

1                   **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2                               STATE OF OKLAHOMA

3                               2nd Session of the 58th Legislature (2022)

4   HOUSE BILL 4077

                              By: Wallace

7                               AS INTRODUCED

8           An Act relating to civil procedure; amending 12 O.S.  
9           2021, Section 2011.1, which relates to determination  
10          of frivolous claims or defenses; allowing court to  
11          make determination without request; requiring  
12          attorney to pay percentage of costs and fees;  
                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.

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

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

18           Section 2011.1   In any action not arising out of contract, ~~if~~  
19   ~~requested~~ the court ~~shall~~ may, upon ruling on a motion to dismiss an  
20   action or a motion for summary judgment or subsequent to  
21   adjudication on the merits, determine whether a claim or defense  
22   asserted in the action by a nonprevailing party was frivolous. As  
23   used in this section, "frivolous" means the claim or defense was  
24   knowingly asserted in bad faith or without any rational argument

1 based in law or facts to support the position of the litigant or to  
2 change existing law. Upon so finding, the court shall enter an order  
3 requiring such nonprevailing party to reimburse the prevailing party  
4 for reasonable costs, including attorney fees, incurred with respect  
5 to such claim or defense. The attorney of the nonprevailing party  
6 shall be liable for fifty percent (50%) of the reimbursement of the  
7 prevailing party's reasonable costs, including attorney fees,  
8 ordered by the court. In addition, the court may impose any  
9 sanction authorized by Section 2011 of this title.

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

12 Section 2011.

#### 13 SIGNING OF PLEADINGS

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

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

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

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

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

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

21       C. SANCTIONS. If, after notice and a reasonable opportunity to  
22 respond, the court determines that subsection B of this section has  
23 been violated, the court shall, subject to the conditions stated  
24 below, impose an appropriate sanction upon the attorneys, law firms,

1 or parties that have violated subsection B of this section or are  
2 responsible for the violation.

3 1. HOW INITIATED.

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

21 b. On Court's Initiative. On its own initiative, the  
22 court may enter an order describing the specific  
23 conduct that appears to violate subsection B of this  
24 section and directing an attorney, law firm, or party

1 to show cause why it has not violated subsection B of  
2 this section with respect thereto.

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

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

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

21 c. Monetary sanctions shall be awarded for any violations  
22 of paragraph 1 of subsection B of this section. The  
23 sanctions shall consist of an order directing payment  
24 of reasonable costs, including attorney fees, incurred

1 by the movant with respect to the conduct for which  
2 the sanctions are imposed. In addition, the court may  
3 impose any other sanctions authorized by this  
4 paragraph.

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

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

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

16 SECTION 3. This act shall become effective November 1, 2022.  
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18 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY - CIVIL, dated  
19 02/16/2022 - DO PASS.  
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