



**Am. S.B. 170**

124th General Assembly  
(As Passed by the General Assembly)

**Sens. Harris, Amstutz, Jacobson, Spada, Carnes, Robert Gardner, Fingerhut, Hagan, Mallory, Prentiss, Austria, Brady, Goodman, Hottinger, McLin, Mead, Oelslager, White**

**Reps. Hoops, Carey, Fessler, Kearns, Latell, Trakas, Niehaus, Clancy, Calvert, Aslanides, Stapleton, Flowers, Lendrum, Schmidt, Collier, Peterson, Patton, Olman, S. Smith, Hagan, Otterman, Barrett, Coates, Carmichael, Jolivette, Womer Benjamin, Allen, Oakar, DePiero, Beatty, Strahorn, Woodard, Key, R. Miller, Britton, Cirelli, Sferra, Hartnett, Carano, Ogg, Barnes, Redfern**

**Effective date:** \*

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**ACT SUMMARY**

- Requires each county child support enforcement agency to conduct reviews to determine compliance with federal law regarding the collection and distribution of certain support arrearages owed to support payees who received public assistance.
- Provides for payment to support payees of amounts representing certain support arrearage amounts accruing before the payee's assistance group received assistance.
- Provides for payment of amounts collected under the state income tax refund intercept program in accordance with the provisions of federal law regarding collection and distribution of support.
- Requires the Ohio Department of Job and Family Services to adopt rules governing the reviews and the calculation and distribution of payments.

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\* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

- Makes an appropriation to cover costs of the reviews and payments.

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## CONTENT AND OPERATION

### Background

Under Ohio's child support enforcement laws, all child support must be collected and sent to the Office of Child Support in the Ohio Department of Job and Family Services (ODJFS) for disbursement to the person entitled to receive the support (the obligee).<sup>1</sup> If, however, the obligee is part of an assistance group that receives public assistance under Ohio Works First (OWF), the support amounts owed the obligee are assigned to the state up to the amount the state has paid in assistance.<sup>2</sup> The assignment is automatic; it occurs once participation in OWF begins. It transforms the obligation of support of the person required to pay support (the obligor) from an obligation owed to the obligee to one owed to the state.<sup>3</sup>

Assignment of support is required by federal law of all states receiving federal funding for their Temporary Assistance for Needy Families programs.<sup>4</sup> Assigned amounts must be paid to the state and not the obligee as part of the requirements for receiving federal funding for state support enforcement requirements.<sup>5</sup> These requirements allow the states and the federal government to recoup some of the costs they incur in providing public assistance.

Because some support amounts are assigned to the state and some are not and because those support amounts need to be parceled up and distributed between the obligee, state, and federal government, federal law provides rules for the

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<sup>1</sup> Revised Code §3121.43.

<sup>2</sup> "Assistance group" means a group of individuals treated as a unit for purposes of determining eligibility for and the amount of assistance provided under OWF.

*OWF is Ohio's version of the Temporary Assistance for Needy Families program established under Title IV-A of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C. 301, as amended. OWF replaced the former Aid to Dependent Children program.*

<sup>3</sup> R.C. §5107.20.

<sup>4</sup> 42 U.S.C. §§602(a)(2); 603; 608(a)(3); and 609.

<sup>5</sup> 42 U.S.C. §654(5).

collection and disbursement of support. These rules include specific provisions on the treatment of assigned support.<sup>6</sup>

On August 22, 1996, Congress amended the rules governing collection and disbursement when it enacted the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA).<sup>7</sup> The changes effect how states are to distribute the support amounts collected. In Ohio, the changes specifically effect how child support arrearage amounts accruing before an assistance group went on assistance (pre-assistance arrearages) and arrearage amounts collected pursuant to the state income tax refund intercept program (refund intercept) are to be distributed.

### **Pre-assistance arrearages**

Support amounts collected are for either current support or support that is in arrears. They are classified under current and former federal law as follows: (1) current support received while on public assistance, (2) current support received after ceasing to receive assistance, (3) arrearages accruing before receiving assistance (pre-assistance arrearages), (4) arrearages accruing while on assistance, (5) arrearages accruing after ceasing to receive assistance, and (6) current support and arrearages received in cases in which no assistance has ever been provided.<sup>8</sup>

Under former law, the first \$50 of pre-assistance arrearage amounts collected were distributed to the obligee; the rest was kept by the state or paid to the federal government as a return of the amounts of assistance paid out.<sup>9</sup> Under PRWORA, if the pre-assistance arrearage amount was collected prior to October 1, 2000, the state may apply the former law regarding distribution. If the pre-assistance arrearage amount was collected on or after October 1, 2000, distribution is to occur as follows: first, to the obligee to the extent necessary to satisfy any pre-assistance arrearage; second, after satisfying any pre-assistance arrearage or post-assistance arrearage owed to the obligee, to the state and federal government, but only to the extent of the assistance provided; and third, to the extent that the first two conditions do not apply, to the obligee.<sup>10</sup> PRWORA gave the states the option of applying the PRWORA changes by October 1, 1998 instead of waiting

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<sup>6</sup> 42 U.S.C. §657.

