

JAN 18 2023

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# A BILL FOR AN ACT

RELATING TO CHILD SUPPORT.

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

1 PART I

2 SECTION 1. The legislature finds that under Hawaii's  
3 current child support system, custodial parents receiving  
4 Temporary Assistance for Needy Families (TANF) funds may never  
5 see any of the child support money they are owed because a non-  
6 custodial parent must make certain child support payments  
7 directly to the State. The State then keeps nearly half of  
8 those payments and then transfers the remaining amount to the  
9 federal government as reimbursement for providing TANF  
10 assistance.

11 The legislature also finds that the federal Deficit  
12 Reduction Act of 2005 recommended that states pass through  
13 certain portions of child support collected by a state and waive  
14 the federal reimbursement portion of those funds if the state  
15 disregards the additional income for determining TANF  
16 eligibility. As a result, twenty-seven states and the District  
17 of Columbia have adopted child support pass-through laws or



1 policies. Based on 2016 estimates for Hawaii, disregarding the  
2 additional income for determining TANF eligibility would result  
3 in \$675,000 of lost revenue to the State. However, due to the  
4 federal reimbursement waiver, this will increase funds to  
5 Hawaii's most needy families by approximately \$1,500,000.

6 The purpose of this Act is to:

- 7 (1) Require certain amounts of child support moneys  
8 collected by the department of human services for  
9 public assistance of a child to pass through to the  
10 family receiving public assistance;
- 11 (2) Require the department of human services to disregard  
12 passed-through child support payments when calculating  
13 the income of an applicant for or recipient of public  
14 assistance;
- 15 (3) Increase the maximum fine for an employer who  
16 discharges from employment, refuses to employ, or  
17 takes disciplinary action against a noncustodial  
18 parent subject to income withholding or who fails to  
19 comply with an order of assignment of future income to  
20 pay child support; and
- 21 (4) Appropriate funds.



1 PART II

2 SECTION 2. Section 346-29, Hawaii Revised Statutes, is  
3 amended by amending subsection (c) to read as follows:

4 "(c) In determining the needs of an applicant or recipient  
5 for public assistance by the department, the department shall:

6 (1) Disregard the amounts of earned or unearned income as  
7 required or allowed by federal acts and other  
8 regulations, to receive federal funds and disregard  
9 from gross earned income twenty per cent plus \$200 and  
10 a percentage of the remaining balance of earned income  
11 consistent with federal regulations and other  
12 requirements;

13 (2) Consider as net income in all cases the income as  
14 federal acts and other regulations require the  
15 department to consider for receipt of federal funds  
16 and may consider the additional income and resources  
17 as these acts and regulations permit to be considered;

18 (3) For households with minor dependents, disregard assets  
19 in determining the needs of persons for financial  
20 assistance; provided that the amount to be disregarded  
21 shall not exceed standards under federally funded



1 financial assistance programs. This paragraph shall  
2 not apply to persons eligible for federal supplemental  
3 security income benefits, aid to the aged, blind or  
4 disabled, or general assistance to households without  
5 minor dependents. In determining the needs of persons  
6 eligible for federal supplemental security income  
7 benefits, aid to the aged, blind or disabled, or  
8 general assistance to households without minor  
9 dependents, the department shall apply all the  
10 resource retention and exclusion requirements under  
11 the federal supplemental security income program;

12 (4) Apply the resource retention requirements under the  
13 federal supplemental security income program in  
14 determining the needs of a single person for medical  
15 assistance only;

16 (5) Apply the resource retention requirements under the  
17 federal supplemental security income program in  
18 determining the needs of a family of two persons for  
19 medical assistance only and an additional \$250 for  
20 each additional person included in an application for  
21 medical assistance only;



- 1           (6) Disregard amounts of emergency assistance granted  
2                   under section 346-65;
- 3           (7) Not consider as income or resources any payment for  
4                   services to or on behalf of, or any benefit received  
5                   by, a participant under the first-to-work program of  
6                   part XI, other than wages. Wages earned by a  
7                   participant while participating in the first-to-work  
8                   program shall be considered income of the participant,  
9                   unless the wages are excluded or disregarded under any  
10                  other law;
- 11          (8) Not consider as income or resources payment made to  
12                  eligible individuals, eligible surviving spouses,  
13                  surviving children or surviving parents as specified  
14                  under title I of the Civil Liberties Act of 1988,  
15                  Public Law 100-383, which made restitution to  
16                  individuals of Japanese ancestry who were interned  
17                  during World War II;
- 18          (9) Allow the community spouse of an individual residing  
19                  in a medical institution to maintain countable  
20                  resources to the maximum allowed by federal statutes  
21                  or regulations with provisions for increases, as



- 1           allowed by the Secretary of Health and Human Services  
2           by means of indexing, court order, or fair hearing  
3           decree, without jeopardizing the eligibility of the  
4           institutionalized spouse for medical assistance;
- 5       (10) Allow an individual residing in a medical institution  
6           to contribute toward the support of the individual's  
7           community spouse, thereby enabling the community  
8           spouse to maintain the monthly maximum income allowed  
9           by federal statutes or regulations, with provisions  
10          for increases as allowed by the Secretary of Health  
11          and Human Services by means of indexing, court order,  
12          or fair hearing decree;
- 13       (11) Consider the transfer of assets from the applicant's  
14          name to another name within the specified time period  
15          as required by federal regulations, known as the  
16          "lookback" period, prior to the application for  
17          medical assistance for care in a nursing home or other  
18          long-term care facility. Pursuant to rules adopted  
19          under chapter 91, the director may attribute any  
20          assets that have been transferred within the required  
21          federal "lookback" period from the applicant if the



1 director determines that transfer of certain assets  
2 was made solely to make the applicant eligible for  
3 assistance under this chapter; [~~and~~]

4 (12) Not consider as income or resources any funds  
5 deposited into a family self-sufficiency escrow  
6 account on behalf of a participant under a federal  
7 housing choice voucher family self-sufficiency program  
8 as required or allowed under federal law[-]; and

9 (13) Disregard any amount of child support payments passed  
10 through to applicants or recipients pursuant to  
11 section 346-37.1."

