

JAN 25 2006

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**A BILL FOR AN ACT**

RELATING TO CHILD SUPPORT ENFORCEMENT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Section 571-52.2, Hawaii Revised Statutes, is  
2 amended by amending subsection (d) to read as follows:

3           "(d) The order for automatic assignment shall operate as  
4 an assignment by the obligor to the child support enforcement  
5 agency and shall be binding upon any person who is or shall  
6 become obligated to the obligor for payment of income and who  
7 has been served with a copy of the assignment order. The order  
8 shall be in the standard format prescribed by Title IV-D of the  
9 Social Security Act, as amended by the child support enforcement  
10 agency.

11           The assignment shall continue after the obligor's  
12 requirement to pay future child support has ended if the obligor  
13 owes past due support, and any amount received pursuant to said  
14 assignment shall be applied to satisfy all past due support  
15 owed. The assignment shall be terminated when appropriate by  
16 the court, the clerk of the court, or the child support  
17 enforcement agency; provided that payment of all overdue support  
18 shall not be the sole basis for terminating the assignment. An

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1 employer withholding income for payment to the child support  
2 enforcement agency shall terminate withholding upon receipt of a  
3 notice from the child support enforcement agency to terminate  
4 income withholding. In the event that the obligee retains  
5 private counsel or proceeds pro se, the obligee shall have  
6 primary responsibility for terminating the assignment.

7 If the obligee fails to terminate the assignment when  
8 appropriate, the obligee shall reimburse the obligor to the  
9 extent of any overpayment. If the assignment is not terminated  
10 when appropriate, the obligor may seek reimbursement for any  
11 overpayment from the obligee or from the child support  
12 enforcement agency, to the extent the overpayment was disbursed  
13 to the department of human services.

14 The child support enforcement agency shall establish  
15 procedures by rule in accordance with chapter 91 for the prompt  
16 reimbursement for any overpayment to the obligor."

17 SECTION 2. Section 576D-14, Hawaii Revised Statutes, is  
18 amended to read as follows:

19 "§576D-14 Implementation of income withholding. (a) For  
20 cases being enforced under the Title IV-D state plan or for  
21 those parents applying to the agency for services, the income of  
22 an obligor who receives income on a periodic basis and who has a

1 support obligation imposed by a support order issued or modified  
2 in the State before January 1, 1994, and issued or modified  
3 thereafter, if not otherwise subject to withholding, shall  
4 become subject to withholding as provided in subsection (b) if  
5 arrearages or delinquency occur, without the need for a judicial  
6 or administrative hearing. The income of an obligor shall  
7 become subject to withholding without regard to whether there  
8 are arrearages or delinquency upon the agency receiving a  
9 request for income withholding from the obligee and a  
10 determination made by the agency that income withholding is  
11 appropriate or upon the agency receiving a request for income  
12 withholding from the obligor. The agency shall implement such  
13 withholding without the necessity of any application in the case  
14 of a child with respect to whom services are already being  
15 provided under Title IV-D and shall implement on the basis of an  
16 application for services under Title IV-D in the case of any  
17 other child on whose behalf a support order has been issued or  
18 modified. In either case, such withholding shall occur without  
19 the need for any amendment to the support order involved or for  
20 any further action by the court or other entity which issued  
21 such order.

1           (b) If the obligor who receives income on a periodic basis  
2 becomes delinquent in making payments under a support order in  
3 an amount at least equal to the support payable for one month,  
4 the agency shall issue an income withholding order that shall  
5 include an amount to be paid towards the delinquency. The  
6 income withholding order shall be in the standard format  
7 prescribed by Title IV-D of the Social Security Act, as amended  
8 by the child support enforcement agency. The order shall be  
9 served upon the employer by regular mail, by personal delivery,  
10 or by transmission to the employer through electronic means.

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

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

21           (e) Upon sending the order of income withholding to the  
22 employer, the agency shall send a notice of the withholding by

1 regular mail to each obligor to whom subsections (b) and (c)  
2 apply. The notice shall inform the obligor:

3 (1) That the withholding has commenced;

4 (2) That the obligor may request a hearing in writing  
5 within fourteen days of the date of the notice;

6 (3) That, unless the obligor files a written request for a  
7 hearing within fourteen days of the date of the  
8 notice, the money received from the income withholding  
9 will be distributed to the custodial parent or, in an  
10 interstate case, the obligee in the other  
11 jurisdiction, or in the case where the children are  
12 receiving public assistance, to the State;

13 (4) That the only defense to income withholding is a  
14 mistake of fact; and

15 (5) Of the information that was provided to the employer  
16 with respect to the employer's duties pursuant to  
17 section 576E-16.

