

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1761 Child Support
SPONSOR(S): Committee on the Future of Florida's Families
TIED BILLS: **IDEN./SIM. BILLS:** SB 1638

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Children's Services (Sub)	6 Y, 0 N	Preston	Liem
2) Future of Florida's Families	14 Y, 0 N	Preston	Liem
3) Judiciary		Birtman	Havlicak
4) Insurance			
5) Judicial Appropriations (Sub)			

SUMMARY ANALYSIS

As the state's Title IV-D agency, the Department of Revenue has responsibility for the Child Support Enforcement Program. In 1996, Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), or federal welfare reform initiative. As a part of that initiative, state child support enforcement programs were reorganized and overhauled. Title III of the federal act not only expanded existing requirements for state child support programs, but implemented new additional requirements as well. Since issues related to child support have traditionally been a function of state family law, state legislatures were required by the federal government to make changes in state law as a condition of receiving funding for child support and child welfare programs. States failing to enact all of the federally mandated child support reforms faced a total loss of federal Temporary Assistance to Needy Families (TANF) funds.

During the 1997 legislative session, the Florida Legislature amended state law to comply with most of the requirements contained in the federal welfare reform package. As federal laws, rules, and regulations have continued to change, the Florida Legislature has subsequently enacted those changes. As a continuation of that process, HB 1761 does the following:

- conforms Florida law to federal law and federal and Florida appellate case law related to the requirement that an applicant or recipient of public assistance cooperate in good faith with the Department of Revenue with regard to paternity establishment;
- provides for the use of private process servers under certain specified circumstances;
- provides for the use of a written declaration under penalty of perjury when executing a voluntary acknowledgement of paternity;
- provides for data base matching and insurance intercepts related to workers compensation and liability claims; and
- eliminates a requirement for the provision of social security numbers of children for which support is ordered.

The bill does not appear to have a fiscal impact on state or local governments.

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

STORAGE NAME: h1761a.ju.doc
DATE: April 10, 2003

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|--|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input checked="" 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 type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" 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: The bill tightens existing and creates new mechanisms for enforcing payment of child support obligations.

B. EFFECT OF PROPOSED CHANGES:

Public Assistance Recipient Cooperation

Federal welfare reform, or PRWORA, resulted in significant changes to both Florida’s public assistance system and child support enforcement program. Changes included placing time limits on the receipt of cash assistance, enacting stringent work requirements, increasing penalties for failure to cooperate with child support enforcement, and shifting the responsibility for determining cooperation and good cause from the Title IV-A program¹ to the Title IV-D program².

Federal law defines cooperation as working with the Title IV-D agency in good faith to provide the name and other identifying information related to the non-custodial parent, attending hearings and conferences and (when appropriate) submitting to genetic testing. Although s.409.2572, Florida Statutes, was amended to implement PRWORA, it was not amended to conform to PRWORA’s good faith standard for cooperation, nor has it been amended in response to Florida case law that effectively limited its effect.

As the state’s Title IV-D agency, the Department of Revenue is required by federal law³ to determine whether an applicant or recipient of public assistance is cooperating in good faith with the Department in its effort to establish paternity when necessary and obtain child support from the non-custodial parent. Section 409.2572, Florida Statutes, provides that the duty to cooperate includes providing the name and other information needed to identify and locate the alleged father if the child was not born or conceived during marriage. The Title IV-A program must then impose sanctions based upon the Title IV-D program’s determination. The imposition of sanctions now results in a loss of eligibility to receive public assistance.⁴

Section 409.2572, Florida Statutes, provides that if the mother identifies one or more persons as the possible father of the child and asserts that there are no others who could be the father of the child, but genetic testing indicates that none of the persons identified could in fact have been the father of the child, the mother shall be deemed noncooperative. The statute further provides that if she subsequently identifies another person as the possible father of the child, she shall still be deemed noncooperative until that person has been genetically tested and is not excluded as the father by the test. She remains labeled as uncooperative even if she has no additional information related to a putative father of the child. These statutory provisions are inconsistent with federal law, which only requires an applicant or recipient to cooperate in good faith as a condition of eligibility for public assistance.

¹ See 42 U.S.C. ss. 602 et seq., which provides for grants to states for temporary assistance for needy families.

² See 42 U.S.C. ss. 651 et seq, which provides for child support enforcement as a part of temporary assistance for needy families.

³ See 42 U.S.C. s. 654(29).

⁴ See s. 409.2572(3), F.S.

In 1992, the 1st DCA held that a mother could not be denied AFDC benefits based on her alleged noncooperation with child support enforcement after the individual named by the mother was excluded as the child's father by paternity blood testing where the mother testified under oath that she could provide HRS with no additional information about who the father of her child might be.⁵ Federal courts in other jurisdictions have issued similar rulings that limit a state's ability to impose sanctions when the recipient attests to a lack of information concerning the father of the child.⁶ The change proposed in the bill would deem a mother noncooperative for refusing to identify the father of the child, or where more than one man could be the father, refusing to identify all such persons.

