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 HB 7107, Engrossed 1

2007 Legislature

1 A bill to be entitled
 2 An act relating to child support enforcement; amending s.
 3 61.1814, F.S.; providing for the collection and deposit of
 4 an annual fee for certain child support cases; amending s.
 5 61.1824, F.S.; revising requirements for certain employers
 6 to remit support payments electronically; providing
 7 grounds for waiving the requirement for employers to
 8 electronically remit support payments; amending s.
 9 409.2564, F.S.; lowering the amount of child support owed
 10 to permit federal action against an obligor's passport;
 11 amending s. 409.25641, F.S.; revising provisions governing
 12 the automated enforcement of a support order from another
 13 state; amending s. 409.2567, F.S.; authorizing the
 14 Department of Revenue to pay a federally required annual
 15 fee; amending ss. 49.011 and 409.257, F.S.; authorizing
 16 service of process by publication for unknown legal
 17 fathers; providing for diligent search and inquiry;
 18 amending s. 742.09, F.S.; providing an exception to the
 19 prohibition against publication of the name of a party in
 20 a paternity action; providing an effective date.

21
 22 Be It Enacted by the Legislature of the State of Florida:

23
 24 Section 1. Section 49.011, Florida Statutes, is amended to
 25 read:
 26 49.011 Service of process by publication; cases in which
 27 allowed.--Service of process by publication may be made in any

ENROLLED

HB 7107, Engrossed 1

2007 Legislature

28 | court on any party identified ~~person mentioned~~ in s. 49.021 in
29 | any action or proceeding:

30 | (1) To enforce any legal or equitable lien or claim to any
31 | title or interest in real or personal property within the
32 | jurisdiction of the court or any fund held or debt owing by any
33 | party on whom process can be served within this state.

34 | (2) To quiet title or remove any encumbrance, lien, or
35 | cloud on the title to any real or personal property within the
36 | jurisdiction of the court or any fund held or debt owing by any
37 | party on whom process can be served within this state.

38 | (3) To partition real or personal property within the
39 | jurisdiction of the court.

40 | (4) For dissolution or annulment of marriage.

41 | (5) For the construction of any will, deed, contract, or
42 | other written instrument and for a judicial declaration or
43 | enforcement of any legal or equitable right, title, claim, lien,
44 | or interest thereunder.

45 | (6) To reestablish a lost instrument or record which has
46 | or should have its situs within the jurisdiction of the court.

47 | (7) In which a writ of replevin, garnishment, or
48 | attachment has been issued and executed.

49 | (8) In which any other writ or process has been issued and
50 | executed which places any property, fund, or debt in the custody
51 | of a court.

52 | (9) To revive a judgment by motion or scire facias.

53 | (10) For adoption.

ENROLLED
 HB 7107, Engrossed 1

2007 Legislature

54 (11) In which personal service of process or notice is not
 55 required by the statutes or constitution of this state or by the
 56 Constitution of the United States.

57 (12) In probate or guardianship proceedings in which
 58 personal service of process or notice is not required by the
 59 statutes or constitution of this state or by the Constitution of
 60 the United States.

61 (13) For termination of parental rights pursuant to part
 62 IX of chapter 39.

63 (14) For temporary custody of a minor child, under ss.
 64 751.01-751.05.

65 (15) To determine paternity, but only as to the legal
 66 father in a paternity action in which another man is alleged to
 67 be the biological father, in which case it is necessary to serve
 68 process on the legal father in order to establish paternity with
 69 regard to the alleged biological father.

70 Section 2. Subsection (2) of section 61.1814, Florida
 71 Statutes, is amended to read:

72 61.1814 Child Support Enforcement Application and Program
 73 Revenue Trust Fund.--

74 (2) With the exception of fees required to be deposited in
 75 the Clerk of the Court Child Support Enforcement Collection
 76 System Trust Fund under s. 61.181(2)(b) and collections
 77 determined to be undistributable or unidentifiable under s.
 78 409.2558, the fund shall be used for the deposit of Title IV-D
 79 program income received by the department. Each type of program
 80 income received shall be accounted for separately. Program

ENROLLED
 HB 7107, Engrossed 1

2007 Legislature

81 income received by the department includes, but is not limited
 82 to:

- 83 (a) Application fees of nonpublic assistance applicants
- 84 for child support enforcement services;
- 85 (b) Court-ordered costs recovered from child support
- 86 obligors;
- 87 (c) Interest on child support collections;
- 88 (d) The balance of fees received under s. 61.181(2)(a) on
- 89 non-Title IV-D cases required to be processed through the State
- 90 Disbursement Unit after the clerk's share is paid; ~~and~~
- 91 (e) Fines imposed under ss. 409.256(7)(b), 409.2564(7),
- 92 and 409.2578; and
- 93 (f) The annual fee required under s. 409.2567.

94 Section 3. Subsection (6) of section 61.1824, Florida
 95 Statutes, is amended to read:

96 61.1824 State Disbursement Unit.--

97 (6) ~~Effective October 1, 1999,~~ All support payments for
 98 cases to which the requirements of this section apply shall be
 99 made payable to and delivered to the State Disbursement Unit.
 100 ~~Effective October 1, 2006,~~

101 (a) An employer that is required to remit tax payments
 102 electronically to the department under s. 213.755 or s. 443.163
 103 ~~who employed 10 or more employees in any quarter during the~~
 104 ~~preceding state fiscal year or who was subject to and paid tax~~
 105 ~~to the department in an amount of \$30,000 or more shall remit~~
 106 support payments deducted pursuant to an income deduction order
 107 or income deduction notice and provide associated case data to
 108 the State Disbursement Unit by electronic means approved by the

ENROLLED

HB 7107, Engrossed 1

2007 Legislature

109 department. The department may waive the requirement to remit
110 payments electronically for an employer that is unable to comply
111 despite good faith efforts or due to circumstances beyond the
112 employer's reasonable control. Grounds for approving a waiver
113 include, but are not limited to, circumstances in which:

114 1. The employer does not have a computer that meets the
115 minimum standards necessary for electronic remittance.

116 2. Additional time is needed to program the employer's
117 computer.

118 3. The employer does not currently file data
119 electronically with any business or government agency.

120 4. Compliance conflicts with the employer's business
121 procedures.

122 5. Compliance would cause a financial hardship.

123 (b) The department shall adopt by rule standards for
124 electronic remittance, ~~and~~ data transfer, and waivers that, to
125 the extent feasible, are consistent with the department's rules
126 for electronic filing and remittance of taxes under ss. 213.755
127 and 443.163. A waiver granted by the department from the
128 requirement to file and remit electronically under s. 213.755 or
129 s. 443.163 constitutes a waiver from the requirement under this
130 subsection.

131 (7) Notwithstanding any other statutory provision to the
132 contrary, funds received by the State Disbursement Unit shall be
133 held, administered, and disbursed by the State Disbursement Unit
134 pursuant to the provisions of this chapter.

135 Section 4. Subsection (10) of section 409.2564, Florida
136 Statutes, is amended to read:

ENROLLED
 HB 7107, Engrossed 1

2007 Legislature

137 409.2564 Actions for support.--
 138 (10) For the purposes of denial, revocation, or limitation
 139 of an obligor's individual's United States passport, consistent
 140 with 42 U.S.C. s. 652(k)(1), the department ~~Title IV D~~ agency
 141 shall have procedures to certify to the Secretary of the United
 142 States Department of Health and Human Services, ~~in the format~~
 143 ~~and accompanied by such supporting documentation as the~~
 144 ~~secretary may require, a determination~~ that an obligor
 145 individual owes arrearages of support in an amount exceeding
 146 \$2,500 ~~\$5,000~~. Said procedures shall provide that the obligor
 147 ~~individual~~ be given notice of the determination and of the
 148 consequence thereof and ~~that the individual shall be given an~~
 149 opportunity to contest the accuracy of the determination.

