

By the Committees on Judiciary; Children and Families; and
Senator Campbell

308-2112-04

1 A bill to be entitled
2 An act relating to child support; amending s.
3 61.30, F.S.; revising certain child care cost
4 guidelines; revising the formula for
5 determining child support obligations with
6 respect to child care costs and federal tax
7 credits for child and dependent care expenses;
8 amending ss. 61.14 and 742.031, F.S.; providing
9 for the modification of temporary support
10 orders; reenacting ss. 39.402(11),
11 39.521(2)(s), 61.13(1)(a) and (5), 61.14(1),
12 409.2563(1)(d), (2)(c), (4)(f), (5)(a), and
13 (7)(e), 409.2564(12), and 742.031(1), F.S.;
14 incorporating the amendments to s. 61.30, F.S.,
15 in references thereto; providing an effective
16 date.

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

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20 Section 1. Subsections (7) and (11) of section 61.30,
21 Florida Statutes, are amended to read:

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 61.30 Child support guidelines; retroactive child
support.--
 (7) Child care costs incurred on behalf of the
children due to employment, job search, or education
calculated to result in employment or to enhance income of
current employment of either parent shall ~~be reduced by 25~~
~~percent and then shall~~ be added to the basic obligation. After
the adjusted child care costs are added to the basic
obligation, any moneys prepaid by the noncustodial parent for
child care costs for the child or children of this action

1 shall be deducted from that noncustodial parent's child
2 support obligation for that child or those children. Child
3 care costs shall not exceed the level required to provide
4 quality care from a licensed source for the children.

5 (11)(a) The court may adjust the minimum child support
6 award, or either or both parents' share of the minimum child
7 support award, based upon the following considerations:

8 1. Extraordinary medical, psychological, educational,
9 or dental expenses.

10 2. Independent income of the child, not to include
11 moneys received by a child from supplemental security income.

12 3. The payment of support for a parent which regularly
13 has been paid and for which there is a demonstrated need.

14 4. Seasonal variations in one or both parents' incomes
15 or expenses.

16 5. The age of the child, taking into account the
17 greater needs of older children.

18 6. Special needs, such as costs that may be associated
19 with the disability of a child, that have traditionally been
20 met within the family budget even though the fulfilling of
21 those needs will cause the support to exceed the proposed
22 guidelines.

23 7. Total available assets of the obligee, obligor, and
24 the child.

25 8. The impact of the Internal Revenue Service
26 dependency exemption and waiver of that exemption. The court
27 may order the primary residential parent to execute a waiver
28 of the Internal Revenue Service dependency exemption if the
29 noncustodial parent is current in support payments.

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1 9. The impact of any federal tax credit for child and
2 dependent care expenses, unless already considered pursuant to
3 subsection (3).

4 ~~10.9.~~ When application of the child support guidelines
5 requires a person to pay another person more than 55 percent
6 of his or her gross income for a child support obligation for
7 current support resulting from a single support order.

8 ~~11.10.~~ The particular shared parental arrangement,
9 such as where the child spends a significant amount of time,
10 but less than 40 percent of the overnights, with the
11 noncustodial parent, thereby reducing the financial
12 expenditures incurred by the primary residential parent; or
13 the refusal of the noncustodial parent to become involved in
14 the activities of the child.

15 ~~12.11.~~ Any other adjustment which is needed to achieve
16 an equitable result which may include, but not be limited to,
17 a reasonable and necessary existing expense or debt. Such
18 expense or debt may include, but is not limited to, a
19 reasonable and necessary expense or debt which the parties
20 jointly incurred during the marriage.

21 (b) Whenever a particular shared parental arrangement
22 provides that each child spend a substantial amount of time
23 with each parent, the court shall adjust any award of child
24 support, as follows:

25 1. In accordance with subsections (9) and (10),
26 calculate the amount of support obligation apportioned to the
27 noncustodial parent without including day care and health
28 insurance costs in the calculation and multiply the amount by
29 1.5.

30 2. In accordance with subsections (9) and (10),
31 calculate the amount of support obligation apportioned to the

1 | custodial parent without including day care and health
2 | insurance costs in the calculation and multiply the amount by
3 | 1.5.

4 | 3. Calculate the percentage of overnight stays the
5 | child spends with each parent.

