

By Senator Diaz-Balart

37-584-99

1 A bill to be entitled
2 An act relating to child support enforcement;
3 amending s. 409.2558, F.S.; providing for
4 review of agency action and for overpayment
5 recovery; authorizing the Department of Revenue
6 to adopt rules; amending s. 409.2558, F.S.;
7 providing for the department to redirect child
8 support payments to the appropriate caretaker
9 relative; amending s. 409.2561, F.S.; providing
10 that the court shall establish liability of an
11 obligor in compliance with the child support
12 guidelines; deleting an obsolete reference;
13 amending s. 409.2564, F.S.; providing for
14 department authority associated with subpoenas;
15 providing for a fine; amending s. 409.25641,
16 F.S.; providing that the term automated
17 administrative enforcement is defined under the
18 Social Security Act; amending s. 409.25656,
19 F.S.; providing that an obligor may consent in
20 writing to a levy; amending s. 409.25657,
21 F.S.; providing that the department shall
22 coordinate with the Federal Parent Locator
23 Service, where applicable, to develop and
24 operate a data match system; providing that the
25 financial institution is required to provide an
26 average daily balance; amending s. 409.2577,
27 F.S.; deleting a redundant statement; providing
28 for appropriations; providing an effective
29 date.

30
31 Be It Enacted by the Legislature of the State of Florida:

1 Section 1. Section 409.2558, Florida Statutes, 1998
2 Supplement, is amended to read:

3 409.2558 Child support distribution and
4 disbursement.--

5 (1) The department shall distribute and disburse child
6 support payments collected in Title IV-D cases in accordance
7 with 42 U.S.C. s. 657 and regulations adopted thereunder by
8 the Secretary of the United States Department of Health and
9 Human Services.

10 (2) A recipient of collection and distribution
11 services of the department's Child Support Enforcement Program
12 may request a reconsideration by the department concerning the
13 amount collected, the date collected, the amount distributed,
14 the distribution timing, or the calculation of arrears. The
15 department shall establish by rule a reconsideration procedure
16 for informal review of agency action in distributing and
17 disbursing child support payments collected by the department.
18 The procedures must provide the recipients of services with an
19 opportunity to review the department's actions before a
20 hearing is requested under chapter 120.

21 (3) If the department's records indicate that a child
22 support obligee has received an overpayment of child support
23 from the department due to mistake or fraud, the department
24 may take action to recover the overpayment. The department may
25 establish by rule a procedure to recover overpayments.

26 Section 2. Effective January 1, 2000, section
27 409.2558, Florida Statutes, 1998 Supplement, as amended by
28 section 1 of this act is amended to read:

29 409.2558 Child support distribution and disbursement;
30 caretaker relatives.--
31

1 (1) The department shall distribute and disburse child
2 support payments collected in Title IV-D cases in accordance
3 with 42 U.S.C. s. 657 and regulations adopted thereunder by
4 the Secretary of the United States Department of Health and
5 Human Services.

6 (2) A recipient of collection and distribution
7 services of the department's Child Support Enforcement Program
8 may request a reconsideration by the department concerning the
9 amount collected, the date collected, the amount distributed,
10 the distribution timing, or the calculation of arrears. The
11 department shall establish by rule a reconsideration procedure
12 for informal review of agency action in distributing and
13 disbursing child support payments collected by the department.
14 The procedures must provide the recipients of services with an
15 opportunity to review the department's actions before a
16 hearing is requested under chapter 120.

17 (3) If the department's records indicate that a child
18 support obligee has received an overpayment of child support
19 from the department due to mistake or fraud, the department
20 may take action to recover the overpayment. The department may
21 establish by rule a procedure to recover overpayments.

22 (4) The obligor's court ordered obligation to comply
23 with an existing support order continues when a caretaker
24 relative as defined by s. 414.0252(11) obtains physical
25 custody of the child for whom the support order was issued and
26 receives temporary cash assistance, as defined by s.
27 414.0252(12), for the child. Upon written notice to the last
28 known address sent by regular mail to the obligor and the
29 payee named in the support order, the department may redirect
30 payments under the support order to the department for
31 distribution and disbursement under subsection (1).

1 (a) The obligor or the payee named in the support
2 order may, within 30 days after the date the notice was
3 mailed, petition the circuit court to contest whether the
4 child resides with the caretaker relative.

5 (b) The notice to the obligor and payee must state:

6 1. That the obligor's court ordered obligation to pay
7 child support continues under the existing support order;

8 2. The name of the caretaker relative unless
9 disclosure is otherwise prohibited by law; and

10 3. That within 30 days after the date the notice was
11 mailed, the obligor or the payee may petition the circuit
12 court to contest whether the child resides with the caretaker
13 relative.

14 (c) If a timely petition to contest is filed by either
15 the obligor or the payee named in the support order, the
16 department may not redirect payments until the matter is
17 decided by the court.

18 (d) If a timely petition to contest is not filed or if
19 the petition to contest is dismissed or denied, the department
20 shall file with the court that issued the support order a copy
21 of the notice to redirect payments to the department.

22 (e) If a caretaker relative stops receiving temporary
23 cash assistance after the department has redirected payments
24 and the child returns to the physical custody of the payee
25 named in the support order, the department may redirect
26 payments to the payee upon notice to the obligor, the
27 caretaker relative, and the payee. The department shall file
28 with the court that issued the support order a copy of the
29 notice to redirect payments to the department.

30 (f) If a caretaker relative stops receiving temporary
31 cash assistance after the department has redirected payments

1 and another caretaker relative obtains physical custody of the
2 child and receives temporary cash assistance for the child,
3 the department may redirect payments under the support order
4 upon notice to the obligor, each caretaker relative, and the
5 payee named in the support order. The department shall file
6 with the court that issued the support order a copy of the
7 notice to redirect payments to the department.

8 (g) If the caretaker relative stops receiving
9 temporary cash assistance but retains physical custody of the
10 child after the department has redirected payments, the
11 department may seek to modify the support order or obtain a
12 new support order.

13 Section 3. Subsections (1) and (5) of section
14 409.2561, Florida Statutes, 1998 Supplement, are amended to
15 read:

16 409.2561 Child support obligations when public
17 assistance is paid; assignment of rights; subrogation; medical
18 and health insurance information.--

19 (1) Any payment of public assistance money made to, or
20 for the benefit of, any dependent child creates an obligation
21 in an amount determined under the child support guidelines
22 ~~equal to the amount of public assistance paid.~~ In accordance
23 with 42 U.S.C. s. 657, the state shall retain amounts
24 collected only to the extent necessary to reimburse amounts
25 paid to the family as assistance by the state. If there has
26 been a prior court order or final judgment of dissolution of
27 marriage establishing an obligation of support, the obligation
28 is limited to the amount provided by such court order or
29 decree. ~~The obligor shall discharge the reimbursement~~
30 ~~obligation. If the obligor fails to discharge the~~
31 ~~reimbursement obligation, the department may apply for a~~

1 ~~contempt order to enforce reimbursement for support furnished.~~
2 The extraordinary remedy of contempt is applicable in child
3 support enforcement cases because of the public necessity for
4 ensuring that dependent children be maintained from the
5 resources of their parents, thereby relieving, at least in
6 part, the burden presently borne by the general citizenry
7 through the public assistance program. If there is no prior
8 court order establishing an obligation of support, the court
9 shall establish the liability of the obligor, if any, by
10 applying the child support guidelines ~~for reimbursement of~~
11 ~~public assistance moneys paid. Priority shall be given to~~
12 ~~establishing continuing reasonable support for the dependent~~
13 ~~child.~~ The department may apply for modification of a court
14 order on the same grounds as either party to the cause and
15 shall have the right to settle and compromise actions brought
16 pursuant to law.

17 (5) With respect to cases for which there is an
18 assignment in effect pursuant to this section:

19 (a) The IV-D agency shall obtain basic medical support
20 information for Medicaid recipients and applicants for
21 Medicaid and provide this information to the state Medicaid
22 agency for third-party liability purposes.

23 (b) When the obligor receives health insurance
24 coverage for the dependent child, the IV-D agency shall
25 provide health insurance policy information, including any
26 information available about the health insurance policy which
27 would permit a claim to be filed or, in the case of a health
28 maintenance or preferred provider organization, service to be
29 provided, to the state Medicaid agency.

30 (c) The state Medicaid agency, upon receipt of the
31 health coverage information from the IV-D agency, shall notify

1 the obligor's insuring entity that the Medicaid agency must be
2 notified within 30 days when such coverage is discontinued.

3 (d) Entities providing health insurance as defined in
4 s. 624.603 and health maintenance organizations and prepaid
5 health clinics as defined in chapter 641 shall provide such
6 records and information as is necessary to accomplish the
7 purpose of this subsection, unless such requirement results in
8 an unreasonable burden.

9 ~~(e) The executive director of the department and the~~
10 ~~commissioner of the Department of Insurance shall enter into a~~
11 ~~cooperative agreement for requesting and obtaining information~~
12 ~~necessary to effect the purpose and objectives of this~~
13 ~~subsection:~~

14 ~~1. The department shall only request that information~~
15 ~~necessary to determine whether health insurance as defined~~
16 ~~pursuant to s. 624.603 or those health services provided~~
17 ~~pursuant to chapter 641 is discontinued.~~

18 ~~2. All information obtained pursuant to subparagraph~~
19 ~~1. is confidential and exempt from the provisions of s.~~
20 ~~119.07(1).~~

21 ~~3. The cooperative agreement or rules promulgated~~
22 ~~hereunder may include financial arrangements to reimburse the~~
23 ~~reporting entities for reasonable costs or a portion thereof~~
24 ~~incurred in furnishing the requested information. Neither the~~
25 ~~cooperative agreement nor the rules shall require the~~
26 ~~automation of manual processes to provide the requested~~
27 ~~information.~~

28 ~~4. The department and the Department of Insurance~~
29 ~~jointly shall promulgate rules for the development and~~
30 ~~administration of the cooperative agreement. The rules shall~~
31 ~~include the following:~~

1 ~~a. A method for identifying those entities subject to~~
2 ~~furnishing information under the cooperative agreement;~~

3 ~~b. A method for furnishing requested information; and~~

4 ~~c. Procedures for requesting exemption from the~~
5 ~~cooperative agreement based on an unreasonable burden to the~~
6 ~~reporting entity.~~

7 ~~(e)(f)~~ Upon the state Medicaid agency receiving notice
8 from the obligor's insuring entity that the coverage is
9 discontinued due to cancellation or other means, the Medicaid
10 agency shall notify the IV-D agency of such discontinuance and
11 the effective date. When appropriate, the IV-D agency shall
12 then take action to bring the obligor before the court for
13 enforcement.

14 Section 4. Subsection (8) of section 409.2564, Florida
15 Statutes, 1998 Supplement, is amended to read:

16 409.2564 Actions for support.--

17 (8) The director of the Title IV-D agency, or the
18 director's designee, is authorized to subpoena from any person
19 financial and other information necessary to establish,
20 modify, or enforce a child support order.

21 (a) For the purpose of establishing, modifying, or
22 enforcing a child support order, the director of this or
23 another state's Title IV-D agency or any investigation under
24 this chapter, any designated employee designated by the
25 director of this state's Title IV-D agency or authorized under
26 another state's law may administer oaths or affirmations,
27 subpoena witnesses and compel their attendance, take evidence
28 and require the production of any matter which is relevant to
29 the child support enforcement action investigation, including
30 the existence, description, nature, custody, condition, and
31 location of any books, documents, or other tangible things and

1 the identity and location of persons having knowledge of
2 relevant facts or any other matter reasonably calculated to
3 lead to the discovery of material evidence.

