



HB 1761

2003

1 A bill to be entitled

2 An act relating to child support; amending s. 61.046,
3 F.S.; redefining the term "support order" for purposes of
4 ch. 61, F.S., to include an order of an administrative
5 agency; amending s. 61.13, F.S.; deleting the requirement
6 that a child support order include the minor's social
7 security number; amending s. 61.181, F.S.; requiring the
8 clerk of the court to establish an account for interstate
9 cases; providing for the continuation of a fee; amending
10 s. 120.80, F.S.; providing for the location of an
11 administrative hearing; amending ss. 382.013 and 382.016,
12 F.S.; permitting voluntary acknowledgements of paternity
13 which are witnessed; amending s. 409.2557, F.S.;
14 authorizing the Department of Revenue to adopt rules to
15 administer the withholding of insurance payments; amending
16 s. 409.2558, F.S.; providing for a notice to the
17 noncustodial parent in applying an undistributable support
18 collection to another support order; amending s. 409.2561,
19 F.S.; providing for the Department of Revenue to establish
20 the obligation of support; amending s. 409.2563, F.S.;
21 providing for the noncustodial parent to request that the
22 Department of Revenue proceed in circuit court to
23 determine the support obligation; revising the
24 requirements under which a noncustodial parent may
25 petition the circuit court to determine the support
26 obligation; providing that the Department of Revenue is a
27 party to court action only with respect to issues of
28 support; amending s. 409.25656, F.S.; providing for the
29 recovery of fees in liquidating securities for the support
30 owed; creating s. 409.25659, F.S.; providing for



HB 1761

2003

31 withholding insurance payments for unpaid support;
 32 providing definitions; specifying the duties of the
 33 insurer; providing that unpaid support constitutes a lien
 34 against an insurance claim; providing for notice to the
 35 obligor; providing for payment to the Department of
 36 Revenue; providing for an exemption for certain fees and
 37 expenses; providing rulemaking authority; amending s.
 38 409.257, F.S.; permitting the use of any means of service
 39 of process under ch. 48, F.S.; amending s. 409.2572, F.S.;
 40 revising the definition of noncooperation or failure to
 41 cooperate as applied to an applicant for or a recipient of
 42 public assistance; amending s. 409.259, F.S.; revising the
 43 manner of reimbursement to the clerk of the court for
 44 court filings in Title IV-D cases; creating s. 440.123,
 45 F.S.; requiring an insurer paying workers' compensation
 46 insurance to inquire about unpaid child support; amending
 47 s. 440.20, F.S.; requiring the judge of compensation
 48 claims to obtain information on the support owed; amending
 49 s. 742.10, F.S.; permitting voluntary acknowledgements of
 50 paternity which are witnessed; deleting the rebuttable
 51 presumption of a voluntary acknowledgement of paternity;
 52 providing effective dates.

53
 54 Be It Enacted by the Legislature of the State of Florida:

55
 56 Section 1. Subsection (19) of section 61.046, Florida
 57 Statutes, is amended to read:

58 61.046 Definitions.--As used in this chapter:

59 (19) "Support order" means a judgment, decree, or order,
 60 whether temporary or final, issued by a court of competent



HB 1761

2003

61 jurisdiction or administrative agency for the support and
62 maintenance of a child which provides for monetary support,
63 health care, arrearages, or past support. When the child support
64 obligation is being enforced by the Department of Revenue, the
65 term "support order" also means a judgment, decree, or order,
66 whether temporary or final, issued by a court of competent
67 jurisdiction for the support and maintenance of a child and the
68 spouse or former spouse of the obligor with whom the child is
69 living which provides for monetary support, health care,
70 arrearages, or past support.

71 Section 2. Paragraph (d) of subsection (1) of section
72 61.13, Florida Statutes, is amended to read:

73 61.13 Custody and support of children; visitation rights;
74 power of court in making orders.--

75 (1)

76 (d)1. Unless the provisions of subparagraph 3. apply, all
77 child support orders entered on or after January 1, 1985, shall
78 direct that the payments of child support be made as provided in
79 s. 61.181 through the depository in the county where the court
80 is located. All child support orders shall provide the full
81 name, and date of birth, ~~and social security number~~ of each
82 minor child who is the subject of the child support order.

83 2. Unless the provisions of subparagraph 3. apply, all
84 child support orders entered before January 1, 1985, shall be
85 modified by the court to direct that payments of child support
86 shall be made through the depository in the county where the
87 court is located upon the subsequent appearance of either or
88 both parents to modify or enforce the order, or in any related
89 proceeding.



HB 1761

2003

90 3. If both parties request and the court finds that it is
91 in the best interest of the child, support payments need not be
92 directed through the depository. The order of support shall
93 provide, or shall be deemed to provide, that either party may
94 subsequently apply to the depository to require direction of the
95 payments through the depository. The court shall provide a copy
96 of the order to the depository.

97 4. If the parties elect not to require that support
98 payments be made through the depository, any party may
99 subsequently file an affidavit with the depository alleging a
100 default in payment of child support and stating that the party
101 wishes to require that payments be made through the depository.
102 The party shall provide copies of the affidavit to the court and
103 to each other party. Fifteen days after receipt of the
104 affidavit, the depository shall notify both parties that future
105 payments shall be paid through the depository.

106 5. In IV-D cases, the IV-D agency shall have the same
107 rights as the obligee in requesting that payments be made
108 through the depository.

