

**ASSEMBLY BILL**

**No. 1891**

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**Introduced by Assembly Member Niello**

February 7, 2008

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An act to amend Section 128.5 of the Code of Civil Procedure, relating to civil procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 1891, as introduced, Niello. Civil procedure: sanctions.

Existing law requires every pleading, petition, written notice of motion, or other similar paper to be signed by the attorney of record, or if a party is unrepresented, by the party, thereby certifying to the best of the person's knowledge, information, and belief that it is not being presented for an improper purpose, as specified, and that the claims, defenses, and legal and factual contentions are warranted, as specified. Existing law provides that trial courts may impose sanctions upon attorneys, law firms, or parties that violate these provisions in a complaint, petition, or other paper filed on or after January 1, 1995.

Existing law authorizes every trial court to order a party, the party's attorney, or both to pay reasonable expenses, including attorney's fees, incurred by another party as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay, if the actions or tactics arise from a complaint filed, or a proceeding initiated, on or before December 31, 1994. In addition to that award, the court may assess punitive damages against the plaintiff on a determination that the plaintiff's action was maintained by a person convicted of a felony against the person's victim for injuries arising from the acts for which the person was convicted, and that the plaintiff is guilty of fraud, oppression, or malice in maintaining the action.

This bill would revise and recast the latter provisions above to require every trial court to order a party, the party’s attorney, or both to pay reasonable expenses incurred by another party as a result of any filing, action, or tactic that is frivolous, clearly unjustified, or otherwise substantially devoid of merit in view of the pertinent facts, the applicable law, and the cause or position asserted. The bill also would delete the December 31, 1994, date limitation, thereby requiring the court to order an award pursuant to this provision regardless of the date a complaint was filed or proceeding initiated. The bill would require the court, if it finds that an attorney has engaged in any filing, action, or tactic that is frivolous, clearly unjustified, or otherwise substantially devoid of merit when considered in the context of the tactic taken or position asserted and the facts and material issues of the particular case, to report each instance and finding to the State Bar of California.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
 State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 128.5 of the Code of Civil Procedure is  
 2 amended to read:  
 3 128.5. (a) Every trial court ~~may~~ *shall* order a party, the party’s  
 4 attorney, or both to pay any reasonable expenses, including  
 5 attorney’s fees, incurred by another party as a result of ~~bad faith~~  
 6 ~~actions or tactics that are frivolous or solely intended to cause~~  
 7 ~~unnecessary delay~~ *any filing, action, or tactic that is frivolous,*  
 8 *clearly unjustified, or otherwise substantially devoid of merit in*  
 9 *view of the pertinent facts, the applicable law, and the cause or*  
 10 *position asserted.* This section also applies to judicial arbitration  
 11 proceedings under Chapter 2.5 (commencing with Section 1141.10)  
 12 of Title 3 of Part 3.  
 13 (b) For purposes of this section:  
 14 (1) ~~“Actions or tactics” include, but are not limited to, the~~  
 15 ~~making or opposing of motions or the filing and service of a~~  
 16 ~~complaint or cross-complaint only if the actions or tactics arise~~  
 17 ~~from a complaint filed, or a proceeding initiated, on or before~~  
 18 ~~December 31, 1994. The mere filing of a complaint without service~~  
 19 ~~thereof on an opposing party does not constitute “actions or tactics”~~  
 20 ~~for purposes of this section.~~

1     ~~(2) “Frivolous” means (A) totally and completely without merit~~  
2     ~~or (B) for the sole purpose of harassing an opposing party.~~  
3     (1) *“Action or tactic” includes, but is not limited to, both of the*  
4     *following:*  
5     (A) *A written claim alleging liability even if no lawsuit has been*  
6     *filed.*  
7     (B) *The filing or the filing and serving of a complaint or cross*  
8     *complaint.*  
9     (2) *Improper litigation tactics that are clearly unjustified shall*  
10    *include, but not be limited to, each of the designated misuses of*  
11    *the discovery process listed in Section 2023.010.*  
12    (3) *Unjustified actions shall include an action or appeal filed*  
13    *solely or primarily for the purpose of delaying the enforcement of*  
14    *a judgment or court order.*  
15    (c) *If the trial court finds, pursuant to either its own order to*  
16    *show cause and a motion or the motion of a party, that an attorney*  
17    *has engaged in any filing, action, or tactic that is frivolous, clearly*  
18    *unjustified, or otherwise substantially devoid of merit when*  
19    *considered in the context of the tactic taken or position asserted*  
20    *and the facts and material issues of the particular case, the court*  
21    *shall report each instance and finding to the State Bar of*  
22    *California.*  
23    ~~(e)~~  
24    (d) Expenses pursuant to this section shall not be imposed except  
25    on notice contained in a party’s moving or responding papers; or  
26    the court’s own motion, after notice and opportunity to be heard.  
27    An order imposing expenses shall be in writing and shall recite in  
28    detail the conduct or circumstances justifying the order.  
29    ~~(d)~~  
30    (e) In addition to any award pursuant to this section for conduct  
31    described in subdivision (a), the court may assess punitive damages  
32    against the plaintiff upon a determination by the court that the  
33    plaintiff’s action was an action maintained by a person convicted  
34    of a felony against the person’s victim, or the victim’s heirs,  
35    relatives, estate, or personal representative, for injuries arising  
36    from the acts for which the person was convicted of a felony, and  
37    that the plaintiff is guilty of fraud, oppression, or malice in  
38    maintaining the action.  
39    ~~(e)~~

- 1     *(f)* The liability imposed by this section is in addition to any
- 2 other liability imposed by law for acts or omissions within the
- 3 purview of this section.

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