

ACT 176

S.B. NO. 3018

A Bill for an Act Relating to the Administrative Process to Establish and Enforce Child Support Obligations.

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

SECTION 1. Chapter 576E, Hawaii Revised Statutes, is amended by adding new sections to be appropriately designated and to read as follows:

“§576E- Contempt; procedure for punishment. In any hearing in a contested case before a hearings officer, any adult who willfully violates, neglects, or refuses to obey or perform any lawful order of the hearings officer, may be proceeded against in the family court for contempt of court according to law.

§576E- Interstate request for income withholding. (a) Whenever the agency acts as an initiating state, it shall promptly notify the child support agency of the state in which the responsible parent is employed to request an interstate income withholding. The notice shall contain all the information that is necessary to carry out the withholding, including the amount requested to be withheld, a copy of the support order, and a statement of arrearages, if any.

(b) Upon receipt of an interstate income withholding request from another jurisdiction by this State, the responsible parent shall be served with an advance notice pursuant to section 576E-4 before the intended withholding is to take place. The notice shall include:

- (1) The amount of past due support and the amount to be withheld;
- (2) A statement that the withholding applies to the current or subsequent employers;
- (3) A statement that the responsible parent is entitled to a hearing, together with an explanation of the procedures to contest the intended withholding;
- (4) A statement that, unless the responsible parent files a written request for a hearing within ten days of the service of the notice, an income withholding order shall be issued; and
- (5) A statement that the only defenses to contesting income withholding are mistakes of fact, which means errors in the amount of current or past due support, or mistaken identity of the alleged responsible parent.

(c) Upon a responsible parent's written request for a hearing, a hearing shall be conducted pursuant to section 576E-9, and when otherwise applicable, chapter 91. The responsible parent shall be notified of the hearings officer's decision as to whether income withholding shall take place.

(d) Enforcement of the support order may also include child support arrearages and reimbursement of Aid to Families with Dependent Children moneys, where such order provides a monthly payment plan for these established debts.

§576E- Willful violations; penalties. Unless otherwise provided herein, any person who knowingly, intentionally or willfully violates any section of this chapter shall be guilty of a petty misdemeanor.

§576E- Uniform statewide procedures. The agency shall adopt uniform statewide procedures in compliance with applicable federal law, including part 305 of Title 45, Code of Federal Regulations.”

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

“§571-52.2 Automatic assignment by court or administrative order of future income for payment of child support. (a) Notwithstanding section 571-52, the court or the child support enforcement agency shall order an assignment of future 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 or administrative order, judgment, or decree;
- (2) The court or administrative order, judgment, or decree provides for an automatic assignment of the obligor’s income upon the obligor’s failure to timely pay any child support that the obligor is required to pay through the child support enforcement 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[,] or the child support enforcement agency, on its own motion, may order an assignment of future 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 or the child support enforcement agency shall provide the obligor written notice at least fourteen days in advance of entering an automatic income assignment and inform the obligor the automatic income assignment will issue on a certain date unless the obligor files with the court or the clerk of the court or the child support enforcement agency, whichever provided the notice, 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 or the child support enforcement agency shall not issue the automatic assignment of future income until a hearing is held and the matter resolved. The court and the child support enforcement agency 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 income and who has been served with a certified copy of the assignment order. The assignment shall be terminated when appropriate by the court or the clerk of the court or 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 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 income of more than one obligor may remit a sum total of the amounts in one check, with a listing of the amounts applicable to each 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 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 or the child support enforcement agency of its duty under this subsection to order the assignment.

(g) It shall be unlawful for any employer to fail to comply with the requirements of this section. In addition, [Any] 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.

(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 income will occur.

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

(k) Notice of automatic 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 income of an obligor may be allocated 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, unemployment 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.

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. Section 576-4, Hawaii Revised Statutes, is amended to read as follows:

"§576-4 Intercounty application. (a) This chapter shall be applicable when both the plaintiff and the defendant are in this State but in different counties. If the court of the county in which the complaint is filed finds that the petition sets forth facts from which it may be determined that the defendant owes a duty of support and finds that a court of another county in this State may obtain jurisdiction of the defendant or the defendant's property, the clerk of the court shall send three copies of the complaint and a certification of the findings to the court of the county in which the defendant or the defendant's property is found. The clerk of the court of the county receiving these copies shall notify the county attorney or corporation counsel of their receipt. The county attorney or corporation counsel and the court in the county to which the copies are forwarded shall then have duties corresponding to those imposed upon them when acting for the State as a responding state. Section 576-27 requiring three certified copies of this chapter to be transmitted by the sending state to the responding state shall not apply when the provisions of this chapter are used by or between the counties of this State.

