

ENROLLED  
CS/HB 449

2010 Legislature

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

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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

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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.

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

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

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76 denial is not withdrawn or appropriately corrected.

77 (5) In administrative proceedings under chapter 120, an  
78 administrative law judge shall award a reasonable attorney's fee  
79 and damages to be paid to the prevailing party in equal amounts  
80 by the losing party and a losing party's attorney or qualified  
81 representative in the same manner and upon the same basis as  
82 provided in subsections (1)-(4). Such award shall be a final  
83 order subject to judicial review pursuant to s. 120.68. If the  
84 losing party is an agency as defined in s. 120.52(1), the award

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85 | to the prevailing party shall be against and paid by the agency.  
86 | A voluntary dismissal by a nonprevailing party does not divest  
87 | the administrative law judge of jurisdiction to make the award  
88 | described in this subsection.

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

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

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