

ACT 115

S.B. NO. 851

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 (e) to read as follows:

“(e) An employer receiving an assignment order shall send the amounts withheld to ~~[the designated obligee or, if requested, to]~~ this State’s child support enforcement agency within five working days after the obligor is paid. The employer shall begin withholding no later than the first pay period occurring within seven business days following the date a copy of the order is mailed to the employer. As used in this subsection, the term “business day” means a day on which the employer’s office is open for regular business. The employer shall withhold funds as directed in the order, except that when an employer receives an income withholding order issued by another state, the employer shall send the amounts withheld to that state’s agency administering a program under Title IV-D of the Social Security Act and apply the income withholding law of the state of the obligor’s principal place of employment in determining:

- (1) The employer’s fee for processing an income assignment order;
- (2) The maximum amount permitted to be withheld from the obligor’s income under ~~[section]~~ Section 303(b) of the Consumer Credit Protection Act (15 U.S.C. §1673(b));
- (3) The time periods within which the employer must implement the income withholding order and forward the child support payment;
- (4) The priorities for withholding and allocating income withheld for multiple child support obligees; and
- (5) Any withholding terms or conditions not specified in the order.

An employer who complies with an income assignment order that is regular on its face shall not be subject to civil liability to any person or agency for conduct in compliance with the order.

An employer who is required to withhold amounts from the income of more than one obligor may remit a sum total of the amounts in one check, with a listing of the amounts applicable to each obligor.

Within two working days after receipt of the amounts withheld by the employer, the child support enforcement agency shall disburse those amounts to the obligee for the benefit of the child, except that the child support enforcement agency may delay the distribution of collections toward arrearages until the resolution of any timely request for a hearing with respect to such arrearages.”

SECTION 2. Section 576D-10, Hawaii Revised Statutes, is amended to read as follows:

“§576D-10 Collection and disbursement of child support; direct payment exception. (a) The agency shall collect and disburse child support payments when an order requires the collection and disbursement. In the event of any default by the obligor, upon notification of the default by the custodial parent, the agency shall proceed against the obligor for the arrearage and the agency shall have jurisdiction over future child support payments. Notwithstanding any other law to the contrary, the agency shall maintain a special interest bearing account for child support payments. Moneys collected by the agency for child support payments shall not be deposited into the state treasury, but shall be deposited into this account. Moneys to be disbursed by the agency for child support payments shall be disbursed from this account without appropriation or allotment. The interest realized from this account shall be used:

- (1) For related costs of the maintenance and operation of the account; and
- (2) To improve the child support enforcement agency's ability to promptly disburse payments to the custodial parent.

The balance shall be deposited into the state treasury to the credit of the general fund.

(b) Any child support payments required by a court order effective on June 30, 1986, to be made to a court or clerk of the court and disbursed to a custodial parent shall be made to the agency after June 30, 1986. The agency shall disburse the payments as appropriate under the court order.

(c) Other than for child support payments disbursed to the department of human services or to another agency administering a program under Title IV-D of the federal Social Security Act, the custodial parent shall elect to receive child support payments from the agency by means of an electronic benefits transfer system or by directly depositing the amount into an account designated by the custodial parent. If an election is not made, the agency shall determine whether the disbursement of child support payments shall be by means of an electronic benefits transfer system or by an alternate method of disbursement that complies with the time frame required under Title IV-D of the federal Social Security Act.

~~[(e)]~~ (d) At the time a child support obligation is first established or at any time thereafter, the court may approve an alternative arrangement for the direct payment of child support from the obligor to the custodial parent as an exception to the provisions for income withholding through the agency, as required by sections 571-52.2(a)(1), 571-52.3, and 576E-16(a).

~~[(e)]~~ (e) The court may approve an alternative arrangement for the direct payment of child support where either:

- (1) The obligor or custodial parent demonstrates and the court finds that there is good cause not to require immediate withholding; or
- (2) A written agreement is reached between the obligor and the custodial parent and signed by both parties;

provided that in either case where child support has been ordered previously, an alternative arrangement for direct payment shall be approved only where the obligor provides proof of the timely payment of previously ordered support. For purposes of this section, good cause to approve an alternative arrangement shall be based upon a determination by the court, either in writing or on the record, that implementing income withholding would not be in the best interests of the child. Such a determination shall include a statement setting forth the basis of the court's conclusion.

~~[(e)]~~ (f) Any alternative arrangement for direct payment shall provide that either parent may void the arrangement at any time and apply for services from the agency to act as agent to receive payments from the obligor parent.

The alternative arrangement for direct payment also shall provide that, if the subject dependents of the obligor parent commence receiving 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 if either parent applies for services from the agency, the agency may immediately void the direct payment arrangement by sending written notice by regular mail to the custodial and obligor parents at their last known addresses, as disclosed in the alternative arrangement agreement.

~~[(f)]~~ (g) The alternative arrangement for direct payment agreement shall include the most recent addresses of the custodial and obligor parent. If the obligor parent alleges direct payment of child support to the custodial parent after the subject dependents of the court-approved alternative arrangement become recipients of 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 after the custodial parent applies for services from the agency, and after receiving proper notification of the change of payee to the agency, then the obligor shall have the burden of proving that the child support payments were made by presenting written evidence, including ~~[but not limited to]~~ canceled checks or receipts.

