

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: PCS/SB 1152

INTRODUCER: Senator Storms

SUBJECT: Child Support Enforcement

DATE: March 3, 2008 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ray	Jameson	CF	<b>Pre-meeting</b>
2.			JU	
3.			HA	
4.			RC	
5.				
6.				

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

The proposed committee substitute amends s. 61.14(6)(d), F.S., to require that child support payments are applied first to the current child support due, then to any delinquent principal, and then to any interest that may be due.

The bill requires the Departments of Business and Professional Regulation (DBPR), Education (DOE), Financial Services (DFS), Health (DOH), and Highway Safety and Motor Vehicles (DHSMV) to work cooperatively with the Department of Revenue (DOR or “the department) to implement an automated method for disclosing information regarding current license or certificate holders to DOR. The bill also conforms each department’s statutes with s. 409.2598, F.S., relating to license suspension proceedings.

The bill repeals s. 409.25645, F.S., because it is duplicative of the provisions of s. 409.256, F.S., concerning administrative orders for genetic testing of putative fathers. The bill moves two provisions from ss. 409.25645(3) and (4), to s. 409.256, F.S., relating to a correctional facility’s responsibility to assist an individual with compliance to an administrative order and the force and effect of an administrative order.

The bill amends the Education Practice Commission discipline authority in s. 1012.795, F.S., to conform to s. 409.2598, F.S., relating to the department's license suspension proceedings.

This bill substantially amends ss. 61.14, 328.42, 409.256, 456.004, 497.167, 559.79, 1012.21, and 1012.795, F.S., and repeals s. 409.25645, F.S.

## II. Present Situation:

### **Child Support Enforcement**

The department has administered the Child Support Enforcement Program since 1994.<sup>1</sup> Some of the strategies used by DOR to enforce a child support order include:<sup>2</sup>

- Suspending an individual's Florida driver license;
- Taking an individual's IRS tax refund;
- Taking an individual's Florida Lottery winnings if over \$600;
- Taking support payments from unemployment and worker's compensation;
- Telling an employer to take payments from an individual's paycheck;
- Placing liens on an individual's car, boat, or other property;
- Reporting past due support to credit agencies;
- Placing a hold on and taking money from an individual's bank accounts; and
- Taking the case to court because an individual violated his or her support order.

Effective July 1, 2006, s. 409.2598, F.S., was amended to allow DOR to use an administrative procedure for suspending business, professional, and recreational licenses for noncompliance with a child support order, and requiring that each licensing agency<sup>3</sup> suspend the obligor's license upon notice by the department or the circuit court.<sup>4</sup>

The department also identified and amended s. 455.203(9), F.S., requiring DBPR to work with DOR to implement an automated method for periodically disclosing information relating to current licensees and upon the direction of the court or the DOR, to suspend or deny the license of anyone found not to be in compliance with a child support order.<sup>5</sup>

The Department has since identified other statutes that need to be amended to conform to the provisions of s. 409.2598, F.S.

### **Application of Payments to Interest and Arrearages**

Section 61.14(6), F.S., provides that a support payment made through the local depository or through the State Disbursement Unit which becomes due and is unpaid, is delinquent. The unpaid amount and other costs and fees become a final judgment by law after notice is sent to the

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<sup>1</sup> Department of Revenue website: [http://dor.myflorida.com/dor/childsupport/about\\_us.html](http://dor.myflorida.com/dor/childsupport/about_us.html) (last visited on February 27, 2008).

<sup>2</sup> Department of Revenue website: <http://dor.myflorida.com/dor/childsupport/enforcement.html> (last visited on February 27, 2008).

<sup>3</sup> Section 409.2598(1)(c), F.S., defines the term "licensing agency" as a department, commission, agency, district, county, municipality, or other subdivision of state or local government which issues licenses.

<sup>4</sup> Chapter 2005-39, Laws of Florida.

<sup>5</sup> Section 455.203(9), F.S.

obligor and the time for response is passed. The depository is required to charge interest at the rate established in s. 55.03, F.S.<sup>6</sup>, on all support judgments.<sup>7</sup>

According to the DOR, Florida law does not currently provide clear guidance concerning how payments on arrearages are to be applied when a judgment is issued and interest accrues upon the amount of the judgment. The clerks of the circuit courts are the official record keepers of child support payments. The clerks of court's current practice is to credit arrearage collections first to the principal amount due and then to any interest.

In June 2007, Florida's 5<sup>th</sup> District Court of Appeals ruled in *Vitt v. Rodriguez* that past due child support payments must be applied first to the current child support obligation, then to accrued interest on arrearages, and finally to the unpaid child support. The court noted that there is no direct guidance concerning how payments on child support arrearages are to be applied.<sup>8</sup>

A March 2003 study examining child support arrearages in California showed that in 2001, the state maintained twenty percent of the nation's total child support arrearage but only twelve percent of the nation's caseload.<sup>9</sup>

Section 695.221 of the California Code of Civil Procedure, provides that payment of child support is first credited against the current month's support. Any remaining money is then credited against the accrued interest remaining unsatisfied, and is finally applied to the principal amount remaining unsatisfied. The 2003 study noted that most other states apply payments first to the principal amount due rather than the interest due, ultimately reducing the amount owed. The study estimated that if California reversed the procedure of applying arrearage payments to interest first, the state would reduce its arrearage balance by six percent over a ten-year period.<sup>10</sup>

California Assembly Bill No. 2669 proposes to revise the provisions of Section 695.221, California Code of Civil Procedure, to require that after a child support payment is credited against the current month's support, any remaining money is credited against the principal amount unsatisfied. The bill will take effect on or after January 1, 2009.<sup>11</sup>

### III. Effect of Proposed Changes:

The bill amends s. 61.14(6)(d), F.S., to require that child support payments are to be applied first to the current child support, then to any past due amount, and finally to the interest due.