6 | 4. Multiply the noncustodial parent's support
7 | obligation as calculated in subparagraph 1. by the percentage
8 | of the custodial parent's overnight stays with the child as
9 | calculated in subparagraph 3.

10 | 5. Multiply the custodial parent's support obligation
11 | as calculated in subparagraph 2. by the percentage of the
12 | noncustodial parent's overnight stays with the child as
13 | calculated in subparagraph 3.

14 | 6. The difference between the amounts calculated in
15 | subparagraphs 4. and 5. shall be the monetary transfer
16 | necessary between the custodial and noncustodial parents for
17 | the care of the child, subject to an adjustment for day care
18 | and health insurance expenses.

19 | 7. Pursuant to subsections (7) and (8), calculate the
20 | net amounts owed by the custodial and noncustodial parents for
21 | the expenses incurred for day care and health insurance
22 | coverage for the child. ~~Day care shall be calculated without~~
23 | ~~regard to the 25-percent reduction applied by subsection (7).~~

24 | 8. Adjust the support obligation owed by the custodial
25 | or noncustodial parent pursuant to subparagraph 6. by
26 | crediting or debiting the amount calculated in subparagraph 7.
27 | This amount represents the child support which must be
28 | exchanged between the custodial and noncustodial parents.

29 | 9. The court may deviate from the child support amount
30 | calculated pursuant to subparagraph 8. based upon the
31 | considerations set forth in paragraph (a), as well as the

1 custodial parent's low income and ability to maintain the
2 basic necessities of the home for the child, the likelihood
3 that the noncustodial parent will actually exercise the
4 visitation granted by the court, and whether all of the
5 children are exercising the same shared parental arrangement.

6 10. For purposes of adjusting any award of child
7 support under this paragraph, "substantial amount of time"
8 means that the noncustodial parent exercises visitation at
9 least 40 percent of the overnights of the year.

10 (c) A noncustodial parent's failure to regularly
11 exercise court-ordered or agreed visitation not caused by the
12 custodial parent which resulted in the adjustment of the
13 amount of child support pursuant to subparagraph (a)10. or
14 paragraph (b) shall be deemed a substantial change of
15 circumstances for purposes of modifying the child support
16 award. A modification pursuant to this paragraph shall be
17 retroactive to the date the noncustodial parent first failed
18 to regularly exercise court-ordered or agreed visitation.

19 Section 2. Subsection (9) is added to section 61.14,
20 Florida Statutes, as amended by chapter 2003-402, Laws of
21 Florida, to read:

22 61.14 Enforcement and modification of support,
23 maintenance, or alimony agreements or orders.--

24 (9)(a) A court may, upon good cause shown, and without
25 a showing of a substantial change of circumstances, modify,
26 vacate, or set aside a temporary support order before or upon
27 entering a final order in a proceeding.

28 (b) The modification of the temporary support order
29 may be retroactive to the date of the initial entry of the
30 temporary support order; to the date of filing of the initial
31 petition for dissolution of marriage, initial petition for

1 support, initial petition determining paternity, or
2 supplemental petition for modification; or to a date
3 prescribed in paragraph (1)(a) or s. 61.30(11)(c) or (17), as
4 applicable.

5 Section 3. Subsection (4) is added to section 742.031,
6 Florida Statutes, to read:

7 742.031 Hearings; court orders for support, hospital
8 expenses, and attorney's fee.--

9 (4)(a) A court may, upon good cause shown and without
10 a showing of a substantial change of circumstances, modify,
11 vacate, or set aside a temporary support order before or upon
12 entering a final order in a proceeding.

13 (b) The modification of the temporary support order
14 may be retroactive to the date of the initial entry of the
15 temporary support order; to the date of filing of the initial
16 petition for dissolution of marriage, petition for support,
17 petition determining paternity, or supplemental petition for
18 modification; or to a date prescribed in s. 61.14(1)(a) or s.
19 61.30(11)(c) or (17), as applicable.

