

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 5117 PCB CCJ 09-10 Court Finances  
**SPONSOR(S):** Criminal & Civil Justice Appropriations Committee and Adams  
**TIED BILLS:** **IDEN./SIM. BILLS:**

	<b>REFERENCE</b>	<b>ACTION</b>	<b>ANALYST</b>	<b>STAFF DIRECTOR</b>
Orig. Comm.:	Criminal & Civil Justice Appropriations Committee	8 Y, 0 N	Darity	Davis
1)	Full Appropriations Council on General Government & Health Care		Darity	Leznoff
2)				
3)				
4)				
5)				

**SUMMARY ANALYSIS**

This bill amends s. 28.2401, F.S., to institute a sliding scale for fees for the formal administration, guardianship, ancillary, curatorship, or conservatorship proceedings as follows:

- For formal administration, guardianship, ancillary, curatorship, or conservatorship proceedings – estates valued under \$75,000 the fee remains \$280.
- For estates valued at \$75,000 to \$250,000 the fee is \$1,000.
- For estates valued at \$250,001 to \$1,000,000 the fee is \$2,000.
- For estates valued over \$1,000,000 the fee is \$5,000.

The bill authorizes the clerks of the court to assess a \$200 filing fee to anyone instituting an action for injunction against repeat violence. As provided in current law, the clerks of the court may not assess a filing fee for a petition against sexual violence or dating violence. The fee will be remitted to the State Court Revenue Trust Fund. The bill further provides that upon a temporary or final judgment on an injunction for protection against sexual violence or dating violence, the respondent must pay a court cost of \$200, and in the case of repeat violence, the respondent must reimburse the petitioner their \$200 filing fee.

Under current law, there is no fee assessed for filing a counterpetition in county, trial, or appellate court. The bill amends ss. 28.241 and 34.041, F.S., to provide that a counterpetition in county, trial or appellate court is subject to filing fees.

The bill fixes a glitch, clarifying that persons who fail to attend or complete a driver improvement school must repay the clerk the 18 percent reduction and the \$18 processing fee the clerk is authorized to charge on cases that originate on or after February 1, 2009.

The bill authorizes the Supreme Court to modify judicial rules associated with filing fees to implement the changes provided in this bill, and declares the bill fulfills an important state interest.

The bill conforms Florida Statutes to the proposed House of Representatives FY 2009-10 General Appropriations Act by increasing trust fund revenues and allowing a recurring fund shift to offset General Revenue reductions of \$24.3 million.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Probate Filing Fee**

Section 28.2401, F.S., provides for services charges which may be imposed by the clerks of the court for certain probate matters. Current law authorizes the clerks of the court to increase fees, by order of the circuit court, under certain extraordinary circumstances. The current service charge for the formal administration, guardianship, ancillary, curatorship, or conservatorship proceedings is \$280.

This bill amends s. 28.2401, F.S., to change the words "service charge" to "filing fee" and require that such fees must be collected. The bill also repeals the provision allowing the clerks of the court to increase fees, by order of the circuit court, under certain extraordinary circumstances.

The bill further amends the section to institute a sliding scale for fees for the formal administration, guardianship, ancillary, curatorship, or conservatorship proceedings as follows:

- For formal administration, guardianship, ancillary, curatorship, or conservatorship proceedings – estates valued under \$75,000 the fee remains \$280.
- For estates valued at \$75,000 to \$250,000 the fee is \$1,000.
- For estates valued at \$250,001 to \$1,000,000 the fee is \$2,000.
- For estates valued over \$1,000,000 the fee is \$5,000.

##### **Repeat Violence Filing Fee**

Under current law (s. 784.046, F.S.), the clerks of the court are not allowed to assess a fee to anyone filing a petition for protection against repeat violence<sup>1</sup>, sexual violence<sup>2</sup>, or dating violence<sup>3</sup>. However,

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<sup>1</sup> Section 784.046 (1)(b), F.S., provides "repeat violence" means two incidents of violence or stalking committed by the respondent, one of which must have been within 6 months of the filing of the petition, which are directed against the petitioner or the petitioner's immediate family member.

<sup>2</sup> Section 784.046 (1)(c), F.S., provides "sexual violence" means any one incident of: 1. Sexual battery, as defined in ch. 794, F.S.; 2. A lewd or lascivious act, as defined in ch. 800, F.S., committed upon or in the presence of a person younger than 16 years of age; 3. Luring or enticing a child, as described in ch. 787, F.S.; 4. Sexual performance by a child, as described in ch. 827, F.S.; or 5. Any other forcible felony wherein a sexual act is committed or attempted, regardless of whether criminal charges based on the incident were filed, reduced, or dismissed by the state attorney.

the clerks of the court are authorized to request reimbursement, at a rate of \$40 per petition, from the Office of the State Court Administrator.

