

Introduced by Senators Haynes, Kelley, and Knight
(Coauthors: Assembly Members Aguiar and Leonard)

February 13, 1998

An act to add and repeal Section 1021.1 of the Code of Civil Procedure, relating to attorney's fees, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 1661, as introduced, Haynes. Settlement offers: Riverside and San Bernardino counties.

Under law effective until January 1, 1998, in the Counties of Riverside and San Bernardino, a party to a civil action was entitled, in the discretion of the court, to an award of attorney's fees, where the party had made a settlement offer, for services rendered after the offer was made if the offer was not accepted and the party to whom the offer was made failed to obtain a more favorable judgment, as specified.

This bill would reenact those provisions. They would remain in effect only until January 1, 2000.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. 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 1021.1 is added to the Code of
- 2 Civil Procedure, to read:

1 1021.1. (a) Reasonable attorney’s fees, may be
2 awarded in an amount to be determined in the court’s
3 discretion, to a party to any civil action as provided by this
4 section, and that award shall be made upon notice and
5 motion by a party and shall be an element of the costs of
6 suit.

7 (b) A party may be entitled, in the discretion of the
8 court, to an award of attorney’s fees under this section if
9 all of the following conditions are met:

10 (1) The party has made an offer for judgment under
11 Section 998.

12 (2) That offer was not accepted within the time
13 provided in Section 998.

14 (3) The party to whom the offer was made thereafter
15 failed to obtain a more favorable judgment.

16 The party making the offer shall be entitled to
17 attorney’s fees only for legal services rendered after the
18 date of the offer.

19 (c) In exercising its discretion to award attorney’s fees
20 the court shall consider the following factors:

21 (1) The reasonableness or lack thereof, of a party’s
22 failure to accept an offer for judgment under Section 998
23 in light of the facts known to the party at the time, of
24 which, in light of all of the circumstances, should have
25 been known to the party. Reasonableness shall be
26 determined by a consideration of at least the following
27 matters:

28 (A) The then apparent merit or lack of merit in the
29 claim that was the subject of the action.

30 (B) The closeness of the questions of fact and law at
31 issue.

32 (C) Whether the offeror has unreasonably refused to
33 furnish information necessary to evaluate the
34 reasonableness of the offer.

35 (D) Whether the action was in the nature of a “test
36 case,” presenting questions of far-reaching importance
37 affecting nonparties.

38 (E) The relief that might reasonably have been
39 expected if the claimant should prevail.



1 (F) The amount of the additional delay, cost, and
2 expense that the offeror reasonably would be expected to
3 incur if the litigation should be prolonged.

4 (G) Those other matters that the court may deem
5 relevant in the interest of justice.

6 (2) The amount of damages and other relief sought
7 and the results obtained for the client.

8 (3) The efforts made by the parties or the attorneys to
9 settle the controversy.

10 (4) The existence of any bad faith or abuse of legal
11 procedure by the parties or the attorneys.

12 (d) In exercising its discretion to determine the
13 amount of attorney's fees to be awarded, the court shall
14 consider the following factors, except that in no event
15 shall the amount awarded exceed a reasonable fee for the
16 services actually rendered.

17 (1) Customary fees in the community in which the
18 action or proceeding is pending charged by attorneys
19 with similar experience or expertise.

20 (2) The time and labor reasonably required to be
21 spent by the attorney or attorneys.

22 (3) The experience and ability of the attorneys
23 generally within the profession and also with respect to
24 the action or proceeding.

25 (4) The novelty and difficulty of the questions
26 involved and the skill required to perform the services
27 properly.

28 (5) The extent to which the acceptance of the
29 particular matter imposes extraordinary burdens on the
30 attorney or attorneys (A) by way of precluding other
31 employment, (B) by the time limitations imposed by the
32 client, or (C) by the circumstances.

33 (6) Whether the fee is fixed or contingent.

34 (7) Those other factors that the court may deem
35 relevant in the interest of justice, including any of the
36 factors described in subdivision (c).

37 (e) Nothing in this section shall be construed to repeal
38 or modify any other statutory provision for the award of
39 attorney's fees or to diminish any express or implied
40 contractual right which a party to a civil action may



1 otherwise have to obtain an award of attorney’s fees for
2 the prosecution or defense of an action.

3 (f) No attorney’s fees shall be awarded pursuant to this
4 section in any of the following instances:

5 (1) Against a party who is proceeding in forma
6 pauperis or a party whom the court has found not to have
7 the financial ability to pay fees or who would suffer an
8 unreasonable financial hardship if ordered to pay fees.

9 (2) For or against any party with respect to any cause
10 of action under which an award for reasonable attorney’s
11 fees is authorized or required by any other federal or
12 California statute.

13 (3) For or against any party with respect to any cause
14 of action or proceeding commenced or prosecuted under
15 Title 7 (commencing with Section 1230.010) of Part 3.

16 (4) For or against any party in any action in which one
17 or more of plaintiffs seek to proceed as a class under
18 Section 382.

19 (5) For or against any party as to any cause of action
20 the gravamen of which is personal injury, wrongful death,
21 or injunctive relief.

22 (g) The determination under this section shall be
23 made after the final disposition of the action.

24 (h) This section shall apply only in Riverside County
25 and San Bernardino County. The Legislature finds and
26 declares that, in order to assess the impact of this section
27 on a limited basis before making it applicable on a
28 statewide basis, it is necessary for this section to be
29 applicable for a limited period of time in those counties.

30 (i) This section shall only be in effect from July 1, 1998,
31 until January 1, 2000, and as of that date is repealed, unless
32 a later enacted statute, that is enacted on or before
33 January 1, 2000, deletes or extends that date.

34 SEC. 2. This act is an urgency statute necessary for the
35 immediate preservation of the public peace, health, or
36 safety within the meaning of Article IV of the
37 Constitution and shall go into immediate effect. The facts
38 constituting the necessity are:

39 In order to encourage settlements in civil actions in
40 Riverside and San Bernardino Counties, and to reduce



1 congestion in the courts of those counties as quickly as
2 possible, it is necessary that this act take effect
3 immediately.

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