20 Section 4. For purposes of incorporating the amendment
21 to section 61.30, Florida Statutes, in references thereto,
22 subsection (11) of section 39.402, Florida Statutes, is
23 reenacted to read:

24 39.402 Placement in a shelter.--

25 (11) If a child is placed in a shelter pursuant to a
26 court order following a shelter hearing, the court shall
27 require in the shelter hearing order that the parents of the
28 child, or the guardian of the child's estate, if possessed of
29 assets which under law may be disbursed for the care, support,
30 and maintenance of the child, to pay, to the department or
31 institution having custody of the child, fees as established

1 by the department. When the order affects the guardianship
2 estate, a certified copy of the order shall be delivered to
3 the judge having jurisdiction of the guardianship estate. The
4 shelter order shall also require the parents to provide to the
5 department and any other state agency or party designated by
6 the court, within 28 days after entry of the shelter order,
7 the financial information necessary to accurately calculate
8 child support pursuant to s. 61.30.

9 Section 5. For purposes of incorporating the amendment
10 to section 61.30, Florida Statutes, in references thereto,
11 paragraph (s) of subsection (2) of section 39.521, Florida
12 Statutes, is reenacted to read:

13 39.521 Disposition hearings; powers of disposition.--

14 (2) The predisposition study must provide the court
15 with the following documented information:

16 (s) If the child has been removed from the home, a
17 determination of the amount of child support each parent will
18 be required to pay pursuant to s. 61.30.

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20 Any other relevant and material evidence, including other
21 written or oral reports, may be received by the court in its
22 effort to determine the action to be taken with regard to the
23 child and may be relied upon to the extent of its probative
24 value, even though not competent in an adjudicatory hearing.
25 Except as otherwise specifically provided, nothing in this
26 section prohibits the publication of proceedings in a hearing.

27 Section 6. For the purpose of incorporating the
28 amendment to section 61.30, Florida Statutes, in references
29 thereto, paragraph (a) of subsection (1) and subsection (5) of
30 section 61.13, Florida Statutes, are reenacted to read:

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1 61.13 Custody and support of children; visitation
2 rights; power of court in making orders.--

3 (1)(a) In a proceeding for dissolution of marriage,
4 the court may at any time order either or both parents who owe
5 a duty of support to a child to pay support in accordance with
6 the guidelines in s. 61.30. The court initially entering an
7 order requiring one or both parents to make child support
8 payments shall have continuing jurisdiction after the entry of
9 the initial order to modify the amount and terms and
10 conditions of the child support payments when the modification
11 is found necessary by the court in the best interests of the
12 child, when the child reaches majority, or when there is a
13 substantial change in the circumstances of the parties. The
14 court initially entering a child support order shall also have
15 continuing jurisdiction to require the obligee to report to
16 the court on terms prescribed by the court regarding the
17 disposition of the child support payments.

18 (5) The court may make specific orders for the care
19 and custody of the minor child as from the circumstances of
20 the parties and the nature of the case is equitable and
21 provide for child support in accordance with the guidelines in
22 s. 61.30. An award of shared parental responsibility of a
23 minor child does not preclude the court from entering an order
24 for child support of the child.

25 Section 7. For the purpose of incorporating the
26 amendment to section 61.30, Florida Statutes, in references
27 thereto, subsection (1) of section 61.14, Florida Statutes, is
28 reenacted to read:

29 61.14 Enforcement and modification of support,
30 maintenance, or alimony agreements or orders.--

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1 (1)(a) When the parties enter into an agreement for
2 payments for, or instead of, support, maintenance, or alimony,
3 whether in connection with a proceeding for dissolution or
4 separate maintenance or with any voluntary property
5 settlement, or when a party is required by court order to make
6 any payments, and the circumstances or the financial ability
7 of either party changes or the child who is a beneficiary of
8 an agreement or court order as described herein reaches
9 majority after the execution of the agreement or the rendition
10 of the order, either party may apply to the circuit court of
11 the circuit in which the parties, or either of them, resided
12 at the date of the execution of the agreement or reside at the
13 date of the application, or in which the agreement was
14 executed or in which the order was rendered, for an order
15 decreasing or increasing the amount of support, maintenance,
16 or alimony, and the court has jurisdiction to make orders as
17 equity requires, with due regard to the changed circumstances
18 or the financial ability of the parties or the child,
19 decreasing, increasing, or confirming the amount of separate
20 support, maintenance, or alimony provided for in the agreement
21 or order. A finding that medical insurance is reasonably
22 available or the child support guidelines in s. 61.30 may
23 constitute changed circumstances. Except as otherwise provided
24 in s. 61.30(11)(c), the court may modify an order of support,
25 maintenance, or alimony by increasing or decreasing the
26 support, maintenance, or alimony retroactively to the date of
27 the filing of the action or supplemental action for
28 modification as equity requires, giving due regard to the
29 changed circumstances or the financial ability of the parties
30 or the child.
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1 (b) For each support order reviewed by the department
2 as required by s. 409.2564(12), if the amount of the child
3 support award under the order differs by at least 10 percent
4 but not less than \$25 from the amount that would be awarded
5 under s. 61.30, the department shall seek to have the order
6 modified and any modification shall be made without a
7 requirement for proof or showing of a change in circumstances.

8 (c) The department shall have authority to adopt rules
9 to implement this section.

10 Section 8. For the purpose of incorporating the
11 amendment to section 61.30, Florida Statutes, in references
12 thereto, paragraph (d) of subsection (1), paragraph (c) of
13 subsection (2), paragraph (f) of subsection (4), paragraph (a)
14 of subsection (5), and paragraph (e) of subsection (7) of
15 section 409.2563, Florida Statutes, are reenacted to read:

16 409.2563 Administrative establishment of child support
17 obligations.--

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

19 (d) "Financial affidavit" means an affidavit or
20 written declaration as provided by s. 92.525(2) which shows an
21 individual's income, allowable deductions, net income, and
22 other information needed to calculate the child support
23 guideline amount under s. 61.30.

24 (2) PURPOSE AND SCOPE.--

25 (c) If there is no support order for a child in a
26 Title IV-D case whose paternity has been established or is
27 presumed by law, the department may establish the noncustodial
28 parent's child support obligation pursuant to this section, s.
29 61.30, and other relevant provisions of state law. The
30 noncustodial parent's obligation determined by the department
31 may include any obligation to pay retroactive support and any

1 obligation to provide for health care for a child, whether
2 through insurance coverage, reimbursement of expenses, or
3 both. The department may proceed on behalf of:

4 1. An applicant or recipient of public assistance, as
5 provided by ss. 409.2561 and 409.2567;

6 2. A former recipient of public assistance, as
7 provided by s. 409.2569;

8 3. An individual who has applied for services as
9 provided by s. 409.2567;

10 4. Itself or the child, as provided by s. 409.2561; or

11 5. A state or local government of another state, as
12 provided by chapter 88.

13 (4) NOTICE OF PROCEEDING TO ESTABLISH ADMINISTRATIVE
14 SUPPORT ORDER.--To commence a proceeding under this section,
15 the department shall provide to the custodial parent and serve
16 the noncustodial parent with a notice of proceeding to
17 establish administrative support order and a blank financial
18 affidavit form. The notice must state:

19 (f) That the department will calculate support
20 obligations based on the child support guidelines in s. 61.30
21 and using all available information, as provided by paragraph
22 (5)(a), and will incorporate such obligations into a proposed
23 administrative support order;

24 (5) PROPOSED ADMINISTRATIVE SUPPORT ORDER.--

25 (a) After serving notice upon the noncustodial parent
26 in accordance with subsection (4), the department shall
27 calculate the noncustodial parent's child support obligation
28 under the child support guidelines as provided by s. 61.30,
29 based on any timely financial affidavits received and other
30 information available to the department. If either parent
31 fails to comply with the requirement to furnish a financial

1 affidavit, the department may proceed on the basis of
2 information available from any source, if such information is
3 sufficiently reliable and detailed to allow calculation of
4 guideline amounts under s. 61.30. If the custodial parent
5 receives public assistance and fails to submit a financial
6 affidavit, the department may submit a financial affidavit for
7 the custodial parent pursuant to s. 61.30(15). If there is a
8 lack of sufficient reliable information concerning a parent's
9 actual earnings for a current or past period, it shall be
10 presumed for the purpose of establishing a support obligation
11 that the parent had an earning capacity equal to the federal
12 minimum wage during the applicable period.

