

ACT 161

H.B. NO. 903

A Bill for an Act Relating to Family Court.

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

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

“§571-52 Assignment by court order of future [wages] income for payments of support. (a) Whenever any person has been ordered to pay an allowance for the support, maintenance, or education of a 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 for the benefit of the child or spouse, of such amounts at such times as may be specified in the order, from [the salary, wages, or other] any income due or to become due in the future to such person from the person’s employer or successor employers, until further order of the court. The assignment of the amounts shall be to the clerk of the court where the order is entered if for the support or maintenance of a spouse or former spouse, or to the child support enforcement agency if for the support, maintenance, or education of a child or if child support and spouse support are contained in the same order. 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] any income due to the person from the employers,¹ and not required to be withheld by any other provision of federal or state law, and transmit to the clerk of the court or child support

enforcement agency 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] income withheld and transmitted to the clerk of the court or child support enforcement agency, as the case may be, 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 and any person who is or shall become obligated to the obligor for payment of income.¹

(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 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 order¹ judgment¹ or decree providing for child support, the court shall 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 child support enforcement agency 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.

(c) 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 part¹ upon an assignment authorized by this section. Any employer violating this section shall be guilty of a misdemeanor under section 710-1077(1)(g).

(d) Notwithstanding any other provision of law, [the provisions of this section shall be applicable to all moneys payable to any obligor] for purposes of this section, the term "income" shall include without limitation, salaries, wages, earnings, workers' compensation, disability benefits, commissions, independent contractor income, and any other entitlement to money including moneys payable as a pension or as an annuity or retirement or disability or death or other benefit, or as a return of contributions and interest thereon from the United States government, or from the State or

other political subdivision thereof, or from any retirement, disability, or annuity system established by any of them pursuant to statute.”

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] income for payment of child support. (a) Notwithstanding section 571-52, the court shall 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 child pursuant to a court order, judgment, or decree;
- (2) The court order, judgment, or decree provides for an automatic assignment of the obligor’s [wages] income upon the obligor’s failure to timely pay any child support that the obligor is required to pay through the child enforcement support agency or directly to the obligee; and
- (3) The child support enforcement agency 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 and notifies the court.

The order shall take effect without necessity of further action of the court or application of the custodial parent or child support enforcement agency, except when a hearing is requested under subsection (c).

(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] income assignment and inform the obligor the automatic [wage] income 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 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 child support enforcement agency 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 child support enforcement agency; provided that payment of all overdue support shall not be the sole basis for terminating 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. 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 or the child support enforcement agency. The child support enforcement agency shall establish

procedures by rule in accordance with chapter 91 for the prompt reimbursement for any overpayment to the obligor.

(e) An employer receiving an assignment order shall send the amounts withheld to the child support enforcement agency within ten days after the [employee] obligor is paid. The employer shall begin withholding no later than the first pay period occurring within fourteen days following the date a certified copy of the order is mailed to the employer. An employer who is required to withhold amounts from the [earnings or] income of more than one [employee] obligor may remit a sum total of the amounts in one check, with a listing of the amounts applicable to each [employee] obligor.

(f) 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.

(g) 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.

(h) The only basis for contesting a withholding under this section is a mistake of fact, which, for purposes of this section, means an error in the amount of current or overdue support or in the identity of the alleged absent parent.

(i) In contested cases, the State shall notify the obligor within forty-five days, as to whether the withholding of the obligor's [earnings or] income will occur.

(j) Obligors may request withholding of their [earnings or] income prior to the entry of an order for the repayment of a delinquency.

(k) Notice of automatic [wage] income assignment after a one-month delinquency shall be included in every child support order entered hereafter in the State.

(l) The child support enforcement agency may allocate amounts withheld from the [earnings or] income of an obligor among more than one obligee if so ordered by the court.

(m) The provisions of section 571-52(c) and (d) shall apply to all orders for automatic assignments issued under this section.

(n) Notwithstanding any other provision of law, for purposes of this section, the term "income" shall include without limitation, salaries, wages, earnings, workers' compensation, disability benefits, commissions, independent contractor income, and any other entitlement to money including moneys payable as a pension or as an annuity or retirement or disability or death or other benefit, or as a return of contributions and interest thereon from the United States government, or from the State or other political subdivision thereof, or from any retirement, disability, or annuity system established by any of them pursuant to statute.

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The term “employer”, as used in this section includes the United States government, the State, any political subdivision thereof and any person who is or shall become obligated to the obligor for payment of income.”

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

SECTION 4. This Act shall take effect upon approval.

(Approved June 5, 1987.)

Note

1. So in original.