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DATE: March 29, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIAL OVERSIGHT
ANALYSIS**

BILL #: HB 969
RELATING TO: Dissolution of Marriage
SPONSOR(S): Representative Clarke
TIED BILL(S): None

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

- (1) JUDICIAL OVERSIGHT YEAS 10 NAYS 1
- (2) FISCAL POLICY AND RESOURCES
- (3) COUNCIL FOR SMARTER GOVERNMENT
- (4)
- (5)

I. SUMMARY:

The bill adds an additional \$50 fee to the existing cost for a petition for dissolution of marriage. Monies collected from this fee are to be transferred to an authorized insurer or eligible surplus lines insurer for the issuance of an insurance policy to provide child support payments when an obligor's employment has been involuntarily terminated.

The bill has an effective date of July 1, 2001.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

For any principle that received a "no" above, please explain: The bill adds a mandatory charge to petitions for dissolutions of marriage.

B. PRESENT SITUATION:

Fees for Petition for Dissolution of Marriage

Section 28.241(1), Florida Statutes, provides that a party instituting any civil action, suit, or proceeding in the circuit court shall pay to the clerk of that court a number of specified fees. Those that would apply in a dissolution of marriage proceeding include:

M A service charge of **\$40** in all cases in which there are not more than five defendants;

M An additional service charge of **\$8** shall be paid to the clerk for each civil action filed, \$7 of such charge to be remitted by the clerk to the State Treasurer for deposit into the General Revenue Fund unallocated;

M An additional charge of **\$2.50** shall be paid to the clerk for each civil action brought in circuit or county court, to be deposited into the Court Education Trust Fund;

M Service charges in excess of those herein fixed may be imposed by the governing authority of the county by ordinance or by special or local law; and such excess shall be expended as provided by such ordinance or any special or local law, now or hereafter in force, to provide and maintain facilities, including a law library, for the use of the courts of the county wherein the service charges are collected; to provide and maintain equipment; or for a legal aid program in such county; and

M In addition, the county is authorized to impose, by ordinance or by special or local law, a fee of up to **\$15** for each civil action filed, for the establishment, maintenance, or supplementation of a public guardian pursuant to ss. 744.701-744.708, inclusive.

The section also provides that the sum of all service charges and fees permitted under this subsection **may not exceed \$200; however, the \$200 cap may be increased to \$210 in order to provide for the establishment, maintenance, or supplementation of a public guardian** as indicated in this subsection. Currently, the total charges assessed by counties for a dissolution of marriage petition range from highs of \$205 and \$206 in Hillsborough and Palm Beach County respectively to lows of \$50.50 and \$53.50 in Glades and Calhoun County respectively.

In addition to the above mandated charges, s. 28.101, Florida Statutes, provides that the following shall also be assessed when a party petitions for a dissolution of marriage:

M A **\$5** charge to be deposited into the Child Welfare Training Trust Fund;

M A **\$5** charge to be deposited into the Displaced Homemaker Trust Fund;

M An **\$18** charge to be deposited into the Domestic Violence Trust Fund;

M A **\$32** charge to be deposited into the Displaced Homemaker Trust Fund and Domestic Violence Trust Fund; and

M A **\$7** charge for recording and reporting the final judgment of dissolution of marriage to the Department of Health.

These additional mandated charges total **\$77**.

Obligation to Support

Section 409.2551, Florida Statutes, provides legislative intent that "it is declared to be the public policy of this state that this act be construed and administered to the end that children shall be maintained from the resources of their parents, thereby relieving, at least in part, the burden presently borne by the general citizenry through public assistance programs". The same section contains legislative recognition that, "Common-law and statutory procedures governing the remedies for enforcement of support for financially dependent children by persons responsible for their support have not proven sufficiently effective or efficient to cope with the increasing incidence of financial dependency...The state, therefore, exercising its police and sovereign powers, declares that the common-law and statutory remedies pertaining to family desertion and nonsupport of dependent children shall be augmented by additional remedies directed to the resources of the responsible parents".

Child support can be ordered by a court under a number of circumstances. Section 61.13, Florida Statutes, provides that in a proceeding for dissolution of marriage, the court may at any time order either or both parents who owe a duty of support to a child to pay support in accordance with the guidelines in s. 61.30, Florida Statutes. Section 742.031, Florida Statutes, related to the determination of parentage, provides that unmarried parents of a child may also be ordered to pay support for that child pursuant to s. 61.30, Florida Statutes. Additionally, s. 741.30, Florida Statutes, provides that during a proceeding for an injunction for protection against domestic violence, the court may grant relief that includes the establishment of support for a child or children of the petitioner.

