

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1759 (PCB FFF 04-01) Child Support Enforcement
SPONSOR(S): Future of Florida's Families and Fiorentino
TIED BILLS: HB 1761 **IDEN./SIM. BILLS:** CS/SB 160

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Children's Services (Sub)	5 Y, 0 N	Preston	Liem
2) The Future of Florida's Families	12 Y, 0 N	Preston	Liem
3)			
4)			
5)			

SUMMARY ANALYSIS

HB 1759 represents the legislative package from the Department of Revenue's Child Support Enforcement Program and it includes the following provisions:

- Deletes the requirement that child support orders contain the social security numbers of the child who is the subject of the order;
- Provides for the continuation of an income deduction order without a reduction in the amount in Title IV-D cases after the last child emancipates if there is an arrearage, delinquency, or retroactive support due;
- Requires the depository to establish an account for interstate Title IV- D cases;
- Amends provisions related to the Child Support Enforcement Application and Program Revenue Trust Fund to reflect the current purpose, composition, and function of the trust fund;
- Permits a voluntary acknowledgment of paternity that is witnessed by two individuals and signed under penalty of perjury as a means of establishing paternity;
- Amends provisions related to undistributable collections to allow them to be applied to another valid support order with the same obligor;
- Amends provisions related to the administrative establishment of child support;
- Clarifies the process related to liquidating securities for the purpose of meeting a past due support obligation to allow for fees and commissions for the liquidation;
- Permits the use of private process servers for the initial service of process;
- Revises the conditions under which a mother receiving public assistance is deemed noncooperative relative to child support establishment;
- Expands the categories of business and professional licenses which are subject to denial or suspension due to past due support to include all licenses issued by a state or local government licensing authority; and
- Creates an insurance claim data exchange to provide for the identification of settlement payments on insurance liability claims which can then be applied to child support arrearages in Title IV-D cases.

The bill is not anticipated to have a fiscal impact.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1759.fff.doc
DATE: March 11, 2004

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 5. Empower families? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

Social Security Number on Support Orders

Federal welfare reform enacted in 1996 required the inclusion of the social security number of any individual who is subject to a divorce decree, support order, or paternity determination or acknowledgment in the records pertaining to the matter.¹ In 1997, the Florida Legislature enacted legislation providing for social security numbers to be placed in a number of specified documents. Disclosure of those numbers was limited to the administration of the child support enforcement program.² In 2002, legislation was enacted to provide that social security numbers held by an agency were to be confidential and exempt from public disclosure, with some exceptions.³

Current law requires that upon entry of a child support order, each party is to provide his or her social security number, as well as the social security numbers of the minor children, to be maintained by the depository in a separate attachment in the file, and to be disclosed only to the extent required for the administration of the child support enforcement program.⁴ Current law also requires that child support orders contain the social security number of each of the children who are subjects of the order.⁵ This serves to make the social security numbers of minor children public and creates statutory inconsistencies.

The bill amends §61.13, Florida Statutes, to remove the requirement that social security numbers of minor children be included in child support orders, thus eliminating the conflicting statutory provisions.

Child Support and Emancipation

When the last child who is subject to a child support order emancipates and the support obligation includes an amount to be paid toward the arrearage, the noncustodial parent's payment is lowered to the amount of the existing arrearage payment. In cases with income deduction orders, employers are directed to withhold an additional twenty percent or more of the monthly amount for the arrearage and other fees and costs owed.⁶ In practice, the amount of the arrearage is typically between ten to twenty percent of the monthly obligation. Because of the reduced payment, it may take a number of years to

¹ Personal Responsibility and Work Opportunity Reconciliation Act, Pub L. No. 104-193, 110 Stat. 2105 (1996).

² See Chapter 97-170, Laws of Florida.

³ See Chapter 2002-256, Laws of Florida.

⁴ See §61.13(10), Florida Statutes.

⁵ See §61.13(1)(d), Florida Statutes.

⁶ See §. 61.1301(1)(b), Florida Statutes.

pay off the arrearage. For Title IV-D cases, the Department of Revenue must seek judicial approval to increase the obligation to be applied to an arrearage.

The bill provides that in Title IV-D cases, when the current child support obligation is reduced or terminated due to the emancipation of a child and the obligor owes arrearages, retroactive support, delinquency, or costs, the obligor will be required to pay the support at the same rate that was effective prior to the emancipation until all arrearages, retroactive support, delinquency, and costs are paid in full or the order is modified. The bill also provides that the continuation of the pre-emancipation payment amount is a remedy for collection of unpaid support and applies to orders entered before, on, or after July 1, 2004.

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.⁷ 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.⁸ Currently there is no statutory provision for a depository to establish an account for cases being enforced in Florida when the case is not registered.

