

**ACT 105**

H.B. NO. 3137

A Bill for an Act Relating to Administrative Process for Child Support Enforcement.

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

SECTION 1. Section 576E-1, Hawaii Revised Statutes, is amended by adding new definitions to be appropriately inserted and to read as follows:

““Office” means the office of child support hearings established pursuant to section 576E-10.

“Party” means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, including but not limited to the custodial parent and the responsible parent.”

SECTION 2. Section 576E-1, Hawaii Revised Statutes, is amended by amending the definitions of "custodial parent" and "responsible parent" to read:

""Custodial parent" means a parent, guardian, or other person having physical custody of the child.

"Responsible parent" means any person who<sup>1</sup> does not have physical custody of the child and who has a legal duty of support."

SECTION 3. 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[,], and the office, 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[,], and the office, may establish, modify, suspend, terminate, and enforce child support obligations and collect or enforce spousal support 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 nonwelfare 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] parties 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, suspend, terminate, or enforce a child support order and to collect or enforce a spousal support order in conjunction with a child support order;
- (4) Determine that a [responsible parent] party has not complied with a court or administrative order and make recommendations to the court or other agency with respect to contempt or other appropriate proceedings;
- (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;
- (8) Exercise the powers and authority described in this section, notwithstanding the existence of a prior court or administrative order issued by another state or foreign jurisdiction, except as modified or limited by this chapter; and
- (9) Delegate the powers and authority described in this section to hearings officers and employees of the agency."

SECTION 4. Section 576E-3, Hawaii Revised Statutes, is amended to read as follows:

**"§576E-3 Jurisdiction.** Notwithstanding any other law to the contrary, the attorney general, through the agency and the office, shall have concurrent jurisdiction with the court over:

- (1) Any person found within the State of Hawaii against whom a child support obligation may be established, modified, suspended, terminated, or enforced; and
- (2) Any person without the State who has maintained a domicile in this State while involved in a marital or family relationship out of which arises a claim for child support, including any person against whom a Hawaii court or agency has entered a support order."

SECTION 5. Section 576E-4, Hawaii Revised Statutes, is amended to read as follows:

**"§576E-4 Service [of process].** (a) Service of the notice provided in section 576E-5 shall be by personal service or certified mail, return receipt requested. After initial service is effected, additional service upon a party shall be satisfied by regular mail to the party's last known address.

(b) Service of the notice of hearing pursuant to the request for hearing under section 576E-6 of a party shall be satisfied by regular mail to the party's address provided with the request for hearing, or if not provided, to the party's last known address."

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

**"§576E-5 Commencement of administrative proceedings; notice.** The agency shall serve a notice of administrative proceedings and notice of financial responsibility upon the [responsible parent] parties prior to the issuance of an order under this chapter. Where applicable, notice shall contain the following:

- (1) A copy or statement of the order proposed to be entered;
- (2) A statement that the [responsible parent is] parties are 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) [The] A statement of the legal authority under which the hearing is to be held;
- (5) A statement that the property of the [responsible parent] parties may be seized or that the income of the [responsible parent] parties may be withheld for payment of support;
- (6) A statement that information relating to the [responsible parent's] parties' nonpayment of support may be made available to credit-reporting agencies;
- (7) A statement that child and spousal support shall be payable by an order for immediate income withholding which shall be entered concurrently with the administrative order pursuant to section 576E-16;
- (8) A statement that [the responsible parent has] parties have the right to request judicial review of a final order of a hearings officer pursuant to section 576E-13;
- (9) A statement that an administrative determination of a support obligation creates a judgment by operation of law upon filing of the order at the family court and as such is entitled to full faith and credit in any other state or jurisdiction."

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

**"§576E-6 Request for hearing; how made.** (a) Except as provided in subsection (b), any [responsible parent] party who is aggrieved by the proposed order of the agency may, within ten days of service of a notice described in section 576E-5, obtain a hearing by sending a written request for hearing to the agency [office that issued] at the address from which the notice[.] was sent.

(b) In the case of a proposed order to modify child support resulting from the agency's periodic review of support orders, a [responsible parent] party aggrieved by the proposed order may request a hearing within thirty days of service of a notice described in section 576E-5.

(c) Notice of the hearing under this section shall be served in accordance with section 576E-4."

SECTION 8. Section 576E-7, Hawaii Revised Statutes, is amended to read as follows:

**"§576E-7 Failure to request hearing; effect.** If the [responsible parent fails] parties fail to request a hearing [within ten days of service of the notice issued pursuant to section 576E-5, the agency shall adopt] pursuant to section 576E-6, a hearings officer shall sign the proposed order as the final order in the action."

SECTION 9. Section 576E-8, Hawaii Revised Statutes, is amended to read as follows:

**"[~~§~~576E-8] Action by agency upon request for hearing.** Upon receipt of a hearing request, the agency shall contact the [responsible parent] parties 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."

SECTION 10. Section 576E-9, Hawaii Revised Statutes, is amended to read as follows:

**"§576E-9 Hearings in contested cases.** Hearings in contested cases shall be conducted in accordance with this chapter, and when otherwise applicable, chapter 91, and shall be presided over by a hearings officer appointed and commissioned by the attorney general pursuant to section 576E-10. The attorney general may adopt such administrative rules pursuant to chapter 91, as may be necessary to carry out this section. In any hearing conducted under this section, [the responsible parent] all parties 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 at the discretion of the hearings officer."

SECTION 11. Section 576E-10, Hawaii Revised Statutes, is amended to read as follows:

**"§576E-10 Hearings officers.** (a) The attorney general shall establish the office of child support hearings, and shall appoint and commission, without

regard to chapters 76 and 77, such hearings officers as may be necessary to carry out the purposes of this chapter.

