

ACT 72

S.B. NO. 2693

A Bill for an Act Relating to Child Support Enforcement.

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

SECTION 1. Section 346-37.1, Hawaii Revised Statutes, is amended to read as follows:

“§346-37.1 Payment of public assistance for child ~~[constitutes debt]~~ requires payment of child support to department by natural or adoptive parents. (a) Any payment of public assistance money made to or for the benefit of any dependent child or children creates a debt due and owing to the department by the natural or adoptive parent or parents who are responsible for support of such children ~~[in an amount equal to the amount of public assistance money so paid or as established pursuant to subsection (b),]~~ except that debts under this section shall not be incurred by a parent or other person who is the recipient of public assistance moneys for the benefit of minor dependent children for the period such person or persons are in such status, and, provided that where there has been a family court order, the debt shall be limited to the amount provided for by the order.

(b) If there is no existing court order, the debt for a period during which public assistance was provided to the child or children may be established by agreement of the parties or ~~[by order of the family court wherein the following criteria shall be considered:~~

- (1) ~~All earnings, income, and resources of the absent parent or parents including real or personal property;~~
- (2) ~~The earnings potential, reasonable necessities, and borrowing ability of the absent parent or parents;~~
- (3) ~~The needs of the child for whom the support is sought;~~
- (4) ~~The amount of assistance which would be paid to the child under the full standard of need as established by the department; and~~
- (5) ~~The existence of other dependents.~~

These criteria shall be applied so as to ensure, at a minimum, that the child for whom support is sought benefits from the income and resources of the absent parent or parents on an equitable basis in comparison with any other minor child of the absent parent.] application of the child support guidelines established pursuant to section 576D-7.”

SECTION 2. Section 346-37.3, Hawaii Revised Statutes, is amended to read as follows:

“§346-37.3 Notice of child support debt. The department shall notify the child support enforcement agency of ~~[each support debt accrued or accruing based upon payment of]~~ the amount of, and the periods during which, public assistance was provided to or for the benefit of any dependent child or children.”

SECTION 3. Section 576D-1, Hawaii Revised Statutes, is amended by repealing the definition of “public assistance debt”.

[““Public assistance debt” means a debt owing to the department of human services under section 346-37.1.”]

SECTION 4. Section 576D-8, Hawaii Revised Statutes, is amended to read as follows:

“§576D-8 [Moneys collected for public assistance debt; transmittal] Transmittal of money collected to department of human services. The moneys collected by the agency on behalf of the department of human services [for public assistance debt] shall be transmitted to the department of human services[. The department of human services shall transmit to the federal government that portion of the moneys required to be transmitted under Title IV-D. The remaining portion of the moneys collected, with the exception of incentive payments or other monetary performance awards to which the State is entitled under Title IV-D, shall be retained by the department of human services to offset Title IV-A public assistance payments.] as required by Title IV-D of the Social Security Act.”

SECTION 5. Section 576D-10, Hawaii Revised Statutes, is amended by amending subsection (g) to read as follows:

“(g) No alternative arrangement for direct payment shall be approved where the obligor or the custodial parent is receiving services under Title IV-D or where the dependents of the obligor receive public assistance, including but not limited to public assistance from the department of human services under chapter 346, foster care under section 571-48, Title IV-E or Title XIX of the federal Social Security Act (42 U.S.C. §1396), or where the obligor owes [a public assistance debt.] child support for a period during which public assistance was provided to the child or children by the department of human services.”

SECTION 6. Section 576D-10.5, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(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.] an order of support for a prior period, 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.”

SECTION 7. Section 576D-10.5, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

“(c) Every order or judgment regarding child support [or public assistance debt] filed in judicial or administrative proceedings in this State shall be recorded in the bureau of conveyances. An order or judgment regarding child support filed in judicial or administrative proceedings of any other state may be recorded 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 becomes effective when it arises under 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.”

SECTION 8. Section 576E-1, Hawaii Revised Statutes, is amended by repealing the definition of “public assistance debt”.¹

[~~““Debt means the public assistance debt as described in section 346-37.1.””]~~

SECTION 9. 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 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 576B. The attorney general, through the 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 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 party has not complied with a court or administrative order of support 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;] an order for child support for periods which public assistance was provided to the child or children by the department of human services;
- (7) Order and enforce assignment of future income under section 576E-16, chapter 571, and section 576D-14;
- (8) Exercise the powers and authority described in this section, notwithstanding the existence of a prior court or administrative order of support issued by another state or foreign jurisdiction, except as modified or limited by this chapter;
- (9) Determine that an obligor owes past-due support with respect to a child receiving assistance under a state program funded under Title IV-A of the Social Security Act, including Aid to Families with Dependent Children and Temporary Assistance to Needy Families and petition the court to issue an order that requires the obligor to pay such support in accordance with a plan approved by the court or, if the obligor is subject to such a plan and is not incapacitated, participate in work activities, as defined in 42 U.S.C. §607(d), as the court deems appropriate;
- (10) Order genetic testing pursuant to chapter 584 for the purpose of establishing paternity, with payment of costs to be made by the agency, subject to recoupment by the State from the father or the mother, if appropriate, if paternity is established, and to also order additional

- testing in any case if an original test result is contested, upon request and advance payment by the contestant;
- (11) Exercise the powers and authority described in this section, notwithstanding the existence of a prior court or administrative order of support issued by another state or foreign jurisdiction, except as modified or limited by this chapter and chapter 576B; and
 - (12) Delegate the powers and authority described in this section to hearings officers and employees of the agency.”

SECTION 10. 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 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;]~~ child support owed for a period during which public assistance was provided to the child or children by the department of human services;
- (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;
- (6) The extent of the party’s responsibility to provide medical insurance coverage of² the dependent child involved in the case, or otherwise to pay the reasonable and necessary medical expenses of the dependent child;
- (7) The name and birth date of the dependent child;
- (8) A statement that the property of the 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 party’s debts to consumer credit reporting agencies, and federal and state tax refund setoff;
- (9) A statement that violations of the administrative order are punishable as contempt of court;
- (10) A statement notifying the parties of the right to judicial review of administrative orders, and the procedure for obtaining such review; and
- (11) Identifying information for each party, including social security number, residential and mailing addresses, telephone number, driver’s license number if different from the social security number, and name, address, and telephone number of the party’s employer, unless there is a finding that such disclosure of information would unreasonably put at risk the health, safety, or liberty of a party or child.”

SECTION 11. Section 576E-16, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) Whenever an administrative order is entered establishing, modifying, or enforcing support, or establishing an arrearage that has accrued under a previous judicial or administrative order [for] of support, [or establishing a public assistance debt,] there shall concurrently be issued an order that shall operate as an assignment

ACT 72

to the agency for the benefit of the child or in the case of spousal support, for the benefit of a spouse or former spouse, 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, except when alternative arrangements are ordered pursuant to section 576D-10. The income withholding order shall be in the standard format prescribed by Title IV-D of the Social Security Act, as amended by the child support enforcement 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."

SECTION 12. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 13. This Act shall take effect upon its approval.

(Approved May 23, 2002.)

Notes

1. Repealed definition of "debt".
2. Prior to amendment "for" appeared here. "Of" should be underscored.