

H.B. NO. 1033

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 (e) to read as follows:
3 "(e) An employer receiving an assignment order shall send
4 the amounts withheld to [~~the designated obligee or, if~~
5 ~~requested, to~~] this State's child support enforcement agency
6 within five working days after the obligor is paid. The
7 employer shall begin withholding no later than the first pay
8 period occurring within seven business days following the date a
9 copy of the order is mailed to the employer. As used in this
10 subsection, the term "business day" means a day on which the
11 employer's office is open for regular business. The employer
12 shall withhold funds as directed in the order, except that when
13 an employer receives an income withholding order issued by
14 another state, the employer shall send the amounts withheld to
15 that state's agency administering a program under Title IV-D and
16 apply the income withholding law of the state of the obligor's
17 principal place of employment in determining:

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

13 An employer who complies with an income assignment order
14 that is regular on its face shall not be subject to civil
15 liability to any person or agency for conduct in compliance with
16 the order.

17 An employer who is required to withhold amounts from the
18 income of more than one obligor may remit a sum total of the
19 amounts in one check, with a listing of the amounts applicable
20 to each obligor.

21 Within two working days after receipt of the amounts
22 withheld by the employer, the child support enforcement agency

1 shall disburse those amounts to the obligee for the benefit of
2 the child, except that the child support enforcement agency may
3 delay the distribution of collections toward arrearages until
4 the resolution of any timely request for a hearing with respect
5 to such arrearages."

6 SECTION 2. Section 576D-10, Hawaii Revised Statutes, is
7 amended to read as follows:

8 **"§576D-10 Collection and disbursal of child support;**
9 **direct payment exception.** (a) The agency shall collect and
10 disburse child support payments when an order requires the
11 collection and disbursal. In the event of any default by the
12 obligor, upon notification of the default by the custodial
13 parent, the agency shall proceed against the obligor for the
14 arrearage and the agency shall have jurisdiction over future
15 child support payments. Notwithstanding any other law to the
16 contrary, the agency shall maintain a special interest bearing
17 account for child support payments. Moneys collected by the
18 agency for child support payments shall not be deposited into
19 the state treasury, but shall be deposited into this account.
20 Moneys to be disbursed by the agency for child support payments
21 shall be disbursed from this account without appropriation or

1 allotment. The interest realized from this account shall be
2 used:

3 (1) For related costs of the maintenance and operation of
4 the account; and

5 (2) To improve the child support enforcement agency's
6 ability to promptly disburse payments to the custodial
7 parent.

8 The balance shall be deposited into the state treasury to the
9 credit of the general fund.

10 (b) Any child support payments required by a court order
11 effective on June 30, 1986, to be made to a court or clerk of
12 the court and disbursed to a custodial parent shall be made to
13 the agency after June 30, 1986. The agency shall disburse the
14 payments as appropriate under the court order.

15 (c) Other than for child support payments disbursed to the
16 department of human services or to another agency administering
17 a program under Title IV-D, the custodial parent shall elect to
18 receive child support payments from the agency by means of an
19 electronic benefits transfer system or by directly depositing
20 the amount into an account designated by the custodial parent.
21 If an election is not made, the agency shall determine whether
22 the disbursement of child support payments shall be by means of

1 an electronic benefits transfer system or by an alternate method
2 of disbursement that complies with the time frame required under
3 Title IV-D.

4 [~~e~~] (d) At the time a child support obligation is first
5 established or at any time thereafter, the court may approve an
6 alternative arrangement for the direct payment of child support
7 from the obligor to the custodial parent as an exception to the
8 provisions for income withholding through the agency, as
9 required by sections 571-52.2(a)(1), 571-52.3, and 576E-16(a).

10 [~~d~~] (e) The court may approve an alternative arrangement
11 for the direct payment of child support where either:

12 (1) The obligor or custodial parent demonstrates and the
13 court finds that there is good cause not to require
14 immediate withholding; or

15 (2) A written agreement is reached between the obligor and
16 the custodial parent and signed by both parties;
17 provided that in either case where child support has been
18 ordered previously, an alternative arrangement for direct
19 payment shall be approved only where the obligor provides proof
20 of the timely payment of previously ordered support. For
21 purposes of this section, good cause to approve an alternative
22 arrangement shall be based upon a determination by the court,

1 either in writing or on the record, that implementing income
2 withholding would not be in the best interests of the child.
3 Such a determination shall include a statement setting forth the
4 basis of the court's conclusion.

