

By Senator Constantine

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1 A bill to be entitled
2 An act relating to sanctions for certain court
3 pleadings; amending s. 57.105, F.S.; prohibiting a
4 monetary sanction against a represented party for a
5 claim that is presented as a good faith argument but
6 that is found to not be supported by the application
7 of then-existing law to material facts; prohibiting
8 sanctions against a party or its attorneys by a court
9 on its own initiative if the case has already been
10 settled or voluntarily dismissed by that party;
11 providing an effective date.

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

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

17 57.105 Attorney's fee; sanctions for raising unsupported
18 claims or defenses; exceptions; service of motions; damages for
19 delay of litigation.—

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

29 (a) Was not supported by the material facts necessary to

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30 establish the claim or defense; or

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

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34 ~~However, the losing party's attorney is not personally~~
35 ~~responsible if he or she has acted in good faith, based on the~~
36 ~~representations of his or her client as to the existence of~~
37 ~~those material facts. If the court awards attorney's fees to a~~
38 ~~claimant pursuant to this subsection, the court shall also award~~
39 ~~prejudgment interest.~~

40 ~~(2) Paragraph (1)(b) does not apply if the court determines~~
41 ~~that the claim or defense was initially presented to the court~~
42 ~~as a good faith argument for the extension, modification, or~~
43 ~~reversal of existing law or the establishment of new law, as it~~
44 ~~applied to the material facts, with a reasonable expectation of~~
45 ~~success.~~

46 (2)~~(3)~~ At any time in any civil proceeding or action in
47 which the moving party proves by a preponderance of the evidence
48 that any action taken by the opposing party, including, but not
49 limited to, the filing of any pleading or part thereof, the
50 assertion of or response to any discovery demand, the assertion
51 of any claim or defense, or the response to any request by any
52 other party, was taken primarily for the purpose of unreasonable
53 delay, the court shall award damages to the moving party for its
54 reasonable expenses incurred in obtaining the order, which may
55 include attorney's fees, and other loss resulting from the
56 improper delay.

57 (3) Notwithstanding subsections (1) and (2), monetary
58 sanctions may not be awarded:

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59 (a) Under paragraph (1)(b) if the court determines that the
60 claim or defense was initially presented to the court as a good
61 faith argument for the extension, modification, or reversal of
62 existing law or the establishment of new law, as it applied to
63 the material facts, with a reasonable expectation of success.

64 (b) Under paragraph (1)(a) or paragraph (1)(b) against the
65 losing party's attorney if he or she has acted in good faith,
66 based on the representations of his or her client as to the
67 existence of those material facts.

68 (c) Under paragraph (1)(b) against a represented party.

69 (d) On the court's initiative under subsections (1) and (2)
70 unless sanctions are awarded before a voluntary dismissal or
71 settlement of the claims made by or against the party that is,
72 or whose attorneys are, to be sanctioned.

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

78 (5) In administrative proceedings under chapter 120, an
79 administrative law judge shall award a reasonable attorney's fee
80 and damages to be paid to the prevailing party in equal amounts
81 by the losing party and a losing party's attorney or qualified
82 representative in the same manner and upon the same basis as
83 provided in subsections (1)-(4). Such award shall be a final
84 order subject to judicial review pursuant to s. 120.68. If the
85 losing party is an agency as defined in s. 120.52(1), the award
86 to the prevailing party shall be against and paid by the agency.
87 A voluntary dismissal by a nonprevailing party does not divest

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88 the administrative law judge of jurisdiction to make the award
89 described in this subsection.

90 (6) The provisions of this section are supplemental to
91 other sanctions or remedies available under law or under court
92 rules.

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

100 Section 2. This act shall take effect July 1, 2009.