

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: SB 212

SPONSOR: Senator Diaz-Balart

SUBJECT: Witnesses in Judicial Proceedings

DATE: January 12, 1999

REVISED: 01/21/99 _____

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

I. Summary:

This bill expands current law as it pertains to liability of employers who retaliate against employees who testify in a judicial proceeding. Employers who dismiss, or threaten to dismiss, employees who testify based on the nature of their testimony, or the absence from employment resulting from testifying, may be held in contempt of court. Additionally, in any civil action arising out of a violation of this section, the employer may be liable for compensatory damages, attorney's fees and punitive damages.

This bill substantially amends section 92.57 of the Florida Statutes.

II. Present Situation:

Currently, the law only imposes liability upon employers who dismiss testifying employees from employment based on the nature of the employee's testimony or the absences from employment resulting from testifying. The employee must have testified in a judicial proceeding pursuant to a subpoena. If an employer violates the current law, it may be liable to the dismissed employee for attorney's fees, actual damages and punitive damages.

The law as it exists does not provide any relief to a dismissed employee who voluntarily testifies. It also does not protect employees who are only threatened with dismissal from employment. While the law allows a dismissed employee to recover attorney's fees and damages in a subsequent civil action arising out of a violation of this section, it provides no sanctions against the employer in the proceeding which the employee is testifying as the court may not have jurisdiction over the employer.

Florida courts have recognized a public policy of securing truthful testimony in all judicial proceedings. *Wiggins v. Southern Management Corp.*, 629 So. 2d 1022 (Fla. 4th DCA 1993). Florida courts interpreting section 92.57, F.S., have ruled the plain language of the statute does not afford protection to employees who voluntarily testify. Accordingly, judges and jurors are not

assisted in their truth seeking endeavors when these employees have to fear retaliatory termination, or threats of termination, as a result of their testimony.

III. Effect of Proposed Changes:

This bill amends section 92.57, F.S., to broaden the protection afforded to a testifying employee. First, employees who voluntarily testify in judicial proceedings are covered by the bill. Second, employees who are threatened with dismissal from employment are protected by the bill. These changes promote the public policy of securing truthful testimony in all judicial proceedings.

This bill also expands the sanctions that can be imposed upon an offending employer. Currently, an employer may only be held liable for attorney's fees, actual damages and punitive damages in a subsequent civil action. This bill would also allow the court, in the proceeding which the employee is testifying, to hold the employer in contempt. Currently, the court may not hold the employer in contempt unless the court has jurisdiction over the employer (i.e. the employer is a party to the proceeding in which the employee is testifying). *See Ponke v. AA Boca, Inc., 429 So.2d 415 (Fla. 4th DCA 1983)*. The contempt provision further promotes the public policy of securing truthful testimony as it empowers the court to subject the employer to immediate 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:

This bill will have an impact upon private sector employers as it broadens the situations when an employer may be liable for monetary damages. The bill's contempt sanction also will subject the employer to immediate sanctions. Additionally, employers could experience

an increase in the number of employee absences as employees are more likely to voluntarily testify. Accordingly, the economic impact could be substantial but the precise impact is undeterminable.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
