

ACT 154

H.B. NO. 3568

A Bill for an Act Relating to Administrative Process to Establish and Enforce Child Support Obligations.

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

SECTION 1. Findings and purpose. The legislature finds that the establishment of an alternative process to establish, modify and enforce support obligations owed to dependent children by parents is a matter of compelling state interest. A process designed to expedite the establishment and enforcement of such obligations, and to promote consistency and equity in obligation amounts, while guaranteeing all affected parties a right to a full and fair hearing, will bring the State into compliance with federal statutory and regulatory requirements and best serve the needs of the people. Accordingly, the purpose of this Act is to establish an administrative process to establish and enforce child support obligations, and to authorize the department of the attorney general to use the process on all types of cases for which the department has responsibility under title IV-D of the Social Security Act, including but not limited to welfare and non-welfare cases in which the responsible parent is subject to the department's jurisdiction, regardless of the residence of the children for whom support is sought. These remedies are in addition to existing law.

SECTION 2. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
ADMINISTRATIVE PROCESS FOR CHILD SUPPORT
ENFORCEMENT**

§ -1 Definitions. As used this chapter, unless the context otherwise requires: “Agency” means the child support enforcement agency established by section 576D-2.

“Arrearage” means past due child support under an existing court order.

“Court” means the family courts of this State and, when the context requires, a court or agency of any other state having jurisdiction to establish, modify and enforce support obligations.

“Court order” means any judgment, decree, or order of a court or agency that requires the payment of a set or determinable amount of child support, or child support and spousal support.

“Department” means the department of the attorney general.

“Debt” means the public assistance debt pursuant to section 346-37.1.

“Employee” means any person working for another for hire, including but not limited to, an individual employed in domestic service or at a family’s or person’s home or any individual employed by the individual’s parent or spouse, or independent contractors.

“Employer” means any person who uses or engages in the services of any person in exchange for the payment of wages or other means of exchange, including the United States government, the State, and any political subdivision thereof.

“Obligee” means any person to whom payments are required to be made under the terms of a court order for child support, or child support and spousal support.

“Public assistance” means any cash paid or medical assistance provided by the department of human services to or for the benefit of any dependent child, including amounts paid to or on behalf of the child’s custodian.

“Responsible parent” means any person upon whom the law of this State places a duty of support.

“Support order” means an obligation determined by a court or duly authorized administrative agency, for the maintenance of a dependent child, which is owed to or on behalf of the child, or to the parent or custodian with whom the child is living.

§ -2 Attorney general; powers. Notwithstanding any other law to the contrary, the attorney general, through the child support enforcement agency, shall have concurrent jurisdiction with the court in all proceedings in which a support obligation is established, modified or enforced, including, but not limited to proceedings under chapters 571, 584 and 576, the Uniform Reciprocal Enforcement of Support Act. The attorney general, through the child support enforcement agency, may establish, modify and enforce child support obligations using the administrative process provided in this chapter on all cases for which the department has a responsibility under Title IV-D of the Social Security Act, including but not limited to welfare and non-welfare cases in which the responsible parent is subject to the department’s jurisdiction, regardless of the residence of the children for whom support is sought. These powers shall include, but not be limited to, the power to:

- (1) Conduct investigations into the ability of responsible parents to pay support and into nonpayment of support;
- (2) Administer oaths, issue subpoenas, and require production of books, accounts, documents, and evidence;
- (3) Establish, modify or enforce a support order;
- (4) Determine that a responsible parent has not complied with a court order;
- (5) Establish arrearage;
- (6) Establish a public assistance debt under section 346-37.1;
- (7) Order and enforce assignment of future income under section -16, and chapter 571, and;
- (8) Exercise the powers and authority described in this section, notwithstanding the existence of a prior court order issued by another state or foreign jurisdiction, except as modified or limited by this chapter.

§ -3 Jurisdiction. Notwithstanding any other law to the contrary, the agency shall have concurrent jurisdiction with the court over:

(a) any person found within the State of Hawaii against whom a child support obligation may be established, modified or enforced, and;

(b) any person without the State who has maintained a domicile in this State while subject to a marital or family relationship out of which arises a claim for child support, including any person against whom a Hawaii court has entered a support order.

