

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.)

Prepared By: Judiciary Committee

BILL: CS/SB 1262

SPONSOR: Judiciary Committee and Senator Campbell

SUBJECT: Child Support Enforcement

DATE: April 14, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sanford</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/1 amendment</u>
2.	<u>Chinn</u>	<u>Maclure</u>	<u>JU</u>	<u>Fav/CS</u>
3.	_____	_____	<u>GA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

In 1996, Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), or federal welfare reform legislation.¹ Title III of the federal act not only expanded existing requirements for state child support programs, but imposed additional requirements as well. Since issues related to child support have traditionally been a function of state family law, states were required by the federal government to make changes in their laws as a condition of receiving funding for child support enforcement and child welfare programs.

During the 1997 legislative session, the Florida Legislature amended state law to comply with most of the requirements contained in the federal welfare reform package. As federal laws, rules, and regulations have changed and as the Florida Child Support Enforcement Program's need for additional enforcement tools has evolved, the Legislature has subsequently enacted further changes. As a continuation of that process, the Committee Substitute for Senate Bill 1262:

- Provides for civil penalties for employers or unions who violate provisions in a National Medical Support Notice;
- Allows the Florida Department of Revenue (DOR) to continue to report a current child support obligation as an open account after a delinquency reported to a consumer reporting agency has been paid;
- Provides that once a settlement agreement is reached related to a workers' compensation claim, no proceeds of the settlement or attorney's fees can be disbursed until after a judge of compensation claims reviews the disbursement proposal and enters an order finding

¹ Personal Responsibility and Work Opportunity Reconciliation Act, Pub L. No. 104-193, 110 Stat. 2105 (1996).

- that the settlement provides for appropriate recovery of any existing child support arrearage;
- Provides rulemaking authority for the Office of Judges of Compensation Claims to adopt procedural rules to implement the review of workers' compensation settlements;
 - Allows the DOR access to any acknowledgment or affidavit of paternity that results in an original birth certificate being amended and allows the Office of Vital Statistics to amend birth records of children born in Florida upon paternity establishment by another state, based upon certification by the Title IV-D agency accompanied by supporting documentation;²
 - Requires DOR to withhold child support disbursements while a support order is modified to redirect child support payments to the person with whom the child resides when the child is no longer living with the party named in the original support order, including provisions for determining the child no longer lives with the named party, for providing notice, and requesting a hearing;
 - Limits the exemption for support order establishment to recipients of temporary cash assistance or Supplemental Security Income (SSI) only;
 - Eliminates the requirement for a monthly report on public assistance collections; and
 - Allows the Agency for Health Care Administration (AHCA) to share KidCare information with the DOR for Title IV-D purposes.

This committee substitute substantially amends the following sections of the Florida Statutes: 61.13, 61.1354, 61.14, 61.1812, 222.21, 382.016, 409.2558, 409.2561, 409.2567, and 409.821.

II. Present Situation:

National Medical Support Notice

In 2003, an estimated 8.4 million children 18 years of age and younger did not have health insurance, with almost 600,000 of those being Florida children.³ While there is no single reason why children do not have insurance coverage for health care services, it is known that children who grow up in families with parents who are divorced, separated, or never-married are at increased risk for not having health care coverage. Private health care coverage is strongly related to income and most single-parent households have lower incomes than two-parent households. Even if income is not an issue, it can be more difficult for parents who are living apart to work together to provide coverage for the health care needs of their children.

Both federal and state governments have responded to the need for health care coverage for children. In 1984, federal law gave state child support enforcement (Title IV-D) programs the responsibility for including medical support establishment and enforcement as part of the child support process.^{4, 5} States were required to include provisions for health care coverage in their

² "Title IV-D" is used interchangeably with "state child enforcement programs" and is derived from subsection IV of the Social Security chapter in federal law relating to "Grants to States for Aid and Services to Needy Families with Children and for Child-welfare Services." More specifically, part D provides for "Child Support and Establishment of Paternity." It is in Title IV-D that the state programs are discussed.

