

Senate Bill No. 528

An act relating to attorney's fees; amending s. 57.105, F.S.; providing for serving of motions seeking sanctions allowed for unsupported claims or defenses or delay of litigation; providing an effective date.

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

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

57.105 Attorney's fee; sanctions for raising unsupported claims or defenses; 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 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.

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

(2) Paragraph (1)(b) does not apply if 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, with a reasonable expectation of success.

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

(4) A motion by a party seeking sanctions under this section must be served but may 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.

(5)(4) The provisions of this section are supplemental to other sanctions or remedies available under law or under court rules.

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

Section 2. This act shall take effect July 1, 2002.

Approved by the Governor April 23, 2002.

Filed in Office Secretary of State April 23, 2002.