**South Carolina General Assembly**

125th Session, 2023-2024

**S. 884**

**STATUS INFORMATION**

General Bill

Sponsors: Senator Kimbrell

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Introduced in the Senate on January 9, 2024

Currently residing in the Senate Committee on **Judiciary**

Summary: Frivolous Lawsuits

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

11/30/2023 Senate Prefiled

11/30/2023 Senate Referred to Committee on **Judiciary**

1/9/2024 Senate Introduced and read first time ([Senate Journal‑page 71](h:\sj\20240109.docx))

1/9/2024 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 71](h:\sj\20240109.docx))

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**VERSIONS OF THIS BILL**

[11/30/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/884_20231130.docx)

A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 15‑36‑10, RELATING TO FRIVOLOUS LAWSUITS, SO AS TO PROVIDE THAT SANCTIONS MUST BE IMPOSED UNDER CERTAIN CONDITIONS, TO PROVIDE THAT A COURT OR PARTY PROPOSING SANCTIONS MUST EXPEDITIOUSLY NOTIFY THE COURT AND ALL PARTIES OF THE CONDUCT CONSTITUTING A VIOLATION, TO PROVIDE THAT THE ATTORNEY, PARTY, OR PRO SE LITIGANT WHO ALLEGEDLY COMMITTED THE VIOLATION HAS FIFTEEN DAYS TO RESPOND TO THE ALLEGATIONS, AND TO INCLUDE THE COSTS OF DEPOSITIONS AND REASONABLE FEES FOR TESTIFYING EXPERT WITNESSES AS REASONABLE COSTS.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 15‑36‑10(A)(4) of the S.C. Code is amended to read:

(4) An attorney or pro se litigant participating in a civil or administrative action or defense may must be sanctioned for:

(a) filing a frivolous pleading, motion, or document if:

(i) the person has not read the frivolous pleading, motion, or document;

(ii) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;

(iii) a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or injure the other party; or

(iv) a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based;

(b) making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts; or

(c) making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification, or reversal of existing law.

SECTION 2. Section 15‑36‑10(B)(2) of the S.C. Code is amended to read:

(2) If a document is signed in violation of this section, or an attorney or pro se litigant has violated subsection (A)(4), the court, upon its own motion or motion of a party, may must impose upon the person in violation any sanction which the court considers just, equitable, and proper under the circumstances.

SECTION 3. Section 15‑36‑10(C)(1) of the S.C. Code is amended to read:

(C)(1) At Within thirty days of the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous. An attorney, party, or pro se litigant shall be sanctioned for a frivolous claim or defense if the court finds the attorney, party, or pro se litigant failed to comply with one of the following conditions:

(a) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;

(b) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of the civil suit was intended merely to harass or injure the other party; or

(c) a reasonable attorney in the same circumstances would believe that the case or defense was frivolous as not reasonably founded in fact or was interposed merely for delay, or was merely brought for a purpose other than securing proper discovery, joinder of proposed parties, or adjudication of the claim or defense upon which the proceedings are based.

SECTION 4. Section 15‑36‑10(D) of the S.C. Code is amended to read:

(D) A person is entitled to notice and an opportunity to respond before the imposition of sanctions pursuant to the provisions of this section. A court or party proposing a sanction pursuant to this section shall expeditiously notify the court and all parties of the conduct constituting a violation of the provisions of this section and explain the basis for the potential sanction imposed. Upon notification, the attorney, party, or pro se litigant who allegedly violated subsection (A)(4) has thirty fifteen days to respond to the allegations as that person considers appropriate including, but not limited to, by filing a motion to withdraw the pleading, motion, document, or argument or by offering an explanation of mitigation.

SECTION 5. Section 15‑36‑10(G)(1) of the S.C. Code is amended to read:

(G) Sanctions may include:

(1) an order for the party represented by an attorney or pro se litigant to pay the reasonable costs and attorney’s fees of the prevailing party under a motion pursuant to this section. Costs shall include, but not be limited to, the following: the time required of the prevailing party by the frivolous proceeding, and travel expenses, mileage, parking, costs of reports, costs of depositions, reasonable fees for testifying expert witnesses, and any additional reasonable consequential expenses of the prevailing party resulting from the frivolous proceeding;

SECTION 6. The provisions of this act apply to a civil action commenced on or after the effective date of this act. A civil action commenced before the effective date of this act is governed by the law in effect immediately before the effective date of the change in law, and that law is continued in effect for that purpose.

SECTION 7. This act takes effect upon approval by the Governor.

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