³ Income, Poverty, and Health Insurance Coverage in the United States: 2003, U.S. Census Bureau. August 2004. Healthy Kids and KidCare January Update, Healthy Kids Corporation, January 12, 2005.

⁴ Child Support Enforcement Amendments of 1984, 42 U.S.C. ss. 657-662 (1984).

child support guidelines, and child support enforcement programs were required to pursue private health care coverage when such coverage was available through a noncustodial parent at a reasonable cost.⁶ Florida law complies with both requirements as follows:

- Health insurance costs resulting from coverage ordered pursuant to s. 61.13(1)(b), F.S., and any noncovered medical, dental, and prescription medication expenses of the child, shall be added to the basic obligation unless these expenses have been ordered to be paid separately on a percentage basis.⁷
- Each order for support shall contain a provision for health care coverage for the minor child when the coverage is reasonably available. Coverage is reasonably available if either the obligor or obligee has access to a group health plan at a reasonable rate. The court may require the obligor either to provide health care coverage or to reimburse the obligee for the cost of health care coverage for the minor child when coverage is provided by the obligee.⁸

Subsequent federal legislation strengthened the enforcement of medical child support. Federal welfare reform enacted in 1996 required that all child support orders contain a provision for health care coverage and directed the state Title IV-D agency to notify an employer of the non-custodial parent's medical child support obligation.⁹ Each state instituted a medical child support process which, in some manner, notified the employer of the non-custodial parent of the parent's obligation to provide health care coverage for his or her child and required the employer or health plan administrator to enroll the child, if eligible. The wide variation of notices and orders that states used created confusion for the employers which resulted in delays or denials when enrolling children in health plans, impeded the optimal use of automation of medical support obligation services, and resulted in health plan administrators often not agreeing on which notices and orders satisfied health plan requirements.¹⁰ In spite of numerous changes to the law at both state and federal levels, there was still no clearly defined tool to enforce medical support obligations that was equivalent to the income-withholding notice used to enforce general child support obligations.

Recognizing that problems continued to affect the ability of states to enforce child medical support orders, Congress enacted legislation requiring the Secretary of Health and Human Services and the Secretary of Labor to jointly develop and promulgate a National Medical Support Notice (NMSN), to be issued by states as a means of enforcing the health care coverage provisions in a child support order.¹¹ The NMSN provides standardized instructions concerning an employee's obligation to provide health insurance coverage for one or more children and is intended to simplify issuing and processing of medical child support orders, provide standardized communication between state child support agencies, employers, and plan administrators, and create a uniform process for enforcement of medical child support.

⁵ See *supra* note 2.

⁶ As Florida's Title IV-D agency since 1994, the Department of Revenue has responsibility for the state's Child Support Enforcement Program

⁷ s. 61.30(8), F.S., related to child support guidelines.

⁸ s. 61.13(1)(b), F.S., related to custody and support of children.

⁹ Personal Responsibility and Work Opportunity Reconciliation Act, Pub L. No. 104-193, 110 Stat. 2105 (1996).

¹⁰ Medical Child Support Working Group's Report, June 2000.

¹¹ Child Support Performance and Incentive Act of 1998 (CSPIA), Pub. L. No. 105-200, s. 401.

Therefore, pursuant to federal and state law, employers and unions are required, after having received a National Medical Support Notice, to enroll the child and inform the Title IV-D agency¹² either of the coverage or that coverage is unavailable because medical insurance is not offered, the employee has been terminated, or coverage costs exceed the employee's income in accordance with the Consumer Credit Protection Act. Florida law does not currently provide a penalty for employers or unions who fail to enroll the child or fail to notify the Florida Department of Revenue (DOR) when coverage is unavailable or the employee has been terminated, creating cases in where children are not provided health care coverage in a timely manner.

Florida KidCare is the state's child health insurance program for children from infancy through age 18 who do not have insurance. The program is made up of four parts: MediKids; Healthy Kids; the Children's Medical Services (CMS) Network for children with special health care needs; and Medicaid for children. When an application for insurance is submitted, Florida KidCare will determine whether a child is eligible for benefits under one of these programs based on the child's age and the family's income. If the child is eligible, KidCare will also determine the program for which the child is eligible.

