

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 528

SPONSOR: Senator Campbell

SUBJECT: Attorney's Fees

DATE: December 18, 2001 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Forgas</u>	<u>Johnson</u>	<u>JU</u>	<u>Favorable</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Bill 528 amends s. 57.105, F.S., to provide that, prior to filing or presenting a motion to the court for attorney's fees based upon frivolous actions, the party seeking fees must give the opposing party 21 days to correct or withdraw the action upon which the motion for fees is based.

The bill takes effect on July 1, 2002.

This bill substantially amends section 57.105 of the Florida Statutes.

II. Present Situation:

Section 57.105, F.S., provides for the imposition of sanctions for deleterious conduct during the course of litigation. Subsection (1) of s. 57.105, F.S., states that the court shall award reasonable attorney's fees to the prevailing party 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 was not supported by material facts or would not be supported by the application of then-existing law to those material facts. The standard for sanctions applies to claims and defenses when they are initially presented to the court and continues to be applicable until the start of trial. The court can award the fees on its own initiative or upon the motion of any party. The fees are to be paid in equal amounts by the losing party and the losing party's attorney.

Subsection (2) of s. 57.105, F.S., provides an exception to the imposition of sanctions when the court determines that the claim or defense was initially presented to the court as a good faith argument for the extension, modification, or reversal of existing law, or the establishment of new law, as it applied to the material facts.

Subsection (3) of s. 57.105, F.S., extends the situations when the court may impose monetary sanctions for the conduct of parties during the course of litigation. Specifically, the court shall award damages when the court determines that a party's actions were taken primarily for the purpose of unreasonable delay. The standard applies at any time during the course of litigation and is applicable to "any action...including, but not limited to, the filing of any pleading or part thereof, the assertion of any claim or defense, or the response to any request by any other party..." Subsection (3) of s. 57.105, F.S., authorizes the court to award damages to the moving party for its reasonable expenses incurred in obtaining the order, which may include attorney's fees and other losses resulting from the improper delay.

Pursuant to subsection (4) of s. 57.105, F.S., the provisions of s. 57.105, F.S., are supplemental to other sanctions or remedies available under law or court rules.

III. Effect of Proposed Changes:

The bill amends s. 57.105, F.S., to add a new subsection (4) which basically provides a curing mechanism for the party accused of violating the provisions of subsections (1) and (3) of s. 57.105, F.S. The bill provides that a party seeking sanctions may not file or present such a motion to the court unless the opposing party has had 21 days to withdraw or correct the challenged paper, claim, defense, contention, allegation, or denial. The bill contemplates the party seeking sanctions will have to:

- provide a copy of the motion seeking sanctions to the accused party 21 days before the motion is actually filed with the court; or
- file the motion with the court and then wait at least 21 days before "presenting" the motion to the court.

The bill's language is similar to that found in Rule 11 of the Federal Rules of Civil Procedure. Rule 11 contains requirements for parties when making representations to the court and provides sanctions for offensive conduct, including conduct that is similar to that proscribed in s. 57.105, F.S. Subdivision (c)(1)(A) of Rule 11, F.R.CV.P., states that the motion for sanctions shall "...not be filed with or presented to the court unless, within 21 days after service of the motion...the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected." The reasoning for Rule 11(c)(1)(A), as set forth in the Advisory Committee Notes, is as follows:

These provisions are intended to provide a type of "safe harbor" against motions under Rule 11 in that a party will not be subject to sanctions on the basis of another party's motion unless, after receiving the motion, it refuses to withdraw that position or to acknowledge candidly that it does not currently have evidence to support a specified allegation. Under the former rule, parties were sometimes reluctant to abandon a questionable contention lest that be viewed as evidence of a violation of Rule 11; under the revision, the timely withdrawal of a contention will protect a party against a motion for sanctions.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Conceivably, the bill could result in fewer instances of sanctions being levied against parties for inappropriate discovery tactics and frivolous presentation of claims and defenses. The bill's 21 day window for curing the allegedly defective conduct should provide enough time and enough specific information to correct the situation.

C. Government Sector Impact:

According to the Office of the State Courts Administrator, the bill will likely result in a reduction of claims based on s. 57.105, F.S., actually reaching the court for resolution. That reduction may result in a corresponding decrease in judge time and judicial resources required to resolve such claims, as well as a decrease in the time and resources required to resolve civil actions in which such claims might be asserted. However, the fiscal impact of this decrease is indeterminable.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.