

ACT 83

H.B. NO. 2780

A Bill for an Act Relating to Child Support Enforcement.

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

SECTION 1. Section 189-2, Hawaii Revised Statutes, is amended to read as follows:

**“§189-2 Commercial marine license.** (a) No person shall take marine life for commercial purposes whether the marine life is caught or taken within or outside of the State, without first obtaining a commercial marine license as provided in this section. Additionally, any person providing vessel charter services in the State for the taking of marine life in or outside of the State shall obtain a commercial marine

license. The department of land and natural resources may adopt rules pursuant to chapter 91 necessary for the purpose of this chapter and to set fees for commercial marine licensing.

(b) All licenses issued under this section shall be in force one year from the date of issuance. Duplicate licenses may be issued to any person upon affidavit that the license was lost, and upon payment of a duplicate license fee. The fees for commercial marine licenses and duplicate commercial marine licenses shall be established by the department by rules adopted in accordance with chapter 91. The department shall set the fees in an amount that, when combined with the fees provided for in sections 188-37 and 188-50, shall be reasonably necessary to supplement the funding for:

- (1) Enforcement of this section and chapter 188; and
- (2) The activities set forth in section 187A-11.

Anyone who qualifies as a "trainee" under rules prescribed by the department shall have the fee waived for a period of not more than one hundred eighty calendar days from the date on which the license is issued.

(c) The department shall suspend, shall refuse to renew, reinstate, or restore, or shall deny any license issued under this section if the department has received certification from the child support enforcement agency pursuant to section 576D-13 that the licensee or applicant is not in compliance with an order of support or has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding. The department shall issue, renew, reinstate, or restore such a license only upon receipt of authorization from the child support enforcement agency, the office of child support hearings, or the family court."

SECTION 2. Section 346-37.1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Any payment of public assistance money made to or for the benefit of any dependent child or children creates a debt due and owing to the department by the natural or adoptive parent or parents who are responsible for support of such children in an amount equal to the amount of public assistance money so paid or as established pursuant to subsection (b), except that debts under this section shall not be incurred by [nor at any time be collected from] a parent or other person who is the recipient of public assistance moneys for the benefit of minor dependent children for the period such person or persons are in such status, and, provided that where there has been a family court order, the debt shall be limited to the amount provided for by the order."

SECTION 3. Section 576D-1, Hawaii Revised Statutes, is amended by amending the definition of "compliance with an order of support" to read as follows:

"“Compliance with an order of support” means that an obligor:

- (1) Is not delinquent in payments in an amount equal to or greater than the sum of payments for [current] child support and spousal support when ordered in conjunction with child support for a three-month period with regard to driver’s licenses and recreational licenses and a six-month period with regard to professional and vocational licenses;
- (2) Is not delinquent in making periodic payments on a support arrearage pursuant to a written agreement with the child support enforcement agency under section 576D-13(d); or
- (3) Has obtained or maintained health insurance coverage as required by a child support order.”

SECTION 4. Section 576D-13, Hawaii Revised Statutes, is amended to read as follows:

**“[[§576D-13]] Suspension or denial of licenses.** (a) Upon a determination that an obligor is not in compliance with an order of support as defined in section 576D-1 or that an individual failed to comply with a subpoena or warrant relating to a paternity or child support proceeding, and that the obligor or individual is the holder of or an applicant for a license issued by a licensing authority in this State, the agency shall serve notice upon the obligor or individual of the agency’s intent to certify the obligor or individual as noncompliant with an order of support or a subpoena or warrant relating to a paternity or child support proceeding, which shall direct the appropriate licensing authority to deny or suspend the license, or to deny the application for renewal, reinstatement, or restoration of such license.

