

FOR CONSIDERATION By the Committee on Judiciary

590-01220A-09

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1 A bill to be entitled

2 An act relating to the small claims process; amending
3 s. 34.041, F.S.; increasing certain fees for filing a
4 civil action in county court; eliminating the filing
5 fee for reopening a small claims suit, action, or
6 proceeding; encouraging the Florida Supreme Court to
7 adopt uniform forms for use in the small claims
8 process; encouraging the Florida Supreme Court to
9 study the feasibility of increasing the current limit
10 on the amount in controversy in a small claims action;
11 encouraging the Florida Supreme Court to amend Rule
12 7.010(b), Florida Small Claims Rules, to provide for
13 equitable relief; encouraging the Florida Supreme
14 Court to exclude personal injury protection cases from
15 the small claims process; providing an effective date.

16
17 WHEREAS, Florida has recognized the need for the efficient
18 and inexpensive resolution of civil actions of a simple nature
19 by creating a small claims process, and

20 WHEREAS, the Florida Small Claims Rules are designed to
21 foster a simple, efficient, and inexpensive remedy at law for
22 litigants, and

23 WHEREAS, a large number of litigants in small claims cases
24 are not represented by attorneys, and

25 WHEREAS, some counties make available various and detailed
26 small claims forms to small claims litigants, while others do
27 not provide these forms to small claims litigants, and

28 WHEREAS, the adoption of uniform forms for small claims
29 cases may promote uniformity in small claims cases throughout

590-01220A-09

20097028__

30 the state, and

31 WHEREAS, the inclusion of commentary and instructions in
32 small claims forms, such as the commentary and instructions
33 included in the Florida Family Law Forms, may enhance a
34 litigant's ability to navigate through the small claims process
35 without an attorney, and

36 WHEREAS, the current small claims amount-in-controversy
37 limit of \$5,000 has not been increased since 1996, and

38 WHEREAS, increasing the amount-in-controversy limit could
39 enhance the small claims process by increasing access to courts
40 for litigants, but could also increase the caseloads of small
41 claims judges, and

42 WHEREAS, under the current Florida Small Claims Rules,
43 county judges presiding over small claims cases are limited to
44 hearing actions at law, and cannot award equitable relief in a
45 small claims case, and

46 WHEREAS, potential litigants may choose not to file certain
47 cases of a simple nature because a small claims judge is
48 precluded from awarding remedies of an equitable nature which
49 may be necessary to make the potential litigant whole, and

50 WHEREAS, personal injury protection cases are often filed
51 in county court as small claims cases because personal injury
52 protection cases typically involve low insurance policy limits
53 and often fall below the \$5,000 amount-in-controversy limit,
54 although authorized awards of attorney's fees often exceed
55 \$5,000, and

56 WHEREAS, the complexity of personal injury protection cases
57 coupled with the length of litigation suggests that these cases
58 are not amenable to the goal of the small claims process, which

590-01220A-09

20097028__

59 is to efficiently and inexpensively resolve simple disputes, and

60 WHEREAS, when a small claims litigant initiates activity to
61 collect on a judgment, he or she may be required to pay a reopen
62 fee in the amount of \$25 or \$50, and

63 WHEREAS, the elimination or alteration of the application
64 of reopen fees may reduce the workload of clerks in determining
65 whether a reopen fee is necessary and curb frustration of small
66 claims litigants upon learning that an additional fee is
67 required in a case that the litigant perceives as pending, and

68 WHEREAS, the Florida Senate studied the Florida small
69 claims process and identified potential enhancements, which are
70 reported in Interim Report 2009-121, NOW, THEREFORE,

71

72 Be It Enacted by the Legislature of the State of Florida:

73

74 Section 1. Subsections (1) and (2) of section 34.041,
75 Florida Statutes, are amended to read:

76 34.041 Filing fees.—

77 (1) (a) Upon the institution of any civil action, suit, or
78 proceeding in county court, the party shall pay the following
79 filing fee, not to exceed:

80 1. For all claims less than \$100 \$51 ~~\$50~~.

81 2. For all claims of \$100 or more but not more than \$500 ...
82 \$76 ~~\$75~~.

83 3. For all claims of more than \$500 but not more than
84 \$2,500 \$171 ~~\$170~~.

85 4. For all claims of more than \$2,500 but not more than
86 \$5,000 \$296 ~~\$295~~.

87 5. For all claims of more than \$5,000 \$295.

