

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Criminal and Civil Justice

BILL: CS/SB 768

INTRODUCER: Judiciary Committee and Senator Perry

SUBJECT: Attorney Fees

DATE: April 15, 2019

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|----------------|------------|--------------------|
| 1. | <u>Stallard</u> | <u>Cibula</u> | <u>JU</u> | Fav/CS |
| 2. | <u>Dale</u> | <u>Jameson</u> | <u>ACJ</u> | Pre-meeting |
| 3. | _____ | _____ | <u>AP</u> | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 768 prohibits a court from awarding a person attorney fees in an action for an injunction for protection against stalking or sexual, repeat, or dating violence, unless the court finds by clear and convincing evidence that the petitioner knowingly made a false statement or allegation in the petition.

However, to form the basis of an award of attorney fees, the false statement or allegation must have been in regard to a “material matter,” which is “any subject, regardless of its admissibility under the rules of evidence, which could affect the course or outcome of the proceeding.”

II. Present Situation:

Context – A Recent Decision by the Florida Supreme Court

In 2018, the Florida Supreme Court held that a court may require a party who raises a claim unsupported by fact or law to pay the attorney fees of the prevailing party in an action for a protective injunction against repeat or dating violence.¹

¹ See *Hall v. Lopez*, 233 So. 3d 451 (Fla. 2018).

The Court determined that an action of this type is in fact a “civil proceeding or action,” and is therefore within the scope of s. 57.105(1), F.S., which authorizes an award of attorney fees against a party who makes an unsupported claim in a civil action or proceeding.²

However, the dissenting justices argued that these injunction actions are not civil in nature, that the Legislature did not intend s. 57.105, F.S., to apply to these actions, and that the majority’s opinion will have a “chilling effect” on persons who are considering filing an action for a protective injunction.³ In support of its argument regarding legislative intent, the dissent pointed out the “incompatibility” of timeframes in the attorney fee statute and the injunction statute: a person seeking attorney fees must give 21 days’ notice that he or she is seeking attorney fees, but an action for an injunction will often conclude in less than 21 days.⁴ Therefore, the person who filed the action might have less than 21 days to withdraw his or her unsupported claim.

Although the majority opinion did not address the possibility of an award of attorney fees in an action for a protective injunction against *stalking*, it nonetheless appears by inference to authorize a court to award attorney fees in these cases.

Motion for Attorney Fees in a Civil Action under Section 57.105, Florida Statutes

Under the American Rule on the awarding of attorney fees, a “court may award attorney fees only when authorized by statute or by agreement of the parties.”⁵ Section 57.105(1), F.S., is one instance of this authorization. It provides for an award of attorney fees to the prevailing party in a civil action or proceeding if another party makes a claim or defense that is unsupported by the facts or the law:

- (1) Upon the court’s initiative or motion of any party, the court shall award a reasonable attorney’s fee, including prejudgment interest, 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.⁶

A person seeking attorney fees under s. 57.105, F.S. must first serve its motion on the party that it believes has made an unsupported claim.⁷ The person must then wait 21 days before filing the

² See *id.* at 453-54.

³ See *id.* at 454-55.

⁴ See *id.* at 456.

⁵ *Florida Patient’s Compensation Fund v. Rowe*, 472 So. 2d 1145, 1148 (Fla. 1985) (citing *Hampton’s Estate v. Fairchild-Florida Construction Co.*, 341 So. 2d 759 (Fla. 1976); *Webb v. Scott*, 176 So. 442 (1936); *State v. Barrs*, 99 So. 668 (1924); *Zinn v. Dzialynski*, 14 Fla. 187 (1872)).

⁶ Emphasis added.

⁷ Section 57.105(4), F.S.

motion for sanctions with the court, during which time the other party may withdraw the allegedly unsupported claim, thus avoiding a possible sanction.⁸ But as the Supreme Court recently acknowledged, an action for an injunction against repeat or dating violence may conclude sooner than 21 days after it or the motion for fees is filed, thus giving the person who filed the action less than 21 days to withdraw an unsupported claim.

Action for Protective Injunction by Victim of Repeat, Sexual, or Dating Violence, or Stalking

A person who is a victim of repeat violence, dating violence, sexual violence, or stalking, may file a petition for an injunction for protection from any of these.⁹ The purpose of the injunction is to stop the perpetrator from committing further acts of violence or stalking upon the victim.¹⁰ Accordingly, if a judge grants a petition for an injunction, he or she may grant “such relief as the court deems proper,” including directing the perpetrator to not commit violence against the victim, to have no contact with the victim, and to not go within a certain distance (e.g., 500 feet) of the victim’s home or office.¹¹

A victim seeks an injunction by filing a petition with the circuit court.¹² The court then holds a hearing, which may be ex parte, and may enter a temporary injunction at the hearing.¹³ If the court does so, a full hearing, with notice to the alleged perpetrator, must occur within 15 days.¹⁴ Following this hearing, the court may enter a permanent injunction.¹⁵ The injunction must be provided to the local sheriff, who must serve it on the perpetrator.¹⁶

III. Effect of Proposed Changes:

The bill prohibits a court from awarding a person attorney fees in an action for an injunction for protection against stalking or sexual, repeat, or dating violence, unless the court finds by clear and convincing evidence that the petitioner knowingly made a false statement or allegation in the petition.

However, to form the basis of an award of attorney fees, the false statement or allegation must have been about a “material matter,” which is “any subject, regardless of its admissibility under the rules of evidence, which could affect the course or outcome of the proceeding.”¹⁷

The bill is effective July 1, 2019.

⁸ *Id.*

⁹ *See* ss. 784.046 and 784.0485, F.S.

¹⁰ *See Id.*

¹¹ *See* ss. 784.046(6)-(7), and 784.0485(5)-(6), F.S.

¹² Sections 784.046(2) and 784.0485(1), F.S.

¹³ *See* ss. 784.046(5) and 784.0485(5), F.S.

¹⁴ *See* ss. 784.046(6)(c) and 784.0485(5)(c), F.S.

¹⁵ Sections 784.046(7) and 784.0485(6), F.S.

¹⁶ Sections 784.046(8)(c) and 784.0485(8)(b), F.S.

¹⁷ Section 837.011(3), F.S.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

This bill does not require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 784.046 and 784.0485.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on April 2, 2019:

The committee substitute provides an exception to the ban on attorney fees in the underlying bill. The bill permits an award of attorney fees if a petitioner knowingly makes a false statement or allegation in regard to a “material matter.”

- B. **Amendments:**

None.