<sup>7</sup> Pub. L. 104-193, 110 Stat. 2104 to 2355.

<sup>8</sup> 42 U.S.C. §657.

<sup>9</sup> 42 U.S.C. §657 (as it existed prior to the enactment of PRWORA).

<sup>10</sup> 42 U.S.C. §657(a)(2)(B)(ii)(II).

until October 1, 2000.<sup>11</sup> Ohio elected to apply the provisions of PRWORA early, but later withdrew that election, consistent with federal law. On October 1, 2000, however, Ohio failed to put the PRWORA changes into effect regarding the distribution of pre-assistance arrearages collected on and after that date.<sup>12</sup> According to a representative of ODJFS, that failure has since been remedied.

Although not required by federal law, Governor Bob Taft has ordered that certain amounts of pre-assistance arrearages that accrued prior to October 1, 1997 and have been collected on and after the obligee's assistance group ceased receiving assistance should be distributed under PRWORA's October 1, 2000 requirements, if they have not already been so distributed.<sup>13</sup> This is what the act attempts to do (see discussion below).

### **Refund intercept**

Ohio law provides for the collection of overdue support from refunds of paid state income taxes.<sup>14</sup> Prior to the enactment of PRWORA, the intercepted refund amounts were distributed using the same distribution method that the federal government applied to Internal Revenue Service refunds of paid federal income taxes. Under that distribution method, the state retained the amounts intercepted to compensate the state and the federal governments for the amounts of assistance paid to the obligee. The excess was then paid to the obligee.<sup>15</sup> With the adoption of PRWORA, this practice was terminated. States were required to begin applying the new federal provisions governing the collection and distribution of support with respect to intercepted state tax refunds.<sup>16</sup> The states were to begin this new application on October 1, 1997.<sup>17</sup> Ohio did not begin until October 1, 2000. The act attempts to correct this (see discussion below).

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<sup>11</sup> 42 U.S.C. §657(a)(6).

<sup>12</sup> *Gongwer, Ohio Report No. 26, Volume 70, Wednesday, February 7, 2001.*

<sup>13</sup> *Executive Order 2001-15T.*

<sup>14</sup> *R.C. §§3123.82 to 3123.823.*

<sup>15</sup> 42 U.S.C. §657 (as it existed prior to enactment of PRWORA); 45 Code of Federal Regulations §§302.51, 303.72, and 303.102 (Regulations adopted pre-PRWORA).

<sup>16</sup> 42 U.S.C. §657; *Action Transmittals AT 97-17 and AT 98-24 from the Federal Office of Child Support Enforcement.*

<sup>17</sup> *Pub. L. 104-193, Title III, Section 302(c)(1).*

## The act

### Review of cases involving pre-assistance arrearages

(Section 1(A) and (B)(1)(a))

Under the act, each county child support enforcement agency (CSEA) must conduct a review of all child support cases involving a support payee that the CSEA is administering or has administered. For the period October 1, 1997 through September 30, 2000, the CSEA must apply the provisions of PRWORA imposing the new collection and disbursement rules governing pre- and post-assistance arrearages and new rules for ordering distributions to the support payee's child support orders to determine the amount of assigned support and the proper distribution of support arrearage payments.

A "support payee" for purposes of the act is a person who is entitled to receive support payments made under a child support order and with respect to whom both of the following apply: (1) the person is a member of an assistance group that applied for and began participating in OWF on or after October 1, 1997, and (2) prior to the person's application for participation in OWF, a support arrearage accrued under the child support order to which all of the following apply: (a) the support arrearage was collected from payments on the support arrearages and not payments of current support, (b) the support arrearage was not collected pursuant to the IRS federal income tax refund intercept program, and (c) the support arrearage was collected on and after the date the assistance group of which the person is a member ceased participating in OWF.<sup>18</sup>

### Payments to support payees

(Section 1(C)(1), (3), and (4))

Based on the reviews made under the act, ODJFS is required to distribute to support payees payments that represent the amount of child support arrearage payments that were distributed to the state instead of the support payees but would have been distributed to the support payees had the provisions of PRWORA imposing the new collection and disbursement rules governing pre- and post-assistance arrearages and new rules for ordering distributions been applied to the period October 1, 1997, through September 30, 2000.

