

By Senator Dudley

25-1372A-98

1 A bill to be entitled
2 An act relating to enforcement of orders
3 establishing child support; amending s.
4 61.1301, F.S.; revising a date to provide for
5 enforcing certain additional support orders
6 through an income deduction without requiring
7 an amendment to the order or further action by
8 the court; amending s. 409.2567, F.S.;
9 redesignating a trust fund to correct a
10 reference; amending s. 409.2579, F.S.;
11 authorizing the disclosure of certain
12 information for purposes of administering the
13 Title VI-D program for child support
14 enforcement; providing an effective date.

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16 Be It Enacted by the Legislature of the State of Florida:

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18 Section 1. Section 61.1301, Florida Statutes, is
19 amended to read:

20 61.1301 Income deduction.--

21 (1) REQUIREMENT FOR INCOME DEDUCTION AS PART OF AN
22 ORDER ESTABLISHING, ENFORCING, OR MODIFYING AN OBLIGATION FOR
23 ALIMONY OR CHILD SUPPORT.--

24 (a) Upon the entry of an order establishing,
25 enforcing, or modifying an obligation for alimony, for child
26 support, or for alimony and child support, the court shall
27 include provisions for income deduction of the alimony and/or
28 child support in the order. Copies of the orders shall be
29 served on the obligee and obligor. The order establishing,
30 enforcing, or modifying the obligation shall direct that
31 payments be made through the depository. The court shall

1 provide to the depository a copy of the order establishing,
2 enforcing, or modifying the obligation. If the obligee is a
3 IV-D applicant, the court shall furnish to the IV-D agency a
4 copy of the order establishing, enforcing, or modifying the
5 obligation.

6 1. The income deduction shall be implemented by
7 serving an income deduction notice upon the payor.

8 2. If a support order entered before January 1, 1994
9 ~~October 1, 1996~~, in a non-Title IV-D case does not specify
10 income deduction, income deduction may be initiated upon a
11 delinquency without the need for any amendment to the support
12 order or any further action by the court. In such case the
13 obligee may implement income deduction by serving a notice of
14 delinquency on the obligor as provided for under paragraph
15 (f).

16 (b) Provisions for income deduction. The order entered
17 pursuant to paragraph (a) shall:

18 1. Direct a payor to deduct from all income due and
19 payable to an obligor the amount required by the court to meet
20 the obligor's support obligation including any attorney's fees
21 or costs owed and forward the deducted amount pursuant to the
22 order.

23 2. State the amount of arrearage owed, if any, and
24 direct a payor to withhold an additional 20 percent or more of
25 the periodic amount specified in the order establishing,
26 enforcing, or modifying the obligation, until full payment is
27 made of any arrearage, attorney's fees and costs owed,
28 provided no deduction shall be applied to attorney's fees and
29 costs until the full amount of any arrearage is paid;

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1 3. Direct a payor not to deduct in excess of the
2 amounts allowed under s. 303(b) of the Consumer Credit
3 Protection Act, 15 U.S.C. s. 1673(b), as amended;

4 4. Direct whether a payor shall deduct all, a
5 specified portion, or no income which is paid in the form of a
6 bonus or other similar one-time payment, up to the amount of
7 arrearage reported in the income deduction notice or the
8 remaining balance thereof, and forward the payment to the
9 governmental depository. For purposes of this subparagraph,
10 "bonus" means a payment in addition to an obligor's usual
11 compensation and which is in addition to any amounts
12 contracted for or otherwise legally due and shall not include
13 any commission payments due an obligor; and

14 5. In Title IV-D cases, direct a payor to provide to
15 the court depository the date on which each deduction is made.

16 (c) The income deduction is effective immediately
17 unless the court upon good cause shown finds that income
18 deduction shall be effective upon a delinquency in an amount
19 specified by the court but not to exceed 1 month's payment. In
20 order to find good cause, the court must at a minimum make
21 written findings that:

22 1. Explain why implementing immediate income deduction
23 would not be in the child's best interest;

24 2. There is proof of timely payment of the previously
25 ordered obligation without an income deduction order in cases
26 of modification; and

27 3.a. There is an agreement by the obligor to advise
28 the IV-D agency and court depository of any change in payor
29 and health insurance; or

30 b. There is a signed written agreement providing an
31 alternative arrangement between the obligor and the obligee

1 and, at the option of the IV-D agency, by the IV-D agency in
2 IV-D cases in which there is an assignment of support rights
3 to the state, reviewed and entered in the record by the court.

4 (d) The income deduction shall be effective until
5 further order of the court.

6 (e) Statement of obligor's rights. When the court
7 orders the income deduction to be effective immediately, the
8 court shall furnish to the obligor a statement of his or her
9 rights, remedies, and duties in regard to the income
10 deduction. The statement shall state:

11 1. All fees or interest which shall be imposed.

12 2. The total amount of income to be deducted for each
13 pay period until the arrearage, if any, is paid in full and
14 shall state the total amount of income to be deducted for each
15 pay period thereafter. The amounts deducted may not be in
16 excess of that allowed under s. 303(b) of the Consumer Credit
17 Protection Act, 15 U.S.C. s. 1673(b), as amended.

18 3. That the income deduction notice applies to current
19 and subsequent payors and periods of employment.

20 4. That a copy of the income deduction notice will be
21 served on the obligor's payor or payors.

22 5. That enforcement of the income deduction notice may
23 only be contested on the ground of mistake of fact regarding
24 the amount owed pursuant to the order establishing, enforcing,
25 or modifying the obligation, the arrearages, or the identity
26 of the obligor.

27 6. That the obligor is required to notify the obligee
28 and, when the obligee is receiving IV-D services, the IV-D
29 agency within 7 days of changes in the obligor's address,
30 payors, and the addresses of his or her payors.

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1 (f) Notice of delinquency. When the court orders the
2 income deduction to be effective upon a delinquency as
3 provided in subparagraph (a)2. or paragraph (c), the obligee
4 may enforce the income deduction by serving a notice of
5 delinquency on the obligor.

6 1. The notice of delinquency shall state:

7 a. The terms of the order establishing, enforcing, or
8 modifying the obligation.

9 b. The period of delinquency and the total amount of
10 the delinquency as of the date the notice is mailed.

11 c. All fees or interest which may be imposed.

12 d. The total amount of income to be deducted for each
13 pay period until the arrearage, and all applicable fees and
14 interest, is paid in full and shall state the total amount of
15 income to be deducted for each pay period thereafter. The
16 amounts deducted may not be in excess of that allowed under s.
17 303(b) of the Consumer Credit Protection Act, 15 U.S.C. s.
18 1673(b), as amended.

19 e. That the income deduction notice applies to current
20 and subsequent payors and periods of employment.

21 f. That a copy of the notice of delinquency will be
22 served on the obligor's payor or payors, together with a copy
23 of the income deduction notice, unless the obligor applies to
24 the court to contest enforcement of the income deduction. The
25 application shall be filed within 15 days after the date the
26 notice of delinquency was served.

27 g. That enforcement of the income deduction notice may
28 only be contested on the ground of mistake of fact regarding
29 the amount owed pursuant to the order establishing, enforcing,
30 or modifying the obligation, the amount of arrearages, or the
31 identity of the obligor.

1 h. That the obligor is required to notify the obligee
2 of the obligor's current address and current payors and of the
3 address of current payors. All changes shall be reported by
4 the obligor within 7 days. If the IV-D agency is enforcing
5 the order, the obligor shall make these notifications to the
6 agency instead of to the obligee.

7 2. The failure of the obligor to receive the notice of
8 delinquency does not preclude subsequent service of the income
9 deduction on the obligor's payor. A notice of delinquency
10 which fails to state an arrearage does not mean that an
11 arrearage is not owed.

12 (g) At any time, any party, including the IV-D agency,
13 may apply to the court to:

14 1. Modify, suspend, or terminate the income deduction
15 notice in accordance with a modification, suspension, or
16 termination of the support provisions in the underlying order;
17 or

18 2. Modify the amount of income deducted when the
19 arrearage has been paid.

20 (2) ENFORCEMENT OF INCOME DEDUCTION.--

21 (a) The obligee or his or her agent shall serve an
22 income deduction notice, and in the case of a delinquency a
23 notice of delinquency, on the obligor's payor unless the
24 obligor has applied for a hearing to contest the enforcement
25 of the income deduction pursuant to paragraph (c).

26 (b)1. Service by or upon any person who is a party to
27 a proceeding under this section shall be made in the manner
28 prescribed in the Florida Rules of Civil Procedure for service
29 upon parties.

30 2. Service upon an obligor's payor or successor payor
31 under this section shall be made by prepaid certified mail,

1 return receipt requested, or in the manner prescribed in
2 chapter 48.

3 (c)1. The obligor, within 15 days after service of a
4 notice of delinquency, may apply for a hearing to contest the
5 enforcement of the income deduction on the ground of mistake
6 of fact regarding the amount owed pursuant to an order
7 establishing, enforcing, or modifying an obligation for
8 alimony, for child support, or for alimony and child support,
9 the amount of the arrearage, or the identity of the obligor.
10 The obligor shall send a copy of the pleading to the obligee
11 and, if the obligee is receiving IV-D services, to the IV-D
12 agency. The timely filing of the pleading shall stay the
13 service of an income deduction notice on all payors of the
14 obligor until a hearing is held and a determination is made as
15 to whether enforcement of the income deduction order is
16 proper. The payment of a delinquent obligation by an obligor
17 upon issuance of an income deduction notice shall not preclude
18 service of the income deduction notice on the obligor's payor.

19 2. When an obligor timely requests a hearing to
20 contest enforcement of income deduction, the court, after due
21 notice to all parties and the IV-D agency if the obligee is
22 receiving IV-D services, shall hear the matter within 20 days
23 after the application is filed. The court shall enter an
24 order resolving the matter within 10 days after the hearing.
25 A copy of this order shall be served on the parties and the
26 IV-D agency if the obligee is receiving IV-D services. If the
27 court determines that service of an income deduction notice is
28 proper, it shall specify the date the income deduction notice
29 must be served on the obligor's payor.

30 (d) When a court determines that an income deduction
31 notice is proper pursuant to paragraph (c), the obligee or his

1 or her agent shall cause a copy of the notice of delinquency
2 to be served on the obligor's payors. A copy of the income
3 deduction notice, and in the case of a delinquency a notice of
4 delinquency, shall also be furnished to the obligor.

5 (e) Income deduction notice. The income deduction
6 notice shall contain only information necessary for the payor
7 to comply with the order providing for income deduction. The
8 notice shall:

9 1. Provide the obligor's social security number.

10 2. Require the payor to deduct from the obligor's
11 income the amount specified in the order providing for income
12 deduction, and in the case of a delinquency the amount
13 specified in the notice of delinquency, and to pay that amount
14 to the obligee or to the depository, as appropriate. The
15 amount actually deducted plus all administrative charges shall
16 not be in excess of the amount allowed under s. 303(b) of the
17 Consumer Credit Protection Act, 15 U.S.C. s. 1673(b);

18 3. Instruct the payor to implement income deduction no
19 later than the first payment date which occurs more than 14
20 days after the date the income deduction notice was served on
21 the payor, and the payor shall conform the amount specified in
22 the income deduction order to the obligor's pay cycle;

23 4. Instruct the payor to forward, within 2 days after
24 each date the obligor is entitled to payment from the payor,
25 to the obligee or to the depository the amount deducted from
26 the obligor's income, a statement as to whether the amount
27 totally or partially satisfies the periodic amount specified
28 in the income deduction notice, and the specific date each
29 deduction is made. If the IV-D agency is enforcing the order,
30 the payor shall make these notifications to the agency instead
31 of the obligee;

1 5. Specify that if a payor fails to deduct the proper
2 amount from the obligor's income, the payor is liable for the
3 amount the payor should have deducted, plus costs, interest,
4 and reasonable attorney's fees;

5 6. Provide that the payor may collect up to \$5 against
6 the obligor's income to reimburse the payor for administrative
7 costs for the first income deduction and up to \$2 for each
8 deduction thereafter;