Use of Private Process Servers

Currently, the law requires the Department of Revenue to utilize a private process server for the initial service of process in Title IV-D cases. The change proposed by the bill would allow the Department to determine on a case-by-case basis whether to use the sheriff or a private process server based on the circumstances present in each case.⁷ This has the potential to enable the Department to establish orders sooner due to a reduction in the time it takes to effect successful service of process.

Voluntary Acknowledgment of Paternity

Paternity is not established for a child born to unwed parents unless the parents voluntarily acknowledge paternity. Pursuant to ss 742.10 and 382.013, Florida Statutes, parents must sign a form to acknowledge paternity, and their signatures must be notarized. Federal law requires that states have a simple civil process for unmarried parents to establish paternity through a voluntary process, but does not require notarization of the acknowledgment forms.⁸

The notarization requirement in Florida law reportedly presents obstacles to hospitals and parents primarily because notaries are frequently unavailable on occasions when it is convenient for both parents to be present, such as weekends, evenings, and holidays. This obstacle results in missed opportunities for parents to establish paternity at the hospital. The notarization requirement adversely affects the state's Paternity Establishment Percentage and puts Florida at a competitive disadvantage with other states for federal incentives. Other states, which Florida competes against for federal incentive monies, have replaced the notarization with a witnessing requirement and out perform Florida in paternity establishment. The bill allows voluntary acknowledgment of paternity to be witnessed by two individuals and signed under penalty of perjury.⁹

Insurance Intercepts

Section 409.25656, Florida Statutes, currently provides the Department the authority to intercept insurance claim payments to obligors who are past-due or overdue in their support. In addition, the Department has the authority to file liens against personal property, including vehicles and bank accounts. However, current statute does not require insurers to make efforts to identify obligors with past-due or overdue support and remit current or pending claim payments to the Department.

⁵ See *Kelly v. Department of Health and Rehabilitative Services*, 596 So.2d 130 (Fla. 1st DCA 1992).

⁶ See *Tomas v. Rubin*, 926 F.2d 906 (9th Cir. 1990); *Smyth v. Carter*, 168 F.R.D. 28 (W.D. Va. 1996).

⁷ See s. 48.021, F.S., which requires process to be served by the sheriff of the county where the person to be served is found, except initial nonenforceable civil process may be served by a special process server or by a certified process server.

⁸ See 42 USC § 666(a)(5)(D).

⁹ See s. 92.525(2), F.S. which allows verification of a document by a person to be accomplished by signing the following statement: "Under penalties of perjury, I declare that I have read the foregoing and that the facts stated in it are true," followed by the signature of the person making the declaration, except when a verification on information or belief is permitted by law, in which case the words "to the best of my knowledge and belief" may be added. The penalty for the crime of perjury (knowingly making a false declaration) is a third degree felony.

The Department currently receives data monthly regarding workers compensation claims filed in Florida. The Department matches these claims against delinquent cases, and income deduction orders are sent to the appropriate insurers when matches are made. In addition, compensation claim judges are required to take into consideration past-due or overdue support at the time settlements are reached in hearings for lump sum payments pursuant to workers compensation claims. Currently, the child support enforcement program does not receive claims information from any other line of insurance.

In May 2002, the Department of Revenue Child Support Enforcement Program entered into a contract with the state of Rhode Island to participate in the Child Support Lien Network. The Child Support Lien Network provides member states with information from participating insurance companies when claims are filed in both workers compensation and personal injury lines of insurance. However, the Department needs specific authority to require affected insurers to withhold the payment of claims where there is past-due or overdue support owed by the claimant.

Changes proposed by the bill would:

- Require insurers¹⁰ to match their claims against a secure¹⁰, web-enabled data base of persons who owe past due support of at least \$500 and to notify the Department of matches;
- Provide notice to the non-custodial parent of the Department's intent to intercept, an opportunity for an administrative hearing, and judicial review;
- Require insurers to remit claim payments up to the amount of support owed to the Department, with exemptions for attorney's fees, pre-existing liens for medical care and payments for future medical expenses;
- Exempts the lesser of 15% of the total payment or \$5000 for the obligor's future medical expenses, provided the expenses are due to a condition that gave rise to the claim and are documented by a licensed physician.
- Provide that insurers who fail to review information or withhold money shall be liable for the amount they should have withheld, plus costs, interest and reasonable attorney's fees; and
- Provide immunity to an insurer, its directors, agents, and employees and any central reporting organization and its agents and employees authorized by an insurer to act on its behalf who act in conformity with the requirements of this act.

Venue of Administrative Hearing: The administrative establishment of child support obligations are conducted by the Division of Administrative Hearings and governed by chapter 120, F.S., and the Uniform Rules of Procedures.¹¹ The Uniform Rules of Procedures require that the hearing be held where the non-governmental party affected by the agency is located or the place most convenient to all parties as determined by the presiding officer.¹² The bill specifies that administrative hearings to establish support orders shall be held in the judicial circuit where the person receiving services under Title IV-D resides, or, if the person receiving services under Title IV-D does not reside in Florida, in the judicial circuit where the respondent resides. The hearing may be held in another location if the Department and the respondent agree.

Service of Process: The law currently provides that a notice of proceeding to establish an administrative support order must state that if the non-custodial parent has issues regarding child custody, parental contact or requests to proceed in circuit court, the non-custodial parent may request in writing that the

¹⁰ The bill defines 'insurers' as an entity that is responsible for paying a claim on liability coverage in an insurance contract and which is: an insurer defined by s. 624.03, F.S., authorized to transact insurance in this state; an eligible surplus lines insurer pursuant to part VIII of chapter 626, F.S.; a joint underwriter or joint reinsurer created by law or otherwise operating pursuant to s. 627.311, F.S.; or an insurance risk apportionment plan operating pursuant to s. 627.351, F.S. Relating to the workers compensation requirements, the bill defines 'insurer' as defined by s. 440.02(39), F.S., as a group self-insurers' fund authorized by s. 624.4621, F.S.; an individual self-insurer authorized by s. 440.38, F.S.; a commercial self-insurance fund authorized by s. 624.462, F.S.; an assessable mutual insurer authorized by s. 628.6011, F.S.; and an insurer licensed to write workers' compensation and employer's liability insurance in this state.

¹¹ See s. 120.54(5), F.S.

¹² See Chapter 28-106.207 of the Uniform Rules of Procedures.

Department proceed in circuit court within 20 days of receiving the initial notice. Upon that request, the Department shall mail the parent a copy of the petition and waiver of service form. Within 10 days of receipt of the petition, the non-custodial parent must sign and return the waiver of service form at which time the Department shall terminate the administrative proceeding and file an action in circuit court.¹³ The Rules of Civil Procedure require that a petition be filed before requesting waiver of service of process.¹⁴ The bill requires the Department to file the petition in circuit court before requesting the non-custodial parent to waive service of process, as consistent with the Rules of Civil Procedure.

The bill also:

- Deletes the requirement that child support orders include the social security numbers of each minor child.
- Requires local child support depositories to establish accounts for the receipt and disbursement of support payments in Title IV-D interstate cases.
- Continues the ability of a local depository to impose and collect an increased fee.
- Requires that for an undistributable collection that would otherwise be refunded to the non-custodial parent, the Department must apply the collection to other support obligations owed by the non-custodial parent that are being enforced by the Department. The bill provides for notice and allocation rules.
- Clarifies that the Department is a party in circuit court only with respect to matters for which federal funding is permitted under Title IV-D of the Social Security Act.

C. SECTION DIRECTORY:

Section 1. Amends s. 61.046, Florida Statutes, relating to definitions, to include a support order issued by an administrative agency as provided by s. 409.2563, F.S.

Section 2. Amends s. 61.13, Florida Statutes, relating to the custody and support of children, to eliminate the requirement that the social security number of each child for whom support is ordered be included in the order.

Section 3. Amends s. 61.181, Florida Statutes, relating to the depository for support payments, to provide that upon the request of the Department, depositories shall establish an account for the purpose of processing support payments for interstate cases that are not necessarily registered in Florida. The section also eliminates a sunset date for a user fee collected by the depositories.

Section 4. Amends s. 120.80, Florida Statutes, relating to proceedings for administrative support orders, to require that, whenever practicable, administrative hearings are to be held where the recipient of the Title IV-D services resides, or if that parent lives out of state, then where the non-custodial parent resides.

Section 5. Amends s. 382.013, Florida Statutes, relating to birth registration, to provide for the use of a written declaration under penalty of perjury when executing a voluntary acknowledgment of paternity.

Section 6. Amends s. 382.016, Florida Statutes, relating to the amendment of birth records, to provide for the use of a written declaration under penalty of perjury when executing a voluntary acknowledgment of paternity.

Section 7. Amends s. 409.2557, Florida Statutes, relating to rulemaking authority for the Department of Revenue for the Child Support Enforcement Program, to provide the Department with the authority to make rules related to the reporting of liability claims by insurers authorized to write workers compensation and/or personal injury lines of insurance.

