

the judicial circuit in which such center is located, except that paragraph (4)(b) and subsections (5) and (6) shall apply to such centers.

(8) Any utility regulated by the Florida Public Service Commission is excluded from the provisions of this act.

History.—s. 2, ch. 85-228; s. 16, ch. 90-360; s. 263, ch. 95-147; s. 19, ch. 96-406.

CHAPTER 57

COURT COSTS

- 57.081 Costs; right to proceed where prepayment of costs waived.
- 57.085 Waiver of prepayment of court costs and fees for indigent prisoners.
- 57.111 Civil actions and administrative proceedings initiated by state agencies; attorneys' fees and costs.

57.081 Costs; right to proceed where prepayment of costs waived.—

(1) Any indigent person, except a prisoner as defined in s. 57.085, who is a party or intervenor in any judicial or administrative agency proceeding or who initiates such proceeding shall receive the services of the courts, sheriffs, and clerks, with respect to such proceedings, without charge. Such services are limited to filing fees, service of process, certified copies of orders or final judgments, a single photocopy of any court pleading, record, or instrument filed with the clerk, examining fees, mediation services and fees, court-appointed counsel fees, subpoena fees and services, service charges for collecting and disbursing funds, and any other cost or service arising out of pending litigation. In any appeal from an administrative agency decision, for which the clerk is responsible for preparing the transcript, the clerk shall waive the cost of preparing the transcripts and the cost for copies of any exhibits in the record. No prepayment of costs to any judge, clerk, or sheriff is required in any action when the party has obtained from the clerk in each proceeding a certification of indigency, based on an affidavit of the applicant claiming that the applicant is indigent and unable to pay the charges otherwise payable by law to any of such officers and providing the details of the applicant's financial condition. However, when the person is represented by an attorney, the person need not file an affidavit in order to be exempt from payment of charges under this subsection. A represented person is exempt from charges under this subsection if the attorney of such person files a written certificate, signed by the attorney, certifying that the attorney has made an investigation to ascertain the financial condition of the client and has found the client to be indigent; that the attorney has investigated the nature of the applicant's position and in the attorney's opinion it is meritorious as a matter of law; and that the attorney has not been paid or promised payment of any remuneration for services and intends to act as attorney for the applicant without compensation. On the failure or refusal of the clerk to issue a certificate of indigency, the applicant is entitled to a review of the application for the certificate by the court having jurisdiction of the cause of action.

(2) Any sheriff who, in complying with the terms of this section, expends personal funds for automotive fuel or ordinary carfare in serving the process of those qualifying under this section may requisition the board of county commissioners of the county for the actual expense, and on the submission to the board of county commissioners of appropriate proof of any such expenditure, the board of county commissioners shall pay the amount of the actual expense from the general fund of the county to the requisitioning officer.

(3) If an applicant prevails in an action, costs shall be taxed in his or her favor as provided by law and, when collected, shall be applied to pay costs which otherwise would have been required and which have not been paid.

History.—ss. 1, 2, 3, ch. 17883, 1937; CGL 1940 Supp. 4680(2); s. 15, ch. 29615, 1955; s. 1, ch. 57-251; s. 13, ch. 67-254; s. 14, ch. 73-334; s. 1, ch. 80-348; s. 18, ch. 94-348; s. 1362, ch. 95-147; s. 1, ch. 96-106.

Note.—Former s. 58.09.

57.085 Waiver of prepayment of court costs and fees for indigent prisoners.—

(1) For the purposes of this section, the term "prisoner" means a person who has been convicted of a crime and is incarcerated for that crime or who is being held in custody pending extradition or sentencing.

(2) When a prisoner who is intervening in or initiating a judicial proceeding seeks waiver of prepayment of court costs and fees because of indigency, the prisoner must file an affidavit of indigency with the appropriate clerk of the court. The affidavit must contain complete information about the prisoner's identity; the nature and amount of the prisoner's income; all real property owned by the prisoner; all tangible and intangible property worth more than \$100 which is owned by the prisoner; the amount of cash held by the prisoner; the balance of any checking, savings, or money market account held by the prisoner; the prisoner's dependents, including their names and ages; the prisoner's debts, including the name of each debtor and the amount owed to each debtor; and the prisoner's monthly expenses. The prisoner must certify in the affidavit whether the prisoner has been adjudicated indigent under this section, certified indigent under s. 57.081, or authorized to proceed as an indigent under 28 U.S.C. s. 1915 by a federal court. The prisoner must attach to the affidavit a photocopy of the prisoner's trust account records for the preceding 6 months or for the length of the prisoner's incarceration, whichever period is shorter. The affidavit must contain the following statements: "I am unable to pay court costs and fees. Under penalty of perjury, I swear or affirm that all statements in this affidavit are true and complete."

(3) Before a prisoner may receive a waiver of prepayment of any court costs and fees for an action brought under this section, the court must review the affidavit of indigency and adjudicate the prisoner indigent.

(4) When a court adjudicates a prisoner indigent but concludes, from the affidavit of indigency or other information, that the prisoner is able to pay part of the court costs and fees required by law, the court shall order the prisoner to make, prior to service of process, an initial partial payment of those court costs and fees. The initial partial payment must total at least 20 percent of the average monthly balance of the prisoner's trust account

for the preceding 6 months or for the length of the prisoner's incarceration, whichever period is shorter.

(5) When a court adjudicates a prisoner indigent under this section, the court shall order the prisoner to make monthly payments of no less than 20 percent of the balance of the prisoner's trust account as payment of court costs and fees. When a court orders such payment, the Department of Corrections or the local detention facility shall place a lien on the inmate's trust account for the full amount of the court costs and fees, and shall withdraw money maintained in that trust account and forward the money, when the balance exceeds \$10, to the appropriate clerk of the court until the prisoner's court costs and fees are paid in full.

(6) Before an indigent prisoner may intervene in or initiate any judicial proceeding, the court must review the prisoner's claim to determine whether it is legally sufficient to state a cause of action for which the court has jurisdiction and may grant relief. The court shall dismiss all or part of an indigent prisoner's claim which:

(a) Fails to state a claim for which relief may be granted;

(b) Seeks monetary relief from a defendant who is immune from such relief;

(c) Seeks relief for mental or emotional injury where there has been no related allegation of a physical injury; or

(d) Is frivolous, malicious, or reasonably appears to be intended to harass one or more named defendants.

(7) A prisoner who has twice in the preceding 3 years been adjudicated indigent under this section, certified indigent under s. 57.081, or authorized to proceed as an indigent under 28 U.S.C. s. 1915 by a federal court may not be adjudicated indigent to pursue a new suit, action, claim, proceeding, or appeal without first obtaining leave of court. In a request for leave of court, the prisoner must provide a complete listing of each suit, action, claim, proceeding, or appeal brought by the prisoner or intervened in by the prisoner in any court or other adjudicatory forum in the preceding 5 years. The prisoner must attach to a request for leave of court a copy of each complaint, petition, or other document purporting to commence a lawsuit and a record of disposition of the proceeding.

(8) In any judicial proceeding in which a prisoner has been adjudicated indigent and has been granted a full or partial waiver of court costs and fees, the court may at any time dismiss the prisoner's action, in whole or in part, upon a finding that:

(a) The prisoner's claim of indigency is false or misleading;

(b) The prisoner provided false or misleading information regarding another judicial or administrative proceeding in which the prisoner was a party;

(c) The prisoner failed to pay court costs and fees assessed under this section despite having the ability to pay; or

(d) The prisoner's action or a portion of the action is frivolous or malicious.

(9) In determining whether an action is frivolous or malicious, the court may consider whether:

(a) The prisoner's claim has no arguable basis in law or fact;

(b) The prisoner's claim reasonably appears intended solely to harass a party filed against;

(c) The prisoner's claim is substantially similar to a previous claim in that it involves the same parties or arises from the same operative facts as a previous claim;

(d) The prisoner's claim has little likelihood of success on its merits; or

(e) The allegations of fact in the prisoner's claim are fanciful or not credible.

(10) This section does not apply to a criminal proceeding or a collateral criminal proceeding.

History.—s. 2, ch. 96-106

157.111 Civil actions and administrative proceedings initiated by state agencies; attorneys' fees and costs.—

(1) This section may be cited as the "Florida Equal Access to Justice Act."

(2) The Legislature finds that certain persons may be deterred from seeking review of, or defending against, unreasonable governmental action because of the expense of civil actions and administrative proceedings. Because of the greater resources of the state, the standard for an award of attorney's fees and costs against the state should be different from the standard for an award against a private litigant. The purpose of this section is to diminish the deterrent effect of seeking review of, or defending against, governmental action by providing in certain situations an award of attorney's fees and costs against the state.

(3) As used in this section:

(a) The term "attorney's fees and costs" means the reasonable and necessary attorney's fees and costs incurred for all preparations, motions, hearings, trials, and appeals in a proceeding.

(b) The term "initiated by a state agency" means that the state agency:

1. Filed the first pleading in any state or federal court in this state;

2. Filed a request for an administrative hearing pursuant to chapter 120; or

3. Was required by law or rule to advise a small business party of a clear point of entry after some recognizable event in the investigatory or other free-form proceeding of the agency.

