## 33-775A-99

A bill to be entitled 1 2 An act relating to civil actions; amending s. 57.105, F.S.; revising conditions for award of 3 4 attorney's fees for presenting unsupported 5 claims or defenses; authorizing damage awards 6 against a party for unreasonable delay of 7 litigation; authorizing the court to impose additional sanctions; amending s. 768.79, F.S.; 8 9 providing that before awarding costs and fees the court must determine whether the offer was 10 11 reasonable under the circumstances known at the 12 time the offer was made; providing an effective date. 13 14 15 Be It Enacted by the Legislature of the State of Florida: 16 17 Section 1. Section 57.105, Florida Statutes, is amended to read: 18 19 57.105 Attorney's fee; sanctions for raising unfounded 20 claims or defenses; damages for delay of litigation .--21 (1) Upon the court's initiative or motion of any 22 party, the court shall award a reasonable attorney's fee to be 23 paid to the prevailing party in equal amounts by the losing party and the losing party's attorney on any claim or defense 24 25 at any time during a in any civil proceeding or action in 26 which the court finds that the losing party or the losing 27 party's attorney knew or should have known that a claim or 28 defense when initially presented to the court or at any time 29 before the trial: 30 (a) Was not supported by the material facts necessary

to establish the claim or defense; or

- (b) Would not be supported by the application of then-existing law to those material facts. there was a complete absence of a justiciable issue of either law or fact raised by the complaint or defense of the losing party; provided, However, that the losing party's attorney is not personally responsible if he or she has acted in good faith, based on the representations of his or her client as to the existence of those material facts. If the court awards attorney's fees to a claimant under this subsection finds that there was a complete absence of a justiciable issue of either law or fact raised by the defense, the court shall also award prejudgment interest.
- (2) Subsection (1) does not apply if the court finds that the claim or defense was initially presented to the court as a good-faith attempt, having a reasonable probability of success, to change then-existing law as it applied to the material facts.
- (3) At any time in a civil proceeding or action in which the moving party proves by a preponderance of the evidence that any action taken by the opposing party, including, but not limited to, the filing of any pleading or part thereof, the assertion of or response to any discovery demand, the assertion of any claim or defense, or the response to any request by any other party, was taken primarily for the purpose of unreasonable delay, the court shall award damages to the moving party for the time necessitated by the conduct in question.
- (4) The court also may impose additional sanctions or other remedies that are just and warranted under the circumstances of the particular case, including, but not

limited to, contempt of court, award of taxable costs,
striking of a claim or defense, or dismissal of the pleading.

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

Section 2. Subsection (7) of section 768.79, Florida Statutes, is amended to read:

768.79 Offer of judgment and demand for judgment.--

- (7)(a) If a party is entitled to costs and fees pursuant to the provisions of this section, the court may, in its discretion, determine that an offer was not made in good faith. In such case, the court may disallow an award of costs and attorney's fees.
- (b) When determining the <u>entitlement to and</u> reasonableness of an award of attorney's fees pursuant to this section, the court shall consider, along with all other relevant criteria, the following additional factors:
- 1. The then apparent merit or lack of merit in the claim.
- 2. The number and nature of offers made by the parties.
- 3. The closeness of questions of fact and law at issue.
  - 4. Whether the proposal was reasonably rejected.

1	5.4. Whether the person making the offer had
2	unreasonably refused to furnish information necessary to
3	evaluate the reasonableness of such offer.
4	6.5. Whether the suit was in the nature of a test case
5	presenting questions of far-reaching importance affecting
6	nonparties.
7	7.6. The amount of the additional delay cost and
8	expense that the person making the offer reasonably would be
9	expected to incur if the litigation should be prolonged.
10	Section 3. This act shall take effect October 1, 1999.
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13	SENATE SUMMARY
14	Revises conditions for the award of attorney's fees when unsupported claims or defenses are presented. Authorizes
15	damages for unreasonable delay of litigation. Requires the court to determine whether a proposal was reasonably
16	rejected when awarding costs and fees.
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