

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 512 Session of
1993

INTRODUCED BY REINARD, BUSH, NAILOR, CESSAR, FLICK, LEH,
FLEAGLE, REBER, CAWLEY, FAIRCHILD, FAJT, SCHEETZ, FARGO,
PESCI, MARSICO, PETRARCA, SCHULER, MICOZZIE, DEMPSEY, MELIO,
BROWN, M. N. WRIGHT, TRELLO, KELLER, BAKER, BATTISTO, FARMER,
CLYMER, KENNEY, SEMMEL, ADOLPH, GODSHALL, SAURMAN, ARMSTRONG,
D. W. SNYDER, DeLUCA, HERSHEY, PHILLIPS, STABACK,
S. H. SMITH, COLAIZZO, CORNELL, BUNT, ALLEN, SATHER,
E. Z. TAYLOR, DRUCE, STERN, LYNCH, PLATTS, RAYMOND, MAITLAND
AND GEIST, MARCH 15, 1993

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 15, 1993

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, further providing for
3 attorney fees.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 Section 1. Section 2503 of Title 42 of the Pennsylvania
7 Consolidated Statutes is amended by adding a paragraph to read:

8 § 2503. Right of participants to receive counsel fees.

9 The following participants shall be entitled to a reasonable
10 counsel fee as part of the taxable costs of the matter:

11 * * *

12 (11) The prevailing party in an action where the court
13 makes a final determination that an action or defense was
14 frivolous or made in bad faith.

15 (i) If a court determines a reasonable counsel fee

1 should be assessed, it shall allocate the payment among
2 the offending attorneys and parties as it determines most
3 just and may charge the amount or any portion to any
4 offending attorney or party.

5 (ii) The court shall assess a counsel fee if, upon
6 the motion of a party or the court itself, the court
7 finds that an attorney or party brought or defended an
8 action or part of an action that was frivolous or that
9 was interposed solely for delay or harassment. If the
10 court finds that an attorney or party unnecessarily
11 expanded the proceedings by other improper conduct,
12 including, but not limited to, abuses of civil discovery
13 procedures, the court shall assess a counsel fee.

14 (iii) No counsel fee shall be assessed if a claim or
15 defense was asserted by an attorney or party in a good
16 faith attempt to establish a new theory of law or if,
17 after filing suit, a voluntary dismissal is filed as to
18 any claim or action within a reasonable time after the
19 attorney or party filing the dismissal knew or reasonably
20 should have known that the party would not prevail on
21 such claim or action.

22 (iv) No party who is appearing without an attorney
23 shall be assessed a counsel fee unless the court finds
24 that the party clearly knew or reasonably should have
25 known that the action or defense or any part of the
26 action or defense was frivolous or made in bad faith.
27 This subparagraph does not apply to an attorney licensed
28 to practice law in this Commonwealth appearing without an
29 attorney. In this case, the attorney shall be held to the
30 standards for attorneys prescribed in this paragraph.

1 (v) In determining the amount of a cost or a counsel
2 fee award under this paragraph, the court shall exercise
3 its sound discretion. When granting an award of costs and
4 a counsel fee, the court shall specifically set forth the
5 reasons for the award and shall, in determining whether
6 to make the assessment and the amount to be assessed
7 against offending attorneys and parties, consider, among
8 other things, the following factors:

9 (A) The extent to which an effort was made to
10 determine the validity of an action or claim before
11 the action initiated on the claim was asserted.

12 (B) The extent of an effort made after the
13 commencement of an action to reduce the number of
14 claims or defenses being asserted or to dismiss
15 claims or defenses that were found to be not valid.

16 (C) The availability of facts to assist the
17 party to determine the validity of a claim or
18 defense.

19 (D) The relative financial position of the
20 parties involved.

21 (E) Whether or not the action was prosecuted or
22 defended, in whole or in part, in bad faith.

23 (F) Whether or not issues of fact, determinative
24 of the validity of a party's claim or defense, were
25 reasonably in conflict.

26 (G) The extent to which the party prevailed with
27 respect to the amount and number of claims in
28 controversy.

29 (H) The amount or conditions of any offer of
30 judgment or settlement in relation to the amount or

1 conditions of the ultimate relief granted by the
2 court.

3 (I) The extent to which a reasonable effort was
4 made to determine, prior to the time of filing to a
5 claim, that all parties sued or joined were proper
6 parties owing a legally defined duty to another
7 party.

8 (J) The extent of an effort made, after the
9 commencement of an action, to reduce the number of
10 parties in the action.

11 (vi) Nothing in this paragraph shall be construed to
12 prevent an attorney and a client from negotiating the
13 actual fee which the client is to pay the attorney.
14 Nothing in this paragraph is intended to limit the
15 authority of the court to approve written stipulations
16 filed with the court or oral stipulations in open court
17 agreeing to no award of a counsel fee or costs or an
18 award of a counsel fee or costs in a manner different
19 than that provided in this paragraph.

20 Section 2. This act shall take effect in 60 days.