13 (7) ADMINISTRATIVE SUPPORT ORDER.--

14 (e) An administrative support order must comply with
15 s. 61.30. The department shall develop a standard form or
16 forms for administrative support orders. An administrative
17 support order must provide and state findings, if applicable,
18 concerning:

19 1. The full name and date of birth of the child or
20 children;

21 2. The name of the noncustodial parent and the
22 custodial parent or caretaker relative;

23 3. The noncustodial parent's duty and ability to
24 provide support;

25 4. The amount of the noncustodial parent's monthly
26 support obligation;

27 5. Any obligation to pay retroactive support;

28 6. The noncustodial parent's obligation to provide for
29 the health care needs of each child, whether through insurance
30 coverage, contribution towards the cost of insurance coverage,
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1 payment or reimbursement of health care expenses for the
2 child, or any combination thereof;

3 7. The beginning date of any required monthly payments
4 and health care coverage;

5 8. That all support payments ordered must be paid to
6 the Florida State Disbursement Unit as provided by s. 61.1824;

7 9. That the parents, or caretaker relative if
8 applicable, must file with the department when the
9 administrative support order is rendered, if they have not
10 already done so, and update as appropriate the information
11 required pursuant to paragraph (13)(b);

12 10. That both parents, or parent and caretaker
13 relative if applicable, are required to promptly notify the
14 department of any change in their mailing addresses pursuant
15 to paragraph (13)(c); and

16 11. That if the noncustodial parent receives
17 unemployment compensation benefits, the payor shall withhold,
18 and transmit to the department, 40 percent of the benefits for
19 payment of support, not to exceed the amount owed.

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21 An income deduction order as provided by s. 61.1301 must be
22 incorporated into the administrative support order or, if not
23 incorporated into the administrative support order, the
24 department or the Division of Administrative Hearings shall
25 render a separate income deduction order.

26 Section 9. For the purpose of incorporating the
27 amendment to section 61.30, Florida Statutes, in references
28 thereto, subsection (12) of section 409.2564, Florida
29 Statutes, is reenacted to read:

30 409.2564 Actions for support.--

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1 (12) The Title IV-D agency shall review child support
2 orders in IV-D cases at least every 3 years upon request by
3 either party, or the agency in cases where there is an
4 assignment of support to the state under s. 414.095(8), and
5 may seek adjustment of the order if appropriate under the
6 guidelines established in s. 61.30. Not less than once every 3
7 years the IV-D agency shall provide notice to the parties
8 subject to the order informing them of their right to request
9 a review and, if appropriate, an adjustment of the child
10 support order. Said notice requirement may be met by including
11 appropriate language in the initial support order or any
12 subsequent orders.

13 Section 10. For the purpose of incorporating the
14 amendment to section 61.30, Florida Statutes, in references
15 thereto, subsection (1) of section 742.031, Florida Statutes,
16 is reenacted to read:

17 742.031 Hearings; court orders for support, hospital
18 expenses, and attorney's fee.--

19 (1) Hearings for the purpose of establishing or
20 refuting the allegations of the complaint and answer shall be
21 held in the chambers and may be restricted to persons, in
22 addition to the parties involved and their counsel, as the
23 judge in his or her discretion may direct. The court shall
24 determine the issues of paternity of the child and the ability
25 of the parents to support the child. Each party's social
26 security number shall be recorded in the file containing the
27 adjudication of paternity. If the court finds that the alleged
28 father is the father of the child, it shall so order. If
29 appropriate, the court shall order the father to pay the
30 complainant, her guardian, or any other person assuming
31 responsibility for the child moneys sufficient to pay

1 reasonable attorney's fees, hospital or medical expenses, cost
2 of confinement, and any other expenses incident to the birth
3 of the child and to pay all costs of the proceeding. Bills
4 for pregnancy, childbirth, and scientific testing are
5 admissible as evidence without requiring third-party
6 foundation testimony, and shall constitute prima facie
7 evidence of amounts incurred for such services or for testing
8 on behalf of the child. The court shall order either or both
9 parents owing a duty of support to the child to pay support
10 pursuant to s. 61.30. The court shall issue, upon motion by a
11 party, a temporary order requiring the provision of child
12 support pursuant to s. 61.30 pending an administrative or
13 judicial determination of parentage, if there is clear and
14 convincing evidence of paternity on the basis of genetic tests
15 or other evidence. The court may also make a determination as
16 to the parental responsibility and residential care and
17 custody of the minor children in accordance with chapter 61.

18 Section 11. This act shall take effect July 1, 2004.

19
20 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
21 COMMITTEE SUBSTITUTE FOR
22 CS/CS for Senate Bill 1060

- 23 - Clarifies reference to the federal tax credit for child
24 care expenses for the purpose of distinguishing it from
25 the federal tax credit for each child.
26 - Adds that the date of the initial entry of a temporary
27 support order may serve as a date to which a modified
28 support order may be made retroactive.
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