9 7. State that the income deduction notice, and in the
10 case of a delinquency the notice of delinquency, are binding
11 on the payor until further notice by the obligee, IV-D agency,
12 or the court or until the payor no longer provides income to
13 the obligor;

14 8. Instruct the payor that, when he or she no longer
15 provides income to the obligor, he or she shall notify the
16 obligee and shall also provide the obligor's last known
17 address and the name and address of the obligor's new payor,
18 if known; and that, if the payor violates this provision, the
19 payor is subject to a civil penalty not to exceed \$250 for the
20 first violation or \$500 for any subsequent violation. If the
21 IV-D agency is enforcing the order, the payor shall make these
22 notifications to the agency instead of to the obligee.
23 Penalties shall be paid to the obligee or the IV-D agency,
24 whichever is enforcing the income deduction order;

25 9. State that the payor shall not discharge, refuse to
26 employ, or take disciplinary action against an obligor because
27 of an income deduction notice and shall state that a violation
28 of this provision subjects the payor to a civil penalty not to
29 exceed \$250 for the first violation or \$500 for any subsequent
30 violation. Penalties shall be paid to the obligee or the IV-D
31 agency, whichever is enforcing the income deduction notice, if

1 any alimony or child support obligation is owing. If no
2 alimony or child support obligation is owing, the penalty
3 shall be paid to the obligor;

4 10. State that an obligor may bring a civil action in
5 the courts of this state against a payor who refuses to
6 employ, discharges, or otherwise disciplines an obligor
7 because of an income deduction notice. The obligor is entitled
8 to reinstatement and all wages and benefits lost, plus
9 reasonable attorney's fees and costs incurred;

10 11. Inform the payor that the income deduction notice
11 has priority over all other legal processes under state law
12 pertaining to the same income and that payment, as required by
13 the income deduction notice, is a complete defense by the
14 payor against any claims of the obligor or his or her
15 creditors as to the sum paid;

16 12. Inform the payor that, when the payor receives
17 income deduction notices requiring that the income of two or
18 more obligors be deducted and sent to the same depository, the
19 payor may combine the amounts that are to be paid to the
20 depository in a single payment as long as the payments
21 attributable to each obligor are clearly identified; and

22 13. Inform the payor that if the payor receives more
23 than one income deduction notice against the same obligor, the
24 payor shall contact the court for further instructions. Upon
25 being so contacted, the court shall allocate amounts available
26 for income deduction as provided in subsection (4).

27 (f) At any time income deduction is being enforced,
28 the obligor may apply to the court for a hearing to contest
29 the continued enforcement of the income deduction on the same
30 grounds set out in paragraph (c), with a copy to the obligee
31 and, in IV-D cases, to the IV-D agency. The application does

1 not affect the continued enforcement of the income deduction
2 until the court enters an order granting relief to the
3 obligor. The obligee or the IV-D agency is released from
4 liability for improper receipt of moneys pursuant to income
5 deduction upon return to the appropriate party of any moneys
6 received.

7 (g) An obligee or his or her agent shall enforce
8 income deduction against an obligor's successor payor who is
9 located in this state in the same manner prescribed in this
10 section for the enforcement of an income deduction order
11 against a payor.

12 (h)1. When income deduction is to be enforced against
13 a payor located outside the state, the obligee who is
14 receiving IV-D services or his or her agent shall promptly
15 request the agency responsible for income deduction in the
16 other state to enforce the income deduction. The request shall
17 contain all information necessary to enforce the income
18 deduction, including the amount to be periodically deducted, a
19 copy of the order establishing, enforcing, or modifying the
20 obligation, and a statement of arrearages, if applicable.

21 2. When the IV-D agency is requested by the agency
22 responsible for income deduction in another state to enforce
23 income deduction against a payor located in this state for the
24 benefit of an obligee who is being provided IV-D services by
25 the agency in the other state, the IV-D agency shall act
26 promptly pursuant to the applicable provisions of this
27 section.

28 3. When an obligor who is subject to income deduction
29 enforced against a payor located in this state for the benefit
30 of an obligee who is being provided IV-D services by the
31 agency responsible for income deduction in another state

1 terminates his or her relationship with his or her payor, the
2 IV-D agency shall notify the agency in the other state and
3 provide it with the name and address of the obligor and the
4 address of any new payor of the obligor, if known.

