

ACT 194

S.B. NO. 2758

A Bill for an Act Relating to Child Support Enforcement.

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

SECTION 1. Section 571-52, Hawaii Revised Statutes, is amended to read as follows:

“§571-52 Assignment by court order of future income for payments of support. (a) Whenever any person has been ordered to pay an allowance for the support[, maintenance, or education] of a child[,], or for the support and maintenance of a spouse or former spouse, and fails or refuses to obey or perform the order[,], and has been adjudged guilty of contempt of court for such failure or refusal, the court may make an order [which] that shall operate as an assignment by the person for the benefit of the child or spouse, of such amounts at such times as may be specified in the order, from any income due or to become due in the future to such person from the person’s employer or successor employers, until further order of the court.

The assignment of the amounts shall be to the clerk of the court where the order is entered if for the support or maintenance of a spouse or former spouse, or to the child support enforcement agency if for the support[, maintenance, or education] of a child or if child support and spouse support are contained in the same order. The order of assignment to the child support enforcement agency shall be in the standard format prescribed by Title IV-D of the Social Security Act, as amended by the child support enforcement agency. The order of assignment 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] regular mail [or],² by personal delivery[.], or by transmission through electronic means.

Thereafter, the employer shall for each pay period withhold from any income due to the person from the employer, and not required to be withheld by any other provision of federal or state law, and transmit to the clerk of the court or child support enforcement agency as set forth in the order, as much as may remain payable to the person for such pay period up to the amount specified in the order of assignment as being payable during the same period. The person ordered to pay shall inform the court immediately of any change [which] that would affect the order of assignment or the disbursement thereof.

Compliance by an employer with the order of assignment shall operate as a discharge of the employer's liability to the employee for that portion of the employee's income withheld and transmitted to the clerk of court or child support enforcement agency, as the case may be, whether or not the employer has withheld the correct amount.

[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.]

(b) Notwithstanding [the provisions]¹ of subsection (a)[.], to the contrary, whenever a court has ordered any person (hereinafter "obligor") to make periodic payments toward the support of a child [and], upon petition of the person to whom such payments are ordered to be made[.], or that person's assignee, and the court finds the obligor to be delinquent in payments in an amount equal to or greater than the sum of payments [which] that would become due over a one-month period under the order, judgment, or decree providing for child support, the court shall 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] that will become due in the future under the terms of the support order will be paid. Such an order 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.

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 subsection, 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]. The fact that the obligor may have subsequently paid such delinquencies shall not relieve the court of its duty under this subsection to order the assignment.

(c) An employer withholding income for payment to the child support enforcement agency shall terminate withholding upon receipt of a notice from the child support enforcement agency to terminate income withholding.

[(c)] (d) 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 part[,] upon an assignment authorized by this section. Any employer violating this section shall be guilty of a misdemeanor under section 710-1077(1)(g).

[(d) Notwithstanding any other provision of law, for purposes of this section, the term "income" shall include without limitation,]

(e) As used in this section:

"Employer" 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.

"Income" includes salaries, wages, earnings, workers' 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."

SECTION 2. 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 copy of the assignment order. The order shall be in the standard format prescribed by Title IV-D of the Social Security Act, as amended by the child support enforcement agency.

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. An employer withholding income for payment to the child support enforcement agency shall terminate withholding upon receipt of a notice from the child support enforcement agency to terminate income withholding. 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 3. Section 576B-101, Hawaii Revised Statutes, is amended by amending the definition of "income withholding order" to read as follows:

"Income withholding order" means an order or other legal process directed to an obligor's employer as defined by sections 571-52, 571-52.2, [and] 571-52.3, and 576D-14, to withhold support from the income of the obligor."

SECTION 4. Section 576B-501, Hawaii Revised Statutes, is amended to read as follows:

“**[§576B-501]** **Employer’s receipt of income withholding order of another state.** An income withholding order issued in another state may be sent to the person or entity defined as the obligor’s employer under sections 571-52, 571-52.2, [and] 571-52.3, and 576E-16, without first filing a petition or comparable pleading or registering the order with a tribunal of this State.”