Currently, the DOR and the Agency for Health Care Administration (AHCA) do not conduct a data match to identify children receiving both KidCare and child support enforcement services because there is no clear statutory authority for AHCA to share this data with the DOR. Such information sharing between the two agencies could assist in securing private health care coverage for children receiving KidCare services and assist in more accurate health care coverage information for the DOR. The information to be exchanged is not protected health information as defined in the Privacy Rule of the federal Health Care Portability Protection Act and would not conflict with the requirements of that act.

Consumer Reporting Agencies

The Child Support Enforcement Amendments of 1984 required improvements in state and local child support enforcement programs, including providing information to consumer reporting agencies including the amount of overdue support owed by a noncustodial parent when the amount owed exceeded \$500.¹³ In 1986, Florida law began to require the DOR to share overdue support information with consumer reporting agencies in compliance with the 1984 federal provisions.¹⁴ Additional provisions of the federal welfare reform legislation enacted in 1996 reiterated the requirement that states periodically report to consumer reporting agencies names of noncustodial parents who are delinquent in the payment of support and removed any minimum delinquency requirement for reporting.¹⁵ In addition, the Fair Credit Reporting Act was amended to authorize credit reporting agencies to release consumer reports to child support programs under certain circumstances.¹⁶

¹² For Florida, an employer would inform the Department of Revenue (see *supra* note 6).

¹³ Child Support Enforcement Amendments of 1984, 42 U.S.C., ss. 657-662 (1984).

¹⁴ ch. 86-220, L.O.F.

¹⁵ Personal Responsibility and Work Opportunity Reconciliation Act, Pub L. No. 104-193, 110 Stat. 2105 (1996).

¹⁶ 15 U.S.C. s. 1681s-1, also found at the Federal Trade Commission website under "Information on Overdue Child Support Obligations," s. 622, <http://www.ftc.gov/os/statutes/fcra.htm>.

Currently, when a Title IV-D case becomes delinquent, it is listed on an obligor's credit report as an open delinquent account. If the noncustodial parent pays off the entire past due amount, the account on the credit report appears to be a closed account even if the child support case is still open because of a current support obligation. If the case again becomes delinquent and is reported to the consumer reporting agencies, the credit history activity shows the case as a new account rather than a change in status for an existing account.

Workers' Compensation Settlements

Current law provides that when reviewing and approving any lump-sum settlement for workers' compensation, a judge of compensation claims must consider whether the settlement serves the interests of the worker and the worker's family, including, but not limited to, whether the settlement provides for appropriate recovery of any child support arrearage.¹⁷ The law also provides that such compensation and benefits are exempt from all claims of creditors, and from levy, execution and attachments or other remedy for recovery or collection of a debt, with the exception of claims based on an award of child support or alimony.¹⁸ The child support guidelines also provide that all workers' compensation benefits and settlements be counted as income for purposes of child support.¹⁹ Neither ch. 61 nor ch. 440, F.S., requires anyone to contact the DOR to determine whether the worker owes child support before the settlement is approved.

Paternity Establishment

Currently, Florida law requires a certificate for each live birth that occurs in this state to be filed within five days after such birth. If the mother is married at the time of birth, the name of the husband shall be entered on the birth certificate as the father of the child, unless paternity has otherwise been determined by a court of competent jurisdiction.²⁰

If the mother is not married at the time of the birth, the name of the father may not be entered on the birth certificate without the execution of an affidavit signed by both the mother and the person to be named as the father. The birthing facility is required to give notice to the parents orally or through the use of video or audio equipment, and in writing, of the alternatives to, the legal consequences of, and the rights and responsibilities associated with signing an acknowledgment of paternity. The facility must also provide to the parents information provided by the DOR related to the benefits of voluntary establishment of paternity. Upon request of the mother and the person to be named as the father, the facility is required to assist in the execution of the affidavit, a notarized voluntary acknowledgment of paternity, or a voluntary acknowledgment of paternity that is witnessed by two individuals and signed under penalty of perjury pursuant to s. 92.525, F.S.²¹

¹⁷ ss. 61.14 and 440.20, F.S.

