

CHAMBER ACTION

1 The Committee on Future of Florida's Families recommends the  
2 following:

3  
4 **Committee Substitute**

5 Remove the entire bill and insert:

6 A bill to be entitled

7 An act relating to child support; amending s. 61.14, F.S.;  
8 providing for modification of temporary support orders;  
9 amending s. 61.30, F.S.; revising the formula for  
10 determining child support obligations with respect to  
11 child care costs and federal tax credits for child and  
12 dependent care expenses; amending s. 742.031, F.S.;  
13 providing for modification of temporary support orders;  
14 reenacting ss. 39.402(11), 39.521(2)(s), 61.13(1)(a) and  
15 (5), 61.14(1), 409.2563(1)(a), (2)(c), (4)(f), (5)(a), and  
16 (7)(c), 409.2564(12), and 742.031(1), F.S., for the  
17 purpose of incorporating by reference the amendments to s.  
18 61.30, F.S.; providing an effective date.

19  
20 Be It Enacted by the Legislature of the State of Florida:

21  
22 Section 1. Subsection (9) is added to section 61.14,  
23 Florida Statutes, to read:

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24 61.14 Enforcement and modification of support,  
25 maintenance, or alimony agreements or orders.--

26 (9)(a) The court may, upon good cause shown, without a  
27 showing of a substantial change of circumstances, modify,  
28 vacate, or set aside a temporary support order before or upon  
29 entering its final order in the proceeding.

30 (b) The modification of the temporary support order may be  
31 made retroactive to the date of the initial entry of that  
32 temporary support order, or to the date of the filing of the  
33 initial petition for dissolution of marriage, initial petition  
34 for support, initial petition to determine paternity, or  
35 supplemental petition for modification, or to a date prescribed  
36 in paragraph (1)(a) or s. 61.30(11)(c) or (17), as applicable.

37 Section 2. Subsections (7) and (11) of section 61.30,  
38 Florida Statutes, are amended to read:

39 61.30 Child support guidelines; retroactive child  
40 support.--

41 (7) Child care costs incurred on behalf of the children  
42 due to employment, job search, or education calculated to result  
43 in employment or to enhance income of current employment of  
44 either parent shall be ~~reduced by 25 percent and then shall be~~  
45 added to the basic obligation. After the ~~adjusted~~ child care  
46 costs are added to the basic obligation, any moneys prepaid by  
47 the noncustodial parent for child care costs for the child or  
48 children of this action shall be deducted from that noncustodial  
49 parent's child support obligation for that child or those  
50 children. Child care costs shall not exceed the level required  
51 to provide quality care from a licensed source for the children.

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

55 1. Extraordinary medical, psychological, educational, or  
56 dental expenses.

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

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

61 4. Seasonal variations in one or both parents' incomes or  
62 expenses.

63 5. The age of the child, taking into account the greater  
64 needs of older children.

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

69 7. Total available assets of the obligee, obligor, and the  
70 child.

71 8. The impact of the Internal Revenue Service dependency  
72 exemption and waiver of that exemption. The court may order the  
73 primary residential parent to execute a waiver of the Internal  
74 Revenue Service dependency exemption if the noncustodial parent  
75 is current in support payments.

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

79 |        ~~10.9.~~ When application of the child support guidelines  
80 | requires a person to pay another person more than 55 percent of  
81 | his or her gross income for a child support obligation for  
82 | current support resulting from a single support order.

83 |        ~~11.10.~~ The particular shared parental arrangement, such as  
84 | where the child spends a significant amount of time, but less  
85 | than 40 percent of the overnights, with the noncustodial parent,  
86 | thereby reducing the financial expenditures incurred by the  
87 | primary residential parent; or the refusal of the noncustodial  
88 | parent to become involved in the activities of the child.

89 |        ~~12.11.~~ Any other adjustment which is needed to achieve an  
90 | equitable result which may include, but not be limited to, a  
91 | reasonable and necessary existing expense or debt. Such expense  
92 | or debt may include, but is not limited to, a reasonable and  
93 | necessary expense or debt which the parties jointly incurred  
94 | during the marriage.

95 |        (b) Whenever a particular shared parental arrangement  
96 | provides that each child spend a substantial amount of time with  
97 | each parent, the court shall adjust any award of child support,  
98 | as follows:

99 |            1. In accordance with subsections (9) and (10), calculate  
100 | the amount of support obligation apportioned to the noncustodial  
101 | parent without including day care and health insurance costs in  
102 | the calculation and multiply the amount by 1.5.