5 ~~(e)~~ (f) Any alternative arrangement for direct payment
6 shall provide that either parent may void the arrangement at any
7 time and apply for services from the agency to act as agent to
8 receive payments from the obligor parent. The alternative
9 arrangement for direct payment also shall provide that, if the
10 subject dependents of the obligor parent commence receiving
11 public assistance, including but not limited to public
12 assistance from the department of human services under chapter
13 346, foster care under section 571-48, Title IV-E or Title XIX
14 of the federal Social Security Act (42 U.S.C. §1396), or if
15 either parent applies for services from the agency, the agency
16 may immediately void the direct payment arrangement by sending
17 written notice by regular mail to the custodial and obligor
18 parents at their last known addresses, as disclosed in the
19 alternative arrangement agreement.

20 ~~(f)~~ (g) The alternative arrangement for direct payment
21 agreement shall include the most recent addresses of the
22 custodial and obligor parent. If the obligor parent alleges

1 direct payment of child support to the custodial parent after
2 the subject dependents of the court-approved alternative
3 arrangement become recipients of public assistance, including
4 but not limited to public assistance from the department of
5 human services under chapter 346, foster care under section 571-
6 48, Title IV-E or Title XIX of the federal Social Security Act
7 (42 U.S.C. §1396), or after the custodial parent applies for
8 services from the agency, and after receiving proper
9 notification of the change of payee to the agency, then the
10 obligor shall have the burden of proving that the child support
11 payments were made by presenting written evidence, including but
12 not limited to canceled checks or receipts.

13 [~~(g)~~] (h) No alternative arrangement for direct payment
14 shall be approved where the obligor or the custodial parent is
15 receiving services under Title IV-D or where the dependents of
16 the obligor receive public assistance, including but not limited
17 to public assistance from the department of human services under
18 chapter 346, foster care under section 571-48, Title IV-E or
19 Title XIX of the federal Social Security Act (42 U.S.C. §1396),
20 or where the obligor owes child support for a period during
21 which public assistance was provided to the child or children by
22 the department of human services.

1 ~~(h)~~ (i) Any alternative arrangement for direct payment
2 shall pertain only to the method of payment of child support.
3 The amount of child support shall be determined according to the
4 child support guidelines pursuant to section 576D-7 and section
5 576E-15.

6 ~~(i)~~ (j) The alternative arrangement for direct payment
7 shall become effective upon approval and filing by the court.
8 For any order approved pursuant to this section on or after
9 October 1, 1998, each party must send a certified copy of the
10 order to the state case registry established under section 576D-
11 6.

12 ~~(j)~~ (k) The agency shall not be required to maintain
13 records while an order obtained pursuant to this section is in
14 effect, except for any payments received and disbursed by the
15 agency."

16 SECTION 3. Section 576D-10.5, Hawaii Revised Statutes, is
17 amended to read as follows:

18 "**§576D-10.5 Liens.** (a) Whenever any obligor through
19 judicial or administrative process in this State or any other
20 state has been ordered to pay an allowance for the support,
21 maintenance, or education of a child, or for the support and
22 maintenance of a spouse or former spouse in conjunction with

1 child support, and the obligor becomes delinquent in those
2 payments, a lien shall arise on the obligor's real and personal
3 property and the obligor's real and personal property shall be
4 subject to foreclosure, distraint, seizure, and sale, or notice
5 to withhold and deliver, which shall be executed in accordance
6 with this section or applicable state law. No judicial notice
7 or hearing shall be necessary prior to creation of such a lien.

8 (b) Upon the establishment of an order of support for a
9 prior period, a lien shall arise on the obligor's real and
10 personal property and the obligor's real and personal property
11 shall be subject to foreclosure, distraint, seizure, and sale,
12 or notice to withhold and deliver, which shall be executed in
13 accordance with this section or applicable state law. No
14 judicial notice or hearing shall be necessary prior to creation
15 of such a lien.

