

FLOOR AMENDMENT

HOUSE OF REPRESENTATIVES

State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB4077 _____
Of the printed Bill
Page _____ Section _____ Lines _____
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by
inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Kevin Wallace

Reading Clerk

STATE OF OKLAHOMA

2nd Session of the 58th Legislature (2022)

FLOOR SUBSTITUTE
FOR

HOUSE BILL NO. 4077

By: Wallace

FLOOR SUBSTITUTE

An Act relating to civil procedure; amending 12 O.S. 2021, Section 2011.1, which relates to determination of frivolous claims or defenses; allowing court to make certain determinations without request; defining term; amending 12 O.S. 2021, Section 2011, which relates to sanctions for frivolous claims or defenses; authorizing court to order payment without a motion; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 12 O.S. 2021, Section 2011.1, is amended to read as follows:

Section 2011.1 In any action not arising out of contract, ~~if requested~~ the court ~~shall~~ may, upon ruling on a motion to dismiss an action or a motion for summary judgment or subsequent to adjudication on the merits, determine whether a claim or defense asserted in the action by a nonprevailing party was frivolous or proven knowingly false. As used in this section, "frivolous" means

1 the claim or defense was knowingly asserted in bad faith or without
2 any rational argument based in law or facts to support the position
3 of the litigant or to change existing law. As used in this section,
4 "knowingly false" means the claim or defense was knowingly asserted
5 with the intent to deceive which shall be proven by clear and
6 convincing evidence. Upon so finding, the court shall enter an
7 order requiring such nonprevailing party to reimburse the prevailing
8 party for reasonable costs, including attorney fees, incurred with
9 respect to such claim or defense. In addition, the court may impose
10 any sanction authorized by Section 2011 of this title.

11 SECTION 2. AMENDATORY 12 O.S. 2021, Section 2011, is
12 amended to read as follows:

13 Section 2011.

14 SIGNING OF PLEADINGS

15 A. SIGNATURE. Every pleading, written motion, and other paper
16 shall be signed by at least one attorney of record in the individual
17 name of the attorney, whose Oklahoma Bar Association identification
18 number shall be stated, or, if the party is not represented by an
19 attorney, shall be signed by the party. Each paper shall state the
20 address of the signer and telephone number, if any. Except when
21 otherwise specifically provided by rule or statute, pleadings need
22 not be verified or accompanied by affidavit. An unsigned paper
23 shall be stricken unless the omission of the signature is corrected

1 promptly after being called to the attention of the attorney or
2 party.

3 B. REPRESENTATIONS TO COURT. By presenting to the court,
4 whether by signing, filing, submitting, or later advocating, a
5 pleading, written motion, or other paper, an attorney or
6 unrepresented party is certifying that to the best of the person's
7 knowledge, information, and belief, formed after an inquiry
8 reasonable under the circumstances:

9 1. It is not being presented for any improper or frivolous
10 purpose, such as to harass or to cause unnecessary delay or needless
11 increase in the cost of litigation;

12 2. The claims, defenses and other legal contentions therein are
13 warranted by existing law or by a nonfrivolous argument for the
14 extension, modification, or reversal of existing law or the
15 establishment of new law;

16 3. The allegations and other factual contentions have
17 evidentiary support or, if specifically so identified, are likely to
18 have evidentiary support after a reasonable opportunity for further
19 investigation or discovery; and

20 4. The denials of factual contentions are warranted on the
21 evidence or, if specifically so identified, are reasonably based on
22 a lack of information or belief.

23 C. SANCTIONS. If, after notice and a reasonable opportunity to
24 respond, the court determines that subsection B of this section has

1 been violated, the court shall, subject to the conditions stated
2 below, impose an appropriate sanction upon the attorneys, law firms,
3 or parties that have violated subsection B of this section or are
4 responsible for the violation.

5 1. HOW INITIATED.

- 6 a. By Motion. A motion for sanctions under this rule
7 shall be made separately from other motions or
8 requests and shall describe the specific conduct
9 alleged to violate subsection B of this section. It
10 shall be served as provided in Section 2005 of this
11 title, but shall not be filed with or presented to the
12 court unless, within twenty-one (21) days after
13 service of the motion or such other period as the
14 court may prescribe, the challenged paper, claim,
15 defense, contention, allegation, or denial is not
16 withdrawn or appropriately corrected. If warranted,
17 the court may award to the party prevailing on the
18 motion the reasonable expenses and attorneys fees
19 incurred in presenting or opposing the motion. Absent
20 exceptional circumstances, a law firm shall be held
21 jointly responsible for violations committed by its
22 partners, associates, and employees.
- 23 b. On Court's Initiative. On its own initiative, the
24 court may enter an order describing the specific

1 conduct that appears to violate subsection B of this
2 section and directing an attorney, law firm, or party
3 to show cause why it has not violated subsection B of
4 this section with respect thereto.

5 2. NATURE OF SANCTIONS; LIMITATIONS. A sanction imposed for
6 violation of this section shall be limited to what is sufficient to
7 deter repetition of such conduct or comparable conduct by others
8 similarly situated. Subject to the limitations in subparagraphs a,
9 b and c of this paragraph, the sanction may consist of, or include,
10 directives of a nonmonetary nature, an order to pay a penalty into
11 court, or, if ~~imposed on motion and~~ warranted for effective
12 deterrence, an order directing payment to the movant of some or all
13 of the reasonable attorneys fees and other expenses incurred as a
14 direct result of the violation.

15 a. Monetary sanctions shall not be awarded against a
16 represented party for a violation of paragraph 2 of
17 subsection B of this section.

18 b. Monetary sanctions shall not be awarded on the court's
19 initiative unless the court issues its order to show
20 cause before a voluntary dismissal or settlement of
21 the claims made by or against the party which is, or
22 whose attorneys are, to be sanctioned.

23 c. Monetary sanctions shall be awarded for any violations
24 of paragraph 1 of subsection B of this section. The

1 sanctions shall consist of an order directing payment
2 of reasonable costs, including attorney fees, incurred
3 by the movant with respect to the conduct for which
4 the sanctions are imposed. In addition, the court may
5 impose any other sanctions authorized by this
6 paragraph.

7 3. ORDER. When imposing sanctions, the court shall describe
8 the conduct determined to constitute a violation of this section and
9 explain the basis for the sanction imposed.

10 D. INAPPLICABILITY TO DISCOVERY. This section does not apply
11 to disclosures and discovery requests, responses, objections, and
12 motions that are subject to the provisions of Sections 3226 through
13 3237 of this title.

14 E. DEFINITION. As used in this section, "frivolous" means the
15 action or pleading was knowingly asserted in bad faith or without
16 any rational argument based in law or facts to support the position
17 of the litigant or to change existing law.

18 SECTION 3. This act shall become effective November 1, 2022.
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