

ACT 61

H.B. NO. 1868

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

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

SECTION 1. 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.

## ACT 61

- (4) In proceedings under chapter 575, the Uniform Desertion and Non-support Act, and under chapter 576, the Uniform Reciprocal Enforcement of Support Act.
- (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 576E.”

SECTION 2. Section 576E-2, Hawaii Revised Statutes, is amended to read as follows:

“**[§576E-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, 580, 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 576E-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.”

SECTION 3. Section 576E-10, Hawaii Revised Statutes, is amended to read as follows:

“**[§576E-10] Hearings officers.** The attorney general shall appoint and commission, [pursuant] without regard 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 576E-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."

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

"(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] circuit court in the [first] circuit[.] where the order was issued. Upon filing, the order shall have all the force and effect of a final order or decree of the circuit court."

SECTION 5. Section 576E-13, Hawaii Revised Statutes, is amended to read as follows:

"**[§576E-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 or senior judge in the circuit in which the person resides within thirty days of the filing of the order. The senior family court judge or 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."

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

"**[§576E-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 office of the clerk of the circuit court in the circuit where the order was issued along with the copy of the support order as provided in section 576E-12.

## ACT 61

(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 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 within fourteen days [after receipt of the order by] following the date a copy is mailed to 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 assignment 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.”

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 8. This Act shall take effect upon its approval.

(Approved April 26, 1989.)