§ -4 **Service of process.** Service of the notice provided in section -5 shall be by personal service or certified mail, return receipt requested.

§ -5 **Commencement of administrative proceedings; notice.** The agency shall serve a notice upon the responsible parent not less than thirty days prior to commencing administrative proceedings to make an order under section -11. The notice shall contain:

- (1) A copy of the order proposed to be entered by the agency;
- (2) A statement that the responsible parent is entitled to an administrative hearing before an impartial hearings officer to contest the entry of the order together with an explanation of the procedure for requesting a hearing;
- (3) A statement of rights at the hearing together with an explanation of defenses or objections which may be considered by the hearings officer;
- (4) A statement that the property of the responsible parent may be seized or that the income of the responsible parent may be withheld for payment of support; and
- (5) A statement that information relating to the responsible parent's non-payment of support may be made available to credit-reporting agencies.

§ -6 **Request for hearing; how made.** Any responsible parent who is aggrieved by the proposed order of the agency may obtain a hearing by sending a written request for hearing to the agency office that issued the notice pursuant to section -5.

§ -7 **Failure to request hearing; effect.** If the responsible parent fails to request a hearing within twenty days of receipt of the notice issued pursuant to section -5, the agency shall adopt the proposed order as the final order in the action. Such orders shall be final decisions of the agency, entitled to judicial review as provided in section -13.

§ -8 **Action by agency upon request for hearing.** Upon receipt of a hearing request, the agency shall contact the responsible parent and attempt to reach an agreed disposition. If no agreed disposition can be obtained, the matter shall be referred to a hearings officer for contested case proceedings.

§ -9 **Hearings in contested cases.** Hearings in contested cases shall be conducted in accordance with chapter 91 and shall be presided over by an administrative hearings officer appointed by the attorney general. The attorney general may adopt such administrative rules pursuant to chapter 91, as may be necessary to carry out the provisions of this section. In any hearing conducted under this section, the responsible parent shall have the right to confront and cross-examine witnesses, to present witnesses and evidence, to be represented by counsel or other person, and to be notified of these rights in writing. Hearings may be conducted by telephone or other electronic telecommunications methods upon the consent of all parties to the hearing.

§ -10 **Hearings officers.** The attorney general shall appoint and commission, pursuant to chapters 76 and 77, such hearings officers as may be necessary to carry out the purposes of this chapter. Hearings officers shall exercise all of the powers granted to the attorney general under this chapter, but shall not be considered deputy attorneys general and shall not exercise the powers or discharge the duties conferred upon the attorney general or the attorney general's deputies by chapter 28. In exercising the powers conferred upon the attorney general in section -2, the hearings officers shall have the authority to:

- (1) Enter a default order against a responsible parent who fails to appear at the time and place of the hearing, upon a showing of proper notice to that parent;
- (2) Accept a voluntary acknowledgment of support liability or stipulated agreement setting the amount of support to be paid after consideration of the guidelines established under section 576D-7;
- (3) Receive testimony from the parties to the hearing and establish a record; and
- (4) Evaluate the testimony and other evidence received at the hearing and make specific findings of fact and conclusions of law.

§ -11 Agency orders; required findings. Every order entered by the agency pursuant to this chapter shall specify, at a minimum, the following:

- (1) The amount of periodic support to be paid by the responsible parent, with directions as to the manner of payment;
- (2) The amount of child support arrears, if any, that have accrued under an existing court order;
- (3) The amount of public assistance debt, if any, accrued under section 346-37.1;
- (4) The amount of the periodic payment to be made in liquidation of such public assistance debt, if any, or child support arrears, if any;
- (5) The extent of the responsible parent's responsibility to provide medical insurance coverage for the dependent child involved in the case, or otherwise to pay the reasonable and necessary medical expenses of the dependent child;
- (6) The name of the person or agency with custody of the dependent child for whom support is sought, except where a court has previously directed that such information be withheld, and the name and birth date of such child;
- (7) A statement that the property of the responsible parent is subject to collection action, including but not limited to, withholding of income, unemployment insurance benefits, workers' compensation, and retirement benefits, seizure of property, disclosure of information relating to the responsible parent's debt to consumer credit reporting agencies, and federal and state tax refund interception;
- (8) A statement that violations of the agency's order are punishable as contempt of court; and
- (9) A statement notifying the responsible parent of the right to judicial review of agency orders, and the procedure for obtaining such review.

