

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 Budget Subcommittee on General Government Appropriations

BILL: CS/SB 1342

INTRODUCER: Banking and Insurance Committee and Senator Storms

SUBJECT: Child Support Enforcement

DATE: February 27, 2012 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Farmer	CF	Favorable
2.	Eichin	Buford	TR	Fav/2 amendments
3.	Johnson	Burgess	BI	Fav/CS
4.	Blizzard	DeLoach	BGA	Pre-meeting
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|-----------------------------------------|
| 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:

This bill amends Florida law relating to child support enforcement. Specifically, the bill:

- Provides that a default in support payments is not required in Title IV-D cases for the Department of Revenue (DOR) to request that payments be made through the State Disbursement Unit;
- Provides that a driver's license of an obligor will not be suspended if the obligor begins paying any delinquency by income deduction;
- Makes it discretionary for the DOR to notify the Department of Highway Safety and Motor Vehicles (DHSMV) to request suspension of a driver's license of an obligor;
- Authorizes the DOR to commence an administrative paternity proceeding based on an affidavit or written declaration provided by a caregiver that states the putative father may be the child's biological father;
- Requires that a request to informally discuss a proposed administrative support order with the DOR be made in writing within fifteen days after the date of the mailing of the proposed order;
- Eliminates the requirement for the DOR to provide certain notices by registered or certified mail, requiring regular mail instead;

- Authorizes the DOR to send notices to a garnishee by secure e-mail or facsimile upon consent by the garnishee;
- Requires the Department of Financial Services (DFS) and the DOR to work cooperatively to establish an automated method for identifying persons who are doing business with the state and who owe overdue support so that support payments may be withheld by the state;
- Makes changes related to the use of unclaimed property for past due support; and
- Authorizes the DOR to place an administrative lien on certain claims, judgments, and property.

This bill amends the following sections of the Florida Statutes: 61.13, 61.13016, 322.058, 409.256, 409.2563, 409.25656, 409.25658, and 409.2575. This bill reenacts section 409.256(7), Florida Statutes.

II. Present Situation:

Child support enforcement is a federally funded program that has been administered by the Department of Revenue (DOR) since 1994. 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. The DOR provides services under the federally required program in sixty five counties and through contracts in two counties.¹

The DOR is responsible for some case-processing activities including opening and closing cases; collecting and maintaining of case, financial and location information; and receiving and responding to verbal and written inquiries. During the 2009 calendar year, 1.1 million cases were maintained by DOR. In Fiscal Year 2008-2009, the DOR had a 7.3 percent increase in new service requests and 6.6 percent increase in reopened cases.

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, assets;
- Payment collection and disbursement; and
- Order enforcement.

The DOR establishes the initial child support order and modifies existing orders when a family’s circumstances change. The DOR processed \$48 million in child support collections on support orders established during Fiscal Year 2008-2009. Some child support orders are established by the DOR administratively. Section 409.2563, F.S., was created to provide the DOR with an alternative procedure for establishing child support obligations in Title IV-D cases in a fair and expeditious manner, when there is no court order of support. Prior to beginning the administrative process, the DOR screens cases for complex circumstances and, if identified, will

¹ Miami-Dade County cases are handled by the state attorney’s office, and Manatee County cases are handled by the clerk of court.

proceed with those cases judicially. In order to establish a support order administratively, the DOR must provide notice to both the parent from whom support is not being sought and to the parent from whom support is being sought.² After providing notice, the DOR must calculate the proposed support obligation based on the financial affidavits provided by the parties or, if the parties did not provide the required affidavits, then the department may rely on any reliable source for the information. If there is no reliable source, the DOR may calculate the proposed support obligation based on the assumption that the parent had an earning capacity equal to the federal minimum wage during the applicable period.³ The DOR must send copies of the proposed administrative support order to both parents, along with a notice of rights to the parent from whom support is being sought. This notice of rights must inform the parent that within ten days from the date of the mailing, the parent may contact the DOR to discuss the proposed administrative order.⁴ If a request for an administrative hearing in response to the proposed order is not made timely, the department renders a final order that incorporates the terms of the proposed order.⁵ If the parent from whom support is being sought files a timely request for hearing or the department determines that an evidentiary hearing is appropriate, the DOR will refer the proceeding to the Division of Administrative Hearings.

Child support orders are enforced by the DOR, as well as the receipt and disbursement of collections. During the 2009 calendar year, over \$1.41 billion was collected and distributed, with 98 percent of collections distributed within twenty four hours. Of all parents in the DOR caseload, fewer than 30 percent pay their full child support obligation on a monthly basis. In addition, the DOR initiated enforcement actions on 92 percent of the support collections ultimately received.

The DOR has several methods for collecting past due child support. Pursuant to s. 61.13016, F.S., the obligor is notified by the DOR or a clerk of court within fifteen days of non-payment or failure to comply with a subpoena or other order, that his or her driver's license may be suspended unless such payment is made or order complied with. Although not provided for in statute, the DOR also allows an obligor to begin paying a delinquent support order by income deduction in order to avoid license suspension. According to the DOR, income deduction is the most reliable way to obtain child support payments.⁶ If the obligor fails to comply with any of these actions, twenty days after the notification is sent to the obligor, the DOR notifies the DHSMV, which is required to suspend the driver's license under s. 322.058, F.S.

