



Sub. H.B. 200

125th General Assembly

(As Reported by S. Health, Human Services, and Aging)

Reps. Willamowski, Schneider, Otterman, S. Patton, Flowers, Hagan, Price, Reidelbach, Schmidt, Beatty, Carano, Chandler, Cirelli, Clancy, Daniels, DePiero, Distel, Domenick, C. Evans, Hartnett, Harwood, Hollister, Hughes, Jolivette, Key, McGregor, Niehaus, T. Patton, Perry, Raussen, Redfern, Schaffer, Schlichter, Seitz, Sferra, J. Stewart, Sykes, Wagner, Widener, Widowfield

BILL SUMMARY

Contracts for service of process

- Permits a child support enforcement agency (CSEA) to contract with the county sheriff to compensate the sheriff's office for the provision of services, staff, or equipment, or for acting on behalf of the CSEA to accomplish certain objectives of the CSEA.
- Permits a CSEA to contract with a private person or entity to provide service of process if the CSEA determines that the county sheriff is unable to provide the resources necessary for service of process in a timely manner.

Program Income Fund

- Eliminates the Program Income Fund in the Ohio Department of Job and Family Services.

Distribution of administrative charges

- Requires monthly, rather than quarterly, distributions of administrative charge amounts to CSEAs.

Form of withholding and deduction notices

- Requires that the standard forms of the Department of Job and Family Services (ODJFS) for support withholding and deduction notices be used

regardless of the type or source of income and specifies that the withholding and deduction requirements contained in the notices are final and enforceable by a court.

Service of withholding notice or order on state official

- Changes the person on whom a withholding notice must be served when the obligor (person who owes support) is an individual who is under contract with Ohio, or is owed or to be owed money from Ohio, from the Director of Budget and Management to the head of the state agency contracting with the obligor or that owes or will owe the obligor money.

New hire reports

Contractors

- Revises the definitions that apply to the provisions relating to the requirement that an employer make a new hire report when hiring an employee or engaging an independent contractor to: (1) distinguish between independent contractors and employees who report compensation as wages, (2) exclude from the definition of "contractor" certain professionally licensed persons who provide services to the employer under a professional license and individuals who will receive for the services provided under the contract compensation of less than a threshold amount, and (3) creates an additional exception to the definition of "employer" to exclude, in the case of compensation paid to a contractor, any person or entity that lacks a federal employer identification number.
- Authorizes ODJFS, by rule, to exempt employers from making new hire reports on any classification of contractors if ODJFS determines that exempting the employer will assist the administration of the new hire reporting requirement.
- Specifies the information that an employer must include in each new hire report relating to a contractor.
- Permits ODJFS to specify by rule the extent to which contractor new hire report information is entered into the New Hires Directory or any other appropriate directory.

- Excludes contractors from the provision that requires ODJFS to make comparisons of the Social Security numbers obtained from the new hire reports and the Social Security numbers appearing in the ODJFS Support Order Case Registry.
- Permits ODJFS to furnish to the National Directory information on contractors to the extent it determines appropriate.

ODJFS flexibility

- Permits ODJFS by rule to require that additional information, specified in the rule, be included in each new hire report.
- Requires an employer to make a new hire report for each employee or contractor in a manner prescribed by ODJFS.
- Repeals an existing provision that specifies the procedure by which ODJFS must enforce support orders when the Social Security numbers in new hire reports match those in the Child Support Order Case Registry, and enacts a new provision that requires ODJFS, by rule, to establish the manner in which information on contractors identified in a new hire report must be used to enforce support obligations.
- Removes from a provision authorizing ODJFS to use the new hire reports it receives for establishing, modifying, and enforcing child support orders the requirement that the orders be orders being administered by CSEAs in Ohio.
- Allows ODJFS to disclose information in new hire reports to state agencies operating employment security and workers compensation programs for the purpose of administering those programs.
- Changes the enforcement method regarding new hire reports from an ODJFS imposed fee to making the employer liable for a civil penalty for the failure.

