

1977 Assembly Bill 237

Date published: April 6, 1978

CHAPTER 209, Laws of 1977

AN ACT to amend 814.04 (intro.); and to create 814.025 of the statutes, relating to awarding costs and fees if an action, special proceeding, cross complaint, defense or counterclaim is determined to be frivolous.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. 814.025 of the statutes is created to read:

814.025 Costs upon frivolous claims and counterclaims. (1) If an action or special proceeding commenced or continued by a plaintiff or a counterclaim, defense or cross complaint commenced, used or continued by a defendant is found, at any time during the proceedings or upon judgment, to be frivolous by the court, the court shall award to the successful party costs determined under s. 814.04 and reasonable attorney fees.

(2) The costs and fees awarded under sub. (1) may be assessed fully against either the party bringing the action, special proceeding, cross complaint, defense or counterclaim or the attorney representing the party or may be assessed so that the party and the attorney each pay a portion of the costs and fees.

(3) In order to find an action, special proceeding, counterclaim, defense or cross complaint to be frivolous under sub. (1), the court must find one or more of the following:

(a) The action, special proceeding, counterclaim, defense or cross complaint was commenced, used or continued in bad faith, solely for purposes of harassing or maliciously injuring another.

(b) The party or the party's attorney knew, or should have known, that the action, special proceeding, counterclaim, defense or cross complaint was without any reasonable

1095

CHAPTER 209

basis in law or equity and could not be supported by a good faith argument for an extension, modification or reversal of existing law.

SECTION 2. 814.04 (intro.) of the statutes is amended to read:

814.04 Items of costs. (intro.) ~~When~~ Except as provided in s. 814.025, when allowed costs shall be as follows:
