

By the Committee on Children, Families, and Elder Affairs; and
Senator Hill

586-04466-09

20092166c1

1 A bill to be entitled
2 An act relating to spousal and child support; amending
3 s. 61.075, F.S.; requiring specified findings if a
4 deferred payment is ordered in an equitable
5 distribution; providing for application of specified
6 provisions; amending s. 61.14, F.S.; specifying how
7 payments on alimony or spousal support judgments shall
8 be applied; providing for enforcement of interest
9 payments on child support and alimony or spousal
10 support judgments; providing that interest not accrue
11 on postjudgment interest; amending s. 61.30, F.S.;
12 specifying a definition relating to payment of child
13 support varying from the guideline amount whenever any
14 of the children are required by court order to spend a
15 substantial amount of time with either parent;
16 prohibiting use of certain factors in imputing income
17 beyond minimum wage unless a court makes specified
18 findings; revising provisions relating to income tax
19 calculations used in determining net income;
20 eliminating a reduction in the child care cost added
21 to the basic support obligation; providing for
22 determination of the total minimum child support need;
23 providing for payment of a parent's share of the
24 minimum total child support need; deleting provisions
25 relating to adjustment of a minimum child support
26 award relating to the Internal Revenue Service
27 dependency exemption; providing for adjustment of a
28 party's minimum child support award when application
29 of the child support guidelines leaves the party with

586-04466-09

20092166c1

30 a net income lower than the federal poverty
31 guidelines; revising the percentage of overnight time-
32 sharing that is considered significant for certain
33 purposes; allowing a court to order a party to execute
34 a waiver of the Internal Revenue Service dependency
35 exemption for a child for good cause shown; amending
36 s. 409.2563, F.S.; revising provisions relating to a
37 presumption of minimum wage earning capacity for
38 purposes of administrative support orders; amending s.
39 742.08, F.S.; providing for enforcement of interest
40 payments on support judgments; providing that interest
41 shall not accrue on postjudgment interest; providing
42 an effective date.

43
44 Be It Enacted by the Legislature of the State of Florida:

45
46 Section 1. Subsection (10) of section 61.075, Florida
47 Statutes, is amended to read:

48 61.075 Equitable distribution of marital assets and
49 liabilities.-

50 (10) To do equity between the parties, the court may, in
51 lieu of or to supplement, facilitate, or effectuate the
52 equitable division of marital assets and liabilities, order a
53 monetary payment in a lump sum or in installments paid over a
54 fixed period of time. If deferred payment is ordered, the court
55 shall require security and a reasonable rate of interest, or
56 otherwise recognize the time value of money, in any such
57 deferred distribution scheme, absent good cause. The court shall
58 make written findings of fact relating to any deferred payment,

586-04466-09

20092166c1

59 security or lack thereof, and interest or lack thereof. Nothing
60 in this section shall preclude application of any provision of
61 chapter 55 to any subsequent default.

62 Section 2. Paragraph (d) of subsection (6) of section
63 61.14, Florida Statutes, is amended, and subsection (12) is
64 added to that section, to read:

65 61.14 Enforcement and modification of support, maintenance,
66 or alimony agreements or orders.-

67 (6)

68 (d) The court shall hear the obligor's motion to contest
69 the impending judgment within 15 days after the date of filing
70 of the motion. Upon the court's denial of the obligor's motion,
71 the amount of the delinquency and all other amounts that become
72 due, together with costs and a service charge of up to \$25,
73 become a final judgment by operation of law against the obligor.
74 The depository shall charge interest at the rate established in
75 s. 55.03 on all judgments for support. Payments on judgments
76 shall be applied first to the current child support due, then to
77 any delinquent principal, and then to interest on the support
78 judgment. Payments on alimony or spousal support judgments shall
79 be applied first to the current alimony or spousal support due,
80 then to any delinquent principal, and then to interest on the
81 alimony or spousal support judgment.

82 (12) Interest on child support and alimony or spousal
83 support judgments shall be enforceable through all of the
84 methods available to enforce the underlying support order,
85 including contempt. Interest shall not accrue on postjudgment
86 interest.

