

SB0100



96TH GENERAL ASSEMBLY

State of Illinois

2009 and 2010

SB0100

Introduced 1/30/2009, by Sen. Iris Y. Martinez

SYNOPSIS AS INTRODUCED:

750 ILCS 28/35

Amends the Income Withholding for Support Act. Provides that a finding of a payor's nonperformance within the time required under the Act must be documented by a certified mail return receipt or a sheriff's or private process server's proof of service (instead of by a certified mail return receipt) showing the date the income withholding notice was served on the payor.

LRB096 03110 AJO 13126 b

A BILL FOR

1 AN ACT concerning civil law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Income Withholding for Support Act is
5 amended by changing Section 35 as follows:

6 (750 ILCS 28/35)

7 Sec. 35. Duties of payor.

8 (a) It shall be the duty of any payor who has been served
9 with an income withholding notice to deduct and pay over income
10 as provided in this Section. The payor shall deduct the amount
11 designated in the income withholding notice, as supplemented by
12 any notice provided pursuant to subsection (f) of Section 45,
13 beginning no later than the next payment of income which is
14 payable or creditable to the obligor that occurs 14 days
15 following the date the income withholding notice was mailed,
16 sent by facsimile or other electronic means, or placed for
17 personal delivery to or service on the payor. The payor may
18 combine all amounts withheld for the benefit of an obligee or
19 public office into a single payment and transmit the payment
20 with a listing of obligors from whom withholding has been
21 effected. The payor shall pay the amount withheld to the State
22 Disbursement Unit within 7 business days after the date the
23 amount would (but for the duty to withhold income) have been

1 paid or credited to the obligor. If the payor knowingly fails
2 to withhold the amount designated in the income withholding
3 notice or to pay any amount withheld to the State Disbursement
4 Unit within 7 business days after the date the amount would
5 have been paid or credited to the obligor, then the payor shall
6 pay a penalty of \$100 for each day that the amount designated
7 in the income withholding notice (whether or not withheld by
8 the payor) is not paid to the State Disbursement Unit after the
9 period of 7 business days has expired. The failure of a payor,
10 on more than one occasion, to pay amounts withheld to the State
11 Disbursement Unit within 7 business days after the date the
12 amount would have been paid or credited to the obligor creates
13 a presumption that the payor knowingly failed to pay over the
14 amounts. This penalty may be collected in a civil action which
15 may be brought against the payor in favor of the obligee or
16 public office. A finding of a payor's nonperformance within the
17 time required under this Act must be documented by a certified
18 mail return receipt or a sheriff's or private process server's
19 proof of service showing the date the income withholding notice
20 was served on the payor. For purposes of this Act, a withheld
21 amount shall be considered paid by a payor on the date it is
22 mailed by the payor, or on the date an electronic funds
23 transfer of the amount has been initiated by the payor, or on
24 the date delivery of the amount has been initiated by the
25 payor. For each deduction, the payor shall provide the State
26 Disbursement Unit, at the time of transmittal, with the date

1 the amount would (but for the duty to withhold income) have
2 been paid or credited to the obligor.

3 After June 30, 2000, every payor that has 250 or more
4 employees shall use electronic funds transfer to pay all
5 amounts withheld under this Section. During the year 2001 and
6 during each year thereafter, every payor that has fewer than
7 250 employees and that withheld income under this Section
8 pursuant to 10 or more income withholding notices during
9 December of the preceding year shall use electronic funds
10 transfer to pay all amounts withheld under this Section.

11 Upon receipt of an income withholding notice requiring that
12 a minor child be named as a beneficiary of a health insurance
13 plan available through an employer or labor union or trade
14 union, the employer or labor union or trade union shall
15 immediately enroll the minor child as a beneficiary in the
16 health insurance plan designated by the income withholding
17 notice. The employer shall withhold any required premiums and
18 pay over any amounts so withheld and any additional amounts the
19 employer pays to the insurance carrier in a timely manner. The
20 employer or labor union or trade union shall mail to the
21 obligee, within 15 days of enrollment or upon request, notice
22 of the date of coverage, information on the dependent coverage
23 plan, and all forms necessary to obtain reimbursement for
24 covered health expenses, such as would be made available to a
25 new employee. When an order for dependent coverage is in effect
26 and the insurance coverage is terminated or changed for any

1 reason, the employer or labor union or trade union shall notify
2 the obligee within 10 days of the termination or change date
3 along with notice of conversion privileges.

4 For withholding of income, the payor shall be entitled to
5 receive a fee not to exceed \$5 per month to be taken from the
6 income to be paid to the obligor.

7 (b) Whenever the obligor is no longer receiving income from
8 the payor, the payor shall return a copy of the income
9 withholding notice to the obligee or public office and shall
10 provide information for the purpose of enforcing this Act.

11 (c) Withholding of income under this Act shall be made
12 without regard to any prior or subsequent garnishments,
13 attachments, wage assignments, or any other claims of
14 creditors. Withholding of income under this Act shall not be in
15 excess of the maximum amounts permitted under the federal
16 Consumer Credit Protection Act. Income available for
17 withholding shall be applied first to the current support
18 obligation, then to any premium required for employer, labor
19 union, or trade union-related health insurance coverage
20 ordered under the order for support, and then to payments
21 required on past-due support obligations. If there is
22 insufficient available income remaining to pay the full amount
23 of the required health insurance premium after withholding of
24 income for the current support obligation, then the remaining
25 available income shall be applied to payments required on
26 past-due support obligations. If the payor has been served with

1 more than one income withholding notice pertaining to the same
2 obligor, the payor shall allocate income available for
3 withholding on a proportionate share basis, giving priority to
4 current support payments. A payor who complies with an income
5 withholding notice that is regular on its face shall not be
6 subject to civil liability with respect to any individual, any
7 agency, or any creditor of the obligor for conduct in
8 compliance with the notice.

9 (d) No payor shall discharge, discipline, refuse to hire or
10 otherwise penalize any obligor because of the duty to withhold
11 income.

12 (Source: P.A. 92-590, eff. 7-1-02; 93-294, eff. 1-1-04.)