(b) Notwithstanding the provisions in subsection (a), the procedures in chapter 576E shall apply when the child support obligor and obligee reside in different counties in this State."

SECTION 4. Section 576-27, Hawaii Revised Statutes, is amended to read as follows:

"§576-27 Duty of court or child support enforcement agency of this State as initiating state. If the court or the child support enforcement agency of this State acting as an initiating state finds that the petition sets forth facts from which it may be determined that the defendant owes a duty of support and that a court of the responding state may obtain jurisdiction of the defendant or the defendant's property, it shall so certify and shall cause three copies of (1) the petition, (2) its certificate, and (3) this chapter to be transmitted to the court in the responding state. If the name and address of the court is unknown and the responding state has an information agency comparable to that established in the initiating state, it shall cause such copies to be transmitted to the state information agency or

other proper official of the responding state, with a request that it forward them to the proper court, and that the court of the responding state acknowledge their receipt to the court or the child support enforcement agency of the initiating state.”

SECTION 5. Section 576-31, Hawaii Revised Statutes, is amended to read as follows:

“§576-31 Duty of the court or child support enforcement agency of this State as responding state. When the court or the child support enforcement agency of this State, acting as a responding state, receives from [the court of] an initiating state the aforesaid copies, it shall [(1) docket the cause, (2) notify the county attorney or corporation counsel if plaintiff is not represented by private counsel, (3) set a time and place for a hearing, and (4)] take such action as is necessary in accordance with the laws of this State to [obtain jurisdiction.] establish or enforce support.”

SECTION 6. Section 576-33, Hawaii Revised Statutes, is amended to read as follows:

“§576-33 Procedure. The court, or hearings officer as defined in section 576E-1, shall conduct proceedings under this chapter or chapter 576E in the manner prescribed by law for an action for the enforcement of the type of support claimed.”

SECTION 7. Section 576D-7, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§576D-7]]~~ Guidelines in establishing amount of child support. (a) The family court, in consultation with the agency, shall establish guidelines to establish the amount of child support when an order for support is sought or being [enforced] modified under this chapter. The guidelines shall be based on specific descriptive and numeric criteria and result in a computation of the support obligation.

The guidelines may include consideration of the following:

- (1) All earnings, income, and resources of both parents; provided that earnings be the net amount, after deductions for taxes, and social security. Overtime and cost of living allowance may be deducted where appropriate;
- (2) The earning potential, reasonable necessities, and borrowing capacity of both parents;
- (3) The needs of the child for whom support is sought;
- (4) The amount of public assistance which would be paid for the child under the full standard of need as established by the department;
- (5) The existence of other dependents of the obligor parent;
- (6) To foster incentives for both parents to work;
- (7) To balance the standard of living of both parents and child and avoid placing any below the poverty level whenever possible;
- (8) To avoid extreme and inequitable changes in either [parents] parent’s income depending on custody; and
- (9) If any obligee parent (with a school age child or children in school), who is mentally and physically able to work, remains at home and does not work, thirty (or less) hours of weekly earnings at the minimum wage may be imputed to that parent’s income.

- (b) The guidelines shall be:
 - (1) Applied statewide;
 - (2) To simplify the calculations as much as practicable;
 - (3) Applied to ensure, at a minimum, that the child for whom support is sought benefits from the income and resources of the obligor parent on an equitable basis in comparison with any other minor child of the obligor parent;
 - (4) Established by October 1, 1986; and
 - (5) Transmitted to the agency and all family court judges when available or updated, and shall be considered by the judges in the establishment of each child support order.
- (c) The family court, in consultation with the agency, may update the guidelines when the family court deems it necessary.”

SECTION 8. Section 576E-1, Hawaii Revised Statutes, is amended to read as follows:

“~~[[[~~**§576E-1**~~]]] Definitions.~~ As used in this chapter, unless the context otherwise requires:

“Administrative order” means the order resulting from an administrative adjudication by a hearings officer or the attorney general, through the agency, of the final disposition of a matter before the agency.

