

## ACT 34

H.B. NO. 2303

A Bill for an Act Relating to Child Support Enforcement.

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

SECTION 1. Section 571-52.2, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) The order for automatic assignment shall operate as an assignment by the obligor to the child support enforcement agency and shall be binding upon any person who is or shall become obligated to the obligor for payment of income and who has been served with a copy of the assignment order. The 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.

The assignment shall continue after the obligor’s requirement to pay future child support has ended if the obligor owes past due support, and any amount received pursuant to the assignment shall be applied to satisfy all past due support owed. The assignment shall be terminated when appropriate by the court, the clerk of the court, or the child support enforcement agency; provided that payment of all overdue support shall not be the sole basis for terminating the assignment. An employer withholding income for payment to the child support enforcement agency shall terminate withholding upon receipt of a notice from the child support enforcement agency to terminate income withholding. In the event that the obligee retains

private counsel or proceeds pro se, the obligee shall have primary responsibility for terminating the assignment.

If the obligee fails to terminate the assignment when appropriate, the obligee shall reimburse the obligor to the extent of any overpayment. If the assignment is not terminated when appropriate, the obligor may seek reimbursement for any overpayment from the obligee or from the child support enforcement agency, to the extent the overpayment was disbursed to the department of human services.

The child support enforcement agency shall establish procedures by rule in accordance with chapter 91 for the prompt reimbursement for any overpayment to the obligor.”

SECTION 2. Section 576D-14, Hawaii Revised Statutes, is amended to read as follows:

“**§576D-14 Implementation of income withholding.** (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 January 1, 1994, and issued or modified thereafter, 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 income of an obligor shall become subject to withholding without regard to whether there are arrearages or delinquency upon the agency receiving a request for income withholding from the obligee and a determination made by the agency that income withholding is appropriate, or upon the agency receiving a request for income withholding from the obligor. 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 withholding 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, [~~sueh~~] the 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 [~~whieh~~] that issued [~~sueh~~] the order.

(b) If the obligor who receives income on a periodic basis becomes delinquent in making payments under a support order in an amount at least equal to the support payable for one month, the agency shall issue an income withholding order that shall include an amount to be paid towards the delinquency. 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. The order shall be served upon the employer by regular mail, by personal delivery, or by transmission to the employer through electronic means.

(c) Upon the agency’s receipt of an interstate income withholding request from another jurisdiction, the agency may issue an income withholding order to collect the support imposed upon the obligor by a support order issued or modified by the other state. The order shall include an amount adequate to ensure that past due payments and payments that will become due in the future under the terms of the support order will be paid.

(d) A copy of the order shall be filed in the office of the clerk of the circuit court in the circuit where the order was issued.

(e) Upon sending the order of income withholding to the employer, the agency shall send a notice of the withholding by regular mail to each obligor to whom subsections (b) and (c) apply. The notice shall inform the obligor:

- (1) That the withholding has commenced;

- (2) That the obligor may request a hearing in writing within fourteen days of the date of the notice;
  - (3) That, unless the obligor files a written request for a hearing within fourteen days of the date of the notice, the money received from the income withholding will be distributed to the custodial parent or, in an interstate case, the obligee in the other jurisdiction, or in the case where the children are receiving public assistance, to the State;
  - (4) That the only defense to income withholding is a mistake of fact; and
  - (5) Of the information that was provided to the employer with respect to the employer's duties pursuant to section 576E-16.
- (f) The agency may delay the distribution of collections toward arrearages or delinquency until the resolution of any requested hearing regarding the arrearages or delinquency.
- (g) Upon timely receipt of a request for a hearing from the obligor pursuant to the notice provided under subsection (e), the agency shall refer the matter to the office and a hearing shall be conducted pursuant to chapters 91 and 576E.
- (h) Upon receiving an order of income withholding from the agency, the employer is subject to the requirements of section 576E-16(b) through (h).
- (i) In a case being enforced under the Title IV-D state plan or for those parents applying to the agency for services, the agency may enforce the existing order of support by sending to the employer by regular mail, by personal delivery, or by transmission through electronic means, a notice to withhold child support issued by the agency that reflects the terms and conditions specified in the order for support or income withholding order. Upon receiving a notice to withhold child support, the employer is subject to the requirements of section 576E-16(b) to (h).
- (j) The agency may terminate income withholding by sending a notice to the employer by regular mail, by personal delivery, or by transmission through electronic means. The notice shall be issued upon determination by the agency that the obligor no longer owes the child support or that the obligation is being satisfied through withholding by another employer.
- (k) The agency may adopt rules in accordance with chapter 91 as may be necessary to implement and administer income withholding under this section and sections 571-52, 571-52.2, 571-52.3, and 576E-16.

SECTION 3. Section 576E-16, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) An income withholding order or a notice to withhold child support shall remain in effect after the obligor’s requirement to pay future child support has ended if the obligor owes past due support and any amount received pursuant to the order or notice shall be applied to satisfy all past due support owed. An income withholding order or a notice to withhold child support shall ~~remain in effect until~~ be terminated when appropriate by court or administrative order, except that an employer withholding income for payment to the child support enforcement agency shall terminate withholding upon receipt of a notice from the child support enforcement agency to terminate income withholding. Payment by the responsible parent of any delinquency shall not in and of itself warrant termination of the income withholding order or the notice to withhold child support. The agency shall promptly refund any amount withheld in error to the responsible parent.”

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

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**SECTION 5. This Act shall take effect upon its approval.**

(Approved April 26, 2006.)