

1 A bill to be entitled
2 An act relating to child support enforcement; amending
3 s. 61.13, F.S.; providing that in Title IV-D cases an
4 affidavit seeking to require payments be made through
5 the State Disbursement Unit need not allege a default
6 in support payments and default is not required;
7 amending s. 61.13016, F.S.; providing that a child
8 support obligor may avoid the suspension of his or her
9 driver license and motor vehicle registration by
10 beginning to pay his or her obligation by income
11 deduction within a specified period; authorizing
12 rather than requiring the Title IV-D agency, or the
13 depository or clerk of the court, to request the
14 suspension of the obligor's driver license and motor
15 vehicle registration if a delinquent obligor fails to
16 take a specified action within a certain period after
17 notice of default; amending s. 322.058, F.S.;;
18 providing that a child support obligor may avoid the
19 suspension of his or her driver license and motor
20 vehicle registration by beginning to pay his or her
21 obligation by income deduction within a specified
22 period; amending s. 409.256, F.S.; authorizing a
23 child's caregiver, in addition to a child's mother, to
24 make an affidavit or declaration that the child's
25 putative father is or may be the child's biological
26 father; amending s. 409.2563, F.S.; revising the time
27 period in which a parent from whom support is sought
28 may request an informal discussion of a proposed

HB 935

2012

29 administrative support order; amending s. 409.25656,
30 F.S.; providing that certain notices may be sent by
31 regular rather than certified or registered mail;
32 providing that a garnishee may consent to receive
33 certain notices by secure e-mail or fax; requiring
34 establishment of an automated method for the Chief
35 Financial Officer to periodically provide the
36 Department of Revenue an electronic file of
37 individuals to whom the state pays money for goods or
38 services or who lease real property to the state;
39 requiring garnishment of such payments for past due or
40 overdue support; deleting provisions requiring the
41 Department of Revenue to provide certain information
42 to the Chief Financial Officer for such purpose;
43 amending s. 409.25658, F.S.; providing that certain
44 notices may be sent by regular rather than certified
45 mail; revising provisions concerning use of unclaimed
46 property for collection of past due support; amending
47 s. 409.2575, F.S.; revising language concerning who
48 may cause certain liens to be placed for unpaid and
49 delinquent support; authorizing liens on a claim,
50 settlement, or judgment that may result in payment to
51 the obligor; providing for notice to the obligor;
52 providing requirements for such notice; providing
53 effective dates.

54
55 Be It Enacted by the Legislature of the State of Florida:
56

HB 935

2012

57 Section 1. Paragraph (d) of subsection (1) of section
58 61.13, Florida Statutes, is amended to read:

59 61.13 Support of children; parenting and time-sharing;
60 powers of court.—

61 (1)

62 (d)1. All child support orders shall provide the full name
63 and date of birth of each minor child who is the subject of the
64 child support order.

65 2. If both parties request and the court finds that it is
66 in the best interest of the child, support payments need not be
67 subject to immediate income deduction. Support orders that are
68 not subject to immediate income deduction may be directed
69 through the depository under s. 61.181 or made payable directly
70 to the obligee. Payments made by immediate income deduction
71 shall be made to the State Disbursement Unit. The court shall
72 provide a copy of the order to the depository.

73 3. For support orders payable directly to the obligee, any
74 party, or the department in a IV-D case, may subsequently file
75 an affidavit with the depository alleging a default in payment
76 of child support and stating that the party wishes to require
77 that payments be made through the depository. For IV-D cases,
78 the affidavit need not allege a default in support payments and
79 default is not required. The party shall provide copies of the
80 affidavit to the court and to each other party. Fifteen days
81 after receipt of the affidavit, the depository shall notify all
82 parties that future payments shall be paid through the
83 depository, except that payments in Title IV-D cases and income
84 deduction payments shall be made to the State Disbursement Unit.

