

ACT 153

H.B. NO. 3192

A Bill for an Act Relating to Support Enforcement.

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

SECTION 1. Section 231-51, Hawaii Revised Statutes, is amended to read as follows:

**“§231-51 Purpose.** The purpose of sections 231-52 to 231-59 is to permit the retention of state income tax refunds of those persons who owe a debt to the State, who are delinquent in the payment of child support[, pursuant to section 576D-1], who have defaulted on an education loan note held by the United Student Aid Funds, Inc., or who owe federal income taxes to the United States Treasurer.”

SECTION 2. Section 231-52, Hawaii Revised Statutes, is amended by amending the definitions of “claimant agency,” “debt,” and “debtor” to read as follows:

““Claimant agency” includes any state agency, board, commission, department, institution, or other state organization, or any subdivision thereof. In the case of delinquent child support[,], pursuant to section 576D-1, “claimant agency” means the child support enforcement agency or an agency under cooperative agreement with the department whenever the department is required by law to enforce a support order on behalf of an individual. “Claimant agency” includes the department of budget and finance when acting on behalf and at the request of the United Student Aid Funds, Inc. to collect defaulted education loan notes incurred under the federal Higher Education Act of 1965 (Public Law 89-329, 79 Stat. 1219), as amended; provided that the department has a contract with the United Student Aid Funds, Inc. under chapter 309 when acting as a claimant agency. “Claimant agency” includes the department of taxation when acting on behalf and at the request of the Internal Revenue Service under the United States Department of the Treasury, and when the Internal Revenue Service is authorized by federal law to administratively impose a levy upon a refund of a debt or in satisfaction of the federal income taxes assessed under Internal Revenue Code of 1986, as amended.

“Debt” includes either:

- (1) Any delinquency in periodic court-ordered or administrative-ordered payments for child support pursuant to section 576D-1, in an amount equal to or exceeding the sum of payments which would become due over a one-month period; or
- (2) Any liquidated sum exceeding \$25 which is due and owing any claimant agency, regardless of whether there is an outstanding judgment for that sum, and whether the sum has accrued through contract, subrogation, tort, operation of law, or judicial or administrative judgment or order; or
- (3) Any defaulted education loan note held by the United Student Aid Funds, Inc. incurred under the federal Higher Education Act of 1965 (Public Law 89-329, 79 Stat. 1219), as amended; or
- (4) Any federal income taxes due and owing to the United States Treasurer.

“Debtor” includes any person who owes a debt to any claimant agency, who is delinquent in payment of court-ordered or administrative-ordered child support payments, pursuant to section 576D-1, who has defaulted on an education loan note held by the United Student Aid Funds, Inc. incurred under the federal Higher Education Act of 1965 (Public Law 89-329, 79 Stat. 1219), as amended, or who owes federal income taxes to the United States Treasurer.”

SECTION 3. Section 383-163.5, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) As used in this section, the term “child support obligations” includes only obligations which are being enforced [pursuant to a plan described in section 454 of the Social Security Act and approved by the Secretary of Health and Human Services under part D of title IV of the Social Security Act.] pursuant to section 576D-1.”

SECTION 4. Section 576D-1, Hawaii Revised Statutes, is amended by amending the definitions of “child support” and “order of support” to read as follows:

““Child support” means payment for the necessary support and maintenance of a child as required by law[.] that includes but is not limited to spousal support when ordered in conjunction with child support or medical support when a court or administrative order requires the debtor parent to pay an amount in lieu of

providing medical insurance coverage or to reimburse for maternity and delivery expenses incurred when the debtor parent's child was born.

“Order of support” means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorney’s fees, and other relief. An order of support may include spousal support when ordered to be paid in conjunction with child support. An order of support may also include medical support when the debtor parent is ordered to pay an amount in lieu of providing medical insurance coverage or to reimburse for maternity and delivery expenses incurred when the debtor parent's child was born.”

SECTION 5. Section 576D-6, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The agency shall:

- (1) Establish a state parent locator service for the purpose of locating absent and custodial parents;
- (2) Cooperate with other states in:
  - (A) Establishing paternity, if necessary;
  - (B) Locating an absent parent who is present in the State and against whom any action is being taken under a Title IV-D program in any other state; and
  - (C) Securing compliance by such an absent parent with a support order issued by a court of competent jurisdiction in another state;
- (3) Perform periodic checks of whether a parent is collecting unemployment compensation and, if so, to arrange, either through agreement with the parent or by bringing legal process, to have a portion of the compensation withheld, to fulfill the parent’s child support obligations;
- (4) Notify annually each custodial parent, guardian, protective payee, or other person having custody of the child of an Aid to Families with Dependent Children family of the amount of child support collected on behalf of the child in the family. For the purpose of this section, “Aid to Families with Dependent Children family” means a family which receives financial assistance under the federal Aid to Families with Dependent Children program or its successor;
- (5) Establish and utilize procedures which shall require a debtor parent to give security, post bond, or give some other guarantee to secure payment of delinquent child support. The procedures shall apply to all debtor parents of children described under section 576D-3. The procedures shall include advance notice to the debtor parent in full compliance with the State’s procedural due process requirements. The agency shall develop guidelines, which are available to the public, to determine whether the case is inappropriate for application of this requirement;
- (6) Establish and utilize procedures by which information regarding the name of the debtor parent and the amount of delinquent child support owed by a debtor parent residing in the State will be made available to any consumer reporting agency[.] as defined in section 603(f) of the Fair Credit Reporting Act. The procedures shall be effectuated upon the agency being authorized to provide Title IV-D services, and shall include provisions on advance notice to the debtor parent whose infor-

mation is being reported of the procedures, which shall be in full compliance with the State's procedural due process requirements, to contest the accuracy of the information;

- (7) Establish and utilize procedures which will enforce liens against the real and personal property of a debtor parent who owes overdue support and who resides or owns property in the State. The agency shall further establish guidelines which are available to the public to determine whether the case is inappropriate for application of this paragraph;
- (8) Establish and utilize procedures for the notification of a custodial parent that any income tax refund setoff under section 231-53 shall be credited to child support debts for past public assistance or foster care maintenance before any other debt;
- (9) Establish and utilize procedures for prompt reimbursements of overpayments of child support debts from income tax refund setoffs under section 231-53. The procedures shall provide for the reimbursements to be made by the custodial parent or agency;
- (10) Establish and utilize procedures for periodic review and modification of child support orders in accordance with Title IV-D;
- (11) Provide notice not less than once every three years to those parents subject to an order of support informing the parents of their right to request the agency to review and, if appropriate, adjust the order of support pursuant to the guidelines established under section 576D-7;
- (12) Establish and operate a state case registry which contains records of:
  - (A) Each case in which services are being provided by the agency under the state plan; and
  - (B) Each support order established or modified in the State on or after October 1, 1998.

Such records shall use standardized data elements for both parents, including but not limited to names, residential and mailing addresses, telephone numbers, driver's license numbers, names, addresses, and telephone number of the party's employer, social security numbers and other uniform identification numbers, dates of birth, and case identification numbers, and contain such other information as required by the United States Secretary of the Department of Health and Human Services. In each case with respect to subparagraph (A) and where a support order has been established, the case record shall include the amount of monthly or other periodic support owed under the order, and other amounts, including but not limited to arrearages, due under the order, the amounts collected under the order, the birthdate of any child for whom the order requires the provision of support, and the amount of any lien imposed;

- (13) Perform other duties required under chapter 576B, the Uniform Interstate Family Support Act; and
- (14) Perform other duties required under Title IV-D."

SECTION 6. Section 576D-12, Hawaii Revised Statutes, is amended to read as follows:

**"§576D-12 Protection of records; divulging confidential information prohibited; penalties.** (a) The agency and its agents shall keep such records as may be necessary or proper in accordance with this chapter. All applications and records concerning any applicant for support services or recipient of public assistance shall be confidential. The use or disclosure of information concerning any applicant or recipient shall be limited to:

- (1) Persons duly authorized by the State or the United States in connection with their official duties, when their official duties are directly concerned with the administration and implementation of any child support enforcement plan or program approved by Title IV-A through D, or under Titles II, X, XIV, XVI, XIX, or XX of the Social Security Act, including but not limited to any legal counsel working on behalf of the agency;
- (2) Disclosure to the extent necessary to provide information to family support payors or payees or their authorized representatives regarding payments received by the agency and the status of their support accounts; provided that the information shall be disclosed to an authorized representative only if the request is accompanied by a written waiver of the payor or payee concerned;
- (3) Disclosure to consumer reporting agencies as provided in section 576D-6(a)(6);
- (4) Other agencies or persons connected with the administration of any other federal or federally assisted program which provides assistance, in cash or in kind, or services, directly to individuals on the basis of need;
- (5) Employees acting within the scope and course of their employment with the department as may be approved by the agency; [and]
- (6) Purposes directly connected with any investigation, enforcement, prosecution, or criminal or civil proceeding conducted in connection with the administration of any plan or program in paragraph (1); and
- (7) Disclosure to the family court as may be deemed necessary by the family court for any case pending before a court or for purposes of implementation of section 571-51.5.

(b) Disclosure to any committee or legislative body (federal, state, or county) of any information that identifies by name and address any applicant or recipient shall be prohibited.

(c) The agency shall not disclose information relating to the location of one party or the child to another party if the agency knows a protective order has been entered with respect to the other party. The agency shall not disclose information related to the location of one party or the child to another person if the agency has reason to believe that disclosure of the information to that person may result in physical or emotional harm to the [other] party[.] or the child.

