



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB3898

by Rep. Robert F. Martwick

SYNOPSIS AS INTRODUCED:

750 ILCS 28/15
750 ILCS 28/35

Amends the Income Withholding for Support Act. Defines "non-employee" as an independent contractor, a vendor, or a person receiving payments who is not an employee and not receiving payments for personal services. Provides that "obligor" includes a non-employee. Provides that the payor shall calculate all applicable deductions to a non-employee obligor's income as if the non-employee were an employee, whether or not the deductions are actually taken from the non-employee obligor's income. Provides that the amount withheld on the remaining balance of payments, paid or payable, to the non-employee shall not be in excess of the maximum amounts permitted under the federal Consumer Credit Protection Act.

LRB099 09535 HEP 29743 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 Sections 15 and 35 as follows:

6 (750 ILCS 28/15)

7 Sec. 15. Definitions.

8 (a) "Order for support" means any order of the court which
9 provides for periodic payment of funds for the support of a
10 child or maintenance of a spouse, whether temporary or final,
11 and includes any such order which provides for:

12 (1) modification or resumption of, or payment of
13 arrearage, including interest, accrued under, a previously
14 existing order;

15 (2) reimbursement of support;

16 (3) payment or reimbursement of the expenses of
17 pregnancy and delivery (for orders for support entered
18 under the Illinois Parentage Act of 1984 or its predecessor
19 the Paternity Act); or

20 (4) enrollment in a health insurance plan that is
21 available to the obligor through an employer or labor union
22 or trade union.

23 (b) "Arrearage" means the total amount of unpaid support

1 obligations, including interest, as determined by the court and
2 incorporated into an order for support.

3 (b-5) "Business day" means a day on which State offices are
4 open for regular business.

5 (c) "Delinquency" means any payment, including a payment of
6 interest, under an order for support which becomes due and
7 remains unpaid after entry of the order for support.

8 (d) "Income" means any form of periodic payment to an
9 individual, regardless of source, including, but not limited
10 to: wages, salary, commission, compensation as an independent
11 contractor, workers' compensation, disability, annuity,
12 pension, and retirement benefits, lottery prize awards,
13 insurance proceeds, vacation pay, bonuses, profit-sharing
14 payments, severance pay, interest, and any other payments, made
15 by any person, private entity, federal or state government, any
16 unit of local government, school district or any entity created
17 by Public Act; however, "income" excludes:

18 (1) any amounts required by law to be withheld, other
19 than creditor claims, including, but not limited to,
20 federal, State and local taxes, Social Security and other
21 retirement and disability contributions;

22 (2) union dues;

23 (3) any amounts exempted by the federal Consumer Credit
24 Protection Act;

25 (4) public assistance payments; and

26 (5) unemployment insurance benefits except as provided

1 by law.

2 Any other State or local laws which limit or exempt income
3 or the amount or percentage of income that can be withheld
4 shall not apply.

5 (d-5) "Non-employee" means an independent contractor, a
6 vendor, or a person receiving payments who is not an employee
7 and not receiving payments for personal services.

8 (e) "Obligor" means the individual who owes a duty to make
9 payments under an order for support and includes a
10 non-employee.

11 (f) "Obligee" means the individual to whom a duty of
12 support is owed or the individual's legal representative.

13 (g) "Payor" means any payor of income to an obligor.

14 (h) "Public office" means any elected official or any State
15 or local agency which is or may become responsible by law for
16 enforcement of, or which is or may become authorized to
17 enforce, an order for support, including, but not limited to:
18 the Attorney General, the Illinois Department of Healthcare and
19 Family Services, the Illinois Department of Human Services, the
20 Illinois Department of Children and Family Services, and the
21 various State's Attorneys, Clerks of the Circuit Court and
22 supervisors of general assistance.

23 (i) "Premium" means the dollar amount for which the obligor
24 is liable to his employer or labor union or trade union and
25 which must be paid to enroll or maintain a child in a health
26 insurance plan that is available to the obligor through an

1 employer or labor union or trade union.

2 (j) "State Disbursement Unit" means the unit established to
3 collect and disburse support payments in accordance with the
4 provisions of Section 10-26 of the Illinois Public Aid Code.

5 (k) "Title IV-D Agency" means the agency of this State
6 charged by law with the duty to administer the child support
7 enforcement program established under Title IV, Part D of the
8 Social Security Act and Article X of the Illinois Public Aid
9 Code.

10 (l) "Title IV-D case" means a case in which an obligee or
11 obligor is receiving child support enforcement services under
12 Title IV, Part D of the Social Security Act and Article X of
13 the Illinois Public Aid Code.

14 (m) "National Medical Support Notice" means the notice
15 required for enforcement of orders for support providing for
16 health insurance coverage of a child under Title IV, Part D of
17 the Social Security Act, the Employee Retirement Income
18 Security Act of 1974, and federal regulations promulgated under
19 those Acts.

20 (n) "Employer" means a payor or labor union or trade union
21 with an employee group health insurance plan and, for purposes
22 of the National Medical Support Notice, also includes but is
23 not limited to:

24 (1) any State or local governmental agency with a group
25 health plan; and

26 (2) any payor with a group health plan or "church plan"

1 covered under the Employee Retirement Income Security Act
2 of 1974.

3 (Source: P.A. 94-90, eff. 1-1-06; 95-331, eff. 8-21-07; 95-685,
4 eff. 10-23-07.)

5 (750 ILCS 28/35)

6 Sec. 35. Duties of payor.

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

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

1 has been initiated by the payor. For each deduction, the payor
2 shall provide the State Disbursement Unit, at the time of
3 transmittal, with the date the amount would (but for the duty
4 to withhold income) have been paid or credited to the obligor.

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

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

1 new employee. When an order for dependent coverage is in effect
2 and the insurance coverage is terminated or changed for any
3 reason, the employer or labor union or trade union shall notify
4 the obligee within 10 days of the termination or change date
5 along with notice of conversion privileges.

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

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

13 (c) Withholding of income under this Act shall be made
14 without regard to any prior or subsequent garnishments,
15 attachments, wage assignments, or any other claims of
16 creditors. Withholding of income under this Act shall not be in
17 excess of the maximum amounts permitted under the federal
18 Consumer Credit Protection Act. The payor shall calculate all
19 applicable deductions to a non-employee obligor's income as if
20 the non-employee were an employee, whether or not the
21 deductions are actually taken from the non-employee obligor's
22 income. The amount withheld on the remaining balance of
23 payments, paid or payable, to the non-employee shall not be in
24 excess of the maximum amounts permitted under the federal
25 Consumer Credit Protection Act. Income available for
26 withholding shall be applied first to the current support

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

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

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