109 Section 3. Effective July 1, 2003, subsections (1) and (2)
110 of section 61.181, Florida Statutes, are amended to read:

111 61.181 Depository for alimony transactions, support,
112 maintenance, and support payments; fees.--

113 (1)(a) The office of the clerk of the court shall operate
114 a depository unless the depository is otherwise created by
115 special act of the Legislature or unless, prior to June 1, 1985,
116 a different entity was established to perform such functions.
117 The department shall, no later than July 1, 1998, extend
118 participation in the federal child support cost reimbursement
119 program to the central depository in each county, to the maximum



HB 1761

2003

120 extent possible under existing federal law. The depository shall
121 receive reimbursement for services provided under a cooperative
122 agreement with the department pursuant to s. 61.1826. Each
123 depository shall participate in the State Disbursement Unit and
124 shall implement all statutory and contractual duties imposed on
125 the State Disbursement Unit. Each depository shall receive from
126 and transmit to the State Disbursement Unit required data
127 through the Clerk of Court Child Support Enforcement Collection
128 System. Payments on non-Title IV-D cases without income
129 deduction orders shall not be sent to the State Disbursement
130 Unit.

131 (b) Upon request by the Title IV-D agency, the depository
132 created pursuant to paragraph (a) shall establish an account for
133 the receipt and disbursement of support payments for Title IV-D
134 interstate cases. The Title IV-D agency shall provide a copy of
135 the other state's order with the request and the depository
136 shall advise the Title IV-D agency of the account number in
137 writing within 4 business days after receipt of the request.

138 (2)(a) For payments not required to be processed through
139 the State Disbursement Unit, the depository shall impose and
140 collect a fee on each payment made for receiving, recording,
141 reporting, disbursing, monitoring, or handling alimony or child
142 support payments as required under this section. For non-Title
143 IV-D cases required to be processed by the State Disbursement
144 Unit pursuant to this chapter, the State Disbursement Unit
145 shall, on each payment received, collect a fee, and shall
146 transmit to the depository in which the case is located 40
147 percent of such service charge for the depository's
148 administration, management, and maintenance of such case. If a
149 payment is made to the State Disbursement Unit which is not



HB 1761

2003

150 accompanied by the required fee, the State Disbursement Unit
151 shall not deduct any moneys from the support payment for payment
152 of the fee. The fee shall be a flat fee based, to the extent
153 practicable, upon estimated reasonable costs of operation. The
154 fee shall be reduced in any case in which the fixed fee results
155 in a charge to any party of an amount greater than 3 percent of
156 the amount of any support payment made in satisfaction of the
157 amount which the party is obligated to pay, except that no fee
158 shall be less than \$1 nor more than \$5 per payment made. The fee
159 shall be considered by the court in determining the amount of
160 support that the obligor is, or may be, required to pay.

161 (b)1. ~~For the period of July 1, 1992, through June 30,~~
162 ~~2003,~~ The fee imposed in paragraph (a) shall be increased to 4
163 percent of the support payments which the party is obligated to
164 pay, except that no fee shall be more than \$5.25. The fee shall
165 be considered by the court in determining the amount of support
166 that the obligor is, or may be, required to pay. Notwithstanding
167 the provisions of s. 145.022, 75 percent of the additional
168 revenues generated by this paragraph shall be remitted monthly
169 to the Clerk of the Court Child Support Enforcement Collection
170 System Trust Fund administered by the department as provided in
171 subparagraph 2. These funds shall be used exclusively for the
172 development, implementation, and operation of the Clerk of the
173 Court Child Support Enforcement Collection System to be operated
174 by the depositories, including the automation of civil case
175 information necessary for the State Case Registry. The
176 department shall contract with the Florida Association of Court
177 Clerks and the depositories to design, establish, operate,
178 upgrade, and maintain the automation of the depositories to
179 include, but not be limited to, the provision of on-line



HB 1761

2003

180 electronic transfer of information to the IV-D agency as
181 otherwise required by this chapter. The department's obligation
182 to fund the automation of the depositories is limited to the
183 state share of funds available in the Clerk of the Court Child
184 Support Enforcement Collection System Trust Fund. Each
185 depository created under this section shall fully participate in
186 the Clerk of the Court Child Support Enforcement Collection
187 System and transmit data in a readable format as required by the
188 contract between the Florida Association of Court Clerks and the
189 department.

190 2. Moneys to be remitted to the department by the
191 depository shall be done daily by electronic funds transfer and
192 calculated as follows:

193 a. For each support payment of less than \$33, 18.75 cents.

194 b. For each support payment between \$33 and \$140, an
195 amount equal to 18.75 percent of the fee charged.

196 c. For each support payment in excess of \$140, 18.75
197 cents.

198 3. The fees established by this section shall be set forth
199 and included in every order of support entered by a court of
200 this state which requires payment to be made into the
201 depository.

202 Section 4. Paragraph (c) of subsection (14) of section
203 120.80, Florida Statutes, is amended to read:

204 120.80 Exceptions and special requirements; agencies.--

205 (14) DEPARTMENT OF REVENUE.--

206 (c) *Proceedings for administrative support orders.*--In
207 proceedings for the establishment of administrative support
208 orders pursuant to s. 409.2563, final orders in cases referred
209 by the Department of Revenue to the Division of Administrative



HB 1761

2003

210 Hearings shall be entered by the division's administrative law
 211 judge and transmitted to the Department of Revenue for filing
 212 and rendering. The Department of Revenue has the right to seek
 213 judicial review under s. 120.68 of a final order entered by an
 214 administrative law judge. Administrative support orders rendered
 215 pursuant to s. 409.2563 may be enforced pursuant to s. 120.69
 216 or, alternatively, by any method prescribed by law for the
 217 enforcement of judicial support orders, except contempt.

