



Sub. H.B. 236

125th General Assembly
(As Passed by the House)

Reps. Willamowski, Kearns, Schmidt, McGregor, Hughes, C. Evans, Allen, Key, Ujvagi, Beatty, Brown, Buehrer, Carano, Cirelli, DeBose, DeGeeter, Distel, Domenick, Gilb, Hagan, Hartnett, Latta, Miller, Price, Reidelbach, S. Smith, D. Stewart, J. Stewart, Sykes, Woodard, Yates

BILL SUMMARY

- Eliminates a child support enforcement agency's authority to order a payor who fails to withhold amounts from an obligor's income pursuant to a withholding notice requirement issued in relation to a child support order to pay those amounts to the Office of Child Support.
- Provides that, if an employer who is subject to a withholding notice requirement issued in relation to a child support order willfully fails to comply with the withholding notice or failed to comply with a withholding notice three times in 12 consecutive months, a court may issue an order requiring one or both of the following: (1) payment of support by electronic transfer of funds from the bank account of the employer, or (2) a civil penalty, in addition to any other penalty, of up to 50% of the amount not withheld or not timely forwarded to the Office of Child Support in accordance with the notice.
- Requires a child support enforcement agency, when investigating whether a child support order should terminate, to determine whether the amounts being paid under the order should be impounded because continued receipt and disbursement would result in an overpayment, and modifies the criteria that determine when an agency must order the impoundment of funds received for child support or submit to the court an order for such an impoundment so that, in addition to determining that the order should terminate, the agency also must determine that the amounts being paid under the order should be impounded for that reason.

- Authorizes the Director of the Department of Job and Family Services to adopt rules regarding a form for requests by a child support enforcement agency for a court impoundment order.

CONTENT AND OPERATION

Background information--withholding and deduction of child support

Existing law provides for the issuance or modification in specified circumstances of child support orders by a court (under R.C. Chapter 3115. or R.C. 2151.23, 2151.231, 2151.232, 2151.33, 2151.36, 2151.361, 2151.49, 3105.21, 3109.05, 3109.19, 3111.13, 3113.04, 3113.07, 3113.31, 3119.65, or 3119.70, not in the bill) or administrative child support orders by a child support enforcement agency (under R.C. 3109.19 or R.C. 3111.38 to 3111.85, not in the bill). The amount of the child support to be included in an order generally is calculated in accordance with existing R.C. Chapter 3119. Existing R.C. Chapter 3121. provides a mechanism for the collection and disbursement of child support required under an order. Included within the mechanism is a section that provides that, when a child support order is issued or modified, the court or child support enforcement agency (CSEA), as appropriate, must take a specified type of action to ensure that withholding or deduction from the income or assets of the person who is required to pay support under the order (the obligor) is available from the commencement of the support order for the collection of the support and any arrearages that occur (R.C. 3121.02, not in the bill). The mechanism provides for various types of withholding or deduction notices and orders to provide for the payment of the support and procedures that govern the court or CSEA in determining which of the notices and orders to issue. Generally, if the court or CSEA determines that the obligor is receiving money from a payor,¹ the court or CSEA must require the payor to withhold specific amounts from that income, forward them to the Office of Child Support,² and continue the withholding at specified intervals until further notice. 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

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)).

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)).

require the financial institution to deduct specified amounts from the account, send those amounts to the Office of Child Support, and continue the deduction at specified intervals until further notice. (R.C. 3121.03, not in the bill.) 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 payor, financial institution, or person required to comply with it (R.C. 3121.03 and 3121.035, not in the bill).

If the CSEA sends a withholding or deduction notice, and the payor or financial institution fails to comply with that notice, the CSEA must request that the court issue an order requiring the payor's or financial institution's immediate compliance. If the court issues the order, a payor or financial institution that does not immediately comply is in contempt of court. (R.C. 3121.371, not in the bill.)

Liability for support amounts

Current law

Under current law, 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 generally is liable for the amount that was not withheld.⁴ Similarly, a financial institution that fails to deduct amounts for support from an obligor's account in accordance with a deduction notice is liable for the amount that was not deducted. A payor that is an employer with a normal pay and disbursement cycle that makes it impossible to comply with the withholding requirement will not, however, be liable for the amount not withheld if the payor 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 withholding notice must order a payor that is liable as described in the preceding paragraph for amounts not withheld to pay the amount owed to the Office of Child Support for disbursement in accordance with the support order. (R.C. 3121.38.)

Operation of the bill

The bill eliminates the CSEA's authority to order a payor who fails to withhold support amounts (and, thus, is liable for those amounts) to pay those

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)).*

amounts to the Office of Child Support. Under the bill, the court is still required to order payment in those situations. (R.C. 3121.38.)

