

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 449  
SPONSOR(S): Steinberg

Sanctions for Certain Court Pleadings

TIED BILLS: IDEN./SIM. BILLS:

	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	Ciccione
3)	Criminal & Civil Justice Policy Council			
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.

Currently, there may be instances where a party represented by an attorney does not in fact know that their lawyer is making a legally baseless argument but the party can still be sanctioned by the court. Under HB 449, sanctions for a lawyer’s legally baseless argument would not be authorized against a represented party unless the court finds that the party actually knew that their lawyer’s argument had no legal basis.

Also under the bill, a court could impose sanctions on its own initiative where the sanctions were ordered against a party before the entry of a voluntary dismissal of the case or settlement of the claim. Under the bill, however, once a party is placed on notice by the court that it may impose sanctions, a party’s subsequent entry of a voluntary dismissal will not preclude a court from imposing sanctions as a matter of discretion.

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. 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.

##### **Effect of HB 449**

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 (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.<sup>1</sup>

Under HB 449, sanctions for a lawyer’s legally baseless argument would not be authorized against a represented party unless the court finds that the party actually knew that their lawyer’s argument had no legal basis. Therefore under the bill, absent such a finding, a lawyer will be solely responsible for paying the cost of court imposed sanctions for raising such arguments.

Also under the bill, a court could impose sanctions on its own initiative where the sanctions were ordered against a party before the entry of a voluntary dismissal of the case or settlement of the claim. Under the bill, however, once a party is placed on notice by the court that it may impose sanctions, a party’s subsequent entry of a voluntary dismissal will not preclude a court from imposing sanctions as a matter of discretion.

**B. SECTION DIRECTORY:**

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

Section 2. Providing an effective date.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**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.

---

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

### **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**