

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 5129 PCB GOA 09-02 Child Support Enforcement

SPONSOR(S): Government Operations Appropriations Committee and Hays

TIED BILLS: **IDEN./SIM. BILLS:** SB 2632

| | REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|--------------|--|-----------|---------|----------------|
| Orig. Comm.: | Government Operations Appropriations Committee | 6 Y, 0 N | Perkins | Topp |
| 1) | Full Appropriations Council on General Government & Health Care | 30 Y, 0 N | Perkins | Leznoff |
| 2) | | | | |
| 3) | | | | |
| 4) | | | | |
| 5) | | | | |

SUMMARY ANALYSIS

Child support enforcement is a federally funded program that has been administered by the Department of Revenue (DOR) since 1994. "Title IV-D case" is defined as any case in which the child support enforcement agency is enforcing the child support order pursuant to Title IV-D of the Social Security Act.

The DOR reports that Florida law is currently not in compliance with new federal regulations for establishing, modifying, and enforcing health insurance obligations in Title IV-D child support enforcement cases. A final regulation issued by the federal Office of Child Support Enforcement on July 21, 2008, defines "health insurance," when health insurance is available at reasonable cost, and establishes a requirement to order payment of medical expenses.¹

The bill makes various statutory and conforming language amendments to bring the DOR child support enforcement program in compliance with new federal regulations for establishing, modifying, and enforcing health insurance obligations in Title IV-D child support enforcement cases.

Fiscal Impact: Compliance with the new regulation is a Title IV-D State Plan requirement and a condition of the state receiving federal funding.² Noncompliance could result in disapproval of Florida's Title IV-D state plan and the loss of approximately \$248.1 million in federal funding for the Florida Child Support Enforcement Program. If the federal government disapproves Florida's Title IV-D state plan, all federal Title IV-D funding would be immediately suspended until the State Plan could be approved.³ A portion of the State's Temporary Assistance for Needy Families (Title IV-A) block grant would also be at risk because having an approved Title IV-D state plan is a condition of receiving federal Title IV-A funding.⁴

The bill conforms the law to the proposed House of Representatives proposed FY 2009-10 General Appropriations Act which appropriates \$248.1 million in federal funding for the Florida Child Support Enforcement Program.

The bill will take effect upon becoming law.

¹ [45 C.F.R. section 303.31; see 73 Fed. Reg. 42416, July 21, 2008]

² Office of Child Support Enforcement Action Transmittal AT-08-14, December 22, 2008

³ [OCSE-AT-97-05, April 28, 1997]

⁴ [42 U.S.C section 602(a)(2)]

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

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DATE: 4/7/2009

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Child Support Enforcement Overview:

Child support enforcement is a federally funded program that has been administered by the DOR since 1994.

"Title IV-D case" is defined as any case in which the child support enforcement agency is enforcing the child support order pursuant to Title IV-D of the Social Security Act.

The DOR reports that Florida law is currently not in compliance with a new federal regulation for establishing, modifying, and enforcing health insurance obligations in Title IV-D child support enforcement cases. A final regulation issued by the federal Office of Child Support Enforcement on July 21, 2008, defines "health insurance," when health insurance is available at reasonable cost, and establishes a requirement to order payment of medical expenses.⁵

Compliance with the new regulation is a Title IV-D State Plan requirement and a condition of federal funding.⁶ Noncompliance could result in disapproval of Florida's Title IV-D state plan and the loss of approximately \$248.1 million in federal funding for the Florida Child Support Enforcement Program. If the federal government disapproves Florida's Title IV-D state plan, all federal Title IV-D funding would be immediately suspended until the State Plan could be approved.⁷ A portion of the State's Temporary Assistance for Needy Families (Title IV-A) block grant would be at risk because having an approved Title IV-D state plan is a condition of receiving federal Title IV-A funding.⁸

Section 1.

Present Situation:

Within section 61.046, F.S., includes definitions pertaining to dissolution of marriage including child support; however, the term "health insurance" is not defined.