(b) 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.

(c) 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 application of the guidelines established under section 576D-7;
- (3) Enter an income withholding order pursuant to section 576E-16;
- (4) Conduct a hearing and enter an automatic income assignment order pursuant to section 571-52.2;
- (5) Enter an interstate income withholding order pursuant to section 576E-16;
- (6) Enter support orders which have the effect of modifying, suspending, terminating, or enforcing the child support provision of orders of the Hawaii family courts;
- (7) Enter support orders of any form if the order establishes, modifies, suspends, terminates, or enforces child support obligations;
- (8) Receive testimony from the parties to the hearing and establish a record;
- (9) Evaluate the testimony and other evidence received at the hearing and make specific findings of fact and conclusions of law after contested case hearings and when otherwise required by law;
- (10) Issue subpoenas;
- (11) Compel production of documents and witnesses;
- (12) Dismiss a child support case upon finding of good cause;
- (13) Hold a pre-hearing conference;
- (14) Conduct a hearing and enter an order concerning whether a state income tax refund should be intercepted to satisfy a past due support obligation pursuant to section 231-54;
- (15) Enter an order concerning whether a responsible parent's unemployment compensation should be applied to satisfy a past due support obligation pursuant to chapter 576D;
- (16) Enter an order concerning whether a lien should be imposed on a responsible parent's personal and real property pursuant to section 576D-10.5;
- (17) Enter an order concerning whether a responsible parent should be required to post bond in order to secure payment of past due support pursuant to chapter 576D;
- (18) Enter an order concerning whether a responsible parent's child support obligation should be reported to consumer credit reporting agencies pursuant to chapter 576D;
- (19) Refer contempt proceedings to the appropriate court; and
- (20) Enter an order enforcing the collection of spousal support for a spouse or former spouse who is living with a subject child or children if a support obligation has been established by a court order for

that spouse and the child support is being enforced for the subject child or children.]

conduct hearings and enter the following orders:

- (1) Child support orders which have the effect of modifying, suspending, terminating, or enforcing the child support provisions of orders of the family courts;
  - (2) Child support orders establishing, modifying, suspending, terminating, or enforcing child support obligations;
  - (3) Orders enforcing the collection of spousal support when child support is being established, modified, or enforced;
  - (4) Income withholding orders pursuant to section 576E-16;
  - (5) Automatic income assignment orders pursuant to section 571-52.2;
  - (6) Interstate income withholding orders pursuant to section 576E-16.5;
  - (7) State income tax refund setoff orders pursuant to section 231-54;
  - (8) Orders determining whether Aid to Families with Dependent Children pass through payments were properly distributed;
  - (9) Orders determining whether a party should be required to post bond in order to secure payment of past due support pursuant to section 576D-6;
  - (10) Medical insurance coverage orders; and
  - (11) Orders in other child support areas as authorized by the attorney general.
- (d) Hearings officers shall have further authority to:
- (1) Accept voluntary acknowledgments of paternity, support liability, and stipulated agreements setting the amount of child support to be paid after application of the guidelines established under section 576D-7;
  - (2) Receive testimony and evidence from parties to the hearing and to establish a record;
  - (3) Evaluate testimony and other evidence received at hearings and make specific findings of fact and conclusions of law after contested hearings and when otherwise required by law;
  - (4) Issue subpoenas;
  - (5) Compel production of documents and witnesses;
  - (6) Dismiss a case upon a finding of good cause;
  - (7) Hold prehearing conferences;
  - (8) Examine judgment debtors;
  - (9) Refer contempt proceedings to the appropriate court.
- (e) Hearings officers shall be entitled to immunity from liability while acting in their official capacity."

SECTION 12. Section 576E-11, Hawaii Revised Statutes, is amended to read as follows:

**"§576E-11 Administrative orders; required findings.** Every order entered pursuant to this chapter shall specify, where applicable, the following:

- (1) The amount of periodic support to be paid by [the responsible parent,] a party with directions as to the manner of payment;
- (2) The amount of child support arrearage, if any, that has accrued under an existing court or administrative 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 arrearage, if any;
- (5) A statement that a party's taxes shall be set off against the amount of such public assistance debt, if any, or child support arrearage, if any;
- [(5)] (6) The extent of the [responsible parent's] party'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)] (7) [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] The name and birth date of [such] the dependent child;
- [(7)] (8) A statement that the property of the [responsible parent] party is subject to collection action, including but not limited to, withholding of income, unemployment compensation, workers' compensation, and retirement benefits, seizure of property, disclosure of information relating to the [responsible parent's debt] party's debts to consumer credit reporting agencies, and federal and state tax refund [interception;] setoff;
- [(8)] (9) A statement that violations of the administrative order are punishable as contempt of court; and
- [(9)] (10) A statement notifying the [responsible parent] parties of the right to judicial review of administrative orders, and the procedure for obtaining such review."

SECTION 13. Section 576E-12, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(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.] all parties."

SECTION 14. Section 576E-15, Hawaii Revised Statutes, is amended to read as follows:

"**§576E-15 Guidelines to be followed.** When an administrative order establishes or modifies the amount of child support required to be paid by a [responsible parent,] party, the guidelines established under section 576D-7 shall be applied, except when exceptional circumstances warrant departure. The most current guidelines shall be used to calculate the amount of the child support obligation."

SECTION 17.<sup>2</sup> Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 18.<sup>2</sup> This Act shall take effect upon its approval.

(Approved June 8, 1994.)

#### Notes

- 1. "Who" should not be underscored.
- 2. So in original.