

By Senator Campbell

33-285-02

1 A bill to be entitled
 2 An act relating to attorney's fees; amending s.
 3 57.105, F.S.; providing for serving of motions
 4 seeking sanctions allowed for unsupported
 5 claims or defenses or delay of litigation;
 6 providing an effective date.

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8 Be It Enacted by the Legislature of the State of Florida:

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10 Section 1. Section 57.105, Florida Statutes, is
11 amended to read:

12 57.105 Attorney's fee; sanctions for raising
13 unsupported claims or defenses; service of motions; damages
14 for delay of litigation.--

15 (1) Upon the court's initiative or motion of any
16 party, the court shall award a reasonable attorney's fee to be
17 paid to the prevailing party in equal amounts by the losing
18 party and the losing party's attorney on any claim or defense
19 at any time during a civil proceeding or action in which the
20 court finds that the losing party or the losing party's
21 attorney knew or should have known that a claim or defense
22 when initially presented to the court or at any time before
23 trial:

24 (a) Was not supported by the material facts necessary
25 to establish the claim or defense; or

26 (b) Would not be supported by the application of
27 then-existing law to those material facts.

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29 However, the losing party's attorney is not personally
30 responsible if he or she has acted in good faith, based on the
31 representations of his or her client as to the existence of

1 those material facts. If the court awards attorney's fees to a
2 claimant pursuant to this subsection, the court shall also
3 award prejudgment interest.

4 (2) Paragraph (1)(b) does not apply if the court
5 determines that the claim or defense was initially presented
6 to the court as a good faith argument for the extension,
7 modification, or reversal of existing law or the establishment
8 of new law, as it applied to the material facts, with a
9 reasonable expectation of success.

10 (3) At any time in any civil proceeding or action in
11 which the moving party proves by a preponderance of the
12 evidence that any action taken by the opposing party,
13 including, but not limited to, the filing of any pleading or
14 part thereof, the assertion of or response to any discovery
15 demand, the assertion of any claim or defense, or the response
16 to any request by any other party, was taken primarily for the
17 purpose of unreasonable delay, the court shall award damages
18 to the moving party for its reasonable expenses incurred in
19 obtaining the order, which may include attorney's fees, and
20 other loss resulting from the improper delay.

21 (4) A motion by a party seeking sanctions under this
22 section must be served but may not be filed with or presented
23 to the court unless, within 21 days after service of the
24 motion, the challenged paper, claim, defense, contention,
25 allegation, or denial is not withdrawn or appropriately
26 corrected.

27 (5)~~(4)~~ The provisions of this section are supplemental
28 to other sanctions or remedies available under law or under
29 court rules.

30 (6)~~(5)~~ If a contract contains a provision allowing
31 attorney's fees to a party when he or she is required to take

1 any action to enforce the contract, the court may also allow
2 reasonable attorney's fees to the other party when that party
3 prevails in any action, whether as plaintiff or defendant,
4 with respect to the contract. This subsection applies to any
5 contract entered into on or after October 1, 1988.

6 Section 2. This act shall take effect July 1, 2002.

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9 SENATE SUMMARY

10 Provides conditions for serving a motion seeking
11 sanctions specified under s. 57.105, F.S., for filing
12 unsupported claims or defenses or for delay of
13 litigation.

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