

Bill No. CS for SB 874

Amendment No.

<u>Senate</u>	CHAMBER ACTION	<u>House</u>
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Senators Sullivan and Rossin moved the following amendment:

Senate Amendment

On page 12, line 26, through page 14, line 31, delete those lines

and insert:

Section 4. Section 57.105, Florida Statutes, is amended to read:

57.105 Attorney's fee; sanctions for raising unfounded claims or defenses; damages for delay of litigation.--

(1) The court shall award a reasonable attorney's fee to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney in any civil action in which the court finds that the losing party or the losing party's attorney knew, or with diligent inquiry in the time available to present the claim or defense should have known, before presenting the claim or defense:

(a) That the claim or defense was not supported by the material facts necessary to establish the claim or defense; or

(b) That the application of then-existing law to those

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1 material facts known to the losing party or losing party's
2 attorney would not support the claim or defense.~~there was a~~
3 ~~complete absence of a justiciable issue of either law or fact~~
4 ~~raised by the complaint or defense of the losing party;~~
5 ~~provided,~~

6
7 However, ~~that~~ the losing party's attorney is not personally
8 responsible if he or she has acted in good faith, based on the
9 representations of his or her client as to the existence of
10 material facts. If the court awards fees to a claimant
11 pursuant to this subsection ~~finds that there was a complete~~
12 ~~absence of a justiciable issue of either law or fact raised by~~
13 ~~the defense~~, the court shall also award prejudgment interest.

14 (2) Subsection (1) shall not apply if the court
15 determines that the claim or defense was presented as a
16 good-faith attempt with a reasonable probability of damaging
17 the then-existing law as it applied to the facts the losing
18 party or losing party's attorney knew at the time the claim or
19 defense was presented.

20 (3) If any plaintiff or defendant has been sanctioned
21 under subsection (1) in more than 25 percent of the actions
22 that are filed, or in which a defense has been filed, by that
23 party, then in any further litigation in which that plaintiff
24 or defendant is a party, whether or not related to the actions
25 in which the sanctions were imposed, the opposing party is
26 entitled to have the claims or defenses of such plaintiff or
27 defendant stricken unless such plaintiff or defendant first
28 makes a prima facie showing that the claims or defenses are
29 brought in good faith, applying then-existing law or applying
30 a good-faith attempt to change the then-existing law, and
31 supported by the material facts necessary to establish the

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1 claim or defense. Furthermore, the court may impose such
2 additional sanctions or requirements as are just and warranted
3 under the circumstances of the particular case.

4 (4) In any civil proceeding in which the moving party
5 proves, by a preponderance of the evidence, that any action
6 taken by the opposing party, including, but not limited to,
7 the filing of any pleading or part thereof, the assertion of
8 or response to any discovery demand, the assertion of any
9 claim or defense, or the response to any request by any other
10 party, was taken primarily for the purpose of unreasonable
11 delay, the court shall award damages to the moving party for
12 the time necessitated by the conduct in question.

13 (5)(2) If a contract contains a provision allowing
14 attorney's fees to a party when he or she is required to take
15 any action to enforce the contract, the court may also allow
16 reasonable attorney's fees to the other party when that party
17 prevails in any action, whether as plaintiff or defendant,
18 with respect to the contract. The subsection applies to any
19 contract entered into on or after October 1, 1988. This act
20 shall take effect October 1, 1988, and shall apply to
21 contracts entered into on said date or thereafter.

22 Section 5. Effective October 1, 1999, subsection (3)
23 of section 57.105, Florida Statutes, as amended by this act,
24 is amended to read:

25 57.105 Attorney's fee; sanctions for raising unfounded
26 claims or defenses; damages for delay of litigation.--

27 (3) If any plaintiff or defendant has been sanctioned
28 under subsection (1) in more than 10 25 percent of the actions
29 that are filed, or in which a defense has been filed, by that
30 party, then in any further litigation in which that plaintiff
31 or defendant is a party, whether or not related to the actions

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1 in which the sanctions were imposed, the opposing party is
 2 entitled to have the claims or defenses of such plaintiff or
 3 defendant stricken unless such plaintiff or defendant first
 4 makes a prima facie showing that the claims or defenses are
 5 brought in good faith, applying then-existing law or applying
 6 a good-faith attempt to change the then-existing law, and
 7 supported by the material facts necessary to establish the
 8 claim or defense. Furthermore, the court may impose such
 9 additional sanctions or requirements as are just and warranted
 10 under the circumstances of the particular case.

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(Redesignate subsequent sections.)