According to the Office of the State Court Administrator, judges asked to participate in a focus group respecting repeat violence petitions have reported wide spread abuse of that remedy by those who have other issues such as child support, but wish to avoid the filing fees collected for the “correct” remedy. Additionally, persons with “neighbors grievances” often use the petition process to harass or intimidate. Judges report a great majority of repeat violence cases are brought for frivolous reasons. A filing fee, which can be waived for the indigent under current law, would tend to discourage frivolous cases.

The bill authorizes the clerks for the court to assess a \$200 filing fee to anyone instituting an action for injunction against repeat violence. As provided in current law, the clerks of the court may not assess a filing fee for a petition against sexual violence or dating violence. The fee will be remitted to the State Court Revenue Trust Fund.

The bill further provides that upon a temporary or final judgment on an injunction for protection against sexual violence or dating violence, the respondent must pay a court cost of \$200, and in the case of repeat violence, the respondent must reimburse the petitioner their \$200 filing fee.

### **Counterpetition**

Under current law, there is no fee assessed for filing a counterpetition in county, trial, or appellate court. The bill amends ss. 28.241 and 34.041, F.S., to provide that a counterpetition in county, trial or appellate court is subject to filing fees.

### **Driver Improvement School**

Section 318.14(9), F.S., provides when a person elects to attend driver improvement school they are allowed an 18 percent reduction in civil penalties. Section 318.15, F.S., currently provides that a person who elects to attend driver improvement school and has paid the appropriate civil penalties, but fails to attend the driver improvement school within the time specified by the court, is deemed to have admitted the infraction and is adjudicated guilty. In such a case, the person must repay the clerk the 18 percent reduction as it existed February 1, 2009, and must pay an \$18 processing fee. Current law is not clear that the clerks of the court can collect the processing fee on cases that originate after February 1, 2009.

The bill authorizes the clerks of the court to charge a processing fee of \$18 on cases that originate on or after February 1, 2009. The bill also clarifies that persons who fail to attend or complete a driver improvement school must repay the clerk the 18 percent reduction and the \$18 processing fee.

#### **B. SECTION DIRECTORY:**

Section 1. Amends s. 28.2401, F.S., relating to probate filing fees.

Section 2. Amends s. 28.241, F.S., relating to filing fees.

Section 3. Amends s. 34.041, F.S., relating to filing fees.

Section 4. Amends s. 318.15, F.S., relating to driver improvement school.

Section 5. Amends s. 784.046, F.S., relating to repeat violence filing fee.

Section 6. Provides rulemaking authority to the Supreme Court.

Section 7. Declares this act fulfills an important state interest.

Section 8. Provides the bill will take effect June 1, 2009 unless expressly provided otherwise.

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<sup>3</sup> Section 784.046 (1)(d), F.S., provides “dating violence” means violence between individuals who have or have had a continuing and significant relationship of a romantic or intimate nature. The existence of such a relationship shall be determined based on the consideration of the following factors: 1. A dating relationship must have existed within the past 6 months; 2. The nature of the relationship must have been characterized by the expectation of affection or sexual involvement between the parties; and 3. The frequency and type of interaction between the persons involved in the relationship must have included that the persons have been involved over time and on a continuous basis during the course of the relationship. The term does not include violence in a casual acquaintanceship or violence between individuals who only have engaged in ordinary fraternization in a business or social context.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The increase in the probate filing fees are expected to increase revenues to the State Courts Revenue Trust Fund by approximately \$22 million and increase the General Revenue Fund by \$1.7 million in FY 2009-10.

The increase in the repeat violence filing fee is expected to increase revenues to the State Courts Revenue Trust Fund by approximately \$2.3 million and increase the General Revenue Fund by \$200,000 in FY 2009-10.

#### 2. Expenditures:

None.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

None.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Person seeking formal administration, guardianship, ancillary, curatorship, or conservatorship proceedings for estates valued over \$75,000 will pay increased filing fees.

Persons seeking to institute an action for injunction against repeat violence will have to pay a \$200 filing fee, however upon temporary or final judgment on an injunction for protection against the respondent must reimburse the petitioner their \$200 filing fee. The respondent, upon a temporary or final judgment on an injunction for protection against sexual violence or dating violence, must pay a court cost of \$200, and in the case of repeat violence, the respondent must reimburse the petitioner their \$200 filing fee.

### D. FISCAL COMMENTS:

The bill conforms Florida Statutes to the proposed House of Representatives FY 2009-10 General Appropriations Act by increasing trust fund revenues and allowing a recurring fund shift to offset General Revenue reductions of \$24.3 million.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

The bill authorizes the Supreme Court to modify judicial rules associated with filing fees to implement the changes provided in this bill.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**