

By Senator Garcia

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1                   A bill to be entitled  
 2       An act relating to child support; amending s. 61.046,  
 3       F.S.; conforming a cross-reference; revising the  
 4       definition of the term "depository"; amending s.  
 5       61.13016, F.S.; revising requirements for the  
 6       deferment of payment agreements for child support;  
 7       amending s. 61.181, F.S.; revising the procedures for  
 8       collection and distribution of court depository fees;  
 9       amending s. 61.1811, F.S.; conforming a cross-  
 10      reference; amending s. 61.30, F.S.; removing  
 11      exceptions to the prohibition on treating  
 12      incarceration as voluntary employment; amending s.  
 13      409.256, F.S.; revising requirements for the  
 14      Department of Revenue to commence proceedings  
 15      regarding paternity and child support; amending s.  
 16      409.2563, F.S.; requiring and specifying procedures  
 17      for the clerk of the court to credit depository  
 18      accounts for collections received by another state;  
 19      providing an effective date.

20  
 21 Be It Enacted by the Legislature of the State of Florida:

22  
 23       Section 1. Subsections (2) and (4) of section 61.046,  
 24       Florida Statutes, are amended to read:

25       61.046 Definitions.—As used in this chapter, the term:  
 26       (2) "Clerk of Court Child Support Collection System" or  
 27       "CLERC System" means the automated system established pursuant  
 28       to s. 61.1811 ~~s. 61.181(2)(b)1.~~, integrating all clerks of court  
 29       and depositories and through which payment data and State Case

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30 Registry data is transmitted to the department's automated child  
31 support enforcement system.

32 (4) "Depository" means the ~~central governmental~~ depository  
33 established by the clerk of the circuit court pursuant to s.  
34 ~~61.181, created by special act of the Legislature or other~~  
35 ~~entity established before June 1, 1985, to perform depository~~  
36 ~~functions and to receive, record, report, disburse, monitor, and~~  
37 otherwise handle alimony and child support payments not  
38 otherwise required to be processed by the State Disbursement  
39 Unit.

40 Section 2. Subsection (1) of section 61.13016, Florida  
41 Statutes, is amended to read:

42 61.13016 Suspension of driver licenses and motor vehicle  
43 registrations.—

44 (1) The driver license and motor vehicle registration of a  
45 support obligor who is delinquent in payment or who has failed  
46 to comply with subpoenas or a similar order to appear or show  
47 cause relating to paternity or support proceedings may be  
48 suspended. When an obligor is 15 days delinquent making a  
49 payment in support or failure to comply with a subpoena, order  
50 to appear, order to show cause, or similar order in IV-D cases,  
51 the ~~Title~~ IV-D agency may provide notice to the obligor of the  
52 delinquency or failure to comply with a subpoena, order to  
53 appear, order to show cause, or similar order and the intent to  
54 suspend by regular United States mail that is posted to the  
55 obligor's last address of record with the Department of Highway  
56 Safety and Motor Vehicles. When an obligor is 15 days delinquent  
57 in making a payment in support in non-IV-D cases, and upon the  
58 request of the obligee, the depository or the clerk of the court

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59 must provide notice to the obligor of the delinquency and the  
60 intent to suspend by regular United States mail that is posted  
61 to the obligor's last address of record with the Department of  
62 Highway Safety and Motor Vehicles. In either case, the notice  
63 must state all of the following:

64 (a) The terms of the order creating the support  
65 obligation.†

66 (b) The period of the delinquency and the total amount of  
67 the delinquency as of the date of the notice or describe the  
68 subpoena, order to appear, order to show cause, or other similar  
69 order that has not been complied with.†

70 (c) That notification will be given to the Department of  
71 Highway Safety and Motor Vehicles to suspend the obligor's  
72 driver license and motor vehicle registration unless, within 20  
73 days after the date that the notice is mailed, the obligor:

74 1.a. Pays the delinquency in full and any other costs and  
75 fees accrued between the date of the notice and the date the  
76 delinquency is paid;

77 b. Enters into a written agreement for payment with the  
78 obligee in non-IV-D cases or with the ~~Title~~ IV-D agency in IV-D  
79 cases; or in IV-D cases, complies with a subpoena or order to  
80 appear, order to show cause, or a similar order, which may  
81 include a reasonable period of payment deferral to accommodate  
82 an obligor's good faith job-seeking or job training efforts;

83 c. Files a petition with the circuit court to contest the  
84 delinquency action;

85 d. Demonstrates that he or she receives reemployment  
86 assistance or unemployment compensation pursuant to chapter 443;

87 e. Demonstrates that he or she is disabled and incapable of

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88 self-support or that he or she receives benefits under the  
89 federal Supplemental Security Income program or Social Security  
90 Disability Insurance program;