~~[(g)]~~ (h) No alternative arrangement for direct payment shall be approved where the obligor or the custodial parent is receiving services under Title IV-D of the federal Social Security Act 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 child support for a period during which public assistance was provided to the child or children by the department of human services.

~~[(h)]~~ (i) Any alternative arrangement for direct payment shall pertain only to the method of payment of child support. The amount of child support shall be determined according to the child support guidelines pursuant to ~~[section]~~ sections 576D-7 and [section] 576E-15.

~~[(i)]~~ (j) The alternative arrangement for direct payment shall become effective upon approval and filing by the court. For any order approved pursuant to this section on or after October 1, 1998, each party ~~[must]~~ shall send a certified copy of the order to the state case registry established under section 576D-6.

~~[(j)]~~ (k) The agency shall not be required to maintain records while an order obtained pursuant to this section is in effect, except for any payments received and disbursed by the agency."

SECTION 3. Section 576D-10.5, Hawaii Revised Statutes, is amended by amending subsections (f) and (g) to read:

"(f) A lien shall be enforceable by the child support enforcement agency or its designated counsel ~~[or]~~, by the obligee, or by another agency administering a program under Title IV-D of the federal Social Security Act, in the following manner:

- (1) By suit in the appropriate court;
- (2) By bringing an action in an administrative tribunal;
- (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 the last four digits only of the 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. For service effectuated by certified mail, an electronic copy or facsimile of the signature of the served individual or entity on certified mailers provided by the United States Postal Service shall constitute valid proof of service on the individual or entity. 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 or by another agency administering a program under Title IV-D of the Social Security Act 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]~~ 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."

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

"(c) In response to a notice of lien or levy, the financial institution ~~[shall surrender or encumber assets held by such institution to the agency]~~, if holding assets on behalf of any noncustodial parent who is subject to a child support lien arising by operation of law against real and personal property for delinquent support owed by the noncustodial parent who resides in or owns property in the ~~[State and those liens shall be accorded]~~ state shall accord those liens full faith and credit when the agency or other entity seeking to enforce the lien has complied with the procedural rules of the State and, if applicable, section 501-102[-], and shall surrender those assets to the agency or other entity seeking to enforce the lien, or encumber those assets in accordance with the lien."

SECTION 5. Section 576E-12, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

“(a) A true copy of the administrative order, along with a true copy of the return of service, shall be filed in the office of the clerk of the circuit court in the circuit where the order was issued, or in the office of the clerk of the circuit court in the circuit where a previously established support order was filed. For service effectuated by certified mail, an electronic copy or facsimile of the signature of the served individual on certified mailers provided by the United States Postal Service shall constitute valid proof of service on the individual. Upon filing, the order shall have all the force and effect of a final order or decree of the circuit court.”

SECTION 6. Section 576E-16, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The income withholding order issued pursuant to subsection (a) or the income withholding order or the notice to withhold child support issued pursuant to section 576D-14 shall be effective immediately after service upon an employer of a copy of the order or the notice to withhold child support, which service may be effected by regular mail, by personal delivery, or by transmission through electronic means. 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 ~~designated obligee, or upon request, to the~~ child support enforcement agency of this State, as much as may remain payable to the responsible parent for such pay period up to the amount specified in the order or the notice to withhold child support 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 notice to withhold child support or the disbursement thereof.”

SECTION 7. Section 584-8, Hawaii Revised Statutes, is amended to read as follows:

“**§584-8 Jurisdiction; venue.** (a) Without limiting the jurisdiction of any other court, the family court has jurisdiction of an action brought under this chapter. The action may be joined with an action for divorce, annulment, separate maintenance, or support.

(b) A person who has sexual intercourse in this [State] state thereby submits to the jurisdiction of the courts of this [State] state as to an action brought under this chapter with respect to a child who may have been conceived by that act of intercourse. In addition to any other method provided by statute, personal jurisdiction may be acquired by personal service outside this [State] state or by service by certified or registered mail, postage prepaid, with return receipt requested.

(c) In addition to any other method of service provided by statute or court rule, if the defendant is not found within the circuit, service may be effectuated by registered or certified mail, with request for a return receipt and direction to deliver to addressee only. The return receipt signed by the defendant shall be prima facie evidence that the defendant accepted delivery of the complaint and summons on the date set forth on the receipt. Actual receipt by the defendant of the complaint and summons sent by registered or certified mail shall be equivalent to personal service on the defendant by an authorized process server as of the date of the receipt.

(d) The action may be brought in the county in which the child, the mother, or the alleged father resides or is found or in which the child was born or, if

the father is deceased, in which proceedings for probate of his estate have been or could be commenced.

(e) For service effectuated by registered or certified mail, an electronic copy or facsimile of the signature of the served individual on certified mailers provided by the United States Postal Service shall constitute valid proof of service on the individual."

SECTION 8. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 9. This Act shall take effect upon its approval.

(Approved June 12, 2009.)