

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) Future of Florida's Families	12 Y, 0 N	Preston	Liem
3) Insurance		Tinney	Cooper
4) State Administration			
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 (currently, support payments are no longer required after a child turns 18);
- 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 (current law requires the affidavit to be notarized);
- 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 establishment of child support by administrative action of DOR rather than by a court order;
- 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 custodial parent receiving public assistance is deemed noncooperative relative to child support establishment;
- Expands the categories of business and professional licenses that are subject to denial or suspension due to past due support (the bill includes 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 that can then be applied to child support arrearages in Title IV-D cases.

The fiscal impact associated with implementing the bill is anticipated to be minimal.

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

STORAGE NAME: h1759a.in.doc
DATE: March 24, 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 requiring social security numbers to be included 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 specify that social security numbers held by an agency are 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 As a result, the social security numbers of minor children are public records. This distinction between the public access to the social security numbers of children and the lack of public access to the social security numbers of parent creates statutory inconsistencies.

The bill amends s. 61.13, F.S., to remove the requirement that social security numbers of minor children be included in child support orders, thus eliminating the current inconsistency among statutory provisions.

Child Support and Emancipation

Under current law, when the last child who is subject to a child support order emancipates, i.e., turns age 18, and a 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 involving income deduction orders, employers are directed to withhold an additional 20 percent or more of the monthly amount for the arrearage and other fees and costs owed.⁶ In practice, the amount of the arrearage typically ranges between 10 and 20 percent of the monthly obligation. Because of the

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 s. 61.13(10), F.S.

⁵ See s. 61.13(1)(d), F.S.

⁶ See s. 61.1301(1)(b), F.S.

reduced payment that occurs with emancipation of the affected child, paying an arrearage in full may last for several years after emancipation. For Title IV-D cases, the Department of Revenue (DOR) 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 until the court 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 of DOR to accept and disburse payments under the support order of other states.⁷ While many of the support orders from other states have been registered in a Florida court, registration is not required for DOR, Florida's support enforcement agency, to enforce the support order.⁸ Currently there is no statutory provision requiring a depository to establish an account for cases being enforced in Florida when the case is not registered.

The bill amends s. 61.181, F.S., 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, the law specifies that the Child Support Enforcement Application and Program Revenue Trust Fund is to be used for the deposit of application fees of non-public-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 s. 409.2564, F.S. Additionally, the trust fund receives monies paid 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 s. 409.2578, F.S.⁹

DOR reports that other types of income relating to child support enforcement also are deposited into this trust fund, although these other incomes are not currently specified by law. 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 s. 61.1814, F.S., 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

⁷ See s. 88.3191, F.S.

⁸ See s. 88.5071, F.S.

⁹ See s. 61.1814, F.S.

¹⁰ See s. 215.3207, F.S.

be executed by both the mother and father at the time of birth for inclusion of the father's name on the birth certificate or at a later time, through the Bureau of Vital Statistics, 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. This requirement for notarization of paternity acknowledgements may result in missed opportunities to establish paternity.

The bill amends ss. 382.013, 382.016, and 742.10, F.S., to permit a voluntary acknowledgment of paternity that is witnessed by two individuals and signed under penalty of perjury pursuant to s. 90.525(2), F.S. This change 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, if the noncustodial parent grants permission, then
- Refunded to the noncustodial parent, then
- If the noncustodial parent cannot be located, the state share is transferred to the General Revenue Fund and the federal share is credited to the federal government.¹²

This means that, under current law, an undistributable collection must be refunded to a noncustodial parent rather than being applied to another case in which the parent owes support.

The bill amends s. 409.2558, F.S., to remove the requirement that the noncustodial parent's permission be obtained before applying the undistributable collection to another case in which child support is owed. In lieu of obtaining permission, the noncustodial parent is required by the bill to receive notice of the impending intention to apply the collection to another case. Further, the bill stipulates that the noncustodial parent be apprised of his or her right to contest in court the department's intent to distribute the funds to another child. In order to exert the right to contest, the noncustodial parent must file and serve a petition with DOR 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 s. 61.1301, F.S.

Administrative Establishment of Child Support Orders

The 2001 Legislature created a pilot program in Volusia County for the administrative, rather than judicial, establishment of child support.¹³ The following year, legislation authorized statewide implementation of the establishment of the child support process by administrative order.¹⁴ The process allows DOR to establish child support orders administratively, rather than through a judicial

¹¹ See ss. 382.013 and 382.016, F.S.

¹² See s. 409.2558, F.S.

¹³ See Chapter 2001-158, Laws of Florida.

¹⁴ See Chapter 2002-239, Laws of Florida and s. 409.2563, F.S.

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

- Statutory definitions do not currently recognize the support orders by administrative order implemented by DOR.¹⁵
- Administrative hearings initiated by DOR are required by the Administrative Procedure Act, chapter 120, F.S., 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 a child support obligation, or to address issues concerning child custody or rights of parental visitation, 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. Current law also is unclear as to whether DOR is required to provide legal representation for issues that are not eligible for federal financial participation, including issues relating 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 ss. 61.046, 409.2561, 120.80, and 409.2563, F.S., to reconcile existing statutory inconsistencies and related 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 law 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 s. 409.25656, F.S., to allow for the securities which are to be used to meet 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 DOR to serve initial process and orders by a local county sheriff. If the sheriff is unsuccessful, the subsequent summons may be served either by the sheriff or a private process server.¹⁸ In cases in which the noncustodial parent attempts to elude service of a summons, or when the affected parent works hours other than 8 am to 5 pm, DOR has found that it may be more effective to request that the summons be served by a private process server.

The bill permits the use of other means of service of process, including a private process service, if DOR determines that an alternative means of service likely will be more effective.

Public Assistance Recipient Cooperation

The receipt of public assistance creates an obligation for the amount of assistance received to be reimbursed if child support is collected following the onset of public assistance.¹⁹ Individuals receiving

¹⁵ See s. 61.046, F.S.

¹⁶ See s. 409.2563, F.S.

¹⁷ See s. 409.25656, F.S.

¹⁸ See s. 409.257, F.S.

¹⁹ See s. 409.2561, F.S.

public assistance are required by law to cooperate with DOR to identify the noncustodial parent, to establish paternity, and to obtain support payments. Failure of the custodial parent to cooperate with DOR results in the parent being deemed ineligible to receive further public assistance.

DOR reports that 90 percent or more of the custodial parents served by the child support enforcement program are mothers. Currently, if a mother identifies the possible father, asserts that he is the only individual who could be the father, and subsequent genetic tests determine that the identified father is not, in fact, the father, the mother may be deemed noncooperative and thus 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 provided by federal law. Current federal law provides that a statement under oath by a public assistance recipient affirming a lack of additional information about another possible father establishes cooperation.²⁰

The bill amends s. 409.2572, F.S., to repeal the requirement that a mother be deemed noncooperative and ineligible for public assistance until a subsequent father is identified and confirmed through scientific testing to be the father in cases in which the putative father initially identified is determined not to be the father. The bill recognizes good faith efforts and specifies that noncooperation is refusal, not failure, to identify the father. With the changes proposed by the bill, the mother will be considered cooperative, pending the outcome of the genetic tests of an individual subsequently identified by the mother as the potential father. Alternatively, a mother is deemed cooperative if she attests to a lack of further information regarding the father. This change conforms Florida laws 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 in child-support collection currently provided to DOR is the suspension or denial of certain statutorily prescribed business or professional licenses, registrations, or certificates. DOR is authorized 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 available to DOR only after other remedies have been exhausted.²¹ Federal law requires states to provide procedures to withhold, suspend, or restrict the driver, professional, occupational, recreational, or sporting license of individuals owing past due support.

The bill expands the categories of licenses for which DOR 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 either in 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.

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, respectively; 456, related to health professions and occupations; 559, related to motor vehicle repair, travel agent, and business salesperson; and 1012, related to teacher certification.

Insurance Claim Data Exchange

The statutory authority granted to DOR 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 transference of identified funds to DOR for application 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. CSLN has developed working arrangements with a number of insurance carriers to exchange data and match cases. Information provided to CSLN may then be used to identify obligors who owe past-due support if the obligor has filed a claim for workers' compensation or personal injury lines of insurance. DOR has participated in CSLN since July 2002; however, the department and CSLN report that a many insurance carriers in Florida do not currently share data with CSLN. This means that the network is unable to supply claims data with DOR for those carriers which do not provide data to CSLN.