218 Whenever practicable, hearings held by the Division of
 219 Administrative Hearings pursuant to s. 409.2563 shall be held in
 220 the judicial circuit where the person receiving services under
 221 Title IV-D resides or, if the person receiving services under
 222 Title IV-D does not reside in this state, in the judicial
 223 circuit where the respondent resides. If the department and the
 224 respondent agree, the hearing may be held in another location.

225 Section 5. Effective July 1, 2003, paragraph (c) of
 226 subsection (2) of section 382.013, Florida Statutes, is amended
 227 to read:

228 382.013 Birth registration.--A certificate for each live
 229 birth that occurs in this state shall be filed within 5 days
 230 after such birth with the local registrar of the district in
 231 which the birth occurred and shall be registered by the local
 232 registrar if the certificate has been completed and filed in
 233 accordance with this chapter and adopted rules. The information
 234 regarding registered births shall be used for comparison with
 235 information in the state case registry, as defined in chapter
 236 61.

237 (2) PATERNITY.--

238 (c) If the mother is not married at the time of the birth,
 239 the name of the father may not be entered on the birth



HB 1761

2003

240 certificate without the execution of an affidavit signed by both
 241 the mother and the person to be named as the father. The
 242 facility shall give notice orally or through the use of video or
 243 audio equipment, and in writing, of the alternatives to, the
 244 legal consequences of, and the rights, including, if one parent
 245 is a minor, any rights afforded due to minority status, and
 246 responsibilities that arise from signing an acknowledgment of
 247 paternity, as well as information provided by the Title IV-D
 248 agency established pursuant to s. 409.2557, regarding the
 249 benefits of voluntary establishment of paternity. Upon request
 250 of the mother and the person to be named as the father, the
 251 facility shall assist in the execution of the affidavit, ~~or~~ a
 252 notarized voluntary acknowledgment of paternity, or a voluntary
 253 acknowledgment of paternity that is witnessed by two individuals
 254 and signed under penalty of perjury as specified by s.
 255 92.525(2).

256 Section 6. Effective July 1, 2003, paragraph (b) of
 257 subsection (1) of section 382.016, Florida Statutes, is amended
 258 to read:

259 382.016 Amendment of records.--The department, upon
 260 receipt of the fee prescribed in s. 382.0255; documentary
 261 evidence, as specified by rule, of any misstatement, error, or
 262 omission occurring in any birth, death, or fetal death record;
 263 and an affidavit setting forth the changes to be made, shall
 264 amend or replace the original certificate as necessary.

265 (1) CERTIFICATE OF LIVE BIRTH AMENDMENT.--

266 (b) Upon written request and receipt of an affidavit, ~~a~~ ~~or~~
 267 notarized voluntary acknowledgment of paternity, or a voluntary
 268 acknowledgment of paternity that is witnessed by two individuals
 269 and signed under penalty of perjury as specified by s. 92.525(2)



HB 1761

2003

270 that is signed by the mother and father acknowledging the
271 paternity of a registrant born out of wedlock, together with
272 sufficient information to identify the original certificate of
273 live birth, the department shall prepare a new birth
274 certificate, which shall bear the same file number as the
275 original birth certificate. The names and identifying
276 information of the parents shall be entered as of the date of
277 the registrant's birth. The surname of the registrant may be
278 changed from that shown on the original birth certificate at the
279 request of the mother and father of the registrant, or the
280 registrant if of legal age. If the mother and father marry each
281 other at any time after the registrant's birth, the department
282 shall, upon the request of the mother and father or registrant
283 if of legal age and proof of the marriage, amend the certificate
284 with regard to the parents' marital status as though the parents
285 were married at the time of birth. The department shall
286 substitute the new certificate of birth for the original
287 certificate on file. All copies of the original certificate of
288 live birth in the custody of a local registrar or other state
289 custodian of vital records shall be forwarded to the State
290 Registrar. Thereafter, when a certified copy of the certificate
291 of birth or portion thereof is issued, it shall be a copy of the
292 new certificate of birth or portion thereof, except when a court
293 order requires issuance of a certified copy of the original
294 certificate of birth. The department shall place the original
295 certificate of birth and all papers pertaining thereto under
296 seal, not to be broken except by order of a court of competent
297 jurisdiction or as otherwise provided by law.

298 Section 7. Effective July 1, 2003, subsection (3) of
299 section 409.2557, Florida Statutes, is amended to read:



HB 1761

2003

300 409.2557 State agency for administering child support
301 enforcement program.--

302 (3) SPECIFIC RULEMAKING AUTHORITY.--The department has the
303 authority to adopt rules pursuant to ss. 120.536(1) and 120.54
304 to implement all laws administered by the department in its
305 capacity as the Title IV-D agency for this state including, but
306 not limited to, the following:

307 (a) Background screening of department employees and
308 applicants, including criminal records checks;

309 (b) Confidentiality and retention of department records;
310 access to records; record requests;

311 (c) Department trust funds;

312 (d) Federal funding procedures;

313 (e) Agreements with law enforcement and other state
314 agencies; National Crime Information Center (NCIC) access;
315 Parent Locator Service access;

316 (f) Written agreements entered into between the department
317 and support obligors in establishment, enforcement, and
318 modification proceedings;

319 (g) Procurement of services by the department, pilot
320 programs, and demonstration projects;

