



## 97TH GENERAL ASSEMBLY

### State of Illinois

2011 and 2012

HB5221

Introduced 2/8/2012, by Rep. Robert W. Pritchard

#### SYNOPSIS AS INTRODUCED:

750 ILCS 28/20  
750 ILCS 28/35  
750 ILCS 28/45

Amends the Income Withholding for Support Act. Provides that an income withholding notice must state a payor's duties and possible penalties in bold face type. Provides that a payor is subject to a \$100 per day penalty if he or she willfully (instead of knowingly) fails to withhold the amount designated in an income withholding notice or to pay any amount withheld to the State Disbursement Unit within 7 business days. Provides that an action to collect a penalty from a payor may not be brought more than one year after the date of the payor's alleged failure to withhold or pay income. Provides that if an obligee who is receiving income withholding payments does not receive a payment required under the income withholding notice, the obligee must give written notice of the non-receipt to the payor. Provides that the notice must include the date on which the obligee believes the payment was to have been made and the amount of the payment and must be sent by certified mail, return receipt requested. Provides that after receiving a written notice of non-receipt of payment, a payor must, within 14 days thereafter, either (i) notify the obligee of the reason for the non-receipt of payment or (ii) make the required payment, together with interest at the rate of 9% calculated from the date on which the payment of income should have been made. Provides that a payor who fails to comply with this provision is subject to the \$100 per day penalty provided under the Act. Effective immediately.

LRB097 18123 DRJ 65561 b

FISCAL NOTE ACT  
MAY APPLY

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 Sections 20, 35, and 45 as follows:

6 (750 ILCS 28/20)

7 Sec. 20. Entry of order for support containing income  
8 withholding provisions; income withholding notice.

9 (a) In addition to any content required under other laws,  
10 every order for support entered on or after July 1, 1997,  
11 shall:

12 (1) Require an income withholding notice to be prepared  
13 and served immediately upon any payor of the obligor by the  
14 obligee or public office, unless a written agreement is  
15 reached between and signed by both parties providing for an  
16 alternative arrangement, approved and entered into the  
17 record by the court, which ensures payment of support. In  
18 that case, the order for support shall provide that an  
19 income withholding notice is to be prepared and served only  
20 if the obligor becomes delinquent in paying the order for  
21 support; and

22 (2) Contain a dollar amount to be paid until payment in  
23 full of any delinquency that accrues after entry of the

1 order for support. The amount for payment of delinquency  
2 shall not be less than 20% of the total of the current  
3 support amount and the amount to be paid periodically for  
4 payment of any arrearage stated in the order for support;  
5 and

6 (3) Include the obligor's Social Security Number,  
7 which the obligor shall disclose to the court. If the  
8 obligor is not a United States citizen, the obligor shall  
9 disclose to the court, and the court shall include in the  
10 order for support, the obligor's alien registration  
11 number, passport number, and home country's social  
12 security or national health number, if applicable.

13 (b) At the time the order for support is entered, the Clerk  
14 of the Circuit Court shall provide a copy of the order to the  
15 obligor and shall make copies available to the obligee and  
16 public office.

17 (c) The income withholding notice shall:

18 (1) be in the standard format prescribed by the federal  
19 Department of Health and Human Services; and

20 (1.1) state the date of entry of the order for support  
21 upon which the income withholding notice is based; and

22 (2) direct any payor to withhold the dollar amount  
23 required for current support under the order for support;  
24 and

25 (3) direct any payor to withhold the dollar amount  
26 required to be paid periodically under the order for

1 support for payment of the amount of any arrearage stated  
2 in the order for support; and

3 (4) direct any payor or labor union or trade union to  
4 enroll a child as a beneficiary of a health insurance plan  
5 and withhold or cause to be withheld, if applicable, any  
6 required premiums; and

7 (5) state the amount of the payor income withholding  
8 fee specified under this Section; and

9 (6) state that the amount actually withheld from the  
10 obligor's income for support and other purposes, including  
11 the payor withholding fee specified under this Section, may  
12 not be in excess of the maximum amount permitted under the  
13 federal Consumer Credit Protection Act; and

14 (7) in bold face type, the size of which equals the  
15 largest type on the notice, state the duties of the payor  
16 and the fines and penalties for failure to withhold and pay  
17 over income and for discharging, disciplining, refusing to  
18 hire, or otherwise penalizing the obligor because of the  
19 duty to withhold and pay over income under this Section;  
20 and

21 (8) state the rights, remedies, and duties of the  
22 obligor under this Section; and

23 (9) include the Social Security number of the obligor;  
24 and

25 (10) include the date that withholding for current  
26 support terminates, which shall be the date of termination

1 of the current support obligation set forth in the order  
2 for support; and

3 (11) contain the signature of the obligee or the  
4 printed name and telephone number of the authorized  
5 representative of the public office, except that the  
6 failure to contain the signature of the obligee or the  
7 printed name and telephone number of the authorized  
8 representative of the public office shall not affect the  
9 validity of the income withholding notice; and

10 (12) direct any payor to pay over amounts withheld for  
11 payment of support to the State Disbursement Unit.

