

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 7083 PCB HCS 10-01 Child Support Enforcement
SPONSOR(S): Health & Family Services Policy Council; Health Care Services Policy Committee and Kreegel
TIED BILLS: **IDEN./SIM. BILLS:**

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.:	Health Care Services Policy Committee	10 Y, 1 N	Schoonover	Schoolfield
1)	Health & Family Services Policy Council	15 Y, 0 N, As CS	Schoonover	Gormley
2)				
3)				
4)				
5)				

SUMMARY ANALYSIS

CS/HB 7083 makes several administrative and technical amendments to improve the effectiveness of the Child Support Enforcement program administered by the Department of Revenue (DOR). The bill:

- Restores authority for Clerk of Courts to process payments for private child support cases.
- Deletes DOR authority to reduce a retroactive support obligation by 25 percent when obligor and DOR agree on terms.
- Streamlines the process to modify child support obligations.
- Authorizes DOR to collect non-covered medical expenses by installments and gives DOR access to health records received by the Agency for Health Care Administration (AHCA).
- Authorizes DOR to claim as program income, uncashed checks of less than \$1 or to close case balances of less than \$1.
- Clarifies statutory terms regarding administrative establishment of child support orders.
- Assists DOR in establishing paternity by directing the Office of Vital Statistics to amend a child’s birth certificate based on a marriage license application submitted under oath or upon entry of a final judgment of dissolution of marriage.
- Makes permissive the requirement for DOR to request a federal waiver to provide services without the need of an application.
- Extends the deadline for DOR to implement electronic filing of documents with the court.
- Clarifies assignment of child support rights to DOR in temporary cash assistance cases.

The bill has an estimated non-recurring fiscal impact of \$5,000 on state government.

The bill is effective upon becoming law.

HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Child support enforcement is a federally funded program that has been administered by the Department of Revenue (DOR) since 1994.¹ A "Title IV-D case" is defined as any case in which the child support enforcement agency is enforcing the child support order pursuant to Title IV-D of the Social Security Act.² DOR provides services under this federally required program directly 65 counties and through contracts with governmental entities in the remaining two counties.³

To remain eligible for the Temporary Assistance for Needy Families (TANF) Block Grant, Florida must have a federally compliant child support program. The program must contain the following services:

- Paternity establishment;
- Support order establishment;
- Support order review and modification;
- Location of parents, employers, and assets;
- Payment collection and disbursement
- Order enforcement.⁴

The paternity establishment service uses administrative and judicial actions to establish paternity, as well as genetic testing to assist in determining biological parents. In 2009, 105,379 children were born out-of-wedlock in Florida. Of that amount, 94,775 paternity determinations were made. Currently, 100,568 children await paternity determination.⁵

DOR establishes initial child support orders and modifies existing orders when a family's circumstances change. During FY 08-09, DOR support orders resulted in \$48 million in child support collections. Currently, 223,973 cases require a support order.⁶

¹ s. 4, Ch. 94-124, Laws of Florida

² *Id.*

³ Miami-Dade County cases are handled by the State Attorney's Office; Manatee County cases are handled by the Clerk of Court.

⁴ Health Care Services Policy Committee Presentation by Lisa Echeverri of Department of Revenue. January 21, 2010.

⁵ *Id.*

⁶ *Id.*

DOR is responsible for several case processing activities including: opening and closing cases; collecting and maintaining case, location, and financial data; and receipt and response to verbal and written inquiries. In 2009, 1.1 million cases were maintained by DOR. In FY 08-09, DOR had a 7.3 percent increase in new service requests and 6.6 percent increase in reopened cases.⁷

Child support orders are enforced by DOR by using available administrative and judicial action. DOR also handles receipt and disbursement of collections. In 2009, over \$1.41 billion was collected and distributed, with 98 percent of collections distributed within 24 hours. Less than 30 percent of parents obligated to pay child support pay their full child support obligation on a monthly basis. Thus, DOR used enforcement actions to collect on 92 percent of the support collections eventually received.⁸

