

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: CS/SB 694

INTRODUCER: Children, Families, and Elder Affairs Committee and

SUBJECT: Child Support Enforcement

DATE: March 9, 2010

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Walsh	Walsh	CF	Fav/CS
2.			JU	
3.			GA	
4.			RC	
5.				
6.				

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

CS/SB 694 makes multiple amendments to the statutes relating to Child Support Enforcement (CSE) to improve the effectiveness of the CSE program administered by the Department of Revenue (DOR). The amendments made in the bill address:

- Use of the Clerk's Depository in private child support cases
- Support obligation modifications
- Medical support improvements
- Payment processing
- Administrative process improvements
- Paternity establishment via marriage applications and judgments of dissolution of marriage
- Federal waiver
- Electronic filing
- Assignment of rights

CS/SB 694 provides that except as otherwise specifically provided in the bill, the act is effective upon becoming law.

This bill substantially amends ss. 61.13, 61.30, 382.015, 382.016, 409.2558, 409.256, 409.2563, 409.25635, 409.2564, 409.2567, 409.259, 409.910, 414.095, and 741.101. F.S.

II. Present Situation:

Child support enforcement is a federally funded program that has been administered by the Department of Revenue (DOR) since 1994. A "Title IV-D case" is defined as any case in which the child support enforcement agency is enforcing the child support order pursuant to Title IV-D of the Social Security Act. DOR provides services under the federally required program in 65 counties and through contracts in two counties.¹

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;
- Order enforcement.

Paternity establishment uses all administrative and judicial actions to establish paternity. It also uses genetic testing in assisting parents in determining the biological parents. In 2009, 105,379 children were born out-of-wedlock in Florida. Of that number, 94,775 paternity determinations were made. Currently, 100,568 children in the DOR caseload need their paternity established.

DOR 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, as provided by s. 409.2563, F.S. Last year the department established over 12,000 administrative support orders. Prior to beginning the administrative process, the Department screens cases for complex circumstances and if identified, DOR will proceed with those cases judicially.

Under s. 409.2563(4)-(7), F.S., the Department issues a proposed order after notice and a requirement for full financial disclosure by the parties. If no timely request for an administrative hearing in response to the proposed order is made, the Department renders a final order that incorporates the terms of the proposed order.²

¹ Miami-Dade County cases are handled by the State Attorney's Office; Manatee County cases are handled by the Clerk of Court.

² In contested cases, there is a formal hearing before the Division of Administrative Hearings.

DOR is responsible for some case processing activities including opening and closing cases; collecting and maintaining case, location, and financial data; and receipt and response 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.

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.

III. Effect of Proposed Changes:

Use of the Clerk's Depository in Private Child Support Cases (Section 1)

DOR operates the State Disbursement Unit, which is responsible for the collection and disbursement of child support payments. The clerks of all Florida circuit courts operate a depository to perform depository functions and to receive, record, report, disburse, monitor, and otherwise handle child support payments not otherwise required to be handled by the State Disbursement Unit.³ In previous years, parties in private child support cases could request the local circuit court's depository to process certain payments through their offices. However, in 2009, legislation was passed that inadvertently eliminated this ability.⁴ The bill amends s. 61.13(1)(d), F.S., to reinstate the ability of parties in private child support cases to request that the local clerk's depository process their support payments.

Support Obligation Modifications (Section 2 – Effective July 1, 2010; Section 9 - Effective November 1, 2010)

The bill deletes a section of s. 409.2564(4), F.S., which gave DOR the authority to reduce by 25 percent the amount of retroactive support an obligor (parent) owed to the State, if the obligor and DOR agree on terms. The intent of this law passed in 2006, was to encourage out of court settlements and improve compliance. However, DOR has been unable to implement this provision due to the complexity of federal distribution rules which determine when arrears are owed to the State.

The bill amends s. 409.2564(11), F.S., relating to modification of a support order, to require that DOR serve the party who requested the review by registered mail, restricted delivery. The party who did not request the review may be served in the same manner or by personal service. The bill also allows DOR to seek modification of the order if payment of noncovered medical expenses or required health insurance is accessible and available. In each case, the order may not be modified absent an evidentiary hearing.

The changes to s. 409.2564, F.S., are effective November 1, 2010.

The bill also amends s. 61.30(15), F.S., effective July 1, 2010, to give DOR the option of filing a written declaration under penalty of perjury which attests to the income of a parent who receives

³ s. 61.046, F.S.

⁴ s. 1, Ch. 2009-180, Laws of Florida

public assistance when the parent is not cooperative in providing the information. This will expedite establishment of child support orders and allow electronic filing.

Medical Support Improvements Section 1; Section 8 – Effective October 1, 2010; and Section 12)

The bill amends s. 61.13(1)(b), F.S., to remove an erroneous reference to health insurance in the determination of medical support orders. Only noncovered medical expenses are to be considered.

This bill amends s. 409.25635(7), F.S., effective October 1, 2010, to authorize DOR to collect noncovered medical expenses in installments by adding a periodic payment to an income deduction notice issued by DOR, thereby reducing an administrative burden on the department. Noncovered medical expenses mean uninsured medical, dental, or prescription medication expenses that are ordered to be paid on behalf of a child.⁵

This bill amends s. 409.910(20), F.S., to give DOR access to health insurance records received by the Agency for Health Care Administration (AHCA). These records will assist DOR in identifying available health insurance of parents and in enforcing support orders containing health insurance coverage for dependents.

Payment Processing (Section 5 --- Effective July 1, 2010)

This bill amends s. 409.2558(3), F.S., effective July 1, 2010, to allow DOR to retain uncashed paper checks of less than \$1 which are older than 180 days and balances on closed cases which are less than \$1. Current law requires DOR to continue attempts to disburse minimal collections of less than \$1 when a parent does not cash the check. DOR estimates that the cumulative amount that would have been retained from such uncashed checks in 2009 was less than \$300.

The bill also establishes additional priorities for applying undistributable collections in the program. The additional priorities will allow DOR to offset costs incurred from losses resulting from bad checks or overpayments made to either parent. These changes will create additional program income for the department and greater efficiency in payment processing.

Administrative Process Improvements (Sections 6 and 7)

The bill amends s. 409.256, F.S., relating to administrative proceedings to establish paternity and child support, to replace the term "custodian" with "caregiver." "Caregiver" is defined as a person, other than the mother, father or putative father, who has physical custody or with whom the child primarily resides.

The bill also amends s. 409.2563, F.S., relating to administrative establishment of child support obligations, to replace the term "caretaker relative" with "caregiver." This change will give those adults providing care or residence to a child the standing to address child support obligations in a court of law or in an administrative proceeding.

The bill replaces the phrase "informal review" with "informal discussion" to make the terminology used in s. 409.256, F.S., consistent with that used in s. 409.2563, F.S.

⁵ s. 409.25635(1), F.S.

The bill provides DOR the discretion to refer a case to DOAH for a formal hearing when an evidentiary hearing is needed to resolve complicated factual issues. In cases where there is conflicting information, such as a complex financial situation or a complicated guidelines deviation issue, it can be difficult for the Department to prepare a proposed order. The relatively few cases⁶ with these characteristics often result in an evidentiary hearing as the process unfolds. Rather than attempting to prepare a proposed order based on incomplete or conflicting information, authorizing the Department to refer the case to DOAH earlier in the process will result in more timely support orders and will allow the Department to devote more of its resources to resolving routine matters.

Paternity Establishment via Marriage Applications and Judgments of Dissolution of Marriage (Sections 3, 4, and 14)

The bill amends s. 382.015, F.S., to require the Department of Health (DOH) and its Office of Vital Statistics (OVS) accept as a determination of paternity a certified copy of a final judgment of dissolution of marriage that requires the former husband to pay support for the child. This will require OVS to amend a child's birth certificate to include the name of the legal father following a judgment of dissolution of marriage requiring child support payment from the former husband.

The bill amends s. 741.01, F.S., to require both applicants to marriage, to state under oath in writing if they are the parents of a child born in Florida and to identify children they have in common. The bill amends s. 382.016, F.S., to require the OVS to amend the birth certificate upon receipt of the marriage license to reflect the marital status of the parents.

These changes will assist DOR to establish paternity in a timely fashion and maintain compliance with federal standards for the program, which requires paternity to be established for 90 percent of out of wedlock births.⁷

Federal Waiver Request (Section 10)

The bill amends s. 409.2567, F.S., to make permissive, instead of mandatory, a current requirement in statute which directs DOR to request a federal waiver allowing them to provide services to an individual owed child support who has not made an application to DOR for assistance.

The bill further provides that DOR may seek a waiver if it would result in an increase of federal funding over the additional costs to the state. This change will allow DOR to seek the waiver, should the federal funding formula change and make the program cost beneficial to the state.

Electronic Filing (Section 11)

The bill amends s. 409.259, F.S., to remove the October 1, 2009, deadline to begin electronic filing for pleadings, returns of service, and other papers with the clerks of the circuit courts for child support cases, and requires that it be implemented upon completion of the Child Support Automated Management System II (CAMS).

⁶ DOR estimates that these types of cases number few than 100.

⁷ 45 C.F.R. 305.33(a)

DOR is currently developing the second phase of CAMS. Due to unexpected implementation issues the requirement for electronic filing of documents with the court was removed from DOR's contract with the CAMS vendor. The change to s. 409.259, F.S., will allow DOR to complete the statewide implementation of CAMS and require DOR to work with each partner to ensure they can accept electronic documents and filings in Title IV-D cases.

Assignment of Rights (Section 13)

The bill amends s. 414.095, F.S., to correctly identify DOR as the agency who obtains the rights of assignment of temporary cash assistance, aligning Chapter 414 with Chapter 409, F.S.

The bill reenacts ss. 61.14(1)(c) and 61.30(1)(c), F.S., to incorporate the amendments made to s. 409.2564, F.S. by the bill.

The Committee Substitute for SB 694 provides that except as otherwise specifically provided in the bill, the act is effective upon becoming law.

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:

None.

C. Government Sector Impact:

There will likely be a small fiscal impact from the provisions of the CS requiring that service of notice for modification of support be provided to the party requesting the review only by "Registered mail, restricted delivery."

VI. Technical Deficiencies:

Lines 1085-1102 relate to service of process for the establishment of administrative support orders. DOR is permitted to serve notice of that proceeding by personal service by an authorized department employee; by any means authorized for service of process in a civil action; or by “certified mail, restricted delivery, return receipt requested.” If the latter method is used, the following restrictions apply:

Service by certified mail is completed when the certified mail is received or refused by the addressee or by an authorized agent as designated by the addressee in writing. If a person other than the addressee signs the return receipt, the department shall attempt to reach the addressee by telephone to confirm whether the notice was received, and the department shall document any telephonic communications. If someone other than the addressee signs the return receipt, the addressee does not respond to the notice, and the department is unable to confirm that the addressee has received the notice, service is not completed and the department shall attempt to have the addressee served personally.

Lines 1282-1294 of the CS, relating to modification of support orders, require that “A copy of the petition, proposed order, and other documents shall be served [only] by registered mail, restricted delivery...” on the party who requested the review. The party who did not request the review may be served in the same manner or by personal service.

The Legislature may wish to consider amending the CS to require consistent methods for service of process under all circumstances.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on March 9, 2010:

The Committee Substitute amends the manner by which DOR may serve notice when seeking to modify a support order, as well as making evidentiary hearings mandatory in those cases. In addition, the bill mandates that the clerks of court, Office of State Courts Administrator, sheriffs, Office of the Attorney General, and the department implement electronic filing in Title IV-D cases.

B. Amendments:

None.