HB 935

2012

85 Section 2. Subsection (1), paragraph (a) of subsection
86 (2), and subsection (3) of section 61.13016, Florida Statutes,
87 are amended to read:

88 61.13016 Suspension of driver ~~driver's~~ licenses and motor
89 vehicle registrations.—

90 (1) The driver ~~driver's~~ license and motor vehicle
91 registration of a support obligor who is delinquent in payment
92 or who has failed to comply with subpoenas or a similar order to
93 appear or show cause relating to paternity or support
94 proceedings may be suspended. When an obligor is 15 days
95 delinquent making a payment in support or failure to comply with
96 a subpoena, order to appear, order to show cause, or similar
97 order in IV-D cases, the Title IV-D agency may provide notice to
98 the obligor of the delinquency or failure to comply with a
99 subpoena, order to appear, order to show cause, or similar order
100 and the intent to suspend by regular United States mail that is
101 posted to the obligor's last address of record with the
102 Department of Highway Safety and Motor Vehicles. When an obligor
103 is 15 days delinquent in making a payment in support in non-IV-D
104 cases, and upon the request of the obligee, the depository or
105 the clerk of the court must provide notice to the obligor of the
106 delinquency and the intent to suspend by regular United States
107 mail that is posted to the obligor's last address of record with
108 the Department of Highway Safety and Motor Vehicles. In either
109 case, the notice must state:

110 (a) The terms of the order creating the support
111 obligation;

112 (b) The period of the delinquency and the total amount of

113 the delinquency as of the date of the notice or describe the
 114 subpoena, order to appear, order to show cause, or other similar
 115 order that ~~which~~ has not been complied with;

116 (c) That notification may ~~will~~ be given to the Department
 117 of Highway Safety and Motor Vehicles to suspend the obligor's
 118 driver ~~driver's~~ license and motor vehicle registration unless,
 119 within 20 days after the date the notice is mailed, the obligor:

120 1.a. Pays the delinquency in full and any other costs and
 121 fees accrued between the date of the notice and the date the
 122 delinquency is paid;

123 b. Enters into a written agreement for payment with the
 124 obligee in non-IV-D cases or with the Title IV-D agency in IV-D
 125 cases; or in IV-D cases, complies with a subpoena or order to
 126 appear, order to show cause, or a similar order; ~~or~~

127 c. Files a petition with the circuit court to contest the
 128 delinquency action; or ~~and~~

129 d. Begins paying the delinquency by income deduction; and

130 2. Pays any applicable delinquency fees.

131
 132 If the obligor in non-IV-D cases enters into a written agreement
 133 for payment before the expiration of the 20-day period, the
 134 obligor must provide a copy of the signed written agreement to
 135 the depository or the clerk of the court.

136 (2) (a) Upon petition filed by the obligor in the circuit
 137 court within 20 days after the mailing date of the notice, the
 138 court may, in its discretion, direct the department to issue a
 139 license for driving privileges restricted to business purposes
 140 only, as defined by s. 322.271, if the person is otherwise

141 | qualified for such a license. As a condition for the court to
 142 | exercise its discretion under this subsection, the obligor must
 143 | agree to a schedule of payment on any child support arrearages
 144 | and to maintain current child support obligations. If the
 145 | obligor fails to comply with the schedule of payment, the court
 146 | shall direct the Department of Highway Safety and Motor Vehicles
 147 | to suspend the obligor's driver ~~driver's~~ license.

148 | (3) If the obligor does not, within 20 days after the
 149 | mailing date on the notice, pay the delinquency;~~;~~ enter into a
 150 | written payment agreement;~~;~~ comply with the subpoena, order to
 151 | appear, order to show cause, or other similar order; begin
 152 | paying the delinquency by income deduction;~~;~~ or file a motion to
 153 | contest, the Title IV-D agency in IV-D cases, or the depository
 154 | or clerk of the court in non-IV-D cases, may ~~shall~~ file the
 155 | notice with the Department of Highway Safety and Motor Vehicles
 156 | and request the suspension of the obligor's driver ~~driver's~~
 157 | license and motor vehicle registration in accordance with s.
 158 | 322.058.

159 | Section 3. Subsections (1) and (2) of section 322.058,
 160 | Florida Statutes, are amended to read:

161 | 322.058 Suspension of driving privileges due to support
 162 | delinquency; reinstatement.—

163 | (1) When the department receives notice from the Title IV-
 164 | D agency or depository or the clerk of the court that any person
 165 | licensed to operate a motor vehicle in the State of Florida
 166 | under the provisions of this chapter has a delinquent support
 167 | obligation or has failed to comply with a subpoena, order to
 168 | appear, order to show cause, or similar order, the department

HB 935

2012

169 shall suspend the driver ~~driver's~~ license of the person named in
 170 the notice and the registration of all motor vehicles owned by
 171 that person.