321 (h) Management of cases by the department involving any
322 documentation or procedures required by federal or state law,
323 including but not limited to, cooperation; review and
324 adjustment; audits; interstate actions; diligent efforts for
325 service of process;

326 (i) Department procedures for orders for genetic testing;
327 subpoenas to establish, enforce, or modify orders; increasing
328 the amount of monthly obligations to secure delinquent support;
329 suspending or denying driver's and professional licenses and



HB 1761

2003

330 certificates; fishing and hunting license suspensions;
 331 suspending vehicle and vessel registrations; screening
 332 applicants for new or renewal licenses, registrations, or
 333 certificates; income deduction; credit reporting and accessing;
 334 tax refund intercepts; passport denials; liens; financial
 335 institution data matches; expedited procedures; medical support;
 336 and all other responsibilities of the department as required by
 337 state or federal law;

338 (j) Collection and disbursement of support and alimony
 339 payments by the department as required by federal law;
 340 collection of genetic testing costs and other costs awarded by
 341 the court;

342 (k) Report information to and receive information from
 343 other agencies and entities;

344 (l) Provide location services, including accessing from
 345 and reporting to federal and state agencies;

346 (m) Privatizing location, establishment, enforcement,
 347 modification, and other functions;

348 (n) State case registry;

349 (o) State disbursement unit;

350 (p) Administrative proceedings to establish child-support
 351 obligations; ~~and~~

352 (q) Insurer reporting of liability claims, withholding of
 353 insurance payments for unpaid support, and reporting of weekly
 354 workers' compensation; and

355 ~~(r)(q)~~ All other responsibilities of the department as
 356 required by state or federal law.

357 Section 8. Paragraph (b) of subsection (2) of section
 358 409.2558, Florida Statutes, is amended to read:

359 409.2558 Support distribution and disbursement.--



HB 1761

2003

- 360 (2) UNDISTRIBUTABLE COLLECTIONS.--
- 361 (b) Collections that are determined to be undistributable
- 362 shall be processed in the following order of priority:
- 363 1. Apply the payment to any assigned arrears on the
- 364 custodial parent's case; then
- 365 2. Apply the payment to any administrative costs ordered
- 366 by the court pursuant to s. 409.2567 associated with the
- 367 custodial parent's case; then
- 368 3. When the noncustodial parent is subject to a valid
- 369 order to support another child ~~other children~~ in a another case
- 370 with a different custodial parent and the obligation is being
- 371 enforced by the department, the department shall mail a notice
- 372 to the noncustodial parent at the most recent known address in
- 373 the department's records, stating the department's intention to
- 374 apply the payment pursuant to this subparagraph, and advising
- 375 the noncustodial parent of the right to contest the department's
- 376 proposed action in the circuit court by filing and serving a
- 377 petition on the department within 20 days after the mailing date
- 378 of the department's notice. If the noncustodial parent does not
- 379 file and serve a petition within the 20 days, or upon a
- 380 disposition of the judicial action favorable to the department,
- 381 the department shall, ~~with the noncustodial parent's permission,~~
- 382 apply the payment towards his or her other support obligation.
- 383 If there is more than one such other case, the department shall
- 384 allocate the remaining undistributable amount as specified by s.
- 385 61.1301(4)(c); then
- 386 4. Return the payment to the noncustodial parent; then
- 387 5. If the noncustodial parent cannot be located after
- 388 diligent efforts by the department, the federal share of the



HB 1761

2003

389 payment shall be credited to the Federal Government and the
390 state share shall be transferred to the General Revenue Fund.

391 Section 9. Subsection (1) of section 409.2561, Florida
392 Statutes, is amended to read:

393 409.2561 Support obligations when public assistance is
394 paid; assignment of rights; subrogation; medical and health
395 insurance information.--

396 (1) Any payment of temporary cash or Title IV-E assistance
397 made to, or for the benefit of, any dependent child creates an
398 obligation in an amount determined pursuant to the child support
399 guidelines. In accordance with 42 U.S.C. s. 657, the state shall
400 retain amounts collected only to the extent necessary to
401 reimburse amounts paid to the family as assistance by the state.
402 Such amounts collected shall be deposited into the General
403 Revenue Fund up to the level specified in s. 61.1812. If there
404 has been a prior support court order or final judgment of
405 dissolution of marriage establishing an obligation of support,
406 the obligation is limited to the amount provided by such support
407 ~~court~~ order or decree. The extraordinary remedy of contempt is
408 applicable in child support enforcement cases because of the
409 public necessity for ensuring that dependent children be
410 maintained from the resources of their parents, thereby
411 relieving, at least in part, the burden presently borne by the
412 general citizenry through the public assistance program. If
413 there is no prior support court order ~~establishing an obligation~~
414 ~~of support~~, the court, or the department as provided by s.
415 409.2563, shall establish the liability of the obligor, if any,
416 by applying the child support guidelines. The department may
417 apply for modification of a support court order on the same



HB 1761

2003

418 grounds as either party to the cause and shall have the right to
419 settle and compromise actions brought pursuant to law.

420 Section 10. Paragraph (m) of subsection (4) of section
421 409.2563, Florida Statutes, is amended to read:

422 409.2563 Administrative establishment of child support
423 obligations.--

424 (4) NOTICE OF PROCEEDING TO ESTABLISH ADMINISTRATIVE
425 SUPPORT ORDER.--To commence a proceeding under this section, the
426 department shall provide to the custodial parent and serve the
427 noncustodial parent with a notice of proceeding to establish
428 administrative support order and a blank financial affidavit
429 form. The notice must state:

430 (m) That, neither the department nor the Division of
431 Administrative Hearings has jurisdiction to award or change
432 child custody or rights of parental contact and these issues may
433 only be addressed in circuit court.

