

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 Judiciary Committee

BILL: CS/CS/SB 1152

INTRODUCER: Judiciary Committee, Children, Families, and Elder Affairs Committee, and Senators Storms and Lynn

SUBJECT: Child Support Enforcement

DATE: April 2, 2008 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Ray	Jameson	CF	Fav/CS
2.	Daniell	Maclure	JU	Fav/CS
3.			GA	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The bill requires certain state agencies to work cooperatively with the Department of Revenue (DOR or department) to implement an automated method for disclosing information regarding current license or certificate holders to the department. The bill also clarifies that, upon notice by DOR, certain state agencies must deny or suspend the license or certificate of those persons not in compliance with a child support order, a subpoena, an order to show cause, or a written agreement with DOR.

The bill specifies how payments on child support judgments are to be paid and requires electronic disbursement of payments to obligees.

The bill repeals current law authorizing administrative orders for genetic testing and reorganizes other sections of law.

This bill substantially amends the following sections of Florida Statutes: 61.14, 61.1824, 328.42, 409.2558, 409.256, 456.004, 497.167, 559.79, 1012.21, and 1012.795, F.S. This bill repeals section 409.25645, Florida Statutes.

II. Present Situation:

Child Support Enforcement

Prior to 1975, state law governed all child support enforcement programs, resulting in inconsistent distribution, eligibility requirements, and setting of support awards throughout the country.¹ In response to growing concerns, the United States Congress created the federal Child Support Enforcement Act in 1974.² The Child Support Enforcement Act was designed to:

- Reduce welfare costs;
- Increase parent contribution; and
- Secure independence for welfare families by using child support enforcement programs to get them off welfare.³

The Department of Revenue (DOR or department) has administered Florida's Child Support Enforcement Program since 1994.⁴ There are two basic types of child support cases: (1) Title IV-D, which refers to families who receive public assistance from DOR for child support collections and enforcement; and (2) private, which are cases not represented by DOR.⁵

Some of the strategies used by DOR to enforce a child support order include:

- 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 workers' 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.⁶

The clerks of the court assist DOR in processing child support payments by maintaining and operating local depositories in each of the state's 67 counties.⁷ Each repository maintains the

¹ Ann Marie Rotondo, *Helping Families Help Themselves: Using Child Support Enforcement to Reform our Welfare System*, 33 CAL. W. L. REV. 281, 290 (1997).

² The Child Support Enforcement Act of 1974 is located in Title IV, Part D of the Social Security Act. *See* 42 U.S.C. ss. 651-669.

³ Ann Marie Rotondo, *supra* note 1, at 290.

⁴ Office of Program Policy Analysis & Government Accountability, Fla. Legislature, *Justification Review: Child Support Enforcement Program*, Report No. 00-24, at ii (Dec. 2000), <http://www.oppaga.state.fl.us/reports/pdf/0024rpt.pdf> (last visited March 27, 2008).

⁵ Office of Program Policy Analysis & Government Accountability, Fla. Legislature, *Performance Review: Establishment of the State Disbursement Unit Raises Cost to Process Child Support Payments*, Report No. 00-11, at 2 (Sept. 2000), <http://www.oppaga.state.fl.us/reports/pdf/0011rpt.pdf> (last visited March 27, 2008).

⁶ Dep't of Revenue, *Child Support Enforcement Process: Enforcement of Child Support Orders*, <http://dor.myflorida.com/dor/childsupport/enforcement.html> (last visited March 27, 2008).

official court record, payment history of all child support cases in the county, and receipting and disbursing all private child support payments made.⁸ The Florida Association of Court Clerks and Comptrollers (clerks' association) collects Title IV-D payment data and transmits it to DOR.⁹

One of the biggest overhauls of the federal Child Support Enforcement Act came with the passage of the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Act). Under the Act, child support enforcement was mandatory for states that wanted federal funding for their welfare programs.¹⁰ The Act was successful because of the implementation of nationwide computerization, sanctions for delinquent fathers, paternity establishment regulations, and the federal auditing procedures.¹¹ The Act also required, among other things, that each state establish and operate a State Disbursement Unit (SDU).¹²

The purpose of the SDU is "to provide one central location for receipt and disbursement of all Title IV-D child support payments and for all private payments associated with support orders initially issued on or after January 1, 1994, with an income deduction order."¹³ In 1998, upon direction from the Florida Legislature, DOR contracted with the clerks' association to operate and maintain the SDU, which allowed the state to take advantage of the existing technology connecting the 67 local depositories through the CLERC System.¹⁴ In March 1999, the clerks' association awarded a contract to Lockheed Martin IMS to develop, operate, and maintain the payment, receipt, and disbursement functions of the SDU.¹⁵

In FY 2006-07, the Child Support Enforcement Program collected and distributed \$1.256 million in child support payments.¹⁶ However, DOR reported that approximately \$21.2 million is characterized as "undistributed collections," which means that the funds have not yet been distributed to the intended recipient.¹⁷ While there are many reasons for undistributed collections, the most common are unidentified or unassigned collections, inactive location information, or inaccurate or missing information on a recipient.¹⁸ In 2007, DOR implemented direct deposit and debit cards in order to help reduce instances of checks being returned for incorrect recipient information.¹⁹ According to DOR, more than 280,000 families currently receive child support collections electronically.²⁰

⁷ *Performance Review*, *supra* note 5, at 2; *see also* s. 61.181(1), F.S.

