

As Amended by Senate Committee

Session of 2011

SENATE BILL No. 160

By Senator Lynn

2-9

1 AN ACT concerning child support; relating to collection of support
2 payments; amending K.S.A. 2010 Supp. 23-4,107 and 75-6202 and
3 repealing the existing sections.
4

5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 2010 Supp. 23-4,107 is hereby amended to read
7 as follows: 23-4,107. (a) Any new or modified order for support shall
8 include a provision for the withholding of income to enforce the order
9 for support.

10 (b) Except as otherwise provided in subsection (j), (k) or (l), all
11 new or modified orders for support shall provide for immediate
12 issuance of an income withholding order. The income withholding
13 order shall be issued without further notice to the obligor and shall
14 specify an amount sufficient to satisfy the order for support and to
15 defray any arrearage. The income withholding order shall be issued
16 regardless of whether a payor subject to the jurisdiction of this state can
17 be identified at the time the order for support is entered.

18 (c) Except as otherwise provided in this subsection or subsections
19 (j) or (l), if no income withholding order is in effect to enforce the
20 support order, an income withholding order shall be issued by the court
21 upon request of the obligee or public office, provided that the obligor
22 accrued an arrearage equal to or greater than the amount of support
23 payable for one month and the requirements of subsections (d) and (h)
24 have been met. The income withholding order shall be issued without
25 further notice to the obligor and shall specify an amount sufficient to
26 satisfy the order for support and to defray any arrearage. The income
27 withholding order shall be issued regardless of whether a payor subject
28 to the jurisdiction of this state can be identified at the time the income
29 withholding order is issued.

30 (d) Not less than seven days after the obligee or public office has
31 served a notice pursuant to subsection (h), the obligee or public office
32 may initiate income withholding pursuant to paragraph (1) or (2).

33 (1) The obligee or public office may apply for an income

1 withholding order by filing with the court an affidavit stating: (A) The
2 date that the notice was served on the obligor and the manner of
3 service; (B) that the obligor has not filed a motion to stay issuance of
4 the income withholding order or, if a motion to stay has been filed, the
5 reason an income withholding order must be issued immediately; (C) a
6 specified amount to be withheld by the payor to satisfy the order of
7 support and to defray any arrearage; (D) whether the income
8 withholding order is to include a medical withholding order; and (E)
9 that the amount of the arrearage as of the date the notice to the obligor
10 was prepared was equal to or greater than the amount of support
11 payable for one month. In addition to any other penalty provided by
12 law, the filing of such an affidavit with knowledge of the falsity of a
13 material declaration is punishable as a contempt.

14 Upon the filing of the affidavit, the income withholding order shall
15 be issued without further notice to the obligor, hearing or amendments
16 of the support order. Payment of all or part of the arrearage before
17 issuance of the income withholding order shall not prevent issuance of
18 the income withholding order, unless the arrearage is paid in full and
19 the order for support does not include an amount for the current support
20 of a person. No affidavit is required if the court, upon hearing a motion
21 to stay issuance of the income withholding order or otherwise, issues an
22 income withholding order.

23 (2) In a title IV-D case, the IV-D agency may issue an income
24 withholding order as authorized by K.S.A. 39-7,147, and amendments
25 thereto. Any such income withholding order shall be considered an
26 income withholding order issued pursuant to this act.

27 (e) (1) An income withholding order shall be directed to any payor
28 of the obligor. Notwithstanding any other requirement of this act as to
29 form or content, any income withholding order prepared in a standard
30 format prescribed by the secretary of social and rehabilitation services
31 shall be deemed to be in compliance with this act.

32 (2) An income withholding order which does not include a
33 medical withholding order shall require the payor to withhold from any
34 income due, or to become due, to the obligor a specified amount
35 sufficient to satisfy the order of support and to defray any arrearage and
36 shall include notice of and direction to comply with the provisions of
37 K.S.A. 23-4,108 and 23-4,109, and amendments thereto.

38 (3) An income withholding order which consists only of a medical
39 withholding order shall include notice of the medical child support

1 order and shall conform to the requirements of K.S.A. 23-4,121, and
2 amendments thereto. The medical withholding order shall include
3 notice of and direction to comply with the requirements of K.S.A. 23-
4 4,108, 23-4,109, 23-4,119 and 23-4,122, and amendments thereto.

5 (4) An income withholding order which includes both a medical
6 withholding order and an income withholding order for cash support
7 shall meet the requirements of paragraphs (2) and (3).

8 (f) (1) Upon written request and without the requirement of further
9 notice to the obligor, the clerk of the district court shall cause a copy of
10 the income withholding order to be served on the payor only by
11 personal service or registered mail, return receipt requested.

12 (2) Without the requirement of further notice to the obligor, the
13 *court trustee or* IV-D agency may cause a copy of any income
14 withholding order to be served on the payor only by personal service or
15 registered mail, return receipt requested or by any alternate method
16 acceptable to the payor. No payor shall be liable to any person solely
17 because of the method of service accepted by the payor.