The bill creates s. 409.25659, F.S., to provide for the identification of claims relating to liability insurance that can then be applied to child support arrearages in Title IV-D cases. Specifically, the newly created section:

- Directs DOR to develop and operate a data match system which would identify noncustodial parents who owe past due child support and who also have a claim with an insurer;
- Requires the 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 provide DOR with certain information of noncustodial parents whom they identify as having filed a claim (three options are provided by the bill for insurers to comply with this requirement):
 - DOR may obtain the information through an insurance data collection organization, such as CSLN, with which the insurer participates and to which the insurer submits pertinent claim data at least monthly;
 - The insurer may provide data relating to pertinent claims electronically to DOR; or
 - The insurer may opt to receive a data file from DOR, conduct a data match, and subsequently provide claims information to the department.

The bill specifies that insurers subject to the claims data sharing requirements 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 DOR is required to establish a standard fee in rule for conducting the data match. The fee established by DOR may not 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 result from the compliance of an insurer's compliance in providing the claims data to DOR. The department is authorized by the bill to administer the insurance claim data exchange section.

²² See ss. 09.25656, 409.25657, and 409.25658, F.S.

C. SECTION DIRECTORY:

Section 1. Amends s. 61.046, F.S., to amend the definition of “support order” to reference administrative orders.

Section 2. Amends s. 61.13, F.S., 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 s. 61.1301, F.S., 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 are provided by the bill to the obligor.

Section 4. Amends s. 61.181, F.S., related to the depository for support transactions, to require the creation 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 s. 61.1814, F.S., 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 s. 120.80, F.S., of the Administrative Procedure Act, related to exceptions, to specify that administrative hearings relating to child support be held in the judicial circuit where the person receiving Title IV-D services resides. If that parent lives out of state, the hearing will be held where the respondent lives. Hearings may be conducted by telephone or videoconference.

Section 7. Amends s. 382.013, F.S., 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 s. 382.016, F.S., 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 establish paternity for purposes of changing an original birth certificate.

Section 9. Amends s. 409.2558, F.S., related to distribution and disbursement of support payments, to allow DOR to apply an undistributable collection to another case with the same obligor if the obligor/parent provides permission, cannot be located, or fails to respond to a letter requesting permission.

Section 10. Amends s. 409.2561, F.S., related to support payments and public assistance, to clarify that orders for child support include both judicial and administrative orders.

Section 11. Amends s. 409.2563, F.S., related to the administrative establishment of support, to correct inconsistencies in the administrative process for establishing an order for child support.

Section 12. Amends s. 409.25656, F.S., 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 s. 409.257, F.S., related to service of process, to allow DOR to select the most appropriate method for initial service of process based on the circumstances of each case.

Section 14. Amends s. 409.2572, F.S., related to cooperation in public assistance cases, to recognize that a custodial parent is 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 s. 409.259, F.S., related to filing fees in Title IV-D cases, to codify the current practice for reimbursing clerks of court for filing fees.

Section 16. Amends s. 409.2598, F.S., related to licenses, registrations, and certifications, to expand the categories that are subject to suspension and denial as a result of the licensee owing past-due child support.

Section 17. Creates s. 409.25659, F.S., related to insurance claim data exchange. DOR is authorized 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 s. 742.10, F.S., related to establishing paternity for children born out of wedlock. A voluntary acknowledgment of paternity that is witnessed by two persons and signed under penalty of perjury may be used to establish paternity.

Section 19. Provides an effective date upon the bill becoming law.

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:

DOR 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. This means an estimated \$40 million additional could be collected.

The insurance claim data exchange initiative created by this bill has the potential to increase child support collections that might not otherwise be paid. DOR reports that it has collected an estimated \$1 million since July 2002 through the Child Support Lien Network. Many major Florida insurers do not currently share claims data with the network, however. As Florida-based insurance carriers provide the

insurance claims data required by the bill, the carriers likely will incur costs to match data and remit claims information to DOR. The collective costs to be incurred by Florida-based insurance carriers are indeterminate.

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:

DOR is granted rule-making authority to develop and implement an insurance claim data exchange.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.