

ASSEMBLY BILL

No. 1167

Introduced by Assembly Member Gallagher

February 27, 2015

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1167, as introduced, Gallagher. Courts: frivolous actions or proceedings.

Existing law, until January 1, 2018, authorizes a trial court to order a party, the party's attorney, or both, to pay the 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. Existing law, on and after January 1, 2018, authorizes a trial court to make that order only if the actions or tactics arise from a complaint filed, or a proceeding initiated, on or before December 31, 1994.

This bill would make technical, nonsubstantive change to the provision described above that is operative until January 1, 2018.

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, as
- 2 amended by Section 1 of Chapter 425 of the Statutes of 2014, is
- 3 amended to read:

1 128.5. (a) A trial court may order a party, the party’s attorney,
 2 or ~~both~~ *both*, to pay the reasonable expenses, including attorney’s
 3 fees, incurred by another party as a result of bad-faith actions or
 4 tactics that are frivolous or solely intended to cause unnecessary
 5 delay. This section also applies to judicial arbitration proceedings
 6 under Chapter 2.5 (commencing with Section 1141.10) of Title 3
 7 of Part 3.

8 (b) For purposes of this section:

9 (1) “Actions or tactics” include, but are not limited to, the
 10 making or opposing of motions or the filing and service of a
 11 complaint, cross-complaint, answer, or other responsive pleading.
 12 The mere filing of a complaint without service thereof on an
 13 opposing party does not constitute “actions or tactics” for purposes
 14 of this section.

15 (2) “Frivolous” means totally and completely without merit or
 16 for the sole purpose of harassing an opposing party.

17 (c) Expenses pursuant to this section shall not be imposed except
 18 on notice contained in a party’s moving or responding papers or,
 19 on the court’s own motion, after notice and opportunity to be heard.
 20 An order imposing expenses shall be in writing and shall recite in
 21 detail the conduct or circumstances justifying the order.

22 (d) In addition to any award pursuant to this section for conduct
 23 described in subdivision (a), the court may assess punitive damages
 24 against the plaintiff on a determination by the court that the
 25 plaintiff’s action was an action maintained by a person convicted
 26 of a felony against the person’s victim, or the victim’s heirs,
 27 relatives, estate, or personal representative, for injuries arising
 28 from the acts for which the person was convicted of a felony, and
 29 that the plaintiff is guilty of fraud, oppression, or malice in
 30 maintaining the action.

31 (e) This section ~~shall~~ *does* not apply to disclosures and discovery
 32 requests, responses, objections, and motions.

33 (f) Any sanctions imposed pursuant to this section shall be
 34 imposed consistently with the standards, conditions, and procedures
 35 set forth in subdivisions (c), (d), and (h) of Section 128.7.

36 (g) The liability imposed by this section is in addition to any
 37 other liability imposed by law for acts or omissions within the
 38 purview of this section.

39 (h) (1) A party who files a motion pursuant to this section shall,
 40 promptly upon filing, transmit to the California Research Bureau

1 of the California State Library, by email, a copy of the endorsed,
2 filed caption page of the motion or opposition, a copy of any related
3 notice of appeal or petition for a writ, and a conformed copy of
4 any order issued pursuant to this section, including any order
5 granting or denying the motion. The party shall also indicate
6 whether a motion for sanctions was made pursuant to Section
7 128.7.

8 (2) The California Research Bureau shall maintain a public
9 record of information transmitted pursuant to this section for at
10 least three years, or until this section is repealed, whichever occurs
11 first, and may store the information on microfilm or other
12 appropriate electronic media.

13 (i) This section shall remain in effect only until January 1, 2018,
14 and as of that date is repealed, unless a later enacted statute, that
15 is enacted before January 1, 2018, deletes or extends that date.