

ASSEMBLY BILL NO. 396—ASSEMBLYMAN HOLCOMB

MARCH 24, 2005

Referred to Committee on Judiciary

SUMMARY—Requires courts to award attorney’s fees and costs against attorneys and parties under certain circumstances. (BDR 2-780)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in **bolded italics** is new; matter between brackets [omitted-material] is material to be omitted.

AN ACT relating to civil actions; requiring courts to award attorney’s fees and costs against certain attorneys and parties for taking certain actions, including, without limitation, filing an action or defense without substantial justification; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** Chapter 18 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 9, inclusive, of this
3 act.
- 4 **Sec. 2.** *As used in sections 2 to 9, inclusive, of this act, unless*
5 *the context otherwise requires, the words and terms defined in*
6 *sections 3 to 6, inclusive, of this act have the meanings ascribed to*
7 *them in those sections.*
- 8 **Sec. 3.** *“Action” means any suit, counterclaim, cross-claim*
9 *or third-party claim filed at law or in equity, including, without*
10 *limitation:*
 - 11 1. *Any claim therein asserted by one or more parties or*
12 *against one or more parties in such a suit, counterclaim, cross-*
13 *claim or third-party claim; and*
 - 14 2. *Any motion relating to or appeal of any suit, counterclaim,*
15 *cross-claim or third-party claim.*



1 **Sec. 4. "Defense" includes, without limitation, any motion**
2 **relating to or appeal of a defense.**

3 **Sec. 5. "Person" means any of the following:**

4 **1. A natural person.**

5 **2. Any form of business or social organization and any other**
6 **nongovernmental legal entity, including, without limitation, a**
7 **corporation, partnership, association, trust or unincorporated**
8 **organization.**

9 **3. A government, a political subdivision of a government or**
10 **an agency or instrumentality of a government or a political**
11 **subdivision of a government.**

12 **Sec. 6. "Without substantial justification" means frivolous,**
13 **groundless in fact or law, vexatious or interposed for any**
14 **improper purpose, including, without limitation, to harass a**
15 **person, cause unnecessary delay or cause needless increase in the**
16 **cost of litigation, as determined by a court.**

17 **Sec. 7. 1. Except as otherwise provided in this section and**
18 **sections 8 and 9 of this act, in any action in any court in this State,**
19 **the court shall award, during the proceeding or as part of its**
20 **judgment and in addition to any other costs otherwise awarded,**
21 **reasonable attorney's fees or costs, or both, against any attorney**
22 **or party, or both, who:**

23 **(a) Has brought an action or asserted a defense that the court**
24 **determines to be without substantial justification, either in whole**
25 **or in part; or**

26 **(b) Has unnecessarily expanded the proceeding by improper**
27 **conduct, including, without limitation, an abuse of the procedures**
28 **for discovery provided in the Nevada Rules of Civil Procedure.**

29 **2. A court may award attorney's fees or court costs pursuant**
30 **to this section upon the motion of a party or on its own motion.**

31 **3. If a court determines that reasonable attorney's fees or**
32 **costs should be awarded pursuant to this section against more**
33 **than one offending attorney or party, or both, the court may:**

34 **(a) Allocate the payment of the attorney's fees or costs among**
35 **them; or**

36 **(b) Allocate the full amount of the payment of the attorney's**
37 **fees or costs to any one or more offending attorneys or parties.**

38 **4. The court shall not award attorney's fees or costs pursuant**
39 **to this section if a voluntary dismissal is filed or granted as to an**
40 **action or defense within 90 days after the action or defense was**
41 **filed, or during any reasonable extension of the 90-day period**
42 **granted by the court, for good cause shown, on a notice or a**
43 **motion for an extension of the 90-day period filed before the**
44 **expiration of the 90-day period.**



1 5. The court shall not award attorney's fees or costs pursuant
2 to this section against a party who is appearing without an
3 attorney unless:

4 (a) The party is an attorney licensed to practice law in this
5 State; or

6 (b) The court finds that the party knew or reasonably should
7 have known that his action or defense or any part thereof was filed
8 without substantial justification.

9 Sec. 8. The court shall exercise its discretion in determining
10 the amount of attorney's fees or costs to award pursuant to section
11 7 of this act. When awarding attorney's fees or costs, the court
12 shall set forth the reasons for awarding such fees and costs and
13 shall consider, without limitation, the following factors in
14 determining whether to award attorney's fees or costs and the
15 amount to be awarded:

16 1. The extent to which any effort was made to determine the
17 validity of an action before it was brought or of a defense before it
18 was asserted;

19 2. The extent of any effort made after the commencement of
20 an action to reduce the number of claims or defenses being
21 asserted or to dismiss claims or defenses that were found to be
22 invalid;

23 3. The availability of facts to assist in determining the validity
24 of an action or defense;