“Agency” means the child support enforcement agency established by section 576D-2.

“Arrearage” means past due child support under an existing court or administrative order.

“Child support” means payment for the necessary support and maintenance of a child as required by law.

“Court” means the family courts of this State and, when the context requires, a court or agency of any other state having jurisdiction to establish, modify, and enforce support obligations.

[“Court order” means any judgment, decree, or order of a court or agency that requires the payment of a set or determinable amount of child support, or child support and spousal support.]

“Custodial parent” means a parent, guardian, or other person having custody of the child.

“Department” means the department of the attorney general.

“Debt” means the public assistance debt [pursuant to] as described in section 346-37.1.

“Dependent child” means any person to whom a duty of support is owed.

“Duty of support” means any duty of support imposed or imposed by law, or by any court order, decree, or judgment, whether interlocutory or final or whether incidental to a proceeding for divorce, judicial separation, separate maintenance, or otherwise, and includes the duty to pay arrearages of support past due and unpaid.

“Employee” means any person working for another for hire, including but not limited to, an individual employed in domestic service or at a family’s or person’s home or any individual employed by the individual’s parent or spouse, or independent contractors.

“Employer” means any person who uses or engages [in] the services of any person in exchange for the payment of wages or other means of exchange, including the United States government, the State, and any political subdivision thereof[.], and anyone who is or shall become obligated for payment of income.

“Hearings officer” means a public official appointed and commissioned pursuant to section 576E-10.

“Obligee” means any person to whom payments are required to be made under the terms of a court or administrative order for child support, or child support and spousal support.

“Obligor” means a responsible parent obligated by court or administrative order to pay child support.

“Public assistance” means any cash paid or medical assistance provided by the department of human services to or for the benefit of any dependent child, including amounts paid to or on behalf of the child’s custodian.

“Responsible parent” means any person [upon whom the law of this State places a duty of support.] who has a legal duty of support.

“Support order” means an obligation determined by a court or duly authorized administrative agency, for the maintenance of a dependent child, which is owed to or on behalf of the child, or to the parent or custodian with whom the child is living.

“Uniform statewide procedures” means a written set of instructions prepared by the agency which describe step by step actions to be taken by agency personnel in the performance of duties under this chapter.”

SECTION 9. Section 576E-2, Hawaii Revised Statutes, is amended to read as follows:

“§576E-2 Attorney general; powers. Notwithstanding any other law to the contrary, the attorney general, through the child support enforcement agency, shall have concurrent jurisdiction with the court in all proceedings in which a support obligation is established, modified, or enforced, including, but not limited to, proceedings under chapters 571, 580, 584, and 576, the Uniform Reciprocal Enforcement of Support Act. The attorney general, through the child support enforcement agency, may establish, modify, suspend, terminate, and enforce child support obligations using the administrative process provided in this chapter on all cases for which the department has a responsibility under Title IV-D of the Social Security Act, including but not limited to welfare and nonwelfare cases in which the responsible parent is subject to the department’s jurisdiction, regardless of the residence of the children for whom support is sought. These powers shall include, but not be limited to, the power to:

- (1) Conduct investigations into the ability of responsible parents to pay support and into nonpayment of support;
- (2) Administer oaths, issue subpoenas, and require production of books, accounts, documents, and evidence;
- (3) Establish, modify, suspend, terminate, or enforce a support order;
- (4) Determine that a responsible parent has not complied with a court or administrative order[;] and make recommendations to the court or other agency with respect to contempt or other appropriate proceedings;
- (5) Establish arrearage;
- (6) Establish a public assistance debt under section 346-37.1;
- (7) Order and enforce assignment of future income under section 576E-16, and chapter 571; [and]
- (8) Exercise the powers and authority described in this section, notwithstanding the existence of a prior court or administrative order issued by another state or foreign jurisdiction, except as modified or limited by this chapter[.]; and

- (9) Delegate the powers and authority described in this section to hearings officers and employees of the agency.”

SECTION 10. Section 576E-3, Hawaii Revised Statutes, is amended to read as follows:

“**[[[§576E-3]] Jurisdiction.** Notwithstanding any other law to the contrary, the agency shall have concurrent jurisdiction with the court over:

- (1) Any person found within the State of Hawaii against whom a child support obligation may be established, modified, suspended, terminated, or enforced[, and]; and
- (2) Any person without the State who has maintained a domicile in this State while [subject to] involved in a marital or family relationship out of which arises a claim for child support, including any person against whom a Hawaii court or agency has entered a support order.”