590-01220A-09

20097028__

88 ~~6.5.~~ In addition, for all proceedings of garnishment,
 89 attachment, replevin, and distress \$85.
 90 ~~7.6.~~ For removal of tenant action \$265.
 91 (b) The first \$80 of the filing fee collected under
 92 subparagraph (a)4. and the first \$80 of the filing fee collected
 93 under subparagraph (a)5. shall be remitted to the Department of
 94 Revenue for deposit into the General Revenue Fund. The next \$15
 95 of the filing fee collected under subparagraph (a)4., the next
 96 \$15 of the filing fee collected under subparagraph (a)5., and
 97 the first \$15 of the each filing fee collected under
 98 subparagraph (a)7. ~~(a)6.,~~ shall be deposited in the state
 99 courts' Mediation and Arbitration Trust Fund. One-third of any
 100 filing fees collected by the clerk under this section in excess
 101 of the first \$95 collected under subparagraph (a)4. and one-
 102 third of any filing fees collected by the clerk under this
 103 section in excess of the first \$95 collected under subparagraph
 104 (a)5. shall be remitted to the Department of Revenue for deposit
 105 into the Department of Revenue Clerks of the Court Trust Fund.
 106 An additional filing fee of \$4 shall be paid to the clerk. The
 107 clerk shall transfer \$3.50 to the Department of Revenue for
 108 deposit into the Court Education Trust Fund and shall transfer
 109 50 cents to the Department of Revenue for deposit into the
 110 Department of Financial Services' Administrative Trust Fund to
 111 fund clerk education. Postal charges incurred by the clerk of
 112 the county court in making service by mail on defendants or
 113 other parties shall be paid by the party at whose instance
 114 service is made. Except as provided herein, filing fees and
 115 service charges for performing duties of the clerk relating to
 116 the county court shall be as provided in ss. 28.24 and 28.241.

590-01220A-09

20097028__

117 Except as otherwise provided herein, all filing fees shall be
118 retained as fee income of the office of the clerk of circuit
119 court. Filing fees imposed by this section may not be added to
120 any penalty imposed by chapter 316 or chapter 318.

121 (c) Any party other than a party described in paragraph (a)
122 who files a pleading in an original civil action in the county
123 court for affirmative relief by cross-claim, counterclaim, or
124 third-party complaint, or who files a notice of cross-appeal or
125 notice of joinder or motion to intervene as an appellant, cross-
126 appellant, or petitioner, shall pay the clerk of court a fee of
127 \$296 ~~\$295~~ if the relief sought by the party under this paragraph
128 exceeds \$2,500 but does not exceed \$5,000. The party shall pay
129 the clerk of court a fee of \$295 if the relief sought by the
130 party under this paragraph exceeds \$5,000. This fee does ~~shall~~
131 not apply where the cross-claim, counterclaim, or third-party
132 complaint requires transfer of the case from county to circuit
133 court. The clerk shall remit the fee to the Department of
134 Revenue for deposit into the General Revenue Fund.

135 (d) The clerk of court shall collect a service charge of
136 \$10 for issuing a summons. The clerk shall assess the fee
137 against the party seeking to have the summons issued.

138 (2) A party reopening any civil action, suit, or proceeding
139 in the county court shall pay to the clerk of court a filing fee
140 set by the clerk in an amount not to exceed ~~\$25 for all claims~~
141 ~~of not more than \$500 and an amount not to exceed \$50 for all~~
142 claims of more than \$5,000 ~~\$500~~. For purposes of this section, a
143 case is reopened when a case previously reported as disposed of
144 is resubmitted to a court. A party is exempt from paying the fee
145 for any of the following:

590-01220A-09

20097028__

- 146 (a) A writ of garnishment;
- 147 (b) A writ of replevin;
- 148 (c) A distress writ;
- 149 (d) A writ of attachment;
- 150 (e) A motion for rehearing filed within 10 days;
- 151 (f) A motion for attorney's fees filed within 30 days after
- 152 ~~of~~ the entry of the judgment or final order;
- 153 (g) A motion for dismissal filed after a mediation
- 154 agreement has been filed;
- 155 (h) A motion to withdraw by attorneys;
- 156 (i) Stipulations; or
- 157 (j) Responsive pleadings.

158 Section 2. (1) The Legislature encourages the Florida

159 Supreme Court, in consultation and cooperation with The Florida

160 Bar Committee on Small Claims Rules, county court judges, and

161 other practitioners, to adopt uniform small claims forms along

162 with commentary and instructions, such as the commentary and

163 instructions provided in the Florida Family Law Forms, to

164 simplify the process of litigation in small claims matters for

165 litigants who proceed without an attorney.

166 (2) The Legislature encourages the Florida Supreme Court,

167 in consultation and cooperation with The Florida Bar Committee

168 on Small Claims Rules, county court judges, and other

169 practitioners, to study the advantages and disadvantages of and

170 to consider increasing the current small claims amount-in-

171 controversy limit of \$5,000.

172 (3) The Legislature encourages the Florida Supreme Court,

173 in consultation and cooperation with The Florida Bar Committee

174 on Small Claims Rules, county court judges, and other

590-01220A-09

20097028__

175 practitioners, to amend Rule 7.010(b), Florida Small Claims
176 Rules, to allow small claims judges to hear equitable matters in
177 addition to actions at law.

178 (4) The Legislature encourages the Florida Supreme Court,
179 in consultation and cooperation with The Florida Bar Committee
180 on Small Claims Rules, county court judges, and other
181 practitioners, to amend the Florida Small Claims Rules to
182 exclude personal injury protection cases from the small claims
183 process.

184 Section 3. This act shall take effect July 1, 2009.