

House Bill 1803

By: Representatives Porter of the 119th, Skipper of the 116th, Childers of the 13th, Post 1, Parrish of the 102nd, Bordeaux of the 125th, 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 within 30 days of notifying the attorney or
 6 party in writing.

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, or
 11 submitting, a pleading or other document an attorney or unrepresented party is certifying
 12 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; and

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 (c) Sanctions. If, after notice and a reasonable opportunity to respond, the court
 24 determines that subsection (b) of this Code section has been violated, the court shall,
 25 subject to this subsection, impose an appropriate sanction upon the attorneys, law firms,
 26 or parties that have violated subsection (b) of this Code section or are responsible for the
 27 violation. In the event any attorney, representing the insured, to whom the provisions of
 28 this subsection may apply is an employee of the insurance company, the provisions of this
 29 subsection shall also apply to the insurance company.

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

33 SECTION 4.

34 Said title is further amended by striking paragraph (2) of subsection (a) of Code Section
 35 9-11-33, relating to interrogatories to parties, and inserting in lieu thereof the following:

1 request is objected to, in which event the ~~reasons for objection shall be stated~~ reasons for
 2 ~~objection shall be stated~~ objecting party shall state the reasons for objection and shall
 3 respond to the extent the request is not objectionable. If objection is made to part of an
 4 item or category, the part shall be specified. The party submitting the request may move
 5 for an order under subsection (a) of Code Section 9-11-37 with respect to any objection
 6 to or other failure to respond to the request or any part thereof, or any failure to permit
 7 inspection as requested."

8 SECTION 7.

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

12 "(4) AWARD OF EXPENSES OF MOTION.

13 (A) If the motion is granted, the court shall, after opportunity for hearing, require the
 14 party or deponent whose conduct necessitated the motion or the party or the attorney
 15 advising ~~such conduct or both of them~~ the party to pay to the moving party the
 16 reasonable expenses incurred in obtaining the order, including attorney's fees, unless
 17 the court finds that the opposition to the motion was substantially justified or that other
 18 circumstances make an award of expenses unjust. In the event any attorney,
 19 representing the insured, to whom the provisions of this subparagraph may apply is an
 20 employee of the insurance company, the provisions of this subparagraph shall also
 21 apply to the insurance company.

22 (B) If the motion is denied, the court shall, after opportunity for hearing, require the
 23 moving party or the attorney advising the ~~motion or both of them~~ party to pay to the
 24 party or deponent who opposed the motion the reasonable expenses incurred in
 25 opposing the motion, including attorney's fees, unless the court finds that the making
 26 of the motion was substantially justified or that other circumstances make an award of
 27 expenses unjust. In the event any attorney, representing the insured, to whom the
 28 provisions of this subparagraph may apply is an employee of the insurance company,
 29 the provisions of this subparagraph shall also apply to the insurance company.

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

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

34 (1) SANCTIONS BY COURT IN COUNTY WHERE DEPOSITION IS TAKEN. If a deponent fails
 35 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 to pay the
29 reasonable expenses, including attorney's fees, caused by the failure, unless the court
30 finds that the failure was substantially justified or that other circumstances make an
31 award of expenses unjust. In the event any attorney, representing the insured, to whom
32 the provisions of this paragraph may apply is an employee of the insurance company, the
33 provisions of this paragraph shall also apply to the insurance company."

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

36 (1) If a party or an officer, director, or managing agent of a party or a person designated
37 under paragraph (6) of subsection (b) of Code Section 9-11-30 or subsection (a) of Code

1 Section 9-11-31 to testify on behalf of a party fails to appear before the officer who is to
 2 take his or her deposition, after being served with a proper notice, or fails to serve
 3 answers or objections to interrogatories submitted under Code Section 9-11-33, after
 4 proper service of the interrogatories, or fails to serve a written response to a request for
 5 inspection submitted under Code Section 9-11-34, after proper service of the request, the
 6 court in which the action is pending on motion may make such orders in regard to the
 7 failure as are just; and, among others, it may take any action authorized under
 8 subparagraphs (b)(2)(A) through (b)(2)(C) of this Code section. In lieu of any order, or
 9 in addition thereto, the court shall require the party failing to act or the attorney advising
 10 ~~him, or both,~~ the party to pay the reasonable expenses, including attorney's fees, caused
 11 by the failure, unless the court finds that the failure was substantially justified or that
 12 other circumstances make an award of expenses unjust. In the event any attorney,
 13 representing the insured, to whom the provisions of this paragraph may apply is an
 14 employee of the insurance company, the provisions of this paragraph shall also apply to
 15 the insurance company.

