

House Substitute for SENATE BILL No. 160

AN ACT concerning child support; relating to collection of support payments; amending K.S.A. 2011 Supp. 23-3103 and 75-6202 and repealing the existing sections.

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

Section 1. K.S.A. 2011 Supp. 23-3103 is hereby amended to read as follows: 23-3103. (a) Any new or modified order for support shall include a provision for the withholding of income to enforce the order for support.

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

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

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

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

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

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

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

(2) An income withholding order which does not include a medical withholding order shall require the payor to withhold from any income due, or to become due, to the obligor a specified amount sufficient to satisfy the order of support and to defray any arrearage and shall include notice of and direction to comply with the provisions of K.S.A. 2011 Supp. 23-3104 and 23-3105, and amendments thereto.

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

and shall conform to the requirements of K.S.A. 2011 Supp. 23-3116, and amendments thereto. The medical withholding order shall include notice of and direction to comply with the requirements of K.S.A. 2011 Supp. 23-3104, 23-3105, 23-3114 and 23-3117, and amendments thereto.

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

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

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

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

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

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

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

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

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

(j) (1) In a nontitle IV-D case, upon presentation to the court of a written agreement between the parties providing for an alternative arrangement, no income withholding order shall be issued pursuant to subsection (b). In any case, before entry of a new or modified order for support, a party may request that no income withholding order be issued pursuant to subsection (b) if notice of the request has been served on all interested parties and: (A) The party demonstrates, and the court finds, that there is good cause not to require immediate income withholding; or (B) a written agreement among all interested parties provides for an

alternative arrangement. If child support and maintenance payments are both made to an obligee by the same obligor, and if the court has determined that good cause has been shown that direct child support payments to the obligee may be made, then the court shall provide for direct maintenance payments to the obligee and no income withholding order shall be issued pursuant to subsection (b). In a title IV-D case, the determination that there is good cause not to require immediate income withholding must include a finding that immediate income withholding would not be in the child's best interests and, if an obligor's existing obligation is being modified, proof of timely payment of previously ordered support.

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

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

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

- (A) The agreement was not in writing;
- (B) the agreement was not approved by all interested parties;
- (C) the terms of the agreement or alternative arrangement are not being met;
- (D) the agreement or alternative arrangement is not in the best interests of the child; or
- (E) the agreement or alternative arrangement places an unnecessary burden upon the obligor, obligee or a public office.

(5) The procedures and requirements of K.S.A. 2011 Supp. 23-3106, and amendments thereto, apply to any motion pursuant to paragraph (3) or (4) of this subsection ~~(j)~~.

(k) (1) An *ex parte* interlocutory order for support may be enforced pursuant to subsection (b) only if the obligor has consented to the income withholding in writing.

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

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

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

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

Sec. 2. K.S.A. 2011 Supp. 75-6202 is hereby amended to read as follows: 75-6202. As used in this act:

- (a) "Debtor" means any person who:
 - (1) Owes a debt to the state of Kansas or any state agency or any municipality;
 - (2) owes support to an individual, or an agency of another state, who

is receiving assistance in collecting that support under K.S.A. 39-756 or K.S.A. 2011 Supp. 20-378, and amendments thereto, or under part D of title IV of the federal social security act—(42 U.S.C. § 651 *et seq.*), as amended; or

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

(b) “Debt” means:

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

(2) any amount of support due and owing an individual, or an agency of another state, who is receiving assistance in collecting that support under K.S.A. 39-756 or K.S.A. 2011 Supp. 20-378, and amendments thereto, or under part D of title IV of the federal social security act—(42 U.S.C. § 651 *et seq.*), as amended, which amount shall be considered a debt due and owing the district court trustee or the department of social and rehabilitation services for the purposes of this act.

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

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

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

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

(g) “Director” means the director of accounts and reports of the department of administration.

(h) “Municipality” means any municipality as defined by K.S.A. 75-1117, and amendments thereto.

(i) “Payor agency” means any state agency which holds money for, or owes money to, a debtor.

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

Sec. 3. K.S.A. 2011 Supp. 23-3103 and 75-6202 are hereby repealed.

Sec. 4. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.