
A BILL FOR AN ACT

RELATING TO COLLECTION OF RESTITUTION FOR CRIME VICTIMS.

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

1 SECTION 1. Chapter 706, Hawaii Revised Statutes, is
2 amended by adding a new section to part III to be appropriately
3 designated and to read as follows:
4 **"§706- Income withholding for payment of restitution.**
5 (1) Whenever a person is sentenced and a judgment or order is
6 entered establishing, modifying, or enforcing restitution, the
7 court shall allow ninety days for a defendant to make payment in
8 full. If the judgment or order is not satisfied after ninety
9 days, the court shall issue an income withholding order that
10 shall operate as an assignment to the department of the attorney
11 general for the benefit of the victim, of amounts that are due
12 at times that may be specified in the judgment or order, but no
13 less than \$30 per month, from the defendant's income due or to
14 become due in the future from the defendant's employer or
15 successor employers. A copy of the income withholding order
16 shall be filed with the clerk of the court that issued the
17 income withholding order.



1 (2) The income withholding order issued pursuant to
2 subsection (1) shall be effective immediately after service upon
3 an employer of a copy of the order, which service may be
4 effected by the department of the attorney general by regular
5 mail, personal delivery, or transmission through electronic
6 means. Thereafter, the employer, for each pay
7 period, shall withhold from the income due to the defendant from
8 the employer and transmit to the department of the attorney
9 general as much as may remain payable to the defendant and is
10 not required to be withheld by any other provision of federal or
11 state law, for the pay period up to the amount specified in the
12 order as being payable during the same pay period. The employer
13 shall immediately inform the department of the attorney general
14 of any change that would affect the income withholding order.

15 (3) Compliance by an employer with an income withholding
16 order issued pursuant to subsection (1) shall operate as a
17 discharge of the employer's liability to the defendant for that
18 portion of the defendant's earnings withheld and transmitted to
19 the department of the attorney general, regardless of whether
20 the employer has withheld the correct amount. For each payment
21 made pursuant to an income withholding order, the employer may



1 deduct and retain as an administrative fee an additional amount
2 of \$2 from the income owed to the defendant. The total amount
3 withheld from the defendant's income, including the
4 administrative fee, shall not exceed the maximum amounts
5 permitted under section 303(b) of the Consumer Credit
6 Protection Act (15 U.S.C. 1673(b)).

7 (4) Any income withholding order issued pursuant to this
8 section shall:

9 (a) Have priority as against any garnishment, attachment,
10 execution, or other income withholding order, or any
11 other order, except for any order made pursuant to
12 chapters 571, 576B, 576D, 576E, 580, and 584; and

13 (b) Not be subject to the exemptions or restrictions
14 contained in part III of chapter 651 and in chapters
15 652 and 653.

16 (5) An employer who fails to comply with an income
17 withholding order under this section shall be liable to the
18 victim or the department of the attorney general for the full
19 amount of all sums ordered to be withheld and transmitted. An
20 employer receiving an income withholding order shall:



1 (a) Transmit withheld amounts to the department of the
2 attorney general within five business days after the
3 defendant is paid; and

4 (b) Begin withholding no later than the first pay period
5 commencing within seven business days following the
6 date a copy of the order is served upon the employer
7 by regular mail, personal delivery, or electronic
8 means.

9 (6) An employer who complies with an income withholding
10 order that is valid on its face shall not be subject to civil
11 liability to any person or agency for conduct in compliance with
12 the order.

13 (7) An employer who is required to withhold amounts from
14 the income of more than one employee may remit to the department
15 of the attorney general a sum total of all amounts in one lump
16 check with a listing of the amounts applicable to each employee.

17 (8) Within thirty days after receipt of the amounts
18 withheld by the employer, the department of the attorney general
19 shall disburse the amounts to the appropriate victim.

20 (9) An income withholding order shall be terminated when
21 appropriate by court order. The department of the attorney



1 general shall promptly refund any amount withheld in error to
2 the defendant.

3 (10) If there is more than one restitution judgment or
4 order, the amounts withheld from the income of a defendant shall
5 be allocated among the different restitution judgments or
6 orders. If the concurrent income withholding orders would cause
7 the amounts withheld from the defendant's income to exceed
8 applicable wage withholding limitations established under this
9 section, the amount withheld shall be allocated so that in no
10 case does the allocation result in a withholding for any of the
11 restitution obligations not being implemented.

12 (11) If a defendant changes employment while an income
13 withholding order is in effect, the department of the attorney
14 general shall notify the defendant's new employer of the
15 defendant's and the new employer's respective obligations under
16 this section. The new employer shall be bound by the income
17 withholding order until further court order.

18 (12) As used in this section, and notwithstanding any
19 other provision of law:

20 "Business day" means a day on which an employer's office is
21 open for regular business.



1 "Employer" means any person, including the United States
2 government, the State, and any political subdivision thereof,
3 who uses or engages the services of any person in exchange for
4 the payment of wages or other means of exchange, or who is or
5 shall become obligated for payment of income; provided that this
6 meaning shall not apply if the employed individual is
7 incarcerated in a correctional facility or engaged in an inmate
8 work furlough program within the State.

9 "Income" includes without limitation salaries, wages,
10 earnings, workers' compensation, commissions, fees, bonuses,
11 independent contractor income, and any other entitlement to
12 money, including moneys payable as a disability, death, or other
13 benefit, or moneys from the State or a political subdivision
14 thereof, or from any disability system established under law by
15 the State or any political subdivision thereof."

16 SECTION 2. There is appropriated out of the general
17 revenues of the State of Hawaii the sum of \$ or so
18 much thereof as may be necessary for fiscal year 2018-2019 to
19 the department of the attorney general for the purpose of
20 enhancing restitution collection pursuant to section 1 of this
21 Act, including the hiring of any necessary staff.



1 The sum appropriated shall be expended by the department of
2 the attorney general for the purposes of this Act.

3 SECTION 3. This Act does not affect rights and duties that
4 matured, penalties that were incurred, and proceedings that were
5 begun before its effective date.

6 SECTION 4. If any provision of this Act, or the
7 application thereof to any person or circumstance, is held
8 invalid, the invalidity does not affect other provisions or
9 applications of the Act that can be given effect without the
10 invalid provision or application, and to this end the provisions
11 of this Act are severable.

12 SECTION 5. New statutory material is underscored.

13 SECTION 6. This Act shall take effect on July 1, 2035;
14 provided that section 2 shall take effect on July 1, 2035.



Report Title:

Honolulu Prosecuting Attorney Package; AG; Crime Victims;
Restitution; Appropriation

Description:

Establishes standards and procedures for withholding income to
pay restitution orders. Appropriates funds to the Department of
the Attorney General for enhancing restitution collection.
Effective 7/1/2035. (SD2)

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not legislation or evidence of legislative intent.*