¹⁸ s. 440.22, F.S.

¹⁹ s. 61.30, F.S.

²⁰ s. 382.013, F.S.

²¹ s. 382.013, F.S.

In cases where parents acknowledge paternity for a child after leaving the hospital by executing a notarized or witnessed acknowledgment or affidavit, the Office of Vital Statistics (OVS) amends the original birth record to include the name of the father. However, the OVS seals the acknowledgment or affidavit signed by the parents along with the original birth record, and will not provide that information to the DOR without a court order. In instances where the same acknowledgment process is completed at the time of birth in the hospital, the OVS provides the acknowledgment without a court order.

The Florida Statutes do not currently provide for an administrative process or for voluntary acknowledgement as a means for the OVS to amend birth records of children born in Florida for whom paternity is established by another state. The result is that the state's vital statistics records do not accurately reflect that paternity has been established for these children. In addition, to amend the birth records of children born in Florida whose paternity is established by another state through a judicial process, the OVS requires a certified copy of the final order adjudicating paternity before amending the birth certificate. Obtaining a certified copy of the order from another state can be difficult and time consuming and can present an obstacle to updating Florida's vital statistics records and obtaining a child support order.

Amending a Child Support Order

Section 409.2558, F.S., was created in 1998 to require DOR to distribute and disburse child support payments collected in Title IV-D cases²² in accordance with 42 U.S.C. s. 657 and regulations subsequently adopted by the Secretary of the United States Department of Health and Human Services.²³ When a child no longer resides with the parent or other caretaker named on a child support order, DOR must go to court to modify a support order to redirect disbursement of payments to the person with whom the child now resides.²⁴ Where an order for child support has been administratively entered, DOR must modify the order administratively to redirect support payments.²⁵ Currently, there is no provision in statute that allows the DOR to withhold child support payments while the modified order is obtained.

Child Support and Public Assistance

Social Security benefits and Supplemental Security Income (SSI) benefits are different in a number of ways. The purpose of SSI benefits is to ensure that the income of a recipient is maintained at a level viewed by the federal government as the minimum necessary for subsistence and, therefore, unlike Social Security benefits,²⁶ SSI benefits:

²² Title IV-D case means a case or proceeding in which DOR is providing child support services under Title IV-D of the Social Security Act. These cases are typically, but not always, cases in which public assistance is currently being received or has been received at some point in time. See s. 409.2563, F.S.

²³ See ch. 98-397, L.O.F.

²⁴ ss. 61.13 and 61.30, F.S., address orders for child support entered in court and s. 61.13(1)(a), F.S., provides that the original court to enter an order for support has continuing jurisdiction over the support order

²⁵ s. 409.2563(12), F.S.

²⁶ "Social Security benefits" provide retirement, disability, and survivor benefits. Generally, your Social Security benefit is a percentage of the recipient's average lifetime earnings. Low-income workers receive a higher percentage of their average lifetime earnings than those in the upper income brackets. A worker with average earnings can expect a retirement benefit that replaces about 40 percent of his or her average lifetime earnings. Social Security never was intended to be the only source of income for retirement, disability, or death (provided to survivors in the event of death). It is intended to supplement

- are a supplement to the recipient's income based on need and do not serve as a substitute for income lost due to disability;
- require both the existence of a disability and that the applicant has no more than \$2,000 in financial resources;²⁷
- are not provided for the dependents of the SSI recipient, unless the dependents themselves independently meet the SSI eligibility criteria; and
- are not subject to attachment for the purpose of spousal support or child support.²⁸

Based on the stated purposes of SSI benefits, the vast majority of states that have considered the issue have determined that these benefits may not be considered income for purposes of child support. Generally, those states have based those decisions on two reasons: first, because by federal law SSI cannot be attached, it cannot be considered income; and second, because SSI is a means-tested benefit, it should not be considered income. Income from a means-tested federal program is "last resource" income intended to provide a minimum floor for support of the recipient. Other income received, including child support, either reduces the level of such payments (as with Food Stamps) or is used to reimburse the respective agency for payments of the benefits (as with Temporary Assistance for Needy Families [TANF]²⁹). In either case, it has generally been determined to be inappropriate to count such income for purposes of child support.³⁰