87 Section 3. Paragraph (a) of subsection (1), paragraph (b)

586-04466-09

20092166c1

88 of subsection (2), paragraph (a) of subsection (3), and
89 subsections (7), (10), and (11) of section 61.30, Florida
90 Statutes, are amended, and subsection (18) is added to that
91 section, to read:

92 61.30 Child support guidelines; retroactive child support.—

93 (1) (a) The child support guideline amount as determined by
94 this section presumptively establishes the amount the trier of
95 fact shall order as child support in an initial proceeding for
96 such support or in a proceeding for modification of an existing
97 order for such support, whether the proceeding arises under this
98 or another chapter. The trier of fact may order payment of child
99 support which varies, plus or minus 5 percent, from the
100 guideline amount, after considering all relevant factors,
101 including the needs of the child or children, age, station in
102 life, standard of living, and the financial status and ability
103 of each parent. The trier of fact may order payment of child
104 support in an amount which varies more than 5 percent from such
105 guideline amount only upon a written finding explaining why
106 ordering payment of such guideline amount would be unjust or
107 inappropriate. Notwithstanding the variance limitations of this
108 section, the trier of fact shall order payment of child support
109 which varies from the guideline amount as provided in paragraph
110 (11) (b) whenever any of the children are required by court order
111 or mediation agreement to spend a substantial amount of time
112 with either parent as defined by subparagraph (11) (b) 8. This
113 requirement applies to any living arrangement, whether temporary
114 or permanent.

115 (2) Income shall be determined on a monthly basis for each
116 parent as follows:

586-04466-09

20092166c1

117

118 (b)1. Income on a monthly basis shall be imputed to an
119 unemployed or underemployed parent when such employment or
120 underemployment is found by the court to be voluntary on that
121 parent's part, absent a finding of fact by the court of physical
122 or mental incapacity or other circumstances over which the
123 parent has no control. In the event of such voluntary
124 unemployment or underemployment, the employment potential and
125 probable earnings level of the parent shall be determined based
126 upon his or her recent work history, occupational
127 qualifications, and prevailing earnings level in the community
128 as provided in this paragraph; however, the court may refuse to
129 impute income to a parent if the court finds it necessary for
130 the parent to stay home with the child who is the subject of a
131 child support calculation.

132 2. There shall be a rebuttable presumption entitling the
133 court to impute Florida minimum wage on a full-time basis to a
134 parent, absent a finding by the court that:

135 a. The parent has a physical or mental incapacity that
136 renders the parent unemployable or underemployed;

137 b. The parent needs to stay home to care for a child who is
138 the subject of the child support calculation, thereby preventing
139 the parent's employment or rendering the parent underemployed;
140 or

141 c. There are other circumstances over which the parent has
142 no control, except for penal incarceration, that prevent the
143 parent from earning an income.

144

145 If evidence is produced that demonstrates that the parent is a

586-04466-09

20092166c1

146 resident of another state, that state's minimum wage law shall
147 apply. In the absence of a state minimum wage, the federal
148 minimum wage as determined by the United States Department of
149 Labor shall apply.

150 (3) Net income is obtained by subtracting allowable
151 deductions from gross income. Allowable deductions shall
152 include:

153 (a) Federal, state, and local income tax which shall be
154 calculated using gross income deductions, adjusted for actual
155 filing status, personal and dependency exemptions, applicable
156 deductions, earned income credits, child and dependent care
157 credits, and other allowable tax credits ~~and allowable~~
158 ~~dependents and income tax liabilities.~~

159 (7) Child care costs incurred on behalf of the children due
160 to employment, job search, or education calculated to result in
161 employment or to enhance income of current employment of either
162 parent shall be ~~reduced by 25 percent and then shall be added to~~
163 the basic obligation. After the ~~adjusted~~ child care costs are
164 added to the basic obligation, any moneys prepaid by a parent
165 for child care costs for the child or children of this action
166 shall be deducted from that parent's child support obligation
167 for that child or those children. Child care costs shall not
168 exceed the level required to provide quality care from a
169 licensed source for the children.