91 f. Demonstrates that he or she receives temporary cash  
92 assistance pursuant to chapter 414; or

93 g. Demonstrates that he or she is making payments in  
94 accordance with a confirmed bankruptcy plan under chapter 11,  
95 chapter 12, or chapter 13 of the United States Bankruptcy Code,  
96 11 U.S.C. ss. 101 et seq.; and

97 2. Pays any applicable delinquency fees.  
98

99 If an obligor in a non-IV-D case enters into a written agreement  
100 for payment before the expiration of the 20-day period, the  
101 obligor must provide a copy of the signed written agreement to  
102 the depository or the clerk of the court. If an obligor seeks to  
103 satisfy sub-subparagraph 1.d., sub-subparagraph 1.e., sub-  
104 subparagraph 1.f., or sub-subparagraph 1.g. before expiration of  
105 the 20-day period, the obligor must provide the applicable  
106 documentation or proof to the depository or the clerk of the  
107 court.

108 Section 3. Paragraph (a) of subsection (1), subsection (2),  
109 paragraph (a) of subsection (3), and subsections (4), (8), and  
110 (9) of section 61.181, Florida Statutes, are amended to read:

111 61.181 Depository for alimony transactions, support,  
112 maintenance, and support payments; fees.—

113 (1)(a) The office of the clerk of the court shall operate a  
114 depository ~~unless the depository is otherwise created by special~~  
115 ~~act of the Legislature or unless, prior to June 1, 1985, a~~  
116 ~~different entity was established to perform such functions.~~ The

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117 department shall, ~~no later than July 1, 1998,~~ extend  
118 participation in the federal child support cost reimbursement  
119 program to the ~~central~~ depository in each county, to the ~~maximum~~  
120 extent allowable ~~possible~~ under ~~existing~~ federal law. The  
121 depository shall receive reimbursement for services provided  
122 under a cooperative agreement with the department pursuant to s.  
123 61.1826. Each depository shall participate in the State  
124 Disbursement Unit and shall implement all statutory and  
125 contractual duties imposed on the State Disbursement Unit. Each  
126 depository shall receive from and transmit to the State  
127 Disbursement Unit required data through the Clerk of Court Child  
128 Support Enforcement Collection System. Payments on non-IV-D non-  
129 ~~Title IV-D~~ cases without income deduction orders may not ~~shall~~  
130 ~~not~~ be sent to the State Disbursement Unit.

131 (2) (a) The depository shall impose and collect a fee on  
132 payments on non-IV-D cases. The fee is 4 percent of the payment,  
133 except no fee may be less than \$1 or more than \$5.25 ~~For~~  
134 ~~payments not required to be processed through the State~~  
135 ~~Disbursement Unit, the depository shall impose and collect a fee~~  
136 ~~on each payment made for receiving, recording, reporting,~~  
137 ~~disbursing, monitoring, or handling alimony or child support~~  
138 ~~payments as required under this section. For non-Title IV-D~~  
139 ~~cases required to be processed by the State Disbursement Unit~~  
140 ~~pursuant to this chapter, the State Disbursement Unit shall, on~~  
141 ~~each payment received, collect a fee, and shall transmit to the~~  
142 ~~depository in which the case is located 40 percent of such~~  
143 ~~service charge for the depository's administration, management,~~  
144 ~~and maintenance of such case. If a payment is made to the State~~  
145 ~~Disbursement Unit which is not accompanied by the required fee,~~

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146 ~~the State Disbursement Unit shall not deduct any moneys from the~~  
147 ~~support payment for payment of the fee. The fee shall be a flat~~  
148 ~~fee based, to the extent practicable, upon estimated reasonable~~  
149 ~~costs of operation. The fee shall be reduced in any case in~~  
150 ~~which the fixed fee results in a charge to any party of an~~  
151 ~~amount greater than 3 percent of the amount of any support~~  
152 ~~payment made in satisfaction of the amount which the party is~~  
153 ~~obligated to pay, except that no fee shall be less than \$1 nor~~  
154 ~~more than \$5 per payment made. The court shall consider the fee~~  
155 ~~shall be considered by the court in determining the amount of~~  
156 ~~support that the obligor is, or may be, required to pay. A fee~~  
157 ~~may not be imposed on payments on IV-D cases.~~

158 (b)1. ~~The fee imposed in paragraph (a) shall be increased~~  
159 ~~to 4 percent of the support payments which the party is~~  
160 ~~obligated to pay, except that no fee shall be more than \$5.25.~~  
161 ~~The fee shall be considered by the court in determining the~~  
162 ~~amount of support that the obligor is, or may be, required to~~  
163 ~~pay. Notwithstanding the provisions of s. 145.022, the fee for~~  
164 ~~non-IV-D cases must be distributed 75 percent of the additional~~  
165 ~~revenues generated by this paragraph shall be remitted monthly~~  
166 ~~to the Clerk of the Court Child Support Enforcement Collection~~  
167 ~~System Trust Fund administered by the department as provided in~~  
168 ~~subparagraph 2., calculated as follows:~~

169 a. For each support payment of less than \$33, 18.75 cents.