The bill amends §61.181, Florida Statutes, to require a depository to establish an account for the receipt and disbursement of child support payments in Title IV-D interstate cases that are not registered in Florida, whenever requested to do so by the department.

Child Support Enforcement Application and Program Revenue Trust Fund

Currently, Florida law specifies that the Child Support Enforcement Application and Program Revenue Trust Fund is to be used for the deposit of application fees of nonpublic assistance applicants for child support enforcement services and for fines imposed both for failure to comply with a subpoena for information necessary to establish, modify, or enforce a child support order pursuant to §409.2564, Florida Statutes, and for failure to respond to a written request for information on the employment compensation and benefits of an employee who has a child support obligation pursuant to §409.2578, Florida Statutes.⁹

The Department of Revenue reports that other types of program income is deposited into this trust fund which is not reflected in the statute. Further, current law does not provide for the disposition of the federal share of the program income, investment authority, the disposition of proceeds of investment activity, the disposition of unencumbered cash at the end of the fiscal year, or the purpose of the trust fund as is required by law for establishing a trust fund.¹⁰

The bill amends §61.1814, Florida Statutes, to provide for the current purpose, composition, and function of the Child Support Enforcement Application and Program Revenue Trust Fund.

Paternity Acknowledgment

Paternity may be established for children born out of wedlock in a number of ways, including through an adjudicatory hearing, a stipulation of paternity or an affidavit acknowledging paternity executed by both parties that is then filed with the clerk of the court, or an affidavit or notarized voluntary acknowledgement of paternity executed by both parties. A voluntary acknowledgment of paternity may be executed by both the mother and father at the time of birth for inclusion of the father's name on the

⁷ See §88.3191, Florida Statutes.

⁸ See §88.5071, Florida Statutes.

⁹ See §61.1814, Florida Statutes.

¹⁰ See §215.3207, Florida Statutes.

birth certificate or at a later time to amend the birth certificate to add the father's name.¹¹ 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 bill amends §§382.013, 382.016, and 742.10, Florida Statutes, to permit a voluntary acknowledgment of paternity that is witnessed by two individuals and signed under penalty of perjury pursuant to §90.525.(2), Florida Statutes. This will allow a voluntary acknowledgment that is witnessed by two individuals and signed under penalty of perjury to be used as a valid affidavit for adding the father's name to the birth certificate at the time of 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.

Allocation of Undistributable Collections

Current law provides a statutory framework for processing unidentifiable and undistributable collections. Undistributable collections, or collections that cannot be paid to the final intended recipient, are to be processed in the following order:

- applied to arrears on the custodial parent's case, then
- applied to any court ordered administrative costs associated with the custodial parent's case, then
- applied to another case with a different custodial parent with the noncustodial parent's permission, then
- refunded to the noncustodial parent, then
- if the noncustodial parent cannot be located, the state share is transferred to General Revenue and the federal share is credited to the federal government.¹²

This would allow an undistributable collection to be refunded to a noncustodial parent rather than being applied to another case in which the parent owes support.

The bill amends §409.2558, Florida Statutes, 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 30 days of the mailing of the notice. The bill also 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 §61.1301, Florida Statutes.

Administrative Establishment of Child Support Orders

The 2001 Legislature created a pilot program in Volusia County for the administrative establishment of child support.¹³ The following year, legislation provided for the statewide application and implementation of this administrative child support establishment process¹⁴ which allows the Department of Revenue to establish child support orders administratively, in lieu of a judicial

¹¹ See §§382.013 and 382.016, Florida Statutes.

¹² See §409.2558, Florida Statutes.

¹³ See Chapter 2001-158, Laws of Florida.

¹⁴ See Chapter 2002-239, Laws of Florida and §409.2563, Florida Statutes.

proceeding, for Title IV-D cases when paternity is not an issue. In implementing this administrative child support establishment process statewide, inconsistencies between the administrative process and current statutes or other required procedures, as well as potential problems, have been identified:

- Statutory definitions do not currently recognize the administrative support orders established by the department.¹⁵
- Administrative hearings initiated by the department are required by Uniform Rules of Procedures, to hold the hearing where the noncustodial parent resides, or the place most convenient place for all parties.
- 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, a waiver of service is to 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, including issues related to custody or rights of parental contact.¹⁶
- There is no statutory process for filing an initial notice or creating a depository account at the time an administrative establishment proceeding begins.

The bill amends §§61.046, 409.2561, 120.80, and 409.2563, Florida Statutes, to address those inconsistencies and problems.

Liquidation of Securities Glitch

Florida law currently provides for garnishment of personal property, including securities, for payment of child support obligations.¹⁷ However, the statutory language does not permit the full amount of both the overdue support and the applicable commissions and fees to be liquidated for payment to the department and to the securities dealer.

