

ASSEMBLY, No. 2646

STATE OF NEW JERSEY

INTRODUCED JANUARY 9, 1997

By Assemblyman ROONEY and Assemblywoman
VANDERVALK

1 AN ACT concerning income withholding and amending P.L.1981,
2 c.417.

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4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 1. Section 2 of P.L.1981, c.417 (C.2A:17-56.8) is amended to read
8 as follows:

9 2. Every complaint, notice or pleading for the entry or
10 modification of an order of a court which includes child support shall
11 include a written notice to the obligor stating that the child support
12 provision of the order shall, and the medical support provision may, as
13 appropriate, be enforced by an income withholding upon the current
14 or future income due from the obligor's employer or successor
15 employers and upon the unemployment compensation benefits due the
16 obligor and against debts, income, trust funds, profits or income from
17 any other source due the obligor except as provided in section 3 of
18 P.L.1981, c.417 (C.2A:17-56.9). The written notice shall also state
19 that the driver's license and professional or occupational licenses held
20 or applied for by the obligor may be denied, suspended or revoked if:
21 the child support arrearage is equal to or exceeds the amount of child
22 support payable for six months; the obligor fails to provide health
23 insurance for the children as ordered by the court for six months; or a
24 warrant for the obligor's arrest has been issued by the court due to
25 failure to pay child support as ordered, failure to appear at a hearing
26 to establish paternity or child support, or failure to appear at a hearing
27 to enforce a child support order and said warrant remains outstanding.
28 The written notice shall also state that the amount of a IV-D child
29 support order and the provisions for medical support coverage shall be
30 reviewed and updated, as necessary, at least every three years.

31 The court shall ensure that in the case of each obligor against whom
32 a support order is or has been issued or modified, the obligor's income
33 shall be withheld to comply with the order. An amount shall be

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 withheld to pay the support obligation and it shall include an amount
2 to be applied toward liquidation of arrearages reduced to judgments,
3 payments for paternity testing procedures and provisions for medical
4 support coverage when applicable. These provisions shall also be
5 applicable to all orders issued on or before the effective date of [this
6 act] P.L.1981, c.417 (C.2A:17-56.7 et seq.).

7 Beginning on the effective date of P.L.,c. (pending before the
8 Legislature as this bill), a child support obligation contained in any
9 order or judgment issued by the court shall be paid by income
10 withholding unless the order or judgment specifically provides for an
11 alternative payment arrangement.

12 (cf: P.L.1996, c.7, s.1)

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14 2. Section 3 of P.L.1981, c.417 (C.2A:17-56.9) is amended to read
15 as follows:

16 3. [The income withholding shall be initiated by the probation
17 department of the county in which the obligor resides immediately]
18 For child support obligations that are payable through the Probation
19 Division of the Superior Court, the Probation Division shall mail the
20 notice of immediate income withholding to the payor of the obligor's
21 income within 15 calendar days after the court order has been issued
22 [; except that immediate] if the payor is known or, if the payor is not
23 known, within 15 calendar days of identifying the payor. For child
24 support obligations that are not payable through the Probation
25 Division, the Probation Division shall mail the notice of income
26 withholding within 15 calendar days of the date that the obligee
27 requests such services. Immediate withholding shall not apply in those
28 cases in which the obligor and obligee agree in writing to an
29 alternative arrangement or the obligor or obligee demonstrates and the
30 court finds good cause for establishing an alternative arrangement.

31 If an [immediate withholding is not ordered, due to the above
32 exception] alternative payment arrangement is agreed upon, or [an]
33 the order was entered prior to the effective date of [this act, the]
34 P.L.1990, c.92, an income withholding shall be initiated by the
35 Probation Division when the obligor has failed to make a required
36 child support payment allocated or unallocated that has arrearages
37 accrued equal to the amount of the support payable for 14 days.
38 Subject to the provisions of [this act, the]P.L.1990, c.92, a Probation
39 Division initiated income withholding shall take effect without
40 amendment to the support order or further court or quasi-judicial
41 action and without regard to any alternative arrangements entered into
42 by the parties.

43 The total amount of income to be withheld shall not exceed the
44 maximum amount permitted under section 303 (b) of the federal
45 Consumer Credit Protection Act (15 U.S.C. §1673 (b)). The income
46 withholding shall be carried out in full compliance with all procedural

1 due process requirements. The Administrative Office of the Courts
2 shall establish procedures for promptly terminating the withholding
3 when necessary and for promptly refunding amounts which have been
4 improperly withheld.

