



# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. HOUSE PRINCIPLES ANALYSIS:

**The bill does not appear to implicate any of the House Principles.**

### B. EFFECT OF PROPOSED CHANGES:

#### **Interest on Past Due Child Support**

Current law provides that a support payment made through the local depository or through the State Disbursement Unit which becomes due and is unpaid, is delinquent. After notice to the obligor and the time for response, the unpaid amount as well as other costs and fees become a final judgment by operation of law.<sup>1</sup> The depository is required to charge interest at a rate established in statute on all support judgments.<sup>2</sup>

In June 2007, Florida's 5th District Court of Appeals ruled in *Vitt v. Rodriguez* that past due child support payments must be applied first to accrued interest then to the principal amount that is past due. The Court found "no direct guidance in the statutes governing child support concerning how payments on arrearages are to be applied." In the absence of direct guidance, the Court based its ruling on common law.<sup>3</sup>

The clerks of court are the official record keepers of child support payments in Florida and are relied on by all parties in judicial proceedings to enforce child support orders. The automated systems used by the clerks of the circuit court to maintain child support payment accounts and the Department of Revenue (DOR) are programmed to credit arrearage collections first to the principal amount and then to any interest. Major changes would be needed to both automated systems to implement this change.

The bill provides that past due support payments are applied first to the principal amount due and then to interest that accrued on the past due amount.

#### **License Suspension**

During the early 1990s, states began experimenting with solutions to the problem of parents not paying child support. One very successful enforcement tool has been restricting, revoking or suspending the licenses of parents who do not fulfill their obligations. Some states, including Maine, Illinois and Vermont, pioneered the development of state license restriction programs.

The success of these programs prompted Congress to require, as part of the 1996 federal child support reforms, that all states have similar license restriction laws. States were required to have and use the authority to withhold, suspend or restrict the use of driver's licenses, professional and occupational licenses, recreational and sporting licenses of individuals owing past due support or failing after receiving appropriate notice, to comply with subpoenas or warrants relating to paternity or child support proceedings.<sup>4</sup>

By the end of 1998, 49 states and the District of Columbia had laws in place to restrict driver's and occupational licenses, 50 states and the District of Columbia had similar laws applying to professional licenses, and 48 states and the District of Columbia had laws restricting recreational and sporting

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<sup>1</sup> See s. 61.14(6), Florida Statutes.

<sup>2</sup> See s. 55.03, Florida Statutes.

<sup>3</sup> *Vitt v. Rodriguez*, 960 so.2d 47 (Fla. 5th DCA 2007).

<sup>4</sup> See Section 369 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Public Law 104-193.

licenses. Some states have aggressively used and promoted these programs, while others have applied these new laws more selectively.<sup>5</sup>

License suspension and revocation is an enforcement mechanism designed to encourage obligors to pay their child support or risk restriction of various licenses. States which have implemented this remedy have found that the risk of losing a license is an effective means of bringing a delinquent obligor into compliance. As a result, few licenses have actually been suspended or revoked.

The Legislature amended s. 409.2598, Florida Statutes, effective July 1, 2006, to allow DOR to use an administrative procedure for suspending business, professional and recreational licenses for noncompliance with a child support order. At the same time, s. 455.203(9), Florida Statutes, related to the Department of Business and Professional Regulation, was also amended. However, all other statutes concerning license suspension were not amended at that time to conform to the change in s. 409.2598, Florida Statutes. The proposed change brings the provisions within s. 456.004, Florida Statutes, in conformance with current law.

Current law requires the Department of Highway Safety and Motor Vehicles (DHSMV), the Department of Health (DOH), the Department of Financial Services (DFS), the Department of Business and Professional Regulation (DBPR), the Department of Education (DOE), and the Education Practice Commission (EPC), to allow DOR to screen applicants for licenses under the jurisdiction of these agencies to assure compliance with a support obligation. These agencies must then deny or suspend the license of any applicant who has a delinquent support obligation.

The bill removes the provisions allowing DOR to screen applicants and provides that each of the above referenced agencies and the EPC shall work cooperatively with DOR to implement an automated method for periodically disclosing information related to current licensees to DOR. Three changes are made to ss. 328.42, 456.004, 497.167, 559.79, 1012.21, and 1012.795, Florida Statutes:

- DOR is authorized pursuant to s. 409.2598, Florida Statutes, in addition to the court, to direct these agencies to suspend or cancel a license.
- Denial or suspension applies when the licensee is not in compliance with a support order, subpoena, order to show cause, or written agreement entered into by the licensee with the DOR, not when the licensee has a delinquent support obligation.
- These agencies shall reinstate a license when they are notified by DOR that the licensee has complied with the support order, in addition to when the court gives notice.

#### C. SECTION DIRECTORY:

**Section 1.** Amends s. 61.14, Florida Statutes, relating to the enforcement and modification of support, maintenance, or alimony agreements or orders.

**Section 2.** Amends s. 328.42, Florida Statutes, relating to the suspension or denial of a vessel registration.

**Section 3.** Amends s. 409.256, Florida Statutes, relating to administrative proceedings to establish paternity or paternity and child support and orders to appear for genetic testing.

**Section 4.** Repeals s. 409.25645, Florida Statutes, relating to administrative orders for genetic testing.

**Section 5.** Amends s. 409.2584, Florida Statutes, relating to interest on obligations due.

**Section 6.** Amends s. 456.004, Florida Statutes, relating to the powers and duties of the Department of Health.

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<sup>5</sup> Myers, T.A., License Restrictions and Child Support, NCSL Legisbrief, January 1999, Vol. 7, No. 5.

**Section 7.** Amends s. 497.167, Florida Statutes, relating to administrative matters within the Department of Financial Services.

**Section 8.** Amends s. 559.79, Florida Statutes, relating to licensing by the Department of Business and Professional Regulation.

**Section 9.** Amends s. 1012.21, Florida Statutes, relating to duties of the Department of Education.

**Section 10.** Amends s. 1012.795, Florida Statutes, relating to the authority to discipline by the Education Practices Commission.

**Section 11.** Provides an effective date of July 1, 2008.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

### **C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

None.

### **D. FISCAL COMMENTS:**

None.

## **III. COMMENTS**

### **A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

### **B. RULE-MAKING AUTHORITY:**

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

N/A

**IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES**