

## ACT 294

S.B. NO. 1267

A Bill for an Act Relating to Child Support Enforcement.

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

SECTION 1. Chapter 657, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“**§657- Judgments for support.** Every judgment for child support, including a judgment for reimbursement or other arrears, shall be presumed to be paid and discharged on the thirty-third birthday of the child for which the order of support was rendered or by the expiration of the latest period provided in section 657-5, whichever date is later.”

SECTION 2. Section 576D-7, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The establishment of the guidelines or the adoption of any substantive modifications made to the guidelines set forth in this section may constitute a change in circumstances sufficient to permit review of the support order. A material change of circumstances will be presumed if support as calculated pursuant to the guidelines is either ten per cent greater or less than the support amount in the outstanding support order. The most current guidelines shall be used to calculate the amount of the child support obligation.”

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

“**§576D-10 Collection and disbursement of child support; direct payment exception.** (a) The agency shall collect and disburse child support payments when [a court] an order requires the collection and disbursement. Notwithstanding any other law to the contrary, the agency shall maintain a special interest bearing account for child support payments. Moneys collected by the agency for child support payments shall not be deposited into the state treasury, but shall be deposited into this account. Moneys to be disbursed by the agency for child support payments shall be disbursed from this account without appropriation or allotment. The interest realized from this account shall be used for related costs of the maintenance and operation of the account and the balance shall be deposited into the state treasury to the credit of the general fund.

(b) Any child support payments required by a court order effective on June 30, 1986, to be made to a court or clerk of the court and disbursed to a custodial parent shall be made to the agency after June 30, 1986. The agency shall disburse the payments as appropriate under the court order.

(c) At the time a child support obligation is first established or at any time thereafter, the court may approve an alternative arrangement for the direct payment of child support from the obligor to the custodial parent as an exception to the provisions for income withholding through the agency, as required by sections 571-52.2(a)(1), 571-52.3, and 576E-16(a).

(d) The court may approve an alternative arrangement for the direct payment of child support where either:

- (1) The obligor or custodial parent demonstrates and the court finds that there is good cause not to require immediate withholding; or

- (2) A written agreement is reached between the obligor and the custodial parent and signed by both parties;

provided that in either case where child support has been ordered previously, an alternative arrangement for direct payment shall be approved only where the obligor provides proof of the timely payment of previously ordered support. For purposes of this section, good cause to approve an alternative arrangement shall be based upon a determination by the court, either in writing or on the record, that implementing income withholding would not be in the best interests of the child. Such a determination shall include a statement setting forth the basis of the court's conclusion.

(e) Any alternative arrangement for direct payment shall provide that either parent may void the arrangement at any time and apply for services from the agency to act as agent to receive payments from the obligor parent. The alternative arrangement for direct payment also shall provide that, if the subject dependents of the obligor parent commence receiving public assistance, including but not limited to public assistance from the department of human services under chapter 346, [Hawaii Revised Statutes,] foster care under section 571-48, [Hawaii Revised Statutes,] Title IV-E or Title XIX of the federal Social Security Act (42 U.S.C. §1396), or if either parent applies for services from the [child support enforcement] agency, the agency may immediately void the direct payment arrangement by sending written notice by regular mail to the custodial and obligor parents at their last known addresses, as disclosed in the alternative arrangement agreement.

(f) The alternative arrangement for direct payment agreement shall include the most recent addresses of the custodial and obligor parent. If the obligor parent alleges direct payment of child support to the custodial parent after the subject dependents of the court-approved alternative arrangement become recipients of public assistance, including but not limited to public assistance from the department of human services under chapter 346, [Hawaii Revised Statutes,] foster care under section 571-48, [Hawaii Revised Statutes,] Title IV-E or Title XIX of the federal Social Security Act (42 U.S.C. §1396), or after the custodial parent applies for services from the agency, and after receiving proper notification of the change of payee to the [child support enforcement] agency, then the obligor shall have the burden of proving that the child support payments were made by presenting written evidence, including but not limited to cancelled checks or receipts.

(g) No alternative arrangement for direct payment shall be approved where the obligor or the custodial parent is receiving services under Title IV-D or where the dependents of the obligor receive public assistance, including but not limited to public assistance from the department of human services under chapter 346, foster care under section 571-48, [Hawaii Revised Statutes,] Title IV-E or Title XIX of the federal Social Security Act (42 U.S.C. §1396), or where the obligor owes a public assistance debt.

(h) Any alternative arrangement for direct payment shall pertain only to the method of payment of child support. The amount of child support shall be determined according to the child support guidelines pursuant to section 576D-7 and section 576E-15.

