

- Authorizes the department to send notices to a garnishee by secure e-mail or facsimile upon consent by the garnishee;
- Requires the Chief Financial Officer and the department 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 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 or department) 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 department provides services under the federally required program in 65 counties and through contracts in two counties.¹

The department is responsible for some case-processing activities including opening and closing cases; collecting and maintaining case, location, and financial data; and receiving and responding 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.

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 department establishes the initial child support order and modifies existing orders when a family’s circumstances change. During FY 08-09, DOR processed \$48 million in child support collections on support orders established in that fiscal year.

Some child support orders are established by DOR administratively. Section 409.2563, F.S., was created to provide the department 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

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

support. Prior to beginning the administrative process, DOR screens cases for complex circumstances and, if identified, it will proceed with those cases judicially. In order to establish a support order administratively, the department 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 department 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, 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 department must then 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 from whom support is being sought that within 10 days from the date of the mailing the parent may contact DOR, at the address or telephone number in the notice, to informally 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 department shall refer the proceeding to the Division of Administrative Hearings. In 2009, the department established over 12,000 administrative support orders.

Child support orders are enforced by DOR, as well as the receipt and disbursement of collections. In 2009, over \$1.41 billion was collected and distributed, with 98 percent of collections distributed within 24 hours. Of all parents in the DOR caseload, fewer than 30 percent pay their full child support obligation on a monthly basis. In addition, DOR initiated enforcement actions on 92 percent of the support collections eventually received.

The department has several methods for collecting past due child support. Under s. 61.13016, F.S., the obligor is notified by DOR or a clerk of court within 15 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. The notice provided to the obligor must state:

- the terms of the order creating the obligation;
- the period of the delinquency;
- the total amount of the delinquency or description of the non-compliant order; and
- that the Department of Highway Safety and Motor Vehicles (DHSMV) will be notified to suspend the license, unless the obligor:
 - pays the delinquency within 20 days,
 - enters a written agreement for payment or complies with the non-compliant order;
 - contests the delinquency action in circuit court; and
 - pays any delinquency fees⁶.

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 Section 61.13016(1)(c), F.S.

Although not provided for in statute, DOR also allows an obligor to begin paying a delinquent support order by income deduction in order to avoid license suspension. According to DOR, income deduction is the most reliable way to obtain child support payments.⁷ If the obligor fails to comply with any of these action, 20 days after the notification is sent to the obligor, DOR notifies DHSMV which is required to suspend the driver's license under s. 322.058, F.S.

If a person has a support obligation which is subject to enforcement by the department as the state Title IV-D program, the department can notify all persons who have credits or personal property, including wages, under their control that belong to the obligor that they may not transfer any of the credits or personal property, up to the amount listed in the notice, without DOR consent.⁸ Additionally, the department shall provide notice to the Chief Financial Officer (CFO) identifying the obligor and the amount of support outstanding. The CFO must then 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, and DOR may levy upon the withheld payments.⁹

Another way DOR may collect past due support is through the use of unclaimed property. The department, in cooperation with the Department of Financial Services (DFS), shall identify persons owing support who are presumed to have unclaimed property held by DFS. Before paying an obligor's approved claim for unclaimed property, DFS must notify DOR that the claim was approved, and DOR shall immediately send a notice by certified mail to the obligor advising the obligor of the department's intent to intercept the approved claim up to the amount of the past due support.¹⁰

III. Effect of Proposed Changes:

This bill amends Florida law relating to child support enforcement. Section 61.13, F.S., is amended to provide that in Title IV-D cases, the Department of Revenue (DOR or department) does not need to allege a default in support payments, and a default is not required, in order for the department 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 DOR to notify the Department of Highway Safety and Motor Vehicles to suspend an obligor's driver's license if the delinquency is not paid in full.

⁷ E-mail from Debbie Thomas, Dep't of Revenue, to Senate professional staff (Dec. 12, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

⁸ Section 409.25656(1), F.S.

⁹ Section 409.25656(10), F.S.

¹⁰ Section 409.25658, F.S.

The bill amends s. 409.256, F.S., effective July 1, 2012, authorizing 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, 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 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 DOR to serve garnishment notices by registered mail, requiring instead that the department 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 Chief Financial Officer and 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.

Under current law, DOR provides to the CFO a listing of obligors for whom warrants are outstanding. The CFO then withholds all payments to any obligor doing business with the state and DOR may levy upon the withheld payments. The change made by this bill essentially reverses this method, so that the CFO is disclosing to the department 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 DOR.

The bill requires DOR, in cooperation with the Department of Financial Services (DFS), to identify persons who owe past due support collected by the department who are presumed to have unclaimed property held by DFS. If a claim for unclaimed property is approved by DFS, the department shall send a notice by certified mail to the obligor at the address provided by the obligor to DFS 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 the department. If an obligor does not request a hearing, DOR must notify DFS, electronically or in writing, to transfer the property to the department.

The bill authorizes DOR to place an administrative lien for unpaid support on a motor vehicle or vessel, even if owned free and clear by the obligor, and on claims, settlement proceeds, and judgments. The department 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 Department of Revenue (DOR or the department) to place an administrative lien for unpaid support on claims, settlements, and judgments, as well as a motor vehicle or vessel that is owned free and clear by the obligor. This change in the law may have a financial impact on obligors who have certain claims, settlements, or judgments and are expecting to receive money in relation to the claim, settlement, or judgment, but also owe unpaid or delinquent support.

C. Government Sector Impact:

According to DOR, its procedures will need to be modified to implement the changes made by this bill. However, DOR expects that any operational impact of the bill will be insignificant.¹¹

DHSMV will likely experience negative impacts to revenue. According to DHSMV, in FY 2010-2011 the department processed 42,698 child support license reinstatements which generated \$3,109,980 in revenue. It is not known how many fewer suspensions (and thus reinstatements) will be processed as a result of this bill; however, reinstatement revenues will likely be negatively impacted. Additionally, Section 2 of the bill effectively makes DOR's request for license suspension discretionary, which could also lead to fewer suspensions and reinstatements.

¹¹ Dep't of Revenue, *2012 Bill Analysis, HB 935*, 5 (Dec. 16, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs). House bill 935 is substantially similar to SB 1342.

VI. Technical Deficiencies:

Section 409.25658, F.S., is amended so that notice of intent to intercept an approved claim for unclaimed property is sent to the obligor by *certified* mail to the address provided by the obligor to the Department of Financial Services (see lines 316-322). According to the Department of Revenue's (DOR or department) bill analysis, the notice of intent is meant to be mailed to the obligor by *regular* mail.¹² Other sections of the bill also eliminate the requirement for the department to mail notices via registered or certified mail, instead only requiring regular mail. It appears that the intent of the bill is to require notice be sent to an obligor via regular mail when the obligor's unclaimed property is to be used for past due child support. The Legislature may wish to amend line 320 of the bill to address this oversight.

The bill amends s. 409.2575, F.S., allowing the department to cause a lien for unpaid or delinquent support be placed on a "claim, settlement, or judgment." It is unclear what type of claim is being referenced. However, according to DOR's bill analysis, this section is amended "to authorize the Department of Revenue to place an administrative lien for unpaid support on personal injury claims, settlement proceeds, and judgments."¹³ If the intent of the bill is to allow an administrative lien be placed on personal injury claims, the Legislature may wish to amend the bill on line 351 to make the intent clear.

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.)

None.

B. Amendments:

Barcodes 202046 and 682354 by Transportation revise the bill's provisions relating to driver's license suspensions. The unamended bill provides an 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).

- Barcode 202046 revises the notification sent to obligors prior to the potential suspension of the obligors' driver's license for non-payment of child support. Specifically, this amendment requires DOR to include notification that income deduction is an option to avoid suspension *unless* the obligor receives government assistance, i.e., unemployment compensation, social security disability payments,

¹² *Id.* at 4.

¹³ *Id.*

supplemental security income, or temporary cash assistance. This amendment *removes* the income deduction option if obligors receive government assistance.

- Barcode 682354 provides for the obligor's license to be reinstated upon notification to DHSMV that the obligor is making payments through income deduction *or* is receiving government assistance (unemployment compensation, social security disability payments, supplemental security income, or temporary cash assistance). In contrast to Barcode 202046, this amendment causes the reinstatement of the license of a person *because* that person receives government assistance.

Taken together, these amendments are somewhat contradictory. Staff recommends consideration of further refinement.