

LEGISLATIVE BILL 261

Approved by the Governor May 19, 1987

Introduced by Haberman, 44; Conway, 17; Pappas, 42;
Ashford, 6; McFarland, 28; Abboud, 12

AN ACT relating to civil procedure; to amend section 25-824, Reissue Revised Statutes of Nebraska, 1943; to provide for attorney's fees and costs in frivolous actions as prescribed; to provide criteria for the awarding of such fees and costs; to harmonize provisions; and to repeal the original section.

Be it enacted by the people of the State of Nebraska,

Section 1. That section 25-824, Reissue Revised Statutes of Nebraska, 1943, be amended to read as follows:

25-824. (1) A pleading shall not be used against a party in any criminal prosecution or action or proceeding for a penalty or forfeiture, as proof of a fact admitted or alleged in such pleading. ~~Allegations or denials which are frivolous or made in bad faith shall subject the party or attorney pleading the same to the payment of such reasonable expenses, including reasonable attorney's fees, to be taxed by the court, as may have been necessarily incurred by the other party by reason of such pleading.~~ If a pleading is frivolous or made in bad faith, it may be stricken. The signature of a party or of an attorney on a pleading constitutes a certificate by him or her that he or she has read the pleading; that to the best of his or her knowledge, information, and belief there is good ground for the filing of the pleading; and that it is not interposed for delay.

(2) Except as provided in subsections (5) and (6) of this section, in any civil action commenced or appealed in any court of record in this state, the court shall award as part of its judgment and in addition to any other costs otherwise assessed reasonable attorney's fees and court costs against any attorney or party who has brought or defended a civil action that alleges a claim or defense which a court determines is frivolous or made in bad faith.

(3) When a court determines reasonable attorney's fees or costs should be assessed, it shall allocate the payment of such fees or costs among the

offending attorneys and parties as it determines most just and may charge such amount or portion thereof to any offending attorney or party.

(4) The court shall assess attorney's fees and costs if, upon the motion of any party or the court itself, the court finds that an attorney or party brought or defended an action or any part of an action that was frivolous or that the action or any part of the action was interposed solely for delay or harassment. If the court finds that an attorney or party unnecessarily expanded the proceedings by other improper conduct, including, but not limited to, abuses of civil discovery procedures, the court shall assess attorney's fees and costs.

(5) No attorney's fees or costs shall be assessed if a claim or defense was asserted by an attorney or party in a good faith attempt to establish a new theory of law in this state or if, after filing suit, a voluntary dismissal is filed as to any claim or action within a reasonable time after the attorney or party filing the dismissal knew or reasonably should have known that he or she would not prevail on such claim or action.

(6) No party who is appearing without an attorney shall be assessed attorney's fees unless the court finds that the party clearly knew or reasonably should have known that his or her action or defense or any part of such action or defense was frivolous or made in bad faith, except that this subsection shall not apply to any situation in which an attorney licensed to practice law in the state is appearing without an attorney, in which case he or she shall be held to the standards for attorneys prescribed in this section.

Sec. 2. In determining the amount of a cost or an attorney's fee award pursuant to subsection (2) of section 25-824, the court shall exercise its sound discretion. When granting an award of costs and attorney's fees, the court shall specifically set forth the reasons for such award and shall, in determining whether to assess attorney's fees and costs and the amount to be assessed against offending attorneys and parties, consider the following factors, including, but not limited to: (1) The extent to which any effort was made to determine the validity of any action or claim before the action was asserted; (2) the extent of any effort made after the commencement of an action to reduce the number of claims or defenses being asserted or to dismiss claims or defenses that have been found not to be valid; (3) the availability of facts to assist

the party to determine the validity of a claim or defense; (4) the relative financial position of the parties involved; (5) whether or not the action was prosecuted or defended in whole or in part in bad faith; (6) whether or not issues of fact, determinative of the validity of a party's claim or defense, were reasonably in conflict; (7) the extent to which the party prevailed with respect to the amount of and number of claims in controversy; (8) the amount or conditions of any offer of judgment or settlement in relation to the amount or conditions of the ultimate relief granted by the court; (9) the extent to which a reasonable effort was made to determine prior to the time of filing of a claim that all parties sued or joined were proper parties owing a legally defined duty to the plaintiff or defendant; and (10) the extent of any effort made after the commencement of an action to reduce the number of parties in the action.

Sec. 3. Nothing in section 25-824 and sections 2 to 4 of this act shall be construed to prevent an attorney and his or her client from negotiating the actual fee which the client is to pay the attorney. Nothing in such sections shall be intended to limit the authority of the court to approve written stipulations filed with the court or oral stipulations in open court agreeing to no award of attorney's fees or costs or an award of attorney's fees or costs in a manner different than that provided in such sections.

Sec. 4. Section 25-824 and sections 2 to 4 of this act shall apply unless attorney's fees are otherwise specifically provided by law, in which case the provision allowing the greater award shall prevail.

Sec. 5. That original section 25-824, Reissue Revised Statutes of Nebraska, 1943, is repealed.