

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.)

BILL: SB 1638
 SPONSOR: Senator Lynn
 SUBJECT: Child Support
 DATE: March 9, 2003 REVISED: 03/19/03 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dowds</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/1 Amendment</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>AGG</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Bill 1638 sets forth the following provisions relating to child support:

- Amends a series of statutes related to the administrative establishment of child support to recognize administrative support orders, to revise the venue criteria, and to revise the process required for a noncustodial parent to request to proceed in circuit court;
- Deletes the requirement that the social security number of the children be provided on child support orders;
- Stipulates the process for establishing a depository account for interstate Title IV-D cases;
- Permits a voluntary acknowledgment of paternity that is witnessed and signed under penalty of perjury;
- Deletes the stipulation that an acknowledgment of paternity without an adjudicatory hearing creates a rebuttable presumption of paternity;
- Amends the processing of undistributable collections relative to the noncustodial parent's role in applying such collections to other support cases;
- Revises the conditions under which a mother receiving public assistance is deemed noncooperative relative to child support establishment;
- Amends the process for liquidating securities for the purpose of meeting a past due support obligation;
- Provides for the identification and collection of settlement payments on insurance liability claims to be applied to child support arrearages; and
- Permits the use of private process servers for the initial service of process.

This bill substantially amends sections 61.046, 61.13, 61.181, 120.80, 382.013, 382.016, 409.2557, 409.2558, 409.2561, 409.2563, 409.25656, 409.257, 409.2572, 409.259, 440.20, and

742.10 of the Florida Statutes. It also creates sections 409.25659 and 440.123 of the Florida Statutes.

II. Present Situation:

Administrative Establishment of Child Support Orders

The 2001 Legislature created a pilot program in Volusia County for the administrative establishment of child support (ch. 2001-158, L.O.F.). The next year, ch. 2002-239, L.O.F., provided for the statewide application and implementation of this administrative child support establishment process. This process, which is set forth in s. 409.2563, F.S., allows the Department of Revenue to establish child support orders administratively, in lieu of a judicial proceeding, for Title IV-D cases when paternity is not an issue. The statewide implementation of this process is being accomplished in phases with 13 counties commencing implementation in October of 2002, 11 counties in January 2003, 6 counties in March 2003, and the last 37 counties in May of 2003. As of January 2003, 306 notices initiating the administrative procedure had been issued, 38 sets of custodial and non custodial parents had responded to the initial notices with the financial affidavits, and 11 proposed orders mailed.

In implementing this administrative child support establishment process statewide, the following inconsistencies between the administrative process and current statutes or other required procedures, as well as potential problems, have been identified:

- The definitions in ch. 61, F.S., do not currently recognize the administrative support orders established by the department, only the orders issued by the courts. However, the provisions of ch. 61, F.S., govern aspects of the establishment of the administrative child support obligation and enforcement of these orders in addition to s. 409.2563, F.S. For example, the administrative support order is to stipulate the obligation of the non-custodial parent to provide for the health care needs of the child, but the specifics for Title IV-D orders as it relates to providing the required health care is provided for in s. 61.13(1)(b), F.S. In addition, the income deduction orders to be included in the administrative support orders are specifically delineated in s. 61.1301, F.S. Section 409.2561, F.S., regarding the child support obligation created when public assistance is received also only recognizes court orders, not the administrative orders.
- If a noncustodial parent chooses to proceed in circuit court for the determination of the child support obligation or to address issues concerning child custody or rights of parental contact, s. 409.2563(4)(m), F.S., requires that a waiver of service be sent to the noncustodial parent by regular mail and signed prior to the case being filed in circuit court. However, the rules of civil procedure require that the waiver of service be sent by certified mail and be signed after the case is filed in court. The language is also not clear that the department will not provide legal representation for issues that are not eligible for federal financial participation, i.e., issues concerning custody or rights of parental contact.
- The noncustodial parent may request a hearing of the administrative support order proposed by the department. Such hearings are conducted by the Division of Administrative Hearings and governed by ch. 120, F.S., and the Uniform Rules of Procedures, unless stipulated otherwise. Chapter 28-106.207 of the Uniform Rules of Procedures requires that the hearing be held where the non-governmental party affected

by the agency action is located, i.e., most likely interpreted as the noncustodial parent, or the most convenient place for most parties. The venue applied for Title IV-D cases handled through the court system is the judicial circuit where the custodial parent resides. Some of the noncustodial parents may request to use the court system for custody and determination of parental visitation, at which time the venue for the administrative process would differ from the court process.

