

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 108

Short Title: Civil Litigation Costs Reform Act of 2011. (Public)

Sponsors: Senators Rouzer; Apodaca, Brown, Hise, and Jackson.

Referred to: Judiciary I.

February 23, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH AS A GENERAL RULE IN CIVIL ACTIONS THAT
3 PREVAILING DEFENDANTS BE AWARDED ATTORNEYS' FEES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Article 3 of Chapter 6 of the General Statutes is amended by adding a
6 new section to read:

7 "**§ 6-19.3. Attorneys' fees to prevailing parties.**

8 (a) General Rule. – The court shall award reasonable attorneys' fees resulting from the
9 successful defense of any civil action to the defendant. For purposes of this section, "successful
10 defense" means the defendant prevailed after trial or in a motion for summary judgment
11 pursuant to Chapter 1A-1, Rule 56, with respect to all claims presented by plaintiff, the
12 defendant prevailed in a motion under Chapter 1A-1, Rule 50, with respect to all claims
13 presented by plaintiff, or the action was dismissed pursuant to Chapter 1A-1, Rules 12(b)(6),
14 12(c), or 41(b).

15 (b) Records. – Counsel of record in actions subject to an award of attorneys' fees under
16 this section shall maintain accurate, up-to-date records of hours worked on the matter
17 regardless of the fee arrangement with the client. The court may decline to award fees to a
18 prevailing defendant otherwise eligible for a fee award under subsection (a) of this section or
19 may reduce the fee award should it find that the defendant's costs are excessive, speculative, or
20 not adequately documented.

21 (c) Statutory Exceptions. – This section does not apply when a specific statute
22 otherwise addresses an award of attorneys' fees, except that G.S. 6-21.1 shall apply
23 concurrently with this section."

24 **SECTION 2.** G.S. 6-21.5 reads as rewritten:

25 "**§ 6-21.5. Attorney's fees in certain nonjusticiable cases.**

26 In any ~~civil action~~, special proceeding, or estate or trust proceeding, the court, upon motion
27 of the prevailing party, may award a reasonable attorney's fee to the prevailing party if the court
28 finds that there was a complete absence of a justiciable issue of either law or fact raised by the
29 losing party in any pleading. The filing of a general denial or the granting of any preliminary
30 motion, such as a motion for judgment on the pleadings pursuant to G.S. 1A-1, Rule 12, a
31 motion to dismiss pursuant to G.S. 1A-1, Rule 12(b)(6), a motion for a directed verdict
32 pursuant to G.S. 1A-1, Rule 50, or a motion for summary judgment pursuant to G.S. 1A-1,
33 Rule 56, is not in itself a sufficient reason for the court to award attorney's fees, but may be
34 evidence to support the court's decision to make such an award. A party who advances a claim
35 or defense supported by a good faith argument for an extension, modification, or reversal of
36 law may not be required under this section to pay attorney's fees. The court shall make findings
37 of fact and conclusions of law to support its award of attorney's fees under this section."



1 **SECTION 3.** This act becomes effective October 1, 2011, and applies to civil
2 actions filed on or after that date.