



1           WHEREAS, the Legislature enacted chapter 99-225, Laws  
2 of Florida, which amended both section 57.105, Florida  
3 Statutes, and section 768.79, Florida Statutes, and

4           WHEREAS, the Legislature provided the standard for the  
5 award of attorney's fees under section 57.105, Florida  
6 Statutes, which provides that attorney's fees shall be awarded  
7 to the prevailing party in a civil proceeding or action in  
8 which the court finds that the losing party or the losing  
9 party's attorney knew or should have known that a claim or  
10 defense when initially presented to the court or at any time  
11 before trial was not supported by the material facts necessary  
12 to establish the claim or defense, or would not be supported  
13 by the application of then-existing law to those material  
14 facts, and

15           WHEREAS, the standard for the award of attorney's fees  
16 under section 57.105, Florida Statutes, is not whether the  
17 claim or defense was "frivolous," and

18           WHEREAS, the application of a standard other than the  
19 standard adopted by the Legislature for the award of a  
20 substantive right encroaches upon the Legislature's right to  
21 confer substantive rights, and

22           WHEREAS, it is the intent of the Legislature to  
23 preserve and protect the separation of powers clause in  
24 section 3, Article II of the State Constitution, NOW,  
25 THEREFORE,

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

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29           Section 1. Section 57.105, Florida Statutes, is  
30 reenacted and amended to read:

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1           57.105 Attorney's fee; sanctions for raising  
2 unsupported claims or defenses; service of motions; damages  
3 for delay of litigation.--

4           (1) Upon the court's initiative or motion of any  
5 party, the court shall award a reasonable attorney's fee to be  
6 paid to the prevailing party in equal amounts by the losing  
7 party and the losing party's attorney on any claim or defense  
8 at any time during a civil proceeding or action in which the  
9 court finds that the losing party or the losing party's  
10 attorney knew or should have known that a claim or defense  
11 when initially presented to the court or at any time before  
12 trial:

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

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

17  
18 However, the losing party's attorney is not personally  
19 responsible if he or she has acted in good faith, based on the  
20 representations of his or her client as to the existence of  
21 those material facts. If the court awards attorney's fees to a  
22 claimant pursuant to this subsection, the court shall also  
23 award prejudgment interest.

24           (2) Paragraph (1)(b) does not apply if the court  
25 determines that the claim or defense was initially presented  
26 to the court as a good faith argument for the extension,  
27 modification, or reversal of existing law or the establishment  
28 of new law, as it applied to the material facts, with a  
29 reasonable expectation of success.

30           (3) At any time in any civil proceeding or action in  
31 which the moving party proves by a preponderance of the

1 | evidence that any action taken by the opposing party,  
2 | including, but not limited to, the filing of any pleading or  
3 | part thereof, the assertion of or response to any discovery  
4 | demand, the assertion of any claim or defense, or the response  
5 | to any request by any other party, was taken primarily for the  
6 | purpose of unreasonable delay, the court shall award damages  
7 | to the moving party for its reasonable expenses incurred in  
8 | obtaining the order, which may include attorney's fees, and  
9 | other loss resulting from the improper delay.

10 |       (4) A party is entitled to an award of sanctions under  
11 | this section only if a motion is by a party seeking sanctions  
12 | under this section must be served by a party seeking sanctions  
13 | under this section. Such motion shall but may not be filed  
14 | with or presented to the court unless, within 21 days after  
15 | service of the motion, the challenged paper, claim, defense,  
16 | contention, allegation, or denial is not withdrawn or  
17 | appropriately corrected. Any motion filed with the court which  
18 | does not comply with this subsection is null and void. This  
19 | subsection is substantive and shall not be waived except in  
20 | writing. This subsection does not apply to sanctions ordered  
21 | upon the court's initiative.

22 |       (5) In administrative proceedings under chapter 120,  
23 | an administrative law judge shall award a reasonable  
24 | attorney's fee and damages to be paid to the prevailing party  
25 | in equal amounts by the losing party and a losing party's  
26 | attorney or qualified representative in the same manner and  
27 | upon the same basis as provided in subsections (1)-(4). Such  
28 | award shall be a final order subject to judicial review  
29 | pursuant to s. 120.68. If the losing party is an agency as  
30 | defined in s. 120.52(1), the award to the prevailing party  
31 | shall be against and paid by the agency. A voluntary dismissal

1 | by a nonprevailing party does not divest the administrative  
2 | law judge of jurisdiction to make the award described in this  
3 | subsection.