Social Security Numbers of Court Orders

Section 61.13(10), F.S., requires each party of a child support order to provide his or her social security number, as well as the social security numbers of the minor children. These social security numbers are to be maintained by the depository in a separate attachment in the file and are only to be disclosed to the extent required for the administration of the Title IV-D program. However, s. 61.13(1)(d), F.S., specifically requires that the actual child support orders contain the name, date of birth, and social security number of each of the children who are subjects of the order and, thus, makes the social security number of the minor children public. This provision conflicts with the limited disclosure provided for children's social security numbers in s. 61.13(10), F.S., and treats the children's social security numbers differently from the adult's social security numbers.

The issue of the confidentiality of social security numbers was specifically addressed during the 2002 session with the passage of ch. 2002-256, L.O.F. With this legislation, the Legislature recognized that the social security number can be used to acquire sensitive personal, financial, medical, or familial information and to perpetrate fraud. Social security numbers held by an agency were made confidential and exempt from public disclosure, with certain exceptions.

Depository Accounts for Interstate Cases

Interstate child support cases often require the Florida State Disbursement Unit to accept and disburse payments under another state's order (s. 88.3191, F.S.). While many of these support orders from other states have been registered in a Florida court, registration is not required for the support enforcement agency to enforce the support order (s. 88.5071, F.S.).

Section 61.181, F.S., requires the clerk of the court to establish a depository for support payments and requires the depository to participate in the State Disbursement Unit which is responsible for the collection and disbursement of support payments. One function resulting from the registering of a case with the court is the directive to establish a depository account for the receipt and disbursement of the support payments. For interstate child support cases that are not registered with a Florida court, it is reported that there is not a clearly stipulated process for establishing the depository accounts which can delay processing the support payment.

Acknowledgement of Paternity

Section 742.10, F.S., provides for the methods by which paternity may be established for children born out of wedlock and includes determination and establishment of paternity through an adjudicatory hearing, the execution of a stipulation of paternity or an affidavit acknowledging paternity by both parties that is then filed with the clerk of the court, and the execution of a voluntary notarized acknowledgement of paternity by both parties. A voluntary acknowledgment

of paternity may be executed by both the mother and father at the time of birth [s. 382.013(2)(c), F.S.] for inclusion of the father's name on the birth certificate or at a later time to amend the birth certificate to add the father's name (s. 382.016, F.S.). Such acknowledgments of paternity are required to be notarized which has presented barriers to the establishment of paternity, especially at the time of birth. Specifically, it is reported that hospitals and other birth facilities do not always have a notary available at the time the parents are prepared to execute the acknowledgment of paternity and that the parents often do not have the required identification when a document is being notarized, resulting in missed opportunities to establish paternity.

The voluntary acknowledgment of paternity is recognized in s. 742.10, F.S., as constituting establishment of paternity for children born out of wedlock. However, s. 742.10, F.S., also provides that the voluntary acknowledgment of paternity creates a rebuttable presumption of paternity as defined by s. 90.304, F.S., if no adjudicatory proceeding was held. Section 90.304, F.S., provides that rebuttable presumptions are presumptions affecting the burden of proof. As such a presumption, evidence can be produced contradicting the presumption (in this case, the acknowledgment of paternity) which is given consideration in determining the validity of the presumption. Section 742.10, F.S., further provides that in the event an adjudicatory proceeding was not held, the signatory has the right to rescind the acknowledgment of paternity within 60 days. It appears this section may be providing contradictory directives as to the disputability of the voluntary acknowledgments of paternity.

