THE SENATE
THIRTY-FIRST LEGISLATURE, 2022
STATE OF HAWAII

S.B. NO. 317

JAN 26 2022

A BILL FOR AN ACT

RELATING TO CHILD SUPPORT.

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

PART I

SECTION 1. Section 346-29, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

"(c) In determining the needs of an applicant or recipient for public assistance by the department, the department shall:

(1) Disregard the amounts of earned or unearned income as required or allowed by federal acts and other regulations, to receive federal funds and disregard from gross earned income twenty per cent plus $200 and a percentage of the remaining balance of earned income consistent with federal regulations and other requirements;

(2) Consider as net income in all cases the income as federal acts and other regulations require the department to consider for receipt of federal funds and may consider the additional income and resources as these acts and regulations permit to be considered;

(3) For households with minor dependents, disregard assets in determining the needs of persons for financial assistance; provided that the amount to be disregarded shall not exceed standards under federally funded financial assistance programs. This paragraph shall not apply to persons eligible for federal supplemental security income benefits, aid to the aged, blind or disabled, or general assistance to households without minor dependents. In determining the needs of persons eligible for federal supplemental security income benefits, aid to the aged, blind or disabled, or general assistance to households without minor dependents, the department shall apply all the resource retention and exclusion requirements under the federal supplemental security income program;

(4) Apply the resource retention requirements under the federal supplemental security income program in determining the needs of a single person for medical assistance only;

(5) Apply the resource retention requirements under the federal supplemental security income program in

determining the needs of a family of two persons for medical assistance only and an additional $250 for each additional person included in an application for medical assistance only;

(6) Disregard amounts of emergency assistance granted under section 346-65;

(7) Not consider as income or resources any payment for services to or on behalf of, or any benefit received by, a participant under the first-to-work program of part XI, other than wages. Wages earned by a participant while participating in the first-to-work program shall be considered income of the participant, unless the wages are excluded or disregarded under any other law;

(8) Not consider as income or resources payment made to eligible individuals, eligible surviving spouses, surviving children or surviving parents as specified under title I of the Civil Liberties Act of 1988, Public Law 100-383, which made restitution to individuals of Japanese ancestry who were interned during World War II;

(9) Allow the community spouse of an individual residing in a medical institution to maintain countable resources to the maximum allowed by federal statutes or regulations with provisions for increases, as allowed by the Secretary of Health and Human Services by means of indexing, court order, or fair hearing decree, without jeopardizing the eligibility of the institutionalized spouse for medical assistance;

(10) Allow an individual residing in a medical institution to contribute toward the support of the individual's community spouse, thereby enabling the community spouse to maintain the monthly maximum income allowed by federal statutes or regulations, with provisions for increases as allowed by the Secretary of Health and Human Services by means of indexing, court order, or fair hearing decree;

(11) Consider the transfer of assets from the applicant's name to another name within the specified time period as required by federal regulations, known as the "lookback" period, prior to the application for medical assistance for care in a nursing home or other

long-term care facility. Pursuant to rules adopted under chapter 91, the director may attribute any assets that have been transferred within the required federal "lookback" period from the applicant if the director determines that transfer of certain assets was made solely to make the applicant eligible for assistance under this chapter; [~~and~~]

(12) Not consider as income or resources any funds deposited into a family self-sufficiency escrow account on behalf of a participant under a federal housing choice voucher family self-sufficiency program as required or allowed under federal law[~~.~~]; and

(13) Not consider as income any amount of child support payments passed through to applicants or recipients pursuant to section 346-37.1."

SECTION 2. Section 346-37.1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any payment of public assistance money made to or for the benefit of any dependent child or children creates a debt due and owing to the department by the natural or adoptive parent or parents, or any other person who [~~are~~] is responsible

for support of [~~such~~] the child or children [~~except that debts~~]; provided that:

(1) Debts under this section shall not be incurred by a parent or other person who is the recipient of public assistance moneys for the benefit of minor dependent children for the period [~~such~~] the person or persons are in [~~such~~] that status[~~, and, provided that where~~];

(2) Where there has been a family court order, the debt shall be limited to the amount provided for by the order[~~.~~]; and

(3) Each month, the child support enforcement agency shall pass through to a family receiving public assistance moneys for the benefit of minor dependent children up to the first $100 in child support collected in that month for a recipient family that has one child and up to the first $200 in child support collected in that month for a recipient family that has more than one child."

SECTION 3. There is appropriated out of the general revenues of the State of Hawaii the sum of $ or so much thereof as may be necessary for fiscal year 2022-2023 for

necessary expenses incurred by the child support enforcement agency in complying with the requirements of this part.

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

SECTION 4. There is appropriated out of the general revenues of the State of Hawaii the sum of $ or so much thereof as may be necessary for fiscal year 2022-2023 for necessary expenses incurred by the benefit, employment, and support services division in complying with the requirements of this part.

The sum appropriated shall be expended by the department of human services for the purposes of this part.

PART II

SECTION 5. Section 571-52.2, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

"(g) It shall be unlawful for any employer to fail to comply with the requirements of this section. In addition, an employer who fails to comply with an order of assignment of future income, as provided for under this section, shall be liable to the obligee or the obligee's assignee for whom support was required to be paid, for the full amount of all sums ordered

to be withheld and transmitted and not otherwise done so, and may be subject to a fine not to exceed [~~$250~~] $1,000 as determined by the court."

SECTION 6. Section 576E-16, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (c) to read:

"(c) Compliance by an employer with the income withholding order issued pursuant to subsection (a) or with the income withholding order or the notice to withhold child support issued pursuant to section 576D-14 shall operate as a discharge of the employer's liability to the responsible parent for that portion of the responsible parent's earnings withheld and transmitted to the agency, regardless of whether the employer has withheld the correct amount. For each payment made pursuant to an income withholding order or a notice to withhold child support, the employer may deduct and retain as an administrative fee an additional amount of $2 from the income owed to the responsible parent. The total amount withheld from the obligor's income, including the administrative fee, may not be in excess of the maximum amounts permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. §1673(b)). Any income

withholding order or notice to withhold child support shall have priority as against any garnishment, attachment, execution, or other income withholding order, or any other order, and shall not be subject to the exemptions or restrictions contained in part III of chapter 651 and in chapters 652 and 653. An employer who fails to comply with an income withholding order under this section or with an income withholding order or notice to withhold child support issued pursuant to section 576D-14 shall be liable to the obligee or the agency for the full amount of all sums ordered to be withheld and transmitted. In addition, an employer violating this subsection may be subject to a fine not to exceed [~~$250~~] $1000 as determined by the court. An employer receiving an income withholding order or a notice to withhold child support shall transmit amounts withheld to the agency within five working days after the responsible parent is paid. The employer shall begin withholding no later than the first pay period commencing within seven business days following the date a copy of the order or the notice to withhold child support is mailed to the employer.

As used in this subsection, the term "business day" means a day on which the employer's office is open for regular business.

The employer shall withhold funds as directed in the order or the notice to withhold child support, except that when an employer receives an income withholding order issued by another state, the employer shall apply the income withholding law of the state of the obligor's principal place of employment in determining:

(1) The employer's fee for processing an income withholding order;

(2) The maximum amount permitted to be withheld from the obligor's income under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. §1673(b));

(3) The time periods within which the employer must implement the income withholding order and forward the child support payment;

(4) The priorities for withholding and allocating income withheld for multiple child support obligees; and

(5) Any withholding terms or conditions not specified in the order.

An employer who complies with an income withholding order or a notice to withhold child support that is regular on its

face shall not be subject to civil liability to any person or agency for conduct in compliance with the order.

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

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

2. By amending subsection (e) to read:

"(e) It shall be unlawful for any employer to refuse to hire a prospective employee, to discharge an employee, or to take any other disciplinary action against an employee, based in whole or in part upon an order or notice to withhold child support authorized by this section. Any employer who fails to comply with this subsection may be subject to a fine not to exceed [~~$250~~] $1000 as determined by the court."

PART III

SECTION 7. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect on July 1, 2022.

INTRODUCED BY: _____

S.B. NO. 3171

Report Title:
Department of Human Services; Temporary Assistance for Needy Families Program; Employer; Fines; Appropriation

Description:
Requires certain amounts of child support moneys collected by the Department of Human Services for public assistance of a child to pass through to the family receiving public assistance. Requires the Department of Human Services to disregard passed-through child support payments when calculating the income of an applicant for or recipient of public assistance. Increases the maximum fine imposed upon am employer that discharges from employment, refuses to employ, takes disciplinary action against any noncustodial parent subject to income withholding, or fails to comply with an order of assignment of future income to pay child support Appropriates funds.

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