12 SECTION 3. Section 346-37.1, Hawaii Revised Statutes, is  
13 amended by amending subsection (a) to read as follows:

14 "(a) Any payment of public assistance money made to or for  
15 the benefit of any dependent child or children creates a debt  
16 due and owing to the department by the natural or adoptive  
17 parent or parents, or any other person who [~~are~~] is responsible  
18 for support of [~~such~~] the child or children [~~except that debts~~];  
19 provided that:

20 (1) Debts under this section shall not be incurred by a  
21 parent or other person who is the recipient of public



1 assistance moneys for the benefit of minor dependent  
2 children for the period [~~sueh~~] the person or persons  
3 are in [~~sueh~~] that status[, ~~and, provided that where~~];

4 (2) Where there has been a family court order, the debt  
5 shall be limited to the amount provided for by the  
6 order[-]; and

7 (3) Each month, the child support enforcement agency shall  
8 pass through to a family receiving public assistance  
9 moneys for the benefit of minor dependent children up  
10 to the first \$100 in child support collected in that  
11 month for a recipient family that has one child and up  
12 to the first \$200 in child support collected in that  
13 month for a recipient family that has more than one  
14 child."

15 SECTION 4. There is appropriated out of the general  
16 revenues of the State of Hawaii the sum of \$ or so  
17 much thereof as may be necessary for fiscal year 2023-2024 and  
18 the same sum or so much thereof as may be necessary for fiscal  
19 year 2024-2025 for necessary expenses incurred by the child  
20 support enforcement agency in complying with the requirements of  
21 part II of this Act.





1           The sums appropriated shall be expended by the department  
2 of the attorney general for the purposes of part II of this Act.

3                               PART III

4           SECTION 5. Section 571-52.2, Hawaii Revised Statutes, is  
5 amended by amending subsection (g) to read as follows:

6           "(g) It shall be unlawful for any employer to fail to  
7 comply with the requirements of this section. In addition, an  
8 employer who fails to comply with an order of assignment of  
9 future income, as provided for under this section, shall be  
10 liable to the obligee or the obligee's assignee for whom support  
11 was required to be paid, for the full amount of all sums ordered  
12 to be withheld and transmitted and not otherwise done so, and  
13 may be subject to a fine not to exceed [~~\$250~~] \$1,000 as  
14 determined by the court."

15          SECTION 6. Section 576E-16, Hawaii Revised Statutes, is  
16 amended as follows:

17          1. By amending subsection (c) to read:

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



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



1 addition, an employer violating this subsection may be subject  
2 to a fine not to exceed [~~\$250~~] \$1,000 as determined by the  
3 court. An employer receiving an income withholding order or a  
4 notice to withhold child support shall transmit amounts withheld  
5 to the agency within five working days after the responsible  
6 parent is paid. The employer shall begin withholding no later  
7 than the first pay period commencing within seven business days  
8 following the date a copy of the order or the notice to withhold  
9 child support is mailed to the employer.

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

18 (1) The employer's fee for processing an income  
19 withholding order;



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

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

15           An employer who is required to withhold amounts from the  
16 income of more than one employee may remit to the agency a sum  
17 total of all such amounts in one check with a listing of the  
18 amounts applicable to each employee.

19           Within two working days after receipt of the amounts  
20 withheld by the employer, the agency shall disburse the amounts  
21 to the obligee for the benefit of the child, except that the



1 agency may delay the distribution of collections toward  
2 arrearages until resolution of any timely requested hearing with  
3 respect to such arrearages."

4 2. By amending subsection (e) to read:

5 "(e) It shall be unlawful for any employer to refuse to  
6 hire a prospective employee, to discharge an employee, or to  
7 take any other disciplinary action against an employee, based in  
8 whole or in part upon an order or notice to withhold child  
9 support authorized by this section. Any employer who fails to  
10 comply with this subsection may be subject to a fine not to  
11 exceed [~~\$250~~] \$1,000 as determined by the court."

12 PART IV

13 SECTION 7. This Act does not affect rights and duties that  
14 matured, penalties that were incurred, and proceedings that were  
15 begun before its effective date.

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

18 SECTION 9. This Act shall take effect on July 1, 2023.

19

INTRODUCED BY: 



# S.B. NO. 95

**Report Title:**

Department of Human Services; Child Support; Temporary Assistance for Needy Families Program; Employer; Fines; Appropriation

**Description:**

Requires certain amounts of child support moneys collected by the Department of Human Services for public assistance of a child to pass through to the family receiving public assistance. Requires the Department of Human Services to disregard passed-through child support payments when calculating the income of an applicant for or recipient of public assistance. Increases the maximum fine for an employer who discharges from employment, refuses to employ, or takes disciplinary action against a noncustodial parent subject to income withholding or who fails to comply with an order of assignment of future income to pay child support. Appropriates funds.

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