434 1. The noncustodial parent may request in writing that the
435 department proceed in circuit court to determine his or her
436 support obligations.

437 2. The noncustodial parent may state in writing to the
438 department his or her intention to address issues concerning
439 custody or rights to parental contact in circuit court.

440 3. If the noncustodial parent submits the request
441 mentioned in subparagraph 1., or the statement mentioned in
442 subparagraph 2., to the department within 20 days after receipt
443 of the initial notice, the department shall file a petition in
444 circuit court for the determination of the noncustodial parent's
445 child support obligations, and shall send to the noncustodial
446 parent a copy of its petition, a notice of commencement of



HB 1761

2003

447 action, and a request for waiver of service of process as
448 provided in the Rules of Civil Procedure.

449 4. If, within 10 days after receipt of the department's
450 petition and waiver of service, the noncustodial parent signs
451 and returns the waiver of service form to the department, the
452 department shall terminate the administrative proceeding without
453 prejudice and proceed in circuit court.

454 5. In any circuit court action brought by the department
455 pursuant to this subsection, or brought by a noncustodial parent
456 or other person pursuant to paragraph (l) or paragraph (n), the
457 department shall be a party only with respect to those issues of
458 support allowed and reimbursable under Title IV-D of the Social
459 Security Act. It is the responsibility of the noncustodial
460 parent or other person to take the necessary steps to present
461 other issues they wish to have the court consider. That if the
462 noncustodial parent has issues regarding child custody or right
463 of parental contact or requests to proceed in circuit court, the
464 noncustodial parent may request in writing that the department
465 proceed in circuit court to determine support. That the
466 noncustodial parent must make such request in writing within 20
467 days after receipt of the initial notice. That upon such
468 request, the department shall send the noncustodial parent by
469 regular mail a copy of the department's petition and waiver of
470 service form. That the noncustodial parent must sign and return
471 the waiver of service form, within 10 days of receipt of the
472 petition, at which time the department shall terminate the
473 administrative proceeding and file an action in circuit court to
474 determine support;

475



HB 1761

2003

476 The department may serve the notice of proceeding to establish
477 administrative support order by certified mail, restricted
478 delivery, return receipt requested. Alternatively, the
479 department may serve the notice by any means permitted for
480 service of process in a civil action. For purposes of this
481 section, an authorized employee of the department may serve the
482 notice and execute an affidavit of service. Service by certified
483 mail is completed when the certified mail is received or refused
484 by the addressee or by an authorized agent as designated by the
485 addressee in writing. If a person other than the addressee signs
486 the return receipt, the department shall attempt to reach the
487 addressee by telephone to confirm whether the notice was
488 received, and the department shall document any telephonic
489 communications. If someone other than the addressee signs the
490 return receipt, the addressee does not respond to the notice,
491 and the department is unable to confirm that the addressee has
492 received the notice, service is not completed and the department
493 shall attempt to have the addressee served personally. The
494 department shall provide the custodial parent or caretaker
495 relative with a copy of the notice by regular mail to the last
496 known address of the custodial parent or caretaker.

497 Section 11. Subsection (3) of section 409.25656, Florida
498 Statutes, is amended to read:

499 409.25656 Garnishment.--

500 (3) During the last 30 days of the 60-day period set forth
501 in subsection (1), the executive director or his or her designee
502 may levy upon such credits, personal property, or debts. The
503 levy must be accomplished by delivery of a notice of levy by
504 registered mail, upon receipt of which the person possessing the
505 credits, other personal property, or debts shall transfer them



HB 1761

2003

506 to the department or pay to the department the amount owed by
 507 the obligor. If the department levies upon securities and the
 508 value of the securities is less than the total amount of past
 509 due or overdue support, the person who possesses or controls the
 510 securities shall liquidate the securities in a commercially
 511 reasonable manner. After liquidation, the person shall transfer
 512 to the department the proceeds, less any applicable commissions
 513 or fees, or both, which are charged in the normal course of
 514 business. If the value of the securities exceeds the total
 515 amount of past due or overdue support, the obligor may, within 7
 516 days after receipt of the department's notice of levy, instruct
 517 the person who possesses or controls the securities which
 518 securities are to be sold to satisfy the obligation for past due
 519 or overdue support. If the obligor does not provide instructions
 520 for liquidation, the person who possesses or controls the
 521 securities shall liquidate the securities in a commercially
 522 reasonable manner ~~and~~ in an amount sufficient to cover the
 523 obligation for past due or overdue support, and ~~less~~ any
 524 applicable commissions or fees, or both, which are charged in
 525 the normal course of business, beginning with the securities
 526 purchased most recently. After liquidation, the person who
 527 possesses or controls the securities shall transfer to the
 528 department the total amount of past due or overdue support.

529 Section 12. Effective July 1, 2003, section 409.25659,
 530 Florida Statutes, is created to read:

531 409.25659 Withholding of insurance payment for unpaid
 532 support.--

533 (1) DEFINITIONS.--As used in this section, the term:



HB 1761

2003

534 (a) "Insurer" means an entity that is responsible for
535 paying a claim on liability coverage in an insurance contract
536 and which is:

537 1. An insurer, as defined in s. 624.03, authorized to
538 transact insurance in this state;

539 2. An eligible surplus lines insurer pursuant to part VIII
540 of chapter 626;

541 3. A joint underwriter or joint reinsurer created by law
542 or otherwise operating pursuant to s. 627.311; or

543 4. An insurance risk apportionment plan operating pursuant
544 to s. 627.351.