172 (2) The department must reinstate the driving privilege
 173 and allow registration of a motor vehicle when the Title IV-D
 174 agency in IV-D cases or the depository or the clerk of the court
 175 in non-IV-D cases provides to the department an affidavit
 176 stating that:

177 (a) The person has paid the delinquency;

178 (b) The person has reached a written agreement for payment
 179 with the Title IV-D agency or the obligee in non-IV-D cases;

180 (c) A court has entered an order granting relief to the
 181 obligor ordering the reinstatement of the license and motor
 182 vehicle registration; ~~or~~

183 (d) The person has complied with the subpoena, order to
 184 appear, order to show cause, or similar order; or

185 (e) The obligor is paying the delinquency by income
 186 deduction.

187 Section 4. Effective July 1, 2012, paragraph (a) of
 188 subsection (2), paragraph (c) of subsection (4), and subsection
 189 (7) of section 409.256, Florida Statutes, are amended to read:

190 409.256 Administrative proceeding to establish paternity
 191 or paternity and child support; order to appear for genetic
 192 testing.—

193 (2) JURISDICTION; LOCATION OF HEARINGS; RIGHT OF ACCESS TO
 194 THE COURTS.—

195 (a) The department may commence a paternity proceeding or
 196 a paternity and child support proceeding as provided in

197 subsection (4) if:

198 1. The child's paternity has not been established.

199 2. No one is named as the father on the child's birth
 200 certificate or the person named as the father is the putative
 201 father named in an affidavit or a written declaration as
 202 provided in subparagraph 5.

203 3. The child's mother was unmarried when the child was
 204 conceived and born.

205 4. The department is providing services under Title IV-D.

206 5. The child's mother or caregiver or a putative father
 207 has stated in an affidavit, or in a written declaration as
 208 provided in s. 92.525(2), that the putative father is or may be
 209 the child's biological father. The affidavit or written
 210 declaration must set forth the factual basis for the allegation
 211 of paternity as provided in s. 742.12(2).

212 (4) NOTICE OF PROCEEDING TO ESTABLISH PATERNITY OR
 213 PATERNITY AND CHILD SUPPORT; ORDER TO APPEAR FOR GENETIC
 214 TESTING; MANNER OF SERVICE; CONTENTS.—The Department of Revenue
 215 shall commence a proceeding to determine paternity, or a
 216 proceeding to determine both paternity and child support, by
 217 serving the respondent with a notice as provided in this
 218 section. An order to appear for genetic testing may be served at
 219 the same time as a notice of the proceeding or may be served
 220 separately. A copy of the affidavit or written declaration upon
 221 which the proceeding is based shall be provided to the
 222 respondent when notice is served. A notice or order to appear
 223 for genetic testing shall be served by certified mail,
 224 restricted delivery, return receipt requested, or in accordance

HB 935

2012

225 with the requirements for service of process in a civil action.
226 Service by certified mail is completed when the certified mail
227 is received or refused by the addressee or by an authorized
228 agent as designated by the addressee in writing. If a person
229 other than the addressee signs the return receipt, the
230 department shall attempt to reach the addressee by telephone to
231 confirm whether the notice was received, and the department
232 shall document any telephonic communications. If someone other
233 than the addressee signs the return receipt, the addressee does
234 not respond to the notice, and the department is unable to
235 confirm that the addressee has received the notice, service is
236 not completed and the department shall attempt to have the
237 addressee served personally. For purposes of this section, an
238 employee or an authorized agent of the department may serve the
239 notice or order to appear for genetic testing and execute an
240 affidavit of service. The department may serve an order to
241 appear for genetic testing on a caregiver. The department shall
242 provide a copy of the notice or order to appear by regular mail
243 to the mother and caregiver, if they are not respondents.

244 (c) The order to appear for genetic testing shall inform
245 the person ordered to appear:

246 1. That the department has commenced an administrative
247 proceeding to establish whether the putative father is the
248 biological father of the child.

