

Act 948 of the 1989 Regular Session.

Act 948

HB1257

By: Representative Mahony

"AN ACT TO AMEND TITLE 9, CHAPTERS 10, 12 AND 14 OF THE ARKANSAS CODE OF 1987, TO IMPLEMENT FEDERAL REQUIREMENTS CONCERNING IMMEDIATE INCOME WITHHOLDING AND USE OF SUPPORT GUIDELINES FOR CHILD SUPPORT ENFORCEMENT BEGINNING OCTOBER 1, 1989 FOR IV-D CASES; AND FOR OTHER PURPOSES."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code 9-10-112 is hereby amended to read as follows:

"9-10-112. Income withholding - Delinquent noncustodial parent. (a) (1) Except as provided in subsection (b), all persons under court order on August 1, 1985 to pay support who become delinquent thereunder in an amount equal to the total court-ordered support payable for thirty (30) days shall be subject to income withholding.

(2) In all orders which provide for the payment of money for the support of any child, the court shall include a provision directing a payor to deduct from money, income, or periodic earnings due the noncustodial parent an amount which is sufficient to meet the periodic child support payments imposed by the court, plus an additional amount equal to ten percent (10%) of the periodic child support payment to be applied toward liquidation of any accrued arrearage due under the order.

(b) (1) Beginning October 1, 1989, all cases brought pursuant to Title IV-D support orders shall include a provision for immediate implementation of income withholding absent a finding of good cause not to require immediate income withholding or a written agreement of the parties incorporated in the order setting forth an alternative agreement. Otherwise, it shall become effective under (a) above following the procedure set forth in subsection (c) of this section or as provided in (d) below.

(2) Beginning January 1, 1994, all support orders shall include a provision for immediate implementation of income withholding absent a finding of good cause not to require immediate income withholding or a written agreement of the parties incorporated in the order setting forth an alternative agreement.

(3) In all non-IV-D cases brought prior to January 1, 1994, the support order may include a provision for immediate implementation of income withholding absent a finding of good cause not to require immediate withholding or a written agreement of the parties incorporated in the order setting forth an alternative agreement. The judge of each division shall determine prior to October 1, 1989, if all support orders shall be subject to the provisions of this section and shall enter a standing order setting forth the treatment of non-IV-D cases in that division prior to January 1, 1994.

(c) In activating an order of income withholding which did not become effective immediately, the court shall follow the same procedures and requirements as set forth in the laws of this state applicable to child support orders and judgments entered by the chancery court.

(d) In cases brought pursuant to Title IV-D with support orders effective prior to October 1, 1989, income withholding may take effect immediately in any child support case at the request or upon the consent of the noncustodial parent."

SECTION 2. Arkansas Code 9-12-312 (a) is hereby amended to read as follows:

"9-12-312(a) (1) When a decree is entered, the court shall make such orders concerning the alimony of the wife or the husband and care of the children, if there are any, as are reasonable from the circumstances of the parties and the nature of the case.

(2) In determining a reasonable amount of support initially or upon review to be paid by the noncustodial parent, the court shall refer to the most recent revision of the family support chart. It shall be a rebuttable presumption for the award of child support, that the amount contained in the family support chart is the correct amount of child support to be awarded. Only upon a written finding or specific finding on the record that the application of the support chart would be unjust or inappropriate as determined under established criteria set forth in the support chart, shall the presumption be rebutted.

(3) The family support chart shall be revised at least once every four (4) years by a committee to be appointed by the Chief Justice of the Arkansas Supreme Court to ensure that the support amounts are appropriate for child support awards. The committee shall also establish the criteria for deviation from use of the chart amount.

(4) The Arkansas Supreme Court shall approve the family support chart and criteria upon revision by the committee for use in this state and shall publish same through per curiam order of the court."

SECTION 3. Arkansas Code 9-14-209(b) is hereby amended to read as follows:

"(b) Upon written request by a consumer reporting agency, the Child Support Enforcement Unit may make information available to the agency regarding an amount of overdue support owed by a noncustodial parent."

SECTION 4. Arkansas Code 9-14-216(b) is hereby amended to read as follows:

"(b) The other state shall forward to the unit three (3) certified copies of the support order issued by its court or administrative forum and a notice which contains the noncustodial parent's name, social security number, and current address, the name and address of the payor to the noncustodial parent, the amount to be withheld, and the name and address where payments are to be mailed by the unit."

SECTION 5. Arkansas Code 9-14-218 is hereby amended to read as follows:

"9-14-218. Income withholding - Time of taking effect generally - Forms.

(a) (1) In all decrees or orders which provide for the payment of money for the support and care of any children, the court shall include a provision directing a payor to deduct from money, income, or periodic earnings due the noncustodial parent an amount which is sufficient to meet the periodic child support payments imposed by the court plus an additional amount equal to ten percent (10%) of the periodic child support payment to be applied toward liquidation of any accrued arrearage due under the order.

