

**ACT 95**

H.B. NO. 526

A Bill for an Act Relating to Child Support Enforcement.

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

SECTION 1. Section 576D-10.5, Hawaii Revised Statutes, is amended to read as follows:

**“§576D-10.5 Liens.** (a) Whenever any obligor through judicial or administrative process in this State or any other state has been ordered to pay an allowance for the support, maintenance, or education of a child, or for the support and maintenance of a spouse or former spouse in conjunction with child support, and the obligor becomes delinquent in those payments, a lien shall arise on the obligor’s real and personal property and the obligor’s real and personal property shall be subject to foreclosure, distraint, seizure, and sale, or ~~order~~ notice to withhold and deliver, which shall be executed in accordance with this section or applicable state law. No judicial notice or hearing shall be necessary prior to creation of such a lien.

(b) Whenever the dependents of the obligor receive public assistance moneys, the child support enforcement agency or its designated counsel may establish the public assistance debt through an appropriate judicial or administrative proceeding. Upon the establishment of the public assistance debt, ~~[it shall be subject to collection action, and the real and personal property of the obligor shall be subject to lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver.]~~ a lien shall arise on the obligor’s real and personal property and the obligor’s real and personal property shall be subject to foreclosure, distraint, seizure, and sale, or notice to withhold and deliver, which shall be executed in accordance with this section or applicable state law. No judicial notice or hearing shall be necessary prior to creation of such a lien.

(c) ~~[The child support]~~ Every order or judgment regarding child support or public assistance debt filed [through] in judicial or administrative proceedings in this State [or any other state] shall be recorded in the bureau of conveyances. [The recordation of the order or judgment in the bureau of conveyances] This recorded lien shall be deemed, at such time, for all purposes and without any further action, to procure a lien on land registered in the land court under chapter 501. The statutory lien [shall become] becomes effective when it arises under [subsections] subsection (a) or (b) and shall attach to all interests in real or personal property then owned or subsequently acquired by the obligor including any interests not recorded with the bureau of conveyances or filed in the land court.

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

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

(f) ~~[The]~~ A lien shall be enforceable by the child support enforcement agency or its designated counsel or by the obligee [by] in the following manner:

- (1) By suit in the appropriate court [or by];
- (2) By bringing an action in an administrative tribunal [or shall be enforceable as a claim against the estate of the obligor or by];
- (3) By filing and serving a notice of child support lien; or
- (4) By any lawful means of collection.

A notice of child support lien shall state the name and social security number (if available) of the obligor, the child support enforcement case number, the amount of the lien and the through date (if applicable), the accruing monthly amount, and the date on which the order or judgment regarding child support or public assistance debt was recorded with the bureau of conveyances. The notice shall require that whoever is served with a notice of child support lien either satisfy the lien or obtain a release of the lien prior to disbursing any funds to the obligor. The method of service of a notice of child support lien shall be by certified mail, return receipt requested, or

by personal delivery to the individual or entity referred to. A copy of the notice of child support lien shall also be sent to the obligor by regular mail at the obligor's last known address. Upon service of a notice of child support lien, the individual or entity served shall withhold the amount of the lien from the proceeds of any estate, judgment, settlement, compromise, vacation or holiday pay, or other benefits due the obligor and deliver the funds to the child support enforcement agency. A notice of child support lien may be amended from time to time until extinguished or released, each amendment taking effect upon proper service. A notice of child support lien shall remain in effect until satisfied, extinguished, or released.

(g) A lien shall be enforceable by the child support enforcement agency or its designated counsel without the necessity of obtaining a court order in the following manner:

- (1) By intercepting or seizing periodic or lump-sum payments from:
  - (A) A state or local agency, including unemployment compensation, and other benefits; and
  - (B) Judgments, settlements, and lotteries;provided that unemployment compensation benefits may be intercepted only to the extent authorized by section 303(e) of the Social Security Act;
- (2) By attaching and seizing assets of the obligor held in financial institutions;
- (3) By attaching public and private retirement funds; and
- (4) By imposing liens in accordance with this section and, in appropriate cases, to force the sale of property and distribution of proceeds.

