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**AB-984 Courts: frivolous actions or tactics.** (2017-2018)

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**Assembly Bill No. 984**

**CHAPTER 169**

An act to amend and repeal Section 128.5 of the Code of Civil Procedure, relating to courts, and declaring the urgency thereof, to take effect immediately.

[ Approved by Governor August 07, 2017. Filed with Secretary of State August 07, 2017. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 984, Calderon. Courts: frivolous actions or tactics.

Existing law, until January 1, 2018, authorizes a trial court to order a party, the party's attorney, or both, to pay the reasonable expenses, including attorney's fees, incurred by another party as a result of bad-faith actions or tactics, as defined, that are frivolous or solely intended to cause unnecessary delay. Existing law requires a party filing a motion pursuant to those provisions to promptly transmit specified information to the California Research Bureau of the California State Library. Existing law requires the bureau to maintain a public record of transmitted information for at least 3 years, or until those provisions are repealed, as specified.

This bill would extend indefinitely the authorization of the trial court to order the payment of those reasonable expenses, but would not extend, and instead delete, the requirements on the filing party and the bureau relating to transmitting and maintaining the specified information, respectively. The bill would require the actions or tactics to be part of a civil case that was filed on or after January 1, 2015.

Existing law requires that any sanctions imposed pursuant to the above provisions be imposed consistently with the standards, conditions, and procedures set forth in specified provisions relating to sanctions.

This bill would delete that requirement and would instead impose various conditions and procedures on the sanctions ordered, as specified.

Existing law, operative on January 1, 2018, authorizes a trial court to make the above-described order only if the actions or tactics arise from a complaint filed, or a proceeding initiated, on or before December 31, 1994.

This bill would delete those provisions.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: 2/3 Appropriation: no Fiscal Committee: yes Local Program: no

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** Section 128.5 of the Code of Civil Procedure, as amended by Section 1 of Chapter 425 of the Statutes of 2014, is amended to read:

**128.5.** (a) A trial court may order a party, the party's attorney, or both, to pay the reasonable expenses, including attorney's fees, incurred by another party as a result of actions or tactics, made in bad faith, that are frivolous or solely intended to cause unnecessary delay. This section also applies to judicial arbitration proceedings under Chapter 2.5 (commencing with Section 1141.10) of Title 3 of Part 3.

(b) For purposes of this section:

(1) "Actions or tactics" include, but are not limited to, the making or opposing of motions or the filing and service of a complaint, cross-complaint, answer, or other responsive pleading. The mere filing of a complaint without service thereof on an opposing party does not constitute "actions or tactics" for purposes of this section.

(2) "Frivolous" means totally and completely without merit or for the sole purpose of harassing an opposing party.

(c) Expenses pursuant to this section shall not be imposed except on notice contained in a party's moving or responding papers or, on the court's own motion, after notice and opportunity to be heard. An order imposing expenses shall be in writing and shall recite in detail the action or tactic or circumstances justifying the order.

(d) In addition to any award pursuant to this section for an action or tactic described in subdivision (a), the court may assess punitive damages against the plaintiff on a determination by the court that the plaintiff's action was an action maintained by a person convicted of a felony against the person's victim, or the victim's heirs, relatives, estate, or personal representative, for injuries arising from the acts for which the person was convicted of a felony, and that the plaintiff is guilty of fraud, oppression, or malice in maintaining the action.

(e) This section shall not apply to disclosures and discovery requests, responses, objections, and motions.

(f) Sanctions ordered pursuant to this section shall be ordered pursuant to the following conditions and procedures:

(1) If, after notice and a reasonable opportunity to respond, the court issues an order pursuant to subdivision (a), the court may, subject to the conditions stated below, impose an appropriate sanction upon the party, the party's attorneys, or both, for an action or tactic described in subdivision (a). In determining what sanctions, if any, should be ordered, the court shall consider whether a party seeking sanctions has exercised due diligence.

(A) A motion for sanctions under this section shall be made separately from other motions or requests and shall describe the specific alleged action or tactic, made in bad faith, that is frivolous or solely intended to cause unnecessary delay.

(B) If the alleged action or tactic is the making or opposing of a written motion or the filing and service of a complaint, cross-complaint, answer, or other responsive pleading that can be withdrawn or appropriately corrected, a notice of motion shall be served as provided in Section 1010, but shall not be filed with or presented to the court, unless 21 days after service of the motion or any other period as the court may prescribe, the challenged action or tactic is not withdrawn or appropriately corrected.

(C) If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(D) If the alleged action or tactic is the making or opposing of a written motion or the filing and service of a complaint, cross-complaint, answer, or other responsive pleading that can be withdrawn or appropriately corrected, the court on its own motion may enter an order describing the specific action or tactic, made in bad faith, that is frivolous or solely intended to cause unnecessary delay, and direct an attorney, law firm, or party to show cause why it has made an action or tactic as defined in subdivision (b), unless, within 21 days of service of the order to show cause, the challenged action or tactic is withdrawn or appropriately corrected.

(2) An order for sanctions pursuant to this section shall be limited to what is sufficient to deter repetition of the action or tactic or comparable action or tactic by others similarly situated. Subject to the limitations in subparagraphs (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorney's fees and other expenses incurred as a direct result of the action or tactic described in subdivision (a).

(A) Monetary sanctions may not be awarded against a represented party for a violation of presenting a claim, defense, and other legal contentions that are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

(B) Monetary sanctions may not be awarded on the court's motion unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party that is, or whose attorneys are, to be sanctioned.

(g) A motion for sanctions brought by a party or a party's attorney primarily for an improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation, shall itself be subject to a motion for sanctions. It is the intent of the Legislature that courts shall vigorously use its sanction authority to deter the improper actions or tactics or comparable actions or tactics of others similarly situated.

(h) The liability imposed by this section is in addition to any other liability imposed by law for acts or omissions within the purview of this section.

(i) This section applies to actions or tactics that were part of a civil case filed on or after January 1, 2015.

**SEC. 2.** Section 128.5 of the Code of Civil Procedure, as added by Section 2 of Chapter 425 of the Statutes of 2014, is repealed.

**SEC. 3.** This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to avoid further confusion or inconsistent decisions among courts regarding the application of Section 128.5 of the Code of Civil Procedure, as amended by Section 1 of Chapter 425 of the Statutes of 2014, including, among other things, the standards, conditions, and procedures that must be applied and whether the statute applies to a case that was filed on or after January 1, 2015, instead of applying to a case pending as of January 1, 2015; to apply the statute equally to similarly situated parties; and to prevent further injustice, as quickly as possible, it is necessary for this act to take effect immediately.