170 b. For each support payment between \$33 and \$140 inclusive,  
171 an amount equal to 75 percent of the difference between 4  
172 percent of the payment amount not to exceed \$5.25 and 3 percent  
173 of the payment amount not to exceed \$5.00.

174 c. For each support payment in excess of \$140, 18.75 cents.

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175  
176 These funds must ~~shall~~ be used exclusively for the development,  
177 implementation, and operation of the Clerk of the Court Child  
178 Support Enforcement Collection System to be operated by the  
179 depositories, including the automation of civil case information  
180 necessary for the State Case Registry. The department shall  
181 contract with the Florida Association of Court Clerks and the  
182 depositories to design, establish, operate, upgrade, and  
183 maintain the automation of the depositories to include, but not  
184 be limited to, the provision of online electronic transfer of  
185 information to the IV-D agency as otherwise required by this  
186 chapter. The department's obligation to fund the automation of  
187 the depositories is limited to the state share of funds  
188 available in the Clerk of the Court Child Support Enforcement  
189 Collection System Trust Fund. Each depository created under this  
190 section must ~~shall~~ fully participate in the Clerk of the Court  
191 Child Support Enforcement Collection System and transmit data in  
192 a readable format as required by the contract between the  
193 Florida Association of Court Clerks and the department.

194       2. For payments not processed through the State  
195 Disbursement Unit, the clerk of the court shall retain the  
196 balance of the fee for receiving, recording, reporting,  
197 disbursing, monitoring, or handling alimony or child support  
198 payments as required under this section.

199       3. For payments processed through the State Disbursement  
200 Unit, the clerk of the court shall retain 40 percent of the fee  
201 for the depository's administration, management, and maintenance  
202 of the case. After retaining 40 percent of the fee and paying  
203 the amount due to the Clerk of the Court Child Support

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204 Enforcement Collection System Trust Fund, the clerk of the court  
205 shall transmit the balance of the fee to the department for  
206 handling as program income under s. 61.1814.

207 (c) Moneys to be remitted under subparagraphs (b)1. and 3.  
208 must be remitted no less often than monthly in accordance with  
209 s. 28.245 to the Clerk of the Court Revenue Remittance System.

210 ~~(d) Moneys to be remitted to the department by the~~  
211 ~~depository shall be done daily by electronic funds transfer and~~  
212 ~~calculated as follows:~~

213 ~~a. For each support payment of less than \$33, 18.75 cents.~~

214 ~~b. For each support payment between \$33 and \$140, an amount~~  
215 ~~equal to 18.75 percent of the fee charged.~~

216 ~~c. For each support payment in excess of \$140, 18.75 cents.~~

217 ~~3.~~ The fees established by this section shall be set forth  
218 and included in every order of support entered by a court of  
219 this state which requires payment to be made into the  
220 depository.

221 (3) (a) For payments not required to be processed through  
222 the State Disbursement Unit, the depository shall collect and  
223 distribute all support payments paid into the depository to the  
224 appropriate party. ~~On or after July 1, 1998,~~ If a payment is  
225 made on a ~~Title~~ IV-D case which is not accompanied by the  
226 required transaction fee, the depository may ~~shall~~ not deduct  
227 any moneys from the support payment for payment of the fee.  
228 Nonpayment of the required fee shall be considered a  
229 delinquency, and when the total of fees and costs which are due  
230 but not paid exceeds \$50, the judgment by operation of law  
231 process set forth in s. 61.14(6) (a) shall become applicable and  
232 operational. As part of its collection and distribution

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233 functions, the depository shall maintain records listing:

234 1. The obligor's name, address, social security number,  
235 place of employment, and any other sources of income.

236 2. The obligee's name, address, and social security number.

237 3. The amount of support due as provided in the court  
238 order.

239 4. The schedule of payment as provided in the court order.

240 5. The actual amount of each support payment received, the  
241 date of receipt, the amount disbursed, and the recipient of the  
242 disbursement.

243 6. The unpaid balance of any arrearage due as provided in  
244 the court order.

245 7. Other records as necessary to comply with federal  
246 reporting requirements.

247 ~~(4) The depository shall provide to the IV-D agency, at~~  
248 ~~least once a month, a listing of IV-D accounts which identifies~~  
249 ~~all delinquent accounts, the period of delinquency, and total~~  
250 ~~amount of delinquency. The list shall be in alphabetical order~~  
251 ~~by name of obligor, shall include the obligee's name and case~~  
252 ~~number, and shall be provided at no cost to the IV-D agency.~~

253 (7) ~~(8)~~ ~~On or before July 1, 1994,~~ The depository shall  
254 provide information required by this chapter to be transmitted  
255 to the ~~Title~~ IV-D agency by online electronic transmission  
256 pursuant to rules promulgated by the ~~Title IV-D~~ agency.