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

~~(g)~~ (h) The child support enforcement agency, its designated counsel or the obligee, where appropriate, shall issue certificates of release upon satisfaction of the lien. Certificates of release of any real property shall be recorded in the bureau of conveyances or filed in the office of the assistant registrar of the land court. Recordation of the certificate of release shall be the responsibility of the obligor.

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

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

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

"(i) The agency shall adopt rules necessary for the implementation and administration of this section. The licensing authority shall adopt rules necessary for the implementation and administration of this section. The appropriate licensing authority shall require that the social security number of any applicant for a professional license, driver's license, occupational license, recreational license, or marriage license be recorded on the application for those licenses. The social security number shall be used solely for purposes of this chapter for child support enforcement and identification."

SECTION 3. Section 576D-14, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) For cases being enforced under the Title IV-D state plan or for those parents applying to the agency for services, the income of an obligor who receives income on a periodic basis and who has a support obligation imposed by a support order issued or modified in the State before [~~October 1, 1996,~~] January 1, 1994, if not otherwise subject to withholding, shall become subject to withholding as provided in subsection (b) if arrearages or delinquency occur, without the need for a judicial or administrative hearing. The agency shall implement such withholding without the necessity of any application in the case of a child with respect to whom services are already being provided under Title IV-D and shall implement on the basis of an application for services under Title IV-D in the case of any other child on whose behalf a support order has been issued or modified. In either case, such withholding shall occur without the need for any amendment to the support order involved or for any further action by the court or other entity which issued such order.”

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

“(b) The financial institution shall provide to the agency, on a quarterly basis, the name, record address, social security number or other taxpayer identification number, and other identifying information for each noncustodial parent who maintains an account at such institution and who owes past due support, as identified by the agency by name and social security number or other taxpayer identification number. The information provided by the financial institution shall also include the name and last known address of all account holders of any account reported under this section.”

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

“(a) [~~Service~~] In any proceeding to establish a child support order, in cases where the agency is not yet enforcing an order of support for the subject child, 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.”

SECTION 6. Section 576E-4, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) In any child support enforcement [~~proceedings~~] proceeding subsequent to an order[;] already being enforced by the agency, upon a showing that diligent effort has been made to ascertain the location of a party, notice and service of process shall be presumed to be satisfied upon delivery of written notice to the most recent residential or employer address on file with the state case registry pursuant to section 571-52.6.”

SECTION 7. Section 576E-13, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) Proceedings for review shall be instituted in the family court of the circuit where the [~~appellant resides~~] final decision and order was filed within thirty days after the preliminary ruling or within thirty days after service of the certified copy of the final decision and order of the hearings officer or agency. The filing of a notice of appeal shall not stay enforcement of the administrative order.”

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SECTION 8. Section 584-3.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) To expedite the establishment of paternity, each public and private birthing hospital or center and the department of health shall provide unwed parents the opportunity to voluntarily acknowledge the paternity of a child during the period immediately prior to or following the child’s birth. The voluntary acknowledgment of paternity shall be in writing and shall consist of a single form signed under oath by both the natural mother and the natural father and signed by a witness. The voluntary acknowledgment of paternity form shall include the Social Security number of each parent. Prior to the signing of the voluntary acknowledgment of paternity form, designated staff members of such facilities shall provide to both the mother and the alleged father, if he is present at the facility:

- (1) Written materials regarding paternity establishment;
- (2) Forms necessary to voluntarily acknowledge paternity; and
- (3) Oral, video, or audio, and written descriptions of the alternatives to, the legal consequences of, and the rights and responsibilities of acknowledging paternity, including, if one parent is a minor, any right afforded due to minority status.

The completed voluntary acknowledgment forms shall clearly identify the name and position of the staff member who provides information to the parents regarding paternity establishment. The provision by designated staff members of the facility of the information required by this section shall not constitute the unauthorized practice of law. Each facility shall send to the department of health the original acknowledgment of paternity containing the Social Security numbers, if available, of both parents, with the information required by the department of health so that the birth certificate issued includes the name of the legal father of the child, which shall be promptly recorded by the department of health.”

SECTION 9. Statutory material to be repealed is stricken and bracketed. New statutory material is underscored.

SECTION 10. This Act shall take effect upon its approval.

(Approved May 18, 2001.)