Effect of Proposed Changes

Clerk's Depository and Private Child Support Cases

The bill amends s. 61.13(1)(d), F.S., to allow parties in private child support cases to request that the local clerk's depository process their support payments. DOR operates the State Disbursement Unit, which is responsible for the collection and disbursement of child support payments. The clerks of all Florida circuit courts operate a depository to receive, record, report, disburse, monitor, and otherwise handle child support payments not otherwise required to be handled by the State Disbursement Unit.⁹ In previous years, parties in private child support cases could request the local circuit court's depository to process certain payments through their office. However, in 2009, legislation was passed that unintentionally eliminated this ability.¹⁰ The bill re-creates this procedure and allows payments through the depository, except for income deduction payments, which must be made through the State Disbursement Unit.

Support Obligation Modifications

The bill deletes a provision in s. 409.2564(4), F.S., enacted in 2006, providing DOR the authority to reduce the amount of retroactive support an obligor (parent) owes to the State by 25 percent if the obligor and DOR agree on terms. The provision was intended to encourage out-of-court settlements and improve compliance; however, DOR has been unable to implement this provision due to the complexity of federal distribution rules that determine when arrears are owed to the State. The bill removes this requirement in statute.

Current law, s. 409.2564, F.S., requires DOR to review temporary cash assistance cases at least every three years and, by request, other child support cases, to determine if a support obligation modification is necessary.¹¹ When such review reveals that a modification is warranted, DOR initiates the modification action by providing notice by personal service followed by a hearing before a judge or hearing officer to make the final determination.¹²

The bill amends s. 409.2564, F.S., by authorizing DOR to serve child support modification petitions by regular mail to parties who request, or participate in, a review. A party that does not request review or respond to the department during review must be served notice personally. The bill permits either parent to object within 30 days of receipt of the proposed order and request a hearing on the matter. If a timely objection or request for hearing is not made, the bill authorizes the court to enter a final modified support order with the same provisions as the proposed order. The bill requires DOR to include with the petition to modify any financial affidavits or written declarations and findings as to the source and amount of income.

The bill also allows DOR to seek modification of the order if the order does not provide for payment of noncovered medical expenses or require health insurance for the child when such insurance is

⁷ *Id.*

⁸ *Id.*

⁹ s. 61.046, F.S.

¹⁰ s. 1, Ch. 2009-180, Laws of Florida.

¹¹ s. 409.2564(11), F.S.

¹² s. 409.3564, F.S.

accessible and available at reasonable cost. A modification under these circumstances does not require proof, or a showing of change in circumstances.

The bill also amends s. 61.30(15), F.S., to give DOR the option to file a written declaration under penalty of perjury which attests to the income of a parent who receives public assistance when the parent is not cooperative in providing the information. The effect of this change will expedite establishment of child support orders and facilitate electronic filing when it becomes available, making the process more efficient.

Medical Support Improvements

In 2009, s. 61.13(1)(b) was amended, and created a process for determining each parent's share of responsibility for the child's health insurance and noncovered medical expenses when that is the only issue before the court. In such proceedings, each parent's share required for health insurance and noncovered medical expenses is calculated by dividing each parent's net monthly income by the combined monthly net income of both parents.¹³ However, the intent was to establish a clear procedure for calculating the parent's share of responsibility for noncovered medical expenses, not health insurance. The bill corrects this error by removing the reference to health insurance.

The bill amends s. 409.25635, F.S., to authorize DOR to collect noncovered medical expenses in installments by adding a periodic payment to an income deduction notice issued by DOR. Noncovered medical expenses are uninsured medical, dental, or prescription medication expenses that are ordered to be paid on behalf of a child.¹⁴ Under current law, DOR is authorized to use any available administrative remedy to collect noncovered medical expenses. The effect of this change will reduce the administrative burden on DOR in collecting noncovered medical expenses.

The bill amends s. 409.910, F.S., to give DOR access to health insurance records received by the Agency for Health Care Administration (AHCA). Currently, AHCA is not authorized to share data it receives from the Office of Insurance Regulation regarding third party insurance payors with DOR. This will allow DOR to identify whether parents have health insurance coverage and to enforce support orders with health insurance coverage for dependents.