5 4.a. The procedural rules and laws of this state
6 govern the procedural aspects of income deduction whenever the
7 agency responsible for income deduction in another state
8 requests the enforcement of an income deduction order in this
9 state.

10 b. Except with respect to when withholding must be
11 implemented, which is controlled by the state where the order
12 establishing, enforcing, or modifying the obligation was
13 entered, the substantive law of this state shall apply
14 whenever the agency responsible for income deduction in
15 another state requests the enforcement of an income deduction
16 in this state.

17 c. When the IV-D agency is requested by an agency
18 responsible for income deduction in another state to implement
19 income deduction against a payor located in this state for the
20 benefit of an obligee who is being provided IV-D services by
21 the agency in the other state or when the IV-D agency in this
22 state initiates an income deduction request on behalf of an
23 obligee receiving IV-D services in this state against a payor
24 in another state, the IV-D agency shall file the interstate
25 income deduction documents, or an affidavit of such request
26 when the income deduction documents are not available, with
27 the depository and if the IV-D agency in this state is
28 responding to a request from another state, provide copies to
29 the payor and obligor in accordance with subsection (1). The
30 depository created pursuant to s. 61.181 shall accept the
31 interstate income deduction documents or affidavit and shall

1 establish an account for the receipt and disbursement of child
2 support or child support and alimony payments and advise the
3 IV-D agency of the account number in writing within 2 days
4 after receipt of the documents or affidavit.

5 (i) Certified copies of payment records maintained by
6 a depository shall, without further proof, be admitted into
7 evidence in any legal proceeding in this state.

8 (j)1. A person may not discharge, refuse to employ, or
9 take disciplinary action against an employee because of the
10 enforcement of income deduction. An employer who violates
11 this subsection is subject to a civil penalty not to exceed
12 \$250 for the first violation or \$500 for any subsequent
13 violation. Penalties shall be paid to the obligee or the IV-D
14 agency, whichever is enforcing the income deduction order, if
15 any alimony or child support is owing. If no alimony or child
16 support is owing, the penalty shall be paid to the obligor.

17 2. An employee may bring a civil action in the courts
18 of this state against an employer who refuses to employ,
19 discharges, or otherwise disciplines an employee because of
20 income deduction. The employee is entitled to reinstatement
21 and all wages and benefits lost plus reasonable attorney's
22 fees and costs incurred.

23 (k) When a payor no longer provides income to an
24 obligor, he or she shall notify the obligee and, if the
25 obligee is a IV-D applicant, the IV-D agency and shall also
26 provide the obligor's last known address and the name and
27 address of the obligor's new payor, if known. A payor who
28 violates this subsection is subject to a civil penalty not to
29 exceed \$250 for the first violation or \$500 for a subsequent
30 violation. Penalties shall be paid to the obligee or the IV-D
31 agency, whichever is enforcing the income deduction.

1 (3) It is the intent of the Legislature that this
2 section may be used to collect arrearages in child support
3 payments or in alimony payments which have been accrued
4 against an obligor.

5 (4) When there is more than one income deduction
6 notice against the same obligor, the court shall allocate
7 amounts available for income deduction among all obligee
8 families as follows:

9 (a) For computation purposes, the court shall convert
10 all obligations to a common payroll frequency and determine
11 the percentage of deduction allowed under s. 303(b) of the
12 Consumer Credit Protection Act, 15 U.S.C. s. 1673(b), as
13 amended. The court shall determine the amount of income
14 available for deduction by multiplying that percentage figure
15 by the obligor's net income and determine the sum of all of
16 the support obligations.

17 (b) If the sum of the support obligations is less than
18 the amount of income available for deduction, the court shall
19 order that the full amount of each obligation shall be
20 deducted.

21 (c) If the sum of the support obligations is greater
22 than the amount of income available for deduction, the court
23 shall determine a prorated percentage for each support
24 obligation by dividing each obligation by the sum total of all
25 the support obligations. The court shall then determine the
26 prorated deduction amount for each support obligation by
27 multiplying the prorated percentage for each support
28 obligation by the amount of income available for deduction.
29 The court shall then order that the resultant amount for each
30 support obligation shall be deducted from the obligor's
31 income.