The bill amends §409.25656, Florida Statutes, 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.

Service of Process

Current law requires the department to have service of initial process and orders carried out by the sheriff. If the sheriff is unsuccessful, the subsequent summons issued can be sent to either the sheriff or a private process server for service.¹⁸ There are case situations where requesting a private process server for the initial summons may be more effective.

The bill would permit the use of other means of service of process, including a private process service, if determined by the department to be more effective.

Public Assistance Recipient Cooperation

The receipt of public assistance creates an obligation for the amount of assistance received to be reimbursed by child support collected.¹⁹ Individuals receiving public assistance are required to cooperate with the Department of Revenue to identify the father, establish paternity, and obtain support

¹⁵ See §61.046, Florida Statutes.

¹⁶ See §409.2563, Florida Statutes.

¹⁷ See §409.25656, Florida Statutes.

¹⁸ See §409.257, Florida Statutes.

¹⁹ See §409.2561, Florida Statutes.

payments. Failure to cooperate results in the recipient being deemed ineligible to receive the public assistance. Currently, if a mother identifies the possible fathers, asserts these are the only individuals who could be the father, and subsequent genetic 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 which provides that a recipient's statement under oath affirming her lack of additional information about another possible father establishes cooperation²⁰

The bill amends §409.2572, Florida Statutes 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 in cases where the putative 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 will serve to conform Florida Statute to federal law and federal and state appellate court case law. The section is also amended to replace the use of blood samples to confirm paternity with the current method of collecting DNA samples.

Business and Professional License Suspensions

One of the enforcement mechanisms currently provided to the Department of Revenue is the suspension or denial of certain statutorily prescribed business or professional licenses, registrations, or certificates. The department is allowed to petition the court for the denial or suspension of those licenses, registrations, or certificates of a noncustodial parent who is delinquent in the payment of child support or who fails to respond to an order relating to paternity or support proceedings. This enforcement mechanism is not available to the Department of Revenue until all other remedies have been exhausted.²¹ Federal law requires states to have procedures to withhold, suspend, or restrict any driver's, professional, occupational, recreational, or sporting license of individuals owing past due support.

The bill expands the categories of licenses for which the Department of Revenue has authority to seek denial or suspension to include all licenses issued by a state or local government licensing authority. The bill defines "license", "licensee" and "licensing agency". These definitions incorporate any license, permit, certificate, registration, franchise, or other form of written permission that authorizes an individual to engage in either an occupation, business, trade or profession, or in a recreational activity when issued by a licensing agency. A licensing agency includes any department, commission, agency, or other subdivision of a state or local government that issues licenses.

Insurance Claim Data Exchange

The statutory authority that the Department of Revenue has 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

²⁰ See 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.

²¹ See chapters 328, related to vessel registrations; 370 and 372, related to hunting and fishing licenses; 456, related to health professions and occupations; 559, related to motor vehicle repairer, travel agent, and business salesperson; and 1012, related to teacher certification.

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 transference of identified funds to the department to be applied to the past due support.²² However, current law does not require insurers to identify obligors with past-due support and remit claim payments to the department.

The Child Support Lien Network (CSLN) 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 claims with workers' compensation and personal injury lines of insurance. While Florida has participated in this network since July 2002, it is reported that a major portion of the insurance carriers in Florida do not have arrangements with CSLN to share data from which to match cases.

The bill creates §409.25659, Florida Statutes, to provide for the identification of claims on liability insurance which can then be applied to child support arrearages in Title IV-D cases. Specifically, the newly created section:

- directs the Department of Revenue to develop and operate a data match system which would identify noncustodial parents who owe past due child support and also have a claim with an insurer;
- requires this data match system is to be developed in consultation with at least one insurer and is to use automated data exchanges to the extent possible;
- requires insurers to the department with certain information of noncustodial parents whom they identify have a claim. Three options are provided by the bill for insurers to comply with this requirement:
 - the department is may obtain the information through an insurance data collection organization with which the insurer participates and submits the required claim data at least monthly;
 - the insurer may provide data on each claim electronically to the department; or
 - the insurer may opt to receive a data file from the department, conduct a data match, and subsequently provide the required information to the department.

The bill provides that insurers that are subject to this section are entities that fall under one of the following categories of insurers: insurers authorized to transact insurance in Florida who are engaged as indemnitors, surety, or contractors in the insurance or annuity business, eligible surplus lines insurers, joint underwriters or joint insurers, and insurance risk apportionment plans . An insurer may request a fee for conducting the data match and the department is to establish a standard fee in rule for conducting the data match which is not to exceed actual costs. The bill provides immunity to an insurer and any central reporting organization, as well as their employees and agents, from any liability for damages, whether actual or alleged, that is the result of such entity's compliance with this provision. The bill authorizes the Department of Revenue to adopt rules to administer the insurance claim data exchange section.