(b) The notice shall be sent by regular mail to both the last known address of record of the obligor or individual as shown in the records of the licensing authority and the address of record of the obligor or individual as shown in the agency’s child support record [and]. For purposes of this section, the date of service means two days following the date of mailing. The notice shall contain the following information:

- (1) Identification of the license, certificate, permit, or registration subject to suspension, nonrenewal, nonreinstatement, nonrestoration, or denial;
  - (2) The name, social security number, if available, date of birth, if known, and each applicable child support case number or numbers of the obligor or individual;
  - (3) The amount of the arrears, the amount of the monthly child support obligation, and reference to the support order upon which the support amount and arrears are based or the subpoena or warrant that the individual has failed to comply with;
  - (4) A statement that the obligor or individual may contest the suspension, nonrenewal, nonreinstatement, nonrestoration, or denial of a license by requesting a hearing in writing [which shall be received by the agency] within thirty days of the date of service of the notice of intent to suspend, not renew, not reinstate, not restore, or deny the license;
  - (5) A statement that the obligor may contact the agency in writing within thirty days of [receiving] the date of service of the notice and enter into a monthly payment agreement for the arrears owed, and if an agreement is entered into within thirty days of making contact with the agency, the agency shall not pursue the suspension, nonrenewal, nonreinstatement, nonrestoration, or denial of the license;
  - (6) A statement that an individual not in compliance with a subpoena or warrant relating to a paternity or child support proceeding may contact the agency in writing within thirty days [after receiving] of the date of service of the notice and enter into an agreement to provide the information or appear at the proceedings, and if so, the agency shall not pursue the suspension, nonrenewal, nonreinstatement, nonrestoration, or denial of the license; and
  - (7) A statement that if the obligor or individual makes a timely request as specified in paragraph (4), the agency shall stay the action until a decision is made.
- (c) If the obligor or individual:
- (1) Fails to contact the agency in writing within thirty days of the date of service of the notice;

- (2) Is not in compliance with an order of support or failed to comply with a subpoena or warrant relating to a paternity or child support proceeding, and does not timely enter into an agreement under subsection (d); or
- (3) If the office issues a decision that the obligor or an individual is not in compliance with an order of support or has failed to comply with a subpoena or warrant relating to a paternity or child support proceeding, the agency shall certify in writing to the licensing authority that the obligor is not in compliance with an order of support or that the individual is not in compliance with a subpoena or warrant relating to a paternity or child support proceeding, and shall authorize the immediate suspension, nonrenewal, nonreinstatement, nonrestoration, or denial of any license held or applied for by the obligor or individual. The agency shall provide a copy of the certification to the obligor or individual. Upon receipt of the certification, the licensing authority shall suspend any license that the obligor or individual holds or deny any license for which the obligor or individual applies without further review or hearing concerning the suspension, nonrenewal, nonreinstatement, nonrestoration, or denial. Notwithstanding the provisions of any other law setting terms of suspension, revocation, denial, termination, or renewal, reinstatement, or restoration of a license, a certification issued by the agency suspending, not renewing, not reinstating, not restoring, or denying a license shall be implemented by the licensing authority and continue in effect until the licensing authority receives a written release of suspension or denial from the agency, the office of child support hearings, or the family court.

(d) The obligor may enter into a payment agreement with the agency if the obligor makes contact with the agency within thirty days of the date of service of the notice, or the individual may enter into an agreement to provide the information requested in the subpoena or appear at the proceeding required by the warrant.

(e) If the obligor or the individual requests an administrative hearing in writing within thirty days of the date of service of the notice as provided in subsection (b), the office shall schedule a hearing to determine whether the obligor is not in compliance with a support order or whether the individual is not in compliance with a subpoena or warrant relating to a paternity or child support proceeding. The hearing shall be conducted in accordance with chapters 91 and 576E. The issues before the hearings officer shall be limited to whether the obligor is in compliance with an order of support or whether the individual is in compliance with a subpoena or warrant relating to a paternity or child support proceeding. The hearings officer shall issue a written decision within ten days of the hearing. If the hearings officer decides that the obligor is not in compliance with a support order or that the individual is not in compliance with a subpoena or warrant relating to a paternity or child support proceeding, the license held or applied for by the obligor or individual shall be denied or suspended and shall not be renewed, reinstated, or restored.

(f) The decision of the hearings officer shall be final and shall be subject to judicial review as provided in chapter 91. Any suspension or denial under this section shall not be stayed pending judicial review.

[(g) In the event that an obligor or individual holds more than one license, any determination regarding suspension or denial of one license is sufficient to suspend or deny any other license within a thirty-day period after the first certification of suspension, nonrenewal, nonreinstatement, nonrestoration, or denial.

(h)] (g) When the conditions which resulted in the suspension, nonrenewal, nonreinstatement, nonrestoration, or denial no longer exist, the agency shall provide the obligor or individual with written confirmation that the obligor is in compliance with the order of support or that the individual is in compliance with the subpoena or

warrant relating to a paternity or child support proceeding, and the agency, office, or the family court shall issue an authorization canceling the certification in writing to the licensing authority.

[(i)] (h) If a license is suspended or denied under this section, any funds paid by the obligor or individual to the licensing authority shall not be refunded by the licensing authority, and the licensing authority may charge a fee for reinstating or restoring a license. The licensing authority may also charge the obligor or individual a reasonable fee to cover the administrative costs incurred by the licensing authority in complying with this section.

[(j)] (i) The agency shall adopt rules necessary for the implementation and administration of this section. The licensing authority shall adopt rules necessary for the implementation and administration of this section.”

SECTION 5. Section 576D-14, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) If the obligor who receives income on a periodic basis becomes delinquent in making payments under a support order in an amount at least equal to the support payable for one month, the agency shall issue an income withholding order that shall include an amount to be paid [for current support and] towards the delinquency. The order shall be served upon the employer by certified mail or personal service, or transmitted to the employer through electronic means.”

SECTION 6. Section 576D-14, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Upon sending the order of income withholding to the employer, the agency shall send a notice of the withholding by regular mail to each obligor to whom subsections (b) and (c) apply. The notice shall inform the obligor:

- (1) That the withholding has commenced;
- (2) That the obligor may request a hearing in writing within fourteen days of the date of the notice;
- (3) That, unless the obligor files a written request for a hearing within fourteen days of the date of the notice, the money received from the income withholding will be distributed to the custodial parent or, in an interstate case, the obligee in the other jurisdiction, or in the case where the children are receiving public assistance, to the State;
- (4) That the only defense to income withholding is mistake of fact; and
- (5) Of the information that was provided to the employer with respect to the employer’s duties pursuant to section 576E-16.”

SECTION 7. Section 576E-1, Hawaii Revised Statutes, is amended by amending the definition of “compliance with an order of support” to read as follows:

““Compliance with an order of support” means that an obligor:

- (1) Is not delinquent in payments in an amount equal to or greater than the sum of payments which would become due for [current] child support, and spousal support when ordered in conjunction with child support, for a three-month period with regard to driver’s and recreational licenses and for a six-month period with regard to professional and vocational licenses;

- (2) Is not delinquent in making periodic payments on a support arrearage pursuant to a written agreement with the child support enforcement agency under section 576D-13(d); or
- (3) Has obtained or maintained health insurance coverage as required by a child support order.”

SECTION 8. 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 agency and the office, 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 576B[, the Uniform Interstate Family Support Act]. The attorney general, through the agency and the office, may establish, modify, suspend, terminate, and enforce child support obligations and collect or enforce spousal support 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 parties 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 child support order and to collect or enforce a spousal support order in conjunction with a child support order;
- (4) Determine that a party 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, chapter 571, and section 576D-14;
- (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;
- (9) Determine that an obligor owes past-due support with respect to a child receiving assistance under a state program funded under Title IV-A of the Social Security Act, including Aid to Families with Dependent Children and Temporary Assistance to Needy Families and petition the court to issue an order that requires the obligor to pay such support in accordance with a plan approved by the court or, if the obligor is subject to such a plan and is not incapacitated, participate in work activities, as defined in 42 U.S.C. §607(d), as the court deems appropriate;
- (10) Order genetic testing pursuant to chapter 584 for the purpose of establishing paternity[;], with payment of costs to be made by the agency, subject to recoupment by the State from the father or the mother, if appropriate, if paternity is established, and to also order additional

testing in any case if an original test result is contested, upon request and advance payment by the contestant;

- (11) 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 chapter [[576B[, the Uniform Interstate Family Support Act]]; and
- (12) Delegate the powers and authority described in this section to hearings officers and employees of the agency.”

