

By Senator Lynn

7-71-04

1 A bill to be entitled
2 An act relating to child support; amending s.
3 61.046, F.S.; redefining the term "support
4 order" for purposes of ch. 61, F.S., to include
5 an order of an administrative agency; amending
6 s. 61.13, F.S.; deleting the requirement that a
7 child support order include the minor's social
8 security number; amending s. 61.181, F.S.;
9 requiring the clerk of the court to establish
10 an account for interstate cases; amending s.
11 120.80, F.S.; providing for the location of an
12 administrative hearing; amending ss. 382.013
13 and 382.016, F.S.; permitting voluntary
14 acknowledgments of paternity which are
15 witnessed; amending s. 409.2557, F.S.;
16 authorizing the Department of Revenue to adopt
17 rules to administer the withholding of
18 insurance payments; amending s. 409.2558, F.S.;
19 providing for a notice to the noncustodial
20 parent in applying an undistributable support
21 collection to another support order; amending
22 s. 409.2561, F.S.; providing for the Department
23 of Revenue to establish the obligation of
24 support; amending s. 409.2563, F.S.; providing
25 for the noncustodial parent to request that the
26 Department of Revenue proceed in circuit court
27 to determine the support obligation; revising
28 the requirements under which a noncustodial
29 parent may petition the circuit court to
30 determine the support obligation; providing
31 that the Department of Revenue is a party to

1 court action only with respect to issues of
2 support; amending s. 409.25656, F.S.; providing
3 for the recovery of fees in liquidating
4 securities for the support owed; creating s.
5 409.25659, F.S.; providing for withholding
6 insurance payments for unpaid support;
7 providing definitions; specifying the duties of
8 the insurer; providing that unpaid support
9 constitutes a lien against an insurance claim;
10 providing for notice to the obligor; providing
11 for payment to the Department of Revenue;
12 providing for an exemption for certain fees and
13 expenses; providing rulemaking authority;
14 amending s. 409.257, F.S.; permitting the use
15 of any means of service of process under ch.
16 48, F.S.; amending s. 409.2572, F.S.; revising
17 the definition of noncooperation or failure to
18 cooperate as applied to an applicant for or a
19 recipient of public assistance; amending s.
20 409.259, F.S.; revising the manner of
21 reimbursement to the clerk of the court for
22 court filings in Title IV-D cases; creating s.
23 440.123, F.S.; requiring an insurer paying
24 workers' compensation insurance to inquire
25 about unpaid child support; amending s. 440.20,
26 F.S.; requiring the judge of compensation
27 claims to obtain information on the support
28 owed; amending s. 742.10, F.S.; permitting
29 voluntary acknowledgments of paternity which
30 are witnessed; providing effective dates.
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1 Be It Enacted by the Legislature of the State of Florida:

2

3 Section 1. Subsection (19) of section 61.046, Florida
4 Statutes, is amended to read:

5 61.046 Definitions.--As used in this chapter:

6 (19) "Support order" means a judgment, decree, or
7 order, whether temporary or final, issued by a court or
8 administrative agency of competent jurisdiction for the
9 support and maintenance of a child which provides for monetary
10 support, health care, arrearages, or past support. When the
11 child support obligation is being enforced by the Department
12 of Revenue, the term "support order" also means a judgment,
13 decree, or order, whether temporary or final, issued by a
14 court of competent jurisdiction for the support and
15 maintenance of a child and the spouse or former spouse of the
16 obligor with whom the child is living which provides for
17 monetary support, health care, arrearages, or past support.

18 Section 2. Paragraph (d) of subsection (1) of section
19 61.13, Florida Statutes, is amended to read:

20 61.13 Custody and support of children; visitation
21 rights; power of court in making orders.--

22 (1)

23 (d)1. Unless the provisions of subparagraph 3. apply,
24 all child support orders entered on or after January 1, 1985,
25 shall direct that the payments of child support be made as
26 provided in s. 61.181 through the depository in the county
27 where the court is located. All child support orders shall
28 provide the full name and date of birth, ~~and social security~~
29 ~~number~~ of each minor child who is the subject of the child
30 support order.

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1 2. Unless the provisions of subparagraph 3. apply, all
2 child support orders entered before January 1, 1985, shall be
3 modified by the court to direct that payments of child support
4 shall be made through the depository in the county where the
5 court is located upon the subsequent appearance of either or
6 both parents to modify or enforce the order, or in any related
7 proceeding.

8 3. If both parties request and the court finds that it
9 is in the best interest of the child, support payments need
10 not be directed through the depository. The order of support
11 shall provide, or shall be deemed to provide, that either
12 party may subsequently apply to the depository to require
13 direction of the payments through the depository. The court
14 shall provide a copy of the order to the depository.

15 4. If the parties elect not to require that support
16 payments be made through the depository, any party may
17 subsequently file an affidavit with the depository alleging a
18 default in payment of child support and stating that the party
19 wishes to require that payments be made through the
20 depository. The party shall provide copies of the affidavit to
21 the court and to each other party. Fifteen days after receipt
22 of the affidavit, the depository shall notify both parties
23 that future payments shall be paid through the depository.

24 5. In IV-D cases, the IV-D agency shall have the same
25 rights as the obligee in requesting that payments be made
26 through the depository.