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

20 SECTION 8.

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

24 "(a) In any civil action in any court of record of this state, ~~reasonable and necessary~~
 25 ~~attorney's fees and expenses of litigation~~ sanctions under subsection (e) of this Code
 26 section shall be awarded to any party against whom another party has asserted a claim,
 27 defense, or other position with respect to which there existed such a complete absence of
 28 any justiciable issue of law or fact that it could not be reasonably believed that a court
 29 would accept the asserted claim, defense, or other position. ~~Attorney's fees and expenses~~
 30 ~~so awarded~~ Sanctions under subsection (e) of this Code section shall be assessed against
 31 the party asserting such claim, defense, or other position, or against that party's attorney,
 32 or against both of them in such manner as is just. In the event any attorney, representing
 33 the insured, to whom the provisions of this subsection may apply is an employee of the
 34 insurance company, the provisions of this subsection shall also apply to the insurance
 35 company.

1 (b) The court ~~may~~ shall assess ~~reasonable and necessary attorney's fees and expenses of~~
 2 ~~litigation sanctions as provided in subsection (e) of this Code section~~ in any civil action in
 3 any court of record if, upon the motion of any party or the court itself, it finds that an
 4 ~~attorney or a party or an attorney, or both of them,~~ brought or defended an action, or any
 5 part thereof, that lacked substantial justification or that the action, or any part thereof, was
 6 interposed for delay or harassment, or if it finds that ~~an attorney or a party or an attorney,~~
 7 ~~or both of them,~~ unnecessarily expanded the proceeding by other improper conduct,
 8 including, but not limited to, abuses of discovery procedures available under Chapter 11
 9 of this title, the 'Georgia Civil Practice Act.' As used in this Code section, 'lacked
 10 substantial justification' means substantially frivolous, substantially groundless, or
 11 substantially vexatious. In the event any attorney, representing the insured, to whom the
 12 provisions of this subsection may apply is an employee of the insurance company, the
 13 provisions of this subsection shall also apply to the insurance company."

14 ~~"(e)(1) Attorney's fees and expenses under this Code section may be requested by motion~~
 15 ~~at any time during the course of the action but not later than 45 days after the final~~
 16 ~~disposition of the action. A motion for sanctions under this Code section shall be made~~
 17 ~~separately from other motions or requests and shall describe the specific conduct alleged~~
 18 ~~to violate subsection (a) or (b) of this Code section or subsection (b) of Code Section~~
 19 ~~9-11-11.~~

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

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

32 (4) On its own initiative, the court may enter an order describing the specific conduct
 33 that appears to warrant sanctions under this Code section and directing an attorney, law
 34 firm, or party to show cause why sanctions should not be imposed. In the event any
 35 attorney, representing the insured, to whom the provisions of this paragraph may apply
 36 is an employee of the insurance company, the provisions of this paragraph shall also
 37 apply to the insurance company.

1 (5) A sanction imposed pursuant to this Code section shall be sufficient to deter
2 repetition of such conduct or comparable conduct by others similarly situated. Subject
3 to the limitations in subparagraphs (A) and (B) of this paragraph, the sanction may
4 consist of or include directives of a nonmonetary nature as described in subparagraph (C)
5 of this paragraph, an order to pay a penalty into court, or, if imposed on motion and
6 warranted for effective deterrence, an order to pay a penalty into court or an order
7 directing payment to the movant of some or all of the reasonable attorney's fees and other
8 expenses incurred as a direct result of the violation; provided, however, that:

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

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

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

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

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

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

27 SECTION 9.

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