Emergency and delayed effective date

- Declares an emergency, but provides that only the provisions regarding contracts for service of process take immediate effect.

CONTENT AND OPERATION

Contracts for service of process

Background

The Child Support Reform Shareholders' Group was created in April 2001 to assist the state, counties, and child support partners in improving programs and delivery of services to parents and their children. The Group's members included parents, employers, advocacy association representatives, a professional payroll association, members of the judiciary and legislature, county prosecutors and the Attorney General, administrators and staff of child support enforcement agencies, the federal Office of Child Support Enforcement, and other interested parties. In December 2002, after considering information provided in community forums held throughout the state, a consumer survey, feedback provided on the Group's website, and a survey of the counties, the Shareholders' Group submitted 28 recommendations to the Department of Job and Family Services.¹ This bill includes the recommendation regarding service of process.

Generally, a defendant in a judicial proceeding must be given proper notice and an opportunity to be heard. In general, the defendant has been provided notice when he has received the set of papers known as "process." Process consists of a summons, which directs the defendant to appear before the court under penalty of default, and a copy of the complaint. Process must be properly served and the defendant must be given sufficient notice of the pending action. Rules governing methods of service, as well as who may be served and special rules governing out-of-state service and service by publication are set forth in the Ohio Rules of Civil Procedure.²

The Ohio Department of Job and Family Services (ODJFS) has also adopted a rule governing service of process for establishing and enforcing support obligations.³ Criminal actions and court or administrative actions to establish paternity or support or bring civil contempt actions generally require personal service. Other notices may generally be served by ordinary first class mail. The rules require each local child support enforcement agency (CSEA) to make diligent efforts for service of process, including determining the appropriate method of service, using the most time efficient means available for service,

¹ <http://jfs.ohio.gov/shareholders/> (visited April 18, 2004).

² Civ. R. 4, 4.1, 4.2, 4.3, 4.4, 4.5, and 4.6.

³ Ohio Administrative Code 5101:1-30-19.

accomplishing service within 30 days, continuing to attempt service periodically if it is not initially accomplished, and documenting each service attempt.

The Shareholders' Group recommended that CSEAs implement performance-based contracts with county sheriffs and others to improve service of process. The rationale expressed in the Recommendations was that lack of successful service is a barrier to parentage and support order establishment and actions for contempt for failure to pay existing support obligations when the sheriff's office is unable to focus on child support activities due to staffing or other issues.⁴

The bill

Under the bill, in providing for service of process of a notice or order required by the law governing parentage actions and the establishment and enforcement of support orders, and in locating an individual to be served, a CSEA may do one or both of the following:

(1) Contract with the sheriff of the county served by the CSEA to compensate the sheriff's office for providing services, staff, or equipment, or acting on behalf of the CSEA to accomplish the objectives of the support enforcement program pursuant to federal and state law. The bill exempts these contracts from the Revised Code's general provision establishing fees a sheriff may charge for service of process.

(2) Contract with a private person or entity to provide service of process if the CSEA determines that the sheriff of the county served by the CSEA is unable to provide the resources necessary for service of process in a timely manner. The contract may include additional incentives for service of process.

These provisions of the bill will go into immediate effect. (R.C. 311.17 and 3125.141 and Sections 3 and 4 of the bill.)⁵

Program Income Fund

A court or CSEA that issues or modifies a child support order is required to impose on the obligor a processing charge that is the greater of 2% of the support

⁴ Recommendation 8 (<http://jfs.ohio.gov/shareholders/CSRSGRreport.pdf>, visited April 18, 2004).

⁵ The bill declares an emergency, which gives immediate effect to the bill. The bill then provides that all of the bill's provisions other than the contracts for service of process provisions take effect on the 90th day after the bill's effective date.

payment to be collected under the order or \$1 per month (R.C. 3119.27 *not in the bill*).⁶ The Office of Child Support in the Department of Job and Family Services is required to collect these charges (R.C. 3121.56 *not in the bill*).

