S T A T E O F N E W Y O R K

2578

2011-2012 Regular Sessions

I N S E N A T E

January 26, 2011

Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Codes

AN ACT to amend the civil practice law and rules, in relation to expenses, penalties and additional interest for frivolous actions or procedures and to repeal certain provisions of such law relating thereto

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

Section 1. Section 8303-a of the civil practice law and rules is REPEALED and a new section 8303-a is added to read as follows:

S 8303-A. EXPENSES, PENALTIES AND ADDITIONAL INTEREST FOR FRIVOLOUS ACTION OR PROCEDURE. (A) IF IN A CIVIL ACTION OR PROCEEDING, A CLAIM IS COMMENCED OR CONTINUED BY A PLAINTIFF, OR A COUNTERCLAIM, DEFENSE, CROSS CLAIM OR THIRD-PARTY CLAIM IS COMMENCED OR CONTINUED BY A DEFENDANT, OR AN APPLICATION, A MOTION OR CROSS MOTION FOR AN ORDER IS MADE OR CONTINUED, THAT IS FOUND BY THE COURT AT ANY TIME DURING THE PROCEEDINGS OR UPON JUDGMENT TO BE FRIVOLOUS, THE COURT SHALL AWARD EXPENSES TO ANY PARTY ADVERSELY AFFECTED BY THE FRIVOLOUS CONDUCT.

(B) FOR PURPOSES OF THIS SECTION:

(I) "ACTION OR PROCEDURE" INCLUDES, BUT IS NOT LIMITED TO, THE MAKING OR OPPOSING OF AN APPLICATION OR A MOTION, INCLUDING A MOTION FOR SANCTION PURSUANT TO THIS SECTION OR THE ASSERTION OF A CLAIM, COUNTERCLAIM, DEFENSE, CROSS CLAIM OR THIRD-PARTY CLAIM.

(II) "FRIVOLOUS" MEANS ENTIRELY WITHOUT MERIT AND NOT ADVANCED IN GOOD FAITH OR SOLELY INTENDED TO HARASS OR MALICIOUSLY INJURE ANOTHER.

(III) "EXPENSES" MEANS THE LEGAL EXPENSES INCURRED BY A PARTY DIRECTLY ATTRIBUTABLE TO A FRIVOLOUS ACTION OR PROCEDURE, INCLUDING REASONABLE ATTORNEY'S FEES AND DISBURSEMENTS.

(C) THE EXPENSES AWARDED UNDER SUBDIVISION (A) OF THIS SECTION SHALL BE ASSESSED EITHER AGAINST THE PARTY BRINGING OR USING THE FRIVOLOUS ACTION OR PROCEDURE OR AGAINST THE ATTORNEY FOR SUCH PARTY, OR AGAINST BOTH, AS MAY BE DETERMINED BY THE COURT, BASED UPON THE CIRCUMSTANCES OF THE CASE. SUCH EXPENSES SHALL BE IN ADDITION TO ANY OTHER AWARD GRANTED TO ANY PARTY ADVERSELY AFFECTED BY THE FRIVOLOUS CONDUCT.

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

LBD07286-01-1

(D) IN ADDITION TO ANY EXPENSES AWARDED UNDER THIS SECTION, OR AS AN ALTERNATIVE SANCTION, THE COURT MAY IMPOSE UPON THE PARTY BRINGING OR USING A FRIVOLOUS ACTION OR PROCEDURE OR UPON THE ATTORNEY FOR SUCH PARTY, OR UPON BOTH, A PENALTY NOT TO EXCEED TWO HUNDRED FIFTY DOLLARS, TO BE AWARDED TO ANY PARTY ADVERSELY AFFECTED BY THE FRIVOLOUS CONDUCT.

(E) IN ADDITION TO ANY EXPENSES AWARDED OR PENALTY IMPOSED UNDER THIS SECTION, OR AS AN ALTERNATIVE SANCTION, IF IN AN ACTION FOR THE RECOVERY OF A SUM OF MONEY THE COURT FINDS THAT THE PARTY LIABLE FOR PAYMENT OF SUCH SUM OR ATTORNEY FOR SUCH PARTY HAS BROUGHT ANY FRIVOLOUS ACTION OR PROCEDURE IN ORDER TO DELAY JUDGMENT, THE COURT SHALL AWARD TO EACH CLAIMANT AGAINST WHOM SUCH ACTION OR PROCEDURE WAS BROUGHT OR USED ADDITIONAL INTEREST ON THE UNPAID PORTION OF SUCH SUM AT ONE HUNDRED FIFTY PERCENT OF THE LEGAL RATE FROM THE DATE WHEN THE SUM WAS DUE TO THE CLAIMANT, WHICH DATE SHALL BE STATED IN THE AWARD, UNTIL THE SUM IS PAID IN FULL.