SECTION 9. Section 576E-10, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) In exercising the powers conferred upon the attorney general in section 576E-2, the hearings officers shall have the authority to conduct hearings and enter the following orders:

- (1) Child support orders which have the effect of modifying, suspending, terminating, or enforcing the child support provisions of orders of the family courts;
- (2) Child support orders establishing, modifying, suspending, terminating, or enforcing child support obligations;
- (3) Orders enforcing the collection of spousal support when child support is being established, modified, or enforced;
- (4) Income withholding orders pursuant to section 576E-16;
- (5) Automatic income assignment orders pursuant to sections 571-52.2 and 576D-14;
- (6) Interstate income withholding orders pursuant to chapter [576 or its successor;] 576B;
- (7) State income tax refund setoff orders pursuant to section 231-54;
- (8) Orders determining whether Aid to Families with Dependent Children pass through payments were properly distributed;
- (9) Orders determining whether a party should be required to post bond in order to secure payment of past due support pursuant to section 576D-6;
- (10) Medical insurance coverage orders;
- (11) Orders suspending or denying the granting, the renewal, the reinstatement, or the restoration of licenses or applications of an obligor or individual for noncompliance with an order of support or failure to comply with a subpoena or warrant relating to a paternity or child support proceeding, and authorizations allowing the reinstatement of suspended licenses or consideration of license applications pursuant to section 576D-13; [and]
- (12) Orders concerning whether a responsible parent’s child support obligation should be reported to consumer credit reporting agencies pursuant to chapter 576D; and
- [(12)] (13) Orders in other child support areas as authorized by the attorney general.”

SECTION 10. Section 584-3.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) To expedite the establishment of paternity, each public and private birthing hospital or center and the department of health shall provide unwed parents the opportunity to voluntarily acknowledge the paternity of a child during the period

immediately prior to or following the child's birth. The voluntary acknowledgment of paternity shall be in writing and shall consist of a single form signed under oath by both the natural mother and the natural father and signed by a witness. The voluntary acknowledgment of paternity form shall include the Social Security number of each parent. Prior to the signing of the voluntary acknowledgment of paternity form, designated staff members of such facilities shall provide to both the mother and the alleged father, if he is present at the facility:

- (1) Written materials regarding paternity establishment;
- (2) Forms necessary to voluntarily acknowledge paternity; and
- (3) Oral and written descriptions of the alternatives to, the legal consequences of, and the rights and responsibilities of acknowledging paternity, including, if one parent is a minor, any right afforded due to minority status[; and
- (4) The opportunity to speak with staff who are trained to provide information and answer questions about paternity establishment].

The completed voluntary acknowledgment forms shall clearly identify the name and position of the staff member who provides information [and answers questions of] to the parents regarding paternity establishment. The provision by designated staff members of the facility of the information required by this section shall not constitute the unauthorized practice of law. Each facility shall send to the department of health the original acknowledgment of paternity containing the Social Security numbers, if available, of both parents, with the information required by the department of health so that the birth certificate issued includes the name of the legal father of the child, which shall be promptly recorded by the department of health."

SECTION 11. Section 634-37, Hawaii Revised Statutes, is amended to read as follows:

**“[[§634-37]] Presumption of notice and service of process in child support cases.** Whenever notice and service of process is required for child support enforcement proceedings subsequent to an order issued pursuant to chapter 571, [576 or its successor,] 576B, 576E, 580, or 584, upon a showing that diligent effort has been made to ascertain the location of a party, notice and service of process shall be presumed to be satisfied upon delivery of written notice to the most recent residential or employer address on file with the state case registry pursuant to section 571-52.6.”

SECTION 12. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 13. This Act shall take effect upon its approval.

(Approved May 26, 1998.)