

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1218

SPONSOR: Senator Holzendorf

SUBJECT: Dissolution of Marriage

DATE: April 16, 2001 REVISED: 04/19/01 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dowds</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/3 amendments</u>
2.	_____	_____	<u>BI</u>	_____
3.	_____	_____	<u>FT</u>	_____
4.	_____	_____	<u>AGG</u>	_____
5.	_____	_____	<u>AP</u>	_____
6.	_____	_____	_____	_____

I. Summary:

SB 1218 establishes a policy of insurance to provide child support payments when a parent obligated to pay the support becomes involuntarily unemployed. A charge of \$50 is applied to the fee for filing a petition for dissolution of marriage to fund the insurance premium. The insurance policy will provide the child support payment for up to 13 weeks when a parent obligated to make the payment becomes involuntarily unemployed. The Department of Management Services will select the authorized insurer or eligible surplus insurer who will offer the insurance using the competitive bid process provided for in ch. 287, F.S.

This bill substantially amends section 28.101 of the Florida Statutes.

II. Present Situation:

Fees Required for Dissolution of Marriage Petitions

Section 28.101, F.S., identifies specific charges required in filing for a petition for dissolution of marriage. Of these filing charges, \$60.50 are transferred to other specific trust funds, including the Child Welfare Training Trust Fund, the Domestic Violence Trust Fund, the Displaced Homemaker Trust Fund, and the Family Courts Trust Fund. Section 28.241, F.S., provides for specific service charges for trial and appellate procedures, which are applied to petitions for dissolution of marriage and allow the governing authority of the county to impose additional charges. The fees associated with filing a petition for dissolution of marriage can vary from county to county. Currently, these fees range from \$118 to \$273.50.

In 1998, a total of 80,466 petitions for dissolution of marriage were filed of which 33,674 were couples with children. The total remained relatively constant in 1999 with 80,983 petitions filed, of which 33,875 involved children.

Child Support

Section 61.13, F.S., allows the court to order child support from one or both parents in the proceedings for dissolution of marriage. The child support to be paid is established based on the guidelines set forth in s. 61.30, F.S. The child support guidelines provide the basis for considering income, expenses, visitation and other factors in calculating the child support. A schedule, which is based on the income and number of children, is utilized to derive the minimum child support need from which the child support award is determined.

Each clerk of the court office is directed to operate a local depository for receipt and disbursement of alimony and child support payments (s. 61.181, F.S.). Support payments made by non-custodial parents who are receiving child support services through the Department of Revenue and child support orders issued since January 1994 using income deduction orders are sent to the State Disbursement Unit for disbursement (s. 61.1824, F.S.). The State Disbursement Unit provides a centralized depository for collecting and disbursing child support payments.

Insurance

Florida's Insurance Code is comprised of chapters 624,-632, 634, 635, 641, 642, 648, and 651, F.S. The Department of Insurance is provided the responsibility of enforcing the provisions of the Florida Insurance Code. Insurance is classified into designated kinds of insurance as follows: life, health, property, casualty, surety, marine, and title (s. 624.6011, F.S.). One category of casualty insurance is credit insurance which is defined as "insurance against loss or damage resulting from failure of debtors to pay their obligations to the creditor (including loss or damage resulting from the involuntary unemployment of the debtors) . . ." [s. 624.605(1)(i), F.S.].

Insurance which is regulated by the Department of Insurance is afforded certain protections under Florida Statute. Such protections include rates that are not excessive, inadequate or unfairly discriminatory as is provided for in s. 627.062, F.S., based on review by the department. All basic insurance policies, annuity contract forms and application forms which are part of a policy or contract are required to be filed with and approved by the Department of Insurance (s. 627.410, F.S.). Authorized insurers are insurers who have been issued a subsisting certificate by the department authorizing them to transact insurance in this state [s. 624.09(1), F.S.].

Surplus Lines Insurance

Sections 626.913-626.937, F.S., set forth the provisions for Florida's Surplus Lines Law, the purpose of which is to provide access to insurance coverage that cannot be obtained from insurers authorized to sell insurance in Florida. The law establishes requirements for approval of eligible surplus lines insurers and licensure of surplus lines agents by the Department of Insurance. The law also specifies the conditions that must be met before insurance coverage may be exported to an eligible surplus lines insurer. Surplus lines insurance is not subject to Florida regulation of rates or forms and there is no insurance guaranty fund protection if the insurer

becomes insolvent. Surplus lines insurance is subject to a 5 percent premium tax paid by the policyholder and a 0.3 percent fee to fund the Florida Surplus Lines Service Office. Eligible surplus line insurers are granted eligibility by the Department of Insurance. Section 626.918, F.S., delineates the conditions for eligibility which are intended to represent that the insurer appears to be financially sound and to have satisfactory claims practices.

Chapter 287 Competitive Bid Process

Chapter 287, F.S., sets forth a system of uniform procedures for state agencies to use in managing and procuring commodities and contractual services (s. 287.001, F.S.) and provides the Department of Management Services with the authority and duty to operate this system (s. 287.032, F.S.). Section 287.057, F.S., delineates the requirements for procurement of commodities and contractual services. For the purchase of commodities and contractual services which exceed \$25,000, either an invitation to bid process or a request for proposal process is used, both of which are competitive and sealed processes. If fewer than two responsive bids or proposals for commodity or contractual services are received, the state agency may resolicit the bid or proposal or negotiate the best terms and conditions. Contracts for commodities and contractual services may be renewed on a yearly basis for no more than 2 years or for a period not longer than the term of the original contract. The review and approval process for contractual service contracts exceeding \$50,000 are to include program, financial and legal review and approval.