(2) Beginning October 1, 1989, in all cases brought pursuant to Title IV-D the order of income withholding shall take effect immediately absent a finding of good cause not to require immediate income withholding or a written agreement of the parties incorporated in the order setting forth an alternative arrangement. Otherwise, it shall become effective as set forth in (e) below or when the requirements set forth in 9-14-221 have been satisfied.

(3) Beginning January 1, 1994, all support orders shall include a provision for immediate implementation of income withholding absent a finding

of good cause not to require immediate income withholding or a written agreement of the parties incorporated in the order setting forth an alternative agreement.

(4) In all non-IV-D cases brought prior to January 1, 1994, the support order may include a provision for immediate implementation of income withholding absent a finding of good cause not to require immediate withholding or a written agreement of the parties incorporated in the order setting forth an alternative agreement. The judge of each division shall determine prior to October 1, 1989, if all support orders shall be subject to the provisions of this section and shall enter a standing order setting forth the treatment of non-IV-D cases in that division prior to January 1, 1994.

(b) Income withholding shall apply to current and subsequent periods of employment, if used in employment, or remuneration, once activated.

(c)(1) Any forms necessary to provide notice, affidavits, or any other matter which is required by this subchapter to enforce the payment of child support shall be devised by the State Commission on Child Support with advice from the Arkansas Judicial Department.

(2) Upon the approval of the forms by the Chief Justice of the Arkansas Supreme Court, they shall be used on a statewide basis.

(3) Any necessary changes in the forms shall be the responsibility of the Arkansas Supreme Court.

(d) All judgments for past due support shall include in the same paragraph denoting the judgment amount, a statement that the amount is subject to reduction through income withholding to put third parties on notice that the amount currently owed may differ from that reflected in the judgment.

(e) In cases brought pursuant to Title IV-D with support orders effective prior to October 1, 1989, income withholding may take effect immediately in any child support case at the request or upon the consent of the noncustodial parent."

SECTION 6. Arkansas Code 9-14-228 is hereby amended to read as follows:

"9-14-228. (a)(1) A payor shall withhold the amount indicated in the notice from money, income, or periodic earnings due the noncustodial parent and remit the amount in the manner set forth in the notice.

(2) Payments are to be made at the same time the noncustodial parent is paid. The payor shall identify the date of income withholding on each payment.

(3) The amount withheld when added to the administrative fee charged by the payor shall not exceed the maximum limit under Section 303(b) of the Consumer Credit Protection Act if the payor is an employer of the noncustodial parent.

(b) A payor may combine and remit one (1) single withholding payment from several noncustodial parents so long as the payee for all payments is identical and the payment is accompanied by sufficient information to identify that portion of the payment which is attributable to each of the noncustodial parents and the date of income withholding for each payment.

(c) If the payor is already under an income withholding order under this subchapter, then the payor must comply on a first-come-first-serve basis and honor both withholding orders to the extent that the total amount withheld does not exceed the maximum limits under Section 303(b) of the Consumer Credit Protection Act if the payor is an employer of the noncustodial parent.

(d) The payor shall implement withholding no later than the first pay period that occurs after fourteen (14) days following the date the notice was mailed."

SECTION 7. Arkansas Code 9-14-206 is hereby amended to read as follows:

"9-14-206. Child Support Enforcement Unit

(a) There is established an organizational unit to be called the Child Support Enforcement Unit which shall administer the state plan for child support enforcement required under Title IV-D of the Social Security Act.

(b) The Child Support Enforcement Unit is designated to administer income-withholding orders in actions brought pursuant to Title IV-D of the Social Security Act.

(c) The Child Support Enforcement Unit shall develop by September 1, 1989, a plan indicating how and when child support orders being enforced under Title IV-D are to be periodically reviewed and adjusted pursuant to guidelines established by the committee appointed by the Chief Justice of the Arkansas Supreme Court. Such plan shall include a provision for review upon request of either parent or when initiated by the Child Support Enforcement Unit. The plan shall also provide that the unit shall develop a program within four (4) years after September 1, 1989, to ensure that an order shall be reviewed not later than thirty-six (36) months after entry and adjusted in accordance with the guidelines established. The program shall be developed pursuant to state and federal regulations and shall set forth circumstances when such a review would not be in the best interests of the child. The review process shall contain notification requirements which shall comply with due process. If the review process results in a determination that the child support amount should be increased, a petition shall be filed requesting the court to modify the order."

SECTION 8. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 9. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 10. EMERGENCY. It is hereby found and determined by the General Assembly that it is in the best interest of the people of the State of Arkansas that child support be collected in the most expedient manner for all children of this state; that new federal requirements of the Title IV-D program operated by the Department of Human Services should be extended to all litigants of this state enforcing collection of child support; and that the smooth transition from current requirements to those of this act require some provisions to become effective immediately upon passage and other effective at a later date. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval with sections 1, 2 and 5 of this act to become effective October 1, 1989.

APPROVED: March 27, 1989

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