150 Section 5. Section 409.25641, Florida Statutes, is amended
 151 to read:

152 409.25641 Procedures for processing interstate ~~automated~~
 153 ~~administrative~~ enforcement requests.--

154 ~~(1)~~ The department ~~Title IV D~~ agency shall use automated
 155 administrative enforcement, as provided in 42 U.S.C. s.
 156 666(a)(14)(A) to respond ~~defined in the Social Security Act, in~~
 157 ~~response~~ to a request from another state to enforce a support
 158 order and shall promptly report the results of the enforcement
 159 action to the requesting state.

160 ~~(2) This request:~~

161 ~~(a) May be transmitted from the other state by electronic~~
 162 ~~or other means;~~

ENROLLED
 HB 7107, Engrossed 1

2007 Legislature

163 ~~(b) Shall contain sufficient identifying information to~~
 164 ~~allow comparison with the databases within the state which are~~
 165 ~~available to the Title IV-D agency; and~~

166 ~~(c) Shall constitute a certification by the requesting~~
 167 ~~state:~~

168 ~~1. Of the amount of arrearage accrued under the order; and~~

169 ~~2. That the requesting state has complied with all~~
 170 ~~procedural due process requirements applicable to the case.~~

171 ~~(3) If assistance is provided by the Title IV-D agency to~~
 172 ~~another state as prescribed above, neither state shall consider~~
 173 ~~the case to be transferred from the caseload of the other state~~
 174 ~~to the caseload of the Title IV-D agency.~~

175 ~~(4) The Title IV-D agency shall maintain a record of:~~

176 ~~(a) The number of requests received;~~

177 ~~(b) The number of cases for which the Title IV-D agency~~
 178 ~~collected support in response to such a request; and~~

179 ~~(c) The amount of such collected support.~~

180 ~~(5) The department shall have authority to adopt rules to~~
 181 ~~implement this section.~~

182 Section 6. Section 409.2567, Florida Statutes, is amended
 183 to read:

184 409.2567 Services to individuals not otherwise eligible.--

185 (1) All support services provided by the department shall
 186 be made available on behalf of all dependent children. Services
 187 shall be provided upon acceptance of public assistance or upon
 188 proper application filed with the department. The federally
 189 required application fee for individuals who do not receive
 190 public assistance is \$1, which shall be waived for all

ENROLLED
 HB 7107, Engrossed 1

2007 Legislature

191 applicants and paid by the department. The annual fee required
 192 under 42 U.S.C. s. 654(6)(B) for cases involving an individual
 193 who has never received temporary cash assistance and for whom
 194 the department has collected at least \$500 of support shall be
 195 paid by the department. ~~The obligor is responsible for all~~
 196 ~~administrative costs, as defined in s. 409.2554. The court shall~~
 197 ~~order payment of administrative costs without requiring the~~
 198 ~~department to have a member of the bar testify or submit an~~
 199 ~~affidavit as to the reasonableness of the costs.~~

200 (2) An attorney-client relationship exists only between
 201 the department and the legal services providers in Title IV-D
 202 cases. The attorney shall advise the obligee in Title IV-D cases
 203 that the attorney represents the agency and not the obligee. ~~In~~
 204 ~~Title IV D cases, any costs, including filing fees, recording~~
 205 ~~fees, mediation costs, service of process fees, and other~~
 206 ~~expenses incurred by the clerk of the circuit court,~~

207 (3) All administrative costs shall be assessed only
 208 against the nonprevailing obligor after the court makes a
 209 determination of the nonprevailing obligor's ability to pay such
 210 costs and fees. In any case where the court does not award all
 211 costs, the court shall state in the record its reasons for not
 212 awarding the costs. The court shall order payment of costs
 213 without requiring the department to have a member of the bar
 214 testify or submit an affidavit as to the reasonableness of the
 215 costs.

