

## ALEC EXPOSED

"ALEC" has long been a secretive collaboration between Big Business and "conservative" politicians. Behind closed doors, they ghostwrite "model" bills to be introduced in state capitols across the country. This agenda-underwritten by global corporations-- includes major tax loopholes for big industries and the super rich, proposals to offshore U.S. jobs and gut minimum wage, and efforts to weaken public health, safety, and environmental protections. Although many of these bills have become law, until now, their origin has been largely unknown. With **ALEC EXPOSED**, the Center for Media and Democracy hopes more Americans will study the bills to understand the depth and breadth of how big corporations are changing the legal rules and undermining democracy across the nation.

## ALEC's Corporate Board --in recent past or present

- AT&T Services, Inc.
- centerpoint360
- UPS
- Bayer Corporation
- GlaxoSmithKline
- Energy Future Holdings
- Johnson & Johnson
- Coca-Cola Company
- PhRMA
- Kraft Foods, Inc.
- Coca-Cola Co.
- Pfizer Inc.
- Reed Elsevier, Inc.
- DIAGEO
- Peabody Energy
- Intuit, Inc.
- Koch Industries, Inc.
- ExxonMobil
- Verizon
- Reynolds American Inc.
- Wal-Mart Stores, Inc.
- Salt River Project
- Altria Client Services, Inc.
- American Bail Coalition
- State Farm Insurance

For more on these corporations, search at [www.SourceWatch.org](http://www.SourceWatch.org).

& MEETINGS

**DID YOU KNOW?** Corporations VOTED to adopt this. Through ALEC, global companies work as "equals" in "unison" with politicians to write laws to govern your life. Big Business has "a VOICE and a VOTE," according to newly exposed documents. **DO YOU?**

Home → Model Legislation → Civil Justice → **Litigation Accountability Act**

### Summary

This Act sets forth guidelines and procedures for determining when it is appropriate to impose sanctions for frivolous actions. Under the Act, parties who bring unjustified claims will be assessed court costs and attorneys' fees.

### Model Legislation

{Title, enacting clause, etc.}

**Section 1. {Title.}** This act shall be known and may be cited as the Litigation Accountability Act.

**Section 2. {Definitions.}** The following words, as used in this Act, have the meaning set forth below, unless the context clearly requires otherwise:

(A) "Justification" means the case is not frivolous, groundless in fact or in law, or vexatious, as determined by the court;

(B) "Person" means any individual, corporation, company, association, firm, partnership, society, joint stock company, or any other entity, including any governmental entity or unincorporated association of persons.

### Section 3. {Costs and attorneys' fees.}

(A) Except as otherwise provided below, in any civil action commenced or appealed in any court of record in this state, the court shall award, except as otherwise provided below, as part of its judgment and in addition to any other costs otherwise assessed, reasonable attorneys' fees and court costs against any attorney or party who has brought or defended a civil action that a court determines lacks substantial justification either in whole or in part.

(B) When a court determines reasonable attorneys' fees or costs should be assessed, it shall allocate the payment thereof among the offending attorneys and parties as it determines most just and may charge such amount or portion thereof to any offending attorney or party.

(C) The court shall assess attorneys' fees and costs if, upon the motion of any party or the court itself, it finds that an attorney or party brought or defended an action or any part thereof that lacks substantial justification, or that the action or any part thereof was interposed for delay or harassment, or if it finds that an attorney or party unnecessarily expanded the proceedings by other improper conduct including, but not limited to, abuses of discovery procedures available under the state's rules of civil procedures.

(D) No attorneys' fees or costs shall be assessed if, after filing suit, a voluntary dismissal is filed as to any claim or action within a reasonable time after the attorney or party filing the dismissal knew or reasonably should have known that it would not prevail on said claim or action.

(E) No party who is appearing without an attorney shall be assessed attorneys' fees unless the court finds that the party knew or should have known that his action or defense or any part thereof lacked substantial justification, except that this Subsection shall not apply to situations in which an attorney licensed to practice law in the state is appearing without an attorney, in which case that attorney shall be held to the standards for attorneys set forth elsewhere in this Section.

**Section 4. {Procedure for determining costs and reasonable fees.}** In determining the amount of a cost or an attorneys' fee award, the court shall exercise its sound discretion. When granting an award of costs and attorneys' fees, the court shall set forth the reasons for such award and shall consider the following factors, among others, in determining whether to assess attorneys' fees and costs and the amount to be assessed:

(A) the extent to which any effort was made to determine the validity of any action or claim before the action was asserted;

(B) the extent to which any effort made after the commencement of an action to reduce the number of claims or defenses being asserted or to dismiss claims or defenses that have been found not to be valid;

(C) the availability of facts to assist the party to determine the validity of a claim or defense;

(D) whether or not the action was prosecuted or defended in whole or in part in bad faith;

Did you know that Victor Schwartz--a lawyer who represents companies in product litigation--was the corporate co-chair in 2011?

(E) whether or not issues of fact, determinative of the validity of a parties' claim or defense, were reasonably in conflict;

(F) the extent to which the party prevailed with respect to the number of claims in controversy and the judgment amount;

(G) the extent to which any claim or defense was asserted by an attorney or party in a good faith attempt to establish a new theory of law in the state;

(H) the amount or conditions of any offer of judgment or settlement in relation to the amount or conditions of the ultimate relief granted by the court;

(I) the extent to which a reasonable effort was made to determine prior to the time of filing of a claim that all parties sued or joined were proper parties owing a legally defined duty to the plaintiff or defendant; and

(J) the extent of any effort made after the commencement of an action to reduce the number of parties in the action.

**Section 5. {Limitation on use of alias.}** The practice of using alias designations in the naming of parties, such as "John Doe" or "Jane Doe," is prohibited, except in cases involving minors or where the court finds that there is a public policy reason for keeping the name of the party confidential to avoid distress and embarrassment and issues a protective order which allows the parties to know the name of the plaintiff or the defendant but prohibits them from making such information public.

**Section 6. {Limitations.}** Nothing in this Section is intended to limit the authority of the court to approve written stipulations filed with the court or oral stipulations in open court agreeing to no award of attorneys' fees or costs or an award of attorneys' fees or costs in a manner different than that provided in this Act.

**Section 7. {Other laws.}** This Act shall apply in all cases covered by the Act unless attorneys' fees are otherwise specifically provided by law, in which case the provision allowing the greater award shall prevail.

**Section 8. {Severability clause.}**

**Section 9. {Repealer clause.}**

**Section 10. {Effective date.}**

*ALEC's Sourcebook of American State Legislation 1995*

**About Us and ALEC EXPOSED.** The Center for Media and Democracy reports on corporate spin and government propaganda. We are located in Madison, Wisconsin, and publish [www.PRWatch.org](http://www.PRWatch.org), [www.SourceWatch.org](http://www.SourceWatch.org), and now [www.ALECExposed.org](http://www.ALECExposed.org). For more information contact: [editor@prwatch.org](mailto:editor@prwatch.org) or 608-260-9713.

### Center for Media and Democracy's quick summary

This bill provides sanctions for lawsuits deemed frivolous, making the party bringing the suit pay court costs and the other side's attorney's fees.

Governor Scott Walker of Wisconsin added similar provisions in 2011 Wis. Act 2, which created Section 895.44. Wis Stat Section 802.05 also provides for frivolous lawsuit sanctions.