

2A:15-59.1

LEGISLATIVE HISTORY CHECKLIST

NJSA: 2A:15-59.1

(Attorney's fees--  
recovery--allow  
in certain civil  
suits)

LAWS OF: 1988

CHAPTER: 46

Bill No: A1316

Sponsor(s): Ogden

Date Introduced: Pre-filed

Committee: Assembly: Judiciary

Senate: Judiciary

Amended during passage: Yes Assembly Committee Substitute  
for A1316/751 enacted.

Date of Passage: Assembly: January 25, 1988

Senate: March 28, 1988

Date of Approval: June 28, 1988

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: No

Following were printed:

Reports: No

Hearings: No

See newspaper clipping--attached:

(Over)

"Legal fee liability enacted for filers of frivolous suits." 6-29-88 Star Ledger

p. 2

P.L. 1988, CHAPTER 46, *approved June 28, 1988*  
Assembly Committee Substitute (*First Reprint*) for  
1988 Assembly Nos. 1316 and 751  
CORRECTED COPY

1 **AN ACT** providing for payment of costs and attorney fees in  
3 certain circumstances and supplementing Title 2A of the New  
Jersey Statutes.

5 **BE IT ENACTED** by the Senate and General Assembly of the  
State of New Jersey:

7 1. a. A party who prevails in a civil action, either as plaintiff  
or defendant, against any other party may be awarded all  
9 reasonable litigation costs and reasonable attorney fees, if the  
judge finds at any time during the proceedings or upon judgment  
11 that a complaint, counterclaim, cross-claim or defense of the  
nonprevailing person was frivolous.

13 b. In order to find that a complaint, counterclaim,  
cross-claim or defense of the nonprevailing party was frivolous,  
15 the judge shall find on the basis of the pleadings, discovery, or  
the evidence presented that either:

17 (1) The complaint, counterclaim, cross-claim or defense was  
commenced, used or continued in bad faith, solely for the  
19 purpose of harassment, delay or malicious injury; or

(2) The nonprevailing party knew, or should have known, that  
21 the complaint, counterclaim, cross-claim or defense was  
without any reasonable basis in law or equity and could not be  
23 supported by a good faith argument for an extension,  
modification or reversal of existing law <sup>1</sup>{or was based on false  
25 allegations of fact}<sup>1</sup>.

c. A party seeking an award under this section shall make  
27 application to the court which heard the matter. The  
application shall be supported by an affidavit stating in detail:

29 (1) The nature of the services rendered, the responsibility  
assumed, the results obtained, the amount of time spent by

**EXPLANATION**--Matter enclosed in bold-faced brackets [thus] in the  
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.  
Matter enclosed in superscript numerals has been adopted as follows:  
<sup>1</sup> Senate floor amendments adopted March 3, 1988.

1 the attorney, any particular novelty or difficulty, the time  
2 spent and services rendered by secretaries and staff, other  
3 factors pertinent in the evaluation of the services the  
4 attorney, any particular novelty or difficulty, the time  
5 spent and services rendered by secretaries and staff, other  
6 factors pertinent in the evaluation of the services  
7 rendered, the amount of the allowance applied for, an  
8 itemization of the disbursements for which reimbursement  
9 is sought, and any other factors relevant in evaluating fees  
10 and costs; and

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

14 2. This act shall take effect on the 180th day after  
15 enactment and shall apply only to causes of action filed on or  
16 after the effective date.

17

18 JUDICIARY  
19 Courts

20

21 Permits the recovery of attorney's fees in a civil suit when the  
22 legal position of nonprevailing party was not justified.  
23

# ASSEMBLY, No. 1316

## STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel

PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Assemblywoman ODGEN

1     **AN ACT** providing for payment of costs and attorney fees in  
2             certain circumstances and supplementing Title 2A of the New  
3     Jersey Statutes.

5             **BE IT ENACTED** *by the Senate and General Assembly of the*  
6     *State of New Jersey:*

7             1. a. A party who prevails in a civil action, either as plaintiff  
8             or defendant, against any other party may be awarded  
9             reasonable attorney fees, not to exceed \$2,500.00, if the judge  
10            finds at any time during the proceedings or upon judgment that a  
11            complaint, counterclaim, cross-claim or defense of the  
12            nonprevailing person was frivolous.

13            b. In order to find that a complaint, counterclaim,  
14            cross-claim or defense of the nonprevailing party was frivolous,  
15            the judge shall find on the basis of the pleadings, discovery, or  
16            the evidence presented that either:

17                (1) The complaint, counterclaim, cross-claim or defense  
18                was commenced, used or continued in bad faith, solely for  
19                the purpose of harassment, delay or malicious injury; or

20                (2) The nonprevailing party knew, or should have known,  
21                that the complaint, counterclaim, cross-claim or defense  
22                was without any reasonable basis in law or equity and  
23                could not be supported by a good faith argument for an  
24                extension, modification or reversal of existing law or was  
25                based on false allegations of fact.

26            c. A party seeking an award under this section shall make  
27            application to the court which heard the matter. The  
28            application shall be supported by an affidavit stating in detail:

29                (1) The nature of the services rendered, the responsibility  
30                assumed, the results obtained, the amount of time spent by  
31                the attorney, any particular novelty of difficulty, the time  
              spent and services rendered by secretaries and staff,

1 other factors pertinent in the evaluation of the services  
 2 rendered, the amount of the allowance applied for, an  
 3 itemization of the disbursements for which reimbursement  
 4 is sought, and any other factors relevant in evaluating fees  
 5 and costs; and  
 6 (2) How much has been paid to the attorney and what  
 7 provision, if any, has been made for the payment of these  
 8 fees in the future.  
 9 2. This act shall take effect on the 180th day after  
 10 enactment and shall apply only to causes of action filed on or  
 11 after the effective date.

13

*Sponsor* STATEMENT

15

16 The purpose of this bill is to allow a party who prevails in a  
 17 civil suit to recover reasonable attorney fees and litigations  
 18 costs from the nonprevailing person if the judge finds that the  
 19 legal position of the nonprevailing person was not justified and  
 20 was commenced in bad faith solely for the purpose of delay or  
 21 malicious injury, or that the nonprevailing party knew or should  
 22 have known that the action was without any reasonable basis in  
 23 law or equity.

25

JUDICIARY  
Courts

27

28 Permits the recovery of attorney's fees in a civil suit when the  
 29 legal position of nonprevailing party was not justified.

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ASSEMBLY, No. 751

STATE OF NEW JERSEY

Introduced Pending Technical Review by Legislative Counsel  
PRE-FILED FOR INTRODUCTION IN THE 1988 SESSION

By Assemblyman SHUSTED

1     **AN ACT** concerning certain civil actions and supplementing  
          chapter 15 of Title 2A of the New Jersey Statutes.

3

**BE IT ENACTED** *by the Senate and General Assembly of the*  
5     *State of New Jersey:*

          1. Unless costs are otherwise provided for by law or rule of  
7     court, the prevailing party in a civil action based on contract  
          may apply to the court for the allowance of attorney's fees  
9     which the party incurred in defending or prosecuting the action.  
          The application shall be supported by an affidavit stating in  
11    detail:

          a. The nature of the services rendered, the responsibility  
13    assumed, the results obtained, the amount of time spent by the  
          attorney, any particular novelty or difficulty, the time spent and  
15    services rendered by secretaries and staff, other factors  
          pertinent in the evaluation of the services rendered, the amount  
17    of the allowance applied for, an itemization of disbursements  
          for which reimbursement is sought, and any other factors  
19    relevant in evaluating fees and costs; and

          b. How much has been paid to the attorney and what  
21    provision, if any, has been made for the payment of these fees in  
          the future.

23    2. Upon application pursuant to section 1 of this act, the  
          courts in its discretion, may award the prevailing party the  
25    actual attorney's fees incurred in defending or prosecuting the  
          action and they shall be taxed as costs according to law.

27    3. This act shall take effect on the 180<sup>th</sup> day after  
          enactment and shall apply only to causes of action filed on or  
29    after the effective date.

31

STATEMENT

33    This bill provides that a court may award the prevailing party,

1 in a civil action based on contract, the actual attorney's fees  
the party incurred in defending or prosecuting the action.  
3 Application for this award must be supported by a detailed  
affidavit as specified under the bill.

5 The bill so would take effect on the 180<sup>th</sup> day after  
enactment, and apply only to causes of action filed on or after  
7 the effective date.

9

#### COURTS

11 Prosecution and Defense

13 Allows the court to award attorney's fees to prevailing party in  
certain civil actions.



ASSEMBLY JUDICIARY COMMITTEE  
STATEMENT TO  
ASSEMBLY COMMITTEE SUBSTITUTE FOR

**ASSEMBLY, Nos. 1316 and 751**

**STATE OF NEW JERSEY**

DATED: JANUARY 21, 1988

The Assembly Judiciary Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 1316 and Assembly Bill No. 751.

The committee substitute permits a party who prevails in a civil suit to recover reasonable attorney fees and all reasonable litigation costs from the nonprevailing person, if the judge finds that the legal position of the nonprevailing person was frivolous.

A legal position could be frivolous if a judge finds that:

1. The action or defense was commenced or continued in bad faith, solely for the purpose of harassment, delay or malicious injury; or
2. The nonprevailing person knew or should have known, that the action was without any reasonable basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law or was based on false allegations of fact.

The party seeking an award of fees and costs must submit an application and a detailed statement which includes the nature of the services rendered, the time spent and services rendered by the secretaries and staff, an itemization of disbursements and how much has already been paid to the attorney.

SENATE JUDICIARY COMMITTEE  
STATEMENT TO  
ASSEMBLY COMMITTEE SUBSTITUTE FOR  
**ASSEMBLY, No. 1316**  
**STATE OF NEW JERSEY**

DATED: FEBRUARY 18, 1988

The Senate Judiciary Committee reports favorably Assembly Committee Substitute for Assembly Bill No. 1316.

The bill permits a party who prevails in a civil suit to recover reasonable attorney fees and all reasonable litigation costs from the nonprevailing person, if the judge finds that the legal position of the nonprevailing person was frivolous.

A legal position could be determined to be frivolous if a judge finds that:

1. The action or defense was commenced or continued in bad faith, solely for the purpose of harassment, delay or malicious injury; or
2. The nonprevailing person knew or should have known, that the action was without any reasonable basis in law equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law or was based on false allegations of fact.

The party seeking an award of fees and costs must submit an application and a detailed statement which includes the nature of the services rendered, the time spent and services rendered by the secretaries and staff, an itemization of disbursements and how much has already been paid to the attorney.