The bill provides that the DBPR<sup>12</sup>, DOE<sup>13</sup>, DFS<sup>14</sup>, DOH<sup>15</sup>, and DHSMV<sup>16</sup> work cooperatively with DOR to implement an automated method for periodically disclosing information regarding

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<sup>6</sup> The interest rate is established by Florida's Chief Financial Officer every year on December 1. The interest rate for 2008 is 11 percent.

<sup>7</sup> Section 61.14(6)(d), F.S.

<sup>8</sup> *Vitt v. Rodriguez*, 960So.2d47(Fla. 5<sup>th</sup> DCA 2007).

<sup>9</sup> Dr. Elaine Sorensen, Dr. Heather Koball, Kate Pomper, and Chava Zibman, *Examining Child Support Arrears in California: The Collectibility Study*, (March 2003).

<sup>10</sup> *Id.* at page 23.

<sup>11</sup> California Assembly Bill No. 2669.

<sup>12</sup> Section 559.79(3), F.S.

<sup>13</sup> Section 1012.21(3), F.S.

current license or certificate holders to DOR. The bill authorizes DOR, in addition to the court, to direct the cancellation, and or suspension of the license or certificate of an individual not in compliance with a support order, subpoena, order to show cause, or written agreement with DOR.

The bill repeals s. 409.25645, F.S., because it is duplicative of the provisions of s. 409.256, F.S., concerning administrative orders for genetic testing of putative fathers. The bill amends the current requirements found in ss. 409.25645(3) and (4), F.S., to s. 409.256, F.S.

The bill amends s. 1012.795, F.S., providing that the Education Practice Commission may suspend an educator certificate if a person is not in compliance with a support order, subpoena, order to show cause, or written agreement with DOR. The bill adds authority for DOR to give notice to suspend and reinstate an educator certificate.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The implementation of an automated method for the transfer of information may have some fiscal impact on the affected departments. The DBPR<sup>17</sup>, DOH<sup>18</sup>, and DHSMV<sup>19</sup>

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<sup>14</sup> Section 497.167(6), F.S.

<sup>15</sup> Section 456.004(9), F.S.

<sup>16</sup> Section 328.42(1), F.S.

<sup>17</sup> Phone conversation with James Kotas, Legislative Affairs Director, DBPR, in Tallahassee, FL (Feb. 26, 2008). Mr. Kotas said that he did not believe this bill would cost the department any additional money and that they were already working with DOR.

support the language and have indicated they will not incur implementation costs. According to DFS<sup>20</sup>, the implementation of such a system will cost up to \$108,300. It is not clear how DFS will fund the system, however, DFS supports the bill.<sup>21</sup> The DOE reports that the implementation of this bill will have an indeterminate fiscal impact.<sup>22</sup>

#### VI. Technical Deficiencies:

None.

#### VII. Related Issues:

None.

#### VIII. Additional Information:

- A. Committee Substitute – Statement of Substantial Changes:  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

##### **PCS by Children, Families, and Elder Affairs on March 5, 2008:**

The bill amends s. 61.14(6)(d), F.S., to require that child support payments are applied first to the current child support due, then to any delinquent principal, and then to any interest that may be due.

The bill requires the Departments of Business and Professional Regulation (DBPR), Education (DOE), Financial Services (DFS), Health (DOH), and Highway Safety and Motor Vehicles (DHSMV) to work cooperatively with the Department of Revenue (DOR or “the department) to implement an automated method for disclosing information regarding current license or certificate holders to DOR. The bill also conforms each department’s statutes with s. 409.2598, F.S., relating to license suspension proceedings.

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<sup>18</sup> Phone conversation with Tom Cook, Deputy General Counsel, DOH, in Tallahassee, FL (Feb. 28, 2008). Mr. Cook said that he did not believe this bill would cost the department any additional money and that they were working with DOR.

<sup>19</sup> Phone conversation with Steven Fielder, Legislative Affairs Director, DHSMV, in Tallahassee, FL (Feb. 27, 2008). Mr. Fielder said that he did not believe this bill would cost the department any additional money and that they were already working with DOR.

<sup>20</sup> Phone conversation with J. Richard Brinkley, Assistant Director, DFS, Division of Funeral, Cemetery, and Consumer Services, in Tallahassee, FL (Feb. 29, 2008). Mr. Brinkley confirmed that the implementation of this bill would cost the department \$108,300 in un-existing resources.

<sup>21</sup> Email from Michael Carlson, Legislative Affairs Director, DFS (February 25, 2008)(On file with the committee).

<sup>22</sup> Phone conversation with Marian Lambeth, Chief, Office of Professional Practices Service, DOE, in Tallahassee, FL (Feb. 29, 2008).

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The bill amends the Education Practice Commission discipline authority in s. 1012.795, F.S., to conform to s. 409.2598, F.S., relating to the department's license suspension proceedings.

**B. Amendments:**

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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