16 (c) Every order or judgment regarding child support filed
17 in judicial or administrative proceedings in this State shall be
18 recorded in the bureau of conveyances. An order or judgment
19 regarding child support filed in judicial or administrative
20 proceedings of any other state may be recorded in the bureau of
21 conveyances. This recorded lien shall be deemed, at such time,
22 for all purposes and without any further action, to procure a

1 lien on land registered in the land court under chapter 501.
2 The statutory lien becomes effective when it arises under
3 subsection (a) or (b) and shall attach to all interests in real
4 or personal property then owned or subsequently acquired by the
5 obligor including any interests not recorded with the bureau of
6 conveyances or filed in the land court.

7 (d) No fee shall be charged the child support enforcement
8 agency or its designated counsel for recording or filing of the
9 liens provided for in this section or for the recording or
10 filing of any releases requested in conjunction with the liens.

11 (e) A recorded order or judgment regarding child support
12 or public assistance debt becomes effective and takes priority
13 from the time it is recorded or the time the child support
14 obligation described therein becomes delinquent, whichever is
15 later. A statutory lien that is provided for by and becomes
16 effective under this section shall take priority over any
17 unrecorded lien whenever acquired, except tax liens previously
18 acquired.

19 (f) A lien shall be enforceable by the child support
20 enforcement agency or its designated counsel [~~or~~], by the
21 obligee, or by another agency administering a program under
22 Title IV-D in the following manner:

- 1 (1) By suit in the appropriate court;
- 2 (2) By bringing an action in an administrative tribunal;
- 3 (3) By filing and serving a notice of child support lien;
- 4 or
- 5 (4) By any lawful means of collection.

6 A notice of child support lien shall state the name and the last
7 four digits only of the social security number (if available) of
8 the obligor, the child support enforcement case number, the
9 amount of the lien and the through date (if applicable), the
10 accruing monthly amount, and the date on which the order or
11 judgment regarding child support or public assistance debt was
12 recorded with the bureau of conveyances. The notice shall
13 require that whoever is served with a notice of child support
14 lien either satisfy the lien or obtain a release of the lien
15 prior to disbursing any funds to the obligor. The method of
16 service of a notice of child support lien shall be by certified
17 mail, return receipt requested, or by personal delivery to the
18 individual or entity referred to. A copy of the notice of child
19 support lien shall also be sent to the obligor by regular mail
20 at the obligor's last known address. Upon service of a notice
21 of child support lien, the individual or entity served shall
22 withhold the amount of the lien from the proceeds of any estate,

1 judgment, settlement, compromise, vacation or holiday pay, or
2 other benefits due the obligor and deliver the funds to the
3 child support enforcement agency. For service effectuated by
4 certified mail, an electronic copy or facsimile of the signature
5 of the served individual or entity provided by the United States
6 Postal Service shall constitute valid proof of service on the
7 individual or entity. A notice of child support lien may be
8 amended from time to time until extinguished or released, each
9 amendment taking effect upon proper service. A notice of child
10 support lien shall remain in effect until satisfied,
11 extinguished, or released.

12 (g) A lien shall be enforceable by the child support
13 enforcement agency or its designated counsel or by another
14 agency administering a program under Title IV-D without the
15 necessity of obtaining a court order in the following manner:

16 (1) By intercepting or seizing periodic or lump-sum
17 payments from:

18 (A) A state or local agency, including unemployment
19 compensation, and other benefits; and

20 (B) Judgments, settlements, and lotteries;

1 provided that unemployment compensation benefits
2 may be intercepted only to the extent authorized
3 by section 303(e) of the Social Security Act;

4 (2) By attaching and seizing assets of the obligor held in
5 financial institutions;

6 (3) By attaching public and private retirement funds; and

7 (4) By imposing liens in accordance with this section and,
8 in appropriate cases, to force the sale of property
9 and distribution of proceeds.

10 These procedures shall be subject to due process safeguards,
11 including, as appropriate, requirements for notice, opportunity
12 to contest the action, and opportunity for an appeal on the
13 record to an independent administrative or judicial tribunal.

14 (h) The child support enforcement agency, its designated
15 counsel or the obligee, where appropriate, shall issue
16 certificates of release upon satisfaction of the lien.

17 Certificates of release of any real property shall be recorded
18 in the bureau of conveyances or filed in the office of the
19 assistant registrar of the land court. Recordation of the
20 certificate of release shall be the responsibility of the
21 obligor.