170 (10) The total minimum child support need shall be
171 determined by adding child care costs and health insurance costs
172 to the minimum child support need. Each parent's actual dollar
173 share of the total minimum child support need shall be
174 determined by multiplying the minimum child support need by each

586-04466-09

20092166c1

175 parent's percentage share of the combined monthly net income.
176 The resulting amount shall be paid by the parent having less
177 than 20 percent of the overnight time-sharing to the parent
178 having more than 80 percent of the overnight time-sharing.

179 (11) (a) The court may adjust the total minimum child
180 support award, or either or both parents' share of the total
181 minimum child support award, based upon the following deviation
182 factors:

183 1. Extraordinary medical, psychological, educational, or
184 dental expenses.

185 2. Independent income of the child, not to include moneys
186 received by a child from supplemental security income.

187 3. The payment of support for a parent which regularly has
188 been paid and for which there is a demonstrated need.

189 4. Seasonal variations in one or both parents' incomes or
190 expenses.

191 5. The age of the child, taking into account the greater
192 needs of older children.

193 6. Special needs, such as costs that may be associated with
194 the disability of a child, that have traditionally been met
195 within the family budget even though the fulfilling of those
196 needs will cause the support to exceed the presumptive amount
197 established by the guidelines.

198 7. Total available assets of the obligee, obligor, and the
199 child.

200 ~~8. The impact of the Internal Revenue Service dependency~~
201 ~~exemption and waiver of that exemption. The court may order a~~
202 ~~parent to execute a waiver of the Internal Revenue Service~~
203 ~~dependency exemption if the paying parent is current in support~~

586-04466-09

20092166c1

204 ~~payments.~~

205 ~~8.9.~~ When application of the child support guidelines
206 schedule requires a person to pay another person more than 55
207 percent of his or her gross income for a child support
208 obligation for current support resulting from a single support
209 order or when the application of the child support guidelines
210 leaves a party with a net income that is lower than the current
211 federal poverty guidelines.

212 ~~9.10.~~ The particular parenting plan, such as where the
213 child spends a significant amount of time, but less than 20 ~~40~~
214 percent of the overnights, with one parent, thereby reducing the
215 financial expenditures incurred by the other parent; or the
216 refusal of a parent to become involved in the activities of the
217 child.

218 ~~10.11.~~ Any other adjustment which is needed to achieve an
219 equitable result which may include, but not be limited to, a
220 reasonable and necessary existing expense or debt. Such expense
221 or debt may include, but is not limited to, a reasonable and
222 necessary expense or debt which the parties jointly incurred
223 during the marriage.

224 (b) Whenever a particular parenting plan provides that each
225 child spend a substantial amount of time with each parent, the
226 court shall adjust any award of child support, as follows:

227 1. In accordance with subsections (9) and (10), calculate
228 the amount of support obligation apportioned to each parent
229 without including day care and health insurance costs in the
230 calculation and multiply the amount by 1.5.

231 2. Calculate the percentage of overnight stays the child
232 spends with each parent.

586-04466-09

20092166c1

233 3. Multiply each parent's support obligation as calculated
234 in subparagraph 1. by the percentage of the other parent's
235 overnight stays with the child as calculated in subparagraph 2.

236 4. The difference between the amounts calculated in
237 subparagraph 3. shall be the monetary transfer necessary between
238 the parents for the care of the child, subject to an adjustment
239 for day care and health insurance expenses.

240 5. Pursuant to subsections (7) and (8), calculate the net
241 amounts owed by each parent for the expenses incurred for day
242 care and health insurance coverage for the child. ~~Day care shall~~
243 ~~be calculated without regard to the 25-percent reduction applied~~
244 ~~by subsection (7).~~

245 6. Adjust the support obligation owed by each parent
246 pursuant to subparagraph 4. by crediting or debiting the amount
247 calculated in subparagraph 5. This amount represents the child
248 support which must be exchanged between the parents.

249 7. The court may deviate from the child support amount
250 calculated pursuant to subparagraph 6. based upon the deviation
251 factors in paragraph (a), as well as the obligee parent's low
252 income and ability to maintain the basic necessities of the home
253 for the child, the likelihood that either parent will actually
254 exercise the time-sharing schedule set forth in the parenting
255 plan granted by the court, and whether all of the children are
256 exercising the same time-sharing schedule.

