

AN ACT concerning civil law.

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

Section 5. The Income Withholding for Support Act is amended by changing Sections 20, 35, and 45 as follows:

(750 ILCS 28/20)

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

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

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

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

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

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

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

(c) The income withholding notice shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(750 ILCS 28/35)

Sec. 35. Duties of payor.

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

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

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

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

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

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

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

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

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

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

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

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

(750 ILCS 28/45)

Sec. 45. Additional duties.

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

(b) An obligee who is a recipient of public aid shall send a copy of any income withholding notice served by the obligee

to the Division of Child Support Enforcement of the Department of Healthcare and Family Services.

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

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

(e) (Blank.)

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

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

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

(i) At the time of transmitting each support payment, the

State Disbursement Unit shall provide the obligee or public office, as appropriate, with any information furnished by the payor as to the date the amount would (but for the duty to withhold income) have been paid or credited to the obligor.

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

After receiving a written notice of non-receipt of payment under this subsection, 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. A payor who fails to comply with this subsection is subject to the \$100 per day penalty provided under subsection (a) of Section 35 of this Act.

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

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