

House Bill 1400

By: Representatives Powell of the 23rd, Bordeaux of the 125th, Porter of the 119th, Parrish of the 102nd, Skipper of the 116th, and others

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 requirements for the imposition of sanctions; to provide for
7 related matters; to repeal conflicting laws; and for other 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 General Assembly finds that frivolous claims and defenses are detrimental to the prompt
13 and efficient administration of justice and shall be prohibited according to the specific
14 provisions 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, including any person or entity that has taken an active part in the initiation,
34 continuation, or procurement of the violation.

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

SECTION 4.

Said title is further amended by striking paragraph (2) of subsection (a) of Code Section 9-11-33, relating to interrogatories to parties, and inserting in lieu thereof the following:

"(2) Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the ~~reasons for objection shall be stated in lieu of an answer~~ objecting party shall state the reasons for objection and shall answer to the extent the interrogatory is not objectionable. The answers are to be signed by the person making them, and the objections signed by the attorney making them. The party upon whom the interrogatories have been served shall serve a copy of the answers, and objections if any, within 30 days after the service of the interrogatories, except that a defendant may serve answers or objections within 45 days after service of the summons and complaint upon that defendant. The court may allow a shorter or longer time. The party submitting the interrogatories may move for an order under subsection (a) of Code Section 9-11-37 with respect to any objection to or other failure to answer an interrogatory."

SECTION 5.

Said title is further amended by striking subsection (c) of Code Section 9-11-33, relating to interrogatories to parties, and inserting in lieu thereof the following:

"(c) *Option to produce business records.* Where the answer to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such business records, or from a compilation, abstract, or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to the interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries. A specification shall be in sufficient detail to permit the interrogating party to locate and to identify, as readily as can the party served, the records from which the answer can be ascertained."

SECTION 6.

Said title is further amended by striking paragraph (2) of subsection (b) of Code Section 9-11-34, relating to the production of documents and things and entry upon land for inspection and other purposes, and inserting in lieu thereof the following:

"(2) The party upon whom the request is served shall serve a written response within 30 days after the service of the request, except that a defendant may serve a response within

1 45 days after service of the summons and complaint upon that defendant. The court may
 2 allow a shorter or longer time. The response shall state, with respect to each item or
 3 category, that inspection and related activities will be permitted as requested, unless the
 4 request is objected to, in which event the ~~reasons for objection shall be stated~~ reasons for
 5 ~~objection shall be stated~~ objecting party shall state the reasons for objection and shall
 6 respond to the extent the request is not objectionable. If objection is made to part of an
 7 item or category, the part shall be specified. The party submitting the request may move
 8 for an order under subsection (a) of Code Section 9-11-37 with respect to any objection
 9 to or other failure to respond to the request or any part thereof, or any failure to permit
 10 inspection as requested."

11 SECTION 7.

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

15 "(4) AWARD OF EXPENSES OF MOTION.

16 (A) If the motion is granted, the court shall, after opportunity for hearing, require the
 17 party or deponent whose conduct necessitated the motion or the party or the attorney
 18 advising ~~such conduct or both of them~~ the party or any other person or entity that has
 19 taken an active part in the initiation, continuation, or procurement of the conduct at
 20 issue to pay to the moving party the reasonable expenses incurred in obtaining the
 21 order, including attorney's fees, unless the court finds that the opposition to the motion
 22 was substantially justified or that other circumstances make an award of expenses
 23 unjust.

24 (B) If the motion is denied, the court shall, after opportunity for hearing, require the
 25 moving party or the attorney advising the ~~motion or both of them~~ party or any other
 26 person or entity that has taken an active part in the initiation, continuation, or
 27 procurement of the conduct at issue to pay to the party or deponent who opposed the
 28 motion the reasonable expenses incurred in opposing the motion, including attorney's
 29 fees, unless the court finds that the making of the motion was substantially justified or
 30 that other circumstances make an award of expenses unjust.

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

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

35 (1) SANCTIONS BY COURT IN COUNTY WHERE DEPOSITION IS TAKEN. If a deponent fails
 36 to be sworn or to answer a question after being directed to do so by the court in the

1 county in which the deposition is being taken, the failure may be considered a contempt
2 of that court.

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

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

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

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

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

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

27 In lieu of any of the foregoing orders, or in addition thereto, the court shall require the
28 party failing to obey the order or the attorney advising ~~him, or both,~~ the party or any other
29 person or entity that has taken an active part in the initiation, continuation, or
30 procurement of the conduct at issue to pay the reasonable expenses, including attorney's
31 fees, caused by the failure, unless the court finds that the failure was substantially
32 justified or that other circumstances make an award of expenses unjust."

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

35 (1) If a party or an officer, director, or managing agent of a party or a person designated
36 under paragraph (6) of subsection (b) of Code Section 9-11-30 or subsection (a) of Code
37 Section 9-11-31 to testify on behalf of a party fails to appear before the officer who is to

1 take his or her deposition, after being served with a proper notice, or fails to serve
 2 answers or objections to interrogatories submitted under Code Section 9-11-33, after
 3 proper service of the interrogatories, or fails to serve a written response to a request for
 4 inspection submitted under Code Section 9-11-34, after proper service of the request, the
 5 court in which the action is pending on motion may make such orders in regard to the
 6 failure as are just; and, among others, it may take any action authorized under
 7 subparagraphs (b)(2)(A) through (b)(2)(C) of this Code section. In lieu of any order, or
 8 in addition thereto, the court shall require the party failing to act or the attorney advising
 9 ~~him, or both,~~ the party or any other person or entity that has taken an active part in the
 10 initiation, continuation, or procurement of the conduct at issue to pay the reasonable
 11 expenses, including attorney's fees, caused by the failure, unless the court finds that the
 12 failure was substantially justified or that other circumstances make an award of expenses
 13 unjust.

