

JAN 25 2017

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# A BILL FOR AN ACT

RELATING TO INCOME WITHHOLDING FOR CHILD SUPPORT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Section 571-52, Hawaii Revised Statutes, is  
2 amended as follows:

3           (1) By amending subsection (a) to read as follows:

4           "(a) Whenever any person has been ordered to pay an  
5 allowance for the support of a child or for the support and  
6 maintenance of a spouse or former spouse, and fails or refuses  
7 to obey or perform the order and has been adjudged guilty of  
8 contempt of court for such failure or refusal, the court may  
9 make an order that shall operate as an assignment by the person  
10 for the benefit of the child or spouse, of such amounts at such  
11 times as may be specified in the order, from any income due or  
12 to become due in the future to such person from the person's  
13 employer or successor employers, until further order of the  
14 court.

15           The assignment of the amounts shall be to the clerk of the  
16 court where the order is entered if for the support or  
17 maintenance of a spouse or former spouse, or to the child

1 support enforcement agency if for the support of a child or if  
2 child support and spouse support are contained in the same  
3 order. The order of assignment to the child support enforcement  
4 agency shall be in the standard format prescribed by Title IV-D  
5 of the Social Security Act, as amended by the child support  
6 enforcement agency. The order of assignment shall be effective  
7 immediately after service upon an employer of a true copy of the  
8 order, which service may be effected by regular mail, by  
9 personal delivery, or by transmission through electronic means.

10       Thereafter, the employer shall for each pay period withhold  
11 from any income due to the person from the employer, and not  
12 required to be withheld by any other provision of federal or  
13 state law, and transmit to the clerk of the court or child  
14 support enforcement agency as set forth in the order, as much as  
15 may remain payable to the person for such pay period up to the  
16 amount specified in the order of assignment as being payable  
17 during the same period. The person ordered to pay shall inform  
18 the court immediately of any change that would affect the order  
19 of assignment or the disbursement thereof. Any employer  
20 violating this subsection may be subject to a fine not to exceed  
21 \$1,000 as determined by the court.

22       Compliance by an employer with the order of assignment  
23 shall operate as a discharge of the employer's liability to the

1 employee for that portion of the employee's income withheld and  
2 transmitted to the clerk of court or child support enforcement  
3 agency, as the case may be, whether or not the employer has  
4 withheld the correct amount."

5 (2) By amending subsection (d) to read as follows:

6 "(d) It shall be unlawful for any employer to refuse to  
7 hire a prospective employee, to discharge an employee, or to  
8 take any other disciplinary action against an employee, based in  
9 whole or part upon an assignment authorized by this section.  
10 Any employer [~~violating this section shall be guilty of a~~  
11 ~~misdemeanor under section 710-1077(1)(g).~~] who fails to comply  
12 with this subsection may be in violation of contempt of court  
13 and subject to a fine not to exceed \$1,000 as determined by the  
14 court."

15 SECTION 2. Section 571-52.2, Hawaii Revised Statutes, is  
16 amended by amending subsection (g) to read as follows:

17 "(g) It shall be unlawful for any employer to fail to  
18 comply with the requirements of this section. In addition, an  
19 employer who fails to comply with an order of assignment of  
20 future income, as provided for under this section, shall be  
21 liable to the obligee or the obligee's assignee for whom support  
22 was required to be paid, for the full amount of all sums ordered  
23 to be withheld and transmitted and not otherwise done so[-] and

1 may be subject to a fine not to exceed \$1,000 as determined by  
2 the court."

3 SECTION 3. Section 576E-16, Hawaii Revised Statutes, is  
4 amended as follows:

5 (1) By amending subsection (c) to read as follows:

6 "(c) Compliance by an employer with the income withholding  
7 order issued pursuant to subsection (a) or with the income  
8 withholding order or the notice to withhold child support issued  
9 pursuant to section 576D-14 shall operate as a discharge of the  
10 employer's liability to the responsible parent for that portion  
11 of the responsible parent's earnings withheld and transmitted to  
12 the agency, whether or not the employer has withheld the correct  
13 amount. For each payment made pursuant to an income withholding  
14 order or a notice to withhold child support, the employer may  
15 deduct and retain as an administrative fee an additional amount  
16 of \$2 from the income owed to the responsible parent. The total  
17 amount withheld from the obligor's income, including the  
18 administrative fee, may not be in excess of the maximum amounts  
19 permitted under section 303(b) of the Consumer Credit Protection  
20 Act (15 U.S.C. §1673(b)). Any income withholding order or  
21 notice to withhold child support shall have priority as against  
22 any garnishment, attachment, execution, or other income  
23 withholding order, or any other order, and shall not be subject

1 to the exemptions or restrictions contained in part III of  
2 chapter 651 and in chapters 652 and 653. An employer who fails  
3 to comply with an income withholding order under this section or  
4 with an income withholding order or notice to withhold child  
5 support issued pursuant to section 576D-14 shall be liable to  
6 the obligee or the agency for the full amount of all sums  
7 ordered to be withheld and transmitted. In addition, any  
8 employer violating this subsection may be subject to a fine not  
9 to exceed \$1,000 as determined by the court. An employer  
10 receiving an income withholding order or a notice to withhold  
11 child support shall transmit amounts withheld to the agency  
12 within five working days after the responsible parent is paid.  
13 The employer shall begin withholding no later than the first pay  
14 period commencing within seven business days following the date  
15 a copy of the order or the notice to withhold child support is  
16 mailed to the employer.

17 As used in this subsection, the term "business day" means a  
18 day on which the employer's office is open for regular business.  
19 The employer shall withhold funds as directed in the order or  
20 the notice to withhold child support, except that when an  
21 employer receives an income withholding order issued by another  
22 state, the employer shall apply the income withholding law of

1 the state of the obligor's principal place of employment in  
2 determining:

- 3 (1) The employer's fee for processing an income  
4 withholding order;
- 5 (2) The maximum amount permitted to be withheld from the  
6 obligor's income under section 303(b) of the Consumer  
7 Credit Protection Act (15 U.S.C. §1673(b));
- 8 (3) The time periods within which the employer must  
9 implement the income withholding order and forward the  
10 child support payment;
- 11 (4) The priorities for withholding and allocating income  
12 withheld for multiple child support obligees; and
- 13 (5) Any withholding terms or conditions not specified in  
14 the order.

15 An employer who complies with an income withholding order  
16 or a notice to withhold child support that is regular on its  
17 face shall not be subject to civil liability to any person or  
18 agency for conduct in compliance with the order.

19 An employer who is required to withhold amounts from the  
20 income of more than one employee may remit to the agency a sum  
21 total of all such amounts in one check with a listing of the  
22 amounts applicable to each employee.

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1           Within two working days after receipt of the amounts  
2 withheld by the employer, the agency shall disburse the amounts  
3 to the obligee for the benefit of the child, except that the  
4 agency may delay the distribution of collections toward  
5 arrearages until resolution of any timely requested hearing with  
6 respect to such arrearages."

7           (2) By amending subsection (e) to read as follows:

8           "(e) It shall be unlawful for any employer to refuse to  
9 hire a prospective employee, to discharge an employee, or to  
10 take any other disciplinary action against an employee, based in  
11 whole or in part upon an order or notice to withhold child  
12 support authorized by this section. Any employer [~~violating~~  
13 ~~this section shall be guilty of a misdemeanor under section 710-~~  
14 ~~1077(1)(g)-]~~ who fails to comply with this subsection may be in  
15 violation of contempt of court and subject to a fine not to  
16 exceed \$1,000 as determined by the court."

17           SECTION 4. Statutory material to be repealed is bracketed  
18 and stricken. New statutory material is underscored.

19           SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY:



22

BY REQUEST

S.B. NO. 891

**Report Title:**

Income Withholding for Child Support

**Description:**

Amends the income withholding requirements to impose a fine against any employer who (a) discharges from employment, refuses to employ, or takes disciplinary action against any noncustodial parent subject to income withholding or (b) fails to withhold support from income or pay the amounts to the Child Support Enforcement Agency.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

JUSTIFICATION SHEET

DEPARTMENT: ATTORNEY GENERAL, CHILD SUPPORT ENFORCEMENT AGENCY

TITLE: A BILL FOR AN ACT RELATING TO INCOME WITHHOLDING FOR CHILD SUPPORT.

PURPOSE: To amend the income withholding requirements to impose a fine against any employer who (a) discharges from employment, refuses to employ, or takes disciplinary action against any noncustodial parent subject to income withholding or (b) fails to withhold support from income or pay the amounts to the Child Support Enforcement Agency (CSEA).

MEANS: Amend sections 571-52(a) and (d), 571-52.2(g), and 576E-16(c) and (e), Hawaii Revised Statutes.

JUSTIFICATION: Under 42 U.S.C. 666(b)(6)(D), each State must have in effect laws requiring the imposition of a fine against any employer who discriminates against an employee because of the existence of an income withholding order or fails to withhold support from income or pay the amounts to a child support agency.

Impact on the public: This measure would benefit the public because it increases the effectiveness of income withholding and therefore makes the child support enforcement process more efficient. In addition, it protects the obligor parent against employment discrimination due to the income withholding order.

Impact on the department and other agencies: If this federal requirement is not implemented, the state plan that is administered by the CSEA for federal funding

purposes may be disapproved. If the state plan is disapproved, federal funding that is provided to the CSEA and to the Department of Human Services may be jeopardized.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: ATG 500

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: Upon approval.