4 (b) Subpoenas issued by this or any other state's
5 Title IV-D agency may be challenged in accordance with s.
6 120.569(2)(i)1. While a subpoena is being challenged, the
7 Title IV-D agency may not impose a fine as provided for under
8 this paragraph until the challenge is complete and the
9 subpoena has been found to be valid ~~Prior to making~~
10 ~~application to the court for an order compelling compliance~~
11 ~~with a subpoena, the department shall issue a written~~
12 ~~notification of noncompliance.~~ Failure to comply with the
13 subpoena or challenge the subpoena as provided in this
14 paragraph within 15 days after service of the subpoena may
15 result in the agency taking the following actions:

16 1. Imposition of an administrative fine of not more
17 than \$500;

18 2. Enforcement of the subpoena as provided in s.
19 120.569(2)(i)2. When a subpoena is enforced under s.
20 120.569(2)(i)2. the court may award costs and attorney's fees
21 to the prevailing party in accordance with that section.

22 (c) The Title IV-D agency may seek to collect
23 administrative fines imposed under paragraph (b) by filing a
24 petition in the circuit court of the judicial circuit in which
25 the person against whom the fine was imposed resides. All
26 fines collected under this section shall be deposited into the
27 Child Support Enforcement Application and Program Revenue
28 Trust Fund. ~~receipt of the written notification without good~~
29 ~~cause may result in the application by the Title IV-D agency~~
30 ~~to the circuit court for an order compelling compliance with~~
31 ~~the subpoena. The person who is determined to be in~~

1 ~~noncompliance with the subpoena shall be liable for reasonable~~
2 ~~attorney's fees and costs associated with the department~~
3 ~~bringing this action upon showing by the department that the~~
4 ~~person failed to comply with the request without good cause.~~

5 Section 5. Subsection (1) of section 409.25641,
6 Florida Statutes, 1998 Supplement, is amended to read:

7 409.25641 Procedures for processing automated
8 administrative enforcement requests.--

9 (1) The Title IV-D agency shall use automated
10 administrative enforcement, as defined in the Social Security
11 Act, in response to a request from another state to enforce a
12 support order and shall promptly report the results of
13 enforcement action to the requesting state. ~~"Automated~~
14 ~~administrative enforcement" means the use of automated data~~
15 ~~processing to search state databases and determine whether~~
16 ~~information is available regarding the parent who owes a child~~
17 ~~support obligation.~~

18 Section 6. Subsection (7) of section 409.25656,
19 Florida Statutes, is amended to read:

20 409.25656 Garnishment.--

21 (7)(a) Levy may be made under subsection (3) upon
22 credits, other personal property, or debt of any person with
23 respect to any past due or overdue child support obligation
24 only after the executive director or his or her designee has
25 notified such person in writing of the intention to make such
26 levy.

27 (b) Not less than 30 days before the day of the levy,
28 the notice of intent to levy required under paragraph (a) must
29 be given in person or sent by certified or registered mail to
30 the person's last known address.

31

1 (c) The notice required in paragraph (a) must include
2 a brief statement that sets forth:

3 1. The provisions of this section relating to levy and
4 sale of property;

5 2. The procedures applicable to the levy under this
6 section;

7 3. The administrative and judicial appeals available
8 to the obligor with respect to such levy and sale, and the
9 procedures relating to such appeals; and

10 4. The alternatives, if any, available to the obligor
11 which could prevent levy on the property.

12 (d) The obligor may consent in writing to the levy any
13 time after receipt of a notice of intent to levy.

14 Section 7. Subsection (2) of section 409.25657,
15 Florida Statutes, is amended to read:

16 409.25657 Requirements for financial institutions.--

17 (2) The department shall develop procedures to enter
18 into agreements with financial institutions doing business in
19 the state, ~~to develop and operate,~~ in coordination with such
20 financial institutions and the Federal Parent Locator Service
21 in the case of financial institutions doing business in two or
22 more states, to develop and operate a data match system, using
23 automated data exchanges to the maximum extent feasible, in
24 which each financial institution is required to provide for
25 each calendar quarter the name, record address, social
26 security number or other taxpayer identification number,
27 average daily account balance, and other identifying
28 information for:

29 (a) Each noncustodial parent who maintains an account
30 at such institution and who owes past due support, as
31

1 identified by the department by name and social security
2 number or other taxpayer identification number;~~or-~~

3 (b) At the financial institution's option, each
4 individual who maintains an account at such institution. Use
5 of this information must be limited to the purpose of
6 administration of the Title IV-D program for child support
7 enforcement.