249 2. The name and date of birth of the child and the name of
250 the child's mother.

251 3. That the putative father has been named in an affidavit
252 or written declaration that states the putative father is or may

253 be the child's biological father.

254 4. The date, time, and place that the person ordered to
255 appear must appear to provide a sample for genetic testing.

256 5. That if the person has custody of the child whose
257 paternity is the subject of the proceeding, the person must
258 submit the child for genetic testing.

259 6. That when the samples are provided, the person ordered
260 to appear shall verify his or her identity and the identity of
261 the child, if applicable, by presenting a form of identification
262 as prescribed by s. 117.05(5)(b)2. which bears the photograph of
263 the person who is providing the sample or other form of
264 verification approved by the department.

265 7. That if the person ordered to appear submits to genetic
266 testing, the department shall pay the cost of the genetic
267 testing and shall provide the person ordered to appear with a
268 copy of any test results obtained.

269 8. That if the person ordered to appear does not appear as
270 ordered or refuses to submit to genetic testing without good
271 cause, the department may take one or more of the following
272 actions:

273 a. Commence proceedings to suspend the driver ~~driver's~~
274 license and motor vehicle registration of the person ordered to
275 appear, as provided in s. 61.13016;

276 b. Impose an administrative fine against the person
277 ordered to appear in the amount of \$500; or

278 c. File a petition in circuit court to establish paternity
279 and obtain a support order for the child and an order for costs
280 against the person ordered to appear, including costs for

281 genetic testing.

282 9. That the person ordered to appear may contest the order
 283 by filing a written request for informal review within 15 days
 284 after the date of service of the order, with further rights to
 285 an administrative hearing following the informal review.

286 (7) FAILURE OR REFUSAL TO SUBMIT TO GENETIC TESTING.—If a
 287 person who is served with an order to appear for genetic testing
 288 fails to appear without good cause or refuses to submit to
 289 testing without good cause, the department may take one or more
 290 of the following actions:

291 (a) Commence a proceeding to suspend the driver ~~driver's~~
 292 license and motor vehicle registration of the person ordered to
 293 appear, as provided in s. 61.13016;

294 (b) Impose an administrative fine against the person
 295 ordered to appear in the amount of \$500; or

296 (c) File a petition in circuit court to establish
 297 paternity, obtain a support order for the child, and seek
 298 reimbursement from the person ordered to appear for the full
 299 cost of genetic testing incurred by the department.

300

301 As provided in s. 322.058(2), a suspended driver ~~driver's~~
 302 license and motor vehicle registration may be reinstated when
 303 the person ordered to appear complies with the order to appear
 304 for genetic testing. The department may collect an
 305 administrative fine imposed under this subsection by using civil
 306 remedies or other statutory means available to the department
 307 for collecting support.

308 Section 5. Effective July 1, 2012, paragraph (c) of

309 subsection (5) of section 409.2563, Florida Statutes, is amended
 310 to read:

311 409.2563 Administrative establishment of child support
 312 obligations.—

313 (5) PROPOSED ADMINISTRATIVE SUPPORT ORDER.—

314 (c) The department shall provide a notice of rights with
 315 the proposed administrative support order, which notice must
 316 inform the parent from whom support is being sought that:

317 1. The parent from whom support is being sought may,
 318 within 20 days after the date of mailing or other service of the
 319 proposed administrative support order, request a hearing by
 320 filing a written request for hearing in a form and manner
 321 specified by the department;

322 2. If the parent from whom support is being sought files a
 323 timely request for a hearing, the case shall be transferred to
 324 the Division of Administrative Hearings, which shall conduct
 325 further proceedings and may enter an administrative support
 326 order;

327 3. A parent from whom support is being sought who fails to
 328 file a timely request for a hearing shall be deemed to have
 329 waived the right to a hearing, and the department may render an
 330 administrative support order pursuant to paragraph (7) (b);

331 4. The parent from whom support is being sought may
 332 consent in writing to entry of an administrative support order
 333 without a hearing;

334 5. The parent from whom support is being sought may,
 335 within 15 ~~10~~ days after the date of mailing or other service of
 336 the proposed administrative support order, request to informally

337 discuss the proposed administrative support order by filing a
 338 written request with the department, ~~contact a department~~
 339 ~~representative,~~ at the address ~~or telephone number~~ specified in
 340 the notice, ~~to informally discuss the proposed administrative~~
 341 ~~support order~~ and, if informal discussions are requested timely,
 342 the time for requesting a hearing will be extended until 10 days
 343 after the department notifies the parent that the informal
 344 discussions have been concluded; and

345 6. If an administrative support order that establishes a
 346 parent's support obligation is rendered, whether after a hearing
 347 or without a hearing, the department may enforce the
 348 administrative support order by any lawful means.