103 |            2. In accordance with subsections (9) and (10), calculate  
104 | the amount of support obligation apportioned to the custodial  
105 | parent without including day care and health insurance costs in  
106 | the calculation and multiply the amount by 1.5.

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107           3. Calculate the percentage of overnight stays the child  
108 spends with each parent.

109           4. Multiply the noncustodial parent's support obligation  
110 as calculated in subparagraph 1. by the percentage of the  
111 custodial parent's overnight stays with the child as calculated  
112 in subparagraph 3.

113           5. Multiply the custodial parent's support obligation as  
114 calculated in subparagraph 2. by the percentage of the  
115 noncustodial parent's overnight stays with the child as  
116 calculated in subparagraph 3.

117           6. The difference between the amounts calculated in  
118 subparagraphs 4. and 5. shall be the monetary transfer necessary  
119 between the custodial and noncustodial parents for the care of  
120 the child, subject to an adjustment for day care and health  
121 insurance expenses.

122           7. Pursuant to subsections (7) and (8), calculate the net  
123 amounts owed by the custodial and noncustodial parents for the  
124 expenses incurred for day care and health insurance coverage for  
125 the child. ~~Day care shall be calculated without regard to the~~  
126 ~~25-percent reduction applied by subsection (7).~~

127           8. Adjust the support obligation owed by the custodial or  
128 noncustodial parent pursuant to subparagraph 6. by crediting or  
129 debiting the amount calculated in subparagraph 7. This amount  
130 represents the child support which must be exchanged between the  
131 custodial and noncustodial parents.

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

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135 | custodial parent's low income and ability to maintain the basic  
 136 | necessities of the home for the child, the likelihood that the  
 137 | noncustodial parent will actually exercise the visitation  
 138 | granted by the court, and whether all of the children are  
 139 | exercising the same shared parental arrangement.

140 |       10. For purposes of adjusting any award of child support  
 141 | under this paragraph, "substantial amount of time" means that  
 142 | the noncustodial parent exercises visitation at least 40 percent  
 143 | of the overnights of the year.

144 |       (c) A noncustodial parent's failure to regularly exercise  
 145 | court-ordered or agreed visitation not caused by the custodial  
 146 | parent which resulted in the adjustment of the amount of child  
 147 | support pursuant to subparagraph (a)~~11.10.~~ or paragraph (b)  
 148 | shall be deemed a substantial change of circumstances for  
 149 | purposes of modifying the child support award. A modification  
 150 | pursuant to this paragraph shall be retroactive to the date the  
 151 | noncustodial parent first failed to regularly exercise court-  
 152 | ordered or agreed visitation.

153 |       Section 3. Subsection (4) is added to section 742.031,  
 154 | Florida Statutes, to read:

155 |       742.031 Hearings; court orders for support, hospital  
 156 | expenses, and attorney's fee.--

157 |       (4)(a) The court may, upon good cause shown, and without a  
 158 | showing of a substantial change of circumstances, modify,  
 159 | vacate, or set aside a temporary support order before or upon  
 160 | entering its final order in the proceeding.

161 |       (b) The modification of the temporary support order may be  
 162 | made retroactive to the date of the initial entry of that

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163 temporary support order, or to the date of the filing of the  
 164 initial petition for dissolution of marriage, initial petition  
 165 for support, initial petition to determine paternity, or  
 166 supplemental petition for modification, or to a date prescribed  
 167 in s. 61.14(1)(a) or s. 61.30(11)(c) or (17), as applicable.

168 Section 4. For the purpose of incorporating the amendment  
 169 to section 61.30, Florida Statutes, in a reference thereto,  
 170 subsection (11) of section 39.402, Florida Statutes, is  
 171 reenacted to read:

172 39.402 Placement in a shelter.--

173 (11) If a child is placed in a shelter pursuant to a court  
 174 order following a shelter hearing, the court shall require in  
 175 the shelter hearing order that the parents of the child, or the  
 176 guardian of the child's estate, if possessed of assets which  
 177 under law may be disbursed for the care, support, and  
 178 maintenance of the child, to pay, to the department or  
 179 institution having custody of the child, fees as established by  
 180 the department. When the order affects the guardianship estate,  
 181 a certified copy of the order shall be delivered to the judge  
 182 having jurisdiction of the guardianship estate. The shelter  
 183 order shall also require the parents to provide to the  
 184 department and any other state agency or party designated by the  
 185 court, within 28 days after entry of the shelter order, the  
 186 financial information necessary to accurately calculate child  
 187 support pursuant to s. 61.30.