12 (d) The accrual of a delinquency as a condition for service  
13 of an income withholding notice, under the exception to  
14 immediate withholding in subsection (a) of this Section, shall  
15 apply only to the initial service of an income withholding  
16 notice on a payor of the obligor.

17 (e) Notwithstanding the exception to immediate withholding  
18 contained in subsection (a) of this Section, if the court finds  
19 at the time of any hearing that an arrearage has accrued, the  
20 court shall order immediate service of an income withholding  
21 notice upon the payor.

22 (f) If the order for support, under the exception to  
23 immediate withholding contained in subsection (a) of this  
24 Section, provides that an income withholding notice is to be  
25 prepared and served only if the obligor becomes delinquent in  
26 paying the order for support, the obligor may execute a written

1 waiver of that condition and request immediate service on the  
2 payor.

3 (g) The obligee or public office may serve the income  
4 withholding notice on the payor or its superintendent, manager,  
5 or other agent by ordinary mail or certified mail return  
6 receipt requested, by facsimile transmission or other  
7 electronic means, by personal delivery, or by any method  
8 provided by law for service of a summons. At the time of  
9 service on the payor and as notice that withholding has  
10 commenced, the obligee or public office shall serve a copy of  
11 the income withholding notice on the obligor by ordinary mail  
12 addressed to his or her last known address. A copy of an income  
13 withholding notice and proof of service shall be filed with the  
14 Clerk of the Circuit Court only when necessary in connection  
15 with a petition to contest, modify, suspend, terminate, or  
16 correct an income withholding notice, an action to enforce  
17 income withholding against a payor, or the resolution of other  
18 disputes involving an income withholding notice. The changes  
19 made to this subsection by this amendatory Act of the 96th  
20 General Assembly apply on and after September 1, 2009.

21 (h) At any time after the initial service of an income  
22 withholding notice, any other payor of the obligor may be  
23 served with the same income withholding notice without further  
24 notice to the obligor. A copy of the income withholding notice  
25 together with a proof of service on the other payor shall be  
26 filed with the Clerk of the Circuit Court.

1 (i) New service of an income withholding notice is not  
2 required in order to resume withholding of income in the case  
3 of an obligor with respect to whom an income withholding notice  
4 was previously served on the payor if withholding of income was  
5 terminated because of an interruption in the obligor's  
6 employment of less than 180 days.

7 (Source: P.A. 96-858, eff. 1-8-10.)

8 (750 ILCS 28/35)

9 Sec. 35. Duties of payor.

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

1 paid or credited to the obligor. If the payor willfully  
2 ~~knowingly~~ fails to withhold the amount designated in the income  
3 withholding notice or to pay any amount withheld to the State  
4 Disbursement Unit within 7 business days after the date the  
5 amount would have been paid or credited to the obligor, then  
6 the payor shall pay a penalty of \$100 for each day that the  
7 amount designated in the income withholding notice (whether or  
8 not withheld by the payor) is not paid to the State  
9 Disbursement Unit after the period of 7 business days has  
10 expired. The total penalty for a payor's failure, on one  
11 occasion, to withhold or pay to the State Disbursement Unit an  
12 amount designated in the income withholding notice may not  
13 exceed \$10,000. The failure of a payor, on more than one  
14 occasion, to pay amounts withheld to the State Disbursement  
15 Unit within 7 business days after the date the amount would  
16 have been paid or credited to the obligor creates a presumption  
17 that the payor knowingly failed to pay over the amounts. This  
18 penalty may be collected in a civil action which may be brought  
19 against the payor in favor of the obligee or public office. An  
20 action to collect the penalty may not be brought more than one  
21 year after the date of the payor's alleged failure to withhold  
22 or pay income. A finding of a payor's nonperformance within the  
23 time required under this Act must be documented by a certified  
24 mail return receipt or a sheriff's or private process server's  
25 proof of service showing the date the income withholding notice  
26 was served on the payor. For purposes of this Act, a withheld



1 amount shall be considered paid by a payor on the date it is  
2 mailed by the payor, or on the date an electronic funds  
3 transfer of the amount has been initiated by the payor, or on  
4 the date delivery of the amount has been initiated by the  
5 payor. For each deduction, the payor shall provide the State  
6 Disbursement Unit, at the time of transmittal, with the date  
7 the amount would (but for the duty to withhold income) have  
8 been paid or credited to the obligor.

9 After June 30, 2000, every payor that has 250 or more  
10 employees shall use electronic funds transfer to pay all  
11 amounts withheld under this Section. During the year 2001 and  
12 during each year thereafter, every payor that has fewer than  
13 250 employees and that withheld income under this Section  
14 pursuant to 10 or more income withholding notices during  
15 December of the preceding year shall use electronic funds  
16 transfer to pay all amounts withheld under this Section.

