



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2018**

ON THE FOLLOWING MEASURE:

H.B. NO. 2319, RELATING TO INCOME WITHHOLDING FOR CHILD SUPPORT.

BEFORE THE:

HOUSE COMMITTEE ON HEALTH AND HUMAN SERVICES

DATE: Thursday, February 8, 2018 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 329

TESTIFIER(S): Russell A. Suzuki, Acting Attorney General, or
Lynette J. Lau, Administrator, Child Support Enforcement
Agency

Chair Mizuno and Members of the Committee:

The Department of the Attorney General supports this bill with technical formatting amendments.

This bill amends sections 571-52.2 and 576E-16 of the Hawaii Revised Statutes in order to bring the State of Hawaii into compliance with federal law.

Under 42 U.S.C. § 666(b)(6)(D), each state must have in effect laws requiring the imposition of a fine against any employer who (a) discharges from employment, refuses to employ, or takes disciplinary action against any noncustodial parent subject to income withholding or (b) fails to withhold support from income or pay the amounts to a child support agency.

Compliance with this requirement is necessary to maintain the Department of Human Services' eligibility for federal welfare funding and federal funding of child support enforcement programs. In addition, amending the income withholding requirements increases the effectiveness of the income withholding process and protects the obligor parent from employment discrimination due to the income withholding order.

Unfortunately, due to a problem with the transmission of this bill, it does not include the appropriate underscoring, bracketing, and strikethroughs (Ramseyer formatting). We apologize for this inadvertent error and request that the bill be

amended to correct the formatting. Enclosed is a copy of the bill that includes the recommended formatting.

We respectfully ask the Committee to pass this bill with the appropriate technical formatting.

Enclosure

A BILL FOR AN ACT

RELATING TO INCOME WITHHOLDING FOR CHILD SUPPORT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

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

3 "(g) It shall be unlawful for any employer to fail to
4 comply with the requirements of this section. In addition, an
5 employer who fails to comply with an order of assignment of
6 future income, as provided for under this section, shall be
7 liable to the obligee or the obligee's assignee for whom support
8 was required to be paid, for the full amount of all sums ordered
9 to be withheld and transmitted and not otherwise done so[-] and
10 may be subject to a fine not to exceed \$1,000 as determined by
11 the court."

12 SECTION 2. Section 576E-16, Hawaii Revised Statutes, is
13 amended as follows:

14 (1) By amending subsection (c) to read as follows:

15 "(c) Compliance by an employer with the income withholding
16 order issued pursuant to subsection (a) or with the income
17 withholding order or the notice to withhold child support issued
18 pursuant to section 576D-14 shall operate as a discharge of the

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1 employer's liability to the responsible parent for that portion
2 of the responsible parent's earnings withheld and transmitted to
3 the agency, regardless of whether [~~or not~~] the employer has
4 withheld the correct amount. For each payment made pursuant to
5 an income withholding order or a notice to withhold child
6 support, the employer may deduct and retain as an administrative
7 fee an additional amount of \$2 from the income owed to the
8 responsible parent. The total amount withheld from the
9 obligor's income, including the administrative fee, may not be
10 in excess of the maximum amounts permitted under section 303(b)
11 of the Consumer Credit Protection Act (15 U.S.C. §1673(b)). Any
12 income withholding order or notice to withhold child support
13 shall have priority as against any garnishment, attachment,
14 execution, or other income withholding order, or any other
15 order, and shall not be subject to the exemptions or
16 restrictions contained in part III of chapter 651 and in
17 chapters 652 and 653. An employer who fails to comply with an
18 income withholding order under this section or with an income
19 withholding order or notice to withhold child support issued
20 pursuant to section 576D-14 shall be liable to the obligee or
21 the agency for the full amount of all sums ordered to be
22 withheld and transmitted. In addition, any employer violating
23 this subsection may be subject to a fine not to exceed \$1,000 as

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1 determined by the court. An employer receiving an income
2 withholding order or a notice to withhold child support shall
3 transmit amounts withheld to the agency within five working days
4 after the responsible parent is paid. The employer shall begin
5 withholding no later than the first pay period commencing within
6 seven business days following the date a copy of the order or
7 the notice to withhold child support is mailed to the employer.

8 As used in this subsection, the term "business day" means a
9 day on which the employer's office is open for regular business.
10 The employer shall withhold funds as directed in the order or
11 the notice to withhold child support, except that when an
12 employer receives an income withholding order issued by another
13 state, the employer shall apply the income withholding law of
14 the state of the obligor's principal place of employment in
15 determining:

- 16 (1) The employer's fee for processing an income
17 withholding order;
- 18 (2) The maximum amount permitted to be withheld from the
19 obligor's income under section 303(b) of the Consumer
20 Credit Protection Act (15 U.S.C. §1673(b));
- 21 (3) The time periods within which the employer must
22 implement the income withholding order and forward the
23 child support payment;

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- 1 (4) The priorities for withholding and allocating income
2 withheld for multiple child support obligees; and
3 (5) Any withholding terms or conditions not specified in
4 the order.

5 An employer who complies with an income withholding order
6 or a notice to withhold child support that is regular on its
7 face shall not be subject to civil liability to any person or
8 agency for conduct in compliance with the order.

9 An employer who is required to withhold amounts from the
10 income of more than one employee may remit to the agency a sum
11 total of all such amounts in one check with a listing of the
12 amounts applicable to each employee.

13 Within two working days after receipt of the amounts
14 withheld by the employer, the agency shall disburse the amounts
15 to the obligee for the benefit of the child, except that the
16 agency may delay the distribution of collections toward
17 arrearages until resolution of any timely requested hearing with
18 respect to such arrearages."

19 (2) By amending subsection (e) to read as follows:

20 "(e) It shall be unlawful for any employer to refuse to
21 hire a prospective employee, to discharge an employee, or to
22 take any other disciplinary action against an employee, based in
23 whole or in part upon an order or notice to withhold child

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1 support authorized by this section. Any employer [~~violating~~
2 ~~this section shall be guilty of a misdemeanor and shall be~~
3 ~~punished under section 710-1077(1)(g).~~] who fails to comply with
4 this subsection may be subject to a fine not to exceed \$1,000 as
5 determined by the court."

6 SECTION 3. This Act does not affect rights and duties that
7 matured, penalties that were incurred, and proceedings that were
8 begun before its effective date.

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

11 SECTION 5. This Act shall take effect upon approval.

12

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INTRODUCED BY: _____

15

BY REQUEST

16

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Report Title:

Child Support; Income Withholding; Employer; Fines

Description:

Amends the income withholding requirements to impose a fine against any employer who discharges from employment, refuses to employ, or takes disciplinary action against any noncustodial parent subject to income withholding, or who fails to comply with an order of assignment of future income.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.