1 (i) If there is a dispute between the obligor and the
2 child support enforcement agency concerning the amount of the
3 child support lien, the obligor may request in writing an
4 account review. Upon receipt of a written request, the child
5 support enforcement agency shall conduct a review of the
6 obligor's account balance pursuant to its administrative rules.

7 (j) Any person or entity failing to satisfy a notice of
8 child support lien as required by this section, even though able
9 to do so, shall be personally liable to the child support
10 enforcement agency or the obligee for the full amount of all
11 sums required to be withheld and delivered."

12 SECTION 4. Section 576D-15, Hawaii Revised Statutes, is
13 amended by amending subsection (c) to read as follows:

14 "(c) In response to a notice of lien or levy, the
15 financial institution shall surrender to the agency or other
16 entity seeking to enforce the lien or encumber assets held by
17 such institution [~~to the agency~~] on behalf of any noncustodial
18 parent who is subject to a child support lien arising by
19 operation of law against real and personal property for
20 delinquent support owed by the noncustodial parent who resides
21 in or owns property in the State and those liens shall be
22 accorded full faith and credit when the agency or other entity

1 seeking to enforce the lien has complied with the procedural
2 rules of the State and, if applicable, section 501-102."

3 SECTION 5. Section 576E-12, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) A true copy of the administrative order, along with a
6 true copy of the return of service, shall be filed in the office
7 of the clerk of the circuit court in the circuit where the order
8 was issued, or in the office of the clerk of the circuit court
9 in the circuit where a previously established support order was
10 filed. For service effectuated by certified mail, an electronic
11 copy or facsimile of the signature of the served individual
12 provided by the United States Postal Service shall constitute
13 valid proof of service on the individual. Upon filing, the
14 order shall have all the force and effect of a final order or
15 decree of the circuit court."

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

18 "(b) The income withholding order issued pursuant to
19 subsection (a) or the income withholding order or the notice to
20 withhold child support issued pursuant to section 576D-14 shall
21 be effective immediately after service upon an employer of a
22 copy of the order or the notice to withhold child support, which

1 service may be effected by regular mail, by personal delivery,
2 or by transmission through electronic means. Thereafter, the
3 employer shall for each pay period, withhold from the income due
4 to the responsible parent from the employer, and not required to
5 be withheld by any other provision of federal or state law, and
6 transmit to the [~~designated obligee, or upon request, to the~~]
7 child support enforcement agency of this State, as much as may
8 remain payable to the responsible parent for such pay period up
9 to the amount specified in the order or the notice to withhold
10 child support as being payable during the same period. The
11 employer shall immediately inform the agency of any change that
12 would affect the income withholding order or the notice to
13 withhold child support or the disbursement thereof."

14 SECTION 7. Section 584-8, Hawaii Revised Statutes, is
15 amended to read as follows:

16 "**§584-8 Jurisdiction; venue.** (a) Without limiting the
17 jurisdiction of any other court, the family court has
18 jurisdiction of an action brought under this chapter. The
19 action may be joined with an action for divorce, annulment,
20 separate maintenance, or support.

21 (b) A person who has sexual intercourse in this State
22 thereby submits to the jurisdiction of the courts of this State

1 as to an action brought under this chapter with respect to a
2 child who may have been conceived by that act of intercourse.
3 In addition to any other method provided by statute, personal
4 jurisdiction may be acquired by personal service outside this
5 State or by service by certified or registered mail, postage
6 prepaid, with return receipt requested.

7 (c) In addition to any other method of service provided by
8 statute or court rule, if the defendant is not found within the
9 circuit, service may be effectuated by registered or certified
10 mail, with request for a return receipt and direction to deliver
11 to addressee only. The return receipt signed by the defendant
12 shall be prima facie evidence that the defendant accepted
13 delivery of the complaint and summons on the date set forth on
14 the receipt. Actual receipt by the defendant of the complaint
15 and summons sent by registered or certified mail shall be
16 equivalent to personal service on the defendant by an authorized
17 process server as of the date of the receipt.

18 (d) The action may be brought in the county in which the
19 child, the mother, or the alleged father resides or is found or
20 in which the child was born or, if the father is deceased, in
21 which proceedings for probate of his estate have been or could
22 be commenced.

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1 (e) For service effectuated by registered or certified
2 mail, an electronic copy or facsimile of the signature of the
3 served individual provided by the United States Postal Service
4 shall constitute valid proof of service on the individual."

