

By the Committee on Judiciary; and Senator Grall

590-02735-26

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A bill to be entitled
An act relating to attorney fees, suit money, and costs; amending ss. 61.16 and 742.045, F.S.; authorizing a court to order attorney fees, suit money, and costs in appellate proceedings; providing that an award of attorney fees, suit money, and costs may be awarded retroactively and prospectively; authorizing the inclusion of certain fees, money, and costs in an award of attorney fees, suit money, and costs; providing that payment of support owed to the obligee has priority over fees, costs, and expenses; authorizing the court to consider if a good faith offer of settlement was rejected when awarding attorney fees, suit money, and costs; authorizing the court to award, deny, or reduce attorney fees, suit money, and costs under certain circumstances; requiring the court to make certain written findings; providing an effective date.

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

Section 1. Section 61.16, Florida Statutes, is amended to read:

61.16 Attorney ~~Attorney's~~ fees, suit money, and costs.—

(1) The court may from time to time, after considering the financial resources of both parties, order a party to pay a reasonable amount for attorney ~~attorney's~~ fees, suit money, and the cost to the other party of maintaining or defending any proceeding seeking relief under this chapter, including

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enforcement, ~~and~~ modification, and appellate proceedings ~~and~~
appeals.

(2) An award of attorney fees, suit money, and costs, whether temporary or final, may be awarded retroactively and prospectively as equity requires. Attorney fees, suit money, and costs incurred in pursuing an award of such fees, money, and costs may be included in any award under this section.

(3) In those cases in which an action is brought for enforcement and the court finds that the noncompliant party is without justification in the refusal to follow a court order, the court may not award attorney ~~attorney's~~ fees, suit money, and costs to the noncompliant party.

(4) An application for attorney ~~attorney's~~ fees, suit money, or costs, whether temporary or final ~~otherwise~~, may ~~shall~~ not require corroborating expert testimony in order to support an award under this chapter.

(5) The trial court has ~~shall have~~ continuing jurisdiction to make temporary attorney ~~attorney's~~ fees and costs awards reasonably necessary to prosecute or defend an appeal on the same basis and criteria as though the matter were pending before it at the trial level.

(6) In determining entitlement to, and the amount of, an award of attorney fees, suit money, and costs, the court may consider whether a good faith offer of settlement was rejected.

(7) (a) If a party directly engages in vexatious or bad faith litigation, the court may:

1. Award attorney fees, suit money, and costs as a sanction against the opposing party; or

2. Deny or reduce an award of attorney fees, suit money,

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59 and costs to the offending party.

60 (b) An order entered under this subsection addressing
61 vexatious or bad faith litigation must include written findings
62 identifying the specific conduct the party engaged in and the
63 reasons the court granted, denied, or reduced such fees, money,
64 and costs ~~In all cases, the court may order that the amount be~~
65 ~~paid directly to the attorney, who may enforce the order in that~~
66 ~~attorney's name.~~

67 (8) In determining whether to make attorney ~~attorney's~~ fees
68 and costs awards at the appellate level, the court shall
69 primarily consider the relative financial resources of the
70 parties, unless an appellate party's cause is deemed to be
71 frivolous.

72 (9) In all cases, the court may order that the award of
73 attorney fees, suit money, and costs be paid directly to the
74 attorney, who may enforce such order in his or her name.
75 However, payment of support owed to the obligee has priority
76 over fees, costs, and expenses.

77 (10) In Title IV-D cases, attorney ~~attorney's~~ fees, suit
78 money, and costs, including filing fees, recording fees,
79 mediation costs, service of process fees, and other expenses
80 incurred by the clerk of the circuit court, shall be assessed
81 only against the nonprevailing obligor after the court makes a
82 determination of the nonprevailing obligor's ability to pay such
83 costs and fees. The Department of Revenue shall not be
84 considered a party for purposes of this section; however, fees
85 may be assessed against the department pursuant to s. 57.105(1).

86 (11) ~~(2)~~ In an action brought pursuant to Rule 3.840,
87 Florida Rules of Criminal Procedure, whether denominated direct

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88 or indirect criminal contempt, the court may ~~shall have~~
89 ~~authority to:~~

90 (a) Appoint an attorney to prosecute said contempt.

91 (b) Assess attorney ~~attorney's~~ fees and costs against the
92 ~~contemnor~~ ~~contemptor~~ after the court makes a determination of
93 the contemnor's ~~contemptor's~~ ability to pay such costs and fees.

94 (c) Order that the amount be paid directly to the attorney,
95 who may enforce the order in his or her name.

96 Section 2. Section 742.045, Florida Statutes, is amended to
97 read:

98 742.045 Attorney ~~Attorney's~~ fees, suit money, and costs.—

99 (1) The court may from time to time, after considering the
100 financial resources of both parties, order a party to pay a
101 reasonable amount for attorney ~~attorney's~~ fees, suit money, and
102 the cost to the other party of maintaining or defending any
103 proceeding seeking relief under this chapter, including
104 enforcement, ~~and~~ modification, and appellate proceedings.

105 (2) An award of attorney fees, suit money, and costs,
106 whether temporary or final, may be awarded retroactively and
107 prospectively as equity requires. Attorney fees, suit money, and
108 costs incurred in pursuing an award of such fees, money, and
109 costs may be included in any award under this section.

110 (3) An application for attorney ~~attorney's~~ fees, suit
111 money, or costs, whether temporary or final ~~otherwise~~, may ~~shall~~
112 not require corroborating expert testimony in order to support
113 an award under this chapter.

114 (4) In determining entitlement to, and the amount of, an
115 award of attorney fees, suit money, and costs, the court may
116 consider whether a good faith offer of settlement was rejected.

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117 (5) (a) If a party directly engages in vexatious or bad
118 faith litigation, the court may:

119 1. Award attorney fees, suit money, and costs as a sanction
120 against the opposing party; or

121 2. Deny or reduce an award of attorney fees, suit money,
122 and costs to the offending party.

123 (b) An order entered under this subsection addressing
124 vexatious or bad faith litigation must include written findings
125 identifying the specific conduct the party engaged in and the
126 reasons the court granted, denied, or reduced such fees, money,
127 and costs.

128 (6) The court may order that the amount of the attorney
129 fees, suit money, and costs be paid directly to the attorney,
130 who may enforce the order in his or her name. However, payment
131 of support owed to the obligee has priority over fees, costs,
132 and expenses.

133 (7) In Title IV-D cases, any costs, including filing fees,
134 recording fees, mediation costs, service of process fees, and
135 other expenses incurred by the clerk of the circuit court, shall
136 be assessed only against the nonprevailing obligor after the
137 court makes a determination of the nonprevailing obligor's
138 ability to pay such costs and fees. The Department of Revenue
139 may ~~shall~~ not be considered a party for purposes of this
140 section; however, fees may be assessed against the department
141 pursuant to s. 57.105(1).

142 Section 3. This act shall take effect upon becoming a law.