

ASSEMBLY BILL

No. 2494

Introduced by Assembly Member Cooley

February 21, 2014

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2494, as introduced, Cooley. Courts: frivolous actions or proceedings.

Existing law authorizes a 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. Existing law defines "frivolous" for these purposes, in part, as "for the sole purpose of harassing an opposing party." In addition to the reasonable expenses award, existing law authorizes the court to 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.

Existing law also 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 primarily for an improper purpose, as specified, and that the claims, defenses, and legal and factual contentions are warranted, as

specified. Existing law authorizes a trial court to impose sanctions upon an attorney, law firm, or party that violates these provisions in a complaint, petition, or other paper filed on or after January 1, 1995.

This bill would delete the December 31, 1994, date limitation on a trial court’s authorization to award reasonable expenses incurred as a result of bad-faith actions or tactics that are frivolous or solely intended to cause unnecessary delay, thus making both of the provisions described above applicable commencing January 1, 2015. The bill would recast the definition of “frivolous” for purposes of the reasonable expenses award, in part, as “for the purpose of harassing an opposing party.”

Vote: majority. Appropriation: no. Fiscal committee: no.
 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~~A trial court may order a party, the party’s
 4 attorney, or both to pay ~~any~~ the 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. This section also applies to judicial arbitration
 8 proceedings under Chapter 2.5 (commencing with Section 1141.10)
 9 of Title 3 of Part 3.
 10 (b) For purposes of this section:
 11 (1) “Actions or tactics” include, but are not limited to, the
 12 making or opposing of motions or the filing and service of a
 13 complaint ~~or cross-complaint only if the actions or tactics arise~~
 14 ~~from a complaint filed, or a proceeding initiated, on or before~~
 15 ~~December 31, 1994.~~ *cross-complaint*. The mere filing of a
 16 complaint without service thereof on an opposing party does not
 17 constitute “actions or tactics” for purposes of this section.
 18 (2) “Frivolous” means ~~(A)~~ totally and completely without merit
 19 ~~or (B)~~ for the sole purpose of harassing an opposing party.
 20 (c) Expenses pursuant to this section shall not be imposed except
 21 on notice contained in a party’s moving or responding ~~papers; or~~
 22 *papers or*; on the court’s own motion, after notice and opportunity
 23 to be heard. An order imposing expenses shall be in writing and
 24 shall recite in detail the conduct or circumstances justifying the
 25 order.

1 (d) In addition to any award pursuant to this section for conduct
2 described in subdivision (a), the court may assess punitive damages
3 against the plaintiff ~~upon~~ *on* a determination by the court that the
4 plaintiff's action was an action maintained by a person convicted
5 of a felony against the person's victim, or the victim's heirs,
6 relatives, estate, or personal representative, for injuries arising
7 from the acts for which the person was convicted of a felony, and
8 that the plaintiff is guilty of fraud, oppression, or malice in
9 maintaining the action.

10 (e) The liability imposed by this section is in addition to any
11 other liability imposed by law for acts or omissions within the
12 purview of this section.

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