

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.)

Prepared By: Judiciary Committee

BILL: SB 532

SPONSOR: Senator Campbell

SUBJECT: Court Orders/Payment Awards

DATE: March 14, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cibula	Maclure	JU	Favorable
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

The bill provides that a court may award attorney's fees, suit money, and costs incurred by a party for the services performed and costs incurred to establish both the party's entitlement to and the amount of attorney's fees, suit money, and costs to be awarded in divorce, support, child-custody, and paternity-establishment proceedings.

This bill substantially amends the following sections of the Florida Statutes: 61.16 and 742.045.

II. Present Situation:

A court may award attorney's fees only when authorized by a statute or an agreement of the parties.¹ Under both s. 61.16(1) and s. 742.045, F.S., courts are authorized to "order a party to pay a reasonable amount for attorney's fees [and] suit money" in actions involving divorce, support, child custody, and paternity establishment. According to *Wight v. Wight*, 880 So. 2d 692, 695 (Fla. 2d DCA 2004), attorney's fees may not be awarded in a divorce action for the cost of litigating the amount of fees. Attorney's fees, however, may be awarded for litigating entitlement to fees.²

If [a statute authorizing the award of attorney's fees] is to be expanded to include fees for time spent litigating the amount of attorney's fees, then the Legislature, rather than [a court], is the proper party to do so.³

¹ *State Farm Fire & Casualty Co. v. Palma*, 629 So. 2d 830, 832 (Fla. 1993).

² See *Wight v. Wight*, 880 So. 2d 692, 693 (Fla. 2d DCA 2004).

³ *Palma*, 629 So. 2d at 833.

“The rule limiting fees for fees . . . encourag[es] parties to litigate fees in an efficient manner.”⁴ The Florida Supreme Court has noted that an award of attorney’s fees for the cost of litigating the amount of fees may be appropriate under statutes designed “to encourage attorneys to represent indigent clients.”⁵

Both s. 61.16, and 742.045, F.S., permit an award of suit money. That term is defined in BLACK’S LAW DICTIONARY (8th ed. 2004) as: “Attorney’s fees and court costs allowed or awarded by a court; esp., in some jurisdictions, a husband’s payment to his wife to cover her reasonable attorney’s fees in a divorce action.”

III. Effect of Proposed Changes:

The bill provides that a court may award attorney’s fees, suit money, and costs incurred by a party for the services performed and costs incurred to establish both the party’s entitlement to and the amount of attorney’s fees, suit money, and costs to be awarded in divorce, support, child-custody, and paternity-establishment proceedings.

The bill takes effect upon becoming a law.

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:

None.

B. Private Sector Impact:

The bill provides that a court may award attorney’s fees, suit money, and costs incurred by a party for the services performed and costs incurred to establish both the party’s entitlement to and the amount of attorney’s fees, suit money, and costs to be awarded in divorce, support, child-custody, and paternity-establishment proceedings.

⁴ *Wight*, 880 So. 2d at 695.

⁵ *Palma*, 629 So. 2d at 833.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

None.

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