

## ACT 84

H.B. NO. 2433

A Bill for an Act Relating to Child Support Enforcement.

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

SECTION 1. Section 576D-1, Hawaii Revised Statutes, is amended by amending the definitions of “child support”, “compliance with an order of support”, “obligor”, 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~~ being enforced 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.

“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 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.

“Obligor” means a responsible parent obligated by court or administrative order ~~[obligated]~~ to pay child support ~~[or who is obligated by court order to pay spousal support in conjunction with child support]~~.

“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]~~ the support and maintenance of a child; provided that the spousal support provision in an order of support shall only be enforced by the agency when the support and maintenance of a child is being enforced. 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 2. Section 576D-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) The agency and its agents shall keep ~~such~~ records [as] that 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]~~ individual or case shall be confidential. The use or disclosure of information concerning any ~~[applicant or recipient]~~ individual or case 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;
- (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.”

SECTION 3. Section 576D-14, Hawaii Revised Statutes, is amended by amending subsection (i) to read as follows:

“(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]~~:

- (1) Enforce the existing order of support by sending to the employer by regular mail, by personal delivery, or by transmission through electronic means, a notice to withhold child support issued by the agency that reflects the terms and conditions specified in the order for support or income withholding order. Upon receiving a notice to withhold child support, the employer is subject to the requirements of section 576E-16(b) to (h); and
- (2) 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 4. Section 576D-17, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§576D-17]]~~ ~~[Wilful violations;]~~ **Violations; penalties.** (a) Unless otherwise provided, any person or entity in the State including for-profit, nonprofit, and labor organizations, and any agency, board, commission, authority, court, or committee of the State or its political subdivisions ~~[who]~~ that knowingly, intentionally, or wilfully violates any section of this chapter or any request of the agency pursuant to this chapter shall be guilty of a petty misdemeanor.

(b) The agency may establish, through administrative rules, a system of fines for failure to promptly respond to the agency’s request for information, which may be levied without the necessity of a court order.”

SECTION 5. Section 576D-18, Hawaii Revised Statutes, is amended by amending subsections (c) and (d) to read as follows:

“(c) The agency and 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 member, employee, or contractor of [such] the entity, in order to accomplish the purposes of the child support program. The entities include, but are not limited to for-profit, nonprofit, and labor organizations, and any agency, board, commission, authority, court, or committee of the State or its political subdivisions, notwithstanding any provision for confidentiality. Subject to safeguards on privacy and confidentiality and subject to the nonliability of entities that afford access under this section, the agency and other state or territorial agencies administering a program under Title IV-D shall also have access to records held by private entities with respect to individuals who owe or are owed support, or against or with respect to whom a support obligation is sought consisting of:

- (1) The names and addresses of individuals and the names and addresses of the employers of such individuals as appearing in customer records of public utilities and cable television companies, pursuant to an administrative subpoena authorized pursuant to section 576E-2; and
- (2) Information, including information on assets and liabilities, on such individuals held by financial institutions.

~~(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] State to locate an individual for purposes relating to motor vehicles or law enforcement.~~”

SECTION 6. Section 576E-1, Hawaii Revised Statutes, is amended by amending the definitions of “child support”, “compliance with an order of support”, “obligor” 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]~~ being enforced 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.

“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 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.

“Obligor” means a responsible parent obligated by court or administrative order to pay child support ~~[or who is obligated by court order to pay spousal support in conjunction with child support].~~

“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.]~~ the support and maintenance of a child; provided that the spousal support provision in an order of support shall only be enforced by the agency when the support and maintenance of a child is being enforced. 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 7. Section 576E-4, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) In any proceeding to establish a child support order, in cases where the agency is not yet enforcing an order of support for the subject child, service of the notice provided in section 576E-5 shall be by personal service or certified mail, return receipt requested. In the case where the person to be served cannot be found, service shall be completed by leaving copies of the notice at the person's usual place of residence with some person of suitable age and discretion residing at that location. After initial service is effected, additional service upon a party shall be satisfied by regular mail to the party's last known address.”

SECTION 8. Section 576E-16, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (b), (c), (d), and (e) to read as follows:

“(b) The income withholding order issued pursuant to subsection (a) or the income withholding order or the notice to withhold child support issued pursuant to section 576D-14 shall be effective immediately after service upon an employer of a copy of the order[;] or the notice to withhold child support, which service may be effected by 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 or the notice to withhold child support 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 notice to withhold child support or the disbursement thereof.