5 SECTION 8. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 9. This Act shall take effect upon its approval.

8

9

INTRODUCED BY:

Calvin K. Ray

10

BY REQUEST

JAN 26 2009

Report Title:

Child Support Enforcement

Description:

Clarifies that all income withholding payments be sent through the Child Support Enforcement Agency; allows the agency to disburse support by electronic deposit or debit card; allows for electronic copy or facsimile of a signature as proof of service for certified mail; clarifies lien payment and enforcement.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

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

PURPOSE: To clarify that all income withholding payments be sent to the Child Support Enforcement Agency (CSEA) or to another state's child support enforcement agency acting under Title IV-D of the Social Security Act; to allow the agency to disburse funds to custodial parents by way of either electronic deposit or debit card; to clarify that other child support enforcement agencies acting under Title IV-D of the Social Security Act may enforce a child support lien; to require only the last four digits of the obligor's social security number be indicated on the notice of child support lien; to allow the electronic copy or facsimile of a signature in place of an actual signature on certified mailers be acceptable as sufficient proof of service; and to clarify that payment shall be made to the entity seeking to enforce the lien when it has complied with procedural rules of the State.

MEANS: Amend sections 571-52.2(e), 576D-10, 576D-10.5, 576D-15(c), 576E-12(a), 576E-16(b), and 584-8, Hawaii Revised Statutes.

JUSTIFICATION: Under 42 U.S.C. §666(b)(5), income withholding for child support must be administered by the state disbursement unit established by the state's child support enforcement agency.

Disbursing child support by way of direct deposit or debit card will reduce the cost of postage that the CSEA incurs when mailing out child support checks. It is estimated that there will be a cost savings just in postage to the CSEA of approximately

\$130,000.00 annually. There will also be additional savings in paper and envelope costs.

Currently, section 576D-10.5, Hawaii Revised Statutes, only provides for enforcement by the CSEA or the obligee. This measure will clarify that other child support enforcement agencies acting under Title IV-D of the Social Security Act will be able to enforce their child support liens on behalf of obligees or on behalf of their state when child support has been assigned to that state due to public assistance being provided. Under 42 U.S.C. §666(a)(4)(B), the State of Hawaii must have laws to accord full faith and credit to liens arising in another state when an entity seeking to enforce the lien complies with procedural rules in effect within this State.

This measure also seeks to protect against identity theft and make consistent with the changes enacted by the 2008 legislative session in Act 86 by requiring that only the last four digits of the social security number be included on the notice of lien.

At the present time, the certified mail receipt with the recipient's original signature is provided by the U. S. Postal Service when certified mail is being used. The receipt with the original signature is filed with the Family Court as proof of service. The U. S. Postal Service has a program where it provides an electronic copy or facsimile of the recipient's signature rather than the original signature at less than half the cost of regular certified mail. This measure will reduce the cost of postage that the CSEA incurs when utilizing certified mail. It is estimated that there will be a saving in postage costs to the agency of approximately \$24,912.00 annually.

In addition, section 576D-15(c), Hawaii Revised Statutes, currently requires that

the financial institution surrender the funds to the CSEA in response to a notice of lien or levy. This measure will allow the funds to be paid to the entity seeking to enforce the lien in situations where the CSEA is not involved in the process.

Impact on the public: This measure would prohibit income withholding payments for child support purposes from being paid directly to an obligee by an employer. This would benefit employers as an employer will not have to make individual payments to different obligees.

Fees may be assessed to the obligee receiving child support payments by either direct deposit or by debit card.

This measure will help to protect obligors against identity theft. It will also allow a party to benefit from the cost savings when utilizing certified mail in the specified situations and will assist in expediting payments to the entity enforcing the lien where the CSEA is not involved.

Impact on the department and other agencies: If the provision relating to the federal requirement for income withholding is not implemented, the state plan that is administered by the CSEA for federal funding purposes may be disapproved. If the state plan is disapproved, federal funding that is provided to the CSEA and to the Department of Human Services may be jeopardized.

In addition to the savings in costs to the CSEA mentioned above, this measure would also enable the agency to free up staff that process the mailing of checks and allow them to be reassigned to other areas of operation.

Also, CSEA resources will not have to be involved when another child support enforcement agency acting under Title IV-D

of the Social Security Act is attempting to enforce a child support lien.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: ATG 500

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.