188 Section 5. For the purpose of incorporating the amendment  
 189 to section 61.30, Florida Statutes, in a reference thereto,

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190 paragraph (s) of subsection (2) of section 39.521, Florida  
191 Statutes, is reenacted to read:

192 39.521 Disposition hearings; powers of disposition.--

193 (2) The predisposition study must provide the court with  
194 the following documented information:

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

198  
199 Any other relevant and material evidence, including other  
200 written or oral reports, may be received by the court in its  
201 effort to determine the action to be taken with regard to the  
202 child and may be relied upon to the extent of its probative  
203 value, even though not competent in an adjudicatory hearing.  
204 Except as otherwise specifically provided, nothing in this  
205 section prohibits the publication of proceedings in a hearing.

206 Section 6. For the purpose of incorporating the amendment  
207 to section 61.30, Florida Statutes, in references thereto,  
208 paragraph (a) of subsection (1) and subsection (5) of section  
209 61.13, Florida Statutes, are reenacted to read:

210 61.13 Custody and support of children; visitation rights;  
211 power of court in making orders.--

212 (1)(a) In a proceeding for dissolution of marriage, the  
213 court may at any time order either or both parents who owe a  
214 duty of support to a child to pay support in accordance with the  
215 guidelines in s. 61.30. The court initially entering an order  
216 requiring one or both parents to make child support payments  
217 shall have continuing jurisdiction after the entry of the

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218 | initial order to modify the amount and terms and conditions of  
 219 | the child support payments when the modification is found  
 220 | necessary by the court in the best interests of the child, when  
 221 | the child reaches majority, or when there is a substantial  
 222 | change in the circumstances of the parties. The court initially  
 223 | entering a child support order shall also have continuing  
 224 | jurisdiction to require the obligee to report to the court on  
 225 | terms prescribed by the court regarding the disposition of the  
 226 | child support payments.

227 |         (5) The court may make specific orders for the care and  
 228 | custody of the minor child as from the circumstances of the  
 229 | parties and the nature of the case is equitable and provide for  
 230 | child support in accordance with the guidelines in s. 61.30. An  
 231 | award of shared parental responsibility of a minor child does  
 232 | not preclude the court from entering an order for child support  
 233 | of the child.

234 |         Section 7. For the purpose of incorporating the amendment  
 235 | to section 61.30, Florida Statutes, in references thereto,  
 236 | subsection (1) of section 61.14, Florida Statutes, is reenacted  
 237 | to read:

238 |             61.14 Enforcement and modification of support,  
 239 | maintenance, or alimony agreements or orders.--

240 |             (1)(a) When the parties enter into an agreement for  
 241 | payments for, or instead of, support, maintenance, or alimony,  
 242 | whether in connection with a proceeding for dissolution or  
 243 | separate maintenance or with any voluntary property settlement,  
 244 | or when a party is required by court order to make any payments,  
 245 | and the circumstances or the financial ability of either party

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246 | changes or the child who is a beneficiary of an agreement or  
247 | court order as described herein reaches majority after the  
248 | execution of the agreement or the rendition of the order, either  
249 | party may apply to the circuit court of the circuit in which the  
250 | parties, or either of them, resided at the date of the execution  
251 | of the agreement or reside at the date of the application, or in  
252 | which the agreement was executed or in which the order was  
253 | rendered, for an order decreasing or increasing the amount of  
254 | support, maintenance, or alimony, and the court has jurisdiction  
255 | to make orders as equity requires, with due regard to the  
256 | changed circumstances or the financial ability of the parties or  
257 | the child, decreasing, increasing, or confirming the amount of  
258 | separate support, maintenance, or alimony provided for in the  
259 | agreement or order. A finding that medical insurance is  
260 | reasonably available or the child support guidelines in s. 61.30  
261 | may constitute changed circumstances. Except as otherwise  
262 | provided in s. 61.30(11)(c), the court may modify an order of  
263 | support, maintenance, or alimony by increasing or decreasing the  
264 | support, maintenance, or alimony retroactively to the date of  
265 | the filing of the action or supplemental action for modification  
266 | as equity requires, giving due regard to the changed  
267 | circumstances or the financial ability of the parties or the  
268 | child.