Allocation of Undistributable Collections

Chapter 2001-158, L.O.F., created a framework for processing unidentifiable and undistributable collections in s. 409.2558, F.S. For undistributable collections, the department is directed to establish by rule a method for determining if a collection is undistributable to the final intended recipient. An order of priority for processing undistributable collections is delineated as follows: applying the payment to arrears on the custodial parent's case, applying the payment to any court ordered administrative costs associated with the custodial parent's case, applying the payment to another case with a different custodial parent with the noncustodial parent's permission, refunding the payment to the noncustodial parent, and, finally, if the noncustodial parent cannot be located, transferring the state share to General Revenue and crediting the federal share to the federal government. Based on the options for processing the undistributable funds, a noncustodial parent could be refunded the undistributable collection when child support in another case is owed by refusing to grant permission to apply the collection to the other case.

Public Assistance Recipient Cooperation

By accepting public assistance, recipients are creating an obligation for the assistance received to be reimbursed by the child support collected (s. 409.2561, F.S.). Individuals receiving public assistance are required in s. 409.2572, F.S., to cooperate with the Department of Revenue, including, but limited to, in identifying the father, establishing paternity, and obtaining support payments. Failure to cooperate as required by s. 409.2572, F.S., results in the recipient being deemed ineligible to receive the public assistance. Section 409.2572(2)(a), F.S., provides that if a mother identifies the possible fathers, asserts these are the only individuals who could be the fathers, and subsequent scientific tests determine that none of the identified fathers are in fact the father, the mother will be deemed noncooperative and will be ineligible to receive public

assistance until the father has been identified and scientific tests have not excluded him as the father.

This application of noncooperation has been found by both state and federal courts to be inconsistent with the definition of noncooperation in federal law (*B.K. v. Department of Health and Rehabilitative Services*, 537 So.2d 633, Fla. 1st DCA 1989; *Kelly v. Department of Health and Rehabilitative Services*, 596 So.2d 130, Fla. 1st DCA 1992; and *Thomas v. Rubin*, 926 F.2d 906, 9th Cir. 1991). A recipient's statement under oath affirming her lack of additional information about another possible father establishes cooperation (*Kelly v. Department of Health and Rehabilitative Services*, 596 So. 2d 130, Fla. 1st DCA 1992).

Liquidation of Securities Glitch

Section 409.25656, F.S., provides that when an individual has a support obligation that is subject to enforcement by the Department of Revenue as the state Title IV-D agency, the executive director or his designee may, after the required notice and within the specified time frame, levy upon any credit or personal property, including securities. Those entities in possession or control of such credits or personal property of the obligor are required to either transfer the credits or personal property to the department to be used to pay past due support or to pay to the department the amount owed to the obligor. Chapter 2002-173, L.O.F., amended s. 409.25656, F.S., to provide for a process and directive to security dealers for liquidating securities. The process created for those circumstances in which the value of the securities exceeds the amount of the past due child support, gives the noncustodial parent an opportunity to provide instructions as to which securities to sell. Without such instruction, the securities dealer is directed to liquidate the securities for the amount of the overdue support, less applicable commission and fees. However, as currently worded, the statutory language does not permit the full amount of both the overdue support and the applicable commission and fees to be liquidated for payment to the department and to the securities dealer.

Insurance Intercept

The authority provided to the department in s. 409.25656, F.S., to levy any credit or personal property for any past due child support owed by an obligor also applies to several other types of assets and funds, such as bank accounts, vehicles, and insurance claim payments. Mechanisms have been established to identify some of these assets and funds when owned by or being provided to an obligor owing past due child support and, in some instances, mechanisms have also been authorized for the transferring of identified funds to the department to be applied to the past due support. For example, ss. 409.25657 and 409.25658, F.S., provide mechanisms to enable financial institutions and the Department of Banking and Finance to identify obligors with past due child support and either provide the Department of Revenue with information on bank accounts of obligors with overdue amounts or to transfer unclaimed property owed by the obligor to the department. In addition, the ability of judges of compensation claims to consider the past due support when reviewing settlements of lump-sum payments for workers compensation claims is provided in s. 440.20(11)(d)1, F.S. However, current statute does not require insurers to make efforts to identify obligors with past-due support and remit claim payments to the department.