27 Section 3. Effective July 1, 2004, subsection (1) of
28 section 61.181, Florida Statutes, is amended to read:

29 61.181 Depository for alimony transactions, support,
30 maintenance, and support payments; fees.--

31

1 (1)(a) The office of the clerk of the court shall
2 operate a depository unless the depository is otherwise
3 created by special act of the Legislature or unless, prior to
4 June 1, 1985, a different entity was established to perform
5 such functions. The department shall, no later than July 1,
6 1998, extend participation in the federal child support cost
7 reimbursement program to the central depository in each
8 county, to the maximum extent possible under existing federal
9 law. The depository shall receive reimbursement for services
10 provided under a cooperative agreement with the department
11 pursuant to s. 61.1826. Each depository shall participate in
12 the State Disbursement Unit and shall implement all statutory
13 and contractual duties imposed on the State Disbursement Unit.
14 Each depository shall receive from and transmit to the State
15 Disbursement Unit required data through the Clerk of Court
16 Child Support Enforcement Collection System. Payments on
17 non-Title IV-D cases without income deduction orders shall not
18 be sent to the State Disbursement Unit.

19 (b) Upon request by the IV-D agency, the depository
20 created pursuant to paragraph (a) shall establish an account
21 for the receipt and disbursement of support payments for IV-D
22 interstate cases. The IV-D agency shall provide a copy of the
23 other state's order with the request, and the depository shall
24 advise the IV-D agency of the account number in writing within
25 4 business days after receipt of the request.

26 Section 4. Paragraph (c) of subsection (14) of section
27 120.80, Florida Statutes, is amended to read:

28 120.80 Exceptions and special requirements;
29 agencies.--

30 (14) DEPARTMENT OF REVENUE.--

31

1 (c) Proceedings for administrative support orders.--In
2 proceedings for the establishment of administrative support
3 orders pursuant to s. 409.2563, final orders in cases referred
4 by the Department of Revenue to the Division of Administrative
5 Hearings shall be entered by the division's administrative law
6 judge and transmitted to the Department of Revenue for filing
7 and rendering. The Department of Revenue has the right to seek
8 judicial review under s. 120.68 of a final order entered by an
9 administrative law judge. Administrative support orders
10 rendered pursuant to s. 409.2563 may be enforced pursuant to
11 s. 120.69 or, alternatively, by any method prescribed by law
12 for the enforcement of judicial support orders, except
13 contempt. Hearings held by the Division of Administrative
14 Hearings pursuant to s. 409.2563 shall be held in the judicial
15 circuit where the person receiving services under Title IV-D
16 resides or, if the person receiving services under Title IV-D
17 does not reside in this state, in the judicial circuit where
18 the respondent resides. If the department and the respondent
19 agree, the hearing may be held in another location.

20 Section 5. Effective July 1, 2004, paragraph (c) of
21 subsection (2) of section 382.013, Florida Statutes, is
22 amended to read:

23 382.013 Birth registration.--A certificate for each
24 live birth that occurs in this state shall be filed within 5
25 days after such birth with the local registrar of the district
26 in which the birth occurred and shall be registered by the
27 local registrar if the certificate has been completed and
28 filed in accordance with this chapter and adopted rules. The
29 information regarding registered births shall be used for
30 comparison with information in the state case registry, as
31 defined in chapter 61.

1 (2) PATERNITY.--

2 (c) If the mother is not married at the time of the
3 birth, the name of the father may not be entered on the birth
4 certificate without the execution of an affidavit signed by
5 both the mother and the person to be named as the father. The
6 facility shall give notice orally or through the use of video
7 or audio equipment, and in writing, of the alternatives to,
8 the legal consequences of, and the rights, including, if one
9 parent is a minor, any rights afforded due to minority status,
10 and responsibilities that arise from signing an acknowledgment
11 of paternity, as well as information provided by the Title
12 IV-D agency established pursuant to s. 409.2557, regarding the
13 benefits of voluntary establishment of paternity. Upon request
14 of the mother and the person to be named as the father, the
15 facility shall assist in the execution of the affidavit or a
16 notarized voluntary acknowledgment of paternity or a voluntary
17 acknowledgement of paternity that is witnessed by two
18 individuals and signed under penalty of perjury as specified
19 by s. 92.525(2).

20 Section 6. Effective July 1, 2004, paragraph (b) of
21 subsection (1) of section 382.016, Florida Statutes, is
22 amended to read:

23 382.016 Amendment of records.--The department, upon
24 receipt of the fee prescribed in s. 382.0255; documentary
25 evidence, as specified by rule, of any misstatement, error, or
26 omission occurring in any birth, death, or fetal death record;
27 and an affidavit setting forth the changes to be made, shall
28 amend or replace the original certificate as necessary.

29 (1) CERTIFICATE OF LIVE BIRTH AMENDMENT.--

30 (b) Upon written request and receipt of an affidavit
31 or notarized voluntary acknowledgment of paternity signed by

1 the mother and father acknowledging the paternity of a
2 registrant born out of wedlock, or a voluntary acknowledgement
3 of paternity that is witnessed by two individuals and signed
4 under penalty of perjury as specified by s. 92.525(2),
5 together with sufficient information to identify the original
6 certificate of live birth, the department shall prepare a new
7 birth certificate, which shall bear the same file number as
8 the original birth certificate. The names and identifying
9 information of the parents shall be entered as of the date of
10 the registrant's birth. The surname of the registrant may be
11 changed from that shown on the original birth certificate at
12 the request of the mother and father of the registrant, or the
13 registrant if of legal age. If the mother and father marry
14 each other at any time after the registrant's birth, the
15 department shall, upon the request of the mother and father or
16 registrant if of legal age and proof of the marriage, amend
17 the certificate with regard to the parents' marital status as
18 though the parents were married at the time of birth. The
19 department shall substitute the new certificate of birth for
20 the original certificate on file. All copies of the original
21 certificate of live birth in the custody of a local registrar
22 or other state custodian of vital records shall be forwarded
23 to the State Registrar. Thereafter, when a certified copy of
24 the certificate of birth or portion thereof is issued, it
25 shall be a copy of the new certificate of birth or portion
26 thereof, except when a court order requires issuance of a
27 certified copy of the original certificate of birth. The
28 department shall place the original certificate of birth and
29 all papers pertaining thereto under seal, not to be broken
30 except by order of a court of competent jurisdiction or as
31 otherwise provided by law.

1 Section 7. Effective July 1, 2004, subsection (3) of
2 section 409.2557, Florida Statutes, is amended to read:

3 409.2557 State agency for administering child support
4 enforcement program.--

5 (3) SPECIFIC RULEMAKING AUTHORITY.--The department has
6 the authority to adopt rules pursuant to ss. 120.536(1) and
7 120.54 to implement all laws administered by the department in
8 its capacity as the Title IV-D agency for this state
9 including, but not limited to, the following:

10 (a) Background screening of department employees and
11 applicants, including criminal records checks;

12 (b) Confidentiality and retention of department
13 records; access to records; record requests;

14 (c) Department trust funds;

15 (d) Federal funding procedures;

16 (e) Agreements with law enforcement and other state
17 agencies; National Crime Information Center (NCIC) access;
18 Parent Locator Service access;

19 (f) Written agreements entered into between the
20 department and support obligors in establishment, enforcement,
21 and modification proceedings;

22 (g) Procurement of services by the department, pilot
23 programs, and demonstration projects;

24 (h) Management of cases by the department involving
25 any documentation or procedures required by federal or state
26 law, including but not limited to, cooperation; review and
27 adjustment; audits; interstate actions; diligent efforts for
28 service of process;

29 (i) Department procedures for orders for genetic
30 testing; subpoenas to establish, enforce, or modify orders;
31 increasing the amount of monthly obligations to secure

1 delinquent support; suspending or denying driver's and
2 professional licenses and certificates; fishing and hunting
3 license suspensions; suspending vehicle and vessel
4 registrations; screening applicants for new or renewal
5 licenses, registrations, or certificates; income deduction;
6 credit reporting and accessing; tax refund intercepts;
7 passport denials; liens; financial institution data matches;
8 expedited procedures; medical support; and all other
9 responsibilities of the department as required by state or
10 federal law;

11 (j) Collection and disbursement of support and alimony
12 payments by the department as required by federal law;
13 collection of genetic testing costs and other costs awarded by
14 the court;

15 (k) Report information to and receive information from
16 other agencies and entities;

17 (l) Provide location services, including accessing
18 from and reporting to federal and state agencies;

19 (m) Privatizing location, establishment, enforcement,
20 modification, and other functions;

21 (n) State case registry;

22 (o) State disbursement unit;

23 (p) Administrative proceedings to establish
24 child-support obligations; ~~and~~

25 (q) Insurer reporting of liability claims, withholding
26 of insurance payments for unpaid support, and reporting of
27 weekly workers' compensation; and

28 (r)~~(q)~~ All other responsibilities of the department as
29 required by state or federal law.

30 Section 8. Paragraph (b) of subsection (2) of section
31 409.2558, Florida Statutes, is amended to read:

1 409.2558 Support distribution and disbursement.--
2 (2) UNDISTRIBUTABLE COLLECTIONS.--
3 (b) Collections that are determined to be
4 undistributable shall be processed in the following order of
5 priority:
6 1. Apply the payment to any assigned arrears on the
7 custodial parent's case; then
8 2. Apply the payment to any administrative costs
9 ordered by the court pursuant to s. 409.2567 associated with
10 the custodial parent's case; then
11 3. When the noncustodial parent is subject to a valid
12 order to support another child ~~other children~~ in a ~~another~~
13 case with a different custodial parent and the obligation is
14 being enforced by the department, the department shall mail a
15 notice to the noncustodial parent at the most recent known
16 address in the department's records, stating the department's
17 intention to apply the payment pursuant to this subparagraph,
18 and advising the noncustodial parent of the right to contest
19 the department's proposed action in the circuit court by
20 filing and serving a petition on the department within 20 days
21 after the mailing date of the department's notice. If the
22 noncustodial parent does not file and serve a petition within
23 the 20 days, or upon a disposition of the judicial action
24 favorable to the department, the department shall,~~with the~~
25 ~~noncustodial parent's permission,~~ apply the payment towards
26 his or her other support obligation. If there is more than one
27 such other case, the department shall allocate the remaining
28 undistributable amount as specified by s. 61.1301(4)(c); then
29 4. Return the payment to the noncustodial parent; then
30 5. If the noncustodial parent cannot be located after
31 diligent efforts by the department, the federal share of the

1 payment shall be credited to the Federal Government and the
2 state share shall be transferred to the General Revenue Fund.