8 Section 8. Section 409.2577, Florida Statutes, 1998
9 Supplement, is amended to read:

10 409.2577 Parent locator service.--The department shall
11 establish a parent locator service to assist in locating
12 parents who have deserted their children and other persons
13 liable for support of dependent children. The department
14 shall use all sources of information available, including the
15 Federal Parent Locator Service, and may request and shall
16 receive information from the records of any person or the
17 state or any of its political subdivisions or any officer
18 thereof. Any agency as defined in s. 120.52, any political
19 subdivision, and any other person shall, upon request, provide
20 the department any information relating to location, salary,
21 insurance, social security, income tax, and employment history
22 necessary to locate parents who owe or potentially owe a duty
23 of support pursuant to Title IV-D of the Social Security Act.
24 This provision shall expressly take precedence over any other
25 statutory nondisclosure provision which limits the ability of
26 an agency to disclose such information, except that law
27 enforcement information as provided in s. 119.07(3)(i) is not
28 required to be disclosed, and except that confidential
29 taxpayer information possessed by the Department of Revenue
30 shall be disclosed only to the extent authorized in s.
31 213.053(15). Nothing in this section requires the disclosure

1 of information if such disclosure is prohibited by federal
2 law. Information gathered or used by the parent locator
3 service is confidential and exempt from the provisions of s.
4 119.07(1). Additionally, the department is authorized to
5 collect any additional information directly bearing on the
6 identity and whereabouts of a person owing or asserted to be
7 owing an obligation of support for a dependent child.
8 ~~Information gathered or used by the parent locator service is~~
9 ~~confidential and exempt from the provisions of s. 119.07(1).~~
10 The department may make such information available only to
11 public officials and agencies of this state; political
12 subdivisions of this state; the custodial parent, legal
13 guardian, attorney, or agent of the child; and other states
14 seeking to locate parents who have deserted their children and
15 other persons liable for support of dependents, for the sole
16 purpose of establishing, modifying, or enforcing their
17 liability for support, and shall make such information
18 available to the Department of Children and Family Services
19 for the purpose of diligent search activities pursuant to
20 chapter 39. If the department has reasonable evidence of
21 domestic violence or child abuse and the disclosure of
22 information could be harmful to the custodial parent or the
23 child of such parent, the child support program director or
24 designee shall notify the Department of Children and Family
25 Services and the Secretary of the United States Department of
26 Health and Human Services of this evidence. Such evidence is
27 sufficient grounds for the department to disapprove an
28 application for location services.

29 Section 9. (1) The sum of \$58,752 from the General
30 Revenue Fund and the sum of \$114,048 from the Grants and
31 Donations Trust Fund are appropriated to the Department of

1 Revenue to implement the amendments made by this act to
2 section 409.2558, Florida Statutes, 1998 Supplement.

3 (2) The sum of \$19,584 from the General Revenue Fund
4 and the sum of \$38,016 from the Grants and Donations Trust
5 Fund are appropriated to the Department of Revenue to
6 implement the amendments made by this act to section
7 409.25657, Florida Statutes, 1998 Supplement.

8 Section 10. Except as otherwise provided in this act,
9 this act shall take effect July 1, 1999.

10
11 *****

12 SENATE SUMMARY

13 Authorizes the Department of Revenue to adopt rules
14 relating to child support distribution and disbursement.
15 Authorizes the department to redirect child support
16 payments to the appropriate caretaker relative. Provides
17 for the court to establish liability in compliance with
18 child support guidelines. Provides procedures for
19 challenging subpoenas and authorizes the imposition and
20 collection of administrative fines. Redefines the term
21 "automated administrative enforcement." Provides for
22 consent to a levy in garnishment proceedings. Requires
23 the department to coordinate with the Federal Parent
24 Locator Service. Provides appropriations.
25
26
27
28
29
30
31