Other states, such as Rhode Island, New Jersey and Texas, have established insurance intercept programs which require or encourage insurers or their agents doing business in those states to cooperatively match data. Rhode Island reported \$518,565 in collections during the period of April 1999 to August 2001, with \$2 million in pending collections. Texas has collected over \$500,000 in collections since July 2002 and New Jersey has collected approximately \$22,000 since July 2003. Each of these states is also participating in the Child Support Lien Network which is a network of child support agencies operating collectively to secure insurance asset information and enforce the collection of past due support. The Child Support Lien Network has developed working arrangements with a number of insurance carriers to exchange data and match cases, which is used to identify obligors with past due support who have filed workers' compensation and personal injury lines of insurance.

Service of Process

When a noncustodial parent is located and the next appropriate action necessary to establish, modify, or enforce an order is to proceed in circuit court, a summons is issued to attempt service of process of the notice of court action. Section 409.257, F.S., requires that the Sheriff be used to serve the notice. If the Sheriff is unsuccessful, the subsequent summons issued can be sent to either the Sheriff or a private process server for service. There are case situations where requesting a private process server for the initial summons may be more effective. One such example is when the noncustodial parent resides in one county but works in another county. The Sheriff is limited to serving notices within the county, but a private process server could attempt service at both the residential and employer addresses.

III. Effect of Proposed Changes:

SB 1638 sets forth the following provisions relating to child support:

- Amends a series of statutes related to the administrative establishment of child support to recognize administrative support orders, to revise the venue criteria, and to revise the process required for a noncustodial parent to request to proceed in circuit court;
- Deletes the requirement that the social security number of the children be provided on child support orders;
- Stipulates the process for establishing a depository account for interstate Title IV-D cases;
- Permits a voluntary acknowledgment of paternity that is witnessed and signed under penalty of perjury;
- Deletes the stipulation that an acknowledgment of paternity without an adjudicatory hearing creates a rebuttable presumption of paternity;
- Amends the processing of undistributable collections relative to the noncustodial parent's role in applying such collections to other support cases;
- Revises the conditions under which a mother receiving public assistance is deemed noncooperative relative to child support establishment;
- Amends the process for liquidating securities for the purpose of meeting a past due support obligation;
- Provides for the identification and collection of settlement payments on insurance liability claims to be applied to child support arrearages; and

- Permits the use of private process servers for the initial service of process.

Administrative Establishment of Child Support Orders

The bill amends a series of statutes to address the inconsistencies identified as it relates to recognizing administrative support orders and potential problems in the process. First, the definition of “support order” in s. 61.046, F.S., is amended to reflect not only orders for support issued by the court but also orders issued by an administrative agency of competent jurisdiction. This definition is applicable throughout ch. 61, F.S., and will, therefore, recognize the administrative support order issued by the Department of Revenue, in addition to the orders issued by the courts. Second, references to court orders of support as it applies to the child support obligation when public assistance is paid in s. 409.2561, F.S., is revised to reflect support orders generically or the establishment of support obligation by either the court or the department as provided for in s. 409.2563, F.S. Third, s. 120.80, F.S., is amended to provide for specific criteria for establishing venue for hearings held by the Division of Administrative Hearings relating to proceedings for administrative support orders. Specifically, hearings held pursuant to s. 409.2563, F.S., are to be held in the judicial circuit where the person receiving the Title IV-D services (i.e., usually the custodial parent) resides or if this person does not live in Florida, the judicial circuit where the noncustodial parent lives. The hearing may be held in another location, if agreed to by the department and respondent. Finally, s. 409.263(4), F.S., that delineates the process required for a noncustodial parent to request to proceed in circuit court in lieu of the administrative process, is modified to clarify that the noncustodial parent may request to proceed in circuit court either to determine the support obligation or to address issues of custody or rights of parental contact; to require that the waiver of service be signed after the action is filed in circuit court; to remove the method of serving the waiver and, instead, provide that the referenced documents will be sent in accordance with the Rules of Civil Procedure; and to clarify that the department’s participation in hearings in circuit court are limited to issues that are reimbursable under Title IV-D of the Social Security Act.

