

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 775 (PCB FFF 05-01) Child Support Enforcement
SPONSOR(S): Committee on Future of Florida's Families Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Future of Florida's Families Committee	8 Y, 0 N	Preston	Collins
1) _____	_____	_____	_____
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SUMMARY ANALYSIS

In 1996, Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), or federal welfare reform legislation. Title III of the federal act not only expanded existing requirements for state child support programs, but imposed new 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 bill:

- Provides for civil penalties for employers or unions who violate provisions in a National Medical Support Notice;
- Allows the Florida Department of Revenue (the department) 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 that the settlement provides for appropriate recovery of any existing child support arrearage;
- Allows the department 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;
- 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 department for Title IV-D purposes.

The bill does not appear to have a fiscal impact on state or local governments.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide limited government – The bill requires the Agency for Health Care Administration to share information related to KidCare to the department to be used for child support enforcement purposes. The bill also requires an employee or employee's attorney involved in lump-sum settlements for workers' compensation to obtain a written statement from the department as to whether the employee owes unpaid child support and provides for rulemaking by the Office of the Judges of Compensation Claims. The bill eliminates the requirement for a monthly report by the department related to public assistance collections.

Promote personal responsibility – The bill contains numerous provisions that may serve to increase collections and, therefore, more money being distributed to families owed support. This may result in decreased dependency on financial support obtained through public assistance. The bill provides for penalties for employers who violate the provisions of a National Medical Support Notice.

Empower families – The bill contains numerous provisions that may serve to increase collections and, therefore, money being distributed to families owed support. This may result in decreased dependency on financial support obtained through public assistance, may increase family stability, and may improve relationships between family members.

B. EFFECT OF PROPOSED CHANGES:

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.¹ 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 the 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.² States were required to include provisions for health care coverage in their 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.³ Florida law complies with both requirements:

- Health insurance costs resulting from coverage ordered pursuant to s. 61.13(1)(b), and any

¹ Income, Poverty, and Health Insurance Coverage in the United States: 2003. U.S. Census Bureau. August 2004 and Healthy Kids and KidCare January Update. Healthy Kids Corporation. January 12, 2005

² As Florida's Title IV-D agency since 1994, the Department of Revenue has responsibility for the state's Child Support Enforcement Program.

³ Child Support Enforcement Amendments of 1984, 42 U.S.C. ss. 657-662 (1984).

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 separately paid on a percentage basis...⁴

- 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 at a reasonable rate to a group health plan. 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...⁵

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.⁶ 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.⁷ 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 child support obligations.

Recognizing that problems continued to remain affecting the child medical support process, Congress enacted legislation requiring the Secretary of Health and Human Services and the Secretary of Labor to jointly develop and promulgate by regulation 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.⁸ The NMSN provides a standardized format of instructions concerning an employee's obligation to provide health insurance coverage for one or more children and is intended to simplify the issuance 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.

Therefore, pursuant to federal and state law, employers or unions are required, after having received a National Medical Support Notice, to enroll the child and inform the department 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 department when coverage is unavailable or the employee has been terminated, which creates cases in which children are not provided health care coverage in a timely manner.

The bill 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 or \$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.⁹

⁴ Section 61.30(8), Florida Statutes, related to child support guidelines.

⁵ Section 61.13(1)(b), Florida Statutes, related to custody and support of children.

⁶ Personal Responsibility and Work Opportunity Reconciliation Act, Pub L. No. 104-193, 110 Stat. 2105 (1996).

⁷ Medical Child Support Working Group's Report, June 2000.

⁸ Child Support Performance and Incentive Act of 1998 (CSPIA), Pub. L. No. 105-200, Section 401.

⁹ Section 61.1301, Florida Statutes.

In addition, the bill makes a technical correction related to the NMSN. Florida law provides for the department to send the National Medical Support Notice to the obligor's union or employer. Federal policy indicates that the National Medical Support Notice must be sent to the employer, rather than the union. If a union provides the health care coverage, then the employer must route the appropriate section of the notice to the union as the plan administrator. The bill amends s. 61.13, F.S., to require the National Medical Support Notice to be sent only to employers, and require employers to forward the appropriate section of the notice to a union when the union is the provider of health care coverage. This change will meet the requirements of the Title IV-D State Plan.

Florida KidCare is the state's child health insurance program for children from birth 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 which program, if any, a child may be eligible for, based on age and family income.

Currently, the department 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 department. 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 department. 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.

The bill provides AHCA with statutory authority to share KidCare information with the department for the purposes of administering the Title IV-D program.

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 related to the amount of overdue support owed by a noncustodial parent when the amount owed exceeded \$500.¹⁰ In 1986, Florida law began requiring such sharing of information between the department and consumer reporting agencies.¹¹ Provisions of the federal welfare reform legislation enacted in 1996 continued to require states to 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. 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.¹²

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.

The bill allows the department 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

¹⁰ Child Support Enforcement Amendments of 1984, 42 U.S.C. ss. 657-662 (1984).

¹¹ See Chapter 86-220, Laws of Florida.

¹² Personal Responsibility and Work Opportunity Reconciliation Act, Pub L. No. 104-193, 110 Stat. 2105 (1996).

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 they are current in payments.

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.¹³ 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.¹⁴ The child support guidelines also provide that all workers' compensation benefits and settlements be counted as income for purposes of child support.¹⁵ Neither chapter 61 nor chapter 440 requires anyone to contact the Department of Revenue to determine whether the worker owes child support before the settlement is approved.

