

HB1041



98TH GENERAL ASSEMBLY

State of Illinois

2013 and 2014

HB1041

by Rep. Michael W. Tryon

SYNOPSIS AS INTRODUCED:

750 ILCS 28/35

Amends the Income Withholding for Support Act. Deletes language providing that for withholding of income, the payor is entitled to receive a fee not to exceed \$5 per month to be taken from the obligor's income.

LRB098 03826 HEP 33842 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 total penalty for a
10 payor's failure, on one occasion, to withhold or pay to the
11 State Disbursement Unit an amount designated in the income
12 withholding notice may not exceed \$10,000. The failure of a
13 payor, on more than one occasion, to pay amounts withheld to
14 the State Disbursement Unit within 7 business days after the
15 date the amount would have been paid or credited to the obligor
16 creates a presumption that the payor knowingly failed to pay
17 over the amounts. This penalty may be collected in a civil
18 action which may be brought against the payor in favor of the
19 obligee or public office. An action to collect the penalty may
20 not be brought more than one year after the date of the payor's
21 alleged failure to withhold or pay income. A finding of a
22 payor's nonperformance within the time required under this Act
23 must be documented by a certified mail return receipt or a
24 sheriff's or private process server's proof of service showing
25 the date the income withholding notice was served on the payor.
26 For purposes of this Act, a withheld amount shall be considered

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

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

16 Upon receipt of an income withholding notice requiring that
17 a minor child be named as a beneficiary of a health insurance
18 plan available through an employer or labor union or trade
19 union, the employer or labor union or trade union shall
20 immediately enroll the minor child as a beneficiary in the
21 health insurance plan designated by the income withholding
22 notice. The employer shall withhold any required premiums and
23 pay over any amounts so withheld and any additional amounts the
24 employer pays to the insurance carrier in a timely manner. The
25 employer or labor union or trade union shall mail to the
26 obligee, within 15 days of enrollment or upon request, notice

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

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

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

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

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

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

17 (Source: P.A. 96-53, eff. 1-1-10; 97-994, eff. 8-17-12.)