

ASSEMBLY BILL NO. 46—ASSEMBLYMAN BEERS

PREFILED FEBRUARY 1, 2007

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing the award of attorney’s fees and costs by courts against attorneys and parties under certain circumstances. (BDR 2-164)

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; revising provisions governing the award of attorney’s fees and costs by a court against certain attorneys and parties in certain circumstances; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Section 12 of this bill repeals existing law which requires a court to order an attorney personally to pay certain costs and attorney’s fees if the court determines that the attorney unreasonably filed, maintained or defended a civil action or that the attorney unreasonably or vexatiously extended a civil action. (NRS 7.085)

Section 11 of this bill removes a provision of existing law that authorizes a court to award attorney’s fees to a prevailing party if the court finds that certain claims or defenses of the opposing party were brought or maintained without reasonable grounds or to harass the prevailing party. (NRS 18.010)

Section 7 of this bill replaces those provisions with the requirement that a court award reasonable attorney’s fees and costs against an attorney or party, or both, who: (1) brings an action or asserts a defense that the court determines to be without substantial justification; or (2) unnecessarily expands a proceeding by improper conduct, except in certain circumstances. **Section 8** of this bill requires the court to consider certain factors and to exercise discretion in determining whether to award attorney’s fees and costs and the amount to be awarded.

Section 9 of this bill provides that, despite the new provisions, a court may approve agreements in which the parties agree to costs or attorney’s fees that differ from the attorney’s fees or costs required by the new provisions of the bill and a court may continue to award costs or attorney’s fees pursuant to any other law.



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

Section 1. Chapter 18 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 9, inclusive, of this act.

Sec. 2. *As used in sections 2 to 9, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 3 to 6, inclusive, of this act have the meaning ascribed to them in those sections.*

Sec. 3. *“Action” means any suit, counterclaim, cross-claim or third-party claim filed at law or in equity, including, without limitation:*

1. Any claim therein asserted by one or more parties or against one or more parties in such a suit, counterclaim, cross-claim or third-party claim; and

2. Any motion relating to or appeal of any suit, counterclaim, cross-claim or third-party claim.

Sec. 4. *“Defense” includes, without limitation, any motion relating to or appeal of a defense.*

Sec. 5. *“Person” means any of the following:*

1. A natural person.

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

3. A government, a political subdivision of a government or an agency or instrumentality of a government or a political subdivision of a government.

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

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

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



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

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

6 3. If a court determines that reasonable attorney's fees or
7 costs should be awarded pursuant to this section against more
8 than one offending attorney or party, the court may:

9 (a) Allocate the payment of the attorney's fees or costs among
10 the offending attorneys or parties; or

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

13 4. The court shall not award attorney's fees or costs pursuant
14 to this section if a voluntary dismissal is filed or granted as to an
15 action or defense within 90 days after the action or defense was
16 filed, or during any reasonable extension of the 90-day period
17 granted by the court, for good cause shown, on a notice or a
18 motion for an extension of the 90-day period filed before the
19 expiration of the 90-day period.

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

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

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

28 **Sec. 8.** The court shall exercise its discretion in determining
29 the amount of attorney's fees or costs to award pursuant to
30 section 7 of this act. When awarding attorney's fees or costs
31 pursuant to section 7 of this act, the court shall set forth the
32 reasons for awarding such fees and costs and shall consider,
33 without limitation, the following factors in determining whether to
34 award attorney's fees or costs and the amount to be awarded:

35 1. The extent to which any effort was made to determine the
36 validity of an action before it was brought or of defense before it
37 was asserted;

38 2. The extent of any effort made after the commencement of
39 an action to reduce the number of claims or defenses being
40 asserted or to dismiss claims or defenses that were found to be
41 invalid;

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

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



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

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

5 7. *The extent to which an action was brought or a defense*
6 *was asserted by an attorney or party in a good faith attempt to*
7 *establish a new theory of law in this State if that purpose was*
8 *made known to the court at the time the action or defense was*
9 *filed;*

10 8. *The amount or conditions of any offer of judgment or*
11 *settlement in relation to the amount or conditions of the relief*
12 *granted by the court;*

13 9. *The extent to which a reasonable effort was made to*
14 *determine before the action was filed that each party sued or*
15 *joined was a proper party who owed a legally defined duty to the*
16 *party bringing the action; and*

17 10. *The extent of any effort made after the commencement of*
18 *the action to reduce the number of parties in the action.*

19 **Sec. 9.** *The provisions of sections 2 to 8, inclusive, of this act*
20 *do not:*

21 1. *Limit the authority of a court to approve written*
22 *stipulations filed with the court or oral stipulations filed in open*
23 *court in which the parties agree to forgo an award of attorney's*
24 *fees or costs or agree to an award of attorney's fees or costs in a*
25 *manner different from the manner provided in sections 2 to 8,*
26 *inclusive, of this act; or*

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

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

30 18.005 For the purposes of NRS 18.010 to 18.150, inclusive,
31 *and sections 2 to 9, inclusive, of this act*, the term "costs" means:

32 1. Clerks' fees.

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

35 3. Jurors' fees and expenses, together with reasonable
36 compensation of an officer appointed to act in accordance with
37 NRS 16.120.

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

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



1 6. Reasonable fees of necessary interpreters.

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

5 8. Compensation for the official reporter or reporter pro
6 tempore.

7 9. Reasonable costs for any bond or undertaking required as
8 part of the action.

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

10 11. Reasonable costs for telecopies.

11 12. Reasonable costs for photocopies.

12 13. Reasonable costs for long distance telephone calls.

13 14. Reasonable costs for postage.

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

16 16. Fees charged pursuant to NRS 19.0335.

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

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

21 18.010 1. The compensation of an attorney and counselor for
22 his services is governed by agreement, express or implied, which is
23 not restrained by law.

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

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

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

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



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