349 Section 6. Subsections (1), (3), and (4), paragraph (b) of
 350 subsection (7), and subsection (10) of section 409.25656,
 351 Florida Statutes, are amended to read:

352 409.25656 Garnishment.—

353 (1) If a person has a support obligation which is subject
 354 to enforcement by the department as the state Title IV-D
 355 program, the executive director or his or her designee may give
 356 notice of past due and/or overdue support by regular ~~registered~~
 357 mail to all persons who have in their possession or under their
 358 control any credits or personal property, including wages,
 359 belonging to the support obligor, or owing any debts to the
 360 support obligor at the time of receipt by them of such notice.
 361 Thereafter, any person who has been notified may not transfer or
 362 make any other disposition, up to the amount provided for in the
 363 notice, of such credits, other personal property, or debts until
 364 the executive director or his or her designee consents to a

HB 935

2012

365 transfer or disposition, or until 60 days after the receipt of
366 such notice. If the obligor contests the intended levy in the
367 circuit court or under chapter 120, the notice under this
368 section shall remain in effect until final disposition of that
369 circuit court or chapter 120 action. Any financial institution
370 receiving such notice will maintain a right of setoff for any
371 transaction involving a debit card occurring on or before the
372 date of receipt of such notice.

373 (3) During the last 30 days of the 60-day period set forth
374 in subsection (1), the executive director or his or her designee
375 may levy upon such credits, personal property, or debts. The
376 levy must be accomplished by delivery of a notice of levy by
377 regular ~~registered~~ mail, upon receipt of which the person
378 possessing the credits, other personal property, or debts shall
379 transfer them to the department or pay to the department the
380 amount owed by the obligor. If the department levies upon
381 securities and the value of the securities is less than the
382 total amount of past due or overdue support, the person who
383 possesses or controls the securities shall liquidate the
384 securities in a commercially reasonable manner. After
385 liquidation, the person shall transfer to the department the
386 proceeds, less any applicable commissions or fees, or both,
387 which are charged in the normal course of business. If the value
388 of the securities exceeds the total amount of past due or
389 overdue support, the obligor may, within 7 days after receipt of
390 the department's notice of levy, instruct the person who
391 possesses or controls the securities which securities are to be
392 sold to satisfy the obligation for past due or overdue support.

HB 935

2012

393 If the obligor does not provide instructions for liquidation,
394 the person who possesses or controls the securities shall
395 liquidate the securities in a commercially reasonable manner in
396 an amount sufficient to cover the obligation for past due or
397 overdue support and any applicable commissions or fees, or both,
398 which are charged in the normal course of business, beginning
399 with the securities purchased most recently. After liquidation,
400 the person who possesses or controls the securities shall
401 transfer to the department the total amount of past due or
402 overdue support.

403 (4) A notice that is delivered under this section is
404 effective at the time of delivery against all credits, other
405 personal property, or debts of the obligor which are not at the
406 time of such notice subject to an attachment, garnishment, or
407 execution issued through a judicial process. Upon the
408 garnishee's written consent, the department may send notices to
409 the garnishee by secure e-mail or fax.

410 (7)

411 (b) Not less than 30 days before the day of the levy, the
412 notice of intent to levy required under paragraph (a) must be
413 given in person or sent by regular ~~certified or registered~~ mail
414 to the person's last known address.