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

21 (g) Upon timely receipt of a request for a hearing from  
22 the obligor pursuant to the notice provided under subsection

1 (e), the agency shall refer the matter to the office and a  
2 hearing shall be conducted pursuant to chapters 91 and 576E.

3 (h) Upon receiving an order of income withholding from the  
4 agency, the employer is subject to the requirements of section  
5 576E-16(b) through (h).

6 (i) In a case being enforced under the Title IV-D state  
7 plan or for those parents applying to the agency for services,  
8 the agency may enforce the existing order of support by sending  
9 to the employer by regular mail, by personal delivery, or by  
10 transmission through electronic means, a notice to withhold  
11 child support issued by the agency that reflects the terms and  
12 conditions specified in the order for support or income  
13 withholding order. Upon receiving a notice to withhold child  
14 support, the employer is subject to the requirements of section  
15 576E-16(b) to (h).

16 (j) The agency may terminate income withholding by sending  
17 a notice to the employer by regular mail, by personal delivery,  
18 or by transmission through electronic means. The notice shall be  
19 issued upon determination by the agency that the obligor no  
20 longer owes the child support or that the obligation is being  
21 satisfied through withholding by another employer.

1        (k) The agency may adopt rules in accordance with chapter  
2 91 as may be necessary to implement and administer income  
3 withholding under this section and sections 571-52, 571-52.2,  
4 571-52.3, and 576E-16."

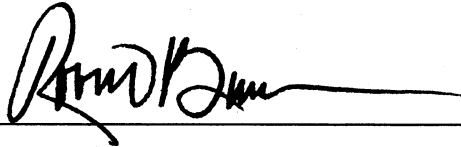
5        SECTION 3. Section 576E-16, Hawaii Revised Statutes, is  
6 amended by amending subsection (d) to read as follows:

7        "(d) An income withholding order or a notice to withhold  
8 child support shall remain in effect after the obligor's  
9 requirement to pay future child support has ended if the obligor  
10 owes past due support and any amount received pursuant to said  
11 order or notice shall be applied to satisfy all past due support  
12 owed. An income withholding order or a notice to withhold child  
13 support shall [~~remain in effect until~~] be terminated when  
14 appropriate by court or administrative order, except that an  
15 employer withholding income for payment to the child support  
16 enforcement agency shall terminate withholding upon receipt of a  
17 notice from the child support enforcement agency to terminate  
18 income withholding. Payment by the responsible parent of any  
19 delinquency shall not in and of itself warrant termination of  
20 the income withholding order or the notice to withhold child  
21 support. The agency shall promptly refund any amount withheld  
22 in error to the responsible parent."

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1 SECTION 4. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 5. This Act shall take effect upon its approval.

4  
5 INTRODUCED BY: 

6 BY REQUEST



JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO CHILD SUPPORT ENFORCEMENT.

PURPOSE: To allow income withholding to continue when current child support ends but there are outstanding arrears for cases where Child Support Enforcement Agency (CSEA) services are being provided; and to authorize CSEA to adopt administrative rules as necessary to implement income withholding requirements of chapter 576D, Hawaii Revised Statutes, and Title IV-D of the Social Security Act.

MEANS: Amending sections 571-52.2, 576D-14, and 576E-16, Hawaii Revised Statutes.

JUSTIFICATION: Presently, when a non-custodial parent's obligation to pay current child support ends, an administrative action is initiated to establish an order to liquidate the arrears, concurrently establish an income withholding order for the liquidation, and to serve the order on the employer, all of which typically takes time to complete, involves costs, and which requires diversion of staff resources to complete these tasks. During this period, until such time that the income withholding order is served on the employer, payment towards the unpaid child support account has ceased to the detriment of the payee involved as well as to the State in terms of opportunity to earn incentive funding. This proposal would negate the need for such a time-consuming process to reinstitute income withholding for payment of past due support. Enabling the CSEA to have income withholding collections continue when current support ends and to apply these collections to arrears is expected to increase the performance level for collection on arrears without expending more resources. Providing

the CSEA with authorization to implement administrative rules would allow for the procedures to be clarified without requiring legislative changes and would make this section consistent with other enforcement remedies specified in chapter 576D.

Impact on the public: This proposal would benefit the custodial parents and children by streamlining the process to collect arrears in situations where the non-custodial parent was already paying child support.

Impact on the department and other agencies: The CSEA's performance level for collection on arrears is estimated at this time to be below the minimum required level to qualify for federal incentive funds. A possible result of increasing the performance level for collection on arrears without expending more resources would be to receive additional federal incentive funds.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: ATG 500

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE  
DATE: Upon approval.