257 8. For purposes of adjusting any award of child support
258 under this paragraph, "substantial amount of time" means that a
259 parent exercises time-sharing visitation at least 20 ~~40~~ percent
260 of the overnights of the year.

261 (c) A parent's failure to regularly exercise the court-

586-04466-09

20092166c1

262 ordered or agreed time-sharing schedule not caused by the other
263 parent which resulted in the adjustment of the amount of child
264 support pursuant to subparagraph (a) 9. ~~10.~~ or paragraph (b)
265 shall be deemed a substantial change of circumstances for
266 purposes of modifying the child support award. A modification
267 pursuant to this paragraph shall be retroactive to the date the
268 noncustodial parent first failed to regularly exercise the
269 court-ordered or agreed time-sharing schedule.

270 (18) The court may, for good cause shown, order the parent
271 otherwise entitled to the Internal Revenue Service dependency
272 exemption for a child to execute a waiver of the dependency
273 exemption.

274 Section 4. Paragraph (a) of subsection (5) of section
275 409.2563, Florida Statutes, is amended to read:

276 409.2563 Administrative establishment of child support
277 obligations.—

278 (5) PROPOSED ADMINISTRATIVE SUPPORT ORDER.—

279 (a) After serving notice upon a parent in accordance with
280 subsection (4), the department shall calculate that parent's
281 child support obligation under the child support guidelines
282 schedule as provided by s. 61.30, based on any timely financial
283 affidavits received and other information available to the
284 department. If either parent fails to comply with the
285 requirement to furnish a financial affidavit, the department may
286 proceed on the basis of information available from any source,
287 if such information is sufficiently reliable and detailed to
288 allow calculation of guideline schedule amounts under s. 61.30.
289 If a parent receives public assistance and fails to submit a
290 financial affidavit, the department may submit a financial

586-04466-09

20092166c1

291 affidavit for that parent pursuant to s. 61.30(15). If there is
292 a lack of sufficient reliable information concerning a parent's
293 actual earnings for a current or past period, there shall be a
294 rebuttable presumption ~~it shall be presumed~~ for the purpose of
295 establishing a support obligation that the parent had an earning
296 capacity equal to the Florida federal minimum wage on a full-
297 time basis during the applicable period, unless evidence is
298 presented that the parent is a resident of another state, in
299 which case that state's minimum wage shall apply. In the absence
300 of a state minimum wage, the federal minimum wage as determined
301 by the United States Department of Labor shall apply.

302 Section 5. Section 742.08, Florida Statutes, is amended to
303 read:

304 742.08 Default of support payments.—Upon default in payment
305 of any moneys ordered by the court to be paid, the court may
306 enter a judgment for the amount in default, plus interest,
307 administrative costs, filing fees, and other expenses incurred
308 by the clerk of the circuit court which shall be a lien upon all
309 property of the defendant both real and personal. Interest on
310 support judgments shall be enforceable through all of the
311 methods available to enforce the underlying support order,
312 including contempt. Interest shall not accrue on postjudgment
313 interest. Costs and fees shall be assessed only after the court
314 makes a determination of the nonprevailing party's ability to
315 pay such costs and fees. In Title IV-D cases, any costs,
316 including filing fees, recording fees, mediation costs, service
317 of process fees, and other expenses incurred by the clerk of the
318 circuit court, shall be assessed only against the nonprevailing
319 obligor after the court makes a determination of the

586-04466-09

20092166c1

320 nonprevailing obligor's ability to pay such costs and fees. The
321 Department of Revenue shall not be considered a party for
322 purposes of this section; however, fees may be assessed against
323 the department pursuant to s. 57.105(1). Willful failure to
324 comply with an order of the court shall be deemed a contempt of
325 the court entering the order and shall be punished as such. The
326 court may require bond of the defendant for the faithful
327 performance of his or her obligation under the order of the
328 court in such amount and upon such conditions as the court shall
329 direct.

330 Section 6. This act shall take effect October 1, 2009.