§ -12 Agency orders; force and effect. (a) A true copy of the agency's order, along with a true copy of the return of service, shall be filed by the agency in the office of the clerk of the family court in the first circuit. Upon filing, the order shall have all the force and effect of a final order or decree of the circuit court.

(b) Orders for reimbursement of public assistance shall be considered child support arrearages for purposes of nondischargeability in bankruptcy.

(c) The agency order shall remain in effect until superseded by a subsequent order entered by the agency or by the court, or until the responsible parent's obligation to provide support for the dependent child and to reimburse the State for public assistance paid on behalf of the child, has ceased to exist.

(d) A copy of the order shall be served by regular mail upon the responsible parent. A copy of the order shall also be sent to the person having custody of the dependent child.

§ -13 Appeal to the family court. Any responsible parent aggrieved by a final order entered by the agency pursuant to this chapter may obtain judicial review under chapter 91 by filing a notice of appeal to the senior family court judge in the circuit in which the person resides within thirty days of the filing of the order. The senior judge may assign the hearing and disposition of such appeals to any district judge of the family court who shall exercise all of the powers conferred upon a circuit court by section 91-14. The filing of a notice of appeal does not stay enforcement of the agency order.

§ -14 Modification of agency orders. (a) After the entry of an order by the agency under this chapter, the responsible parent, the agency, or the person having custody of the involved child may file a request for modification with the agency. Such request shall be in writing, shall set forth the reasons for modification, including the change of circumstances since the date of the entry of the order, and shall state the address of the requesting party. The request shall be served by the requesting party, by personal service or by certified mail, return receipt requested, upon all parties to the original administrative proceeding, and to the person presently having custody of the dependent child. The agency shall thereupon schedule and conduct a hearing on the request.

(b) Only payments accruing subsequent to service of the request on all parties may be modified, and only upon a showing of a substantial and material change of circumstances. The agency shall not be stayed from enforcement of the existing order pending the outcome of the hearing on the request to modify.

§ -15 Guidelines to be followed. When the agency establishes or modifies the amount of child support required to be paid by a responsible parent, the agency shall use the guidelines established under section 576D-7, except when exceptional circumstances warrant departure.

§ -16 Income withholding. (a) Whenever any order is entered by the agency 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, the agency shall concurrently issue an order which shall operate as an assignment to the agency for the benefit of the child 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 order of the agency. A copy of the income withholding order shall be filed in the circuit court along with the copy of the support order as provided in section -12.

(b) The income withholding order 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 mail or by personal delivery. 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 agency, 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.

(c) Compliance by an employer with the income withholding order 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, the employer may deduct and retain

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as an administrative fee an additional amount of \$2 from the income owed to the responsible parent. Any income withholding order shall have priority as against any garnishment, attachment, execution, or other income withholding order, or any other order, unless otherwise ordered by the agency, 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 order entered by the agency under this section 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 shall transmit amounts withheld to the agency within ten days after the responsible parent is paid. The employer shall begin withholding no later than the first pay period commencing fourteen days after receipt of the order by the employer. An employer who is required to withhold amounts from the earnings or 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.

(d) An income withholding order shall remain in effect until terminated when appropriate by the agency. Payment by the responsible parent of any delinquency shall not in and of itself warrant termination of the income withholding order. 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 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).

(f) Notwithstanding any other provision of law, for the purposes of this section, the term "income" shall include, without limitation, 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 political subdivision thereof, or from any retirement, disability, or annuity system established by any of them pursuant to statute.

(g) Any responsible parent may request withholding of the parent's income prior to entry of an order by the agency. The employer shall comply with that request as if so ordered by the agency under this section.

(h) The agency may allocate amounts withheld from the income of one responsible parent among more than one obligee. If concurrent orders would cause the amounts withheld from the responsible parent's income to exceed applicable wage withholding limitations, the current support obligation of the first served order shall be satisfied first, and then current obligations of subsequently served orders shall be satisfied in the order of service. Thereafter, arrearages due under the income withholding orders shall be satisfied in the order of service, up to the applicable limitation.

