

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 486 Session of
1999

INTRODUCED BY REINARD, THOMAS, NAILOR, FARGO, SEYFERT, PIPPY,
MICOZZIE, EGOLF, TRELLO, GODSHALL, LEH, ADOLPH, RAYMOND,
FLICK, ARMSTRONG, BAKER, HENNESSEY, E. Z. TAYLOR, STERN, COY,
BARD, STABACK, STEELMAN, MICHLOVIC, SEMMEL, FAIRCHILD,
JOSEPHS, MARSICO, SERAFINI, HARHAI, RAMOS AND ROSS,
FEBRUARY 9, 1999

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 9, 1999

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

15 (ii) The court shall assess a counsel fee if, upon
16 the motion of a party or the court itself, the court

1 finds that an attorney or party brought or defended an
2 action or part of an action that was frivolous or that
3 was interposed solely for delay or harassment. If the
4 court finds that an attorney or party unnecessarily
5 expanded the proceedings by other improper conduct,
6 including, but not limited to, abuses of civil discovery
7 procedures, the court shall assess a counsel fee.

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

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

25 (v) In determining the amount of a cost or a counsel
26 fee award under this paragraph, the court shall exercise
27 its sound discretion. When granting an award of costs and
28 a counsel fee, the court shall specifically set forth the
29 reasons for the award and shall, in determining whether
30 to make the assessment and the amount to be assessed

1 against offending attorneys and parties, consider, among
2 other things, the following factors:

3 (A) The extent to which an effort was made to
4 determine the validity of an action or claim before
5 the action initiated on the claim was asserted.

6 (B) The extent of an effort made after the
7 commencement of an action to reduce the number of
8 claims or defenses being asserted or to dismiss
9 claims or defenses that were found to be not valid.

10 (C) The availability of facts to assist the
11 party to determine the validity of a claim or
12 defense.

13 (D) The relative financial position of the
14 parties involved.

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

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

20 (G) The extent to which the party prevailed with
21 respect to the amount and number of claims in
22 controversy.

23 (H) The amount or conditions of any offer of
24 judgment or settlement in relation to the amount or
25 conditions of the ultimate relief granted by the
26 court.

27 (I) The extent to which a reasonable effort was
28 made to determine, prior to the time of filing to a
29 claim, that all parties sued or joined were proper
30 parties owing a legally defined duty to another

1 party.

2 (J) The extent of an effort made, after the
3 commencement of an action, to reduce the number of
4 parties in the action.

5 (vi) If a court determines a reasonable counsel fee
6 should be assessed under this paragraph, it shall
7 allocate the payment among the offending attorneys and
8 parties as it determines most just and may charge the
9 amount or any portion to any offending attorney or party.

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

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