The bill 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 bill 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; it allows the judge of compensation claims to require the employee to submit a similar statement from a local depository; and it requires a sworn statement from the employee that all existing support obligations have been disclosed.

Paternity Establishment –

Currently, Florida law requires a certificate for each live birth that occurs in this state to be filed within 5 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.¹⁶

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 Department of Revenue 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 shall 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, Florida Statutes.¹⁷

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 department without a court order. The requirement of a court order adds time and cost to future

¹³ Sections 61.14 and 440.20, Florida Statutes.

¹⁴ Section 440.22, Florida Statutes.

¹⁵ Section 61.30, Florida Statutes.

¹⁶ Section 382.013, Florida Statutes.

¹⁷ Section 382.013, Florida Statutes.

child support actions when the acknowledgment is needed and causes an unnecessary workload for the court system. In instances where the same acknowledgment process is completed at the time of birth in the hospital, the OVS provides this information without a court order.

The bill provides the department with access to the acknowledgment or affidavit signed by parents that amends the original birth record without having to obtain a court order.

Florida Statutes do not currently provide a process for the OVS to amend birth records of children born in Florida for whom paternity is established by another state either through an administrative process or by voluntary acknowledgment. This lack of a statutory process results in Florida's vital statistics records not accurately reflecting that paternity is established for these children. In addition, for 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 is a barrier to updating Florida's vital statistics records and obtaining a child support order.

The bill allows the 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 IV-D agency with supporting documentation. Such documentation may include non-certified copies of the judicial or administrative order or acknowledgments of paternity that are provided or obtained from the other state.

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, SSI benefits:

- 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;¹⁸
- 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.¹⁹

Based on these differences, the vast majority of states that have considered the issue have determined that SSI 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 recipients. Other income received, including child support, either reduces the level of such payments (as with Food Stamps) or is used to reimburse the agency for payments of the benefits (as with TANF). In either case, it has generally been determined to be inappropriate to count such income for purposes of child support.²⁰

Florida law related to child support guidelines does not include SSI benefits or public assistance as defined in s. 409.2554, F.S., as income for purposes of child support and provides an exemption for support order establishment when the noncustodial parent is receiving public assistance for a minor child. Public assistance includes Medicaid, Food Stamps and temporary cash assistance. This results

¹⁸ See 20 C.F.R. § 416.1205(c)

¹⁹ See 42 U.S.C.A. § 407(a)

²⁰ Morgan, L. Supplemental Security Income and Child Support, Child Support Guidelines: Interpretation and Application. 2004.

in support obligations not being established for children who are not in the noncustodial parent's household, even though the noncustodial parent is working and has income. According to the department, limiting the exemption to recipients of temporary cash assistance and SSI recipients only 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.

The bill limits the exemption to recipients of temporary cash assistance and SSI benefits.

Public Assistance Collections Report –

In 1996, legislation was enacted as part of the WAGES Act ²¹ that required the department to provide a monthly report on public assistance collections. The department submitted a letter on September 20, 1996 to then Governor Lawton Chiles regarding the inability of the FLORIDA system to produce the required data. The department has never submitted this monthly report.

In addition, after this 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 Department of Revenue 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 receives a report of these collections and therefore the report required by the 1996 legislation would be unnecessary and duplicative.

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

Technical Changes – The bill also makes two technical corrections:

- Current law requires the department to invest money in the Child Support Incentive Trust Fund pursuant to ss. 215.44-215.52, Florida Statutes, 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 bill amends the statute to correctly reference s. 17.61, F.S.²²
- 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 bill amends the statute to correctly reference the Department of Revenue as the Title IV-D agency.²³

C. SECTION DIRECTORY:

Section 1. Effective October 1, 2005, amends s. 61.13, Florida Statutes, related to custody and support of children and visitation rights.

Section 2. Effective July 1, 2006, amends s. 61.1354, Florida Statutes, related to the sharing of information between consumer reporting agencies and the Title IV-D agency.

Section 3. Effective December 1, 2005, amends s. 61.14, Florida Statutes, related to the enforcement and modification of support, maintenance, or alimony agreements.

Section 4. Amends s. 61.1812, Florida Statutes, related to the Child Support Incentive Trust Fund.

²¹ See Chapter 96-175, Laws of Florida and section 409.2567, Florida Statutes.

²² See section 61.1812, Florida Statutes.

²³ See section 222.21, Florida Statutes.

Section 5. Amends s. 222.21, Florida Statutes, related to the exemption of pension money and retirement or profit-sharing benefits from legal processes.

Section 6. Effective July 1, 2005, amends s. 382.016(1)(b), Florida Statutes, related to the amendment of birth, death, or fetal death records.

Section 7. Effective October 1, 2005, amends s. 382.016(1)(d), Florida Statutes, related to the amendment of birth, death, or fetal death records.

Section 8. Effective July 1, 2005, amends s. 409.2561, Florida Statutes, related to support obligations for public assistance recipients.

Section 9. Amends s. 409.2567, Florida Statutes, related to support services to individuals who are otherwise ineligible.

Section 10. Effective October 1, 2005, amends s. 409.821, Florida Statutes, related to public records for the Florida Kidcare Program.

Section 11. Except as otherwise provided, the act takes effect upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The bill 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.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

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

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the Office of the Judges of Compensation Claims to adopt procedural rules to implement provisions of the bill related to unemployment compensation settlements.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On February 9, 2005, the Committee on the Future of Florida's Families adopted one technical amendment.