Florida law related to child support guidelines does not include SSI benefits or "public assistance" as defined in s. 409.2554(7), F.S., as income for purposes of calculating ability of the noncustodial parent to pay child support.³¹ Section 409.2561(4), F.S., provides an exemption for support order establishment when the noncustodial parent is receiving public assistance for a minor child. The exemption based on receipt of public assistance results in support obligations not being established for children even though the noncustodial parent is working and has income. According to the DOR, limiting the current exemption to recipients of temporary cash assistance and SSI benefits would remedy this situation. Temporary cash assistance is not counted as income for purposes of establishing a support order and recipients of SSI are both indigent and unable to work.

Public Assistance Collections Report

In 1996, legislation was enacted as part of the Work and Gain Economic Self-sufficiency (WAGES) Act that required the DOR to provide a monthly report on public assistance

other income from pension plans, savings, and investments. (Comments found at <http://www.socialsecurity.gov/pubs/10006.html#ssbenefits> and <http://www.socialsecurity.gov/pubs/10006.html#figuring>.)

²⁷ 20 C.F.R. s. 416.1205(c).

²⁸ 42 U.S.C.A. s. 407(a).

²⁹ Temporary Assistance for Needy Families (TANF) denotes what was commonly referred to in the past as "welfare." In Florida, the agency that administers TANF benefits is the Department of Children and Family Services.

³⁰ Morgan, L., "Supplemental Security Income and Child Support," *Child Support Guidelines: Interpretation and Application*, 2004.

³¹ This section defines "public assistance" as money assistance paid on the basis of Title IV-E and Title XIX of the Social Security Act, temporary cash assistance, or food stamps received on behalf of a child under 18 years of age who has an absent parent.

collections.³² The DOR submitted a letter on September 20, 1996, to then Governor Lawton Chiles regarding the inability of the Florida system to produce the required data. To date, the DOR has never submitted this monthly report.

In addition, after the reporting requirement was created, the Legislature changed the procedure for handling public assistance collections retained by the state, and funds are no longer transferred directly to the Department of Children and Family Services. The DOR deposits the state share of the retained collections into the General Revenue Fund. Since the public assistance collections are deposited into the General Revenue Fund, the state already receives a report of these collections, and the report required by the 1996 legislation would be duplicative.

III. Effect of Proposed Changes:

National Medical Support Notice

The committee substitute provides that violation of the provisions in a National Medical Support Notice subjects an employer, union, or plan administrator to a civil penalty not to exceed \$250 for the first violation and not to exceed \$500 for any subsequent violation. These penalties are the same as those for payors who fail to comply with child support income withholding orders/notices.³³

The committee substitute provides the Agency for Healthcare Administration with statutory authority to share KidCare information with the Department of Revenue (DOR) for the purposes of administering the Title IV-D program.³⁴

Consumer Reporting Agencies

The committee substitute allows the DOR to continue to report a current child support obligation as an open account after a delinquency that has been reported to the consumer reporting agencies is paid off. If the case subsequently becomes delinquent, it can be re-reported and the active account would be reflected as delinquent in the same manner as a credit card account. It will reflect negatively only when a person is delinquent and positively when a person is current in payments.

Workers' Compensation Settlements

The committee substitute requires that once a settlement agreement is reached, no proceeds of the settlement or attorney's fees can be disbursed until after the judge of compensation claims reviews the proposed disbursement and enters an order finding that the settlement provides for appropriate recovery of child support arrearages. The committee substitute also requires an employee or employee's attorney, if represented, to obtain a written statement from the Department of Revenue as to whether the worker owes unpaid support and, if so, the amount owed. In addition, the committee substitute authorizes the judge of compensation claims to require the employee to submit a similar statement from a local depository for support payments,

³² ch. 96-175, L.O.F., and s. 409.2567, F.S.

³³ s. 61.1301, F.S.

