

STORAGE NAME: h0115.flc
DATE: February 22, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FAMILY LAW AND CHILDREN
ANALYSIS**

BILL #: HB 115
RELATING TO: Husband and Wife
SPONSOR(S): Representative Brown
COMPANION BILL(S): SB 1226

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) FAMILY LAW AND CHILDREN
 - (2) JUDICIARY
 - (3) CHILDREN AND FAMILIES
 - (4) GOVERNMENTAL RULES AND REGULATIONS
 - (5) CRIMINAL JUSTICE
-

I. SUMMARY:

HB 115 provides that a husband and wife may be held jointly and severally liable for debts incurred by either spouse for necessities, identified as food, clothing, shelter, and medical expenses for themselves and any dependent children and for the care and education of their minor children during the marriage and before a separation agreement is entered into or a petition for dissolution of marriage is filed.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The Doctrine of Necessaries was first recognized in Phillips v. Sanchez, 35 Fla. 187, 17 So. 363 (1895). The doctrine worked together with the disability of coverture, which was a condition resulting from the wife's identity merging with that of the husband at marriage. She was unable to own property, enter into contracts, or receive credit. This necessitated the husband's obligation to provide for her support and provide her with necessaries, recognized at common law as food, clothing, shelter and medical services. This doctrine applied only to the husband and his obligation to provide necessaries for the wife, and included holding the husband liable for necessaries provided to his wife by a third party. No reciprocal obligation existed.

Changing times resulted in a recognition that the doctrine should perhaps include reciprocity, which was recognized in Manatee Convalescent Center, Inc. v. McDonald, 392 So. 2d 1356 (2d DCA 1980) and Parkway Gen. Hosp. v. Stern, 400 So. 2d 166 (3d DCA 1981). However, the Florida Supreme Court refused to hold the wife liable for the necessaries provided to a husband in the form of medical services in Shands Teaching Hosp. & Clinics v. Smith, 497 So. 2d 644 (Fla. 1986) and disapproved Parkway General Hospital and Manatee Convalescent Center. The court recognized that the doctrine may no longer be viable and indicated that the place to reconsider it was in the legislature. The equal protection issue was not addressed in Shands.

The Equal Protection Clause is found in the Fourteenth Amendment of the United States Constitution, and it compels the states to treat all citizens equally under the law. Usually, the state may only make distinctions between certain classes or groups of citizens under the law where there is a compelling state interest.

When the equal protection issue was ultimately raised, the 2d DCA found that the doctrine was still viable, the husband was liable for his wife's medical expenses, and that the obligation was reciprocal. See Webb v. Hillsborough Cty. Hosp. Auth., 521 So. 2d 199 (2d DCA 1988). Following the Webb decision, the 4th DCA found that a wife was not responsible for her husband's necessaries (Faulk and Heinemann) and the 5th DCA held a husband is liable for his wife's necessaries (Waite and Ryals).

While the DCAs agreed they should conform to the Equal Protection Clause and treat spouses the same, they disagreed as to whether the doctrine should apply to both spouses or done away with entirely. Therefore, in 1995 the Florida Supreme Court reviewed Conner v. Southwest Florida Regional Medical Center, 668 So. 2d 175 (Fla. 1995) to resolve the conflict in the circuits while also addressing the equal protection issue.

The Supreme Court abrogated the common law doctrine of necessaries entirely, which meant then that husbands could no longer be held liable for the necessaries furnished to his wife. This, coupled with the previous Shands decision, has the law currently demanding that neither spouse is to be held liable for necessaries furnished to their husband or wife. The court explicitly approved Faulk and Heinemann and disapproved Webb, Waite and Ryals. See Connor, 668 So. 2d at 177.

The way in which states currently apply the Doctrine of Necessaries is as follows. There are five distinct statutory methods to employ the doctrine:

METHOD 1: The common law Doctrine of Necessaries is retained exactly as at common law, with the husband alone liable to third parties for necessaries furnished to his wife. States which retain the doctrine as at common law are Oklahoma and Kentucky.

METHOD 2: The Doctrine of Necessaries is updated and applies equally to the husband and the wife. Under this scheme, the husband is liable for debts incurred by his wife for necessaries, and the wife is liable for necessaries furnished to her husband. Examples of states which follow this method are North Dakota (joint and several liability, but excludes medical expenses), Massachusetts (excludes property held tenancy by the entirety [TBE]) and California (a community property state).