(c) A small business party is a "prevailing small business party" when:

1. A final judgment or order has been entered in favor of the small business party and such judgment or order has not been reversed on appeal or the time for seeking judicial review of the judgment or order has expired;

2. A settlement has been obtained by the small business party which is favorable to the small business party on the majority of issues which such party raised during the course of the proceeding; or

3. The state agency has sought a voluntary dismissal of its complaint.

(d) The term "small business party" means:

1.a. A sole proprietor of an unincorporated business, including a professional practice, whose principal office is in this state, who is domiciled in this state, and whose business or professional practice has, at the time the

action is initiated by a state agency, not more than 25 full-time employees or a net worth of not more than \$2 million, including both personal and business investments; or

b. A partnership or corporation, including a professional practice, which has its principal office in this state and has at the time the action is initiated by a state agency not more than 25 full-time employees or a net worth of not more than \$2 million; or

2. Either small business party as defined in subparagraph 1., without regard to the number of its employees or its net worth, in any action under s. 72.011 or in any administrative proceeding under that section to contest the legality of any assessment of tax imposed for the sale or use of services as provided in chapter 212, or interest thereon, or penalty therefor.

(e) A proceeding is "substantially justified" if it had a reasonable basis in law and fact at the time it was initiated by a state agency.

(4)(a) Unless otherwise provided by law, an award of attorney's fees and costs shall be made to a prevailing small business party in any adjudicatory proceeding or administrative proceeding pursuant to chapter 120 initiated by a state agency, unless the actions of the agency were substantially justified or special circumstances exist which would make the award unjust.

(b)1. To apply for an award under this section, the attorney for the prevailing small business party must submit an itemized affidavit to the court which first conducted the adversarial proceeding in the underlying action, or to the Division of Administrative Hearings which shall assign an administrative law judge, in the case of a proceeding pursuant to chapter 120, which affidavit shall reveal the nature and extent of the services rendered by the attorney as well as the costs incurred in preparations, motions, hearings, and appeals in the proceeding.

2. The application for an award of attorney's fees must be made within 60 days after the date that the small business party becomes a prevailing small business party.

(c) The state agency may oppose the application for the award of attorney's fees and costs by affidavit.

(d) The court, or the administrative law judge in the case of a proceeding under chapter 120, shall promptly conduct an evidentiary hearing on the application for an award of attorney's fees and shall issue a judgment, or a final order in the case of an administrative law judge. The final order of an administrative law judge is reviewable in accordance with the provisions of s. 120.68. If the court affirms the award of attorney's fees and costs in whole or in part, it may, in its discretion, award additional attorney's fees and costs for the appeal.

1. No award of attorney's fees and costs shall be made in any case in which the state agency was a nominal party.

2. No award of attorney's fees and costs for an action initiated by a state agency shall exceed \$15,000.

(5) If the state agency fails to tender payment of the award of attorney's fees and costs within 30 days after the date that the order or judgment becomes final, the prevailing small business party may petition the circuit court where the subject matter of the underlying action

arose for enforcement of the award by writ of mandamus, including additional attorney's fees and costs incurred for issuance of the writ.

(6)(a) This section does not apply to any proceeding involving the establishment of a rate or rule or to any action sounding in tort.

(b) This section only applies to actions initiated by state agencies after July 1, 1984.

History.—ss. 1, 2, 3, 4, 5, 6, ch. 84-78; s. 43, ch. 87-6; s. 7, ch. 87-224; s. 21, ch. 92-315; s. 8, ch. 95-196; s. 6, ch. 96-410.

Note.—Section 55, ch. 95-196, provides that "[n]othing in this act shall be construed to authorize a state agency to discontinue the collection and maintenance of information contained in any required report repealed or modified by this act, unless the state agency is specifically authorized to discontinue such collection and maintenance pursuant to this act or another section of law."

CHAPTER 60

INJUNCTIONS

60.05 Abatement of nuisances.

60.05 Abatement of nuisances.—

(1) When any nuisance as defined in s. 823.05 exists, the Attorney General, state attorney, city attorney, county attorney, or any citizen of the county may sue in the name of the state on his or her relation to enjoin the nuisance, the person or persons maintaining it, and the owner or agent of the building or ground on which the nuisance exists.

(2) The court may allow a temporary injunction without bond on proper proof being made. If it appears by evidence or affidavit that a temporary injunction should issue, the court, pending the determination on final hearing, may enjoin:

(a) The maintaining of a nuisance;

(b) The operating and maintaining of the place or premises where the nuisance is maintained;

(c) The owner or agent of the building or ground upon which the nuisance exists;

(d) The conduct, operation, or maintenance of any business or activity operated or maintained in the building or on the premises in connection with or incident to the maintenance of the nuisance.

The injunction shall specify the activities enjoined and shall not preclude the operation of any lawful business not conducive to the maintenance of the nuisance complained of. At least 3 days' notice in writing shall be given defendant of the time and place of application for the temporary injunction.

(3) Evidence of the general reputation of the alleged nuisance and place is admissible to prove the existence of the nuisance. No action filed by a citizen shall be dismissed unless the court is satisfied that it should be dismissed. Otherwise the action shall continue and the state attorney notified to proceed with it. If the action is brought by a citizen and the court finds that there was no reasonable ground for the action, the costs shall be taxed against the citizen.

(4) On trial if the existence of a nuisance is shown, the court shall issue a permanent injunction and order the costs to be paid by the persons establishing or maintaining the nuisance and shall adjudge that the costs are