Child Support Obligation Protection

Section 61.13(1)(c), Florida Statutes, provides that to the extent necessary to protect an award of child support, the court may order the obligor to purchase or maintain a life insurance policy or a bond, or to otherwise secure the child support award with any other assets which may be suitable for that purpose. It is reported that such life insurance policies are almost always included as a part of settlement agreements and are not commonly ordered by the courts. Courts more often order that when an obligor has life insurance provided by his or her employer that the beneficiary of the policy be designated as the child.

Child Support Depository Trust Fund

The Child Support Depository Trust Fund was established in 1988 (Ch. 88-176, LOF), to be administered by the Comptroller. All funds collected by child support depositories as fees paid for payment of support by personal check were to be credited to the trust fund. Administrators from child support depositories were authorized to apply for reimbursement from the trust fund for uncollectable personal checks received as payment for support obligations which were paid to the obligee and for costs of collection of those checks which were returned unpaid. The Comptroller was authorized to make reimbursements once certain conditions had been met.

The section was amended in 1995 to transfer administration of the trust fund to the Department of Revenue, to eliminate the deposit of fees collected by depositories into the trust fund, and to provide that monies subsequently collected by depositories that they had previously been reimbursed for were to be remitted to DOR for deposit into the trust fund (Ch. 95-312, LOF). The Child Support Depository Trust Fund was repealed in 1999 (Ch. 99-205, LOF).

Unemployment Compensation

Unemployment insurance provides workers, whose jobs have been terminated through no fault of their own, monetary payments for a given period of time or until they find a new job. Unemployment compensation payments or benefits are intended to provide an unemployed worker time to find a new job equivalent to the one lost without financial distress. Without unemployment compensation many workers would be forced to take jobs for which they are overqualified or end up on public assistance.

In the United States, unemployment insurance was established by the federal Social Security Act in 1935 and is based on a dual program of federal and state statutes. Much of the federal program is implemented through the Federal Unemployment Tax Act. Each state administers a separate unemployment insurance program, which must be approved by the Secretary of Labor, based on federal standards. There are special federal rules for nonprofit organizations and governmental entities. Which employees are eligible for compensation, the amount they receive, and the period of time benefits are paid are determined by a mix of federal and state law.

To support the unemployment compensation system a combination of state and federal taxes are levied upon employers. State employer contributions are normally based on the amount of wages they have paid, the amount they have contributed to the unemployment fund, and the amount that their discharged employees have been compensated with from the fund.

The proceeds from the unemployment taxes are deposited in an Unemployment Trust Fund and each state has a separate account in the Fund into which deposits are made. Within the fund there are separate accounts for state administrative costs and extended unemployment compensation. During economic recessions the federal government has provided emergency assistance to allow states to extend the time for which individuals can receive benefits. This is accomplished by passing a temporary law authorizing the transfer of money to a state from the federal government's Extended Unemployment Account. The ability of a state to tap into this emergency system is usually dependent on the employment rate reaching a designated percentage within either the state or nation.

Section 61.30, Florida Statutes, provides that benefits received as unemployment compensation are to be included in gross income for child support purposes. Section 443.051, Florida Statutes, relating to child support intercepts, provides that:

M The Division of Unemployment Compensation shall require each individual filing a new claim for unemployment compensation to disclose at the time of filing such claim whether or not he or she owes child support obligations which are being enforced by a state or local

child support enforcement agency. If an applicant discloses that he or she owes child support obligations and he or she is determined to be eligible for unemployment compensation benefits, the division shall notify the state or local child support enforcement agency enforcing such obligation.

M The division shall deduct and withhold from any unemployment compensation otherwise payable to an individual who owes child support obligations an amount specified by the individual, an amount determined by the state child support enforcement agency, or an amount determined pursuant to the Social Security Act. The division is required to pay any amount deducted from a compensation payment to the appropriate child support enforcement agency.

In practice, Unemployment Compensation, which is now under the Agency for Workforce Innovation, transmits the names of new claimants to the Department of Revenue (DOR) on a weekly basis. The DOR matches those names against the names of child support obligors and notifies Unemployment Compensation of any "hits" as well as the amount to be deducted from the claimant's benefit payment, which begins at 30% and may be adjusted under certain circumstances.

Surplus Lines Insurance

The Florida Insurance Code contains the Surplus Lines Law in ss. 626.913-626.937, Florida Statutes. The purpose of the law 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, also referred to as a "nonadmitted" 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.