³⁴ See *supra* note 2 for an explanation of "Title IV-D."

and the language requires a sworn statement from the employee that all existing support obligations have been disclosed. The language also provides rulemaking authority to the Office of the Judges of Compensation Claims to adopt procedural rules to implement the review of workers' compensation settlements as discussed above.

Paternity Establishment

The committee substitute provides that DOR may have access (when necessary to prove paternity) to the acknowledgment affidavit signed by parents to amend an original birth record. This would eliminate the requirement that the DOR obtain a court order every time that an acknowledgment is needed to show paternity in a child support enforcement case.

The committee substitute allows the Office of Vital Statistics (OVS) to amend birth records of Florida-born children upon the judicial or administrative establishment of paternity by another state based upon certification by the Title IV-D agency (DOR) with supporting documentation. Such documentation may include non-certified copies of the judicial or administrative order or acknowledgments of paternity that the DOR has provided or obtained from the other state.

Amending a Child Support Order

The committee substitute prohibits the DOR from disbursing child support payments to the parent or caretaker named on the current support order in a Title IV-D case if the department has determined that the child no longer lives with that parent or caretaker. Once an original support order has been modified either administratively³⁵ or by the circuit court,³⁶ the department will disburse payments as directed in the modified order.

The proposed language also provides grounds upon which a determination of a child's changed living situation must be based for purposes of support distribution. DOR must notify a parent or caretaker receiving support, the person paying the support, and the person with whom the child is living that the department is withholding support payments and seeking to modify the support order. The committee also provides procedures for any of the notified parties to challenge the department's actions.

Child Support and Public Assistance

The committee substitute revises the current exemption from support order establishment to recipients of temporary cash assistance and SSI benefits instead of "public assistance" in general, narrowing the scope of the exemption's application.

Public Assistance Collections Report

The committee substitute eliminates the statutory requirement for the monthly report on public assistance collections.

³⁵ See s. 409.2563(12), F.S.

³⁶ See s. 61.13, F.S.

Technical Changes

The committee substitute proposes language that would bring the statutes up-to-date with what has become the practice with respect to administration of the state's child support enforcement program. Current law requires the DOR to invest money in the Child Support Incentive Trust Fund pursuant to ss. 215.44-215.52, F.S., when, in fact, the monies are being invested pursuant to s. 17.61, F.S., by notifying the Chief Financial Officer of the amounts available. The committee substitute amends the statute to correctly reference s. 17.61, F.S.³⁷

Additionally, current law references the Department of Children and Family Services as the agency responsible for the administration of the Child Support Enforcement Program as it relates to the processing of Qualified Domestic Relations Orders for the purposes of support collection. The committee substitute amends the statute to correctly reference the Department of Revenue as the Title IV-D agency that pursues these matters.³⁸

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The committee substitute contains a number of provisions that may result in an increase in collections and therefore money being distributed to families.

The current system for reporting overdue child support payments to credit reporting agencies creates a new account on the noncustodial parent's credit report each time the account becomes more than \$500 past due. The committee substitute would revise the current reporting procedure so that the account stays open after the past due amount has been satisfied. This would affect the noncustodial parent's credit report in two ways: 1) the credit report would reflect on-time payments made by the parent once the past due

³⁷ See s. 61.1812, F.S.

³⁸ See s. 222.21, F.S.

amount is satisfied (similar to a credit card account on one's report), and 2) multiple past due accounts all related to the same child support obligation would no longer appear on the parent's credit report. In essence, a financial obligation to pay child support would be treated similarly to any other "account" for purposes of credit reporting, and continued on-time payments could have a positive affect on the parent's credit rating the same way that on-time payments reported on other accounts affect one's credit rating.

C. Government Sector Impact:

The committee substitute contains a number of provisions that may result in an increase in collections and therefore money being distributed to families. This may in turn result in a decrease in the amount of public assistance being paid by the state.

The committee substitute removes the requirement of a court order to obtain a paternity acknowledgement signed outside of the hospital, lessening the time and cost of future child support actions when the acknowledgment is needed. Because these cases would no longer need to be heard in court, it could also lessen court time spent on paternity issues.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

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