18 (3) As used in this section, "copy of the income withholding
19 order" means any document or notice, regardless of format, that advises
20 the payor of the same general duties, requires the same amount to be
21 withheld from income and requires medical withholding to the same
22 extent as the original income withholding order.

23 (g) An income withholding order shall be binding on any existing
24 or future payor on whom a copy of the order is served and shall require
25 the continued withholding of income from each periodic payment of
26 income until further order of the court or agency that issued the income
27 withholding order. At any time following issuance of an income
28 withholding order, a copy of the income withholding order may be
29 served on any payor without the requirement of further notice to the
30 obligor.

31 (h) Except as provided in subsection (k) or (l), at any time
32 following entry of an order for support the obligee or public office may
33 serve upon the obligor a written notice of intent to initiate income
34 withholding. If any notice in the court record indicates that title IV-D
35 services are being provided in the case, whether or not the IV-D
36 services include enforcement of current support, the person or public
37 office requesting issuance of the income withholding order shall obtain
38 the consent of the IV-D agency to the terms of the proposed income
39 withholding order.

1 The notice of intent to initiate income withholding shall be served
2 on the obligor only by personal service or registered mail, return receipt
3 requested. The notice served on the obligor must state: (1) The terms of
4 the order of support and the total arrearage as of the date the notice was
5 prepared; (2) the amount of income that will be withheld, not including
6 premiums to satisfy a medical withholding order; (3) whether a medical
7 withholding order will be included; (4) that the provision for
8 withholding applies to any current or subsequent payor; (5) the
9 procedures available for contesting the withholding and that the only
10 basis for contesting the withholding is a mistake of fact concerning the
11 amount of the support order, the amount of the arrearage, the amount of
12 income to be withheld or the proper identity of the obligor; (6) the
13 period within which the obligor must act to stay issuance of the income
14 withholding order and that failure to take such action within the
15 specified time will result in payors' being ordered to begin withholding;
16 and (7) the action which will be taken if the obligor contests the
17 withholding.

18 The obligor may, at any time, waive in writing the notice required
19 by this subsection.

20 (i) On request of an obligor, the court shall issue an income
21 withholding order which shall be honored by a payor regardless of
22 whether there is an arrearage. Nothing in this subsection shall limit the
23 right of the obligee to request modification of the income withholding
24 order.

25 (j) (1) In a nontitle IV-D case, upon presentation to the court of a
26 written agreement between the parties providing for an alternative
27 arrangement, no income withholding order shall be issued pursuant to
28 subsection (b). In any case, before entry of a new or modified order for
29 support, a party may request that no income withholding order be
30 issued pursuant to subsection (b) if notice of the request has been
31 served on all interested parties and: (A) The party demonstrates, and
32 the court finds, that there is good cause not to require immediate
33 income withholding; or (B) a written agreement among all interested
34 parties provides for an alternative arrangement. If child support and
35 maintenance payments are both made to an obligee by the same
36 obligor, and if the court has determined that good cause has been
37 shown that direct child support payments to the obligee may be made,
38 then the court shall provide for direct maintenance payments to the
39 obligee and no income withholding order shall be issued pursuant to

1 subsection (b). In a title IV-D case, the determination that there is good
2 cause not to require immediate income withholding must include a
3 finding that immediate income withholding would not be in the child's
4 best interests and, if an obligor's existing obligation is being modified,
5 proof of timely payment of previously ordered support.

6 (2) Notwithstanding the provisions of subsection (j)(1), the court
7 shall issue an income withholding order when an affidavit pursuant to
8 subsection (d) is filed if an arrearage exists in an amount equal to or
9 greater than the amount of support payable for one month.

10 (3) If a notice pursuant to subsection (h) has been served in a title
11 IV-D case, there is no arrearage or the arrearage is less than the amount
12 of support payable for one month, and the obligor files a motion to stay
13 issuance of the income withholding order based upon the court's
14 previous finding of good cause not to require immediate income
15 withholding pursuant to subsection (j)(1), the obligor must demonstrate
16 the continued existence of good cause. Unless the court again finds that
17 good cause not to require immediate income withholding exists, the
18 court shall issue the income withholding order.

19 (4) If a notice pursuant to subsection (h) has been served in a title
20 IV-D case, there is no arrearage or the arrearage is less than the amount
21 of support payable for one month, and the obligor files a motion to stay
22 issuance of an income withholding order based upon a previous
23 agreement of the interested parties for an alternative arrangement
24 pursuant to subsection (j)(1), the court shall issue an income
25 withholding order, notwithstanding any previous agreement, if the court
26 finds that:

27 (A) The agreement was not in writing;

28 (B) the agreement was not approved by all interested parties;

29 (C) the terms of the agreement or alternative arrangement are not
30 being met;

31 (D) the agreement or alternative arrangement is not in the best
32 interests of the child; or

33 (E) the agreement or alternative arrangement places an
34 unnecessary burden upon the obligor, obligee or a public office.