257 ~~(9) If the increase in fees as provided by paragraph (2) (b)~~  
258 ~~expires or is otherwise terminated, the depository shall not be~~  
259 ~~required to provide the Title IV-D agency the date provided by a~~  
260 ~~payor as required by s. 61.1301.~~

261 Section 4. Section 61.1811, Florida Statutes, is amended to

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262 read:

263 61.1811 Clerk of the Court Child Support Enforcement  
264 Collection System Trust Fund.—There is hereby created the Clerk  
265 of the Court Child Support Enforcement Collection System Trust  
266 Fund to be used to deposit the department's share of the fees  
267 generated in s. 61.181(2)(b)1 ~~s. 61.181(2)(b)~~.

268 Section 5. Paragraph (c) of subsection (2) of section  
269 61.30, Florida Statutes, is amended to read:

270 61.30 Child support guidelines; retroactive child support.—

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

273 (c) ~~Except for incarceration for willful nonpayment of~~  
274 ~~child support or for an offense against a child or person who is~~  
275 ~~owed child support,~~ Incarceration may not be treated as  
276 voluntary unemployment in establishing or modifying a support  
277 order. However, the court may deviate from the child support  
278 guideline amount as provided in paragraph (1)(a).

279 Section 6. Paragraph (a) of subsection (2) of section  
280 409.256, Florida Statutes, is amended to read:

281 409.256 Administrative proceeding to establish paternity or  
282 paternity and child support; order to appear for genetic  
283 testing.—

284 (2) JURISDICTION; LOCATION OF HEARINGS; RIGHT OF ACCESS TO  
285 THE COURTS.—

286 (a) The department may commence a paternity proceeding or a  
287 paternity and child support proceeding as provided in subsection

288 (4) if:

289 1. The child's paternity has not been established.

290 2. No one is named as the father on the child's birth

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291 certificate or the person named as the father is the putative  
292 father named in an affidavit or a written declaration as  
293 provided in subparagraph 5.

294 3. The child's mother was unmarried when the child was  
295 conceived and born.

296 4. The department is providing services under Title IV-D of  
297 the Social Security Act.

298 5. The child's mother, caregiver, or a putative father has  
299 stated in an affidavit, or in a written declaration as provided  
300 in s. 92.525(2), that the putative father is or may be the  
301 child's biological father. The affidavit or written declaration  
302 must set forth the factual basis for the allegation of paternity  
303 as provided in s. 742.12(2).

304 Section 7. Subsection (8) of section 409.2563, Florida  
305 Statutes, is amended to read:

306 409.2563 Administrative establishment of child support  
307 obligations.—

308 (8) FILING WITH THE CLERK OF THE CIRCUIT COURT; OFFICIAL  
309 PAYMENT RECORD; JUDGMENT BY OPERATION OF LAW.—The department  
310 shall file with the clerk of the circuit court a copy of an  
311 administrative support order rendered under this section. The  
312 depository operated pursuant to s. 61.181 for the county where  
313 the administrative support order has been filed shall:

314 (a) Act as the official recordkeeper for payments required  
315 under the administrative support order;

316 (b) Establish and maintain the necessary payment accounts;

317 (c) Upon a delinquency, initiate the judgment by operation  
318 of law procedure as provided by s. 61.14(6); and

319 (d) Perform all other duties required of a depository with

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320 respect to a support order entered by a court of this state.  
321  
322 When a proceeding to establish an administrative support order  
323 is commenced under subsection (4), the department shall file a  
324 copy of the initial notice with the depository. The depository  
325 shall assign an account number and provide the account number to  
326 the department within 4 business days after the initial notice  
327 is filed. When the department receives a payment record from a  
328 IV-D agency or a court in another state, as the term "state" is  
329 defined by s. 88.1011, and the payment record shows the obligor  
330 made a payment in that state pursuant to an administrative  
331 support order rendered by the department, the department shall  
332 file the payment record with the clerk of the court depository,  
333 requesting the clerk to review the record and update the clerk's  
334 payment accounts, applying credit for payments made to the other  
335 state for which the clerk has not previously provided credit. If  
336 the payment record from the other state indicates the obligor  
337 has made payments that are not reflected in the clerk's payment  
338 accounts, the clerk must credit the account in the amount of the  
339 payment made to the other state. A party to the administrative  
340 proceeding may dispute the application of credit in a subsequent  
341 proceeding concerning payment under the administrative support  
342 order.

343 Section 8. This act shall take effect July 1, 2023.