C. SECTION DIRECTORY:

Section 1. Amends §61.046, Florida Statutes, related to definitions, to amend the definition of "support order" to reference administrative orders.

²² See §§409.25656, 409.25657, and 409.25658, Florida Statutes.

Section 2. Amends §61.13, Florida Statutes, related to the custody and support of children, to eliminate the requirement that the social security numbers of children be included in child support orders.

Section 3. Amends §61.1301, Florida Statutes, related to income deduction orders, to require, in cases where the last child is emancipating and there is an arrearage, an employer to continue collecting support in the same amount until the arrearage is paid. Notice and the right to contest the action would be provided to the obligor.

Section 4. Amends §61.181, Florida Statutes, related to the depository for support transactions, to require the establishment of a depository account for the receipt and disbursement of child support payments in interstate cases that are not registered in Florida.

Section 5. Amends §61.1814, Florida Statutes, related to the Child Support Enforcement Application and Program Revenue Trust Fund, to clarify current law related to the use, the purpose, the investment authority, and the disposition of funds.

Section 6. Amends §120.80, Florida Statutes, related to exceptions, to provide that administrative hearings related to child support shall be held in the judicial circuit where the person receiving Title IV-D services resides. If that parent lives out of state, then the hearing will be held where the respondent lives. Hearings may be conducted by telephone or videoconference.

Section 7. Amends §382.013, Florida Statutes, related to birth registration, to permit a voluntary acknowledgment of paternity that is witnessed by two persons and signed under penalty of perjury to be used to establish paternity for purposes of adding a father's name to a birth certificate at the time of the child's birth.

Section 8. Amends §382.016, Florida Statutes, related to amendment of records, to permit a voluntary acknowledgment of paternity that is witnessed by two persons and signed under penalty of perjury to be used to establish paternity for purposes of changing the birth certificate.

Section 9. Amends §409.2558, Florida Statutes, related to distribution and disbursement of support payments, to allow the Department of Revenue to apply an undistributable collection to another case with the same obligor when the parent provides permission, cannot be located, or fails to respond to a letter requesting permission.

Section 10. Amends §409.2561, Florida Statutes, related to support payments and public assistance, to clarify that orders include both judicial and administrative orders.

Section 11. Amends §409.2563, Florida Statutes, related to the administrative establishment of support, to correct inconsistencies in the administrative child support order establishment process.

Section 12. Amends §409.25656, Florida Statutes, related to garnishment, to allow an entity that liquidates securities at the request of the department to recover any commissions and fees that are charged in the normal course of business.

Section 13. Amends §409.257, Florida Statutes, related to service of process, to allow the department to use the most appropriate method for initial service of process based on the circumstances of each case.

Section 14. Amends §409.2572, Florida Statutes, related to cooperation in public assistance cases, to allow a mother to be deemed cooperative pending the outcome of genetic testing of subsequently named putative fathers, or if she attests to a lack of information related to the name of the father of the child.

Section 15. Amends §409.259, Florida Statutes, related to filing fees in Title IV-D cases, to codify current practice for reimbursing clerks of court for filing fees.

Section 16. Amends §409.2598, Florida Statutes, related to licenses, registrations, and certifications, to expand the categories that are subject to suspension and denial as a result of an overdue child support payment.

Section 17. Creates §409.25659, Florida Statutes, related to insurance claim data exchange, to conduct data matches with certain types of insurers to identify child support obligors who have pending personal injury or Worker's Compensation claims.

Section 18. Amends §742.10, Florida Statutes, related to establishment of paternity for children born out of wedlock, to permit a voluntary acknowledgment of paternity that is witnessed by two persons and signed under penalty of perjury to be used to establish paternity.

Section 19. Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The Department of Revenue reports that more than 19,000 children in Title IV-D cases will emancipate in 2004. A total of \$207 million is owed in past due support by the noncustodial parents of these children. If these noncustodial parents continued to pay at the same rate as prior to the emancipation for a year, the arrearages collected should increase from a projected \$4 million to over \$44 million.

The insurance claim data exchange initiative created by this bill has the potential of increasing child support collections that would not otherwise have been paid. The department has collected \$709,404 since July 2002 through the Child Support Lien Network which does not capture information from a major portion of the insurance carriers in Florida. This initiative will also likely result in costs to the insurance carriers to perform the required activities to match data and remit claims to the Department of Revenue.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not affect county or municipal government.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Provides rule-making authority for the Department of Revenue to develop and implement an insurance claim data exchange.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES