

ACT 176

H.B. NO. 266

A Bill for an Act Relating to Child Support.

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

SECTION 1. Section 571-52, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

“§571-52 Assignment by court order of future wages for payments of support. (a) Whenever any person has been ordered to pay an allowance for the support, maintenance, or education of a [minor] child, or for the support and maintenance of a spouse or former spouse, and fails or refuses to obey or perform the order and has been adjudged guilty of contempt of court for such failure or refusal, the court may make an order which shall operate as an assignment by the person to the clerk of the court where the order is entered, for the benefit of the [minor] child or spouse, of such amounts at such times as may be specified in the order, from the salary, wages, or other income due or to become due in the future to such person from [his] the person's employer or successor employers, until further order of the court. The order of assignment shall be effective immediately after service upon an employer of a true copy of the order, which service may be effected by certified or registered mail or by personal delivery. Thereafter, the employer shall for each pay period withhold from the salary, wages, or other income due to the person from the employer, and not required to be withheld by any other provision of federal or state law, and transmit to the clerk of the court as set forth in the order, as much as may

remain payable to the person for such pay period up to the amount specified in the order of assignment as being payable during the same period. The person ordered to pay shall inform the court immediately of any change which would affect the order of assignment or the disbursement thereof. Compliance by an employer with the order of assignment shall operate as a discharge of the employer's liability to the employee for that portion of the employee's earnings withheld and transmitted to the clerk of court, whether or not the employer has withheld the correct amount. The term "employer" as used in this section includes the United States government, the State, and any political subdivision thereof.

(b) Notwithstanding the provisions of subsection (a), whenever a court has ordered any person (hereinafter "obligor") to make periodic payments toward the support of a [minor] child and, upon petition of the person to whom such payments are ordered to be made, or that person's assignee, the court finds the obligor to be delinquent in payments in an amount equal to or greater than the sum of payments which would become due over a one-month period under the order, judgment, or decree providing for child support, the court may order an assignment of future earnings or income, or a portion thereof, of the obligor in an amount adequate to insure that past due payments and payments which will become due in the future under the terms of the support order will be paid. Such an order shall operate as an assignment by the obligor to the clerk of the court where the order is entered, and shall be binding upon any person who is or shall become obligated to the obligor for payment of earnings or income and who has been served with a certified copy of the assignment order. For each payment made pursuant to an assignment order, the person making such payment may deduct and retain as an administrative fee the additional amount of \$2 from the earnings or income owed to the obligor. Any assignment made pursuant to an assignment order shall have priority as against any garnishment, attachment, execution, or other assignment order, or any other order unless otherwise ordered by the court and the same shall not be subject to any of the exemptions or restrictions contained in part III of chapter 651, and chapters 652 and 653.

For purposes of this subsection, delinquencies in payments shall be computed on the basis of the moneys owed and unpaid on the date that the obligor under the support order has been given notice pursuant to law of the application for the order of assignment, and the fact that the obligor may have subsequently paid such delinquencies shall not relieve the court of its duty under this subsection to order the assignment."

SECTION 2. Section 571-52.2, Hawaii Revised Statutes, is amended to read as follows:

"[§571-52.2] Automatic assignment by court order of future wages for payment of child support. (a) Notwithstanding the provisions of section 571-52, the court may order an assignment of future earnings or income when:

- (1) The court has ordered any person (hereinafter the "obligor") to make periodic payments toward the support of a [minor] child pursuant to a court order, judgment, or decree; and
- (2) The court order, judgment, or decree provides for an automatic assignment of the obligor's wages upon the obligor's failure to timely pay any child support that the obligor is required to pay through the clerk of the court; and
- (3) The court or clerk of the court finds the obligor to be delinquent in payments in an amount equal to or greater than the sum of

payments which would become due over a one month period under the order, judgment, or decree providing for child support.

(b) The court, on its own motion, may order an assignment of future earnings or income, or a portion thereof, of the obligor in an amount adequate to insure that past due payments and payments which will become due in the future under the terms of the support order will be paid.

(c) The court or the clerk of the court shall provide the obligor written notice at least fourteen days in advance of entering an automatic wage assignment and inform the obligor the automatic wage assignment will issue on a certain date unless the obligor files with the court or the clerk of the court a written objection to the automatic assignment and a written request for a hearing. If the obligor files the written objection and the written request, the court or the clerk of the court shall not issue the automatic assignment of future earnings or income until a hearing is held and the matter is resolved. The court shall establish and implement other notice procedures as may be necessary to adequately protect the obligor's right to procedural due process.

(d) The order for automatic assignment shall operate as an assignment by the obligor to the clerk of the court where the order is entered, and shall be binding upon any person who is or shall become obligated to the obligor for payment of earnings or income and who has been served with a certified copy of the assignment order. The assignment shall remain in effect throughout the employment of the obligor and shall be terminated when appropriate by the agency or department which initiated the assignment. In the event that the obligee retains private counsel or proceeds pro se, the obligee shall have primary responsibility for terminating the assignment, the agency or department having secondary responsibility. If the obligee fails to terminate the assignment when appropriate, the obligee shall reimburse the obligor to the extent of any overpayment. If the assignment is not terminated when appropriate, the obligor may seek reimbursement for any overpayment from the obligee, the agency, or the department.

For each payment made pursuant to an assignment order, the person making such payment may deduct and retain as an administrative fee the additional amount of \$2 from the earnings or income owed to the obligor. Any assignment made pursuant to an assignment order shall have priority as against any garnishment, attachment, execution, or other assignment order, or any other order unless otherwise ordered by the court and the same shall not be subject to any of the exemptions or restrictions contained in part III of chapter 651, and chapters 652 and 653.

For purposes of this section, delinquencies in payments shall be computed on the basis of the moneys owed and unpaid on the date that the obligor under the support order has been given notice pursuant to law of the application for the order of assignment, and the fact that the obligor may have subsequently paid such delinquencies shall not relieve the court of its duty under this subsection to order the assignment.

(e) Any employer who fails to comply with an order of assignment of future earnings or 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.

[(e)] (f) The provisions of [sections] section 571-52(c) and (d) shall apply to all orders for automatic assignments issued under this section."

SECTION 3. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved June 1, 1985.)