



## 99TH GENERAL ASSEMBLY

### State of Illinois

2015 and 2016

HB3683

by Rep. Litesa E. Wallace

#### SYNOPSIS AS INTRODUCED:

750 ILCS 28/35  
750 ILCS 28/37 new

Amends the Income Withholding for Support Act. Provides that if a payor knowingly fails to withhold the amount designated in an income withholding notice, then the payor shall pay a penalty of \$200 (instead of \$100) for each day that the amount designated in the income withholding notice is not paid to the State Disbursement Unit after the period of 7 business days has expired. Increases the total penalty to \$20,000 from \$10,000. Creates the Family Support Revolving Fund and provides that the additional penalty amount shall be paid into the Family Support Revolving Fund. Provides that the fund shall be held by the Department of Healthcare and Family Services and shall be used to the extent determined necessary by the Department to pay for aid to families of children who are owed child support. Provides that expenditures from the Fund shall be made in accordance with Department rules and directs the Department to adopt rules to implement the new provisions. Contains other provisions governing the use and investment of moneys in the Fund.

LRB099 09912 HEP 30126 b

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 and by adding Section 37 as  
6 follows:

7 (750 ILCS 28/35)

8 Sec. 35. Duties of payor.

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

1 amount would (but for the duty to withhold income) have been  
2 paid or credited to the obligor. If the payor knowingly fails  
3 to withhold the amount designated in the income withholding  
4 notice or to pay any amount withheld to the State Disbursement  
5 Unit within 7 business days after the date the amount would  
6 have been paid or credited to the obligor, then the payor shall  
7 pay a penalty of \$200 ~~\$100~~ for each day that the amount  
8 designated in the income withholding notice (whether or not  
9 withheld by the payor) is not paid to the State Disbursement  
10 Unit after the period of 7 business days has expired. The total  
11 penalty for a payor's failure, on one occasion, to withhold or  
12 pay to the State Disbursement Unit an amount designated in the  
13 income withholding notice may not exceed \$20,000 ~~\$10,000~~. The  
14 failure of a payor, on more than one occasion, to pay amounts  
15 withheld to the State Disbursement Unit within 7 business days  
16 after the date the amount would have been paid or credited to  
17 the obligor creates a presumption that the payor knowingly  
18 failed to pay over the amounts. This penalty may be collected  
19 in a civil action which may be brought against the payor in  
20 favor of the obligee or public office. An action to collect the  
21 penalty may not be brought more than one year after the date of  
22 the payor's alleged failure to withhold or pay income. A  
23 finding of a payor's nonperformance within the time required  
24 under this Act must be documented by a certified mail return  
25 receipt or a sheriff's or private process server's proof of  
26 service showing the date the income withholding notice was

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

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

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

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

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

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

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

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

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

19 (e) Of the \$200 per day penalty collected under subsection  
20 (a) of this Section, 50% shall be deposited into the Family  
21 Support Revolving Fund created under Section 37 of this Act.

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

23 (750 ILCS 28/37 new)

24 Sec. 37. Family Support Revolving Fund.

25 (a) There is created a revolving fund to be known as the

1 Family Support Revolving Fund, to be held by the Department of  
2 Healthcare and Family Services.

3 (b) The Family Support Revolving Fund shall be used to the  
4 extent determined necessary by the Department to pay for aid to  
5 families of children who are owed child support. Local accounts  
6 for such purposes may be established by the Department.

7 (c) Expenditures from the Family Support Revolving Fund  
8 shall be made in accordance with Department rules. Funding of  
9 the Family Support Revolving Fund shall be from penalties  
10 collected under subsection (a) of Section 35 of this Act.

11 (d) Disbursements from the Family Support Revolving Fund  
12 shall be made as determined by the Department or its designee.  
13 Funds in the Family Support Revolving Fund or the local  
14 accounts created under this Section that are not immediately  
15 required for expenditure may be invested in certificates of  
16 deposit or other interest bearing accounts. Any interest earned  
17 shall be deposited in the Family Support Revolving Fund.

18 (f) The Department of Healthcare and Family Services shall  
19 adopt rules to implement this Section.