SECTION 11. Section 576E-4, Hawaii Revised Statutes, is amended to read as follows:

“**[[[§576E-4]] Service of process.** Service of the notice provided in section 576E-5 shall be by personal service or certified mail, return receipt requested. After initial service is effected, additional service upon a party shall be satisfied by regular mail to the party’s last known address.”

SECTION 12. Section 576E-5, Hawaii Revised Statutes, is amended to read as follows:

“**[[[§576E-5]] Commencement of administrative proceedings; notice.** The agency shall serve a notice of administrative proceedings and notice of financial responsibility upon the responsible parent [not less than thirty days prior to commencing administrative proceedings to make an order] prior to the issuance of an order under [section 576E-11.] this chapter. The notice shall contain:

- (1) A copy of the order proposed to be entered [by the agency];
- (2) A statement that the responsible parent is entitled to an administrative hearing before an impartial hearings officer to contest the entry of the order together with an explanation of the procedure for requesting a hearing;
- (3) A statement of rights at the hearing together with an explanation of defenses or objections which may be considered by the hearings officer;
- (4) The legal authority under which the hearing is to be held;
- [4] (5) A statement that the property of the responsible parent may be seized or that the income of the responsible parent may be withheld for payment of support; [and
- (5) (6) A statement that information relating to the responsible parent’s nonpayment of support may be made available to credit-reporting agencies[.];
- (7) A statement that child support payment shall be payable by an order for immediate income withholding which shall be entered concurrently with the administrative order pursuant to section 576E-16;
- (8) A statement that the responsible parent has the right to request judicial review of a final order of a hearings officer pursuant to section 576E-13; and

- (9) A statement that an administrative determination of a support obligation creates a judgment by operation of law upon filing of the order at the family court and as such is entitled to full faith and credit in any other state or jurisdiction.”

SECTION 13. Section 576E-6, Hawaii Revised Statutes, is amended to read as follows:

“**[§576E-6] Request for hearing; how made.** Any responsible parent who is aggrieved by the proposed order of the agency may, within ten days of service of a notice pursuant to section 576E-5,¹ obtain a hearing by sending a written request for hearing to the agency office that issued the notice [pursuant to section 576E-5].”

SECTION 14. Section 576E-7, Hawaii Revised Statutes, is amended to read as follows:

“**[§576E-7] Failure to request hearing; effect.** If the responsible parent fails to request a hearing within [twenty] ten days of [receipt] service of the notice issued pursuant to section 576E-5, the agency shall adopt the proposed order as the final order in the action. [Such orders shall be final decisions of the agency, entitled to judicial review as provided in section 576E-13.]”

SECTION 15. Section 576E-9, Hawaii Revised Statutes, is amended to read as follows:

“**[§576E-9] Hearings in contested cases.** Hearings in contested cases shall be conducted in accordance with this chapter, and when otherwise applicable, chapter 91,¹ and shall be presided over by [an administrative] a hearings officer appointed and commissioned by the attorney general[.] pursuant to section 576E-10. The attorney general may adopt such administrative rules pursuant to chapter 91, as may be necessary to carry out the provisions of this section. In any hearing conducted under this section, the responsible parent shall have the right to confront and cross-examine witnesses, to present witnesses and evidence, to be represented by counsel or other person, and to be notified of these rights in writing. Hearings may be conducted by telephone or other electronic telecommunications methods upon the consent of all parties to the hearing.”

SECTION 16. Section 576E-10, Hawaii Revised Statutes, is amended to read as follows:

“**§576E-10 Hearings officers.** The attorney general shall appoint and commission, without regard to chapters 76 and 77, such hearings officers as may be necessary to carry out the purposes of this chapter. Hearings officers shall exercise all of the powers granted to the attorney general under this chapter, but shall not be considered deputy attorneys general and shall not exercise the powers or discharge the duties conferred upon the attorney general or the attorney general’s deputies by chapter 28. In exercising the powers conferred upon the attorney general in section 576E-2, the hearings officers shall have the authority to:

- (1) Enter a default order against a responsible parent who fails to appear at the time and place of the hearing, upon a showing of proper notice to that parent;