25 4. Whether the action was prosecuted or defended, in whole
26 or in part, in bad faith or for an improper purpose;

27 5. Whether issues of fact, determinative of the validity of the
28 party's claim or defense, were reasonably in conflict;

29 6. The extent to which the party prevailed with respect to the
30 amount of and number of claims or defenses in controversy;

31 7. The extent to which an action was brought or a defense
32 was asserted by an attorney or party in a good faith attempt to
33 establish a new theory of law in this State if that purpose was
34 made known to the court at the time the action or defense was
35 filed;

36 8. The amount or conditions of any offer of judgment or
37 settlement in relation to the amount or conditions of the relief
38 granted by the court;

39 9. The extent to which a reasonable effort was made to
40 determine before the action was filed that each party sued or
41 joined was a proper party who owed a legally defined duty to the
42 party bringing the action; and

43 10. The extent of any effort made after the commencement of
44 the action to reduce the number of parties in the action.



1 **Sec. 9. *The provisions of sections 2 to 9, inclusive, of this act***
2 ***do not:***

3 1. *Limit the authority of a court to approve written*
4 *stipulations filed with the court or oral stipulations filed in open*
5 *court in which the parties agree to forgo an award of attorney's*
6 *fees or costs or agree to an award of attorney's fees or costs in a*
7 *manner different from the manner provided in sections 2 to 9,*
8 *inclusive, of this act; or*

9 2. *Affect any requirement or authority of a court to award*
10 *attorney's fees or costs pursuant to any other law.*

11 **Sec. 10.** NRS 18.005 is hereby amended to read as follows:

12 18.005 For the purposes of NRS 18.010 to 18.150, inclusive,
13 ***and sections 2 to 9, inclusive, of this act,*** the term "costs" means:

14 1. Clerks' fees.

15 2. Reporters' fees for depositions, including a reporter's fee for
16 one copy of each deposition.

17 3. Jurors' fees and expenses, together with reasonable
18 compensation of an officer appointed to act in accordance with
19 NRS 16.120.

20 4. Fees for witnesses at trial, pretrial hearings and deposing
21 witnesses, unless the court finds that the witness was called at the
22 instance of the prevailing party without reason or necessity.

23 5. Reasonable fees of not more than five expert witnesses in an
24 amount of not more than \$1,500 for each witness, unless the court
25 allows a larger fee after determining that the circumstances
26 surrounding the expert's testimony were of such necessity as to
27 require the larger fee.

28 6. Reasonable fees of necessary interpreters.

29 7. The fee of any sheriff or licensed process server for the
30 delivery or service of any summons or subpoena used in the action,
31 unless the court determines that the service was not necessary.

32 8. The fees of the official reporter or reporter pro tempore.

33 9. Reasonable costs for any bond or undertaking required as
34 part of the action.

35 10. Fees of a court bailiff who was required to work overtime.

36 11. Reasonable costs for telecopies.

37 12. Reasonable costs for photocopies.

38 13. Reasonable costs for long distance telephone calls.

39 14. Reasonable costs for postage.

40 15. Reasonable costs for travel and lodging incurred taking
41 depositions and conducting discovery.

42 16. Fees charged pursuant to NRS 19.0335.

43 17. Any other reasonable and necessary expense incurred in
44 connection with the action, including reasonable and necessary
45 expenses for computerized services for legal research.



Sec. 11. NRS 18.010 is hereby amended to read as follows:

18.010 1. The compensation of an attorney and counselor for his services is governed by agreement, express or implied, which is not restrained by law.

2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party ~~†~~

~~—(a) When if he has not recovered more than \$20,000 . † or~~

~~—(b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross claim or third party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.†~~

3. In awarding attorney's fees, the court may pronounce its decision on the fees at the conclusion of the trial or special proceeding without written motion and with or without presentation of additional evidence.

4. Subsections 2 and 3 do not apply to any action arising out of a written instrument or agreement which entitles the prevailing party to an award of reasonable attorney's fees.

Sec. 12. NRS 7.085 is hereby repealed.

TEXT OF REPEALED SECTION

7.085 Payment of additional costs, expenses and attorney's fees by attorney who files, maintains or defends certain civil actions or extends civil actions in certain circumstances.

1. If a court finds that an attorney has:

(a) Filed, maintained or defended a civil action or proceeding in any court in this State and such action or defense is not well-grounded in fact or is not warranted by existing law or by an argument for changing the existing law that is made in good faith; or



(b) Unreasonably and vexatiously extended a civil action or proceeding before any court in this State,

→ the court shall require the attorney personally to pay the additional costs, expenses and attorney's fees reasonably incurred because of such conduct.

2. The court shall liberally construe the provisions of this section in favor of awarding costs, expenses and attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award costs, expenses and attorney's fees pursuant to this section and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.