The Revised Code provides that the Program Income Fund is to consist of the following: processing charges; program income collected from portions of fines imposed on parties to a support order for failure to notify the CSEA of any change in the party's address, income, employment, or other relevant information provided in law; any other program income. The Office of Child Support and CSEAs must use the funds for child support enforcement activities.

The bill eliminates the Program Income Fund. (R.C. 3121.60 and 3121.63 *both repealed*) and R.C. 3121.59.)

Distribution of administrative charges

On receipt of processing charges from courts and CSEAs, the Office of Child Support currently must determine the amounts collected from obligors under support orders being administered by each county's CSEA and distribute quarterly to each CSEA an amount equal to the charges attributable to that agency. The bill requires that these distributions be made monthly. (R.C. 3121.64.)

Form of withholding and deduction notices

Under existing law, the Department of Job and Family Services (ODJFS) must adopt standard forms for support withholding and deduction notices. All courts and CSEAs must use the forms in issuing withholding and deduction notices.

The bill requires that the forms be used regardless of the type or source of income. The bill specifies that the withholding and deduction requirements contained in the notices are final and enforceable by the court. (R.C. 3121.0310.)

Service of notice or order on state official

Under existing law if the obligor (person who owes support) under a withholding notice or other support order is an individual who is under contract with Ohio or is owed or to be owed money from Ohio, the notice or order must be served on the Director of Budget and Management. The notice must set forth the name of the state agency that owes or will owe money to the individual against whom the notice or order is issued. If money is to be withheld from a corporation or a limited liability company to pay the support obligation of an individual who is

⁶ *The obligor is the person required to pay child support.*

an obligor, the notice also must set forth evidence that the obligor is the sole shareholder of the corporation or the sole member of the limited liability company.

Under the bill, the notice must instead be served on the head of the state agency contracting with the obligor or that owes or will owe the obligor money. The bill repeals the requirement that the additional information be included in the notices. (R.C. 3121.091.)

New hire reports

Existing law requires employers to make "new hire reports" to ODJFS regarding the hiring, rehiring, or return to work as an employee of a person who resides, works, or will be assigned to work in Ohio to whom the employer anticipates paying compensation. Existing law permits ODJFS to use those reports for specified purposes. The bill changes some new hire report provisions as they apply to independent contractors and makes changes to some of these provisions.

Contractors

The bill distinguishes between contractors and employees with regard to some provisions regarding new hire reports.

Definitions. Under existing law, "employee" means an individual who is employed to provide services for compensation to an employer *and includes an individual who provides services to an employer under a contract as an independent contractor, and who is an individual, the sole shareholder of a corporation, or the sole member of a limited liability company.*

The bill excludes from this definition an individual who provides services to an employer under a contract as an independent contractor and an individual who is either an individual, the sole shareholder of a corporation, or the sole member of a limited liability company. Instead, "employee" means an individual who is employed to provide services to an employer for compensation *that is reported as income from wages.* (R.C. 3121.89(B).)

Under the bill, "contractor" means an individual who provides services to an employer as an independent contractor for compensation that is reported as income other than wages and who is an individual, the sole shareholder of a corporation, or the sole member of a limited liability company. "Contractor" does not include either of the following:

(1) A professionally licensed person⁷ who is providing services to the employer under that license;

(2) An individual who will receive for the services provided under the contract compensation of less than \$2,500 per year or a greater amount that the Director of ODJFS establishes by rule. (R.C. 3121.89(A) and 3121.896.)

The bill creates an additional exception to the definition of "employer"⁸ in the new hire report provisions to exclude, in the case of compensation paid to a contractor, any person or entity that lacks a federal employer identification number (R.C. 3121.89(C)).

Different provisions relating to contractors. The bill generally continues requirements for new hire reports regarding contractors that parallel those for employees but makes distinctions in the following areas:

(1) The bill authorizes ODJFS, by rule, to exempt employers from making reports on any classification of contractors if ODJFS determines that exempting the employer will assist the administration of the new hire reporting requirement (R.C. 3121.891).

