

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 623 Timely Administration of Justice

**SPONSOR(S):** Leek

**TIED BILLS:** **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee		Jones	Poche
2) Justice Appropriations Subcommittee			
3) Judiciary Committee			

### SUMMARY ANALYSIS

Certain legal proceedings in Florida are entitled to expedited rules, known as "summary procedure." When summary procedure applies, these judicial processes are condensed and simplified to expedite the case:

- Filing pleadings;
- Conducting discovery;
- Setting the case for trial; and
- Filing an appeal.

Summary procedure is available in several types of proceedings, including:

- Certain actions to recover possession of real property;
- Landlord actions to remove tenants;
- Certain actions to enforce property liens;
- Certain condominium actions;
- Actions to remove mobile home owners or mobile homes; and
- Certain regulatory actions.

Florida law provides that a court may impose sanctions on a party or attorney who raises frivolous claims or defenses or unreasonably delays a judicial proceeding. The court may require the culpable party or attorney to pay for the other party's attorney fees. A party can appeal a court's award or denial of sanctions, and the appellate court must affirm the award or denial, unless the lower court abused its discretion.

HB 623 expands the application of summary procedure to:

- Actions at law based on a contract, obligation, or written instrument where the amount in controversy does not exceed \$100,000, but not including real property actions.
- Actions brought in county court.

If a party shows by clear and convincing evidence that summary procedure is inappropriate, the court may decline to apply summary procedure.

The bill also amends s. 57.105, F.S., to require an appellate court to uphold a lower court's imposition of sanctions unless the lower court clearly abused its discretion. This requires the appellate court to give greater deference to a lower court's imposition of sanctions but does not affect the deference required when a lower court denies sanctions.

The bill may have a positive indeterminate fiscal impact on state government and does not appear to have a fiscal impact on local governments.

The bill provides an effective date of July 1, 2019.

**This document does not reflect the intent or official position of the bill sponsor or House of Representatives.**

**STORAGE NAME:** h0623.CJS

**DATE:** 3/11/2019

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

###### County and Circuit Courts

In Florida, two types of trial courts hear civil lawsuits: county courts and circuit courts.<sup>1</sup> The Florida Constitution provides that county courts exercise jurisdiction as provided by general law, and circuit courts exercise jurisdiction in matters not within the jurisdiction of county courts.<sup>2</sup> Section 34.01, F.S., implements the constitutional provision, establishing that county courts have jurisdiction of cases including actions at law where the amount in controversy does not exceed \$15,000, exclusive of interest, costs, and attorney fees, except those cases within the exclusive jurisdiction of circuit courts.<sup>3</sup> A general action at law with an amount in controversy exceeding \$15,000 must be filed in circuit court.

###### Summary Procedure

Certain legal proceedings in Florida are entitled to expedited rules, known as "summary procedure."<sup>4</sup> Summary procedure applies to actions specified by statute or rule. When summary procedure governs, the following procedures apply:

- **Pleadings.** Pleadings are limited to Plaintiff's initial pleading, Defendant's answer and counterclaim, if necessary, and Plaintiff's response to Defendant's counterclaim, if necessary.
  - Plaintiff's initial pleading must contain everything required by the applicable statute or rule, or otherwise state a cause of action.
  - Defendant's answer must be filed within 5 days after Defendant is served with Plaintiff's initial pleading, and the answer must contain all defenses of law or fact.
  - If the answer contains a counterclaim, Plaintiff must respond within 5 days after Defendant serves the counterclaim.
  - The court must hear all defensive motions before trial.
- **Discovery.** The parties can take depositions at any time. No other discovery or admissions may be conducted except by court order. Discovery does not postpone the time for trial unless a party shows good cause.
- **Jury.** Either party may demand jury trial, if authorized by law, within 5 days after the action comes to issue. The action can be tried immediately if the jury is in attendance at the close of pleading.
- **New Trial.** Either party can move for new trial within 5 days of the verdict.
- **Appeal.** Either party can appeal within 30 days of rendition of the judgment.

Expediting timeframes under summary procedure allows a case to proceed quickly and efficiently. In an action governed by summary procedure, the Florida Rules of Civil Procedure apply, except where the statute or rule provides otherwise.

Several proceedings under Florida law require or permit summary procedure, including:

- Actions to recover possession of real property under ch. 82, F.S.;<sup>5</sup>
- Landlord actions to remove tenants under s. 83.59, F.S.;<sup>6</sup>
- Certain actions to enforce liens on real and personal property under ch. 85, F.S.;<sup>7</sup>

---

<sup>1</sup> Ss. 26.012(5), 34.01(5), F.S.

<sup>2</sup> Art. V, ss. 5, 6, Fla. Const.; s. 26.012(2)(a), F.S.

<sup>3</sup> S. 34.01(1)(c), F.S.

