

**First Regular Session
Sixty-fourth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 03-0522.01 Michael Dohr

HOUSE BILL 03-1198

HOUSE SPONSORSHIP

Lee

SENATE SPONSORSHIP

McElhany

House Committees

Business Affairs & Labor

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING A MANDATORY AWARD OF ATTORNEY FEES TO A PARTY**
102 **IN A CIVIL ACTION IN CERTAIN CIRCUMSTANCES.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Requires a court, in a civil action, to award attorney fees to the prevailing party in certain circumstances. Limits the award of attorney fees if the prevailing party rejects an offer that is less than the judgment by at least 10%. Provides guidance to the court in determining a reasonable award of attorney fees. Awards attorney fees to the nonprevailing party in specified circumstances.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** 13-17-101, Colorado Revised Statutes, is amended
3 to read:

4 **13-17-101. Legislative declaration.** The general assembly
5 recognizes that courts of record of this state have become increasingly
6 burdened with litigation which is straining the judicial system and
7 interfering with the effective administration of civil justice. In response
8 to this problem, the general assembly hereby sets forth provisions for the
9 recovery of attorney fees in courts of record. ~~when the bringing or~~
10 ~~defense of an action, or part thereof (including any claim for exemplary~~
11 ~~damages), is determined to have been substantially frivolous,~~
12 ~~substantially groundless, or substantially vexatious. All courts shall~~
13 ~~liberally construe the provisions of this article to effectuate substantial~~
14 ~~justice and comply with the intent set forth in this section.~~

15 **SECTION 2.** 13-17-102, Colorado Revised Statutes, is amended
16 to read:

17 **13-17-102. Attorney fees.** (1) Subject to the provisions of this
18 section, in any civil action of any nature commenced or appealed in any
19 court of record in this state, the court ~~may~~ SHALL award, except as this
20 article otherwise provides, as part of its judgment and in addition to any
21 costs otherwise assessed, reasonable attorney fees.

22 (2) ~~Subject to the limitations set forth elsewhere in this article, in~~
23 ~~any civil action of any nature commenced or appealed in any court of~~
24 ~~record in this state, the court shall award, by way of judgment or separate~~
25 ~~order, reasonable attorney fees against any attorney or party who has~~
26 ~~brought or defended a civil action, either in whole or in part, that the~~
27 ~~court determines lacked substantial justification.~~

1 (2.1) ~~Notwithstanding any other provision of this part 1, the filing~~
2 ~~of a certificate of review pursuant to section 13-20-602 related to any~~
3 ~~licensed health care professional shall create a rebuttable presumption~~
4 ~~that the claim or action is not frivolous or groundless, but it shall not~~
5 ~~relieve the plaintiff or his attorney from ongoing obligations under rule~~
6 ~~11 of Colorado rules of civil procedure.~~

7 (3) ~~When~~ AFTER a court ~~determines that~~ ORDERS PAYMENT OF
8 reasonable attorney fees, ~~should be assessed,~~ it shall allocate the payment
9 thereof among the ~~offending~~ attorneys and parties, jointly or severally, as
10 it deems most just, and may charge such amount, or portion thereof, to
11 any ~~offending~~ attorney or party.

12 (4) ~~The court shall assess attorney fees if, upon the motion of any~~
13 ~~party or the court itself, it finds that an attorney or party brought or~~
14 ~~defended an action, or any part thereof, that lacked substantial~~
15 ~~justification or that the action, or any part thereof, was interposed for~~
16 ~~delay or harassment or if it finds that an attorney or party unnecessarily~~
17 ~~expanded the proceeding by other improper conduct, including, but not~~
18 ~~limited to, abuses of discovery procedures available under the Colorado~~
19 ~~rules of civil procedure or a designation by a defending party under~~
20 ~~section 13-21-111.5 (3) that lacked substantial justification. As used in~~
21 ~~this article, "lacked substantial justification" means substantially~~
22 ~~frivolous, substantially groundless, or substantially vexatious.~~

23 (5) No attorney fees shall be assessed if, after filing suit, a
24 voluntary dismissal is filed as to any claim or action within a reasonable
25 time after the attorney or party filing the dismissal knew, or reasonably
26 should have known, that he OR SHE would not prevail on said claim or
27 action.

1 (6) No party who is appearing without an attorney shall be
2 assessed attorney fees unless the court finds that the party clearly knew
3 or reasonably should have known that his OR HER action or defense, or
4 any part thereof, was substantially frivolous, substantially groundless, or
5 substantially vexatious; except that this subsection (6) shall not apply to
6 situations in which an attorney licensed to practice law in this state is
7 appearing without an attorney, in which case, he OR SHE shall be held to
8 the standards established for attorneys elsewhere in this article.

9 (7) No attorney or party shall be assessed attorney fees as to any
10 claim or defense which the court determines was asserted by said attorney
11 or party in a good faith attempt to establish a new theory of law in
12 Colorado.

