

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 449 Sanctions for Certain Court Pleadings
SPONSOR(S): Criminal & Civil Justice Policy Council; Steinberg
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1108

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Civil Justice & Courts Policy Committee	11 Y, 0 N	De La Paz	De La Paz
2)	Policy Council	15 Y, 0 N	Varn	Ciccone
3)	Criminal & Civil Justice Policy Council	15 Y, 0 N, As CS	De La Paz	Havlicak
4)				
5)				

SUMMARY ANALYSIS

Section 57.105, F.S., provides courts with authority to impose sanctions against a party or a party's lawyer for bringing a civil claim, or raising a defense in a civil cause of action, that has no genuine legal or factual basis. Currently, a court may impose sanctions if it finds that a losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented or at any time before trial was either: a) not supported by facts necessary to establish the claim or defense or, b) not supported by law. The sanctions are equally split between the party and the party's lawyer.

CS/HB 449 amends section 57.105, F.S., to provide an exception to the imposition of sanctions against a represented party and to limit the authority of the court to impose sanctions on its own motion. Under the bill, represented parties are not subject to monetary sanctions for claims or defenses that would not be supported by the application of then-existing law to the material facts. CS/HB 449 also reduces the court's ability to impose sanctions by providing that a court may only award monetary sanctions on its own initiative if the sanction is ordered before a voluntary dismissal or settlement of the claims by the party to be sanctioned. Under the bill therefore, a party with a frivolous claim filing a voluntary dismissal immediately prior to a court's imposition of sanctions, avoids the sanction.

This bill appears to have no fiscal impact.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Law

Section 57.105, F.S., provides courts with authority to impose sanctions against a party or a party's lawyer for bringing a civil claim or raising a defense in a civil cause of action that has no good faith legal or genuine factual basis. The purpose of the statute is to "discourage baseless claims, stonewall defenses and sham appeals in civil litigation by placing the price tag of attorney's fees awards on the losing parties."¹ Under subsection (1) of this section, a court shall, on its own initiative or on motion of a party, award reasonable attorney's fees to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney when the court finds at any time during a civil proceeding or cause of action that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented 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.

In addition to attorney's fees, prejudgment interest shall also be awarded.

A losing party's attorney, however, is not responsible for the payment of court imposed sanctions if he or she acted in good faith, based on the representations of the client as to the existence of the facts supporting the claim. Also, sanctions will not apply if the legal argument was presented to the court as a good faith argument for an extension, modification, or reversal of existing law, or the establishment of new law as applied to the facts of the case before the court, provided such argument had a reasonable expectation of success.

Subsection (2) of s. 57.105, F.S., provides authority for the court to impose sanctions if a moving party proves by a preponderance of the evidence that any action taken by the opposing party was primarily to cause unreasonable delay.

Under the current statute, a party who "should have known," (an objective standard) may be sanctioned by the court, along with their lawyer, if the lawyer makes an argument that lacks a good faith legal basis. Thus, there may be instances where a party represented by an attorney does not actually know

¹ Murphy v. WISU Props., Ltd., 895 So. 2d 1088, 1093 (Fla. 4th DCA 2004).

(a subjective standard) that their lawyer is making a legally baseless argument and the party is sanctioned by the court, splitting equally the expense of the court's sanction.

Recently, the First District Court of Appeals noted the disparity between the treatment s. 57.105 F.S., provides to a lawyer acting in good faith on the factual representations of a client, compared to the outcome it compels when a client relies in good faith on a lawyer who presents a legally baseless argument:

Section 57.105 allows an award of fees to be paid solely by the litigant if counsel can show that he "acted in good faith, based on the representations of [the] client as to the existence" of material facts. Unfortunately, section 57.105 does not allow for an award of fees to be paid solely by an attorney when the client acts "in good faith, based on the representations of" the attorney as to the legal sufficiency of claim or defenses. If the law allowed, we would order the fees to be paid solely by counsel.²

Effect of CS/HB 449

CS/HB 449 amends section 57.105, F.S., to provide an exception to the imposition of sanctions against a represented party and to limit the authority of the court to impose sanctions on its own motion.

Exception for Represented Parties

Under the bill, represented parties are not subject to monetary sanctions for claims or defenses that would not be supported by the application of then-existing law to the material facts. This exception, however, would apply even if the represented party actually knew that the claim or defense was legally baseless.

Limitation on Authority to Impose Sanctions

Under existing law, a court may award sanctions on its own initiative at any time during a pending civil proceeding or action. CS/HB 449 reduces the court's ability to impose sanctions by providing that a court may only award monetary sanctions on its own initiative if the sanction is ordered before a voluntary dismissal or settlement of the claims by the party to be sanctioned. Under the bill therefore, a party with a frivolous claim filing a voluntary dismissal immediately prior to a court's imposition of sanctions, avoids the sanction.

In contrast, under the analogous Federal Rule of Civil Procedure 11, a federal court may impose sanctions if it has issued an "order to show cause" prior to a voluntary dismissal or settlement by the party or party's attorney who is to be sanctioned. An "order to show cause" in this context compels the party directed to appear before the court to show cause why the conduct described in the order does not violate Rule 11.³ Thus, in the federal system, once the court issues the order to show cause, it has full authority to order sanctions notwithstanding a subsequent voluntary dismissal filed before the actual sanctions are ordered.

B. SECTION DIRECTORY:

Section 1. Amends s. 57.105 F.S., relating to sanctions for raising unsupported claims or defenses.

Section 2. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

² Gopman v. Department of Education, 974 So.2d 1208, 1212 at n 3 (Fla. 1st DCA 2008).

³ Fed. R. Civ. P. 11(c)(5)(B).

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On April 6, 2010, the Criminal & Civil Justice Policy Council approved an amendment conforming the house bill to SB 1108. The amendment removed provisions from the bill as originally filed which would have:

- Allowed a court to impose sanctions on its motion notwithstanding the filing of a voluntary dismissal prior to the order imposing sanctions if the court placed the party on notice its intent to consider sanctions.

- Allowed the court to order sanctions against a represented party for a legally baseless argument raised by his or her counsel when the party actually knew the argument was baseless.