1 Section 2. Section 409.2567, Florida Statutes, is
2 amended to read:
3 409.2567 Services to individuals not otherwise
4 eligible.--All child support services provided by the
5 department shall be made available on behalf of all dependent
6 children. Services shall be provided upon acceptance of public
7 assistance or upon proper application filed with the
8 department. The department shall adopt rules to provide for
9 the payment of a \$25 application fee from each applicant who
10 is not a public assistance recipient. The application fee
11 shall be deposited in the Child Support Enforcement
12 Application and Program Revenue ~~User Fee~~ Trust Fund within the
13 Department of Revenue to be used for the Child Support
14 Enforcement Program. The obligor is responsible for all
15 administrative costs, as defined in s. 409.2554. The court
16 shall order payment of administrative costs without requiring
17 the department to have a member of the bar testify or submit
18 an affidavit as to the reasonableness of the costs. An
19 attorney-client relationship exists only between the
20 department and the legal services providers in Title IV-D
21 cases. The attorney shall advise the obligee in Title IV-D
22 cases that the attorney represents the agency and not the
23 obligee. In Title IV-D cases, any costs, including filing
24 fees, recording fees, mediation costs, service of process
25 fees, and other expenses incurred by the clerk of the circuit
26 court, shall be assessed only against the nonprevailing
27 obligor after the court makes a determination of the
28 nonprevailing obligor's ability to pay such costs and fees. In
29 any case where the court does not award all costs, the court
30 shall state in the record its reasons for not awarding the
31 costs. The Department of Revenue shall not be considered a

1 party for purposes of this section; however, fees may be
2 assessed against the department pursuant to s. 57.105(1). The
3 department shall submit a monthly report to the Governor and
4 the chairs of the Appropriations Committee of the House of
5 Representatives and the Ways and Means Committee of the Senate
6 specifying the funds identified for collection from the
7 noncustodial parents of children receiving temporary
8 assistance and the amounts actually collected.

9 Section 3. Subsection (1) of section 409.2579, Florida
10 Statutes, is amended to read:

11 409.2579 Safeguarding Title IV-D case file
12 information.--

13 (1) Information concerning applicants for or
14 recipients of Title IV-D child support services is
15 confidential and exempt from the provisions of s. 119.07(1).
16 The use or disclosure of such information by the IV-D program
17 is limited to purposes directly connected with:

18 (a) The administration of the plan or program approved
19 under part A, part B, part D, part E, or part F of Title IV;
20 under Title II, Title X, Title XIV, Title XVI, Title XIX, or
21 Title XX; or under the supplemental security income program
22 established under Title XVI of the Social Security Act;

23 (b) Any investigation, prosecution, or criminal or
24 civil proceeding connected with the administration of any such
25 plan or program;

26 (c) The administration of any other federal or
27 federally assisted program which provides service or
28 assistance, in cash or in kind, directly to individuals on the
29 basis of need; ~~and~~

30 (d) Reporting to an appropriate agency or official,
31 information on known or suspected instances of physical or

1 mental injury, child abuse, sexual abuse or exploitation, or
2 negligent treatment or maltreatment of a child who is the
3 subject of a child support enforcement activity under
4 circumstances which indicate that the child's health or
5 welfare is threatened thereby; and-

6 (e) Identification or location information as required
7 under s. 61.13(9) or s. 742.032 and for the purposes of
8 administering the Title VI-D program for child support
9 enforcement.

10 Section 4. This act shall take effect upon becoming a
11 law.

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14 SENATE SUMMARY

15 Provides that a support order entered before January 1,
16 1994, rather than before October 1, 1996, may be enforced
17 through an income deduction without the need for an
18 amendment to the order or further action by the court.
19 Corrects a reference to the Child Support Enforcement
20 Application and Program Revenue Trust Fund. Authorizes
21 the disclosure of information that is otherwise
22 confidential for purposes of administering the Title VI-D
23 program for child support enforcement.
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