Section 8. Amends s. 409.2558, Florida Statutes, relating to the distribution and disbursement of child support payments, to allow the Department to apply a collection deemed to be undistributable to another

¹³ See s. 409.2563(2)(f), F.S.

¹⁴ See Rule 1.070(i), Florida Rules of Civil Procedure.

order or orders for which the obligor is responsible for support without the need to obtain his or her permission.

Section 9. Amends s. 409.2561, Florida Statutes, related to child support obligations in Title IV-D cases, to broaden the requirements to include administrative support orders in addition to court orders.

Section 10. Amends s. 409.2563, Florida Statutes, related to administrative establishment of child support orders, to require that the waiver of service be signed after, rather than before, the action is filed in court.

Section 11. Amends s. 409.25656, Florida Statutes, relating to garnishment, to provide that when securities are liquidated at the request of the Department in order to pay past due child support, the entity liquidating those securities is allowed to recover any commissions or fees ordinarily associated with such liquidation if the value of the securities exceeds the amount of support owed.

Section 12. Creates s. 409.25659, Florida Statutes, related to the withholding of insurance payments for unpaid support, to require all insurers authorized to write workers compensation and/or personal injury lines of insurance and employers who are self-insured to match their claims against a secure, web-based data base of individuals who owe past due support and to notify the Department of matches. The section also provides for notice to the obligor of the Department's intention to intercept a payment, provides an opportunity for an administrative hearing, provides exceptions for medical care expenses and provides for penalties for failure to comply.

Section 13. Amends s. 409.257, Florida Statutes, related to service of process, to allow the Department to determine on a case-by-case basis whether to use the sheriff or a private process server in an initial service of process.

Section 14. Amends s. 409.2572, Florida Statutes, relating to cooperation on the part of an applicant or recipient of public assistance funds, to allow the mother to be deemed cooperative pending the outcome of genetic testing on subsequently named putative fathers or if she attests to a lack of information regarding the identity of the father of the child.

Section 15. Amends s. 409.259, Florida Statutes, related to filing fees in Title IV-D cases, to conform conflicting sections of statute.

Section 16. Creates s. 440.123, Florida Statutes, related to insurers paying periodic compensation, to require all insurers and employers who are self-insured to match their claims against a secure, web-based data base of individuals who owe past due support and to notify the Department of matches.

Section 17. Amends s. 440.20, Florida Statutes, related to workers compensation claims, to require judges, before approving a settlement, to obtain a statement from the Department as to whether the claimant owes unpaid support and, if so, the amount owed.

Section 18. Amends s. 742.10, Florida Statutes, relating to the establishment of paternity for children born out of wedlock, to provide for the use of a written declaration under penalty of perjury when executing a voluntary acknowledgment of paternity and to remove a conflicting statement related to the creation of a rebuttable presumption.

Section 19. Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None

2. Expenditures: None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None

2. Expenditures: None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None

D. FISCAL COMMENTS: The Department of Revenue reports that Florida is expected to receive \$622,745,788 in Temporary Assistance to Needy Families (TANF) grant funds in 2003-2004.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: This bill does not affect local or municipal governments.

2. Other:

Access to Courts: Article I, Section 21 of the State Constitution provides that “the courts shall be open to every person for redress of any injury, and justice shall be administered without sale, denial, or delay.” Where citizens have enjoyed a historical right of access, the Legislature can only eliminate a judicial remedy under two circumstances: a valid public purpose coupled with a reasonable alternative, or an overriding public necessity. It would appear that the administrative scheme set forth in HB 1761 has a valid public purpose in collecting and distributing child support and provides a reasonable alternative to judicial action in allowing administrative determination of support orders.

It is less clear whether the legislative grant of immunity to insurers who comply with the provisions of the act comports with the Access to Courts provisions of the constitution.

Due Process: Florida’s Due Process Clause, found at Article I, section 9, mirrors that contained in the Fourteenth Amendment of the federal constitution. Generally, due process rests primarily on the concept of fundamental fairness.¹⁵ At a minimum, due process requires the right to adequate advance notice and a meaningful right to be heard. It appears that both requirements are provided by the provisions in HB 1761.

B. RULE-MAKING AUTHORITY: The bill provides the Department of Revenue with rulemaking authority related to the reporting of liability claims by insurers.

C. DRAFTING ISSUES OR OTHER COMMENTS: None

¹⁵ See *State v. Smith*, 547 So.2d 131 (Fla. 1989).

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 11, 2003, the Subcommittee on Children's Services recommended an amendment that eliminated the sunset provision related to a user fee charged by depositories in child support enforcement cases.

On March 18, 2003, the Committee on the Future of Florida's Families adopted an amendment providing that when a written declaration under penalty of perjury is used when executing a voluntary acknowledgment of paternity, the declaration must be witnessed by two individuals.