The act requires ODJFS to make these payments to support payees notwithstanding the Revised Code, the election made by the state concerning

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<sup>18</sup> "Child support order" means an order for the support of a child issued by a court or CSEA.

whether to apply PRWORA by October 1, 1998 or wait until October 1, 2000, or any court order establishing assigned support arrearage amounts. The payments to the support payees are not to be reduced by the amounts the federal government is entitled to receive from the arrearage amounts collected as provided under PRWORA provisions governing collection and distribution of support, regardless of whether the federal share is received by the state.

The act also provides that, prior to completion of a review regarding a support payee, ODJFS must distribute to support payees any assigned support collected and distributed to the state on and after October 1, 2000, other than amounts collected pursuant to the IRS federal income tax refund intercept program. Support payees receiving the payments prior to completion of the reviews will not be required to repay those amounts to the state if it is determined later that the payments should have been retained by the state as assigned support.

On completion of a review involving a support payee and payment of the amounts described above, if a support arrearage amount is still subject to assignment, ODJFS is to collect and distribute all support arrearage amounts in accordance with the PRWORA provisions governing collection and disbursement of support.

#### **Refund intercept reviews**

(Section 1(B)(1)(b))

The act requires each CSEA to conduct a review of all child support cases the CSEA administered during the years 1997 through 2000 to determine whether state income tax refunds collected under Ohio's state income tax refund intercept program on and after October 1, 1997, and before October 1, 2000, and distributed to the state to reimburse ADC assistance or OWF were collected and distributed in accordance with PRWORA.<sup>19</sup>

#### **Payments regarding refund intercepts**

(Section 1(C)(2))

Under the act, if the review concerning the refund intercepts reveals payments that were incorrectly distributed to the state, ODJFS must redistribute the payments in accordance with PRWORA provisions governing collection and distribution of support.

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<sup>19</sup> "ADC assistance" means assistance provided pursuant to the former Aid to Dependent Children program.

### **Other provisions regarding repayments**

(Section 1(C)(5) and (6))

The act provides that ODJFS must pay interest at the rate of 6.5% per annum, if the interest amount exceeds \$10. In addition and to the extent permitted by federal law, receipt of a payment under the act is not to be treated as income to the recipient for purposes of determining eligibility for benefits from means-tested government administered programs, including OWF, Prevention, Retention, and Contingency; Food Stamps; Disability Assistance; or other assistance for which eligibility is based on income or assets.

### **Rules governing reviews and payments**

(Section 1(B)(2) and (D))

The act provides that ODJFS must adopt internal management rules pursuant to Revised Code section 111.15 to govern conduct of CSEA reviews under the act.<sup>20</sup> CSEAs are required to conduct the reviews in accordance with the rules. ODJFS must also adopt rules under Revised Code Chapter 119. governing the calculation and payment distributions under the act.<sup>21</sup>

### **Deposit and appropriation**

(Section 2)

The act provides that the ODJFS Director may deposit into the Child Support Special Payment Fund created by the act in the state treasury, up to \$30.6 million of earned federal funds that Ohio receives from the Food and Nutrition Service in the United States Department of Agriculture, for federal fiscal years 1997, 1998, 1999, and 2000, and up to \$10 million of quality control audit funds returned to Ohio by the U.S. Department of Health and Human Services. The act appropriates the deposited funds for the use of conducting the reviews and making payments under the act. The ODJFS Director must determine when all payments required by the act have been made and notify the Director of Budget and Management, at which time the Director of Budget and Management is required to transfer all of the remaining funds to the General Revenue Fund. (See the LSC Fiscal Note for a detailed discussion of the fiscal implications.)

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<sup>20</sup> *Under R.C. 111.15, public hearings are not required in the adoption of rules.*

<sup>21</sup> *R.C. Chapter 119. requires public hearings in the rule adoption process.*

**Status reports on making support payments**

(Section 3)

Until the last of the required payments is made, the Director of Job and Family Services is to submit a written status report to the General Assembly every six months on the progress of the county child support enforcement agencies and the Department of Job and Family Services in implementing the act. At the same time as the Director submits this report, the Director is also to notify the Chairpersons of the House and Senate Finance committees that the Director is prepared to give oral testimony to the committee on the status report. The testimony is to be presented by the Director when requested to do so by the Chairperson.

**Effective date**

(Section 4)

The act provides that the sections of law contained in the act are not subject to the referendum. This is because the act provides an appropriation for current expense and implementation of the act depends on the appropriation. Therefore, under Ohio Constitution, Article II, Section 1d and Revised Code section 1.471, the act, if enacted, will go into immediate effect on the signature of the Governor.

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**HISTORY**

ACTION	DATE	JOURNAL ENTRY
Introduced	10-02-01	p. 925
Reported, S. Finance & Financial Institutions	10-10-01	p. 952
Passed Senate (33-0)	10-10-01	p. 954
Reported, H. Finance & Appropriations	10-16-01	pp. 927-928
Passed House (99-0)	10-17-01	pp. 938-941
Senate concurred in House amendments (32-0)	10-17-01	p. 998

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