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

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

14 |         (8) The provisions of this section create substantive  
15 | rights to the award of attorney's fees, and any procedural  
16 | provisions are directly related to the definition of those  
17 | rights. Any procedural aspects of this provision are intended  
18 | to implement the substantive provisions of the law.

19 |         Section 2. Section 768.79, Florida Statutes, is  
20 | reenacted and amended to read:

21 |         768.79 Offer of judgment and demand for judgment.--

22 |         (1) In any civil action for damages filed in the  
23 | courts of this state, if a defendant files an offer of  
24 | judgment which is not accepted by the plaintiff within 30  
25 | days, the defendant shall be entitled to recover reasonable  
26 | costs and attorney's fees incurred by her or him or on the  
27 | defendant's behalf pursuant to a policy of liability insurance  
28 | or other contract from the date of filing of the offer if the  
29 | judgment is one of no liability or the judgment obtained by  
30 | the plaintiff is at least 25 percent less than such offer, and  
31 | the court shall set off such costs and attorney's fees against

1 | the award. Where such costs and attorney's fees total more  
2 | than the judgment, the court shall enter judgment for the  
3 | defendant against the plaintiff for the amount of the costs  
4 | and fees, less the amount of the plaintiff's award. If a  
5 | plaintiff files a demand for judgment which is not accepted by  
6 | the defendant within 30 days and the plaintiff recovers a  
7 | judgment in an amount at least 25 percent greater than the  
8 | offer, she or he shall be entitled to recover reasonable costs  
9 | and attorney's fees incurred from the date of the filing of  
10 | the demand. If rejected, neither an offer nor demand is  
11 | admissible in subsequent litigation, except for pursuing the  
12 | penalties of this section.

13 |         (2) The making of an offer of settlement which is not  
14 | accepted does not preclude the making of a subsequent offer.  
15 | An offer must:

16 |             (a) Be in writing and state that it is being made  
17 | pursuant to this section.

18 |             (b) Name the party making it and the party to whom it  
19 | is being made.

20 |             (c) State with particularity the amount offered to  
21 | settle a claim for punitive damages, if any.

22 |             (d) State its total amount.

23 |  
24 | The offer shall be construed as including all damages which  
25 | may be awarded in a final judgment.

26 |         ~~(3) A proposal may be made by or to any party or~~  
27 | ~~parties and by or to any combination of parties properly~~  
28 | ~~identified in the proposal. A joint proposal shall state the~~  
29 | ~~amount and terms attributable to each party.~~

30 |         ~~(4) Notwithstanding subsection (3), when a party is~~  
31 | ~~alleged to be solely vicariously, constructively,~~

1 derivatively, or technically liable, whether by operation of  
2 law or by contract, a joint proposal made by or served on such  
3 a party need not state the apportionment or contribution as to  
4 that party. Acceptance by any party shall be without prejudice  
5 to rights of contribution or indemnity.

6 ~~(5)(3)~~ The offer shall be served upon the party to  
7 whom it is made, but it shall not be filed unless it is  
8 accepted or unless filing is necessary to enforce the  
9 provisions of this section.

10 ~~(6)(4)~~ An offer shall be accepted by filing a written  
11 acceptance with the court within 30 days after service. Upon  
12 filing of both the offer and acceptance, the court has full  
13 jurisdiction to enforce the settlement agreement.

14 ~~(7)(5)~~ An offer may be withdrawn in writing which is  
15 served before the date a written acceptance is filed. Once  
16 withdrawn, an offer is void.

17 ~~(8)(6)~~ Upon motion made by the offeror within 30 days  
18 after the entry of judgment or after voluntary or involuntary  
19 dismissal, the court shall determine the following:

20 (a) If a defendant serves an offer which is not  
21 accepted by the plaintiff, and if the judgment obtained by the  
22 plaintiff is at least 25 percent less than the amount of the  
23 offer, the defendant shall be awarded reasonable costs,  
24 including investigative expenses, and attorney's fees,  
25 calculated in accordance with the guidelines promulgated by  
26 the Supreme Court, incurred from the date the offer was  
27 served, and the court shall set off such costs in attorney's  
28 fees against the award. When such costs and attorney's fees  
29 total more than the amount of the judgment, the court shall  
30 enter judgment for the defendant against the plaintiff for the  
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1 amount of the costs and fees, less the amount of the award to  
2 the plaintiff.

3 (b) If a plaintiff serves an offer which is not  
4 accepted by the defendant, and if the judgment obtained by the  
5 plaintiff is at least 25 percent more than the amount of the  
6 offer, the plaintiff shall be awarded reasonable costs,  
7 including investigative expenses, and attorney's fees,  
8 calculated in accordance with the guidelines promulgated by  
9 the Supreme Court, incurred from the date the offer was  
10 served.