§ -17 Medical support enforcement. (a) Where the responsible parent is ordered by the agency to provide medical insurance coverage for the dependent child, the agency shall, in addition to any income withholding order issued pursuant to section -16, forward a copy of the support order, by registered or certified mail or by personal service, to the responsible parent's employer or union when the responsible parent fails to provide written proof to the agency, within thirty days of receipt of the agency's order, that the insurance has been obtained or that application for insurance coverage has been made.

(b) Upon receipt of the copy of the order, or upon request of the responsible

parent pursuant to the order, the employer or union shall enroll the dependent child as a beneficiary in the group medical insurance plan and withhold any required premium from the responsible parent's income. If more than one plan is offered by the employer or union, the child shall be enrolled in the plan in which the responsible parent is enrolled or the least costly plan otherwise available to the responsible parent that is comparable to the plan in which the responsible parent is enrolled.

(c) A dependent child whom a responsible parent is required to cover as a beneficiary pursuant to this section is eligible for insurance coverage as a dependent of the responsible parent until the duty of support expires or until further order of the agency or a court of competent jurisdiction. The insurance coverage shall not be terminated prior to entry of such an order relieving the responsible parent of the duty to provide insurance coverage.

(d) The signature of the custodial parent of the insured dependent child is a valid authorization to the insurer for purposes of processing an insurance reimbursement payment to the provider of medical services. When an order for dependent insurance coverage is in effect and the responsible parent's employment is terminated, or the insurance coverage is terminated, the insurer shall notify the agency within ten days of the termination date with notice of conversion privileges, if any.

(e) Notwithstanding any other law to the contrary, when an order for insurance coverage is in effect, the responsible parent's employer or union shall release to the agency, upon request, information on the dependent coverage available to the responsible parent, including the name of the insurer.

(f) Any responsible parent who fails to comply with an order entered by the agency requiring the maintenance of insurance coverage for the dependent child shall be liable for any medical expenses incurred by the obligee or the State after the effective date of the order."

SECTION 3. Section 571-14, Hawaii Revised Statutes is amended to read as follows:

"§571-14 Jurisdiction; adults. The court shall have exclusive original jurisdiction:

- (1) To try any offense committed against a child by the child's parent or guardian or by any other person having the child's legal or physical custody, and any violation of section 707-726, 707-727, 709-902, 709-903, 709-904, 709-905, 709-906, or 298-12, whether or not included in other provisions of this paragraph or paragraph (2).
- (2) To try any adult charged with:
 - (A) Deserting, abandoning, or failing to provide support for any person in violation of law;
 - (B) An offense, other than a felony, against the person of the defendant's husband or wife;
 - (C) Any violation of a domestic abuse protective order issued pursuant to chapter 586; or
 - (D) Any violation of an order issued by a family court judge.

In any case within paragraph (1) or (2) of this section the court may, in its discretion, waive its jurisdiction over the offense charged.

- (3) In all proceedings under chapter 580, and in all proceedings under chapter 584.
- (4) In proceedings under chapter 575, the Uniform Desertion and Non-support Act, and under chapter 576, the Uniform Reciprocal Enforcement of Support Act.

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- (5) For commitment of an adult alleged to be mentally defective or mentally ill.
- (6) In all proceedings for support between parent and child or between husband and wife, and in all proceedings to appoint a guardian of the person of an adult.
- (7) In all proceedings for waiver of jurisdiction over an adult who was a child at the time of an alleged criminal act as provided in section 571-22.
- (8) In all proceedings under chapter 586, Domestic Abuse Protective Orders.
- (9) In all proceedings to appoint a guardian of the person of an adult.

In any case within paragraph (3), (4), or (6) of this section, the attorney general, through the child support enforcement agency, may exercise concurrent jurisdiction as provided in chapter.”

SECTION 4. It is the intent of this Act not to jeopardize the receipt of any federal aid, and to the extent, and only to the extent, necessary to effectuate this intent, the governor may modify the strict provisions of this Act, but shall promptly report any such modification with reasons therefor to the legislature at its next session thereafter for review by the legislature.

SECTION 5. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.

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

(Approved June 1, 1988.)