269 |       (b) For each support order reviewed by the department as  
270 | required by s. 409.2564(12), if the amount of the child support  
271 | award under the order differs by at least 10 percent but not  
272 | less than \$25 from the amount that would be awarded under s.  
273 | 61.30, the department shall seek to have the order modified and

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274 any modification shall be made without a requirement for proof  
275 or showing of a change in circumstances.

276 (c) The department shall have authority to adopt rules to  
277 implement this section.

278 Section 8. For the purpose of incorporating the amendment  
279 to section 61.30, Florida Statutes, in references thereto,  
280 paragraph (a) of subsection (1), paragraph (c) of subsection  
281 (2), paragraph (f) of subsection (4), paragraph (a) of  
282 subsection (5), and paragraph (c) of subsection (7) of section  
283 409.2563, Florida Statutes, are reenacted to read:

284 409.2563 Administrative establishment of child support  
285 obligations.--

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

287 (a) "Administrative support order" means a final order  
288 rendered by or on behalf of the department pursuant to this  
289 section establishing or modifying the obligation of a  
290 noncustodial parent to contribute to the support and maintenance  
291 of his or her child or children, which may include provisions  
292 for monetary support, retroactive support, health care, and  
293 other elements of support pursuant to chapter 61.

294  
295 Other terms used in this section have the meanings ascribed in  
296 ss. 61.046 and 409.2554.

297 (2) PURPOSE AND SCOPE.--

298 (c) If there is no support order for a child in a Title  
299 IV-D case whose paternity has been established or is presumed by  
300 law, the department may establish the noncustodial parent's  
301 child support obligation pursuant to this section, s. 61.30, and

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302 other relevant provisions of state law. The noncustodial  
 303 parent's obligation determined by the department may include any  
 304 obligation to pay retroactive support and any obligation to  
 305 provide for health care for a child, whether through insurance  
 306 coverage, reimbursement of expenses, or both. The department may  
 307 proceed on behalf of:

- 308 1. An applicant or recipient of public assistance, as  
 309 provided by ss. 409.2561 and 409.2567;
- 310 2. A former recipient of public assistance, as provided by  
 311 s. 409.2569;
- 312 3. An individual who has applied for services as provided  
 313 by s. 409.2567;
- 314 4. Itself or the child, as provided by s. 409.2561; or
- 315 5. A state or local government of another state, as  
 316 provided by chapter 88.

317 (4) NOTICE OF PROCEEDING TO ESTABLISH ADMINISTRATIVE  
 318 SUPPORT ORDER.--To commence a proceeding under this section, the  
 319 department shall provide to the custodial parent and serve the  
 320 noncustodial parent with a notice of proceeding to establish  
 321 administrative support order and a blank financial affidavit  
 322 form. The notice must state:

- 323 (f) That the department will calculate support obligations  
 324 based on the child support guidelines in s. 61.30 and using all  
 325 available information, as provided by paragraph (5)(a), and will  
 326 incorporate such obligations into a proposed administrative  
 327 support order;

328

329 The department may serve the notice of proceeding to establish  
 330 administrative support order by certified mail, restricted  
 331 delivery, return receipt requested. Alternatively, the  
 332 department may serve the notice by any means permitted for  
 333 service of process in a civil action. For purposes of this  
 334 section, an authorized employee of the department may serve the  
 335 notice and execute an affidavit of service. Service by certified  
 336 mail is completed when the certified mail is received or refused  
 337 by the addressee or by an authorized agent as designated by the  
 338 addressee in writing. If a person other than the addressee signs  
 339 the return receipt, the department shall attempt to reach the  
 340 addressee by telephone to confirm whether the notice was  
 341 received, and the department shall document any telephonic  
 342 communications. If someone other than the addressee signs the  
 343 return receipt, the addressee does not respond to the notice,  
 344 and the department is unable to confirm that the addressee has  
 345 received the notice, service is not completed and the department  
 346 shall attempt to have the addressee served personally. The  
 347 department shall provide the custodial parent or caretaker  
 348 relative with a copy of the notice by regular mail to the last  
 349 known address of the custodial parent or caretaker.