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12 For purposes of the determination required by paragraph (a),  
13 the term "judgment obtained" means the amount of the net  
14 judgment entered, plus any postoffer collateral source  
15 payments received or due as of the date of the judgment, plus  
16 any postoffer settlement amounts by which the verdict was  
17 reduced. For purposes of the determination required by  
18 paragraph (b), the term "judgment obtained" means the amount  
19 of the net judgment entered, plus any postoffer settlement  
20 amounts by which the verdict was reduced.

21 ~~(9)(7)~~(a) If a party is entitled to costs and fees  
22 pursuant to the provisions of this section, the court may, in  
23 its discretion, determine that an offer was not made in good  
24 faith. In such case, the court may disallow an award of costs  
25 and attorney's fees.

26 (b) When determining the reasonableness of an award of  
27 attorney's fees pursuant to this section, the court shall  
28 consider, along with all other relevant criteria, the  
29 following additional factors:

30 1. The then apparent merit or lack of merit in the  
31 claim.



1           2. The number and nature of offers made by the  
2 parties.

3           3. The closeness of questions of fact and law at  
4 issue.

5           4. Whether the person making the offer had  
6 unreasonably refused to furnish information necessary to  
7 evaluate the reasonableness of such offer.

8           5. Whether the suit was in the nature of a test case  
9 presenting questions of far-reaching importance affecting  
10 nonparties.

11          6. The amount of the additional delay cost and expense  
12 that the person making the offer reasonably would be expected  
13 to incur if the litigation should be prolonged.

14          ~~(10)(8)~~ Evidence of an offer is admissible only in  
15 proceedings to enforce an accepted offer or to determine the  
16 imposition of sanctions under this section.

17          (11) The provisions of this section create substantive  
18 rights to the award of attorney's fees, and any procedural  
19 provisions are directly related to the definition of those  
20 rights. Any procedural aspects of this provision are intended  
21 to implement the substantive provisions of the law.

22          Section 3. It is the intent of this act and the  
23 Legislature to accord the utmost comity and respect to the  
24 constitutional prerogatives of Florida's judiciary, and  
25 nothing in this act should be construed as an effort to  
26 impinge on those prerogatives. To that end, should any court  
27 of competent jurisdiction enter a final judgment concluding or  
28 declaring that a provision of this act improperly encroaches  
29 upon the authority of the Florida Supreme Court to determine  
30 the rules of practice and procedure in Florida courts, the  
31 Legislature hereby declares its intent that such provision be

1 construed as a request for a rule change pursuant to section  
2 2, Article V of the State Constitution and not as a mandatory  
3 legislative directive.

4 Section 4. The amendment to subsection (4) of s.  
5 57.105, Florida Statutes, is remedial in nature and is  
6 intended to apply retroactively.

7 Section 5. This act shall take effect July 1, 2007,  
8 and the amendments to s. 768.79, Florida Statutes, made by  
9 this act shall apply only to offers made on or after that  
10 date.

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1                   STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2                                   COMMITTEE SUBSTITUTE FOR  
3   Senate Bill 1726

4 This Committee Substitute (CS) differs from the bill as filed  
5 in the following manner:

- 6 - Reenacts and amends s. 57.105, F.S., to:
- 7     1. Require a party who seeks fees to file a motion in  
8       order to be entitled to those fees;
  - 9     2. Provide that a motion not complying with the  
10      provisions of the statute is null and void;
  - 11    3. Provide that the amended subsection is substantive  
12      and may only be waived in writing; and
  - 13    4. Provide that the subsection does not apply to  
14      sanctions ordered on the court's initiative.
  - 15    5. Provide that any procedural provisions are directly  
16      related to the definition of those rights, and  
17      applies these rights retroactively.
- 18 - Amends s. 768.79, F.S., to permit a vicariously,  
19    constructively, derivatively, or technically liable party  
20    to make a joint offer that is not apportioned, and that  
21    accepting such an offer will not affect the rights of  
22    contribution or indemnity. In addition, the CS states  
23    that s. 768.79, F.S., creates substantive rights, and any  
24    procedural provisions are directly related to the  
25    definition of those rights.
- 26 - Provides that if a court determines that this act  
27    improperly encroaches on the authority of the Florida  
28    Supreme Court to determine the rules of practice and  
29    procedure, the Legislature declares its intent that the  
30    provision be considered a request for a rule change.
- 31 - Makes the CS effective July 1, 2007, and states that  
amendments made to s. 768.79, F.S., are applicable to  
offers made on or after that date.