

JAN 24 2019

S.B. NO. 1173

A BILL FOR AN ACT

RELATING TO CHILD SUPPORT.

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 (g) to read as follows:

3 "(g) It shall be unlawful for any employer to fail to
4 comply with the requirements of this section. In addition, an
5 employer who fails to comply with an order of assignment of
6 future income, as provided for under this section, shall be
7 liable to the obligee or the obligee's assignee for whom support
8 was required to be paid, for the full amount of all sums ordered
9 to be withheld and transmitted and not otherwise done so[-],
10 and may be subject to a fine not to exceed \$1,000 as determined
11 by the court."

12 SECTION 2. Section 576D-5, Hawaii Revised Statutes, is
13 amended by amending subsection (b) to read as follows:

14 "(b) In the case of an individual who has never received
15 public assistance for the support of a child under Title IV-A
16 and for whom the State has collected not less than [~~\$500~~] \$550
17 of support, the agency shall impose an annual fee of [~~\$25~~] \$35
18 for each case in which Title IV-D services were furnished, which

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1 shall be retained in accordance with Title IV-D requirements;
2 provided that the [~~\$25~~] \$35 shall not be retained from the first
3 [~~\$500~~] \$550 so collected. Any fee collected shall be maintained
4 by the agency and used as required under Title IV-D."

5 SECTION 3. Section 576E-16, Hawaii Revised Statutes, is
6 amended as follows:

7 (1) By amending subsection (c) to read as follows:

8 "(c) Compliance by an employer with the income withholding
9 order issued pursuant to subsection (a) or with the income
10 withholding order or the notice to withhold child support issued
11 pursuant to section 576D-14 shall operate as a discharge of the
12 employer's liability to the responsible parent for that portion
13 of the responsible parent's earnings withheld and transmitted to
14 the agency, regardless of whether [~~or not~~] the employer has
15 withheld the correct amount. For each payment made pursuant to
16 an income withholding order or a notice to withhold child
17 support, the employer may deduct and retain as an administrative
18 fee an additional amount of \$2 from the income owed to the
19 responsible parent. The total amount withheld from the
20 obligor's income, including the administrative fee, may not be
21 in excess of the maximum amounts permitted under section 303(b)
22 of the Consumer Credit Protection Act (15 U.S.C. §1673(b)). Any
23 income withholding order or notice to withhold child support

1 shall have priority as against any garnishment, attachment,
2 execution, or other income withholding order, or any other
3 order, and shall not be subject to the exemptions or
4 restrictions contained in part III of chapter 651 and in
5 chapters 652 and 653. An employer who fails to comply with an
6 income withholding order under this section or with an income
7 withholding order or notice to withhold child support issued
8 pursuant to section 576D-14 shall be liable to the obligee or
9 the agency for the full amount of all sums ordered to be
10 withheld and transmitted. In addition, an employer violating
11 this subsection may be subject to a fine not to exceed \$1,000 as
12 determined by the court. An employer receiving an income
13 withholding order or a notice to withhold child support shall
14 transmit amounts withheld to the agency within five working days
15 after the responsible parent is paid. The employer shall begin
16 withholding no later than the first pay period commencing within
17 seven business days following the date a copy of the order or
18 the notice to withhold child support is mailed to the employer.

19 As used in this subsection, the term "business day" means a
20 day on which the employer's office is open for regular business.
21 The employer shall withhold funds as directed in the order or
22 the notice to withhold child support, except that when an
23 employer receives an income withholding order issued by another

1 state, the employer shall apply the income withholding law of
2 the state of the obligor's principal place of employment in
3 determining:

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

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

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

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

7 (2) By amending subsection (e) to read as follows:

8 "(e) It shall be unlawful for any employer to refuse to
9 hire a prospective employee, to discharge an employee, or to
10 take any other disciplinary action against an employee, based in
11 whole or in part upon an order or notice to withhold child
12 support authorized by this section. Any employer [~~violating~~
13 ~~this section shall be guilty of a misdemeanor and shall be~~
14 ~~punished under section 710-1077(1)(g).~~] who fails to comply with
15 this subsection may be subject to a fine not to exceed \$1,000 as
16 determined by the court."

17 SECTION 4. This Act does not affect rights and duties that
18 matured, penalties that were incurred, and proceedings that were
19 begun before its effective date.

20 SECTION 5. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.

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1 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY: *M. J. M.*

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BY REQUEST

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Report Title:

Child Support; Income Withholding; Employer; Fines; Child Support Enforcement Agency Fee; Annual Fee

Description:

Amends the income withholding requirements to impose a fine against any employer who (1) discharges from employment, refuses to employ, or takes disciplinary action against any noncustodial parent subject to income withholding or (2) fails to withhold support from income or pay the amounts to the Child Support Enforcement Agency; and amends the amount of the annual fee imposed by the Child Support Enforcement Agency to be in compliance with federal regulations.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: ATTORNEY GENERAL, CHILD SUPPORT ENFORCEMENT AGENCY

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

PURPOSE: To amend the provisions relating to the income withholding requirements and the annual fee imposed by the Child Support Enforcement Agency (CSEA) to be in compliance with federal regulations.

MEANS: Amend sections 571-52.2(g), 576D-5(b), and 576E-16(c) and (e), Hawaii Revised Statutes (HRS).

JUSTIFICATION: Under 42 U.S.C. §666(b)(6)(D), each state must have in effect laws requiring the imposition of a fine against any employer who discriminates against an employee because of the existence of an income withholding order or fails to withhold support from income or pay the amounts to a child support agency.

Section 53117 of the Bipartisan Budget Act of 2018 (Public Law 115-123) signed by President Trump on February 9, 2018, amended Section 454(6)(B)(ii) of the Social Security Act to increase the annual collection fee from \$25 to \$35 assessed on all state IV-D cases that have not received assistance under the state Temporary Assistance for Needy Families (TANF) program. The law also revises the amount from \$500 to \$550 that the state must collect and disburse to the family before imposing the fee each federal fiscal year.

Impact on the public: This measure would benefit the public because it increases the effectiveness of income withholding and

therefore makes the child support enforcement process more efficient. In addition, it protects the obligor parent against employment discrimination due to the income withholding order.

The federal requirement increases the fee by \$10 for child support services in those situations where the custodial parent has not received TANF benefits.

Impact on the department and other agencies:
If these federal requirements are 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 CSEA will be jeopardized.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: ATG 500.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.