17 Upon receipt of an income withholding notice requiring that  
18 a minor child be named as a beneficiary of a health insurance  
19 plan available through an employer or labor union or trade  
20 union, the employer or labor union or trade union shall  
21 immediately enroll the minor child as a beneficiary in the  
22 health insurance plan designated by the income withholding  
23 notice. The employer shall withhold any required premiums and  
24 pay over any amounts so withheld and any additional amounts the  
25 employer pays to the insurance carrier in a timely manner. The  
26 employer or labor union or trade union shall mail to the

1 obligee, within 15 days of enrollment or upon request, notice  
2 of the date of coverage, information on the dependent coverage  
3 plan, and all forms necessary to obtain reimbursement for  
4 covered health expenses, such as would be made available to a  
5 new employee. When an order for dependent coverage is in effect  
6 and the insurance coverage is terminated or changed for any  
7 reason, the employer or labor union or trade union shall notify  
8 the obligee within 10 days of the termination or change date  
9 along with notice of conversion privileges.

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

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

17 (c) Withholding of income under this Act shall be made  
18 without regard to any prior or subsequent garnishments,  
19 attachments, wage assignments, or any other claims of  
20 creditors. Withholding of income under this Act shall not be in  
21 excess of the maximum amounts permitted under the federal  
22 Consumer Credit Protection Act. Income available for  
23 withholding shall be applied first to the current support  
24 obligation, then to any premium required for employer, labor  
25 union, or trade union-related health insurance coverage  
26 ordered under the order for support, and then to payments

1 required on past-due support obligations. If there is  
2 insufficient available income remaining to pay the full amount  
3 of the required health insurance premium after withholding of  
4 income for the current support obligation, then the remaining  
5 available income shall be applied to payments required on  
6 past-due support obligations. If the payor has been served with  
7 more than one income withholding notice pertaining to the same  
8 obligor, the payor shall allocate income available for  
9 withholding on a proportionate share basis, giving priority to  
10 current support payments. A payor who complies with an income  
11 withholding notice that is regular on its face shall not be  
12 subject to civil liability with respect to any individual, any  
13 agency, or any creditor of the obligor for conduct in  
14 compliance with the notice.

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

18 (Source: P.A. 96-53, eff. 1-1-10.)

19 (750 ILCS 28/45)

20 Sec. 45. Additional duties.

21 (a) An obligee who is receiving income withholding payments  
22 under this Act shall notify the State Disbursement Unit and the  
23 Clerk of the Circuit Court of any change of address within 7  
24 days of such change.

25 (b) An obligee who is a recipient of public aid shall send

1 a copy of any income withholding notice served by the obligee  
2 to the Division of Child Support Enforcement of the Department  
3 of Healthcare and Family Services.

4 (c) Each obligor shall notify the obligee, the public  
5 office, and the Clerk of the Circuit Court of any change of  
6 address within 7 days.

7 (d) An obligor whose income is being withheld pursuant to  
8 this Act shall notify the obligee, the public office, and the  
9 Clerk of the Circuit Court of any new payor, within 7 days.

10 (e) (Blank.)

11 (f) The obligee or public office shall provide notice to  
12 the payor and Clerk of the Circuit Court of any other support  
13 payment made, including but not limited to, a set-off under  
14 federal and State law or partial payment of the delinquency or  
15 arrearage, or both.

16 (g) The State Disbursement Unit shall maintain complete,  
17 accurate, and clear records of all income withholding payments  
18 and their disbursements. Certified copies of payment records  
19 maintained by the State Disbursement Unit, a public office, or  
20 the Clerk of the Circuit Court shall, without further proof, be  
21 admitted into evidence in any legal proceedings under this Act.

22 (h) The Department of Healthcare and Family Services shall  
23 design suggested legal forms for proceeding under this Act and  
24 shall make available to the courts such forms and informational  
25 materials which describe the procedures and remedies set forth  
26 herein for distribution to all parties in support actions.

1 (i) At the time of transmitting each support payment, the  
2 State Disbursement Unit shall provide the obligee or public  
3 office, as appropriate, with any information furnished by the  
4 payor as to the date the amount would (but for the duty to  
5 withhold income) have been paid or credited to the obligor.

6 (j) If an obligee who is receiving income withholding  
7 payments under this Act does not receive a payment required  
8 under the income withholding notice, he or she must give  
9 written notice of the non-receipt to the payor. The notice must  
10 include the date on which the obligee believes the payment was  
11 to have been made and the amount of the payment. The obligee  
12 must send the notice to the payor by certified mail, return  
13 receipt requested.

14 After receiving a written notice of non-receipt of payment  
15 under this subsection, a payor must, within 14 days thereafter,  
16 either (i) notify the obligee of the reason for the non-receipt  
17 of payment or (ii) make the required payment, together with  
18 interest at the rate of 9% calculated from the date on which  
19 the payment of income should have been made. A payor who fails  
20 to comply with this subsection is subject to the \$100 per day  
21 penalty provided under subsection (a) of Section 35 of this  
22 Act.

23 (Source: P.A. 95-331, eff. 8-21-07.)

24 Section 99. Effective date. This Act takes effect upon  
25 becoming law.