



Ralph D. Clark

Bill Analysis
Legislative Service Commission

S.B. 170*

124th General Assembly
(As Introduced)

Sen. Harris

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

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

** This analysis was prepared before the bill's introduction appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

the support (the obligee).¹ 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.² 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.³

Assignment of support is required by federal law of all states receiving federal funding for their Temporary Assistance for Needy Families programs.⁴ 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.⁵ 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 collection and disbursement of support. These rules include specific provisions on the treatment of assigned support.⁶

On August 22, 1996, Congress amended the rules governing collection and disbursement when it enacted the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA).⁷ 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

¹ *Revised Code §3121.43.*

² *"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.

³ *R.C. §5107.20.*

⁴ *42 U.S.C. §§602(a)(2); 603; 608(a)(3); and 609.*

⁵ *42 U.S.C. §654(5).*

⁶ *42 U.S.C. §657.*

⁷ *Pub. L. 104-193, 110 Stat. 2104 to 2355.*

(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.⁸

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.⁹ 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.¹⁰ PRWORA gave the states the option of applying the PRWORA changes by October 1, 1998 instead of waiting until October 1, 2000.¹¹ 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.¹² 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

⁸ 42 U.S.C. §657.

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

¹⁰ 42 U.S.C. §657(a)(2)(B)(ii)(II).

¹¹ 42 U.S.C. §657(a)(6).

¹² Gongwer, *Ohio Report No. 26, Volume 70, Wednesday, February 7, 2001.*

receiving assistance should be distributed under PRWORA's October 1, 2000 requirements, if they have not already been so distributed.¹³ This is what the bill attempts to do (see discussion below).

Refund intercept

Ohio law provides for the collection of overdue support from refunds of paid state income taxes.¹⁴ 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.¹⁵ 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.¹⁶ The states were to begin this new application on October 1, 1997.¹⁷ Ohio did not begin until October 1, 2000. The bill attempts to correct this (see discussion below).

The bill

Review of cases involving pre-assistance arrearages

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

Under the bill, 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.

¹³ *Executive Order 2001-15T.*

¹⁴ *R.C. §§3123.82 to 3123.823.*

¹⁵ *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).*

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

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

A "support payee" for purposes of the bill 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.¹⁸

Payments to support payees

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

Based on the reviews made under the bill, 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 bill requires ODJFS to make these payments to support payees notwithstanding the Revised Code, the election made by the state concerning 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 bill 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.

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

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 bill 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.¹⁹

Payments regarding refund intercepts

(Section 1(C)(2))

Under the bill, 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.

Other provisions regarding repayments

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

The bill provides that ODJFS must pay, with each payment made under the bill, 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 bill 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.

¹⁹ "ADC assistance" means assistance provided pursuant to the former Aid to Dependent Children program.

Rules governing reviews and payments

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

The bill provides that ODJFS must adopt internal management rules pursuant to Revised Code section 111.15 to govern conduct of CSEA reviews under the bill.²⁰ 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 bill.²¹

Enforcing CSEA compliance with review requirements

(Section 1(B)(2))

Under current law, ODJFS may take action against a CSEA if it determines that the CSEA has failed to comply with a requirement established by statute or administrative rule for a duty of the CSEA. There are several possible actions, including (1) requiring the CSEA to submit to and comply with a corrective action plan specified by ODJFS, (2) requiring the CSEA to reimburse ODJFS for financial penalties imposed by the federal government, and (3) requesting that the attorney general bring mandamus proceedings to compel the CSEA to take or cease the action that causes the failure to comply with the CSEA duty sought to be enforced. If ODJFS takes any of the actions permitted under current law, it must notify the CSEA in writing of the action. The CSEA may request an administrative review of a proposed action other than a request to the attorney general. The administrative review involves a requirement that the CSEA and ODJFS attempt to resolve the dispute.

The bill provides that if ODJFS takes an action permitted under current law in order to require a CSEA to comply with the bill's requirements, the provisions of current law requiring notice of the action, administrative review, and dispute resolution do not apply.

Deposit and appropriation

(Section 2)

The bill provides that the ODJFS Director may deposit into the Child Support Special Payment Fund created by the bill in the state treasury, up to \$30.6 million of earned federal funds that Ohio receives from the Food and Nutrition

²⁰ Under R.C. 111.15, public hearings are not required in the adoption of rules.

²¹ R.C. Chapter 119, requires public hearings in the rule adoption process.

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 bill appropriates the deposited funds for the use of conducting the reviews and making payments under the bill. The ODJFS Director must determine when all payments required by the bill 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.)

Effective date

(Section 3)

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

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	---	---

S0170-I.124/jc