

SUBJECT: Allowing clerks to postpone filing court documents until a fee is paid

COMMITTEE: Judicial Affairs — favorable, without amendment

VOTE: 5 ayes — Thompson, Clark, Crabb, Luna, Shields

0 nays

4 absent — Hartnett, Garcia, Solis, Zbranek

WITNESSES: For — Charles Bacarisse, Harris County District Clerk; Sandra Hachem, Harris County Clerk

Against — None

BACKGROUND : District and county clerks are allowed to accept documents and papers for filing before a fee is paid. A fee is only paid after the clerk presents the party filing the document with an itemized bill. This bill may be prepared after the papers or documents are filed.

The Texas Supreme Court, in *Jamar v. Patterson*, 868 S.W2d 318 (Tex. 1993), held that when a document is filed with a clerk but payment is not tendered, the document is considered “*conditionally filed*.” Such conditional filing is considered a filing for purposes of the statute of limitations or any required time period.

DIGEST: HB 2922 would require district and county clerks to promptly file all papers and documents tendered to the clerk for filing when the required fees are paid to the clerk’s office. If a fee were not paid as required, the clerk would not be authorized or required to file or record any paper or document. A clerk would still be required to file or record documents without a fee from a party who was exempt from payment by law or was unable to pay and provided the appropriate affidavit.

District and county clerks would also be required to promptly produce a bill detailing the required fees to any requesting party responsible for paying the fee.

HB 2922 would take effect on September 1, 1997.

SUPPORTERS
SAY:

District and county clerks have been placed in limbo by the Supreme Court's decision in the *Jamar* case; HB 2917 would clear up any confusion and make the law consistent for all district and county clerks. Current law requires clerks to bill for filing but also requires them to conditionally file documents without receiving payment.

Sophisticated parties will often file documents without payment knowing that it is more trouble for the clerk's office to track down a \$10 fee than to simply ignore it. In many cases, documents are filed merely to toll the statute of limitations or to increase leverage in a settlement negotiation. It does not matter to the party who files the document if it is eventually thrown out for failure to pay the filing fee because by that time, the need for the filing will have passed. The taxpayers of the county must then pay the administrative costs associated with the filing of court documents when a filing fee is never collected.

HB 2922 would return the law to the way it was intended — requiring payment of filing fees at the time documents were filed. This procedure produces swift administration of justice without creating additional administrative burdens on clerks to track down and collect delinquent fees. It also would help to avoid any future litigation over whether documents filed but not paid for were considered filed.

HB 2922 would make application of the law uniform. In many counties clerks have refused to file documents until the filing fee is paid. This refusal in Harris County led to the decision in the *Jamar* case. While Harris County district and county clerks now file all documents, some clerks in other counties still refuse to file documents until a fee is tendered.

HB 2922 also contains protections for those who cannot afford to pay filing fees, allowing them to file documents without having to pay the fees. The bill would not affect legal services for indigents or anyone else for whom a fee is waived by law.

OPPONENTS
SAY:

If HB 2922 were interpreted to prevent the filing of a necessary legal documents, it could force the end of a claimant's case for simply not paying a fee. The court in *Jamar* stated that it was the court's "policy to construe rules reasonably but liberally, when possible, so that the right to appeal is not lost by creating a requirement not absolutely necessary . . ." (*Jamar v. Patterson*, 868 S.W.2d at 319). In this case the Legislature must weigh whether it is more necessary to collect a fee than to possibly deny someone the right to file their case.