- (2) Accept a voluntary acknowledgment of support liability or stipulated agreement setting the amount of support to be paid after [consideration] application of the guidelines established under section 576D-7;
- (3) Enter an income withholding order pursuant to section 576E-16;
- (4) Conduct a hearing and enter an automatic income assignment order pursuant to section 571-52.2;
- (5) Enter an interstate income withholding order pursuant to section 576E-16;
- (6) Enter support orders which have the effect of modifying, suspending, terminating, or enforcing the child support provision of orders of the Hawaii family courts;
- (7) Enter support orders of any form if the order establishes, modifies, suspends, terminates, or enforces child support obligations;
- [(3)] (8) Receive testimony from the parties to the hearing and establish a record; [and
- (4)] (9) Evaluate the testimony and other evidence received at the hearing and make specific findings of fact and conclusions of law[.] after contested case hearings and when otherwise required by law;
- (10) Issue subpoenas;
- (11) Compel production of documents and witnesses;
- (12) Dismiss a child support case upon finding of good cause;
- (13) Hold a pre-hearing conference;
- (14) Conduct a hearing and enter an order concerning whether a state income tax refund should be intercepted to satisfy a past due support obligation pursuant to section 231-54;
- (15) Enter an order concerning whether a responsible parent's unemployment compensation should be applied to satisfy a past due support obligation pursuant to chapter 576D;
- (16) Enter an order concerning whether a lien should be imposed on a responsible parent's personal and real property pursuant to section 576D-10.5;
- (17) Enter an order concerning whether a responsible parent should be required to post bond in order to secure payment of past due support pursuant to chapter 576D;
- (18) Enter an order concerning whether a responsible parent's child support obligation should be reported to consumer credit reporting agencies pursuant to chapter 576D; and
- (19) Refer contempt proceedings to the appropriate court."

SECTION 17. Section 576E-11, Hawaii Revised Statutes, is amended to read as follows:

"~~§576E-11~~ [Agency] **Administrative orders; required findings.** Every order entered [by the agency] pursuant to this chapter shall specify, [at a minimum,] where applicable,¹ the following:

- (1) The amount of periodic support to be paid by the responsible parent, with directions as to the manner of payment;
- (2) The amount of child support [arrearage,] arrearage,¹ if any, that [have] has accrued under an existing court or administrative order;
- (3) The amount of public assistance debt, if any, accrued under section 346-37.1;

- (4) The amount of the periodic payment to be made in liquidation of such public assistance debt, if any, or child support [arrearage,] arrearage,¹ if any;
- (5) The extent of the responsible parent's responsibility to provide medical insurance coverage for the dependent child involved in the case, or otherwise to pay the reasonable and necessary medical expenses of the dependent child;
- (6) The name of the person or agency with custody of the dependent child for whom support is sought, except where a court has previously directed that such information be withheld, and the name and birth date of such child;
- (7) A statement that the property of the responsible parent is subject to collection action, including but not limited to, withholding of income, unemployment [insurance benefits,] compensation, workers' compensation, and retirement benefits, seizure of property, disclosure of information relating to the responsible parent's debt to consumer credit reporting agencies, and federal and state tax refund interception;
- (8) A statement that violations of the [agency's] administrative order are punishable as contempt of court; and
- (9) A statement notifying the responsible parent of the right to judicial review of [agency] administrative orders, and the procedure for obtaining such review."

SECTION 18. Section 576E-12, Hawaii Revised Statutes, is amended to read as follows:

"[§576E-12] [Agency] Administrative orders; force and effect. (a) A true copy of the [agency's] administrative order, along with a true copy of the return of service, shall be filed by the agency in the office of the clerk of the circuit court in the circuit where the order was issued. Upon filing, the order shall have all the force and effect of a final order or decree of the circuit court.

(b) Orders for reimbursement of public assistance shall be considered child support arrearages for purposes of nondischargeability in bankruptcy.

(c) The [agency] administrative order shall remain in effect until superseded by a subsequent court or administrative order [entered by the agency or by the court, or until the responsible parent's obligation to provide support for the dependent child and to reimburse the State for public assistance paid on behalf of the child, has ceased to exist].

(d) A copy of the order shall be served by regular mail upon the responsible parent. A copy of the order shall also be sent to the person having custody of the dependent child."