545 (b) "Claim" means a claim on liability coverage in an
546 insurance contract payable to an individual, or to a third party
547 for the benefit of an individual, who is a resident of this
548 state or who had an accident or loss that occurred in this
549 state.

550 (2) INDIVIDUALS WHO OWE UNPAID SUPPORT; INSURER DUTY TO
551 INQUIRE; DUTY TO WITHHOLD PAYMENT.--

552 (a) The department shall periodically make available from
553 a secure web-enabled database or other centralized source to
554 insurers who are subject to this section information concerning
555 obligors in Title IV-D cases who owe unpaid support in excess of
556 \$500. For each obligor, the department shall provide, at a
557 minimum, the obligor's name, social security number, last known
558 address, and the amount of unpaid support owed.

559 (b) Not more than 30 days before paying a claim, the
560 insurer shall inquire of the department pursuant to paragraph
561 (a) whether the claimant is an individual who owes unpaid
562 support by providing the department with the individual's name,
563 date of birth, social security number, and last known address



HB 1761

2003

564 according to the insurer's records; the claim number; the date
565 of claim; the name of the insurer; and how the insurer may be
566 contacted. Within 30 days after inquiry, the department shall
567 notify the insurer whether the individual owes unpaid support
568 and, if so, the amount owed. An insurer shall withhold payment
569 on a claim until the department notifies the insurer that the
570 individual does not owe unpaid support or otherwise releases the
571 insurer in writing from the duty to withhold.

572 (3) NOTICE OF DEMAND FOR PAYMENT; LIEN FOR AMOUNT OF
573 UNPAID SUPPORT.--If the department determines pursuant to
574 subsection (2) that the individual owes unpaid support, the
575 department shall issue a written demand for payment to the
576 insurer, which may be transmitted electronically. A demand for
577 payment issued under this subsection constitutes a lien against
578 the obligor's claim for the amount of unpaid support stated in
579 the demand and any unpaid support that accrues subsequently. The
580 lien becomes effective when the demand for payment is received
581 by the insurer and is in addition to any preexisting lien for
582 unpaid support. Upon receipt of a demand for payment, the
583 insurer shall provide the department with the name and address
584 of the obligor's attorney or agent, if known, the amount
585 withheld, the date payment was withheld, and other known
586 information concerning the location, earnings, and assets of the
587 obligor. An insurer who is subject to a demand for payment on a
588 claim may not pay over, release, encumber, assign, or otherwise
589 transfer payment subject to the demand without written
590 authorization by the department or an order of the court.

591 (4) NOTICE TO OBLIGOR; ADMINISTRATIVE HEARING; JUDICIAL
592 REVIEW.--

593 (a) Upon issuing a demand for payment, the department



HB 1761

2003

594 shall promptly provide a copy to the obligor and notify the
595 obligor in writing of the right to contest the demand for
596 payment by filing a written request for an administrative
597 hearing with the department within 21 days after the date of
598 mailing or personal delivery of the notice. Mailing of the
599 notice to the obligor's last known address is deemed adequate
600 notice. Failure to make a timely written request for a hearing
601 is deemed a waiver of the right to hearing. The department also
602 shall provide a copy of the demand for payment and notice to the
603 obligor's attorney or agent, if known.

604 (b) Any person whose substantial interests are affected by
605 the department's demand for payment may request an
606 administrative hearing as provided by chapter 120. Chapter 120
607 and the Uniform Rules of Procedure govern how administrative
608 hearings are conducted and the entry of final orders. Final
609 orders rendered under this section are subject to judicial
610 review as provided by s. 120.68.

611 (5) PAYMENT TO THE DEPARTMENT.--If the obligor does not
612 file a timely written request for an administrative hearing, or
613 consents to the department's demand or the department prevails
614 after hearing, the department shall notify the insurer to send
615 to the department the full amount of the withheld payment, not
616 to exceed the amount of unpaid support, less any amounts payable
617 to the obligor or other entities as specified by subsection (7).
618 Payments due the department must be made payable solely to the
619 department.

620 (6) FULL OR PARTIAL RELEASE.--An insurer may be released
621 from the duty to withhold payment only upon written notice by
622 the department or by order of the court. The department shall
623 execute and deliver a release of the lien for unpaid support to



HB 1761

2003

624 the obligor and the insurer upon payment in full of the unpaid
625 support and any costs due. The department may release a lien
626 fully or in part without liability as needed to correctly
627 reflect the amount of unpaid support owed, if assurance of
628 payment is considered adequate, or to facilitate collection of
629 the unpaid support.

630 (7) PRIORITY OF LIENS; ATTORNEYS FEES; MEDICAL PROVIDERS;
631 EXEMPTION FOR FUTURE MEDICAL EXPENSES.--

632 (a) A lien for unpaid support created by this section is
633 superior to all subsequent liens and security interests. Liens
634 perfected prior to creation of a lien under this section, prior
635 written notices of health care providers, and attorneys fees
636 payable from insurance proceeds are not subject to a lien
637 created by this section.