⁸ *Performance Review*, *supra* note 5, at 2.

⁹ *Id.*

¹⁰ Ann Marie Rotonondo, *supra* note 1, at 292.

¹¹ *Id.*

¹² *Performance Review*, *supra* note 5, at 2; *see also* ss. 61.1824 and 61.1826(1)(c), F.S.

¹³ *Performance Review*, *supra* note 5, at 2. An income deduction order is a court order directing an employer to deduct the amount of child support from the income of a non-custodial parent. *Id.*

¹⁴ *Id.* The clerks' association developed the automated Clerk of Court Child Support Collection (CLERC) System in 1994 to facilitate collection of payment information.

¹⁵ *Id.*

¹⁶ Dep't of Revenue, Child Support Enforcement, *Undistributed Collections* (rec'd March 28, 2008) (on file with the Senate Committee on Judiciary).

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

Section 409.2598, F.S., was amended in 2006 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 agency²¹ suspend the obligor's license upon notice by DOR or the circuit court.²² Section 455.203, F.S., was also amended to require the Department of Business and Professional Regulation to cooperate with DOR to implement an automated method for periodically disclosing information relating to current licensees and, upon the direction of the court or DOR, to suspend or deny the license of anyone found not to be in compliance with a child support order.²³

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 (SDU) which becomes due and remains unpaid is delinquent. The unpaid amount and other costs and fees become a final judgment by law after notice is sent to the obligor and the time for response has passed.²⁴ The depository is required to charge interest at the rate established in s. 55.03, F.S.,²⁵ on all support judgments.²⁶

According to 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.²⁷ Currently, the clerks of the court, who are the official record keepers of child support payments, credit arrearages first to the principal amount due and then to any interest.²⁸

In June 2007, the Fifth District Court of Appeal ruled 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 principal amount due on unpaid child support.²⁹ The court noted that there is no direct guidance in Florida law concerning how payments on child support arrearages are to be applied.³⁰

A study examining child support arrearages in California, referred to as The Collectibility Study, showed that in 2001 the state maintained 20 percent of the nation's total child support arrearage.³¹ The Collectibility Study noted that most other states apply payments of child support

²¹ 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."

²² Chapter 2005-39, s. 33, Laws of Fla.

²³ *Id.* at s. 38; *see also* s. 455.203(9), F.S.

²⁴ Section 61.14(6)(e), F.S.

²⁵ The interest rate is established by Florida's Chief Financial Officer every year on December 1, by averaging the discount rate for the Federal Reserve Bank of New York and then adding 500 basis points to the federal discount rate. The interest rate for 2008 is 11 percent. *See* Fla. Dep't of Financial Servs., *Statutory Interest Rates Pursuant to Section 55.03, Florida Statutes*, <http://www.fldfs.com/aadir/interest.htm> (last visited March 28, 2008).

²⁶ Section 61.14(6)(d), F.S.

²⁷ Dep't of Revenue, *2008 Bill Analysis, CS/SB 1152*, 2 (March 18, 2008) (on file with the Senate Committee on Judiciary).

²⁸ *Id.*

²⁹ *Vitt v. Rodriguez*, 960 So. 2d 47, 49 (Fla. 5th DCA 2007).

³⁰ *Id.* at 48.

³¹ Elaine Sorensen, Heather Koball, Kate Pomper, and Chava Zibman, *Examining Child Support Arrears in California: The Collectibility Study*, 1 (March 2003), available at

first to the principal amount due rather than the interest due, ultimately reducing the amount owed.³² The Collectibility Study estimated that if California reversed its procedure of applying arrearage payments to interest first, the state would reduce its arrearage balance by 6 percent over a 10-year period.³³

III. Effect of Proposed Changes:

This bill amends s. 61.14, F.S., to require that child support payments are to be applied first to the current child support due, then to any past-due amount, and finally to the interest due on the support judgment.

Section 61.1824, F.S., is amended to require the State Disbursement Unit (SDU or unit) to electronically disburse any payment made to the unit that is owed to an obligee. The bill provides that the obligee may designate an account in which the payment can be deposited. If an obligee does not designate an account, the bill requires the SDU to deposit the payment into a stored-value account that is accessible to the obligee.

Similarly, the bill also amends s. 409.2558, F.S., requiring that disbursement of any payment owed to an obligee in a Title IV-D case be made electronically. The obligee may designate an account in which the payment can be deposited, or the SDU will deposit the payment into a stored-value account that is accessible to the obligee.