3 Section 9. Subsection (1) of section 409.2561, Florida
4 Statutes, is amended to read:

5 409.2561 Support obligations when public assistance is
6 paid; assignment of rights; subrogation; medical and health
7 insurance information.--

8 (1) Any payment of temporary cash or Title IV-E
9 assistance made to, or for the benefit of, any dependent child
10 creates an obligation in an amount determined pursuant to the
11 child support guidelines. In accordance with 42 U.S.C. s. 657,
12 the state shall retain amounts collected only to the extent
13 necessary to reimburse amounts paid to the family as
14 assistance by the state. Such amounts collected shall be
15 deposited into the General Revenue Fund up to the level
16 specified in s. 61.1812. If there has been a prior support
17 ~~court~~ order or final judgment of dissolution of marriage
18 establishing an obligation of support, the obligation is
19 limited to the amount provided by such support ~~court~~ order or
20 decree. The extraordinary remedy of contempt is applicable in
21 child support enforcement cases because of the public
22 necessity for ensuring that dependent children be maintained
23 from the resources of their parents, thereby relieving, at
24 least in part, the burden presently borne by the general
25 citizenry through the public assistance program. If there is
26 no prior support ~~court~~ order ~~establishing an obligation of~~
27 ~~support~~, the court, or the department as provided by s.
28 409.2563, shall establish the liability of the obligor, if
29 any, by applying the child support guidelines. The department
30 may apply for modification of a support ~~court~~ order on the
31 same grounds as either party to the cause and shall have the

1 right to settle and compromise actions brought pursuant to
2 law.

3 Section 10. Subsection (4) of section 409.2563,
4 Florida Statutes, is amended to read:

5 409.2563 Administrative establishment of child support
6 obligations.--

7 (4) NOTICE OF PROCEEDING TO ESTABLISH ADMINISTRATIVE
8 SUPPORT ORDER.--To commence a proceeding under this section,
9 the department shall provide to the custodial parent and serve
10 the noncustodial parent with a notice of proceeding to
11 establish administrative support order and a blank financial
12 affidavit form. The notice must state:

13 (a) The names of both parents, the name of the
14 caretaker relative, if any, and the name and date of birth of
15 the child or children;

16 (b) That the department intends to establish an
17 administrative support order as defined in this section;

18 (c) That both parents must submit a completed
19 financial affidavit to the department within 20 days after
20 receiving the notice, as provided by paragraph (13)(a);

21 (d) That both parents, or parent and caretaker
22 relative if applicable, are required to furnish to the
23 department information regarding their identities and
24 locations, as provided by paragraph (13)(b);

25 (e) That both parents, or parent and caretaker
26 relative if applicable, are required to promptly notify the
27 department of any change in their mailing addresses to ensure
28 receipt of all subsequent pleadings, notices, and orders, as
29 provided by paragraph (13)(c);

30 (f) That the department will calculate support
31 obligations based on the child support guidelines in s. 61.30

1 and using all available information, as provided by paragraph
2 (5)(a), and will incorporate such obligations into a proposed
3 administrative support order;

4 (g) That the department will send by regular mail to
5 both parents, or parent and caretaker relative if applicable,
6 a copy of the proposed administrative support order, the
7 department's child support worksheet, and any financial
8 affidavits submitted by a parent or prepared by the
9 department;

10 (h) That the noncustodial parent may file a request
11 for a hearing in writing within 20 days after the date of
12 mailing or other service of the proposed administrative
13 support order or will be deemed to have waived the right to
14 request a hearing;

15 (i) That if the noncustodial parent does not file a
16 timely request for hearing after service of the proposed
17 administrative support order, the department will issue an
18 administrative support order that incorporates the findings of
19 the proposed administrative support order, and will send by
20 regular mail a copy of the administrative support order to
21 both parents, or parent and caretaker relative if applicable;

22 (j) That after an administrative support order is
23 rendered, the department will file a copy of the order with
24 the clerk of the circuit court;

25 (k) That after an administrative support order is
26 rendered, the department may enforce the administrative
27 support order by any lawful means;

28 (l) That either parent, or caretaker relative if
29 applicable, may file at any time a civil action in a circuit
30 court having jurisdiction and proper venue to determine the
31 noncustodial parent's child support obligations, if any, and

1 that a support order issued by a circuit court supersedes an
2 administrative support order rendered by the department;

3 (m) That, neither the department nor the Division of
4 Administrative Hearings has jurisdiction to award or change
5 child custody or rights of parental contact and these issues
6 may only be addressed in circuit court.

7 1. The noncustodial parent may request in writing that
8 the department proceed in circuit court to determine his or
9 her support obligations.

10 2. The noncustodial parent may state in writing to the
11 department his or her intention to address issues concerning
12 custody or rights to parental contact in circuit court.

13 3. If the noncustodial parent submits the request
14 authorized in subparagraph 1., or the statement authorized in
15 subparagraph 2. to the department within 20 days after the
16 receipt of the initial notice, the department shall file a
17 petition in circuit court for the determination of the
18 noncustodial parent's child support obligations, and shall
19 send to the noncustodial parent a copy of its petition, a
20 notice of commencement of action, and a request for waiver of
21 service of process provided in the Rules of Civil Procedure.

22 4. If, within 10 days after receipt of the
23 department's petition and waiver of service, the noncustodial
24 parent signs and returns the waiver of service form to the
25 department, the department shall terminate the administrative
26 proceeding without prejudice and proceed in circuit court.

27 5. In any circuit court action brought by the
28 department pursuant to this paragraph or brought by a
29 noncustodial parent or other person pursuant to paragraph (l)
30 or paragraph (n), the department shall be a party only with
31 respect to those issues of support allowed and reimbursable

1 under Title IV-D of the Social Security Act. It is the
2 responsibility of the noncustodial parent or other person to
3 take the necessary steps to present other issues for the court
4 to consider;~~That if the noncustodial parent has issues~~
5 ~~regarding child custody or right of parental contact or~~
6 ~~requests to proceed in circuit court, the noncustodial parent~~
7 ~~may request in writing that the department proceed in circuit~~
8 ~~court to determine support. That the noncustodial parent must~~
9 ~~make such request in writing within 20 days after receipt of~~
10 ~~the initial notice. That upon such request, the department~~
11 ~~shall send the noncustodial parent by regular mail a copy of~~
12 ~~the department's petition and waiver of service form. That the~~
13 ~~noncustodial parent must sign and return the waiver of service~~
14 ~~form, within 10 days of receipt of the petition, at which time~~
15 ~~the department shall terminate the administrative proceeding~~
16 ~~and file an action in circuit court to determine support;~~

17 (n) That if the noncustodial parent files an action in
18 circuit court and serves the department with a copy of the
19 petition within 20 days after being served notice under this
20 subsection, the administrative process ends without prejudice
21 and the action must proceed in circuit court;

22 (o) Information provided by the Office of State Courts
23 Administrator concerning the availability and location of
24 self-help programs for those who wish to file an action in
25 circuit court but who cannot afford an attorney.

26
27 The department may serve the notice of proceeding to establish
28 administrative support order by certified mail, restricted
29 delivery, return receipt requested. Alternatively, the
30 department may serve the notice by any means permitted for
31 service of process in a civil action. For purposes of this

1 section, an authorized employee of the department may serve
2 the notice and execute an affidavit of service. Service by
3 certified mail is completed when the certified mail is
4 received or refused by the addressee or by an authorized agent
5 as designated by the addressee in writing. If a person other
6 than the addressee signs the return receipt, the department
7 shall attempt to reach the addressee by telephone to confirm
8 whether the notice was received, and the department shall
9 document any telephonic communications. If someone other than
10 the addressee signs the return receipt, the addressee does not
11 respond to the notice, and the department is unable to confirm
12 that the addressee has received the notice, service is not
13 completed and the department shall attempt to have the
14 addressee served personally. The department shall provide the
15 custodial parent or caretaker relative with a copy of the
16 notice by regular mail to the last known address of the
17 custodial parent or caretaker.

18 Section 11. Subsection (3) of section 409.25656,
19 Florida Statutes, is amended to read:

20 409.25656 Garnishment.--

21 (3) During the last 30 days of the 60-day period set
22 forth in subsection (1), the executive director or his or her
23 designee may levy upon such credits, personal property, or
24 debts. The levy must be accomplished by delivery of a notice
25 of levy by registered mail, upon receipt of which the person
26 possessing the credits, other personal property, or debts
27 shall transfer them to the department or pay to the department
28 the amount owed by the obligor. If the department levies upon
29 securities and the value of the securities is less than the
30 total amount of past due or overdue support, the person who
31 possesses or controls the securities shall liquidate the

1 securities in a commercially reasonable manner. After
2 liquidation, the person shall transfer to the department the
3 proceeds, less any applicable commissions or fees, or both,
4 which are charged in the normal course of business. If the
5 value of the securities exceeds the total amount of past due
6 or overdue support, the obligor may, within 7 days after
7 receipt of the department's notice of levy, instruct the
8 person who possesses or controls the securities which
9 securities are to be sold to satisfy the obligation for past
10 due or overdue support. If the obligor does not provide
11 instructions for liquidation, the person who possesses or
12 controls the securities shall liquidate the securities in a
13 commercially reasonable manner ~~and~~ in an amount sufficient to
14 cover the obligation for past due or overdue support and, ~~less~~
15 any applicable commissions or fees, or both, which are charged
16 in the normal course of business, beginning with the
17 securities purchased most recently. After liquidation, the
18 person who possesses or controls the securities shall transfer
19 to the department the total amount of past due or overdue
20 support.

21 Section 12. Effective July 1, 2004, section 409.25659,
22 Florida Statutes, is created to read:

23 409.25659 Withholding of insurance payment for unpaid
24 support.--

25 (1) DEFINITIONS.--As used in this section, the term:

26 (a) "Insurer" means an entity that is responsible for
27 paying a claim on liability coverage in an insurance contract
28 and that is:

29 1. An insurer, as defined in s. 624.03, authorized to
30 transact insurance in this state;

31

1 2. An eligible surplus lines insurer pursuant to part
2 VIII of chapter 626;

3 3. A joint underwriter or joint reinsurer created by
4 law or otherwise operating pursuant to s. 627.311; or

5 4. An insurance risk apportionment plan operating
6 pursuant to s. 627.351.

7 (b) "Claim" means a claim on liability coverage in an
8 insurance contract payable to an individual, or to a third
9 party, for the benefit of an individual who is a resident of
10 this state or who had an accident or loss that occurred in
11 this state.

12 (2) INDIVIDUALS WHO OWE UNPAID SUPPORT; INSURER DUTY
13 TO INQUIRE; DUTY TO WITHHOLD PAYMENT.--

14 (a) The department shall periodically make available
15 from a secure Internet-enabled database or other centralized
16 source to insurers who are subject to this section information
17 concerning obligors in Title IV-D cases who owe unpaid support
18 in excess of \$500. For each obligor, the department shall
19 provide, at a minimum, the obligor's name, social security
20 number, last known address, and the amount of unpaid support
21 owed.

22 (b) Not more than 30 days before paying a claim, the
23 insurer shall inquire of the department pursuant to paragraph
24 (a) whether the claimant is an individual who owes unpaid
25 support by providing the department with the individual's
26 name, date of birth, social security number, and last known
27 address according to the insurer's records; the claim number;
28 the date of claim; the name of the insurer; and how the
29 insurer may be contacted. Within 30 days after the inquiry,
30 the department shall notify the insurer whether the individual
31 owes unpaid support and, if so, the amount owed. An insurer

1 shall withhold payment on a claim until the department
2 notifies the insurer that the individual does not owe unpaid
3 support or otherwise releases the insurer in writing from the
4 duty to withhold.

5 (3) NOTICE OF DEMAND FOR PAYMENT; LIEN FOR AMOUNT OF
6 UNPAID SUPPORT.--If the department determines pursuant to
7 subsection (2) that the individual owes unpaid support, the
8 department shall issue a written demand for payment to the
9 insurer, which may be transmitted electronically. A demand for
10 payment issued under this subsection constitutes a lien
11 against the obligor's claim for the amount of unpaid support
12 stated in the demand and any unpaid support that accrues
13 subsequent to the date of the demand. The lien becomes
14 effective when the demand for payment is received by the
15 insurer and is in addition to any preexisting lien for unpaid
16 support. Upon receipt of a demand for payment, the insurer
17 shall provide the department with the name and address of the
18 obligor's attorney or agent, if known, the amount withheld,
19 the date payment was withheld, and other known information
20 concerning the location, earnings, and assets of the obligor.
21 An insurer who is subject to a demand for payment on a claim
22 may not pay over, release, encumber, assign, or otherwise
23 transfer payment subject to the demand without written
24 authorization by the department or an order of the court.

25 (4) NOTICE TO OBLIGOR; ADMINISTRATIVE HEARING;
26 JUDICIAL REVIEW.--

27 (a) Upon issuing a demand for payment, the department
28 shall promptly provide a copy to the obligor and notify the
29 obligor in writing of the right to contest the demand for
30 payment by filing a written request for an administrative
31 hearing with the department within 21 days after the date of

1 mailing or personal delivery of the notice. Mailing of the
2 notice to the obligor's last known address is deemed adequate
3 notice. Failure to make a timely written request for a hearing
4 is deemed a waiver of the right to hearing. The department
5 also shall provide a copy of the demand for payment and notice
6 to the obligor's attorney or agent, if known.

7 (b) Any person whose substantial interests are
8 affected by the department's demand for payment may request an
9 administrative hearing as provided by chapter 120. Chapter 120
10 and the Uniform Rules of Procedure govern how administrative
11 hearings are conducted and the entry of final orders. Final
12 orders rendered under this section are subject to judicial
13 review as provided by s. 120.68.

14 (5) PAYMENT TO THE DEPARTMENT.--If the obligor does
15 not file a timely written request for an administrative
16 hearing or consents to the department's demand or the
17 department prevails after hearing, the department shall notify
18 the insurer to send to the department the full amount of the
19 withheld payment, not to exceed the amount of unpaid support,
20 less any amounts payable to the obligor or other entities as
21 specified by subsection (7). Payments due the department must
22 be made payable solely to the department.

23 (6) FULL OR PARTIAL RELEASE.--An insurer may be
24 released from the duty to withhold payment only upon written
25 notice by the department or by order of the court. The
26 department shall execute and deliver a release of the lien for
27 unpaid support to the obligor and the insurer upon payment in
28 full of the unpaid support and any costs due. The department
29 may release a lien fully or in part without liability as
30 needed to correctly reflect the amount of unpaid support owed,
31

1 if assurance of payment is considered adequate, or to
2 facilitate collection of the unpaid support.

3 (7) PRIORITY OF LIENS; ATTORNEYS FEES; MEDICAL
4 PROVIDERS; EXEMPTION FOR FUTURE MEDICAL EXPENSES.--

5 (a) A lien for unpaid support created by this section
6 is superior to all subsequent liens and security interests.
7 Liens perfected prior to creation of a lien under this
8 section, prior written notices of health care expenditures
9 related to the claim made by the health care providers, and
10 attorney's fees payable from insurance proceeds are not
11 subject to a lien created by this section.

12 (b) An amount not to exceed the lesser of 15 percent
13 of the total payment or \$5,000 for the obligor's future
14 medical expenses is exempt from a demand for payment under
15 this section if the expenses are due to a condition that gave
16 rise to the claim and are documented by a licensed physician.
17 The department shall notify the obligor of the exemption and
18 how to claim it when providing notice of the right to contest
19 a demand for payment under subsection (4). The obligor has the
20 burden of proving a claim for an exemption.

21 (8) INSURER IMMUNITY.--An insurer, its directors,
22 agents, or employees, and any central reporting organization
23 and its agents and employees authorized by an insurer to act
24 on its behalf who act in conformity with the requirements of
25 this section are immune from any liability to the claimant or
26 other payees, lienholders, or affected entities for any
27 alleged or actual damages that occur as a result of compliance
28 with these requirements.

29 (9) FAILURE TO COMPLY; REMEDIES.--An insurer who does
30 not inquire, withhold, or remit payments as required by this
31 section is liable to the department for the amount the insurer

1 should have withheld or remitted, plus costs, interest, and
2 reasonable attorney's fees. The department may bring an action
3 in circuit court to enforce any provision of this section.

4 (10) RULEMAKING AUTHORITY.--The department may adopt
5 rules to administer or enforce the requirements of this
6 section.

7 Section 13. Effective July 1, 2004, section 409.257,
8 Florida Statutes, is amended to read:

9 409.257 Service of process.--The service of initial
10 process and orders in lawsuits filed by the department, under
11 this act, shall be served by the sheriff in the county where
12 the person to be served may be found or, if determined more
13 effective by the department, by any means permitted under
14 chapter 48 for service of process in a civil action. The
15 sheriff shall be reimbursed at the prevailing rate of federal
16 financial participation for service of process and orders as
17 allowed by law. The sheriff shall bill the department monthly
18 as provided for in s. 30.51(2). In addition, process and
19 orders may be served or executed by authorized agents of the
20 department at the department's discretion; provided that the
21 agent of the department does not take any action against
22 personal property, real property, or persons. Notices and
23 other intermediate process, except witness subpoenas, shall be
24 served by the department as provided for in the Florida Rules
25 of Civil Procedure. Witness subpoenas shall be served by the
26 department by certified mail as provided for in s. 48.031(3).

27 Section 14. Subsections (1) and (2) of section
28 409.2572, Florida Statutes, are amended to read:

29 409.2572 Cooperation.--
30
31

1 (1) An applicant for, or recipient of, public
2 assistance for a dependent child shall cooperate in good faith
3 with the department or a program attorney in:

4 (a) Identifying and helping to locate the alleged
5 parent or obligor.

6 (b) Assisting in establishing the paternity of a child
7 born out of wedlock.

8 (c) Assisting in obtaining support payments from the
9 obligor.

10 (d) Assisting in obtaining any other payments or
11 property due from the obligor.

12 (e) Identifying another putative father when an
13 earlier named putative father has been excluded by DNA, Human
14 Leukocyte Antigen, or other scientific test.

15 (f) Appearing at an office of the department, or
16 another designated office, as necessary to provide verbal or
17 written information, or documentary or physical evidence,
18 known to, possessed by, or reasonably obtainable by the
19 applicant or recipient.

20 (g) Appearing as a witness at judicial or other
21 hearings or proceedings.

22 (h) Providing information under oath regarding the
23 identity or location of the alleged father of the child or
24 attesting to the lack of information.

25 (i) Paying to the department any support received from
26 the obligor after the assignment is effective.

27 (2) Noncooperation, or failure to cooperate in good
28 faith, is defined to include, but is not limited to, the
29 following conduct:

30 (a) ~~Failing or~~ Refusing to identify the father of the
31 child, or where more than one man could be the father of the

1 child, refusing to identify all such persons. ~~If the mother~~
2 ~~identifies one or more persons as the possible father of the~~
3 ~~child and asserts that there are no others who could be the~~
4 ~~father of the child, but the DNA test, Human Leukocyte Antigen~~
5 ~~test, or other scientific test indicates that none of the~~
6 ~~persons identified could in fact have been the father of the~~
7 ~~child, the mother shall be deemed noncooperative. If she~~
8 ~~subsequently identifies another person as the possible father~~
9 ~~of the child, she shall still be deemed noncooperative until~~
10 ~~that person has been given the DNA test, Human Leukocyte~~
11 ~~Antigen test, or other scientific test and is not excluded as~~
12 ~~the father by the test.~~

13 (b) Failing to appear for two appointments at the
14 department or other designated office without justification
15 and notice.

16 (c) Providing false information regarding the
17 paternity of the child or the obligation of the obligor.

18 (d) All actions of the obligee which interfere with
19 the state's efforts to proceed to establish paternity, the
20 obligation of support, or to enforce or collect support.

21 (e) Failure to appear at the laboratory for drawing of
22 blood samples, or leaving the laboratory prior to the drawing
23 of blood samples without compelling reasons.

24 (f) Failure to assist in the recovery of third-party
25 payment for medical services.

26 Section 15. Section 409.259, Florida Statutes, is
27 amended to read:

28 409.259 ~~Partial payment of Filing fees in Title IV-D~~
29 cases.--

30 (1) Notwithstanding s. 28.241, each clerk of the
31 circuit court shall accept petitions, complaints, and motions

1 in Title IV-D cases submitted for filing by the department
2 without billing separately for each such filing, since the
3 clerk is being reimbursed in a different manner for expenses
4 incurred in such filings under the cooperative agreement with
5 the department pursuant to ss. 61.181(1) and 61.1826(2) and
6 ~~(4).only be reimbursed at the prevailing rate of federal~~
7 ~~financial participation on the amount of \$40 for each civil~~
8 ~~action, suit, or proceeding for support instituted in the~~
9 ~~circuit court in which the parent is not receiving temporary~~
10 ~~cash assistance. The prevailing rate of the state match shall~~
11 ~~be paid by the local government in the form of a certified~~
12 ~~public expenditure. The clerk of the circuit court shall bill~~
13 ~~the department monthly. The clerk of the circuit court and~~
14 ~~the department shall maintain a monthly log of the number of~~
15 ~~civil actions, suits, or proceedings filed in which the parent~~
16 ~~does not receive temporary assistance. These monthly logs~~
17 ~~will be used to determine the number of \$40 filings the clerk~~
18 ~~of court may submit for reimbursement at the prevailing rate~~
19 ~~of federal financial participation.~~

20 (2) Notwithstanding subsection (1), the department
21 shall continue to be entitled to the other necessary services
22 of the clerk of court in any proceedings under the IV-D
23 program as authorized under s. 409.2571.

24 Section 16. Effective July 1, 2004, section 440.123,
25 Florida Statutes, is created to read:

26 440.123 Insurer paying periodic compensation; duty to
27 inquire about unpaid child support.--When the Internet-enabled
28 database specified by s. 409.25659 becomes operational, upon
29 determining that a claimant shall be paid weekly compensation,
30 an insurer as defined by s. 440.02(38) shall access the
31 database promptly to inquire whether the claimant owes unpaid

1 support. If it is determined after inquiry that a claimant
2 owes unpaid support, the insurer shall notify the Department
3 of Revenue at that time, through the Internet-enabled
4 database, by providing the individual's name, date of birth,
5 social security number, last known address according to the
6 insurer's records, and employer; the claim number; the weekly
7 compensation amount; the date of first payment; the name of
8 the insurer and how the insurer may be contacted; the name and
9 contact information of the payor of weekly compensation, if
10 different from the insurer; and the name and address of the
11 agent or attorney for the claimant, if any.

12 Section 17. Effective July 1, 2004, paragraph (d) of
13 subsection (11) of section 440.20, Florida Statutes, is
14 amended to read:

15 440.20 Time for payment of compensation; penalties for
16 late payment.--

17 (11)

18 (d)1. With respect to any lump-sum settlement under
19 this subsection, a judge of compensation claims must consider
20 at the time of the settlement, whether the settlement
21 allocation provides for the appropriate recovery of child
22 support arrearages. An employer or carrier does not have a
23 duty to investigate or collect information regarding child
24 support arrearages.

25 2. When reviewing any settlement of lump-sum payment
26 pursuant to this subsection, judges of compensation claims
27 shall consider the interests of the worker and the worker's
28 family when approving the settlement, which must consider and
29 provide for appropriate recovery of past due support.

30 3. With respect to any lump-sum settlement under this
31 subsection, any correspondence to a clerk of the circuit court

1 of this state regarding child support documentation shall be
2 exempt from any fees or costs ordinarily assessed by the
3 clerk's office.

4 4. Before approving a settlement, the judge of
5 compensation claims shall require a party to obtain a written
6 statement from the Department of Revenue disclosing whether
7 the worker owes unpaid support and, if so, the amount owed. In
8 addition, the judge of compensation claims may require a party
9 to obtain a similar statement from a local depository
10 established under s. 61.181.

11 Section 18. Effective July 1, 2004, subsection (1) of
12 section 742.10, Florida Statutes, is amended to read:

13 742.10 Establishment of paternity for children born
14 out of wedlock.--

15 (1) This chapter provides the primary jurisdiction and
16 procedures for the determination of paternity for children
17 born out of wedlock. When the establishment of paternity has
18 been raised and determined within an adjudicatory hearing
19 brought under the statutes governing inheritance, or
20 dependency under workers' compensation or similar compensation
21 programs, or when an affidavit acknowledging paternity or a
22 stipulation of paternity is executed by both parties and filed
23 with the clerk of the court, or when an affidavit, a ~~or~~
24 notarized voluntary acknowledgment of paternity, or a
25 voluntary acknowledgement of paternity that is witnessed by
26 two individuals and signed under penalty of perjury as
27 provided for in s. 382.013 or s. 382.016 is executed by both
28 parties, it shall constitute the establishment of paternity
29 for purposes of this chapter. If no adjudicatory proceeding
30 was held, a notarized voluntary acknowledgment of paternity or
31 voluntary acknowledgement of paternity that is witnessed by

1 two individuals and signed under penalty of perjury as
2 specified by s. 92.525(2) creates ~~shall create~~ a rebuttable
3 presumption, as defined by s. 90.304, of paternity and is
4 subject to the right of any signatory to rescind the
5 acknowledgment within 60 days after ~~of~~ the date the
6 acknowledgment was signed or the date of an administrative or
7 judicial proceeding relating to the child, including a
8 proceeding to establish a support order, in which the
9 signatory is a party, whichever is earlier. Both parents must
10 ~~are required to~~ provide their social security numbers on any
11 acknowledgment of paternity, consent affidavit, or stipulation
12 of paternity. Except for affidavits under seal pursuant to ss.
13 382.015 and 382.016, the Office of Vital Statistics shall
14 provide certified copies of affidavits to the Title IV-D
15 agency upon request.

16 Section 19. Except as otherwise expressly provided in
17 this act, this act shall take effect upon becoming a law.

18
19 *****

20 SENATE SUMMARY

21 Revises various provisions governing the payment and
22 collection of child support. Provides that the term
23 "support order" for purposes of ch. 61, F.S., includes an
24 order by an administrative agency. Provides for a court
25 account for interstate support cases. Provides for
26 voluntary, witnessed acknowledgments of paternity.
27 Provides for the Department of Revenue to establish the
28 obligation of support. Provides procedures under which a
29 noncustodial parent may petition the circuit court to
30 determine a support obligation. Requires that insurance
31 payments be withheld for payment of unpaid support.
Requires notice and provides duties of the insurer.
Requires that an insurer paying workers' compensation
insurance and a judge of compensation claims obtain
information on the support owed. (See bill for details.)