C. EFFECT OF PROPOSED CHANGES:

The bill increases the fee for a petition for dissolution of marriage by \$54, \$50 of which is transferred to an insurer to be used to pay child support on behalf of obligors who become involuntarily unemployed. The remaining \$4 covers administrative costs.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 28.101, Florida Statutes, to provide for an additional charge in the amount of \$50 when a party petitions for a dissolution of marriage with monies collected as a result of this fee to be transferred by the clerk of court to an authorized insurer or eligible surplus lines insurer for the issuance of a policy of insurance for the purpose of providing child support payments when an obligor's employment has been involuntarily terminated. The fee amount may be reduced to the amount of the actual premium for the policy obtained.

The section provides for child support payments on behalf of an obligor when that obligor becomes involuntarily unemployed and defines the term "involuntary unemployment". Payments are to be equal to the monthly child support payments but may not be made for a period that exceeds 13 weeks. Obligor may not be delinquent in paying support at the time of making a claim, however, if they are delinquent when making a claim, monies paid by the insurer are to be deposited into the Child Support Depository Trust Fund.

The section also provides for the clerk to maintain a separate record of all collected costs and authorizes the clerk or the court to collect an additional \$4 to cover administrative costs.

Finally, the section provides that the selection of the insurer is to be made pursuant to chapter 287, Florida Statutes, relating to the procurement of personal property and services.

Section 2. Provides for an effective date of July 1, 2001.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments.

2. Expenditures:

See fiscal comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The intent of the bill is to insure that child support payments will be made on behalf of an obligor who becomes involuntarily unemployed which would contribute to the well being of affected children.

D. FISCAL COMMENTS:

There were approximately 91,000 petitions for dissolution of marriage filed in 2000. An additional charge of \$50 would generate approximately \$4.5 million. There is no data available with which to determine how many claims will be filed per year or the amount of each claim.

The bill will have no fiscal impact on the Department of Revenue, the Department of Insurance, or the Division of Management Services.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not reduce the authority of municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill will not reduce the authority of municipalities and counties to raise revenues.

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

The bill will not reduce the state tax shared with counties and municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

N/A

C. OTHER COMMENTS:

There are many child support orders established for children who have parents who have never been married. This population would presumably be eligible to file a claim for child support payments to be paid on their behalf, yet they would not have paid the \$50 associated with a petition for dissolution of marriage. Approximately 43% of couples seeking dissolution have minor children, which means that 57% of that population would not have a child support order entered.

The bill contains a provision for reducing the \$50 to the actual premium amount as determined through the competitive bidding process. There is no evidence that the \$50 amount was calculated based on actuarial projections of losses and expenses relating to providing such a benefit. If the actual premium amount is subsequently determined to be greater than \$50, there is no provision in the bill for an upward adjustment. There is also no provision for the insurer to provide certificates of insurance, an explanation of coverage, and claim filing instructions to individuals entitled to receive benefits under the policy.

Currently, there is no insurer in Florida providing this type of insurance. Therefore, the provisions of the bill would have to be met through either a surplus lines insurer or an insurer that develops a product in response to this bill. There is at least one company providing child support insurance that will provide child support payments for up to 4 months if the obligor loses his or her job due to downsizing or permanent layoff after a 60 day waiting period. However, there is no coverage if the employee is temporarily laid off, goes on strike, quits the job, becomes incarcerated or is unable to work because of illness or disability. Self-employed persons are not eligible. The annual premium for four months of coverage is 56% of one month's child support obligation.

The bill provides that the clerk or court may collect an additional \$4 fee to cover administrative costs, resulting in a total of \$54 in additional fees added to a dissolution of marriage petition. Many individuals petitioning dissolution have extremely low incomes and any additional fees may present a hardship.

There is some question as to what the term "maintain a separate record of all insurance costs" means and where and how this record would be kept.

The bill requires that the insurer make payments “equal to the monthly child support payments as set forth in the divorce decree or other order”. This is unclear as to whether the insurer must comply with all payment related provisions of an order, or only the amount.

The bill provides that an obligated person must not be delinquent in child support payments at the time a claim is made to the insurer and the bill also provides that if the obligated person is delinquent at the time a claim is made, the monies payable on behalf of that individual are to be deposited into a trust fund. These statements are contradictory to one another.

The trust fund designated for deposit of these funds was repealed in 1999.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On March 29, 2001, the **Committee on Judicial Oversight** adopted a strike everything amendment to the bill that clarifies the process for obtaining the child support insurance policy, provides for the insurer to furnish certificates of insurance, benefit coverage explanations and claim filing instructions to the insureds, and provides notice requirements for the insurer. The amendment also provides that the obligee must not be delinquent in paying child support in order to be eligible to file a claim for benefits.

VII. SIGNATURES:

COMMITTEE ON JUDICIAL OVERSIGHT:

Prepared by:

Staff Director:

Carol Preston

Lynne Overton