415 (10) The Chief Financial Officer shall work cooperatively
416 with the department to establish an automated method for
417 periodically disclosing to the department an electronic file of
418 individuals to whom the state pays money for goods or services
419 or who lease real property to the state. The department shall
420 use the data provided to identify individuals who owe past due

421 or overdue support and may garnish payments owed to such
 422 individuals by the state as provided in this section ~~The~~
 423 ~~department shall provide notice to the Chief Financial Officer,~~
 424 ~~in electronic or other form specified by the Chief Financial~~
 425 ~~Officer, listing the obligors for whom warrants are outstanding.~~
 426 ~~Pursuant to subsection (1), the Chief Financial Officer shall,~~
 427 ~~upon notice from the department, withhold all payments to any~~
 428 ~~obligor who provides commodities or services to the state,~~
 429 ~~leases real property to the state, or constructs a public~~
 430 ~~building or public work for the state. The department may levy~~
 431 ~~upon the withheld payments in accordance with subsection (3).~~
 432 Section 215.422 does not apply from the date the notice is filed
 433 with the Chief Financial Officer until the date the department
 434 notifies the Chief Financial Officer of its consent to make
 435 payment to the person or 60 days after receipt of the
 436 department's notice in accordance with subsection (1), whichever
 437 occurs earlier.

438 Section 7. Subsections (1) and (4) of section 409.25658,
 439 Florida Statutes, are amended to read:

440 409.25658 Use of unclaimed property for past due support.—

441 (1) In a joint effort to facilitate the collection and
 442 payment of past due support, the Department of Revenue, in
 443 cooperation with the Department of Financial Services, shall
 444 identify persons owing support collected by the department
 445 ~~through a court~~ who are presumed to have unclaimed property held
 446 by the Department of Financial Services.

447 (4) Before ~~Prior to~~ paying an obligor's approved claim,
 448 the Department of Financial Services shall notify the department

HB 935

2012

449 that ~~the such~~ claim has been approved. Upon confirmation that
 450 the Department of Financial Services has approved the claim, the
 451 department shall immediately send a notice by regular ~~certified~~
 452 mail to the obligor at the address provided by the obligor to
 453 the Department of Financial Services, with a copy to the
 454 Department of Financial Services, advising the obligor of the
 455 department's intent to intercept the approved claim up to the
 456 amount of the past due support, and informing the obligor of the
 457 obligor's right to request a hearing under chapter 120. The
 458 Department of Financial Services shall retain custody of the
 459 property until a final order has been entered and any appeals
 460 thereon have been concluded, or, if the intercept is
 461 uncontested, until notified by the department. If the obligor
 462 fails to request a hearing, the department shall notify ~~enter a~~
 463 ~~final order instructing~~ the Department of Financial Services,
 464 electronically or in writing, to transfer to the department the
 465 property in the amount stated in the notice or electronic file
 466 ~~final order.~~ Upon ~~such~~ transfer, the Department of Financial
 467 Services shall be released from further liability related to the
 468 transferred property.

469 Section 8. Section 409.2575, Florida Statutes, is amended
 470 to read:

471 409.2575 Administrative liens ~~on motor vehicles and~~
 472 ~~vessels.~~

473 (1) The department ~~director of the state IV-D program, or~~
 474 ~~the director's designee,~~ may cause a lien for unpaid and
 475 delinquent support to be placed upon motor vehicles, as defined
 476 in chapter 320, ~~and~~ upon vessels, as defined in chapter 327,

HB 935

2012

477 that are registered in the name of an obligor who is delinquent
478 in support payments, ~~if the title to the property is held by a~~
479 ~~lienholder,~~ in the manner provided in chapter 319 or chapter
480 328, and upon a claim, settlement, or judgment that may result
481 in payment to the obligor. The department shall notify the
482 obligor of the intent to place a lien by regular mail sent to
483 the obligor's address of record on file with the depository. The
484 notice must state the amount of past due support owed and inform
485 the obligor of the right to contest the lien at an
486 administrative hearing as provided by chapter 120. Notice of
487 lien shall not be mailed unless the delinquency in support
488 exceeds \$600.

489 (2) If the first lienholder fails, neglects, or refuses to
490 forward the certificate of title to the appropriate department
491 as requested pursuant to s. 319.24 or s. 328.15, the department
492 ~~director of the IV-D program, or the director's designee,~~ may
493 apply to the circuit court for an order to enforce the
494 requirements of s. 319.24 or s. 328.15, whichever applies.

495 Section 9. Except as otherwise expressly provided in this
496 act, this act shall take effect upon becoming a law.