638 (b) An amount not to exceed the lesser of 15 percent of
639 the total payment or \$5,000 for the obligor's future medical
640 expenses is exempt from a demand for payment under this section,
641 provided the expenses are due to a condition that gave rise to
642 the claim and are documented by a licensed physician. The
643 department shall notify the obligor of the exemption and how to
644 claim it when providing notice of the right to contest a demand
645 for payment under subsection (4). The obligor has the burden of
646 proving a claim for an exemption.

647 (8) INSURER IMMUNITY.--An insurer, its directors, agents,
648 and employees and any central reporting organization and its
649 agents and employees authorized by an insurer to act on its
650 behalf who act in conformity with the requirements of this
651 section are immune from any liability to the claimant or other
652 payees, lienholders, or affected entities for any alleged or



HB 1761

2003

653 actual damages that occur as a result of compliance with these
654 requirements.

655 (9) FAILURE TO COMPLY; REMEDIES.--An insurer who does not
656 inquire, withhold, or remit payments as required by this section
657 is liable to the department for the amount the insurer should
658 have withheld or remitted, plus costs, interest, and reasonable
659 attorney's fees. The department is authorized to bring an action
660 in circuit court to enforce any provision of this section.

661 (10) WORKERS' COMPENSATION.--When the web-enabled database
662 specified by paragraph (2)(a) becomes operational, the
663 department shall permit access by judges of compensation claims
664 to facilitate review and approval of workers' compensation
665 settlements as provided by s. 440.20(11)(d).

666 (11) RULEMAKING AUTHORITY.--The department may adopt rules
667 to implement, administer, or enforce the requirements of this
668 section.

669 Section 13. Effective July 1, 2003, section 409.257,
670 Florida Statutes, is amended to read:

671 409.257 Service of process.--The service of initial
672 process and orders in lawsuits filed by the department, under
673 this act, shall be served by the sheriff in the county where the
674 person to be served may be found or, if determined to be more
675 effective by the department, by any means permitted under
676 chapter 48 for service of process in a civil action. The sheriff
677 shall be reimbursed at the prevailing rate of federal financial
678 participation for service of process and orders as allowed by
679 law. The sheriff shall bill the department monthly as provided
680 for in s. 30.51(2). In addition, process and orders may be
681 served or executed by authorized agents of the department at the
682 department's discretion; provided that the agent of the



HB 1761

2003

683 department does not take any action against personal property,
684 real property, or persons. Notices and other intermediate
685 process, except witness subpoenas, shall be served by the
686 department as provided for in the Florida Rules of Civil
687 Procedure. Witness subpoenas shall be served by the department
688 by certified mail as provided for in s. 48.031(3).

689 Section 14. Subsections (1) and (2) of section 409.2572,
690 Florida Statutes, are amended to read:

691 409.2572 Cooperation.--

692 (1) An applicant for, or recipient of, public assistance
693 for a dependent child shall cooperate in good faith with the
694 department or a program attorney in:

695 (a) Identifying and helping to locate the alleged parent
696 or obligor.

697 (b) Assisting in establishing the paternity of a child
698 born out of wedlock.

699 (c) Assisting in obtaining support payments from the
700 obligor.

701 (d) Assisting in obtaining any other payments or property
702 due from the obligor.

703 (e) Identifying another putative father when an earlier
704 named putative father has been excluded by DNA, Human Leukocyte
705 Antigen, or other scientific test.

706 (f) Appearing at an office of the department, or another
707 designated office, as necessary to provide verbal or written
708 information, or documentary or physical evidence, known to,
709 possessed by, or reasonably obtainable by the applicant or
710 recipient.

711 (g) Appearing as a witness at judicial or other hearings
712 or proceedings.



HB 1761

2003

713 (h) Providing information under oath regarding the
714 identity or location of the alleged father of the child or
715 attesting to the lack of information.

716 (i) Paying to the department any support received from the
717 obligor after the assignment is effective.

718 (2) Noncooperation, or failure to cooperate in good faith,
719 is defined to include, but is not limited to, the following
720 conduct:

721 (a) ~~Failing or~~ Refusing to identify the father of the
722 child, or where more than one man could be the father of the
723 child, refusing to identify all such persons. ~~If the mother~~
724 ~~identifies one or more persons as the possible father of the~~
725 ~~child and asserts that there are no others who could be the~~
726 ~~father of the child, but the DNA test, Human Leukocyte Antigen~~
727 ~~test, or other scientific test indicates that none of the~~
728 ~~persons identified could in fact have been the father of the~~
729 ~~child, the mother shall be deemed noncooperative. If she~~
730 ~~subsequently identifies another person as the possible father of~~
731 ~~the child, she shall still be deemed noncooperative until that~~
732 ~~person has been given the DNA test, Human Leukocyte Antigen~~
733 ~~test, or other scientific test and is not excluded as the father~~
734 ~~by the test.~~

735 (b) Failing to appear for two appointments at the
736 department or other designated office without justification and
737 notice.

738 (c) Providing false information regarding the paternity of
739 the child or the obligation of the obligor.

740 (d) All actions of the obligee which interfere with the
741 state's efforts to proceed to establish paternity, the
742 obligation of support, or to enforce or collect support.



HB 1761

2003

743 (e) Failure to appear at the laboratory for drawing of
 744 blood samples, or leaving the laboratory prior to the drawing of
 745 blood samples without compelling reasons.

746 (f) Failure to assist in the recovery of third-party
 747 payment for medical services.

