orders, or in addition thereto, an order treating as
 5 a contempt of court the failure to obey any orders except an order to submit to a
 6 physical or mental examination; or

7 (E) Where a party has failed to comply with an order under subsection (a) of Code
 8 Section 9-11-35 requiring him or her to produce another for examination, such orders
 9 as are listed in subparagraphs (A), (B), and (C) of this paragraph, unless the party
 10 failing to comply shows that he or she is unable to produce such person for
 11 examination.

12 In lieu of any of the foregoing orders, or in addition thereto, the court shall require the
 13 party failing to obey the order or the attorney advising ~~him, or both,~~ the party or the
 14 insurer who hired the attorney or all to pay the reasonable expenses, including attorney's
 15 fees, caused by the failure, unless the court finds that the failure was substantially
 16 justified or that other circumstances make an award of expenses unjust."

17 "(d) *Failure of party to attend at own deposition or serve answers to interrogatories or*
 18 *respond to request for inspection.*

19 (1) If a party or an officer, director, or managing agent of a party or a person designated
 20 under paragraph (6) of subsection (b) of Code Section 9-11-30 or subsection (a) of Code
 21 Section 9-11-31 to testify on behalf of a party fails to appear before the officer who is to
 22 take his or her deposition, after being served with a proper notice, or fails to serve
 23 answers or objections to interrogatories submitted under Code Section 9-11-33, after
 24 proper service of the interrogatories, or fails to serve a written response to a request for
 25 inspection submitted under Code Section 9-11-34, after proper service of the request, the
 26 court in which the action is pending on motion may make such orders in regard to the
 27 failure as are just; and, among others, it may take any action authorized under
 28 subparagraphs (b)(2)(A) through (b)(2)(C) of this Code section. In lieu of any order, or
 29 in addition thereto, the court shall require the party failing to act or the attorney advising
 30 ~~him, or both,~~ the party or the insurer or all to pay the reasonable expenses, including
 31 attorney's fees, caused by the failure, unless the court finds that the failure was
 32 substantially justified or that other circumstances make an award of expenses unjust.

33 (2) The failure to act described in the provisions of this chapter which relate to
 34 depositions and discovery may not be excused on the ground that the discovery sought
 35 is objectionable unless the party failing to act has applied for a protective order as
 36 provided by subsection (c) of Code Section 9-11-26."

SECTION 5.

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2 Said title is further amended by striking subsection (a) of Code Section 9-15-14, relating to
3 litigation costs and attorney's fees assessed for frivolous actions and defenses, and inserting
4 in lieu thereof the following:

5 "(a) In any civil action in any court of record of this state, reasonable and necessary
6 attorney's fees and expenses of litigation shall be awarded to any party against whom
7 another party has:

8 (1) Asserted ~~asserted~~ a claim, defense, or other position with respect to which there
9 existed such a complete absence of any justiciable issue of law or fact that it could not
10 be reasonably believed that a court would accept the asserted claim, defense, or other
11 position; or

12 (2) Multiplied the proceedings in any case unreasonably and vexatiously.

13 Attorney's fees and expenses so awarded shall be assessed against the party asserting such
14 claim, defense, or other position, or against that party's attorney or insurer or against ~~both~~
15 all of them in such manner as is just."

16

SECTION 6.

17 All laws and parts of laws in conflict with this Act are repealed.