(d) When the Secretary of Health and Human Services or the Secretary's agent discloses information about a parent or child to a family court or hearings officer and advises that court or hearings officer that the Secretary has been notified that there is reasonable evidence of domestic violence or child abuse, the court or hearings officer shall determine whether disclosure to any other person of information received from the Secretary could be harmful to the parent or child and, if the court or hearings officer determines that disclosure to any other person could be harmful, the court or hearings officer shall not make any such disclosure;

[(d)] (e) The agency shall adopt and enforce such rules as may be necessary to prevent improper acquisition or use of confidential information. Any information obtained pursuant to this section by officials, employees, or legal counsel working on behalf of the agency may be used in connection with their official duties or within the scope and course of their employment but not otherwise, and shall be kept in confidential records or files, which shall not be subject to any other law permitting inspection of government records. The agency and its agents shall determine whether the inspection is in connection with the official duties or within the scope and course of employment.

[ (e)] (f) The use of the records, and other communications of the agency or its agents by any other agency or department of the government to which they may be furnished, shall be limited to the purposes for which they are furnished.

[ (f)] (g) Any person, including any person who is authorized by this section to obtain information, who, knowing the information obtained is from confidential records or files of the agency, intentionally discloses the information other than as authorized by law, or who intentionally or knowingly aids or abets in the inspection or disclosure of the applications or records by any person not authorized by this section to inspect such applications or records, shall be guilty of a misdemeanor, unless a greater penalty is otherwise provided by law.

[ (g)] (h) Nothing in this section shall require the sealing of family court records or preclude the disclosure of information by the family court relating to any case pending before a court or for purposes of implementation of section 571-51.5.”

SECTION 7. Section 576D-18 is amended by amending subsection (d) to read as follows:

“(d) Other state or territorial agencies administering a program under Title IV-D shall have access, including automated inquiry access, to the records of all entities in the State for information on the employment, compensation, and benefits of any individual employed by such entity as an employee or contractor, to the same extent and with the same restrictions as child support enforcement investigators pursuant to this chapter. Other federal, state, and territorial agencies conducting activities under the Title IV-D program shall have access to any system used by the state to locate an individual for purposes relating to motor vehicles or law enforcement.”

SECTION 8. Section 576E-1, Hawaii Revised Statutes, is amended by amending the definitions of “child support” and “order of support” to read as follows:

““Child support” means payment for the necessary support and maintenance of a child as required by law[.] that includes but is not limited to spousal support when ordered in conjunction with child support or medical support when a court or administrative order requires the debtor parent to pay an amount in lieu of providing medical insurance coverage or to reimburse for maternity and delivery expenses incurred when the debtor parent’s child was born.

“Order of support” means a judgment, decree, or order, whether temporary, final, or subject to modification, issued by a court or an administrative agency of competent jurisdiction, for the support and maintenance of a child, including a child who has attained the age of majority under the law of the issuing state, or a child and the parent with whom the child is living, which provides for monetary support, health care, arrearages, or reimbursement, and which may include related costs and fees, interest and penalties, income withholding, attorney’s fees, and other relief. An order of support may include spousal support when ordered to be paid in conjunction with child support. An order of support may also include medical support when the debtor parent is ordered to pay an amount in lieu of providing medical insurance coverage or to reimburse for maternity and delivery expenses incurred when the debtor parent’s child was born.”

SECTION 9. Section 584-12, Hawaii Revised Statutes, is amended to read as follows:

**“§584-12 Evidence relating to paternity.** Evidence relating to paternity may include:

- (1) Evidence of sexual intercourse between the mother and the alleged father at any possible time of conception;
- (2) An expert’s opinion concerning the statistical probability of the alleged father’s paternity based upon the duration of the mother’s pregnancy;
- (3) Genetic test results, including blood test results, weighted in accordance with evidence, if available, of the statistical probability of the alleged father’s paternity;
- (4) Medical or anthropological evidence relating to the alleged father’s paternity of the child based on tests performed by experts. If a man has been identified as a possible father of the child, the court may, and upon request of a party shall, require the child, the mother, and the man to submit to appropriate tests;
- (5) A voluntary, written acknowledgment of paternity [that shall create a rebuttable presumption of paternity; and];
- (6) Bills for pregnancy and childbirth, including medical insurance premiums covering this period and genetic testing, without the need for foundation testimony or other proof of authenticity or accuracy, and these bills shall constitute prima facie evidence of amounts incurred for such services or for testing on behalf of the child; and
- [(6)] (7) All other evidence relevant to the issue of paternity of the child.”

SECTION 10. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 11. This Act shall take effect upon its approval.

(Approved July 7, 1998.)