

HB 449

2010

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

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

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

16 57.105 Attorney's fee; sanctions for raising unsupported
17 claims or defenses; exceptions; service of motions; damages for
18 delay of litigation.—

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

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

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

32
 33 ~~However, the losing party's attorney is not personally~~
 34 ~~responsible if he or she has acted in good faith, based on the~~
 35 ~~representations of his or her client as to the existence of~~
 36 ~~those material facts. If the court awards attorney's fees to a~~
 37 ~~claimant pursuant to this subsection, the court shall also award~~
 38 ~~prejudgment interest.~~

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

45 (2)~~(3)~~ At any time in any civil proceeding or action in
 46 which the moving party proves by a preponderance of the evidence
 47 that any action taken by the opposing party, including, but not
 48 limited to, the filing of any pleading or part thereof, the
 49 assertion of or response to any discovery demand, the assertion
 50 of any claim or defense, or the response to any request by any
 51 other party, was taken primarily for the purpose of unreasonable
 52 delay, the court shall award damages to the moving party for its
 53 reasonable expenses incurred in obtaining the order, which may
 54 include attorney's fees, and other loss resulting from the
 55 improper delay.

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

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

63 (b) Under paragraph (1)(a) or paragraph (1)(b) against the
64 losing party's attorney if he or she has acted in good faith,
65 based on the representations of his or her client as to the
66 existence of those material facts. In cases where a voluntary
67 dismissal is entered after the court has placed a party on
68 notice that it may impose sanctions, the court has discretion to
69 order sanctions notwithstanding the filing of the voluntary
70 dismissal.

71 (c) Under paragraph (1)(b) against a represented party,
72 unless the court determines that the party knew of the lack of
73 legal basis.

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

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

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

95 (6) The provisions of this section are supplemental to
96 other sanctions or remedies available under law or under court
97 rules.

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

105 Section 2. This act shall take effect July 1, 2010.