(i) The alternative arrangement for direct payment shall become effective upon approval and filing by the court. For any order approved pursuant to this section on or after October 1, 1998, each party must send a certified copy of the order to the state case registry established under section 576D-6.

(j) The agency shall not be required to maintain records while an order obtained pursuant to this section is in effect, except for any payments received and disbursed by the agency."

SECTION 4. Section 576E-14, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The establishment of the guidelines or the adoption of any substantive modifications made to the guidelines set forth in section 576D-7 may constitute a change in circumstances sufficient to permit review of the support order. A material change of circumstances will be presumed if support as calculated pursuant to the guidelines is either ten per cent greater or less than the support amount in the outstanding support order. The most current guidelines shall be used to calculate the amount of the child support obligation.”

SECTION 5. Section 580-47, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) No order entered under the authority of subsection (a) or entered thereafter revising so much of such an order as provides for the support, maintenance, and education of the children of the parties shall impair the power of the court from time to time to revise its orders providing for the support, maintenance, and education of the children of the parties upon a showing of a change in the circumstances of either party or any child of the parties since the entry of any prior order relating to [such] the support, maintenance, and education. The establishment of the guidelines or the adoption of any substantive modifications made to the guidelines set forth in section 576D-7 may constitute a change in circumstances sufficient to permit review of the support order. A material change of circumstances will be presumed if support as calculated pursuant to the guidelines is either ten per cent greater or less than the support amount in the outstanding support order. The most current guidelines shall be used to calculate the amount of the child support obligation.”

SECTION 6. Section 584-9 of the Hawaii Revised Statutes, is amended to read as follows:

**“§584-9 Parties; guardian ad litem for minor presumed or alleged father; county attorney or corporation counsel to represent custodial parent or agency; notice to parents.** (a) The child may be made a party to the action and may be represented by the child’s general guardian or a guardian ad litem appointed by the court. The child’s mother or father shall not represent the child as guardian or otherwise. Subject to [the provisions in] section 584-6(e), the natural mother, each man presumed to be the father under section 584-4, [and] each man alleged to be the natural father, and the child support enforcement agency, if public assistance moneys are or have been paid for the support of the subject child, shall be made parties, or, if not subject to the jurisdiction of the court, shall be given notice of the action in a manner prescribed by the court and an opportunity to be heard.

(b) If it appears to the satisfaction of the court that the natural mother or a man alleged or presumed to be the father of the child is a minor, the court shall also cause notice of the pendency of the proceedings and copies of the pleadings on file to be served upon the legal parent or guardian who has physical custody of the minor. The court may appoint a guardian ad litem to represent the minor in the proceedings. If the legal parent or guardian of any such minor cannot be found, the notice may be served in such manner as the court may direct pursuant to sections 634-21 to 634-24. The court may align the parties.

(c) The county attorney or corporation counsel, upon request of the child support enforcement agency, shall represent the [child’s custodial parent, or the custodial parent’s personal representative or parent if the custodial parent has died, or any agency authorized to seek the determination and establishment of paternity or maternity under chapter 576D, if an application for services is made.] child support

enforcement agency. Fees may be charged of the applicant for child support enforcement agency's services as provided for by chapter 576D."

SECTION 7. Section 584-15, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) The judgment or order may contain any other provision directed against the appropriate party to the proceeding, concerning the duty of support, the custody and guardianship of the child, visitation privileges with the child, the furnishing of bond or other security for the payment of the judgment, or any other matter in the best interest of the child. Upon neglect or refusal to give [such] this security, or upon default of the father or [his] the father's surety in compliance with the terms of the judgment, the court may order the forfeiture of any such security and the application of the proceeds thereof toward the payment of any sums due under the terms of the judgment and may also sequester the father's personal estate, and the rents and profits of [his] the father's real estate, and may appoint a receiver thereof, and may cause the father's personal estate, including any salaries, wages, commissions, or other moneys owed to him and the rents and profits of his real estate, to be applied toward the meeting of the terms of the judgment, to the extent that the court, from time to time, deems just and reasonable. The judgment or order may direct the father to pay the reasonable expenses of the mother's pregnancy and confinement[.], including but not limited to medical insurance premiums, such as for MedQuest, which cover the periods of pregnancy, childbirth, and confinement. The court may further order the noncustodial parent to reimburse the custodial parent, the child, or any public agency for reasonable expenses incurred prior to entry of judgment, including support, maintenance, education, and funeral expenses expended for the benefit of the child.”

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 9. This Act shall take effect upon its approval.

(Approved June 21, 1997.)

**Note**

1. Edited pursuant to HRS §23G-16.5.