

ACT 212

H.B. NO. 3006

A Bill for an Act Relating to Child Support.

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

SECTION 1. Section 571-52.2, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(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 from the child support enforcement agency[.], to the extent the overpayment was disbursed to the Department of Human Services. 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."

SECTION 2. Section 576E-14, Hawaii Revised Statutes, is amended to read as follows:

"§576E-14 Modification, suspension, or termination of court and administrative orders. (a) The responsible parent, the agency, or the person having custody of the 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 in circumstances since the date of the entry of the order, and shall state the address of the requesting party. 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) The adoption of any substantive modifications made to the guidelines set forth section 576D-7 may constitute a change in circumstances sufficient to permit review of the support order. The most current guidelines shall be used to calculate the amount of the child support obligation.

(d) 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 concurrently¹ if applicable, issue an order terminating existing assignments against the responsible parent's income and income withholding orders.

(e) In those cases where child support payments are to continue due to the adult child's pursuance of education, the agency, at least three months prior to the adult child's nineteenth birthday, shall send notice by regular mail to the adult child and the custodial parent that prospective child support will be suspended unless proof is provided by the custodial parent or adult child to the child support enforcement agency, prior to the child's nineteenth birthday, that the child is presently enrolled as a full-time student in school or has been accepted into and plans to attend as a full-time student for the next semester a post-high school university, college or vocational school. If the custodial parent or adult child fails to do so, prospective child support payments may be automatically suspended by the child support enforcement agency upon the child reaching the age of nineteen years. In addition, if applicable, the agency or hearings officer may issue an order terminating existing assignments against the responsible parent's income and income assignment orders."

SECTION 3. Section 580-47, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Upon granting a divorce, or thereafter if, in addition to the powers granted in subsections (c) and (d), jurisdiction of such matters is reserved under the decree by agreement of both parties or by order of court after finding that good cause exists, the court may make such further orders as shall appear just and equitable (1) compelling the parties or either of them to provide for the support, maintenance, and education of the children of the parties; (2) compelling either party to provide for the support and maintenance of the other party; (3) finally dividing and distributing the estate of the parties, real, personal, or mixed, whether community, joint, or separate; and (4) allocating, as between the parties, the responsibility for the payment of the debts of the parties whether community, joint, or separate, and the attorney’s fees, costs, and expenses incurred by each party by reason of the divorce. In making such further orders, the court shall take into consideration: the respective merits of the parties, the relative abilities of the parties, the condition in which each party will be left by the divorce, the burdens imposed upon either party for the benefit of the children of the parties, and all other circumstances of the case. In establishing the amounts of child support, the court shall use the guidelines established under section 576D-7. Provision may be made for the support, maintenance, and education of an adult or minor child and for the support, maintenance, and education of an incompetent adult child whether or not the application is made before or after the child has attained the age of majority. In those cases where child support payments are to continue due to the adult child’s pursuance of education, the agency, three months prior to the adult child’s nineteenth birthday, shall send notice by regular mail to the adult child and the custodial parent that prospective child support will be suspended unless proof is provided by the custodial parent or adult child to the child support enforcement agency, prior to the child’s nineteenth birthday, that the child is presently enrolled as a full-time student in school or has been accepted into and plans to attend as a full-time student for the next semester a post-high school university, college or vocational school. If the custodial parent or adult child fails to do so, prospective child support payments may be automatically suspended by the child support enforcement agency, hearings officer, or court upon the child reaching the age of nineteen years. In addition, if applicable, the agency, hearings officer, or court may issue an order terminating existing assignments against the responsible parent’s income and income assignment orders.

In addition to any other relevant factors considered, the court, in ordering spousal support and maintenance, shall consider the following factors:

- (1) Financial resources of the parties;
- (2) Ability of the party seeking support and maintenance to meet his or her needs independently;
- (3) Duration of the marriage;
- (4) Standard of living established during the marriage;
- (5) Age of the parties;
- (6) Physical and emotional condition of the parties;
- (7) Usual occupation of the parties during the marriage;
- (8) Vocational skills and employability of the party seeking support and maintenance;

- (9) Needs of the parties;
- (10) Custodial and child support responsibilities;
- (11) Ability of the party from whom support and maintenance is sought to meet his or her own needs while meeting the needs of the party seeking support and maintenance;
- (12) Other factors which measure the financial condition in which the parties will be left as the result of the action under which the determination of maintenance is made;
- (13) Probable duration of the need of the party seeking support and maintenance.

The court may order support and maintenance to a party for an indefinite period or until further order of the court; provided that in the event the court determines that support and maintenance shall be ordered for a specific duration wholly or partly based on competent evidence as to the amount of time which will be required for the party seeking support and maintenance to secure adequate training, education, skills, or other qualifications necessary to qualify for appropriate employment, whether intended to qualify the party for a new occupation, update or expand existing qualification, or otherwise enable or enhance the employability of the party, the court shall order support and maintenance for a period sufficient to allow completion of the training, education, skills, or other activity, and shall allow, in addition, sufficient time for the party to secure appropriate employment.”

SECTION 4. Section 584-18, Hawaii Revised Statutes, is amended to read as follows:

“[§584-18] Modification of judgment or order. (a) The court shall have continuing jurisdiction to modify or revoke a judgment or order:

- (1) For future education and support; and
- (2) With respect to matters listed in section 584-15(c) and (d) and section 584-17(b), except that a court entering a judgment or order for the payment of a lump sum or the purchase of an annuity under section 584-15(d) may specify that the judgment or order may not be modified or revoked.

(b)² In those cases where child support payments are to continue due to the adult child’s pursuance of education, the child support enforcement agency, three months prior to the adult child’s nineteenth birthday, shall send notice by regular mail to the adult child and the custodial parent that prospective child support will be suspended unless proof is provided by the custodial parent or adult child, to the child support enforcement agency, prior to the child’s nineteenth birthday, that the child is presently enrolled as a full-time student in school or has been accepted into and the plans to attend as a full-time student for the next semester a post-high school university, college or vocational school. If the custodial parent or adult child fails to do so, prospective child support payments may be automatically suspended by the child support enforcement agency, hearings officer, or court upon the child reaching the age of nineteen years. In addition, if applicable, the agency, hearings officer, or court may issue an order terminating existing assignments against the responsible parent’s income and income assignment orders.”

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SECTION 5. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

(Approved June 12, 1992.)

Notes

1. Prior to amendment “,” appeared here.
2. Should be underscored.