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Bill Analysis
Legislative Service Commission

H.B. 236

125th General Assembly
(As Introduced)

Reps. Willamowski, Kearns, Schmidt, McGregor, Hughes, C. Evans, Allen, Key, Ujvagi

BILL SUMMARY

- Provides that an employer who willfully fails to withhold child support amounts from an obligor's income is liable for both the amount not withheld and interest on that amount.
- Provides that, in certain situations in which an employer fails to withhold child support amounts from an obligor's income, the Office of Child Support or a court may issue an order requiring payment of support by electronic transfer of funds.
- Provides that, in certain situations in which an employer fails to withhold child support amounts from an obligor's income, the court may impose a civil penalty of up to 50% of the amount not withheld.

CONTENT AND OPERATION

Background information

(R.C. 3121.02, 3121.03 and 3121.035, not in the bill)

Current law provides that when a child support order is issued or modified the court or child support enforcement agency (CSEA), as appropriate, must take action to ensure that withholding or deduction is available for the collection of the support and any arrearages that occur. Generally, if the court or CSEA determines that the person required to pay support (the obligor) is receiving money from a payor,¹ the payor will be required to withhold specific amounts from that income

¹ A "payor" is defined as any person or entity that pays or distributes income to an obligor, including . . . an employer" R.C. 3121.01(E).

and forward them to the Office of Child Support.² Similarly, if the court or CSEA determines that an obligor has funds on deposit in an account with a financial institution under its jurisdiction,³ and those funds are not otherwise exempt, the court or CSEA may require the financial institution to deduct specified amounts from the account and send those amounts to the Office of Child Support. In either instance, the court or CSEA that issued or modified the support order must send a withholding or deduction notice, as appropriate, to each person required to comply with it.

Liability for failure to withhold support amounts

Current law

(R.C. 3121.38)

Generally, if a withholding notice requires a payor to withhold an amount from an obligor's income for support and the payor fails to do so, the payor is liable for the amount that was not withheld.⁴ The same is true for a financial institution that fails to deduct amounts for support from an obligor's account in accordance with a deduction notice. A payor that is an employer and whose normal pay and disbursement cycle makes it impossible to comply with the withholding requirement, however, will not be liable for the amount not withheld if it provides the court or CSEA that issued the order with written notice of the impossibility. The notice of impossibility must be provided as soon as possible after receipt of the withholding notice, and must state the reasons for the impossibility.

The court or CSEA that issued the support order must order a payor who is liable for amounts not withheld to pay the amount owed to the Office of Child Support for disbursement in accordance with the support order.

² *The Office of Child Support is the state agency responsible for the collection and disbursement of support payments due under support orders. R.C. 3121.43.*

³ *In the case of an administrative child support order, the financial institution must be under the jurisdiction of the common pleas court of the county in which the agency that issued or is administering the order is located. R.C. 3121.03(B)(1).*

⁴ *This applies to situations involving administrative child support orders, court child support orders, and certain spousal support orders. See R.C. 3121.03 and 3119.01(B)(5).*

The bill

(R.C. 3121.38)

The bill provides that an employer payor that willfully fails to withhold amounts from an obligor's income in accordance with a withholding notice is also liable for interest on the amount not withheld.⁵ The bill permits the Office of Child Support or a court to issue an order requiring payment of support by electronic funds transfer from the bank account of an employer payor in the following situations:

(1) If the employer payor willfully failed to withhold an amount from an obligor's income in accordance with the withholding requirement included in a withholding notice;

(2) If the employer payor failed to comply with the withholding requirement of a withholding notice three times in a 12-month period.

Fines for failure to withhold or deduct amounts

(R.C. 3121.381)

Current law

Current law permits a court to fine a payor up to \$200 if:

(1) The payor fails to withhold income pursuant to a withholding notice for court-ordered support;

(2) The payor fails to notify the CSEA administering the court support order of a situation causing the payor to stop paying the obligor enough income to comply with the order; or

(3) If the obligor is an employer, the obligor receives or is eligible to receive an employment benefit other than personal earnings.

Similarly, a financial institution can be fined up to \$200 for (1) failure to deduct funds in accordance with a deduction notice for court-ordered support, (2) failure to notify the court or CSEA administering the court support order of the termination of the account from which funds are being deducted, or (3) failure to

⁵ *The bill does not specify the interest rate to be applied to the amounts not withheld, but Revised Code section 1343.03 addresses the calculation and amount of interest payable when not otherwise stipulated. The bill does not prescribe a process for determining willfulness, nor does the bill provide an opportunity to appeal such a determination.*

notify the court or CSEA administering the court support order that a new account has been opened.

The bill

The bill creates an additional penalty applicable to employer payors. The bill permits a court to impose a civil penalty, in addition to any other penalty required by law, of up to 50 percent of the amount not withheld if either of the following are the case:

(1) The employer payor willfully failed to withhold support amounts in accordance with a withholding requirement included in a withholding notice;

(2) The employer payor failed to comply with that withholding requirement three times in a 12-month period.

HISTORY

ACTION	DATE	JOURNAL ENTRY
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