METHOD 3: The spouse who incurred the debt is primarily liable for the debts they incurred for necessities. Their spouse is secondarily liable for the debts. Examples of this method are New York and South Carolina.

METHOD 4: The husband is primarily liable for necessary debts, with the wife secondarily liable. Two states that employ this method are Ohio and Wisconsin.

METHOD 5: Neither spouse is liable for the necessary debts of the other. Alabama and Florida are examples of this method.

B. EFFECT OF PROPOSED CHANGES:

HB 115 would codify the Doctrine of Necessaries, modifying the doctrine to take equal protection principles into account by holding the husband and wife jointly and severally liable for marital debt for necessities. This includes debt incurred during the marriage but before a separation agreement is entered into or a petition for dissolution of marriage is filed. The doctrine is expanded to include the care and education of dependent children, as well as necessities furnished to dependent children. At this time, Section 61 provides for an action for alimony unconnected with dissolution which allows a spouse to apply to the court for alimony within the marriage for maintenance and support of the spouse and minor children. However, there is no specific cause of action for creditors to recover from one spouse where creditors have furnished necessities to the other spouse and have been unable to recover.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

The bill as proposed increases the role of government by codifying into law the common law doctrine modified to apply equally to husbands and wives (where previously the doctrine only applied to husbands being held liable for their wives' debts). It would create an indirect increase in the role of government over the present situation where the doctrine has been judicially abrogated.

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

N/A

b. Does the bill require or authorize an increase in any fees?

N/A

c. Does the bill reduce total taxes, both rates and revenues?

N/A

d. Does the bill reduce total fees, both rates and revenues?

N/A

e. Does the bill authorize any fee or tax increase by any local government?

N/A

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

N/A

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

The bill does not specify in which chapter of the Florida Statutes the law should be placed. Chapter 741, Husband and Wife, may be the appropriate placement. However, a placement in Chapter 61 might also be appropriate, as Chapter 61 contains an action for maintenance and support during marriage unconnected to dissolution (see Section 61.09, Section 61.10, F.S.).

E. SECTION-BY-SECTION ANALYSIS:

This section need be completed only in the discretion of the Committee.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. **APPLICABILITY OF THE MANDATES PROVISION:**

This bill does not require counties or municipalities to spend funds or take an action requiring expenditure of funds.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the authority that municipalities or counties to have to raise revenues in the aggregate.

C. **REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

This bill does not reduce the percentage of state sales tax shared with municipalities.

V. **COMMENTS:**

This bill imposes joint and several liability for those expenses which are found to be necessities, such as food, shelter and medical expenses, provided to either spouse or their dependent children, as well as the care and education of their dependent children. Joint and several liability could possibly implicate home ownership, as homes are often held TBE (tenancy by the entirety) when couples are married. Therefore, the homes held TBE are unavailable to satisfy debts incurred by only one spouse; under joint liability, the homes could be reached by creditors to satisfy a joint debt.

A currently written, HB 115 applies joint and several liability to any debt for necessities. An unintended consequence may be requiring one spouse to pay for those items which may be considered in the category of necessities but which do not benefit the marriage (such as food, clothing or shelter procured by one spouse for the benefit of another person who is not their spouse).

This bill may also have the unintended consequence of endangering home ownership. Joint and several liability would allow creditors to attach the marital home, no matter how it is held in ownership. Many of the cases involving the Doctrine of Necessaries have to do with hospitals suing surviving spouses for medical expenses for a now deceased spouse. A spouse who has just lost their spouse to illness could immediately be faced with losing their home.

Additionally, the obligations for one spouse to contribute to the maintenance of his or her spouse and any minor children is already required, pursuant to Sections 61.09 and 61.10, F.S. for alimony and child support unconnected with dissolution of marriage.

Also, because the statute requires parents to be liable for the education expenses of minor children, a parent may be liable for the costs associated with a college education, as many children commence their college educations before majority.

VI. **AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:**

The Amendment proposed by Representative Brown appears to cure the problems associated both with the overlap between child welfare statutes and the problems that arise in imposing joint and several liability.

VII. **SIGNATURES:**

COMMITTEE ON FAMILY LAW AND CHILDREN:

Prepared by:

Staff Director:

Julie Greenberg

Carol Preston