III. Effect of Proposed Changes:

SB 1218 establishes a policy of insurance to provide child support payments when a parent obligated to pay the support becomes involuntarily unemployed. A charge of \$50 is applied to the fee for filing a petition for dissolution of marriage which is transferred on a monthly basis by the clerk of the court to the authorized insurer or eligible surplus lines insurer selected to offer the insurance. Either an authorized insurer or eligible surplus lines insurer is permitted to offer the insurance, and one provider will offer the insurance for the entire state. The Department of Management Services is directed to use the competitive bid process set forth in ch. 287, F.S., to select the authorized insurer or eligible surplus lines insurer who will offer the insurance.

The bill provides that the insurance policy will provide the child support payment when a parent obligated to make the payment becomes involuntarily unemployed. "Involuntarily unemployed" is defined to include unemployment as a result of a strike, lockout, individual or mass layoff, or loss of income due to business failure or bankruptcy. The policy is required to provide for the child support payment amount due to the child or the child's parent or legal guardian which must be made in accordance with the divorce decree or other court order. A waiting period of no more than 7 days is required after which the payments are to be made for the term of the involuntary employment, not to exceed 13 weeks. A payment cap of 13 weeks is provided for the life of the policy.

If the actual premium amount for the policy is found to be lower through the competitive bid process, the \$50 charge may be reduced. No corresponding increase is provided for if the actual premium amount is found to be higher than the \$50 charge. The clerk of the court or the judge is permitted to collect an additional \$4 service charge. The Department of Management Services is

directed to notify each of the clerks of the selected insurer or surplus line insurer and of the information that will be required for the clerks to transmit the filing fee collected to the insurer or surplus line insurer to pay the premium of the policy. The clerk of the court is directed to provide specified information regarding the payors and recipients of the child support payments. A certificate of insurance, explanation of the coverage and claim-filing instructions are to be sent by the selected insurer or surplus lines insurer to each of the persons ordered to pay child support and in turn entitled to the insurance coverage. The selected insurer or surplus lines insurer is required to comply with any requirements to file notices that child-support payments are being made by an insurer.

The bill takes effect October 1, 2002.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

This bill requires all persons filing a petition for dissolution of marriage to pay a filing charge of \$50 for an insurance policy to provide the child support payments in the event the individuals become involuntarily unemployed. Based on the 80,983 petitions filed in 1999, a total of \$4,049,150 would be collected for the insurance.

B. Private Sector Impact:

By having the child support payments made during a period of unemployment, custodial parents who normally would have experienced the loss of an important income will continue to receive the payments to meet the children's needs. However, the \$50 fee is required of all persons filing a petition for dissolution of marriage, regardless of whether the person has children and a child support obligation. In 1999, there would have been 47,108 persons who would have been required to pay the filing charge to fund the insurance but who would not have qualified for receiving the benefits of the insurance.

C. Government Sector Impact:

The bill does not require an appropriation to implement the provisions of the bill.

The Department of Insurance reports that the bill would not have a fiscal impact on the department.

The Florida Association of Court Clerks reports that the additional \$4 fee will be sufficient to cover the costs of collecting and disbursing the charge provided for in the bill.

The Department of Management Services reports that there would be a minimal fiscal impact for the department to select the insurer using the competitive bid process in ch. 287, F.S.

VI. Technical Deficiencies:

In the discussion of the payment provisions of the insurance, the bill requires that the person be involuntary unemployed. However, the initial provisions of the bill describe the policy and speak to the payor's employment being voluntarily terminated.

The bill provides for the clerk or the judge to collect an additional fee of \$4 to cover administrative costs of collecting and transmitting the insurance premium. The Judge is not responsible for the collection and disbursement of filing fees.

VII. Related Issues:

It is unclear if the insurance provided for in the bill is "insurance" or if it is the role of an insurer to administer the revenue collected by the \$50 fee. There is no reference or requirement that the insurance policy and subsequent payment of claims comply with any Florida law regulating insurance, in the event an authorized insurer is selected to offer the policy. The Department of Insurance reports that it currently has not approved an insurance policy form or rate for a policy that pays a benefit for child support payments. If a surplus line insurer is selected, there is again no reference or requirement that the insurance policy must comply with the Surplus Lines Law.

It is unclear what relationship the \$50 fee has to the payments projected to be made. The fee may produce substantially more than will be paid in benefits, at which time the bill permits but does not require a reduction in the fee, nor does it provide for use of the excess funds if a reduction in the fee is not made. In converse, the fee may not be adequate to cover the payments required to be made. The bill does not provide for the fee to be increased. It is therefore unclear what recourse is available, such as to cease offering the policy, or whether there would be some obligation on the state for funds.

The bill requires that the selected insurer or surplus lines insurer must file any statutorily required notices that child support payments are being made by an insurer. Currently, there are no statutorily required notices concerning child support payments being made by an insurer. Therefore it is unclear how the payor, custodial parent or other pertinent party will be notified that payments are being made by the insurer.

The bill does not define the term of the policy. It is unclear whether a person obligated to pay child support would be eligible for the insurance benefit provided in this bill for the duration of the child support obligation or for a shorter period of time.

VIII. Amendments:

1 by Children and Families:

Corrects an inconsistency in the bill by replacing “voluntary” with “involuntary.”

2 by Children and Families:

Removes judges from the identified entities responsible for collecting an additional fee for administrative costs.

3 by Children and Families:

Clarifies and specifically stipulates the notices that the insurer or surplus lines insurer will be required to make when the child support payments are being made by the insurer.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
