

By Senator Campbell

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A bill to be entitled

An act relating to unsupported claims or defenses at trial; amending s. 57.105, F.S.; providing certain exceptions to the requirement that a motion seeking sanctions against another party for raising an unsupported claim or defense be served but not immediately filed with the court; providing an effective date.

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

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

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

(1) Upon the court's initiative or motion of any party, 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 on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial:

(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.

1 However, the losing party's attorney is not personally
2 responsible if he or she has acted in good faith, based on the
3 representations of his or her client as to the existence of
4 those material facts. If the court awards attorney's fees to a
5 claimant pursuant to this subsection, the court shall also
6 award prejudgment interest.

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

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

24 (4) A motion by a party seeking sanctions under this
25 section must be served but may not be filed with or presented
26 to the court unless, within 21 days after service of the
27 motion, the challenged paper, claim, defense, contention,
28 allegation, or denial is not withdrawn or appropriately
29 corrected. This subsection does not apply if the trial, final
30 hearing, or trial calendar period is scheduled to begin within
31 30 days and does not apply at any time if the moving party

1 clearly demonstrates that the waiting period would defeat the
2 purpose of the notice requirement.

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

6 (6) If a contract contains a provision allowing
7 attorney's fees to a party when he or she is required to take
8 any action to enforce the contract, the court may also allow
9 reasonable attorney's fees to the other party when that party
10 prevails in any action, whether as plaintiff or defendant,
11 with respect to the contract. This subsection applies to any
12 contract entered into on or after October 1, 1988.

13 Section 2. This act shall take effect July 1, 2003.

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16 SENATE SUMMARY

17 Provides that the waiting period for filing a motion with
18 the court seeking sanctions does not apply if the trial,
19 final hearing, or trial calendar period is scheduled to
begin within 30 days or if the moving party demonstrates
that the waiting period defeats the purpose of the
20 motion.

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