5 (cf: P.L.1990,c.92,s.2)

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7 3. Section 4 of P.L.1981, c.417 (C.2A:17-56.10) is amended to
8 read as follows:

9 4. a. [The probation department] If a Probation Division initiated
10 income withholding is required as specified in section 3 of P.L.1981,
11 c.417 (C.2A:17:56.9), the Probation Division of the Superior Court
12 shall notify the obligor of the income withholding by certified or
13 registered mail with return receipt requested to the last known
14 address. The notice shall be postmarked no later than 10 days after
15 the date on which the application was filed, and shall inform the
16 obligor that the withholding shall take effect 10 days after the
17 postmark date of the notice unless the obligor contests the
18 withholding. An obligor may contest a withholding only on the basis
19 of mistake of fact. The notice to the obligor shall include but not be
20 limited to: the amount to be withheld, including an amount to be
21 applied toward liquidation of arrearages; a statement that the
22 withholding applies to current and subsequent sources of income; the
23 methods available for contesting the withholding on the grounds that
24 the withholding is not proper because of mistake of fact; the period
25 within which the [probation department] Probation Division shall be
26 contacted in order to contest the withholding and that failure to do so
27 will result in notifying the payor to begin withholding; and the actions
28 the [probation department] Probation Division will take if the
29 individual contests the withholding.

30 If an obligor contests the proposed withholding, the [probation
31 department] Probation Division shall schedule a hearing within 20 days
32 after receiving notice of contest of the withholding. If it is determined
33 that the withholding is to occur, the [probation department] Probation
34 Division shall provide notice to the obligor. Notice to the obligor shall
35 include the time within which the withholding is to begin. Notice to
36 the obligor shall also include all of the information that is included in
37 the notice to the payor in section 5 of [this act] P.L.1981, c.417
38 (C.2A:17-56.11). The obligor shall be notified by the [probation
39 department] Probation Division within five days of the determination
40 made at the hearing.

41 b. The [probation department] Probation Division shall prepare the
42 income withholding notice when the obligor does not contest the
43 withholding or has exhausted all procedures established by the
44 Administrative Office of the Courts for contesting the withholding.
45 The income withholding shall include requirements that a payor
46 withhold the amount specified in the notice and shall include a

1 statement that the amount actually withheld for support and for other
2 purposes may not be in excess of the amount allowed under section
3 303(b) of the federal Consumer Credit Protection Act (15 U.S.C.
4 §1673(b)). On any order modifying alimony, maintenance or child
5 support based upon changed circumstances, the income withholding
6 amount shall also be changed accordingly. This income withholding
7 shall have priority over any other withholdings without regard to the
8 dates of the other income withholdings.

9 c. An income withholding made under this act shall continue in full
10 force and effect until such time as a court order to the contrary is
11 entered [upon the liquidation of all arrearages].

12 d. Where there is more than one support order for withholding
13 against a single obligor, the payor shall withhold the payments to fully
14 comply with the court orders on a pro rata basis to the extent that the
15 total amount withheld from the obligor's wages does not exceed the
16 limits allowed under section 303(b) of the federal Consumer Credit
17 Protection Act (15 U.S.C. s. 1673(b)). Payors may combine withheld
18 amounts in a single payment [for each appropriate probation
19 department requesting withholding] and separately identify the portion
20 of the payment which is attributable to each individual obligor.
21 (cf: P.L.1985, c.278, s.4)

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23 4. This act shall take effect immediately.

24 25 26 STATEMENT

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28 This bill amends P.L.1981, c.417 (C.2A:17-56.7 et seq.) to require
29 all court orders for child support to include immediate income
30 withholding unless the order or judgment expressly provides for an
31 alternative payment arrangement.

32 Under current law, each court order or judgment must specifically
33 include a provision requiring that child support is payable by income
34 withholding. If an order does not contain such a provision, the
35 Probation Division does not initiate an income withholding unless the
36 obligor fails to pay the support and accumulates an arrearage equal to
37 14 days of support.

38 By amending P.L.1981, c.417, the processing of income
39 withholdings can be improved and the need for an income withholding
40 provision in each child support order would be avoided.

41 Additionally, this bill adds a 15-day processing time standard for
42 the Probation Division which is consistent with the federal time
43 standard.

44 References to "probation department" have been replaced by
45 "Probation Division" to reflect the State takeover of the county
46 probation departments which occurred pursuant to P.L.1993, c.275

1 (C.2B:10-1 et seq.)

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6 Requires all court orders for child support to include immediate
7 income withholding unless alternative payment arrangement is made.