SECTION 5. Section 576D-14, Hawaii Revised Statutes, is amended to read as follows:

“**§576D-14 Implementation of income withholding.** (a) For cases being enforced under the Title IV-D state plan or for those parents applying to the agency for services, the income of an obligor who receives income on a periodic basis and who has a support obligation imposed by a support order issued or modified in the State before October 1, 1996, if not otherwise subject to withholding, shall become subject to withholding as provided in subsection (b) if arrearages or delinquency occur, without the need for a judicial or administrative hearing. The agency shall implement such withholding without the necessity of any application in the case of a child with respect to whom services are already being provided under Title IV-D and shall implement on the basis of an application for services under Title IV-D in the case of any other child on whose behalf a support order has been issued or modified. In either case, such withholding shall occur without the need for any amendment to the support order involved or for any further action by the court or other entity which issued such order.

(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 towards the delinquency. The income withholding order shall be in the standard format prescribed by Title IV-D of the Social Security Act, as amended by the child support enforcement agency. The order shall be served upon the employer by [certified] regular mail [or], by personal [service,] delivery, or [transmitted] by transmission to the employer through electronic means.

(c) Upon the agency’s receipt of an interstate income withholding request from another jurisdiction, the agency may issue an income withholding order to collect the support imposed upon the obligor by a support order issued or modified by the other state. The order shall include an amount adequate to ensure that past due payments and payments [which] that will become due in the future under the terms of the support order will be paid.

(d) A copy of the order shall be filed in the office of the clerk of the circuit court in the circuit where the order was issued.

(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 a 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.

(f) The agency may delay the distribution of collections toward arrearages or delinquency until the resolution of any requested hearing regarding the arrearages or delinquency.

(g) Upon timely receipt of a request for a hearing from the obligor[,] pursuant to the notice provided under subsection (e), the agency shall refer the matter to the office and a hearing shall be conducted pursuant to chapters 91 and 576E.

(h) Upon receiving an order of income withholding from the agency, the employer is subject to the requirements of section 576E-16(b) through (h).

(i) In a case being enforced under the Title IV-D state plan or for those parents applying to the agency for services, the agency may terminate income withholding by sending a notice to the employer by regular mail or transmission by electronic means. The notice shall be issued upon determination by the agency that the obligor no longer owes the child support or that the obligation is being satisfied through withholding by another employer."

SECTION 6. Section 576E-16, Hawaii Revised Statutes, is amended as follows:

- (1) By amending subsections (a) and (b) to read:

"(a) Whenever an administrative order is entered establishing, modifying, or enforcing support, establishing an arrearage that has accrued under a previous judicial or administrative order for support, or establishing a public assistance debt, there shall concurrently be issued an order [which] that shall operate as an assignment to the agency for the benefit of the child or in the case of spousal support, for the benefit of a spouse or former spouse, 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;] except when alternative arrangements are ordered pursuant to section 576D-10. The income withholding order shall be in the standard format prescribed by Title IV-D of the Social Security Act, as amended by the child support enforcement 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 issued pursuant to subsection (a) or section 576D-14 shall be effective immediately after service upon an employer of a copy of the order, which service may be effected by [certified or registered] regular mail, by personal delivery, or by transmission through electronic means. 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 designated obligee, or upon request, to the child support enforcement agency of this State, 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."

2. By amending subsection (d) to read:

"(d) An income withholding order shall remain in effect until terminated when appropriate by court or administrative order[.], except that an employer withholding income for payment to the child support enforcement agency shall terminate withholding upon receipt of a notice from the child support enforcement agency to terminate income withholding. Payment by the responsible parent of any delinquency shall not in and of itself warrant termination of the income withholding

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order. The agency shall promptly refund any amount withheld in error to the responsible parent.”

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved June 8, 2000.)

Note

1. ‘‘The provisions’’ should not be bracketed.