Payment Processing

Pursuant to s. 409.2558(3), F.S., DOR is required to continue attempts to disburse minimal collections, including payments of less than \$1, when a parent does not cash such payment within 180 days, or balances of less than \$1 owed on closed cases. The bill authorizes DOR to claim as income the state share of any such payments. Any federal share of the funds will be returned to the federal government. For 2009, DOR estimates that the cumulative amount that would be retained from un-cashed checks is less than \$300 dollars.¹⁵

Section 409.2558(3)(b) establishes processing priorities for DOR related to undistributable collections and adds additional priorities for applying undistributable collections. The additional priorities will allow DOR to offset cost incurred from losses resulting from bad checks or overpayments made to either parent.

The effect of these changes will create additional program income and greater efficiency in payment processing for the department.

Administrative Process Improvements

The bill amends s. 409.256, F.S., to replace the term "custodian" with "caregiver" with regard to administrative proceedings to establish paternity and child support, and makes conforming changes throughout the section. "Caregiver" will be defined as a person, other than the mother, father or alleged father, who has physical custody or with whom the child primarily resides. Additionally, the bill amends s. 409.256, F.S., to allow DOR to commence a paternity or child support proceeding upon receiving an

¹³ HB 5129; 2009-90, Laws of Florida.

¹⁴ s. 409.25635(1), F.S.

¹⁵ Email from D. Thomas, DOR dated 1-7-10.

affidavit or written declaration from a child's caregiver stating that the putative father is or may be the child's biological father.

Section 409.2563, F.S., permits either a parent or a caretaker relative to file suit to determine parental support obligations. "Caretaker relative" is defined as an adult who has assumed primary responsibility and care of the child and who is related to the child by blood or marriage.¹⁶ Thus, under current law, an adult with whom the child resides who is not a relative or has legal custody does not have standing to file a civil action or to request an administrative hearing to determine parental support obligations. The bill amends this section by replacing the term "caretaker relative" with "caregiver," which includes any person other than the mother, father, or alleged father who has physical custody or with whom the child primarily resides. This gives adults providing care or residence to a child standing to address child support obligations in legal or administrative proceedings.

Marriage Application, Dissolution of Marriage and Paternity Establishment

The bill amends s. 382.013, F.S. and s. 382.015, F.S., to require the Department of Health (DOH), Office of Vital Statistics (OVS), to accept a certified copy of a final judgment of dissolution of marriage that requires the former husband to pay support for the child as a determination of paternity. This will require OVS to amend a child's birth certificate to include the name of the legal father in these circumstances.

The bill also amend s. 741.01, F.S., to require both applicants to marriage to declare under oath, in writing, whether they are the parents of a child born in Florida and to identify children they have in common. Further the bill amends s. 382.016, F.S., to require the OVS to amend the birth certificate upon receipt of the marriage license to reflect the marital status of the parents.

The effect of these changes will enable DOR to establish paternity in a timely fashion and maintain compliance with federal standards for the program, which require paternity be established for 90 percent of out-of- wedlock births.¹⁷

Federal Waiver Request

Section 409.2567, F.S., requires DOR to seek a federal waiver allowing the department to provide services to an individual owed child support who has not applied to DOR for assistance. DOR has not requested the waiver because changes to incentive payments authorized in the federal funding formula for the Child Support Program has made it cost prohibitive to pursue the waiver.

The bill amends s. 409.2567, F.S. to make DOR's waiver request permissive instead of mandatory. DOR may seek the waiver if it would result in increased federal funding that exceed any additional cost to the state. The effect of this change will allow DOR to seek the waiver when the program would be cost beneficial to the state.

Electronic Filing Deadline

Section 409.259, F.S., requires DOR, the clerks of the circuit court, chief judges through the Office of State Courts Administrator, sheriffs, and the Office of Attorney General to work cooperatively to implement electronic filing of pleadings, returns of service and other papers with the clerks of the circuit court in Title IV-D cases by October 1, 2009. DOR is in the process of implementing the second phase of the Child Support Automated Management System II (CAMS) in order to comply with this requirement; however due to cost and difficulty during implementation of the electronic processing, the requirement for electronic filing of documents with the court was removed from DOR's contract with the CAMS vendor.