SECTION 19. Section 576E-13, Hawaii Revised Statutes, is amended to read as follows:

"§576E-13 Appeal to the family court. [Any responsible parent aggrieved by a final order entered by the agency pursuant to this chapter may obtain judicial review under chapter 91 by filing a notice of appeal to the senior family court judge or senior judge in the circuit in which the person resides within thirty days of the filing of the order.] (a) Any party, including the agency, who is aggrieved by a final decision and order in a contested case or by a preliminary ruling of the nature that deferral of review pending entry of a subsequent final

decision would deprive appellant of adequate relief is entitled to judicial review under chapter 91.

(b) Proceedings for review shall be instituted in the family court of the circuit where the appellant resides within thirty days after the preliminary ruling or within thirty days after service of the certified copy of the final decision and order of the hearings officer or agency. The filing of a notice of appeal shall not stay enforcement of the administrative order.

(c) The senior family court judge or senior judge may assign the hearing and disposition of such appeals to any district judge of the family court who shall exercise all of the powers conferred upon a circuit court by section 91-14. [The filing of a notice of appeal shall not stay enforcement of the agency order.]”

SECTION 20. Section 576E-14, Hawaii Revised Statutes, is amended to read as follows:

“[[§576E-14]] Modification, suspension, or termination of [agency] court and administrative orders. (a) [After the entry of an order by the agency under this chapter, the] The responsible parent, the agency, or the person having custody of the [involved] dependent child may file a request for suspension, termination, or modification of the child support provisions of a Hawaii court or administrative order with the agency. Such request shall be in writing, shall set forth the reasons for suspension, termination, or modification, including the change in¹ circumstances since the date of the entry of the order, and shall state the address of the requesting party. [The request shall be served by the requesting party, by personal service or by certified mail, return receipt requested, upon all parties to the original administrative proceeding, and to the person presently having custody of the dependent child. The agency shall thereupon schedule and conduct a hearing on the request.] The agency shall thereafter commence administrative proceedings pursuant to sections 576E-5 through 576E-9.

(b) Only payments accruing subsequent to service of the request on all parties may be modified, and only upon a showing of a substantial and material change of circumstances. The agency shall not be stayed from enforcement of the existing order pending the outcome of the hearing on the request to modify.

(c) Upon satisfaction of a responsible parent’s support obligation toward the dependent child and the State, the agency or hearings officer without application of any party may issue an order terminating child support and may concurrently, if applicable, issue an order terminating existing assignments against the responsible parent’s income and income withholding orders.”

SECTION 21. Section 576E-15, Hawaii Revised Statutes, is amended to read as follows:

“[[§576E-15]] Guidelines to be followed. (a)¹ When [the agency] an administrative order establishes or modifies the amount of child support required to be paid by a responsible parent, [the agency shall use] the guidelines established under section 576D-7[,] shall be applied, except when exceptional circumstances warrant departure.”

SECTION 22. Section 576E-16, Hawaii Revised Statutes, is amended to read as follows:

“§576E-16 Income withholding. (a) Whenever [any] an administrative order is entered [by the agency] establishing, modifying, or enforcing support, establishing an arrearage that has accrued under a previous judicial or adminis-

trative order for support, or establishing a public assistance debt, [the agency] there shall concurrently [issue] be issued an order which shall operate as an assignment to the agency for the benefit of the child of such amounts at such times as may be specified in the order, from the responsible parent's income due or to become due in the future from the responsible parent's employer, or successor employers, until further court or administrative order [of the agency]. A copy of the income withholding order shall be filed in the office of the clerk of the circuit court in the circuit where the order was issued along with the copy of the support order as provided in section 576E-12.

(b) The income withholding order 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 income due to the responsible parent from the employer, and not required to be withheld by any other provision of federal or state law, and transmit to the agency, as much as may remain payable to the responsible parent for such pay period up to the amount specified in the order as being payable during the same period. The employer shall immediately inform the agency of any change that would affect the income withholding order or the disbursement thereof.

