

CHAPTER 2023-152

House Bill No. 1087

An act relating to child support; amending s. 61.046, F.S.; revising the definition of the term “depository”; amending s. 61.13016, F.S.; authorizing deferral of support payments for an obligor’s good faith job training efforts; amending s. 61.181, F.S.; requiring a depository to impose and collect a fee on certain cases; providing a minimum and maximum amount for the fee; removing language relating to the State Disbursement Unit collecting fees; specifying how such fee must be distributed; requiring certain moneys to be remitted to the Department of Children and Families at specified intervals; removing requirements for a depository to provide certain information to the Title IV-D agency; conforming provisions to changes made by the act; removing obsolete language; making technical changes; amending s. 61.30, F.S.; removing exceptions relating to incarceration when establishing or modifying a support order; amending s. 409.256, F.S.; authorizing a child’s caregiver to provide an affidavit or a written declaration regarding a putative father; amending s. 409.2563, F.S.; requiring the department to file a certain payment record with the clerk of the circuit court; requiring the clerk of the circuit court to update certain information and apply credits under certain circumstances; authorizing a party to dispute the application of a credit in a subsequent proceeding; amending ss. 61.13, 61.1811, and 61.1814, F.S.; conforming cross-references; providing effective dates.

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

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

61.046 Definitions.—As used in this chapter, the term:

(4) “Depository” means a ~~the central governmental~~ depository established by the clerk of the circuit court in each county pursuant to s. 61.181, ~~created by special act of the Legislature or other entity established before June 1, 1985, to perform depository functions and to receive, record, report, disburse, monitor, and otherwise handle alimony and child support payments not otherwise required to be processed by the State Disbursement Unit.~~

Section 2. Paragraph (c) of subsection (1) of section 61.13016, Florida Statutes, is amended to read:

61.13016 Suspension of driver licenses and motor vehicle registrations.

(1) The driver license and motor vehicle registration of a support obligor who is delinquent in payment or who has failed to comply with subpoenas or a similar order to appear or show cause relating to paternity or support

proceedings may be suspended. When an obligor is 15 days delinquent making a payment in support or failure to comply with a subpoena, order to appear, order to show cause, or similar order in IV-D cases, the Title IV-D agency may provide notice to the obligor of the delinquency or failure to comply with a subpoena, order to appear, order to show cause, or similar order and the intent to suspend by regular United States mail that is posted to the obligor's last address of record with the Department of Highway Safety and Motor Vehicles. When an obligor is 15 days delinquent in making a payment in support in non-IV-D cases, and upon the request of the obligee, the depository or the clerk of the court must provide notice to the obligor of the delinquency and the intent to suspend by regular United States mail that is posted to the obligor's last address of record with the Department of Highway Safety and Motor Vehicles. In either case, the notice must state:

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

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

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

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

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

e. Demonstrates that he or she is disabled and incapable of self-support or that he or she receives benefits under the federal Supplemental Security Income program or Social Security Disability Insurance program;

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

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

2. Pays any applicable delinquency fees.

If an obligor in a non-IV-D case enters into a written agreement for payment before the expiration of the 20-day period, the obligor must provide a copy of the signed written agreement to the depository or the clerk of the court. If an obligor seeks to satisfy sub-subparagraph 1.d., sub-subparagraph 1.e., sub-subparagraph 1.f., or sub-subparagraph 1.g. before expiration of the 20-day

period, the obligor must provide the applicable documentation or proof to the depository or the clerk of the court.

Section 3. Subsections (5) through (8) and (10) of section 61.181, Florida Statutes, are renumbered as subsections (4) through (7) and (9), respectively, and present subsections (1), (2), (3), (4), (8), and (9) of that section are amended to read:

61.181 Depositories ~~Depository~~ for alimony transactions, support, maintenance, and support payments; fees.—

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

(b) Upon request by the department, each ~~the~~ depository operated under ~~created pursuant to~~ paragraph (a) shall establish an account for the receipt and disbursement of support payments for Title IV-D interstate cases. The department shall provide a copy of the other state's order with the request, and each ~~the~~ depository shall advise the department of the account number in writing within 4 business days after receipt of the request.

(2)(a) Each depository shall impose and collect a fee for payments ~~not required to be processed through the State Disbursement Unit,~~ the depository shall impose and collect a fee on each payment made for receiving, recording, reporting, disbursing, monitoring, or handling alimony or child support payments as required under this section. ~~for non-Title IV-D cases required to be processed by the State Disbursement Unit pursuant to this chapter, the State Disbursement Unit shall, on each payment received, collect a fee, and shall transmit to the depository in which the case is located 40 percent of such service charge for the depository's administration, management, and maintenance of such case. If a payment is made to the State Disbursement Unit which is not accompanied by the required fee, the State Disbursement Unit shall not deduct any moneys from the support payment for payment of the fee. The fee shall be a flat fee based, to the extent practicable, upon estimated reasonable costs of operation. The fee is 4 shall be reduced in any case in which the fixed fee results in a charge to any party~~

~~of an amount greater than 3 percent of the amount of any support payment made in satisfaction of the amount which the party is obligated to pay, except that a no fee may not shall be less than \$1 or not more than \$5.25 \$5 per payment made. The fee must shall be considered by the court in determining the amount of support that the obligor is, or may be, required to pay. A fee may not be imposed on payments for Title IV-D cases.~~

~~(b)1.— The fee imposed in paragraph (a) shall be increased to 4 percent of the support payments which the party is obligated to pay, except that no fee shall be more than \$5.25. The fee shall be considered by the court in determining the amount of support that the obligor is, or may be, required to pay. Notwithstanding the provisions of s. 145.022, the fee imposed under paragraph (a) shall be distributed as follows:~~

~~1. To 75 percent of the additional revenues generated by this paragraph shall be remitted monthly to the Clerk of the Court Child Support Enforcement Collection System Trust Fund, calculated as follows:~~

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

~~b. For each support payment of at least \$33 but not more than \$140, an amount equal to 75 percent of the difference between 4 percent of the support payment amount, not to exceed \$5.25, and 3 percent of the support payment amount, not to exceed \$5.~~

~~c. For each support payment in excess of \$140, 18.75 cents administered by the department as provided in subparagraph 2.~~

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

~~2. For support payments not processed through the State Disbursement Unit, the clerk of the court shall retain the balance of the fee imposed under paragraph (a) for receiving, recording, reporting, disbursing, monitoring, or handling support payments as required under this section Moneys to be remitted to the department by the depository shall be done daily by electronic funds transfer and calculated as follows:~~

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

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

~~e.— For each support payment in excess of \$140, 18.75 cents.~~

3. For support payments processed through the State Disbursement Unit, the clerk of the court shall retain 40 percent of the fee imposed under paragraph (a) for the depository’s administration, management, and maintenance of each case. After retaining 40 percent of the fee imposed under paragraph (a) and paying the amount due to the Clerk of the Court Child Support Enforcement Collection System Trust Fund, the clerk of the court shall transmit the balance of the fee to the department, which shall be treated as program income under s. 61.1814(2).

(c) Each depository must remit moneys due to the department under subparagraphs (b)1. and 3. at least monthly as required under s. 28.245.

(d) The fees established by this section shall be set forth and included in every order of support entered by a court of this state which requires payment to be made into a the depository.

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

1. The obligor’s name, address, social security number, place of employment, and any other sources of income.
2. The obligee’s name, address, and social security number.
3. The amount of support due as provided in the court order.
4. The schedule of payment as provided in the court order.
5. The actual amount of each support payment received, the date of receipt, the amount disbursed, and the recipient of the disbursement.
6. The unpaid balance of any arrearage due as provided in the court order.

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

(b) A The depository may require a payor or obligor to complete an information form, which shall request the following about the payor or obligor who provides payment by check:

- 1. Full name, address, and home phone number.
- 2. Driver license number.
- 3. Social security number.
- 4. Name, address, and business phone number of obligor’s employer.
- 5. Date of birth.
- 6. Weight and height.

7. Such other information as may be required by the State Attorney if prosecution for an insufficient check becomes necessary.

If a the depository requests such information, and a payor or obligor does not comply, the depository may refuse to accept personal checks from the payor or obligor.

(c) Parties using a the depository for support payments must notify shall ~~inform~~ the depository of:

- 1. Changes in their names or addresses. ~~An obligor shall, additionally, notify the depository of all~~
- 2. Changes in employment or sources of income, including the payor’s name and address, ~~and~~
- 3. Changes in the amounts of income received.

Notification of all changes must shall be made in writing to the depository within 7 days after such ~~of a~~ change.

(d) When time-sharing of a child is relinquished by a parent who is entitled to receive child support moneys from a the depository to the custody of a licensed or registered long-term care child agency, that agency may request from the court an order directing child support payments that would otherwise be distributed to the parent be distributed to the agency for the period of time that the child is with the agency. Thereafter, payments shall be distributed to the agency as if the agency were the parent until further order of the court.

~~(4) The depository shall provide to the IV-D agency, at least once a month, a listing of IV-D accounts which identifies all delinquent accounts, the period of delinquency, and total amount of delinquency. The list shall be~~

~~in alphabetical order by name of obligor, shall include the obligee's name and case number, and shall be provided at no cost to the IV-D agency.~~

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

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

Section 4. Effective upon this act becoming a law, paragraph (c) of subsection (2) of section 61.30, Florida Statutes, is amended to read:

61.30 Child support guidelines; retroactive child support.—

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

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

Section 5. Paragraph (a) of subsection (2) of section 409.256, Florida Statutes, is amended to read:

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

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

(a) The department may commence a paternity proceeding or a paternity and child support proceeding as provided in subsection (4) if:

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

2. No one is named as the father on the child's birth certificate or the person named as the father is the putative father named in an affidavit or a written declaration as provided in subparagraph 5.

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

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

5. The child's mother or caregiver or a putative father has stated in an affidavit, or in a written declaration as provided in s. 92.525(2), that the

putative father is or may be the child's biological father. The affidavit or written declaration must set forth the factual basis for the allegation of paternity as provided in s. 742.12(2).

Section 6. Subsection (8) of section 409.2563, Florida Statutes, is amended to read:

409.2563 Administrative establishment of child support obligations.—

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

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

2.(b) Establish and maintain the necessary payment accounts.;

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

4.(d) Perform all other duties required of a depository with respect to a support order entered by a court of this state.

(b) When a proceeding to establish an administrative support order is commenced under subsection (4), the department shall file a copy of the initial notice with the depository for the county where the proceeding is filed. The depository shall assign an account number and provide the account number to the department within 4 business days after the initial notice is filed.

(c) If the department receives a payment record from a Title IV-D agency or a court outside this state, as defined in s. 88.1011, and the payment record shows that the obligor made a payment in that state pursuant to an administrative support order rendered by the department, the department must file the payment record with the appropriate clerk of the circuit court. The clerk of the circuit court shall review the payment record, update the clerk's payment accounts, and apply a credit for payments made to the other state for which the clerk has not previously provided credit. If the payment record from the other state indicates that the obligor has made payments that are not reflected in the clerk's payment accounts, the clerk must credit the account in the amount of the payment made to the other state. Any party to the administrative proceeding may dispute the application of credit in a subsequent proceeding concerning payment under the administrative support order.

Section 7. Paragraph (d) of subsection (1) of section 61.13, Florida Statutes, is amended to read:

61.13 Support of children; parenting and time-sharing; powers of court.

(1)

(d)1. All child support orders shall provide the full name and date of birth of each minor child who is the subject of the child support order.

2. If both parties request and the court finds that it is in the best interest of the child, support payments need not be subject to immediate income deduction. Support orders that are not subject to immediate income deduction may be directed through the depository under s. 61.181 or made payable directly to the obligee. Payments made by immediate income deduction shall be made to the State Disbursement Unit. The court shall provide a copy of the order to the depository.

3. For support orders payable directly to the obligee, any party may subsequently file an affidavit with the depository alleging a default in payment of child support and stating that the party wishes to require that payments be made through the depository. The party shall provide copies of the affidavit to the court and to each other party. Fifteen days after receipt of the affidavit, the depository shall notify all parties that future payments shall be paid through the depository, except that payments in Title IV-D cases and income deduction payments shall be made to the State Disbursement Unit. In Title IV-D cases, an affidavit of default or a default in payments is not required to receive depository services. Upon notice by the department that it is providing Title IV-D services in a case with an existing support order, the depository shall transmit case data through, and set up appropriate payment accounts in, regardless of whether there is a delinquency, the Clerk of the Court Child Support Enforcement Collection System as required under s. 61.181(2)(b)1. ~~s. 61.181(2)(b).~~

Section 8. Section 61.1811, Florida Statutes, is amended to read:

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

Section 9. Subsection (2) of section 61.1814, Florida Statutes, is amended to read:

61.1814 Child Support Enforcement Application and Program Revenue Trust Fund.—

(2) With the exception of fees required to be deposited in the Clerk of the Court Child Support Enforcement Collection System Trust Fund under s. 61.181(2)(b)1. ~~s. 61.181(2)(b)~~ and collections determined to be undistributable or unidentifiable under s. 409.2558, the fund shall be used for the deposit of Title IV-D program income received by the department. Each type of program income received must shall be accounted for separately. Program

income received by the department includes, but is not limited to, all of the following:

- (a) Application fees of nonpublic assistance applicants for child support enforcement services.;
- (b) Court-ordered costs recovered from child support obligors.;
- (c) Interest on child support collections.;
- (d) The balance of the fee fees received under s. 61.181(2)(b)3, ~~s. 61.181(2)(a)~~ on non-Title IV-D cases required to be processed through the State Disbursement Unit after the clerk’s share is paid.;
- (e) Fines imposed under ss. 409.256(7)(b), 409.2564(7), and 409.2578.;
- and
- (f) The annual fee required under s. 409.2567.

Section 10. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law, this act shall take effect July 1, 2023.

Approved by the Governor May 25, 2023.

Filed in Office Secretary of State May 25, 2023.