The bill amends the October 1, 2009 implementation date in current law by making implementation required upon completion of CAMS. This will allow DOR to complete the statewide implementation of CAMS and permit DOR to work with each of its state partners on their individual requirements and schedules to ensure they can accept electronic documents and filings.

¹⁶ s. 414.0252(11), F.S.

¹⁷ 45 C.F.R. 305.33(a)

Assignment of Rights

Current law requires temporary cash assistance recipient to assign to the Department of Children and Families any rights, up to specified limitations, a member of the family may have to support from another person.¹⁸

The bill amends s. 414.095, F.S. to specify that such support rights are assigned to the DOR. This will align chapter 414, F.S., with chapter 409, to correctly identify DOR as the agency that obtains the right of assignment.

B. SECTION DIRECTORY:

Section 1. Amends s. 61.13, relating to support of children; parenting and time-sharing; powers of court.

Section 2. Amends s. 61.30, relating to child support guidelines; retroactive child support.

Section 3. Amends s. 382.013, relating to birth registration.

Section 4. Amends s. 382.015, relating to new certificates of live birth; duty of clerks of court and department.

Section 5. Amends s. 382.016, relating to amendment of records.

Section 6. Amends s. 409.2558, relating to support distribution and disbursement.

Section 7. Amends s. 409.2558, relating to support distribution and disbursement.

Section 8. Amends s. 409.256, relating to administrative proceeding to establish paternity or paternity and child support; order to appear for genetic testing.

Section 9. Amends s. 409.2563, relating to administrative establishment of child support obligations.

Section 10. Amends s. 409.25635, relating to determination and collection of noncovered medical expenses.

Section 11. Amends s. 409.2564, relating to actions for support.

Section 12. Amends s. 409.2567, relating to services to individuals not otherwise eligible.

Section 13. Amends s. 409.259, relating to filing fees in Title IV-D cases; electronic filing of pleadings, returns of service, and other papers.

Section 14. Amends s. 409.910, relating to responsibility for payments on behalf of Medicaid-eligible persons when other persons are liable.

Section 15. Amends s. 414.095, relating to determining eligibility for temporary cash assistance.

Section 16. Amends s. 741.01, relating to county court judge or clerk of the circuit court to issue marriage license; fee.

Section 17. Reenacting s. 61.14, relating to enforcement and modification of support.

Section 18. Reenacting s. 61.30, relating to child support guidelines; retroactive child support.

Section 19. Providing an effective date upon becoming law, except as otherwise specified in bill.

¹⁸ s. 414.095, F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

<u>Estimated Expenditures</u>	<u>Year 1</u>	<u>Year 2</u>
Expense¹⁹ Modifying Alleged Father's registry forms, brochures, applications and re-stocking current forms.	\$5,000	\$0.00

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The Department of Health will face an estimated non-recurring cost of \$5,000 to change registry forms, brochures, and applications so that they all use the term "alleged father" rather than "putative father" to conform to the changes made by the bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

¹⁹ Staff Analysis, HB 7083 (2010), Department of Health. (On file with committee staff).

None.

IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

On April 6, 2010, the Health & Family Services Policy Council adopted a strike-all amendment for HB 7083. Some of the changes the amendment made include:

- Making several technical and conforming changes;
- Removes use of the term “alleged father” and restores current law, which uses the term “putative father.” This change removes the \$5,000 fiscal impact on the Department of Health to revise forms and make other conforming changes;
- Permits DOR to commence a paternity or child support proceeding upon the receipt of an affidavit or written declaration by the caregiver who claims that the putative father may be the biological father;
- Requires DOR to include source and amount of income of parties when DOR submits to the court a petition to modify a child support order;
- Requires DOR to personally serve the proposed modification to the child support order to parties who did not request a support order review.

The bill was reported favorably as a Council Substitute. The analysis reflects the Council Substitute.