<sup>4</sup> S. 51.011, F.S.

<sup>5</sup> S. 82.03, F.S.

<sup>6</sup> S. 83.59, F.S.

- Certain condominium actions under chapter 718, F.S.;<sup>8</sup>
- Actions to remove mobile home owners or mobile homes under s. 723.061, F.S.;<sup>9</sup> and
- Certain regulatory actions.<sup>10</sup>

The Florida Supreme Court has held that the summary procedure statute, even though it sets judicial procedures, is a valid exercise of legislative authority.<sup>11</sup>

### Attorney Fees for Unsupported Claims or Defenses

Florida law requires a party or attorney who brings an unsupported claim or defense to pay attorney fees and sanctions to the other party.<sup>12</sup> A party may move for sanctions and, under certain circumstances, a court can impose sanctions on its own. Sanctions are appropriate where a party or attorney:

- Brought a claim or defense unsupported by the material facts necessary to establish the claim or defense;
- Brought a claim or defense unsupported by the application of then-existing law to the material facts; or
- Took an action primarily for the purpose of unreasonable delay.

Sanctions cannot be imposed:

- Where a party reasonably presented a claim or defense as a good faith argument for the extension, modification, or reversal of existing law;
- Against the culpable party's attorney, if the attorney acted in good faith based on his or her client's representations as to material fact; or
- Against a represented party whose attorney raised an unsupported legal claim or defense.

A party can appeal the imposition of sanctions under s. 57.105, F.S. The appellate court must review the lower court's award or denial of sanctions under the "abuse of discretion" standard, which means that the appellate court cannot reverse the lower court's decision unless it was "arbitrary, fanciful, or unreasonable."<sup>13</sup> Any questions of law that form the basis of the award or denial of sanctions are reviewed "de novo," which means the appellate court does not owe any deference to the lower court's legal interpretations.<sup>14</sup>

### **Effect of Proposed Changes**

HB 623 expands summary procedure to the following civil actions and requires the court to advance the cause on the calendar:

- Actions at law based on a contract, obligation, or written instrument where the amount in controversy does not exceed \$100,000, but not including actions relating to real property. The court may bifurcate the proceeding and determine liability using summary procedure.
- Actions brought in county court.

<sup>7</sup> S. 85.011, F.S.

<sup>8</sup> S. 718.116(8)(e), F.S.

<sup>9</sup> S. 723.061(3), F.S.

<sup>10</sup> See, e.g., s. 483.825(1)(f), F.S. (Department of Health entitled to summary procedure in certain disciplinary actions); s. 490.009(1)(p), F.S. (Department of Health entitled to summary procedure in certain licensure denials).

<sup>11</sup> See, e.g., *Crocker v. Diland Corp.*, 593 So. 2d 1096 (Fla. 5th DCA 1992); *Pro-Art Dental Lab, Inc. v. V-Strategic Group, LLC*, 986 So. 2d 1244 (Fla. 2008) (approving *Crocker*, 593 So. 2d 1096, and addressing the interplay between the Florida Rules of Civil Procedure and s. 51.011, F.S.).

<sup>12</sup> S. 57.105, F.S.

<sup>13</sup> *MC Liberty Express, Inc. v. All Points Servs., Inc.*, 252 So. 3d 397 (3d DCA 2018) (quoting *Canakarlis v. Canakarlis*, 382 So. 2d 1197, 1203 (Fla. 1980)); *Ferere v. Shure*, 65 So. 3d 1141 (Fla. 4th DCA 2011).

<sup>14</sup> *Id.*

Some especially complicated cases in these categories may be inappropriate for summary procedure. If a party shows by clear and convincing evidence that summary procedure is inappropriate, the court may decline to apply summary procedure.

The bill also amends s. 57.105, F.S., to require an appellate court to uphold a lower court's imposition of sanctions unless the lower court clearly abused its discretion. This requires the appellate court to give greater deference than currently required to a lower court's imposition of sanctions, but it does not affect the deference owed when a lower court denies sanctions.

The bill provides an effective date of July 1, 2019.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 26.012, F.S., relating to jurisdiction of circuit court.

**Section 2:** Amends s. 34.01, F.S., relating to jurisdiction of county court.

**Section 3:** Amends s. 57.105, F.S., relating to attorney fees; sanctions for raising unsupported claims or defenses; exceptions; service of motions; damages for delay of litigation.

**Section 4:** Provides an effective date of July 1, 2019.

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

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

The bill may have a positive indeterminate impact on the courts by allowing for summary procedure in specified civil proceedings.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

The bill may have a positive indeterminate impact on the private sector by making resolution of civil cases more efficient under summary procedure.

**D. FISCAL COMMENTS:**

None.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable. The bill does not appear to affect county or municipal governments.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

Not applicable.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**