35 (5) The procedures and requirements of K.S.A. 23-4,110, and
36 amendments thereto, apply to any motion pursuant to paragraph (3) or
37 (4) of this subsection (†).

38 (k) (1) An ex parte interlocutory order for support may be
39 enforced pursuant to subsection (b) only if the obligor has consented to

1 the income withholding in writing.

2 (2) An ex parte interlocutory order for support may be enforced
3 pursuant to subsection (c) only if 14 or more days have elapsed since
4 the order for support was served on the obligor.

5 (3) Any other interlocutory order for support may be enforced by
6 income withholding pursuant to this act in the same manner as a final
7 order for support.

8 (4) No bond shall be required for the issuance of an income
9 withholding order to enforce an interlocutory order pursuant to this act.

10 (l) All new or modified orders for maintenance of a spouse or ex-
11 spouse, except orders for a spouse or ex-spouse living with a child for
12 whom an order of support is also being enforced, entered on or after
13 July 1, 1992, shall include a provision for the withholding of income to
14 enforce the order of support. Unless the parties consent in writing to
15 earlier issuance of a withholding order, withholding shall take effect
16 only after there is an arrearage in an amount equal to or greater than the
17 amount of support payable for two months and after service of a notice
18 as provided in subsection (h).

19 Sec. 2. K.S.A. 2010 Supp. 75-6202 is hereby amended to read as
20 follows: 75-6202. As used in this act:

21 (a) "Debtor" means any person who:

22 (1) Owes a debt to the state of Kansas or any state agency or any
23 municipality;

24 (2) owes support to an individual, or an agency of another state,
25 who is receiving assistance in collecting that support under K.S.A. ~~23-~~
26 ~~495 or~~ 39-756, and amendments thereto, or under part D of title IV of
27 the federal social security act (42 U.S.C. § 651 *et seq.*), as amended; or

28 (3) owes a debt to a foreign state agency.

29 (b) "Debt" means:

30 (1) Any liquidated sum due and owing to the state of Kansas, or
31 any state agency, municipality or foreign state agency which has
32 accrued through contract, subrogation, tort, operation of law, or any
33 other legal theory regardless of whether there is an outstanding
34 judgment for that sum. A debt shall not include special assessments
35 except when the owner of the property assessed petitioned for the
36 improvement and any successor in interest of such owner of property;
37 or

38 (2) any amount of support due and owing an individual, or an
39 agency of another state, who is receiving assistance in collecting that

1 support under *K.S.A. 23-495 or K.S.A. 39-756*, and amendments
2 thereto, or under part D of title IV of the federal social security act (42
3 U.S.C. § 651 *et seq.*), as amended, which amount shall be considered a
4 debt due and owing the district court trustee or the department of social
5 and rehabilitation services for the purposes of this act.

6 (c) "Refund" means any amount of Kansas income tax refund due
7 to any person as a result of an overpayment of tax, and for this purpose,
8 a refund due to a husband and wife resulting from a joint return shall be
9 considered to be separately owned by each individual in the proportion
10 of each such spouse's contribution to income, as the term "contribution
11 to income" is defined by rules and regulations of the secretary of
12 revenue.

13 (d) "Net proceeds collected" means gross proceeds collected
14 through final setoff against a debtor's earnings, refund or other payment
15 due from the state or any state agency minus any collection assistance
16 fee charged by the director of accounts and reports of the department of
17 administration.

18 (e) "State agency" means any state office, officer, department,
19 board, commission, institution, bureau, agency or authority or any
20 division or unit thereof and any judicial district of this state or the clerk
21 or clerks thereof. "State agency" also shall include any district court
22 utilizing collection services pursuant to *K.S.A. 75-719*, and
23 amendments thereto, to collect debts owed to such court.

24 (f) "Person" means an individual, proprietorship, partnership,
25 limited partnership, association, trust, estate, business trust,
26 corporation, other entity or a governmental agency, unit or subdivision.

27 (g) "Director" means the director of accounts and reports of the
28 department of administration.

29 (h) "Municipality" means any municipality as defined by *K.S.A.*
30 *75-1117*, and amendments thereto.

31 (i) "Payor agency" means any state agency which holds money for,
32 or owes money to, a debtor.

33 (j) "Foreign state or foreign state agency" means the states of
34 Colorado, Missouri, Nebraska or Oklahoma or any agency of such
35 states which has entered into a reciprocal agreement pursuant to *K.S.A.*
36 *75-6215*, and amendments thereto.

37 Sec. 3. *K.S.A. 2010 Supp. 23-4,107 and 75-6202* are hereby
38 repealed.

39 Sec. 4. This act shall take effect and be in force from and after its

SB 160—Am. by SC

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1 publication in the statute book.
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