(F) AN AWARD OF ANY EXPENSES OR ADDITIONAL INTEREST OR THE IMPOSITION OF ANY PENALTY UNDER THE PROVISIONS OF THIS SECTION SHALL BE MADE ONLY UPON MOTION OF ANY PARTY ADDRESSED TO THE JUDGE BEFORE WHOM THE FRIVOLOUS ACTION OR PROCEDURE PROCEEDED, OR UPON THE COURT'S OWN MOTION. THE COURT SHALL CONDUCT A HEARING ON THE MOTION TO DETERMINE WHETHER AN AWARD OF EXPENSES OR ADDITIONAL INTEREST SHOULD BE GRANTED OR A PENALTY IMPOSED, AND THE AMOUNT OF SUCH AWARD, ADDITIONAL INTEREST OR PENALTY.

(G) IF THE COURT DETERMINES FROM A PRELIMINARY CONSIDERATION OF THE MOTION AND PRIOR TO A HEARING THAT THE ACTION OR PROCEDURE MOVED AGAINST IS FRIVOLOUS, IT SHALL WHENEVER POSSIBLE GIVE NOTICE ON THE RECORD TO THE PARTIES OF SUCH PRELIMINARY DETERMINATION. IF WITHIN TEN DAYS FOLLOWING SUCH NOTICE THE PARTY OR ATTORNEY DISCONTINUES THE ACTION OR PROCEDURE, NO EXPENSES OR ADDITIONAL INTEREST SHALL BE AWARDED OR PENALTY IMPOSED; PROVIDED, HOWEVER, THAT NO NOTICE SHALL BE REQUIRED FOR THE COURT AFTER A HEARING TO AWARD EXPENSES OR ADDITIONAL INTEREST OR TO IMPOSE A PENALTY FOR A FRIVOLOUS ACTION OR PROCEDURE BASED UPON THE SUBMISSION TO THE COURT OF A FALSE STATEMENT MADE UNDER OATH.

(H) AN ORDER AWARDING EXPENSES OR ADDITIONAL INTEREST OR IMPOSING A PENALTY UNDER THIS SECTION SHALL BE IN WRITING, SHALL RECITE IN DETAIL THE CONDUCT OR CIRCUMSTANCES JUSTIFYING THE ORDER AND SHALL SPECIFY IN DETAIL THE METHOD BY WHICH THE AMOUNT OF THE AWARD WAS COMPUTED AND THE CALCULATION THEREOF.

(I) ANY ORDER AWARDING EXPENSES OR ADDITIONAL INTEREST OR IMPOSING A PENALTY UNDER THIS SECTION MAY BE APPEALED, AS A MATTER OF RIGHT, TO THE APPROPRIATE APPELLATE COURT, WHICH SHALL REVIEW THE MATTER DE NOVO.

(J) NO FINDING SHALL BE MADE THAT ANY ACTION OR PROCEDURE WAS FRIVOLOUS SOLELY BECAUSE A NOVEL OR UNUSUAL ARGUMENT OR PRINCIPLE OF LAW WAS ADVANCED IN SUPPORT THEREOF.

(K) THIS SECTION SHALL PROVIDE THE EXCLUSIVE REMEDY FOR A FRIVOLOUS ACTION OR PROCEDURE. HOWEVER SUCH REMEDY SHALL NOT BE DEEMED TO PRECLUDE AN ACTION AUTHORIZED PURSUANT TO THIS CHAPTER OR AN ACTION FOR MALICIOUS PROSECUTION OR ABUSE OF PROCESS.

(L) ALL PRECEDING PROVISIONS OF THIS SECTION SHALL NOT APPLY TO:

(I) PROCEEDINGS IN A SMALL CLAIMS PART OF ANY COURT;

(II) LANDLORD-TENANT PROCEEDINGS; AND

(III) PROCEEDINGS IN THE FAMILY COURT COMMENCED UNDER ARTICLE THREE, SEVEN, EIGHT OR TEN OF THE FAMILY COURT ACT.

S 2. This act shall take effect immediately and shall apply to an action or proceeding commenced on or after the effective date of this act.