

## House Bill No. 775

An act relating to child support enforcement; amending s. 61.13, F.S.; providing civil penalties for employers, unions, and plan administrators not in compliance with requirements of the national medical support notice; amending s. 61.1354, F.S.; providing for sharing of information between consumer reporting agencies and the Department of Revenue relating to amount of current support owed; requiring the department to continue reporting to consumer reporting agencies once overdue amount is paid if current support is still owed; amending s. 61.14, F.S.; providing conditions for collection of support from workers' compensation settlements; providing for amendment of the allocation of support recovery within the settlement agreement; providing for rulemaking by the Office of the Judges of Compensation Claims; amending s. 61.1812, F.S.; correcting a reference; amending s. 222.21, F.S.; correcting a reference; amending s. 382.016, F.S.; providing exceptions to the requirement that the department limit access to an acknowledgment of paternity that amends an original birth certificate; providing conditions under which an original birth certificate for a child born in this state whose paternity is established in another state may be amended; amending s. 409.2558, F.S.; providing a procedure for redirecting payments to the person with whom a child resides under certain circumstances; providing for notice and hearing; amending s. 409.2561, F.S.; providing limitation to exemption for support order establishment to recipients of supplemental security income and temporary cash assistance; amending s. 409.2567, F.S.; eliminating requirement for a monthly report by the department on funds identified for collection from noncustodial parents of children receiving temporary assistance; amending s. 409.821, F.S.; requiring the provision of information identifying KidCare program applicants to the department for Title IV-D purposes; providing effective dates.

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

Section 1. Effective October 1, 2005, paragraph (b) of subsection (1) of section 61.13, Florida Statutes, is amended to read:

61.13 Custody and support of children; visitation rights; power of court in making orders.—

(1)

(b) Each order for support shall contain a provision for health care coverage for the minor child when the coverage is reasonably available. Coverage is reasonably available if either the obligor or obligee has access at a reasonable rate to a group health plan. The court may require the obligor either to provide health care coverage or to reimburse the obligee for the cost of health care coverage for the minor child when coverage is provided by the obligee. In either event, the court shall apportion the cost of coverage, and

any noncovered medical, dental, and prescription medication expenses of the child, to both parties by adding the cost to the basic obligation determined pursuant to s. 61.30(6). The court may order that payment of uncovered medical, dental, and prescription medication expenses of the minor child be made directly to the obligee on a percentage basis.

1. In a non-Title IV-D case, a copy of the court order for health care coverage shall be served on the obligor's union or employer by the obligee when the following conditions are met:

a. The obligor fails to provide written proof to the obligee within 30 days after receiving effective notice of the court order, that the health care coverage has been obtained or that application for coverage has been made;

b. The obligee serves written notice of intent to enforce an order for health care coverage on the obligor by mail at the obligor's last known address; and

c. The obligor fails within 15 days after the mailing of the notice to provide written proof to the obligee that the health care coverage existed as of the date of mailing.

2.a. A support order enforced under Title IV-D of the Social Security Act which requires that the obligor provide health care coverage is enforceable by the department through the use of the national medical support notice, and an amendment to the support order is not required. The department shall transfer the national medical support notice to the obligor's union or employer. The department shall notify the obligor in writing that the notice has been sent to the obligor's union or employer, and the written notification must include the obligor's rights and duties under the national medical support notice. The obligor may contest the withholding required by the national medical support notice based on a mistake of fact. To contest the withholding, the obligor must file a written notice of contest with the department within 15 business days after the date the obligor receives written notification of the national medical support notice from the department. Filing with the department is complete when the notice is received by the person designated by the department in the written notification. The notice of contest must be in the form prescribed by the department. Upon the timely filing of a notice of contest, the department shall, within 5 business days, schedule an informal conference with the obligor to discuss the obligor's factual dispute. If the informal conference resolves the dispute to the obligor's satisfaction or if the obligor fails to attend the informal conference, the notice of contest is deemed withdrawn. If the informal conference does not resolve the dispute, the obligor may request an administrative hearing under chapter 120 within 5 business days after the termination of the informal conference, in a form and manner prescribed by the department. However, the filing of a notice of contest by the obligor does not delay the withholding of premium payments by the union, employer, or health plan administrator. The union, employer, or health plan administrator must implement the withholding as directed by the national medical support notice unless notified by the department that the national medical support notice is terminated.

b. In a Title IV-D case, the department shall notify an obligor's union or employer if the obligation to provide health care coverage through that union or employer is terminated.