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

18 SECTION 8.

19 Said title is further amended by striking subsections (a), (b), and (e) of Code Section 9-15-14,
 20 relating to litigation costs and attorney's fees assessed for frivolous actions and defenses, and
 21 inserting in lieu thereof, respectively, the following:

22 "(a) In any civil action in any court of record of this state, ~~reasonable and necessary~~
 23 ~~attorney's fees and expenses of litigation~~ sanctions under subsection (e) of this Code
 24 section shall be awarded to any party against whom another party has asserted a claim,
 25 defense, or other position with respect to which there existed such a complete absence of
 26 any justiciable issue of law or fact that it could not be reasonably believed that a court
 27 would accept the asserted claim, defense, or other position, or when another party has
 28 unreasonably and vexatiously expanded the proceedings. ~~Attorney's fees and expenses so~~
 29 ~~awarded~~ Sanctions under subsection (e) of this Code section shall be assessed against the
 30 party asserting such claim, defense, or other position, ~~or~~ against that party's attorney,
 31 against any other person or entity that has taken an active part in the initiation,
 32 continuation, or procurement of the conduct at issue, or against ~~both~~ all of them in such
 33 manner as is just.

34 (b) The court may shall assess ~~reasonable and necessary attorney's fees and expenses of~~
 35 ~~litigation~~ sanctions as provided in subsection (e) of this Code section in any civil action in
 36 any court of record if, upon the motion of any party or the court itself, it finds that ~~an~~

1 attorney or a party, an attorney, or any other person or entity that has taken an active part
 2 in the initiation, continuation, or procurement of the conduct at issue, or all of them,
 3 brought or defended an action, or any part thereof, that lacked substantial justification or
 4 that the action, or any part thereof, was interposed for delay or harassment, or if it finds that
 5 an attorney or a party, an attorney, or any other person or entity that has taken an active
 6 part in the initiation, continuation, or procurement of the conduct at issue, or all of them,
 7 unnecessarily expanded the proceeding by other improper conduct, including, but not
 8 limited to, abuses of discovery procedures available under Chapter 11 of this title, the
 9 'Georgia Civil Practice Act.' As used in this Code section, 'lacked substantial justification'
 10 means substantially frivolous, substantially groundless, or substantially vexatious."

11 ~~"(e)(1) Attorney's fees and expenses under this Code section may be requested by motion~~
 12 ~~at any time during the course of the action but not later than 45 days after the final~~
 13 ~~disposition of the action. A motion for sanctions under this Code section shall be made~~
 14 ~~separately from other motions or requests and shall describe the specific conduct alleged~~
 15 ~~to violate subsection (a) or (b) of this Code section or subsection (b) of Code Section~~
 16 ~~9-11-11.~~

17 (2) A motion shall not be filed with or presented to the court unless, within 30 days after
 18 service of the pleading or other document at issue, the movant has delivered to the
 19 nonmovant written notice of the movant's intent to file the motion. Upon receipt of such
 20 notice, the nonmovant shall have ten days to withdraw or appropriately correct the
 21 challenged pleading or other document. If the nonmovant refuses or fails to withdraw or
 22 appropriately correct the challenged pleading or other document, the movant shall then
 23 have ten days from the date of such refusal or failure to file a motion under this Code
 24 section.

25 (3) If warranted, the court shall award to the party prevailing on the motion the
 26 reasonable expenses and attorney's fees incurred in presenting or opposing the motion.
 27 Absent exceptional circumstances, a law firm shall be held jointly responsible for
 28 violations committed by its partners, associates, and employees.

29 (4) On its own initiative, the court may enter an order describing the specific conduct
 30 that appears to warrant sanctions under this Code section and directing an attorney, law
 31 firm, party, or any other person or entity that has taken an active part in the initiation,
 32 continuation, or procurement of the conduct at issue to show cause why sanctions should
 33 not be imposed.

34 (5) A sanction imposed pursuant to this Code section shall be sufficient to deter
 35 repetition of such conduct or comparable conduct by others similarly situated. Subject
 36 to the limitations in subparagraphs (A) and (B) of this paragraph, the sanction may
 37 consist of or include directives of a nonmonetary nature as described in subparagraph (C)

1 of this paragraph, an order to pay a penalty into court, or, if imposed on motion and
2 warranted for effective deterrence, an order to pay a penalty into court or an order
3 directing payment to the movant of some or all of the reasonable attorney's fees and other
4 expenses incurred as a direct result of the violation; provided, however, that:

5 (A) Monetary sanctions may not be awarded against a represented party for a violation
6 of paragraph (2) of subsection (a) of Code Section 9-11-11;

7 (B) Monetary sanctions may not be awarded on the court's initiative unless the court
8 issues its order to show cause before a voluntary dismissal or settlement of the claims
9 made by or against the party which is, or whose attorneys are, to be sanctioned; and

10 (C) In addition to any monetary penalties, the court may, in its discretion, impose
11 additional sanctions as are just and, among others, the following:

12 (i) An order refusing to allow the party to support or oppose designated claims or
13 defenses or prohibiting him or her from introducing designated matters in evidence;

14 and

15 (ii) An order striking out pleadings or parts thereof, dismissing the action or
16 proceeding or any part thereof, or rendering a judgment by default against the
17 violating party.

18 (6) When imposing sanctions, the court shall describe the conduct determined to warrant
19 sanctions and explain the basis for the sanction imposed. Sanctions may not be imposed
20 under subparagraph (C) of paragraph (5) of this subsection unless the court issues its
21 order to show cause before a voluntary dismissal or settlement of the claims made by or
22 against the party which is, or whose attorneys are, to be sanctioned."

23 SECTION 9.

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