SPONSOR: Rep. Dukes & Sen. Lopez;
Reps. D. Short, Hudson, Wilson

HOUSE OF REPRESENTATIVES
148th GENERAL ASSEMBLY

HOUSE BILL NO. 131

AN ACT TO AMEND TITLE 13 OF THE DELAWARE CODE RELATING TO ORDERS OF SUPPORT.

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

Section 1. Amend Chapter 513(b)(1), Title 13 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(b)(1) Where a duty to support or to provide medical support has been determined to exist and a new or modified support order is established, and regardless of whether support or medical support payments are in arrears, the court shall attach the obligor's income, if any, as of the effective date of the order, for payment of support or premiums for health insurance coverage except that such income shall not be subject to such withholding under this paragraph in any case where:

a. One of the parties demonstrates, and the court (or administrative process) finds that there is good cause not to require immediate income withholding. Any finding that there is good cause not to require immediate income withholding must be based on at least:

1. A written determination that, and explanation by the court or administrative authority of why, implementing immediate income withholding would not be in the best interests of the child; and

2. Proof of timely payment of previously ordered support in cases involving modification of support orders; or

b. A written agreement is reached between both parties which provides for an alternative arrangement. As used herein, "written agreement" means a written alternative arrangement signed by both parents, or by the obligor and a representative of the Division of Child Support Enforcement in cases brought under Part D of Title IV of the federal Social Security Act [42 U.S.C. § 651 et seq.] in which there is an assignment of support rights to the State, and reviewed and entered in the record by the court or administrative authority.

~~c. In any case where an order of support is not subject to immediate income withholding under paragraph (b)(1) of this section, the obligor's income shall be attached automatically upon the filing of a verified notice by the obligee of a default in payment for 7 working days, or the earliest of:~~

~~1. The date as of which the obligor requests that such withholding begin;~~

~~2. The date as of which the obligee requests that such withholding begin, and the State determines such request is appropriate; or~~

~~3. Such earlier date as the State may select.~~

Section 2. Amend Chapter 513(b)(2), Title 13 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

(2)a. Where no withholding order is in effect for orders of support or medical support entered under this chapter, Chapter 6 of this title, or where the order is one of unallocated alimony and child support under Chapter 15 of this title including orders issued prior to March 5, 1986, or where the ordered payment on arrears is less than 20 percent of current support, the obligor's income shall be attached automatically upon the filing of a ~~verified~~ written notice sent by the obligee or the Division of Child Support Enforcement of a default in payment for ~~7 working days~~ one calendar month, or earlier at the request of the obligor.

b. If the existing support order does not include payment on arrears or if the ordered payment on arrears is less than 20 percent of current support, then the income attachment shall be issued in the amount of current support plus an amount payable toward arrears of up to ~~10~~ 20 percent of the current support order or ~~$5.00~~ $20 per month, whichever is greater. If the existing medical support order does not include an attachment for payment of health insurance coverage, payment for the obligor's share (if any) for premiums of health insurance coverage shall be added to the attachment. ~~The verified notice shall specify the amount requested to reduce the arrears.~~ The remedy specified for recovery of arrearages shall be in addition to and not in substitution for remedies available elsewhere in this title.

Section 3. Amend Chapter 513(b)(4), Title 13 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

~~(4)a.~~ (4) In all cases brought under Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.), a copy of the Court's income withholding order shall be issued to the Division of Child Support Enforcement and shall be served by the Division by first class mail upon the obligor's employer, and any successive employer, and such service shall be as effectual for all purposes as if served by the court.

~~b. In all cases brought under Title IV-D of the Social Security Act, the Division shall be authorized to file the verified notice on behalf of said obligee.~~

SYNOPSIS

Section 1 of this bill deletes §513(b)(1)c. in its entirety. This provision is no longer necessary as Federal law mandates withholding any time there is an order for support.

Section 2 of this bill will strengthen and update the civil enforcement section of the Code relating to child support

and medical support. In most situations there is a court ordered withholding order. For those situations when there is not an order, this section allows a person who is owed child support "obligee" to obtain a withholding order upon sending notice that the child support payments are late. This Bill will add a circumstance when this option is available by including those situations when there is an existing order for payment of arrears that is less than 20 percent of the ongoing obligation. In addition, this Bill adds the Division of Child Support Enforcement as a recognized party. This bill will change the minimum default requirement from 7 days to one month before notice may be sent. The minimum dollar amount that is attached under these orders is being increased from 10 percent of the current obligation to 20 percent, or $20.00 per month (vs. $5.00).

Section 3 of this bill deletes §513(b)(4)b. as this section is no longer necessary in light of the other changes implemented in this bill..