748 Section 15. Section 409.259, Florida Statutes, is amended
 749 to read:

750 409.259 ~~Partial payment of Filing fees~~ in Title IV-D
 751 cases.--

752 (1) Notwithstanding s. 28.241, each clerk of the circuit
 753 court shall accept petitions, complaints, and motions in Title
 754 IV-D cases submitted for filing by the department without
 755 billing separately for each such filing, since the clerk is
 756 being reimbursed in a different manner for expenses incurred in
 757 such filings under the cooperative agreement with the department
 758 pursuant to ss. 61.181(1) and 61.1826(2) and (4). only be
 759 reimbursed at the prevailing rate of federal financial
 760 participation on the amount of \$40 for each civil action, suit,
 761 or proceeding for support instituted in the circuit court in
 762 which the parent is not receiving temporary cash assistance. The
 763 prevailing rate of the state match shall be paid by the local
 764 government in the form of a certified public expenditure. The
 765 clerk of the circuit court shall bill the department monthly.
 766 The clerk of the circuit court and the department shall maintain
 767 a monthly log of the number of civil actions, suits, or
 768 proceedings filed in which the parent does not receive temporary
 769 assistance. These monthly logs will be used to determine the
 770 number of \$40 filings the clerk of court may submit for
 771 reimbursement at the prevailing rate of federal financial
 772 participation.



HB 1761

2003

773 (2) Notwithstanding subsection (1), the department shall
774 continue to be entitled to the other necessary services of the
775 clerk of court in any proceedings under the IV-D program as
776 authorized under s. 409.2571.

777 Section 16. Effective July 1, 2003, section 440.123,
778 Florida Statutes, is created to read:

779 440.123 Insurer paying periodic compensation; duty to
780 inquire about unpaid child support.--When the web-enabled
781 database specified by s. 409.25659 becomes operational, upon
782 determining that a claimant will be paid weekly compensation, an
783 insurer as defined by s. 440.02(39) shall access the database
784 promptly to inquire whether the claimant owes unpaid support. If
785 it is determined after inquiry that a claimant owes unpaid
786 support, the insurer shall notify the Department of Revenue at
787 that time, through the web-enabled database, by providing the
788 individual's name, date of birth, social security number, last
789 known address according to the insurer's records, and employer;
790 the claim number; the weekly compensation amount; the date of
791 first payment; the name of the insurer and how the insurer may
792 be contacted; the name and contact information of the payor of
793 weekly compensation, if different from the insurer; and the name
794 and address of the agent or attorney for the claimant, if any.

795 Section 17. Effective July 1, 2003, paragraph (d) of
796 subsection (11) of section 440.20, Florida Statutes, is amended
797 to read:

798 440.20 Time for payment of compensation; penalties for
799 late payment.--

800 (11)

801 (d)1. With respect to any lump-sum settlement under this
802 subsection, a judge of compensation claims must consider at the



HB 1761

2003

803 time of the settlement, whether the settlement allocation
804 provides for the appropriate recovery of child support
805 arrearages.

806 2. When reviewing any settlement of lump-sum payment
807 pursuant to this subsection, judges of compensation claims shall
808 consider the interests of the worker and the worker's family
809 when approving the settlement, which must consider and provide
810 for appropriate recovery of past due support.

811 3. Before approving a settlement, the judge of
812 compensation claims shall require a party to obtain a written
813 statement from the Department of Revenue as to whether the
814 worker owes unpaid support and, if so, the amount owed. In
815 addition, the judge of compensation claims may require a party
816 to obtain a similar statement from a depository, operated
817 pursuant to s. 61.181.

818 Section 18. Effective July 1, 2003, subsection (1) of
819 section 742.10, Florida Statutes, is amended to read:

820 742.10 Establishment of paternity for children born out of
821 wedlock.--

822 (1) This chapter provides the primary jurisdiction and
823 procedures for the determination of paternity for children born
824 out of wedlock. When the establishment of paternity has been
825 raised and determined within an adjudicatory hearing brought
826 under the statutes governing inheritance, or dependency under
827 workers' compensation or similar compensation programs, or when
828 an affidavit acknowledging paternity or a stipulation of
829 paternity is executed by both parties and filed with the clerk
830 of the court, or when an affidavit, a ~~or~~ notarized voluntary
831 acknowledgment of paternity, or a voluntary acknowledgment of
832 paternity that is witnessed by two individuals and signed under



HB 1761

2003

833 penalty of perjury as provided for in s. 382.013 or s. 382.016
 834 is executed by both parties, it shall constitute the
 835 establishment of paternity for purposes of this chapter. If no
 836 adjudicatory proceeding was held, a notarized voluntary
 837 acknowledgment of paternity or voluntary acknowledgment of
 838 paternity that is witnessed by two individuals and signed under
 839 penalty of perjury as specified by s. 92.525(2) ~~shall create a~~
 840 ~~rebuttable presumption, as defined by s. 90.304, of paternity~~
 841 ~~and~~ is subject to the right of any signatory to rescind the
 842 acknowledgment within 60 days of the date the acknowledgment was
 843 signed or the date of an administrative or judicial proceeding
 844 relating to the child, including a proceeding to establish a
 845 support order, in which the signatory is a party, whichever is
 846 earlier. Both parents are required to provide their social
 847 security numbers on any acknowledgment of paternity, consent
 848 affidavit, or stipulation of paternity. Except for affidavits
 849 under seal pursuant to ss. 382.015 and 382.016, the Office of
 850 Vital Statistics shall provide certified copies of affidavits to
 851 the Title IV-D agency upon request.

852 Section 19. Except as otherwise provided herein, this act
 853 shall take effect upon becoming a law.