The bill requires that the Department of Highway Safety and Motor Vehicles (DHSMV),³⁴ the Department of Health (DOH),³⁵ the Department of Business and Professional Regulation (DBPR),³⁶ and the Department of Education (DOE)³⁷ work cooperatively with the Department of Revenue (DOR or department) to implement an automated method for periodically disclosing information regarding current license or certificate holders to DOR. The bill clarifies that DOR, in addition to the court, can direct these state agencies to deny or suspend the license or certificate of an individual not in compliance with a support order, a subpoena, an order to show cause, or a written agreement with DOR.

Additionally, the bill amends s. 497.167, F.S., and s. 1012.795, F.S., to clarify that DOR, in addition to the court, can direct the Department of Financial Services (DFS) and the Education Practices Commission to deny or suspend the license or educator certificate of an individual not in compliance with a support order, a subpoena, an order to show cause, or a written agreement with DOR.

The bill further provides that DHSMV, DOH, DBPR, DOE, DFS, and the Education Practices Commission must issue or reinstate a license or certificate when notified by the court or DOR

http://www.canadiancrc.com/PDFs/Examining_Child_Support_Arrears_California_2003-05collectibility.pdf (last visited March 28, 2008).

³² *Id.* at 23.

³³ *Id.*

³⁴ Section 328.42(1), F.S.

³⁵ Section 456.004(9), F.S.

³⁶ Section 559.79(3), F.S.

³⁷ Section 1012.21(3), F.S.

that the person has complied with the terms of the support order. Except for the Education Practices Commission, the bill does not mention whether the agencies may issue or reinstate a license or certificate upon compliance with the subpoena, order to show cause, or written agreement, noncompliance with which could have been the reason the license or certificate was denied or suspended.

Currently, s. 409.25645, F.S., authorizes DOR to issue administrative orders to compel genetic testing of putative fathers in Title IV-D cases. In 2005, the Legislature authorized an administrative procedure for determining and establishing paternity.³⁸ 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.³⁹ The bill also moves necessary provisions from s. 409.25645, F.S., to s. 409.256, F.S. Specifically, the bill amends s. 409.256, F.S., requiring state operated correctional facilities to assist incarcerated putative fathers in complying with an administrative order for genetic testing. Also, the bill provides that an administrative order issued by DOR to appear for genetic testing has the same force and effect as a court order.

The bill shall take effect upon becoming a law.

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:

This bill requires the State Disbursement Unit to electronically disburse any payment that is owed to an obligee. According to the Department of Revenue (DOR), the use of

³⁸ Chapter 2005-39, s. 24, Laws of Fla., codified in s. 409.256, F.S.

³⁹ Dep't of Revenue, *2008 Bill Analysis*, *supra* note 27, at 9.

electronic funds is more customer friendly and helps ensure that the funds are distributed to the final intended recipient in a more timely manner.⁴⁰

This bill allows DOR to direct certain state agencies to deny or suspend the license or certificate of an individual not in compliance with a child support order, a subpoena, an order to show cause, or a written agreement with DOR, which could have a direct impact on those individuals. It appears that most of the agencies must issue or reinstate the license or certificate *without additional charge* when notified by the court or DOR that the individual has complied with the terms of the support order. The extent of any fiscal impact on the individual during the period of time the license or certificate is denied or suspended is unknown.

C. Government Sector Impact:

Based on the results from The Collectibility Study, Florida may be able to reduce any arrearage balance it may have through the bill's requirement that child support payments to be applied first to the current child support due, then to any past-due amount, and then to the interest.

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.)

CS by Judiciary on April 1, 2008:

The committee substitute:

- Corrects the title to read that the Department of Financial Services, not the Department of Business and Professional Regulation, is authorized to suspend or deny a license under s. 497.167, F.S., due to noncompliance with a child support order.
- Makes technical and conforming changes.

⁴⁰ See *Undistributed Collections*, *supra* note 16; conversation with Debra Thomas, Legislative and Cabinet Services Specialist, Dep't of Revenue (March 28, 2008).

CS by Children, Families, and Elder Affairs on March 5, 2008:

The committee substitute:

- Removes a provision that required the Department of Financial Services (DFS) to work cooperatively with the Department of Revenue (DOR) to implement an automated method for disclosing information regarding current license or certificate holders to DOR, and adds a provision allowing the Title IV-D child support agency to screen applicants for new and renewal licenses and current licensees to ensure support obligation compliance.
- Requires the State Disbursement Unit to electronically disburse any payment made to the unit that is owed to an obligee. The bill provides that the obligee may designate an account in which the payment can be deposited. If an obligee does not designate an account, the bill requires the State Disbursement Unit to deposit the payment into a stored-value account that is accessible to the obligee.
- Amends the support distribution and disbursement law, requiring the electronic disbursement of any payment made to an obligee in a Title IV-D case. The bill provides that the obligee may designate an account in which the payment can be deposited. If an obligee does not designate an account, the bill requires the State Disbursement Unit to deposit the payment into a stored-value account that is accessible to the obligee.

B. Amendments:

None.