Social Security Numbers of Court Orders

The requirement that social security numbers be provided for minor children on all child support orders is deleted from s. 61.13(1)(d), F.S. Pursuant to s. 61.13(10), F.S., the social security number will still be obtained but will be maintained as a separate document. This amendment would eliminate the conflict between s. 61.13(1)(d), F.S., and s. 61.13(10), F.S., and provide the same protection to the children’s social security numbers as is provided to the adult’s social security number.

Depository Accounts for Interstate Cases

The bill amends s. 61.181, F.S., to stipulate the process for establishing a depository account for the receipt and disbursement of interstate support payments for Title IV-D cases. The department is directed to request the depository to establish an account and provide a copy of the other state’s order with the request. The depository is directed to provide the account number to the department within 4 business days of receipt of the request.

Acknowledgement of Paternity

Sections 382.013, 382.016, and 742.10, F.S., are each amended to permit a voluntary acknowledgment of paternity that is witnessed and signed under penalty of perjury pursuant to s. 90.525.(2), F.S. With these amendments, a voluntary acknowledgment of paternity is no longer required to be notarized. Instead, a voluntary acknowledgment that is witnessed and signed under perjury is set forth as a form of acknowledgment that is accepted as a valid affidavit for adding the father's name to the birth certificate at the time birth, for amending the birth certificate after the birth to add the father's name, and for establishing paternity for children born out of wedlock. Section 742.10, F.S., is also amended to eliminate the stipulation that an acknowledgment of paternity without an adjudicatory hearing, creates a rebuttable presumption of paternity. The signator retains the ability to rescind the acknowledgment within 60 days.

Allocation of Undistributable Collections

The options available for processing undistributable collections in s. 409.2558, F.S., are amended to remove the requirement that the noncustodial parent's permission be obtained before applying the undistributable collection to another case where child support is owed. In lieu of obtaining permission, the noncustodial parent is to be provided notice of the impending intention to apply the collection to another case and of the noncustodial parent's right to contest the department's intended actions in court. In order to exert this right to contest, the noncustodial parent must file and serve a petition on the department within 20 days of the mailing date of the department's notice. The bill further provides that if there is more than one other child support case for which the noncustodial parent owes support, the undistributable amount is to be allocated based on the method stipulated in s. 61.1301(4)(c), F.S. Specifically, s. 61.1301(4)(c), F.S., provides that the percentage to be allocated to each family is determined by dividing each support obligation by the total of all support obligations.

Public Assistance Recipient Cooperation

Section 409.2572, F.S., is amended to remove the requirement that a mother is deemed noncooperative and ineligible for public assistance until a subsequent father is identified and confirmed through scientific testing to be the father if the possible fathers initially identified are determined not to be the fathers. The bill recognizes good faith efforts and provides that noncooperation is refusing, not failing, to identify the father. With these amendments, the mother will be deemed to be cooperative pending the outcome of the scientific testing of the subsequently named potential father or if she attests to the lack of information regarding the identity of the father of the child. This amendment will conform Florida Statute to federal law and federal and state appellate court case law.

Liquidation of Securities Glitch

Section 409.25656, F.S., is amended to allow for the securities which are to be used for the purpose of meeting an obligation of past due support to be liquidated in an amount that is sufficient to cover both the past due support and any applicable commissions and fees.