(2) In the provision regarding the contents of each new hire report, an employer must include the contractor's name, address, Social Security or tax identification number, the date payments begin, and the length of time the contractor will be performing services for the employer (R.C. 3121.892(A)(2)).

(3) While ODJFS must, within five days of receipt from an employer, enter the information required of a new hire report into a New Hires Directory, ODJFS may specify by rule the extent to which contractor new hire report information is entered into the New Hires Directory or any other appropriate directory. ODJFS must enter the information in accordance with the rule. (R.C. 3121.894).

(4) The bill excludes contractors from the provision that requires ODJFS to make comparisons of the Social Security numbers obtained from the new hire reports and the Social Security numbers appearing in the ODJFS Support Order Case Registry (R.C. 3121.895).

⁷ "Professionally licensed person" includes persons licensed to practice in a number of professions including health care, accounting, real estate, and engineering (R.C. 3121.89(D) by reference to R.C. 2925.01(W)).

⁸ Under the bill, "employer" means any person or governmental entity other than the federal government for which an individual performs any service, of whatever nature, as the employee or contractor of such person (R.C. 3121.89(C)).

(5) Under existing law, within three business days after information is entered into the New Hires Directory, ODJFS must furnish the information to the National Directory of New Hires. The bill limits this provision to new hire reports regarding employees but permits ODJFS to also furnish to the National Directory information on contractors to the extent it determines appropriate. (R.C. 3121.897.)

ODJFS flexibility

The bill permits ODJFS by rule to require that additional information, specified in the rule, be included in each new hire report (R.C. 3121.892(B)).

Under existing law, an employer *may* make a new hire report by submitting a copy of the United States Internal Revenue Service Form W-4 (employee's withholding allowance certificate) for the employee, a form provided by ODJFS, or any other hiring document or data storage device or mechanism ODJFS authorizes. Under the bill, an employer *must* make a new hire report for each employee or contractor in a manner prescribed by ODJFS. ODJFS may require the report include or consist of the information authorized under existing law. (R.C. 3121.893.)

Existing law specifies the procedure by which ODJFS must proceed to enforce support orders when the Social Security numbers in new hire reports match those in the Child Support Order Case Registry. The bill repeals this provision and enacts a new provision that requires ODJFS, by rule, to establish the manner in which information on any contractors identified in a new hire report must be used to enforce any support obligations of any person so identified. (R.C. 3121.03 and 3121.896.)

In the provision authorizing ODJFS to use the new hire reports it receives for establishing, modifying, and enforcing child support orders, the bill removes the requirement that the orders be orders being administered by CSEAs in Ohio (R.C. 3121.898(A)).

In the provision authorizing ODJFS to use the new hire reports it receives to verify eligibility for certain governmental programs, the bill rephrases this authority to authorize ODJFS to use the new hire reports it receives to make available to any state agency⁹ responsible for administering those governmental programs for purposes of verifying program eligibility (R.C. 3121.898(B)).

⁹ "State agency" means every department, bureau, board, commission, office, or other organized body established by the constitution or law of Ohio for the exercise of government; every entity of county government that is subject to the rules of a state agency; and every contractual agent of a state agency (R.C. 3121.898(B)).

The bill also allows ODJFS to disclose information in new hire reports to state agencies operating employment security and workers compensation programs for the purpose of administering those programs (R.C. 3121.899(B)(5)).

The bill changes the method of enforcing the requirement to make new hire reports. Under existing law, ODJFS must require the employer to pay a fee for failing to file a new hire report; under the bill, the employer is liable for a civil penalty for the failure. (R.C. 3121.8910.)

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-21-03	p. 499
Reported, H. Human Services & Aging	06-26-03	p. 1002
Passed House (97-0)	09-17-03	pp. 1069-1070
Reported, S. Health, Human Services & Aging	11-18-04	pp. 2300-2301

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