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Bill Analysis
Legislative Service Commission

Sub. H.B. 236

125th General Assembly
(As Reported by H. Juvenile and Family Law)

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

BILL SUMMARY

- Provides that, in certain situations in which an employer fails to comply with a withholding notice, 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 comply with a withholding notice, the court may impose a civil penalty of up to 50% of the amount not withheld.
- Requires the 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, in such cases, requires the child support enforcement agency to order the impoundment or seek a court order of impoundment.
- 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.
- Eliminates the child support enforcement agency's authority to order a payor who fails to withhold certain amounts to pay those amounts to the Office of Child Support.

CONTENT AND OPERATION

Background information--withholding and deduction of child support

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 (R.C. 3121.02, not in the bill). 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 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. (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 person required to comply with it (R.C. 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 immediate compliance. 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

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 with a normal pay and disbursement cycle that makes it impossible to comply with the

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)).

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)).

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 support order must order a payor that 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. (R.C. 3121.38.)

The bill

The bill eliminates the CSEA's authority to order a payor who fails to withhold support amounts to pay those 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

Current law 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 enough income to comply with the order;
- (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 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.)

The bill

The bill creates additional penalties applicable to employer payors in certain situations. Under the bill, when the CSEA seeks an order for contempt

against an employer payor for failure to comply with a withholding notice, the court 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-month period.⁵ At least two weeks before any such hearing, the court must serve the employer payor with notice of the hearing that contains the date, time, and location of the hearing. The notice must also include a statement regarding the penalties enacted by the bill for failure to comply with a withholding notice. (R.C. 3121.373.)

If, after the hearing, 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-month period, the court can 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, (2) a civil penalty of up to 50% of the amount not withheld or withheld but 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 is required to immediately 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 for other children or arrearages. Even if the CSEA does not receive the notice described above, it may conduct an investigation if it has reason to believe there may be grounds to terminate the order. (R.C. 3119.89.)

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

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 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).

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).

The bill

The bill requires the CSEA, when investigating whether a child support order should terminate, to also determine whether 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)). 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 funds should be impounded because continued receipt and disbursement would result in an overpayment (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 of a form 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

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