If a person has a support obligation subject to enforcement by the DOR, the DOR may inform all persons with credits or personal property (i.e. wages) belonging to the obligor under their control to not transfer any of the credits or personal property up to the amount listed in the notice, without DOR consent.⁷ Additionally, the department shall provide notice to the DFS identifying the obligor and the amount of support outstanding.

² Section 409.2563(4), F.S.

³ Section 409.2563(5)(a), F.S.

⁴ Section 409.2563(5)(c), F.S.

⁵ In contested cases, there is a formal hearing before the Division of Administrative Hearings.

⁶ E-mail from Debbie Thomas, Dept. of Revenue, to Senate professional staff (Dec. 12, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

⁷ Section 409.25656(1), F.S.

Under current law, DOR must provide notice to the DFS identifying the obligor and the amount of support outstanding. The DFS must withhold all payments to any obligor who provides commodities or services to the state, leases real property to the state, or constructs a public building or public work for the state. DOR may then levy upon the withheld payments.⁸

Another way DOR may collect past due support is with unclaimed property. The DOR, in cooperation with the DFS, shall identify persons owing support who are presumed to have unclaimed property held by the DFS. Before paying an obligor's approved claim for unclaimed property, the DFS must notify the DOR that the claim was approved, and the DOR shall immediately send a notice by certified mail to the obligor advising the obligor of the DOR's intent to intercept the approved claim up to the amount of the past due support.⁹

III. Effect of Proposed Changes:

This bill amends provisions relating to child support enforcement. Section 61.13, F.S., is amended to provide that in Title IV-D cases, the DOR does not need to allege a default in support payments, and a default is not required, in order for the DOR to request that child support payments be made through the depository. If such a request is made, the depository shall notify all parties that future payments in Title IV-D cases be made to the state disbursement unit.

The bill provides additional means for an obligor to avoid having his or her driver's license suspended. Specifically, if an obligor begins paying any delinquency by income deduction, the obligor's license will not be suspended (and it must be reinstated if it had already been suspended). Additionally, the bill makes it discretionary for the DOR to notify the DHSMV to suspend a driver's license of an obligor if the delinquency is not paid in full.

Effective July 1, 2012, the bill amends s. 409.256, F.S., to authorize the DOR to commence a paternity proceeding if a caregiver states in an affidavit that the putative father is or may be the child's biological father. Under current law, the DOR may commence a proceeding only if the child's mother or a putative father states in an affidavit that the putative father is or may be the child's biological father.

Section 409.2563(5), F.S., is amended to require that requests by a parent from whom support is being sought for an informal discussion with the DOR about the proposed administrative support order be made in writing within 15 days after the date of mailing the proposed support order.

The bill eliminates the requirement for the DOR to serve garnishment notices by registered mail, requiring instead that the DOR serve notice on garnishees and obligors by regular mail. If the garnishee provides written consent, the department may send notices to the garnishee by secure e-mail or facsimile. The bill requires the DFS and the DOR to work cooperatively to establish an automated method for identifying persons who are doing business with the state and who owe past due support so that the support payments may be withheld by the state.

⁸ Section 409.25656(10), F.S.

⁹ Section 409.25658, F.S.

Under current law, the DOR provides to the DFS a listing of obligors for whom warrants are outstanding. The DFS then withholds all payments to any obligor doing business with the state and the DOR may levy upon the withheld payments. The change made by this bill essentially reverses this method so that the DFS is disclosing to the DOR a file of individuals to whom the state pays money. This change may mean that information on persons who do not owe past due child support may also be transmitted to the DOR.

The bill requires the DOR, in cooperation with the DFS, to identify persons who owe past due support collected by the department and who are presumed to have unclaimed property held by the DFS. If a claim for unclaimed property is approved by the DFS, the DOR will send a notice by certified mail to the obligor, advising the obligor of the department's intent to intercept the approved claim. The DFS must retain custody of the property until a final order has been entered and any appeals have concluded or, if the intercept is uncontested, until notified by DOR. If an obligor does not request a hearing, the DOR must notify the DFS electronically, or in writing, to transfer the property to the department.

The bill authorizes the DOR to place an administrative lien for unpaid support on a motor vehicle or vessel, even if owned unencumbered by the obligor. In addition, the DOR is authorized to place an administrative lien on claims, settlement proceeds, and judgments. The DOR must notify the obligor of the intent to place a lien by regular mail sent to the obligor's address on file with the depository. The notice must state the amount of past due support owed and inform the obligor of the right to contest the lien at an administrative hearing.

Finally, the bill reenacts s. 409.256, F.S., in order to incorporate the changes made by the bill to s. 322.058, F.S.

The bill is effective upon becoming a law, except as otherwise provided in the act.

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 authorizes the DOR to place an administrative lien for unpaid support on claims, settlements, and judgments, as well as on motor vehicles or vessels that are owned unencumbered by the obligor. This provision may have a financial impact on obligors expecting to receive money in relation to a claim, settlement, or judgment, but also owe unpaid or delinquent support. However, these changes may result in additional funds being provided for child support.

C. Government Sector Impact:

According to the DOR, procedures will need to be modified to implement the provisions in this bill. However, the DOR expects that any operational impact of the bill will be insignificant.¹⁰

The Department of Highway Safety and Motor Vehicles estimates an insignificant reduction in revenues related to the reinstatement of driver licenses.

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 Banking and Insurance Committee on February 16, 2012:
Provides technical, conforming changes.

- B. **Amendments:**

None.

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

¹⁰ Department of Revenue, *2012 Bill Analysis, SB 1342*, January 25, 2012 (on file with the Senate Committee on Banking and Insurance).