Insurance Intercept

Section 409.25659, F.S., is created to provide for the identification and collection of settlement payments on insurance liability claims to be applied to child support arrearages in Title IV-D cases when the unpaid support exceeds \$500. Specifically, the bill requires the department to periodically make information available to insurers, who are responsible for paying a claim on liability insurance, regarding obligors of Title IV-D cases who owe unpaid support exceeding \$500. Insurers subject to this section are entities that fall under one of the categories of insurers: insurers authorized to transact insurance in Florida who are engaged as indemnitors, surety, or contractors in the insurance or annuity business, pursuant to s. 624.03, F.S.; eligible surplus lines insurers as provided for in Part VIII of ch. 626, F.S.; joint underwriters or joint insurers subject to s. 627.311, F.S.; and insurance risk apportionment plans operating pursuant to s. 627.352, F.S. The information on child support obligors is to be provided by the department through either a secure website database or some other centralized source that will allow the insurer to identify claimants with past due child support. Insurers are required to use this database or other centralized source to inquire as to whether the claimant owes unpaid support not more than 30 days before the claim is paid. The department has 30 days to confirm that the claimant owes support and the amount, but the insurer is required to withhold the claim until notified by the department that unpaid support is not owed or otherwise authorized to release the withhold. If the department determines unpaid support is owed, a lien against the obligor's claim is applied in the form of a demand for payment, after which the insurer is prohibited from releasing or in any form transferring payment without the authorization of the department or by order of the court.

The department is required to notify the obligor of the right to contest the demand for payment which must be accomplished by filing a written request for a ch. 120, F.S., administrative hearing within 21 days of the mailing or delivery of the notice. If the obligor does not request an administrative hearing within the required time frames or the department prevails in a hearing requested, the department is directed to notify the insurer to send to the department the withheld payment, not to exceed the unpaid support amount owed. Excluded from the lien on the withholding are liens executed prior to the lien provided for by this section, previously incurred debts to health care providers, and attorney's fees to be paid from the insurance proceeds. Also excluded from the lien are funds to pay for the obligor's future medical expenses, if such expenses are due to a condition that resulted in the claim, in an amount not to exceed 15 percent of the total payment or \$5,000, whichever is less. The bill provides immunity from liability for insurers, their directors, agents, and employees, and any central reporting organization as it relates to the claimant or other affected parties. Insurers who do not comply with this section in the requirement to inquire, withhold, and remit payments are liable for the amount that should have been withheld or remitted, including any costs, interests and reasonable attorney's fees.

Section 440.123, F.S., is also created in the workers' compensation chapter of law to require workers compensation and employer liability insurers, as defined in s. 440.02(39), F.S., to access the database provided for in s. 409.25659, F.S., when operational, to inquire as to whether a claimant for weekly workers compensation owes unpaid support. If unpaid support is owed, the insurer is required to notify the department. These insurers are currently contacting the department regarding claimants but using a cumbersome manual process. The use of the website database will provide for a more expedient method of sharing this information. Section 440.20(11), F.S., is amended to require parties before a judge of compensation claims relative to

a workers compensation settlement to obtain a statement from the Department of Revenue regarding any support owed. For non-Title IV-D cases, a similar statement may be required by the judge of compensation claims from a local depository. The department is provided the authority to adopt rules to administer and enforce the provisions of this section and to implement the provisions added to ch. 440, F.S., pertaining to insurance interception in ss. 409.25659 and 409.2557, F.S.

Service of Process

Section 409.257, F.S., is amended to permit the use of other means of service of process as provided for by ch. 48, F.S., if determined by the department to be more effective. This amendment will allow for the use of a private process service with the initial service of process under certain circumstances.

The bill takes effect upon becoming law unless stipulated otherwise in the bill.

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 insurance intercept initiative established by this bill has the potential of collecting additional child support for custodial parents that would not have been previously paid. Based on sample data matches, the Child Support Lien Network estimates that 4 percent to 5 percent of the insurance settlements in the United States will be payable to obligors who owe past due child support. With an average intercept amount per child support case match of \$3,500, the network reports this can translate into a potential of \$1.8 million in intercepts annually for every 10,000 cases placed with the Child Support Lien Network, with which the Department of Revenue plans to participate.

C. **Government Sector Impact:**

The Department of Revenue reports that this bill will have minimal fiscal impact on the department.

VI. Technical Deficiencies:

In the identification of incurred costs that are not subject to the lien against the liability insurance claim, the identification of existing health care provider costs is not clearly stipulated.

VII. Related Issues:

None.

VIII. Amendments:

1 by Children and Families:

Clarifies that the written notices to health care providers which are not subject to the lien created in the insurance intercept provisions applies to the health care expenditures related to the claim.

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