

1 HB505  
2 167546-1  
3 By Representatives Williams (JW), Sessions, Wilcox, Bracy,  
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5 Lee, Faust, Moore (B), Weaver, Fridy, Rowe, Wood, Whorton (R),  
6 Ledbetter, Farley, Williams (JD), Collins and Nordgren  
7 RFD: Judiciary  
8 First Read: 16-APR-15

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8 SYNOPSIS: Under existing law, penalties may be  
9 assessed against a person who brings certain types  
10 of legal proceedings that are determined to be  
11 frivolous, unfounded, or without substantial  
12 justification.

13 This bill would provide that reasonable  
14 attorney fees and costs may be assessed against an  
15 attorney or litigant in a civil action if the court  
16 finds at any time during the proceedings or upon  
17 judgment that a complaint, claim, counterclaim,  
18 cross-claim, motion, pretrial application,  
19 affidavit, or other pleading, or any portion  
20 thereof, of the litigant or attorney was frivolous.

21 This bill would, in appropriate cases, allow  
22 the court to order non-monetary sanctions.

23 This bill would require a 21-day notice to a  
24 party to withdraw or modify the inappropriate  
25 pleading before a formal motion for sanction for  
26 frivolous pleadings could be filed with the court.  
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1 A BILL  
2 TO BE ENTITLED  
3 AN ACT

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5 Relating to civil actions; to provide that  
6 reasonable attorney fees and costs may be assessed against an  
7 attorney or litigant in a civil action if the court finds at  
8 any time during the proceedings or upon judgment that a  
9 complaint, claim, counterclaim, cross-claim, motion, pretrial  
10 application, affidavit, or other pleading, or any portion  
11 thereof, of the litigant or attorney was frivolous; to allow  
12 the court, in appropriate cases, to order non-monetary  
13 sanctions; and to require a 21-day notice to a party to  
14 withdraw or modify the inappropriate pleading before a formal  
15 motion for sanction for frivolous pleadings could be filed  
16 with the court.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. (a) Reasonable attorney fees and costs  
19 may be assessed against an attorney or litigant in a civil  
20 action if the judge finds, at any time during the proceedings  
21 or upon judgment that a complaint, claim, counterclaim,  
22 cross-claim, motion, pretrial application, affidavit, or other  
23 pleading, or any portion thereof, of the litigant or attorney  
24 was frivolous. Reasonable attorney fees and costs shall  
25 include, but may not be limited to, litigation costs,  
26 including expenses for experts, counsel fees, prejudgment

1 interest, and any consequential damages that are proximately  
2 related to the frivolous action.

3 (b) In order to find that a complaint, claim,  
4 counterclaim, cross-claim, motion, affidavit, or other  
5 pleading, or any portion thereof was frivolous, the judge  
6 shall find on the basis of the pleadings, discovery, or the  
7 evidence presented that:

8 (1) The complaint, counterclaim, cross-claim,  
9 motion, pretrial application, affidavit, or other pleading, or  
10 any portion thereof was commenced, used, or continued in bad  
11 faith, solely for the purpose of harassment, delay, injury,  
12 retaliation against the assertion of a legitimate claim or to  
13 attack individuals or organizations who in good faith  
14 communicate information to any public entity or any issue that  
15 is reasonable of concern to the individual, to the public or  
16 to the organization.

17 (2) The party knew, or should have known, that the  
18 complaint, counterclaim, cross-claim, motion, pretrial  
19 application, affidavit, or other pleading, or any portion  
20 thereof was without any reasonable basis in law or equity and  
21 could not be supported by a good faith argument for an  
22 extension, modification, or reversal of existing law.

23 (3) The allegations and other factual contentions in  
24 the complaint, counterclaim, cross-claim, defense, motion,  
25 pretrial application, affidavit, or other pleading, or any  
26 portion thereof, did not have evidentiary support or were not

1 likely to have evidentiary support after a reasonable  
2 opportunity for further investigation or discovery.

3 (4) The denials of factual contentions in the  
4 defense or other pleadings are not warranted on the evidence  
5 or are not reasonably based on a lack of information or  
6 belief.

7 (c) In addition to assessing reasonable attorney  
8 fees and costs for a violation of this section, the court may  
9 issue directives of a non-monetary nature which are intended  
10 to deter repetition of the conduct which resulted in the  
11 violation.

12 (d) (1) A notice of intent to file a motion for  
13 attorney fees and costs, describing the specific conduct  
14 alleged to violate this section, shall be served on the party  
15 alleged to have committed the violation at least 21 days prior  
16 to service of the motion for the attorney fees and costs. The  
17 notice of intent to file the motion may not be filed with the  
18 court. If the challenged pleading is not withdrawn or  
19 appropriately modified within the 21-day period, the motion  
20 for attorney fees and costs may then be served on the party  
21 and filed with the court. The court may award to the party  
22 prevailing on the motion the reasonable attorney fees and  
23 costs incurred in filing or defending the motion.

24 (2) The court, on its own initiative, may enter an  
25 order describing the specific conduct alleged to violate this  
26 section and directing an attorney or party to show cause why  
27 it has not violated the provisions of this section.

1           (3) When imposing attorney fees or other sanctions,  
2 the court shall place its findings on the record describing  
3 the conduct determined to constitute a violation of this  
4 section and explaining the basis for the sanctions imposed.

5           (e) A party seeking an award under this section  
6 shall make application to the court which heard the matter.  
7 The application shall be supported by an affidavit stating in  
8 detail the following:

9           (1) The nature of the services rendered, the  
10 responsibility assumed, the results obtained, the amount of  
11 time spent by the attorney, any particular novelty or  
12 difficulty, the time spent and services rendered by  
13 secretaries and staff, other factors pertinent in the  
14 evaluation of the services rendered, the amount of the  
15 allowance applied for, an itemization of the disbursements for  
16 which reimbursement is sought, and any other factors relevant  
17 in evaluating fees and costs.

18           (2) How much has been paid to the attorney and what  
19 provision, if any, has been made for the payment of these fees  
20 in the future.

21           Section 2. This act shall become effective on the  
22 first day of the third month following its passage and  
23 approval by the Governor, or its otherwise becoming law.