(c) Compliance by an employer with the income withholding order 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, whether or not the employer has withheld the correct amount. For each payment made pursuant to an income withholding order, the employer may deduct and retain as an administrative fee an additional amount of \$2 from the income owed to the responsible parent. Any income withholding order shall have priority as against any garnishment, attachment, execution, or other income withholding order, or any other order, unless otherwise ordered [by the agency], 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 [entered by the agency] under this section shall be liable to the obligee or the agency for the full amount of all sums ordered to be withheld and transmitted. An employer receiving an income withholding order shall transmit amounts withheld to the agency within ten days after the responsible parent is paid. The employer shall begin withholding no later than the first pay period commencing within fourteen days following the date a copy is mailed to the employer. 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.

(d) An income withholding order shall remain in effect until terminated when appropriate by [the agency.] court or administrative order. Payment by the responsible parent of any delinquency shall not in and of itself warrant termination of the income withholding order. The agency shall promptly refund any amount withheld in error to the responsible parent.

(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 authorized by this section. Any employer violating this section shall be guilty of a misdemeanor and shall be punished under section 710-1077(1)(g).

(f) Notwithstanding any other provision of law, for the purposes of this section, the term "income" shall include, without limitation, salaries, wages, earnings, workers' compensation, unemployment 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 political subdivision thereof, or from any retirement, disability, or annuity system established by any of them pursuant to statute.

(g) Any responsible parent may request withholding of the parent's income prior to entry of an administrative order [by the agency]. The employer shall comply with that request as if so ordered [by the agency] under this section.

(h) The [agency may allocate] amounts withheld from the income of [one] a responsible parent may be allocated among more than one obligee. If concurrent assignment orders would cause the amounts withheld from the responsible parent's income to exceed applicable wage withholding limitations, the current support obligation of the first served order shall be satisfied first, and then current obligations of subsequently served orders shall be satisfied in the order of service. Thereafter, arrearages due under the income withholding order shall be satisfied in the order of service, up to the applicable limitation.

(i) If a responsible parent changes employment when an income withholding order is in effect, the agency shall notify the responsible parent's new employer of the responsible parent's obligation in accordance with subsections (b)-(f). The new employer shall be bound by the income withholding order until further court or administrative order."

SECTION 23. Section 576E-17, Hawaii Revised Statutes, is amended to read as follows:

“[§576E-17] Medical support enforcement. (a) Where the responsible parent is ordered [by the agency] pursuant to section 576E-11(5) to provide medical insurance coverage for the dependent child, the agency shall, in addition to any income withholding order issued pursuant to section 576E-16, forward a copy of the support order, by registered or certified mail or by personal service, to the responsible parent's employer or union when the responsible parent fails to provide written proof to the agency, within thirty days of receipt of the [agency's] order, that the insurance has been obtained or that application for insurance coverage has been made.

(b) Upon receipt of the copy of¹ order, or upon request of the responsible parent pursuant to the order, the employer or union shall enroll the dependent child as a beneficiary in the group medical insurance plan and withhold any required premium from the responsible parent's income. If more than one plan is offered by the employer or union, the child shall be enrolled in the plan in which the responsible parent is enrolled or the least costly plan otherwise available to the responsible parent that is comparable to the plan in which the responsible parent is enrolled.

(c) A dependent child whom a responsible parent is required to cover as a beneficiary pursuant to this section is eligible for insurance coverage as a dependent of the responsible parent until the duty of support expires or until further court or administrative order¹ [of the agency or a court of competent jurisdiction]. The insurance coverage shall not be terminated prior to entry of such an order relieving the responsible parent of the duty to provide insurance coverage.

(d) The signature of the custodial parent of the insured dependent child is a valid authorization to the insurer for purposes of processing an insurance reimbursement payment to the provider of medical services. When an order for dependent insurance coverage is in effect and the responsible parent's employment is terminated, or the insurance coverage is terminated, the insurer shall

notify the agency within ten days of the termination date with notice of conversion privileges, if any.

(e) Notwithstanding any other law to the contrary, when an order for insurance coverage is in effect, the responsible parent's employer or union shall release to the agency, upon request, information on the dependent coverage available to the responsible parent, including the name of the insurer.

(f) Any responsible parent who fails to comply with an order [entered by the agency] requiring the maintenance of insurance coverage for the dependent child shall be liable for any medical expenses incurred by the obligee or the State after the effective date of the order.”

SECTION 24. Section 576-37.5, Hawaii Revised Statutes, is repealed.

SECTION 25. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 26. This Act shall take effect upon its approval.

(Approved June 19, 1990.)

Notes

1. So in original.
2. Edited pursuant to HRS §23G-16.5.