13 (7.5) NOTWITHSTANDING ANY PROVISION OF THIS SECTION TO THE
14 CONTRARY, IN A CIVIL ACTION, IN ADDITION TO ANY OTHER SANCTIONS
15 CONCERNING OFFERS OF JUDGMENT, THE PREVAILING PARTY SHALL NOT BE
16 AWARDED ATTORNEY FEES THAT ARE INCURRED AFTER AN OFFER OF
17 SETTLEMENT OR JUDGMENT EXPIRES IF THE PREVAILING PARTY DOES NOT
18 ACCEPT THE SETTLEMENT OR JUDGMENT OFFER AND THE JUDGMENT THE
19 PREVAILING PARTY FINALLY OBTAINS IS LESS THAN THE OFFER BY AT LEAST
20 TEN PERCENT OF THE OFFER. IF THE PREVAILING PARTY IS NOT AWARDED
21 ATTORNEY FEES PURSUANT TO THIS SUBSECTION (7.5), THE
22 NONPREVAILING PARTY MAY BE AWARDED REASONABLE ATTORNEY FEES
23 THAT THE NONPREVAILING PARTY INCURRED AFTER THE OFFER EXPIRED.

24 (8) The provisions of this section shall not apply to traffic
25 offenses, matters brought under the provisions of the "Colorado
26 Children's Code", title 19, C.R.S., or related juvenile matters, or matters
27 involving violations of municipal ordinances.

1 **SECTION 3.** 13-17-103, Colorado Revised Statutes, is amended
2 to read:

3 **13-17-103. Procedure for determining reasonable fee - judicial**
4 **discretion.** (1) (a) In determining the amount of an attorney fee award,
5 the court shall exercise its sound discretion AND FIX THE AWARD OF
6 ATTORNEY FEES IN THE AMOUNT OF THE FAIR MARKET VALUE OF THE
7 LEGAL SERVICES RENDERED. When granting an award of attorney fees,
8 the court shall specifically set forth the reasons for said award and shall
9 consider the following factors ADJUSTMENTS AND LIMITATIONS SPECIFIED
10 IN THIS SUBSECTION (1), among others, in determining whether to assess
11 attorney fees and the amount of attorney fees to be assessed against any
12 offending attorney or party.

13 (a) (b) ~~The extent of any effort made to determine the validity of~~
14 ~~any action or claim before said action or claim was asserted~~ THE COURT
15 SHALL CONSIDER WHETHER THE PREVAILING PARTY'S ATTORNEY
16 REASONABLY RENDERED THE LEGAL SERVICES AND REASONABLY
17 INCURRED THE EXPENSES AND THE ATTORNEY ACTED IN GOOD FAITH AND
18 IN COURTEOUS PURSUIT OF THE TRUTHFUL, ECONOMICAL, AND LAWFUL
19 RESOLUTION OF THE ACTION OR IN REASONABLE RESPONSE TO ACTIONS BY
20 THE NONPREVAILING PARTY.

21 (b) (c) ~~The extent of any effort made after the commencement of~~
22 ~~an action to reduce the number of claims or defenses being asserted or to~~
23 ~~dismiss claims or defenses found not to be valid within an action~~ IF THE
24 LEGAL SERVICES RENDERED IN THE ACTION EXCEED WHAT ARE OTHERWISE
25 REASONABLE FOR THE MATTER IN CONTROVERSY, THE JUDGE SHALL
26 AWARD THE PREVAILING PARTY FAIR MARKET VALUE OF THE LEGAL
27 SERVICES RENDERED TO THE EXTENT THAT THE NONPREVAILING PARTY

1 CAUSED THE LEGAL SERVICES TO EXCEED WHAT ARE OTHERWISE
2 REASONABLE.

3 ~~(c) (d) The availability of facts to assist a party in determining the~~
4 ~~validity of a claim or defense~~ THE COURT MAY NOT AWARD ATTORNEY
5 FEES IN EXCESS OF THE AMOUNT THAT THE PREVAILING PARTY PAID OR
6 AGREED TO PAY FOR THE LEGAL SERVICES RENDERED.

7 ~~(d) (e) The relative financial positions of the parties involved~~ THE
8 COURT SHALL NOT ADJUST THE VALUE OF THE LEGAL SERVICES FOR OR
9 GIVE CONSIDERATION TO THE CONTINGENT NATURE OF THE ATTORNEY'S
10 RIGHT TO PAYMENT FROM THE PREVAILING PARTY.

11 ~~(e) Whether or not the action was prosecuted or defended, in~~
12 ~~whole or in part, in bad faith;~~

13 ~~(f) Whether or not issues of fact determinative of the validity of~~
14 ~~a party's claim or defense were reasonably in conflict;~~

15 ~~(g) (f) THE COURT SHALL CONSIDER the extent to which the party~~
16 ~~prevailed with respect to the amount of and number of claims in~~
17 ~~controversy.~~

18 ~~(h) (g) THE COURT SHALL CONSIDER the amount and conditions of~~
19 ~~any offer of judgment or settlement as related to the amount and~~
20 ~~conditions of the ultimate relief granted by the court.~~

21 **SECTION 4. Effective date.** This act shall take effect at 12:01
22 a.m. on the day following the expiration of the ninety-day period after
23 final adjournment of the general assembly that is allowed for submitting
24 a referendum petition pursuant to article V, section 1 (3) of the state
25 constitution; except that, if a referendum petition is filed against this act
26 or an item, section, or part of this act within such period, then the act,

1 item, section, or part, if approved by the people, shall take effect on the
2 date of the official declaration of the vote thereon by proclamation of the
3 governor.