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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/26/2010	.	
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The Committee on Judiciary (Fasano) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

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

(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



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14 attorney on any claim or defense at any time during a civil
15 proceeding or action in which the court finds that the losing
16 party or the losing party's attorney knew or should have known
17 that a claim or defense when initially presented to the court or
18 at any time before trial:

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

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

23

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

30 ~~(2) Paragraph (1)(b) does not apply if the court determines~~
31 ~~that the claim or defense was initially presented to the court~~
32 ~~as a good faith argument for the extension, modification, or~~
33 ~~reversal of existing law or the establishment of new law, as it~~
34 ~~applied to the material facts, with a reasonable expectation of~~
35 ~~success.~~

36 (2)~~(3)~~ At any time in any civil proceeding or action in
37 which the moving party proves by a preponderance of the evidence
38 that any action taken by the opposing party, including, but not
39 limited to, the filing of any pleading or part thereof, the
40 assertion of or response to any discovery demand, the assertion
41 of any claim or defense, or the response to any request by any
42 other party, was taken primarily for the purpose of unreasonable



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43 delay, the court shall award damages to the moving party for its
44 reasonable expenses incurred in obtaining the order, which may
45 include attorney's fees, and other loss resulting from the
46 improper delay.

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

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

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

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

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

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

68 (5) In administrative proceedings under chapter 120, an
69 administrative law judge shall award a reasonable attorney's fee
70 and damages to be paid to the prevailing party in equal amounts
71 by the losing party and a losing party's attorney or qualified



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72 representative in the same manner and upon the same basis as
73 provided in subsections (1)-(4). Such award shall be a final
74 order subject to judicial review pursuant to s. 120.68. If the
75 losing party is an agency as defined in s. 120.52(1), the award
76 to the prevailing party shall be against and paid by the agency.
77 A voluntary dismissal by a nonprevailing party does not divest
78 the administrative law judge of jurisdiction to make the award
79 described in this subsection.

80 (6) The provisions of this section are supplemental to
81 other sanctions or remedies available under law or under court
82 rules.

83 (7) If a contract contains a provision allowing attorney's
84 fees to a party when he or she is required to take any action to
85 enforce the contract, the court may also allow reasonable
86 attorney's fees to the other party when that party prevails in
87 any action, whether as plaintiff or defendant, with respect to
88 the contract. This subsection applies to any contract entered
89 into on or after October 1, 1988.

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

91
92 ===== T I T L E A M E N D M E N T =====

93 And the title is amended as follows:

94 Delete everything before the enacting clause
95 and insert:

96 A bill to be entitled
97 An act relating to sanctions for certain court
98 pleadings; amending s. 57.105, F.S.; prohibiting a
99 monetary sanction against a represented party for a
100 claim that is presented as a good faith argument but



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101 that is found to not be supported by the application
102 of then-existing law to material facts; prohibiting
103 sanctions against a party or its attorneys by a court
104 on its own initiative if the case has already been
105 settled or voluntarily dismissed by that party;
106 providing an effective date.