⁵ [45 C.F.R. section 303.31; see 73 Fed. Reg. 42416, July 21, 2008]

⁶ Office of Child Support Enforcement Action Transmittal AT-08-14, December 22, 2008

⁷ [OCSE-AT-97-05, April 28, 1997]

⁸ [42 U.S.C section 602(a)(2)]

Effect of Proposed Change:

The bill amends section 61.046, F.S., to define “health insurance” as defined by the federal Office of Child Support Enforcement.⁹ “Health insurance” means coverage under a fee-for-service arrangement, health maintenance organization, or preferred provider organization, and other types of coverage available to either parent, under which medical services could be provided to a dependent child.

Section 2.**Present Situation:**

Section 61.13(1)(b), F.S., provides that each support order must contain a provision for health care coverage for the minor child when coverage is reasonably available, and that coverage is reasonably available if either the obligor or obligee has access at a reasonable rate to a group health plan. The court (and the DOR in an administrative proceeding under section 409.2563, F.S.) may order the obligor to reimburse the obligee for the child’s health care costs when coverage is provided by the obligee. Additionally, the support order must apportion the cost of any noncovered medical, dental, and prescription expenses of the child to both parties.¹⁰

Under 45 C.F.R. 303.31(a)(3), health insurance is reasonable in cost if the cost to the parent providing it does not exceed five percent of his or her gross income or a reasonable alternative income-based numeric standard defined in state law. The child support guidelines in section 61.30, F.S., do not provide for computation of an obligation for noncovered medical expenses or health insurance when a support order addresses medical support only. The DOR is required by federal regulations to pursue such orders when a child receives Medicaid and the parent with whom the child lives declines child support enforcement services.¹¹

Effect of Proposed Change:

The bill amends section 61.13(1)(b), F.S., to comply with 45 C.F.R. section 303.31(a)(3). Each order for support shall contain a provision for health insurance for the minor child when health insurance is reasonable in cost and accessible to the child. Health insurance is reasonable if the cost of adding insurance for the child does not exceed five percent of the gross income, as defined in section 61.30, F.S., of the parent responsible for providing health insurance. The presumption of reasonable cost may be rebutted. The court may deviate from what is presumed reasonable when there is evidence of any of the factors in section 61.30(11)(a), F.S. When deviating, the court must make written findings why ordering (or not ordering) health insurance or reimbursement of the obligee’s costs for providing it is unjust or inappropriate, the same as when the court deviates from the guideline amount when ordering child support.

Health insurance is considered accessible if it is available to be used in the county of the child’s primary residence or in another county if the parent who has the most time under the time-sharing plan agrees. If the time-sharing plan provides for equal time-sharing, health insurance is accessible to the child if the health insurance is available to be used in either county where the child resides or in another county if both parents agree.

For cases in which a party or the DOR petitions for medical support only (no child support), each parent’s share of the cost of the child’s health insurance and noncovered medical expenses is calculated based on each parent’s percentage share of the combined net income of the parents. Net income is calculated as specified by sections 61.30(3) and (4), F.S.

The bill provides conforming language to insert health insurance in place of health care coverage or coverage within section 61.13, F.S.

⁹ 45 C.F.R. section 303.31(a)(2)

¹⁰ 2009 DOR Bill Analysis

¹¹ 2009 DOR Bill Analysis

Section 3.

Present Situation:

Section 61.1301(5), F.S., relates to the DOR providing notices issued by the department in electronic format or by mail to the payor in order to obtain the information necessary to begin income deduction and health care coverage.

Effect of Proposed Change:

The bill amends section 61.1301(5), F.S., as a conforming amendment to replace “health care coverage” with “health insurance” as defined in section 1 of the bill.

Section 4.

Present Situation:

Section 409.2554, F.S. relating to definitions does not contain the definition of “health insurance.”

Effect of Proposed Change:

The bill amends section 409.2554, F.S., as a conforming amendment to define “health insurance” as provided in section 1 of the bill.

Section 5.

Present Situation:

The terms “health insurance coverage,” health coverage,” and “coverage” appear in section 409.2561(5)(b),(c) and (e), F.S. Current law refers to coverage provided by the obligor.

Effect of Proposed Change:

The bill amends section 409.2561, F.S., as a conforming amendment by replacing the terms “health insurance coverage,” health coverage,” and “coverage” with “health insurance” as defined in section 1 of the bill. The bill deletes references to “obligor” and “obligor’s” because in some cases the person who is owed support is providing health insurance for the child.

Section 6.

Present Situation:

Section 409.2563, F.S., relates to administrative support orders issued by the DOR requiring the orders to comply with state’s child support guidelines pursuant to section 61.30, F.S.

Effect of Proposed Change:

The bill amends section 409.2563, F.S., by requiring administrative support orders to comply with the health insurance provisions in section 2 of the bill, section 61.13(1), F.S. and section 61.30, F.S. The bill provides conforming amendments by replacing “health care coverage” with “health insurance” as provided in section 1 of the bill.

Section 7.

Present Situation:

Section 409.2572(5), relates to an applicant for, or recipient of, public assistance for a dependent child cooperation requirements with the department or program attorney citing to a definition in section 409.2554, F.S. which defines public assistance.

Effect of Proposed Change:

The bill provides an amendment to section 409.2572(5), F.S., to amend a cross reference cite.

Section 8.

Present Situation:

Section 409.2576(7), F.S., relates to the department to transmit a wage withholding notice to the employee’s employer after entry of the new hire information into the State Directory of New Hires’ data base should the employee be required to provide health care coverage pursuant to an income deduction order.

Effect of Proposed Change:

The bill amends section 409.2576(7), F.S. as a conforming amendment to replace “health care coverage” with “health insurance” as defined in section 1 of the bill.

Section 9.

The bill shall take effect upon becoming law.

B. SECTION DIRECTORY:

Section 1. Amends s. 61.046, F.S., relating to health insurance definition as defined by the federal Office of Child Support Enforcement.

Section 2. Amends s. 61.13, F.S., relating to support orders to provide provisions for health insurance and provides conforming language.

Section 3. Amends s. 61.1301(5), F.S., providing conforming language.

Section 4. Amends s. 409.2554, F.S., providing conforming language.

Section 5. Amends s. 409.2561, F.S., providing conforming language and deleting references to the obligor.

Section 6. Amends s. 409.2563, F.S., relating to administrative support orders complying with health insurance provisions and providing conforming language.

Section 7. Amends s. 409.2572(5), F.S., relating to cross reference cite.

Section 8. Amends s. 2576(7), F.S., providing conforming language.

Section 9. Provides the bill take effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See fiscal comments below.

2. Expenditures:

See fiscal comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

See fiscal comments below.

2. Expenditures:

See fiscal comments below.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill provides the necessary statutory changes to bring Florida law under compliance with federal regulations for establishing, modifying, and enforcing health insurance obligations in Title IV-D child support enforcement cases handled by the DOR.

D. FISCAL COMMENTS:

Compliance with the new regulation is a Title IV-D State Plan requirement and a condition of federal funding.¹² Noncompliance could result in disapproval of Florida's Title IV-D state plan and the loss of approximately \$248.1 million in federal funding for the Florida Child Support Enforcement Program. If the federal government disapproves Florida's Title IV-D state plan, all federal Title IV-D funding would be immediately suspended until the State Plan could be approved.¹³ A portion of the State's Temporary Assistance for Needy Families (Title IV-A) block grant would be at risk since having an approved Title IV-D state plan is a condition of receiving federal Title IV-A funding.¹⁴

The bill conforms the law to the proposed House of Representatives proposed FY 2009-10 General Appropriations Act which appropriates \$248.1 million in federal funding for the Florida Child Support Enforcement Program.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision does not apply because this bill does not: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

¹² Office of Child Support Enforcement Action Transmittal AT-08-14, December 22, 2008]

¹³ [OCSE-AT-97-05, April 28, 1997]

¹⁴ [42 U.S.C section 602(a)(2)]