(c) Compliance by an employer with the income withholding order issued pursuant to subsection (a) or with the income withholding order or the notice to withhold child support issued pursuant to section 576D-14 shall operate as a discharge of the employer's liability to the responsible parent for that portion of the responsible parent's earnings withheld and transmitted to the agency, whether or not the employer has withheld the correct amount. For each payment made pursuant to an income withholding order[;] or a notice to withhold child support, the employer may deduct and retain as an administrative fee an additional amount of \$2 from the income owed to the responsible parent. The total amount withheld from the obligor's income, including the administrative fee, may not be in excess of the maximum amounts permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. §1673(b)). Any income withholding order or notice to withhold child support shall have priority as against any garnishment, attachment, execution, or other income withholding order, or any other order, and shall not be subject to the exemptions or restrictions contained in part III of chapter 651 and in chapters 652 and 653. An employer who fails to comply with an income withholding order under this section or with an income withholding order or notice to withhold child support issued pursuant to section 576D-14 shall be liable to the obligee or the agency for the full amount of all sums ordered to be withheld and transmitted. An employer receiving an income withholding order or a notice to withhold child support shall transmit amounts withheld to the agency within five working days after the responsible parent is paid. The employer shall begin withholding no later than the first pay period commencing within seven business days following the date a copy of the order or the notice to withhold child support is mailed to the employer.

As used in this subsection, the term "business day" means a day on which the employer's office is open for regular business. The employer shall withhold funds as directed in the order[;] or the notice to withhold child support, except that when an employer receives an income withholding order issued by another state, the employer shall apply the income withholding law of the state of the obligor's principal place of employment in determining:

- (1) The employer's fee for processing an income withholding order;
- (2) The maximum amount permitted to be withheld from the obligor's income under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. §1673(b));
- (3) The time periods within which the employer must implement the income withholding order and forward the child support payment;
- (4) The priorities for withholding and allocating income withheld for multiple child support obligees; and
- (5) Any withholding terms or conditions not specified in the order.

An employer who complies with an income withholding order or a notice to withhold child support that is regular on its face shall not be subject to civil liability to any person or agency for conduct in compliance with the order.

An employer who is required to withhold amounts from the income of more than one employee may remit to the agency a sum total of all such amounts in one check with a listing of the amounts applicable to each employee.

Within two working days after receipt of the amounts withheld by the employer, the agency shall disburse the amounts to the obligee for the benefit of the child, except that the agency may delay the distribution of collections toward arrearages until<sup>1</sup> resolution of any timely requested hearing with respect to such arrearages.

(d) An income withholding order or a notice to withhold child support 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 order[.] or the notice to withhold child support. The agency shall promptly refund any amount withheld in error to the responsible parent.

(e) 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 in part upon an order or notice to withhold child support authorized by this section. Any employer violating this section shall be guilty of a misdemeanor and shall be punished under section 710-1077(1)(g).''

2. By amending subsections (h) and (i) to read as follows:

“(h) If there is more than one obligee, the amounts withheld from the income of a responsible parent shall be allocated among the obligees. The allocation may be based on each obligee’s proportionate share of the amount of the withholding orders or the notices to withhold child support that were served on the employer of the obligor. If concurrent assignment orders or notices to withhold child support would cause the amounts withheld from the responsible parent’s income to exceed applicable wage withholding limitations, the amount withheld shall be allocated so that in no case shall the allocation result in a withholding for one of the support obligations not being implemented. Thereafter, arrearages due under the income withholding orders or the notices to withhold child support shall be satisfied in the order of service, up to the applicable limitation.

(i) If a responsible parent changes employment when an income withholding order or a notice to withhold child support is in effect, the agency shall notify the responsible parent’s new employer of the responsible parent’s obligation in accordance with subsections (b) to (f). The new employer shall be bound by the income withholding order or the notice to withhold child support until further court or administrative order[.] or until further notified by the agency pursuant to section 576D-14.’’

SECTION 9. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

(Approved May 31, 2002.)

**Note**

1. Prior to amendment “the” appeared here.