350 (5) PROPOSED ADMINISTRATIVE SUPPORT ORDER.--

351 (a) After serving notice upon the noncustodial parent in  
 352 accordance with subsection (4), the department shall calculate  
 353 the noncustodial parent's child support obligation under the  
 354 child support guidelines as provided by s. 61.30, based on any  
 355 timely financial affidavits received and other information  
 356 available to the department. If either parent fails to comply

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357 with the requirement to furnish a financial affidavit, the  
 358 department may proceed on the basis of information available  
 359 from any source, if such information is sufficiently reliable  
 360 and detailed to allow calculation of guideline amounts under s.  
 361 61.30. If the custodial parent receives public assistance and  
 362 fails to submit a financial affidavit, the department may submit  
 363 a financial affidavit for the custodial parent pursuant to s.  
 364 61.30(15). If there is a lack of sufficient reliable information  
 365 concerning a parent's actual earnings for a current or past  
 366 period, it shall be presumed for the purpose of establishing a  
 367 support obligation that the parent had an earning capacity equal  
 368 to the federal minimum wage during the applicable period.

369 (7) ADMINISTRATIVE SUPPORT ORDER.--

370 (c) If the noncustodial parent waives the right to a  
 371 hearing, or consents in writing to the entry of an order without  
 372 a hearing, the department may render an administrative support  
 373 order.

374  
 375 An income deduction order as provided by s. 61.1301 must be  
 376 incorporated into the administrative support order or, if not  
 377 incorporated into the administrative support order, the  
 378 department or the Division of Administrative Hearings shall  
 379 render a separate income deduction order.

380 Section 9. For the purpose of incorporating the amendment  
 381 to section 61.30, Florida Statutes, in a reference thereto,  
 382 subsection (12) of section 409.2564, Florida Statutes, is  
 383 reenacted to read:

384 409.2564 Actions for support.--

385 (12) The Title IV-D agency shall review child support  
 386 orders in IV-D cases at least every 3 years upon request by  
 387 either party, or the agency in cases where there is an  
 388 assignment of support to the state under s. 414.095(8), and may  
 389 seek adjustment of the order if appropriate under the guidelines  
 390 established in s. 61.30. Not less than once every 3 years the  
 391 IV-D agency shall provide notice to the parties subject to the  
 392 order informing them of their right to request a review and, if  
 393 appropriate, an adjustment of the child support order. Said  
 394 notice requirement may be met by including appropriate language  
 395 in the initial support order or any subsequent orders.

396 Section 10. For the purpose of incorporating the amendment  
 397 to section 61.30, Florida Statutes, in references thereto,  
 398 subsection (1) of section 742.031, Florida Statutes, is  
 399 reenacted to read:

400 742.031 Hearings; court orders for support, hospital  
 401 expenses, and attorney's fee.--

402 (1) Hearings for the purpose of establishing or refuting  
 403 the allegations of the complaint and answer shall be held in the  
 404 chambers and may be restricted to persons, in addition to the  
 405 parties involved and their counsel, as the judge in his or her  
 406 discretion may direct. The court shall determine the issues of  
 407 paternity of the child and the ability of the parents to support  
 408 the child. Each party's social security number shall be recorded  
 409 in the file containing the adjudication of paternity. If the  
 410 court finds that the alleged father is the father of the child,  
 411 it shall so order. If appropriate, the court shall order the  
 412 father to pay the complainant, her guardian, or any other person

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413 assuming responsibility for the child moneys sufficient to pay  
414 reasonable attorney's fees, hospital or medical expenses, cost  
415 of confinement, and any other expenses incident to the birth of  
416 the child and to pay all costs of the proceeding. Bills for  
417 pregnancy, childbirth, and scientific testing are admissible as  
418 evidence without requiring third-party foundation testimony, and  
419 shall constitute prima facie evidence of amounts incurred for  
420 such services or for testing on behalf of the child. The court  
421 shall order either or both parents owing a duty of support to  
422 the child to pay support pursuant to s. 61.30. The court shall  
423 issue, upon motion by a party, a temporary order requiring the  
424 provision of child support pursuant to s. 61.30 pending an  
425 administrative or judicial determination of parentage, if there  
426 is clear and convincing evidence of paternity on the basis of  
427 genetic tests or other evidence. The court may also make a  
428 determination as to the parental responsibility and residential  
429 care and custody of the minor children in accordance with  
430 chapter 61.

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