216 (4) The Department of Revenue shall not be considered a
 217 party for purposes of this section; however, fees may be
 218 assessed against the department pursuant to s. 57.105(1).

ENROLLED
 HB 7107, Engrossed 1

2007 Legislature

219 (5) The Department of Revenue shall seek a waiver from the
 220 Secretary of the United States Department of Health and Human
 221 Services to authorize the Department of Revenue to provide
 222 services in accordance with Title IV-D of the Social Security
 223 Act to individuals who are owed support without need of an
 224 application. If the waiver is granted, the Department of Revenue
 225 shall adopt rules to implement the waiver and begin providing
 226 Title IV-D services if support payments are not being paid as
 227 ordered, except that the individual first must be given written
 228 notice of the right to refuse Title IV-D services and a
 229 reasonable opportunity to respond.

230 Section 7. Section 409.257, Florida Statutes, is amended
 231 to read:

232 409.257 Service of process.--

233 (1) The service of original initial process and orders in
 234 any paternity or child support action or proceeding lawsuits
 235 filed by the department, under this act, shall be made in
 236 accordance with ~~served by the sheriff in the county where the~~
 237 ~~person to be served may be found or, if determined more~~
 238 ~~effective by the department, by any means permitted under~~
 239 chapter 48 ~~for service of process in a civil action.~~ The sheriff
 240 shall be reimbursed at the prevailing rate of federal financial
 241 participation for service of process and orders as allowed by
 242 law. The sheriff shall bill the department monthly as provided
 243 for in s. 30.51(2). ~~In addition,~~

244 (2) Process and orders may be served or executed by
 245 authorized agents of the department at the department's
 246 discretion if, ~~provided that~~ the agent of the department does

ENROLLED

HB 7107, Engrossed 1

2007 Legislature

247 not take any action against personal property, real property, or
248 persons.

249 (3) Service of process by publication under chapter 49 may
250 be made on the legal father in any action or proceeding to
251 determine paternity, which may result in termination of the
252 legal father's parental rights, in which another man is alleged
253 to be the biological father. Before service of process by
254 publication may be made, the petitioner shall conduct a diligent
255 search and inquiry to locate the legal father. A diligent search
256 must include the inquiries required by s. 63.088(5). The
257 petitioner shall execute an affidavit of diligent search and
258 file it with the court confirming completion of each aspect of
259 the diligent search enumerated in s. 63.088(5) and specifying
260 the results. If the legal father cannot be located, he shall be
261 served with process by publication in the manner provided in
262 chapter 49. The notice shall be published in the county where
263 the legal father was last known to have resided. The clerk of
264 the circuit court shall mail a copy of the notice to the legal
265 father at his last known address.

266 (4) Notices and other intermediate process, except witness
267 subpoenas, shall be served by the department as provided for in
268 the Florida Rules of Civil Procedure.

269 (5) Witness subpoenas shall be served by the department by
270 United States mail as provided for in s. 48.031(3).

271 Section 8. Section 742.09, Florida Statutes, is amended to
272 read:

273 742.09 Publishing names; penalty.--Except for the purpose
274 of serving process by publication, as provided under s.

ENROLLED

HB 7107, Engrossed 1

2007 Legislature

275 49.011(15), it shall be unlawful for the owner, publisher,
276 manager, or operator of any newspaper, magazine, radio station,
277 or other publication of any kind whatsoever, or any other person
278 responsible therefor, or any radio broadcaster, to publish the
279 name of any of the parties to any court proceeding to determine
280 paternity. A person who violates this section commits ~~instituted~~
281 ~~or prosecuted under this act; and any person violating this~~
282 ~~provision shall be guilty of~~ a misdemeanor of the first degree,
283 punishable as provided in s. 775.082 or s. 775.083.

284 Section 9. This act shall take effect July 1, 2007.