Failure to withhold or deduct amounts

Current law

As described above, if a payor or financial institution is sent a withholding or deduction notice and fails to comply with it (R.C. 3121.035, not in the bill, and 3121.38): (1) the CSEA must request that the court issue an order requiring the payor's or financial institution's immediate compliance and, if the court issues the order and the payor or financial institution fails to immediately comply with the order, the payor or financial institution is in contempt of court, and (2) the payor or financial institution generally is liable for the amount not withheld or deducted.

Current law also permits a court to fine a payor up to \$200 if any of the following apply: (1) the payor fails to withhold income pursuant to a withholding notice for court-ordered support, (2) the payor fails to notify the court or CSEA administering the court support order of a situation causing the payor to stop paying the obligor income in an amount sufficient 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 court may fine a financial institution up to \$200 for any of the following: (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 notify the court or CSEA administering the court support order that a new account has been opened. (R.C. 3121.381, not in the bill.)

Operation of the bill

The bill creates additional penalties applicable to employer payors who fail to comply with withholding orders, in certain situations. Under the bill, when the CSEA seeks an order for contempt under existing R.C. 3121.371 against an employer payor for failure to comply with a withholding notice, the court, on motion of the CSEA or on its own motion, may hold a hearing to determine if the payor has: (1) willfully failed to comply with the withholding notice, or (2) failed to comply with a withholding notice three times in a 12-consecutive-month

period.⁵ Not later than 14 days before holding any such hearing, the court must serve the employer payor with notice of the hearing that complies with court rules regarding service of summonses and that contains the date, time, and location of the hearing. The notice must also include a statement that, if the court determines the payor has committed acts or omissions of the type described above in clause (1) or (2) of the second preceding sentence, the court may order either or both of the penalties enacted by the bill, as described in the next paragraph. (R.C. 3121.373.)

If, after a hearing conducted under the provisions described in the preceding paragraph, the court determines that the employer payor willfully failed to comply with a withholding notice or failed to comply with a withholding notice three times in a 12-consecutive-month period, the court may issue an order requiring one or both of the following: (1) the payment of support by electronic transfer of funds from the bank account of the payor, or (2) a civil penalty of up to 50% of the amount not withheld or not timely forwarded to the Office of Child Support in accordance with the notice. The bill specifies that the civil penalty may be in addition to any other penalty permitted by law. (R.C. 3121.382.)

Termination of child support orders

Current law

Under current law, the person with legal custody of a child for whom a support order has been issued immediately must notify, and the obligor under the order may notify, the CSEA administering the order of any reason for which the order should terminate (R.C. 3119.87, not in the bill).⁶ Within 20 days of receiving that notice, the CSEA must complete an investigation to determine: (1) whether a reason for termination exists, (2) whether there are other children subject to the order, (3) whether there are arrearages owed under the order, and (4) whether it is necessary to continue withholding or deduction pursuant to a notice or order issued under R.C. 3121.03 for other children or arrearages. A CSEA may conduct such an investigation upon its own initiative if it has reason to believe there may be grounds to terminate the order. (R.C. 3119.89.)

⁵ For purposes of these provisions, the bill defines "willfully" as "voluntarily and intentionally with a specific intent to take an action or fail to take an action" (R.C. 3119.373(A) and 3121.382(A)).

⁶ Several reasons for termination are listed in a separate statute, including the child's attainment of the age of majority, the child's death, the child's marriage, and change of legal custody of the child (R.C. 3119.88, not in the bill).

Generally, if the CSEA determines the order should terminate, any funds received for the child pursuant to that order will be impounded. For administrative support orders, the CSEA is required to issue an order for impoundment; for court child support orders, the CSEA must notify the court of the investigation and submit to the court an order for impoundment (R.C. 3119.90).

Operation of the bill

The bill requires the CSEA, when investigating whether a child support order should terminate, to also determine, in addition to the matters determined under existing law, whether child support amounts paid pursuant to that order should be impounded because continuation of receipt and disbursement would result in an overpayment (R.C. 3119.89(A)(5)).

The bill modifies the criteria that determine when a CSEA must order the impoundment of funds received for child support or submit to the court an order for such an impoundment. Under the bill, the CSEA must order the impoundment of support or submit an order to the court for impoundment of support only if the CSEA determines that the order should terminate *and* that child support amounts paid pursuant to the order should be impounded because continued receipt and disbursement would lead to an overpayment by the obligor (R.C. 3119.90(A)). The bill also authorizes the Director of Job and Family Services to adopt rules that either specify a form for the impoundment orders submitted to courts or approve a form for those orders developed by the Ohio Judicial Conference (R.C. 3119.94(B)).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	06-25-03	pp. 957-958
Reported, H. Juvenile and Family Law	03-16-04	p. 1695
Passed House (94-1)	04-21-04	pp. 1780-1781

H0236-PH-125.doc/jc