3. In a non-Title IV-D case, upon receipt of the order pursuant to subparagraph 1., or upon application of the obligor pursuant to the order, the union or employer shall enroll the minor child as a beneficiary in the group health plan regardless of any restrictions on the enrollment period and withhold any required premium from the obligor's income. If more than one plan is offered by the union or employer, the child shall be enrolled in the group health plan in which the obligor is enrolled.

4.a. Upon receipt of the national medical support notice under subparagraph 2. in a Title IV-D case, the union or employer shall transfer the notice to the appropriate group health plan administrator within 20 business days after the date on the notice. The plan administrator must enroll the child as a beneficiary in the group health plan regardless of any restrictions on the enrollment period, and the union or employer must withhold any required premium from the obligor's income upon notification by the plan administrator that the child is enrolled. The child shall be enrolled in the group health plan in which the obligor is enrolled. If the group health plan in which the obligor is enrolled is not available where the child resides or if the obligor is not enrolled in group coverage, the child shall be enrolled in the lowest cost group health plan that is available where the child resides.

b. If health care coverage or the obligor's employment is terminated in a Title IV-D case, the union or employer that is withholding premiums for health care coverage under a national medical support notice must notify the department within 20 days after the termination and provide the obligor's last known address and the name and address of the obligor's new employer, if known.

5.a. The amount withheld by a union or employer in compliance with a support order may not exceed the amount allowed under s. 303(b) of the Consumer Credit Protection Act, 15 U.S.C. s. 1673(b), as amended. The union or employer shall withhold the maximum allowed by the Consumer Credit Protection Act in the following order:

- (I) Current support, as ordered.
- (II) Premium payments for health care coverage, as ordered.
- (III) Past due support, as ordered.
- (IV) Other medical support or coverage, as ordered.

b. If the combined amount to be withheld for current support plus the premium payment for health care coverage exceed the amount allowed under the Consumer Credit Protection Act, and the health care coverage cannot be obtained unless the full amount of the premium is paid, the union or employer may not withhold the premium payment. However, the union or employer shall withhold the maximum allowed in the following order:

- (I) Current support, as ordered.
- (II) Past due support, as ordered.
- (III) Other medical support or coverage, as ordered.

6. An employer, union, or plan administrator who does not comply with the requirements of sub-subparagraph 4.a. is subject to a civil penalty not to exceed \$250 for the first violation and \$500 for subsequent violations, plus attorney's fees and costs. The department may file a petition in circuit court to enforce the requirements of this subparagraph.

7.6- The Department of Revenue may adopt rules to administer the child support enforcement provisions of this section which affect Title IV-D cases.

Section 2. Effective July 1, 2006, subsections (1) and (2) of section 61.1354, Florida Statutes, are amended to read:

61.1354 Sharing of information between consumer reporting agencies and the IV-D agency.—

(1) Upon receipt of a request from a consumer reporting agency as defined in s. 603(f) of the Fair Credit Reporting Act, the IV-D agency or the depository in non-Title-IV-D cases shall make available information relating to the amount of current and overdue support owed by an obligor. The IV-D agency or the depository in non-Title-IV-D cases shall give the obligor written notice, at least 15 days prior to the release of information, of the IV-D agency's or depository's authority to release information to consumer reporting agencies relating to the amount of current and overdue support owed by the obligor. The obligor shall be informed of his or her right to request a hearing with the IV-D agency or the court in non-Title-IV-D cases to contest the accuracy of the information.

(2) The IV-D agency shall report periodically to appropriate consumer reporting agencies, as identified by the IV-D agency, the name and social security number of any delinquent obligor, ~~and the amount of overdue support owed by the obligor, and the amount of current support owed by the obligor when the overdue support is paid.~~ The IV-D agency, or its designee, shall provide the obligor with written notice, at least 15 days prior to the initial release of information, of the IV-D agency's authority to release the information periodically to the consumer reporting agencies. The notice shall state the amount of overdue support owed and the amount of current support owed when the overdue support is paid and shall inform the obligor of the right to request a hearing with the IV-D agency within 15 days after receipt of the notice to contest the accuracy of the information. After the initial notice is given, no further notice or opportunity for a hearing need be given when updated information concerning the same obligor is periodically released to the consumer reporting agencies.

Section 3. Effective December 1, 2005, paragraph (a) of subsection (8) of section 61.14, Florida Statutes, is amended to read:

61.14 Enforcement and modification of support, maintenance, or alimony agreements or orders.—

(8)(a) When an employee and employer reach an agreement for a lump-sum settlement under s. 440.20(11), no proceeds of the settlement shall be disbursed to the employee, nor shall any attorney's fees be disbursed, until after a judge of compensation claims reviews the proposed disbursement and enters an order finding the settlement provides for appropriate recovery of any support arrearage. The employee, or the employee's attorney if the employee is represented, shall submit a written statement from the department as to whether the employee owes unpaid support and, if so, the amount owed. In addition, the judge of compensation claims may require the employee to submit a similar statement from a local depository established under s. 61.181. The sworn statement of the employee that all existing support obligations have been disclosed is also required. If the judge finds the proposed allocation of support recovery insufficient, the parties may amend the allocation of support recovery within the settlement agreement to make the allocation of proceeds sufficient. The Office of the Judges of Compensation Claims shall adopt procedural rules to implement this paragraph. When reviewing and approving any lump-sum settlement under s. 440.20(11)(a) and (b), a judge of compensation claims must consider whether the settlement serves the interests of the worker and the worker's family, including, but not limited to, whether the settlement provides for appropriate recovery of any child support arrearage.

Section 4. Subsection (1) of section 61.1812, Florida Statutes, is amended to read:

61.1812 Child Support Incentive Trust Fund.—

(1) The Child Support Incentive Trust Fund is hereby created, to be administered by the Department of Revenue. All child support enforcement incentive earnings and that portion of the state share of Title IV-A public assistance collections recovered in fiscal year 1996-1997 by the Title IV-D program of the department which is in excess of the amount estimated by the February 1997 Social Services Estimating Conference to be recovered in fiscal year 1996-1997 shall be credited to the trust fund, and no other receipts, except interest earnings, shall be credited thereto. For fiscal years beginning with 1997-1998, in addition to incentive earnings and interest earnings, that portion of the state share of Title IV-A public assistance collections recovered in each fiscal year by the Title IV-D program of the department which is in excess of the amount estimated by the February 1997 Social Services Estimating Conference to be recovered in fiscal year 1997-1998 shall be credited to the trust fund. The purpose of the trust fund is to account for federal incentive payments to the state for child support enforcement and to support the activities of the child support enforcement program under Title IV-D of the Social Security Act. The department shall invest the money in the trust fund pursuant to s. 17.61 ss. 215.44-215.52, and retain all interest earnings in the trust fund. The department shall separately account for receipts credited to the trust fund. When all general revenue appropriations for the child support enforcement program have been shifted to the trust fund, then annually thereafter, on June 30, if revenues deposited into the trust fund, including federal child support incentive earnings, have exceeded state expenditures for the child support

enforcement program administered by the department for the prior 12-month period, the revenues in excess of cash flow needs are transferred to the General Revenue Fund.

Section 5. Subsection (2) of section 222.21, Florida Statutes, is amended to read:

222.21 Exemption of pension money and retirement or profit-sharing benefits from legal processes.—

(2)(a) Except as provided in paragraph (b), any money or other assets payable to a participant or beneficiary from, or any interest of any participant or beneficiary in, a retirement or profit-sharing plan that is qualified under s. 401(a), s. 403(a), s. 403(b), s. 408, s. 408A, or s. 409 of the Internal Revenue Code of 1986, as amended, is exempt from all claims of creditors of the beneficiary or participant.

(b) Any plan or arrangement described in paragraph (a) is not exempt from the claims of an alternate payee under a qualified domestic relations order. However, the interest of any alternate payee under a qualified domestic relations order is exempt from all claims of any creditor, other than the Department of ~~Revenue Children and Family Services~~, of the alternate payee. As used in this paragraph, the terms “alternate payee” and “qualified domestic relations order” have the meanings ascribed to them in s. 414(p) of the Internal Revenue Code of 1986.

(c) The provisions of paragraphs (a) and (b) apply to any proceeding that is filed on or after October 1, 1987.

Section 6. Effective July 1, 2005, paragraph (b) of subsection (1) of section 382.016, Florida Statutes, is amended to read:

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

(1) CERTIFICATE OF LIVE BIRTH AMENDMENT.—

(b) Upon written request and receipt of an affidavit, a notarized voluntary acknowledgment of paternity signed by the mother and father acknowledging the paternity of a registrant born out of wedlock, or a voluntary acknowledgment of paternity that is witnessed by two individuals and signed under penalty of perjury as specified by s. 92.525(2), together with sufficient information to identify the original certificate of live birth, the department shall prepare a new birth certificate, which shall bear the same file number as the original birth certificate. The names and identifying information of the parents shall be entered as of the date of the registrant's birth. The surname of the registrant may be changed from that shown on the original birth certificate at the request of the mother and father of the registrant, or the registrant if of legal age. If the mother and father marry each other at any time after the registrant's birth, the department shall,

upon the request of the mother and father or registrant if of legal age and proof of the marriage, amend the certificate with regard to the parents' marital status as though the parents were married at the time of birth. The department shall substitute the new certificate of birth for the original certificate on file. All copies of the original certificate of live birth in the custody of a local registrar or other state custodian of vital records shall be forwarded to the State Registrar. Thereafter, when a certified copy of the certificate of birth or portion thereof is issued, it shall be a copy of the new certificate of birth or portion thereof, except when a court order requires issuance of a certified copy of the original certificate of birth. Except for a birth certificate on which a father is listed pursuant to an affidavit, a notarized voluntary acknowledgment of paternity signed by the mother and father acknowledging the paternity of a registrant born out of wedlock, or a voluntary acknowledgment of paternity that is witnessed by two individuals and signed under penalty of perjury as specified by s. 92.525(2), the department shall place the original certificate of birth and all papers pertaining thereto under seal, not to be broken except by order of a court of competent jurisdiction or as otherwise provided by law.

Section 7. Effective October 1, 2005, paragraph (d) is added to subsection (1) of section 382.016, Florida Statutes, to read:

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

(1) CERTIFICATE OF LIVE BIRTH AMENDMENT.—

(d) For a child born in this state whose paternity is established in another state, the department shall amend the child's birth certificate to include the name of the father upon receipt of:

1. A certified copy of an acknowledgment of paternity, final judgment, or judicial or administrative order from another state that determines the child's paternity; or

2. A noncertified copy of an acknowledgment of paternity, final judgment, or judicial or administrative order from another state that determines the child's paternity when provided with an affidavit or written declaration from the Department of Revenue that states the document was provided by or obtained from another state's Title IV-D program.

The department may not amend a child's birth certificate to include the name of the child's father if paternity was established by adoption and the father is not eligible to adopt under state law.

Section 8. Effective October 1, 2005, subsection (7) of section 409.2558, Florida Statutes, is renumbered as subsection (8), and a new subsection (7) is added to said section to read:

409.2558 Support distribution and disbursement.—

(7) ORDER REDIRECTING PAYMENTS TO THE PERSON WITH WHOM THE CHILD RESIDES.—

(a) If the department determines in a Title IV-D case that a child for whom a support order has been entered by a tribunal of this state resides with a person other than the obligee or obligor, the department may not disburse current support payments for the child to the obligee without a further order from the tribunal that entered the support order. For purposes of this section, “tribunal” means either the circuit court or the department.

(b) A determination by the department under paragraph (a) must be based on one or more of the following factors:

1. Public assistance records that show a person other than the obligee or obligor is receiving public assistance for the child.

2. A statement by the obligee that the child resides with a person other than the obligee or obligor is submitted to the department.

3. A sworn statement or written declaration signed under penalty of perjury by a person who has personal knowledge that the child resides with a person other than the obligee or obligor is submitted to the department.

4. Government records that show the obligee is incarcerated.

5. Evidence that the obligee has left the community where the child resides is submitted to the department.

6. Other credible information that indicates the child resides with a person other than the obligee or obligor is submitted to the department.

(c) When the department determines that a child as specified in paragraph (a) resides with a person other than the obligee or obligor, the department shall submit by regular mail to the obligee, the obligor, and, if known, the person with whom the child resides a notice that states:

1. The facts on which the determination is based.

2. The name and address of the person with whom the child resides, if known, unless disclosure is prohibited under s. 409.2579(3) or (4) or the child is in foster care.

3. That the department will not disburse current support payments for the child without a further order from the tribunal that entered the support order.

4. If the support order was entered by the circuit court:

a. That the department will file a motion and proposed order with the court that asks the court to order that the obligor’s current support payments be disbursed to the person with whom the child resides, determine arrearages, and order repayment of arrearages;



b. That the obligee, the obligor, and the person with whom the child resides may file an objection in court to the proposed order or a motion to compel disbursement; and

c. That the obligee, the obligor, and the person with whom the child resides will be mailed a copy of the department's motion and notified of any court hearing.

5. If the support order was entered by the department:

a. That the department intends to disburse the current support payments to the person with whom the child resides, if known, determine arrearages, and order repayment of arrearages;

b. The effective date of the intended action to disburse current support payments to the person with whom the child resides, the amount of arrearages owed to the obligee and the person with whom the child resides, and the amount of the order for periodic repayment of arrearages;

c. That the obligee, the obligor, and the person with whom the child resides may contest the intended action by filing with the department a petition for an administrative hearing within 30 days after the date of mailing of the notice;

d. That if a timely petition for an administrative hearing is filed, the parties will be given advance notice of the date, time, and place of the hearing; and

e. That if the notice of intended action is not timely contested, the department will enter a final order based on what is stated in the notice.

(d) The tribunal that entered the support order shall determine whether support payments not disbursed by the department and current support must be paid to the obligee, paid to the person with whom the child resides, or refunded to the obligor. The person with whom the child resides is deemed a party to the proceedings. The tribunal is not required to hold a hearing unless a party has filed a timely objection to the proposed order or a timely petition for an administrative hearing. If the department is the tribunal and a timely petition for an administrative hearing is filed, the hearing shall be conducted by the Division of Administrative Hearings and the administrative law judge shall enter a final order. If a hearing is not required, the tribunal shall enter an order within 30 days after the department's motion is filed or the notice of intended action is mailed. If a timely objection or petition for an administrative hearing is filed, a hearing shall be conducted and an order entered within 30 days after the objection or petition is filed.

(e) If the tribunal finds by a preponderance of the evidence that the child does not reside with the obligee, the tribunal shall enter an order that redirects the obligor's current support payments due under the support order to the person with whom the child resides, determine arrearages owed to the obligee and the person with whom the child resides, and order repayment of arrearages. The tribunal need not recompute the obligor's support obligation under the child support guidelines. If the person with whom the

child resides is unknown and the obligor owes no arrearages or costs, the tribunal shall enter an order that refunds the payments not disbursed by the department to the obligor. If the child resides with the obligor, the person with whom the child resides is unknown, or the child's place of residence is unknown, the tribunal shall consider whether to abate, terminate, or modify the support order.

(f) A tribunal that enters an order that redirects or refunds support payments shall file a copy of the order with the depository that serves as official recordkeeper for payments due under the support order. The depository shall maintain separate accounts and separate account numbers for individual payees.

Section 9. Effective July 1, 2005, subsection (4) of section 409.2561, Florida Statutes, is amended to read:

409.2561 Support obligations when public assistance is paid; assignment of rights; subrogation; medical and health insurance information.—

(4) No obligation of support under this section shall be incurred by any person who is the recipient of supplemental security income or temporary cash assistance ~~public assistance moneys~~ for the benefit of a dependent child or who is incapacitated and financially unable to pay as determined by the department.

Section 10. Section 409.2567, Florida Statutes, is amended to read:

409.2567 Services to individuals not otherwise eligible.—All support services provided by the department shall be made available on behalf of all dependent children. Services shall be provided upon acceptance of public assistance or upon proper application filed with the department. The department shall adopt rules to provide for the payment of a \$25 application fee from each applicant who is not a public assistance recipient. The application fee shall be deposited in the Child Support Enforcement Application and Program Revenue Trust Fund within the Department of Revenue to be used for the Child Support Enforcement Program. The obligor is responsible for all administrative costs, as defined in s. 409.2554. The court shall order payment of administrative costs without requiring the department to have a member of the bar testify or submit an affidavit as to the reasonableness of the costs. An attorney-client relationship exists only between the department and the legal services providers in Title IV-D cases. The attorney shall advise the obligee in Title IV-D cases that the attorney represents the agency and not the obligee. In Title IV-D cases, any costs, including filing fees, recording fees, mediation costs, service of process fees, and other expenses incurred by the clerk of the circuit court, shall be assessed only against the nonprevailing obligor after the court makes a determination of the nonprevailing obligor's ability to pay such costs and fees. In any case where the court does not award all costs, the court shall state in the record its reasons for not awarding the costs. The Department of Revenue shall not be considered a party for purposes of this section; however, fees may be assessed against the department pursuant to s. 57.105(1). ~~The department shall submit a monthly report to the Governor and the chairs of the Health and Human Services Fiscal Committee of the House of Representatives and~~

~~the Ways and Means Committee of the Senate specifying the funds identified for collection from the noncustodial parents of children receiving temporary assistance and the amounts actually collected.~~

Section 11. Effective October 1, 2005, section 409.821, Florida Statutes, is amended to read:

409.821 Florida Kidcare program public records exemption.—Notwithstanding any other law to the contrary, any information identifying a Florida Kidcare program applicant or enrollee, as defined in s. 409.811, held by the Agency for Health Care Administration, the Department of Children and Family Services, the Department of Health, or the Florida Healthy Kids Corporation is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. Such information may be disclosed to another governmental entity only if disclosure is necessary for the entity to perform its duties and responsibilities under the Florida Kidcare program and shall be disclosed to the Department of Revenue for purposes of administering the state's Title IV-D program. The receiving governmental entity must maintain the confidential and exempt status of such information. Furthermore, such information may not be released to any person without the written consent of the program applicant. This exemption applies to any information identifying a Florida Kidcare program applicant or enrollee held by the Agency for Health Care Administration, the Department of Children and Family Services, the Department of Health, or the Florida Healthy Kids Corporation before, on, or after the effective date of this exemption. A violation of this section is a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

Section 12. Except as otherwise provided herein, this act shall take effect upon becoming a law.

Approved by the Governor May 26, 2005.

Filed in Office Secretary of State May 26, 2005.