

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2924

SPONSOR: Senator Aronberg

SUBJECT: Child Support Disbursements

DATE: April 8, 2004

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Brown</u>	<u>Lang</u>	<u>JU</u>	<u>Fav/1 amendment</u>
2.	_____	_____	<u>CF</u>	_____
3.	_____	_____	<u>AGG</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill relates to the role of the Department of Revenue in determining that a collection is undistributable to the final recipient in a child support case.

This bill requires the Department of Revenue (department) to provide for reasonable efforts to locate and notify persons to whom collections or refunds are owed. In so doing, the department is authorized to disclose names and other information on the Internet.

This bill substantially amends section 409.2558 of the Florida Statutes.

II. Present Situation:

Section 409.2558, F.S., was created in 1998 to require the Department of Revenue to distribute and disburse child support payments collected in Title IV-D cases in accordance with 42 U.S.C. 657 and regulations adopted hereunder by the Secretary of the U.S. Department of Health and Human Services.¹ The federal Office of Child Support Enforcement has indicated a preference for processing undistributable payments as a matter of state law, but if such collections are treated as unclaimed property or become property of the state, they are to be considered as program income and an amount equal to the federal financial participation (66 percent) must be transferred to the federal government. The state share is credited to the General Revenue Fund.²

¹ See Chapter 98-397, L.O.F.

² s. 409.2558(2)(c) 2., F.S.

An “undistributable collection” is defined as a support payment received by the department which is determined to be unable to be distributed to the final intended recipient.³ This happens most often when a party moves and does not notify the Department of the address change.

Section 409.2558, F.S., specifically requires the department to establish by rule a method to determine that a collection or refund to a non-custodial parent is undistributable to the final intended recipient. Current law provides a specified process of application of collections in priority order:

- Apply payment to any arrearages on the custodial parent’s case;
- Apply payment to any administrative costs ordered by the court associated with the custodial parent’s case;
- When the non-custodial parent is subject to a valid order to support other children in another case with a different custodial parent and the obligation is enforced by the department, if the department has the non-custodial parent’s permission, the payment is applied to those other obligations;
- Return the payment to the non-custodial parent; and,
- If the non-custodial parent cannot be located after diligent efforts by the department, the federal share of the payment is credited to the federal government and the state share is transferred to the General Revenue Fund.⁴

The department promulgated Rule 12E-1.005, governing the collection and distribution of payments, but it does not address the priority status for applying payment required under s. 409.2558 (2) (b), F.S. Rule 12E-1.005 predates the priority status requirement under s. 09.2558, F.S.

The department indicates that undistributable funds currently amount to \$14.1 million.

III. Effect of Proposed Changes:

This bill relates to the role of the Department of Revenue in determining that a collection is undistributable to the final recipient in a child support case.

This bill requires the Department of Revenue (department) to provide for reasonable efforts to locate and notify persons to whom collections or refunds are owed. In so doing, the department is authorized to disclose names and other information on the Internet.

Rule 12E-1.005 is currently undergoing revision to conform to s. 409.2558(2), F.S., to parallel the priority status provided for in statute to include returning undistributable funds to the non-custodial parent.

³ s. 409.2554, F.S.

⁴ s. 409.2558 (2)(b),F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill may raise a constitutional challenge regarding privacy rights. Florida recognizes an express right of privacy in section 23 of Article I of the State Constitution, which provides that “every natural person has the right to be let alone and free from governmental intrusion into the person’s private life.”

In right of privacy cases where a reasonable expectation of privacy exists, the Florida Supreme Court has applied the compelling state interest standard of review. The compelling state interest standard requires a review of whether the State intruded on a petitioner’s right of privacy to protect compelling state interests and that the State did so using the least intrusive means possible.⁵

This bill authorizes the department to disclose names and other personal information on the Internet. Without limiting the content or breadth of the information in any way, this bill may be constitutionally suspected.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

More intended recipients may be located with this additional statutory authority to the department.

C. Government Sector Impact:

⁵ See, generally, *Winfield v. Division of Pari-Mutuel Wagering*, 477 So.2d 544 (Fla. 1985).

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

#1 by Judiciary:

Specifies that reasonable efforts are to include the disclosure of the names of obligees, obligors, and account numbers assigned by the depository on the internet.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
