

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Children, Families, and Elder Affairs Committee

BILL: SPB 7072

INTRODUCER: For Consideration by Children, Families, and Elder Affairs Committee

SUBJECT: Child Support Enforcement

DATE: February 8, 2007

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Jameson	Jameson		Pre-meeting
2.				
3.				
4.				
5.				
6.				

I. Summary:

This proposed committee bill permits service of process by publication in support actions to legal fathers who are not biological fathers. The bill codifies federal requirements with regard to the mandatory \$25 fee for services provided by the Department of Revenue (DOR or “the department”) to establish paternity or to establish, modify, or enforce child support obligations, and codifies the federal requirement that states report individuals who owe arrearages of child support in an amount exceeding \$2,500. The bill permits the department to waive electronic remittance of child support payments in specified circumstances. Finally, the bill allows the department to establish a case based upon another state’s request for automated administrative enforcement of child support.

This bill substantially amends the following sections of the Florida Statutes: 49.011, 409.257 and 742.09.

II. Present Situation:

Service of Process

Service of process can be effectuated in several ways. Primarily, service of process occurs through actual delivery of a copy of the process to the witness or defendant, or through substituted service which can occur by delivery to a persons’ residence, or through notice by mail or publication as allowed by law. Section 49.011, F.S. permits service of process by publication in a number of specified legal proceedings. The persons who may be served through publication are enumerated in section 49.021, F.S. Currently, this section does not specifically address service to legal fathers in paternity actions.

In May of 2006, the Supreme Court of Florida held that, “. . . a legal father is an indispensable party in an action to determine paternity and to place support obligations on another man unless it is conclusively established that the legal father’s rights to the child have been divested by some earlier judgment.” *Department of Revenue v. Cummings*, 930 So.2d 604, 609 (Fla. 2006). Prior to this decision, the Department of Revenue served standardized complaints on putative fathers (alleged biological father), and attempted to provide a Notice of Action to the legal father (man who was married to the child’s mother at the time the child was conceived or born). The Department’s attempts included attempted personal service, or constructive notice through publication in a newspaper. According to the court, these attempts to provide service of process failed. The lower court opined that the “legal” father is an indispensable party. *Department of Revenue v. Cummings*, 871 So.2d 1055 (Fla. 2d DCA 2004). The Supreme Court agreed. This result requires actual service of process to the legal father.

Section 409.257, F.S., provides the department’s authority for service of process. This provision requires service by the sheriff, or by any means permitted under chapter 48, F.S.

Section 742.09, F.S., prohibits all media and all persons responsible for media publications or broadcasts of any kind from publishing the name of any party to any court proceeding relating to determination of parentage. A violation of this provision constitutes a first-degree misdemeanor.

Fees

The Department of Revenue is required to deposit Title IV-D program income into the Child Support Enforcement Application and Program Revenue Trust Fund. *See* s. 61.1814(2), F.S.

Pursuant to 42 U.S.C. s. 654(4)(A) the state plan for child and spousal support must provide services relating to the establishment of paternity or establishment, modification, or enforcement of child support obligations under the plan, and enforce specified support obligations. In addition, the state plan must provide for collection and disbursement of child support payments. *See* 42 U.S.C. s 654(5).

Federal law requires the imposition of an application fee for furnishing these services. *See* 42 U.S.C. 654(6)(B). In a case in which an individual who has never received assistance under a state program funded in part with federal dollars, and for whom the state has collected at least \$500 of support, the State must charge an annual fee of \$25 for each case in which services are furnished. This fee is required to be retained by the State from the support paid by the individual applying for the services, recovered from the absent parent, or paid by the State out of its own funds. If the fee is paid from State funds, the payment shall not be considered as an administrative cost of the State, and shall be considered income to the program. According to 45 C.F.R. s. 304.50, the state is required to reduce its quarterly claims for federal IV-D matching funds by the amount of program income.

Section 409.2567, F.S. is requires the Department to provide support services to all dependent children. Currently, the law does not authorize service of process by publication.

Unemployment Tax Payments

Employers who are required to remit sales and unemployment tax payments to the Department of Revenue electronically are also required to remit child support payments and associated data electronically when the child support is deducted under an income deduction order or notice. *See* s. 61.1024(6), F.S. Current law permits the Department to grant a waiver from the requirement to remit tax payments electronically, but does not permit the Department to grant a waiver from the requirement to remit child support payments electronically. *See* s. 213.755(9), F.S. Waivers may be granted when extenuating circumstances are present. Examples of situations in which a waiver may be granted include, but are not limited to: the employer does not have a computer that meets the minimum standards necessary for electronic remittance, additional time is needed for computer programming, the employer does not currently file data electronically with any business or government, electronic filing conflicts with the employer's business procedures, or compliance would cause financial hardship.

Denial, Revocation, or Limitation of United States Passport

Pursuant to 42 U.S.C. 452(k)(1), if a state agency certifies that an individual owes arrearages of child support in an amount exceeding \$2,500, the United States Secretary of State must refuse to issue a passport to the individual, or may revoke, restrict, or limit the individuals previously issued passport.

Interstate Enforcement

Section 409.25641, F.S., permits the Department of Revenue, when requested by another state, to use automated administrative enforcement to assist the other state in enforcing child support orders.

III. Effect of Proposed Changes:

Service of Process

Section 1. The bill adds subsection (15) to section 49.011, F.S. This subsection expands the list of actions or proceedings in which service of process may be made by publication to include proceedings to determine paternity. Service by publication in paternity proceedings is limited to the legal father in a paternity action in which another man is alleged to be the biological father. This change in law will address the court's opinion in *Department of Revenue v. Cummings*, 930 So.2d 604 (Fla. 2006), by specifically allowing notice to the legal father by publication.

Section 7. Section 409.257, F.S., is amended to conform to the changes in s. 49.011, F.S., specifically permitting the Department to provide service of process by publication.

Section 8. Section 742.09, F.S., is amended to conform to the changes in s. 49.011, F.S. (Section 1 of the bill), with regard to service by publication in paternity proceedings.

Fees

Section 2. Section 61.184, F.S., is amended to permit the collection of the annual fee required by federal law for each child support case in which the state has collected at least \$500 during the year. This change is necessary to comport with the changes to federal law contained in the Federal Deficit Reduction Act of 2005. See 42 U.S.C. s. 654.

Section 6. Section 409.2567, F.S., is amended to add paragraph (6) to require that the annual fee under s. 61.1814(2)(f), F.S., be paid by the Department until the Department can effect necessary systems changes. When the systems changes are completed, the Department will collect the fee from the obligor.

Unemployment Tax Payments

Section 3. The bill amends section 61.1824(2), F.S., to insert cross references to sections 213.755 and 443.163, F.S., in order to ensure the same requirements for electronic remittance of tax payments and child support payments. This section is also amended to allow the Department to waive the electronic remittance requirement making this section consistent with electronic remittance of tax payments under s. 213.755(9), F.S.

Denial, Revocation, or Limitation of United States Passport

Section 4. The bill amends s. 409.2564(10), F.S., to comply with changes in federal law. Arrearages in an amount exceeding \$2,500 (rather than \$5,000 which was the previous trigger amount) may result in the denial, revocation or limitation of a United States passport.

Interstate Enforcement

Section 5. The Federal Deficit Reduction Act of 2005, amended 42 U.S.C. s. 654(a)(14)(A)(iii). This amendment authorizes the assisting state to establish a corresponding case based upon another state's request for automated administrative enforcement. Previously, federal law had prohibited states from creating Title IV-D cases on state IV-D automated systems to process these requests. This bill amends s. 409.25641, F.S., to permit the Department to implement the changes to federal law by eliminating unnecessary words and inserting a reference to the Social Security Act.

Appropriation:

Section 9. This section provides for a shift of \$1,204,383 from the Child Support Application and Program Revenue Trust Fund to the General Revenue Fund for the Department of Revenue. This would cover the federally mandated annual fee under s. 61.1814(2)(f), F.S.

Section 10. Provides that the act will take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill provides for a shift of \$1,204,383 from the Child Support Application and Program Revenue Trust Fund to the General Revenue Fund for the Department of Revenue for FY 2007-08. This would cover the federally mandated annual fee under s. 61.1814(2)(f), F.S. According to the Department, the cost for FY 2008-09 will be \$1,605,844.

VI. Technical Deficiencies:

On page 4, line 7, reference is made to the wrong section of the Social Security Act. The citation should be to section 654(6)(B). In addition, the definition of the fee is misplaced in s. 61.1814, F.S., which is the Child Support Enforcement Trust Fund section. The description should be placed in s. 409.2567.

On page 10, lines 20-21 there is superfluous statement regarding annualized costs. This sentence should be deleted since it appears to be informational only.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

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