

SECOND REGULAR SESSION

SENATE BILL NO. 1323

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR HUDSON.

5123S.011

KRISTINA MARTIN, Secretary

AN ACT

To repeal section 452.350, RSMo, and to enact in lieu thereof one new section relating to child support orders, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 452.350, RSMo, is repealed and one new
2 section enacted in lieu thereof, to be known as section 452.350,
3 to read as follows:

452.350. 1. Until January 1, 1994, except for orders
2 entered or modified in IV-D cases, each order for child
3 support or maintenance entered or modified by the court
4 pursuant to the authority of this chapter, or otherwise,
5 shall include a provision notifying the person obligated to
6 pay such support or maintenance that, upon application by
7 the obligee or the Missouri family support division of the
8 department of social services, the obligor's wages or other
9 income shall be subject to withholding without further
10 notice if the obligor becomes delinquent in maintenance or
11 child support payments in an amount equal to one month's
12 total support obligation. The order shall also contain
13 provisions notifying the obligor that:

14 (1) The withholding shall be for the current month's
15 maintenance and support; and

16 (2) The withholding shall include an additional amount
17 equal to fifty percent of one month's child support and

18 maintenance to defray delinquent child support and
19 maintenance, which additional withholding shall continue
20 until the delinquency is paid in full.

21 2. For all orders entered or modified in IV-D cases,
22 and effective January 1, 1994, for every order for child
23 support or maintenance entered or modified by the court
24 pursuant to the authority of this chapter, or otherwise,
25 income withholding pursuant to this section shall be
26 initiated on the effective date of the order, except that
27 such withholding shall not commence with the effective date
28 of the order in any case where:

29 (1) One of the parties demonstrates, and the court
30 finds, that there is good cause not to require immediate
31 income withholding. For purposes of this subdivision, any
32 finding that there is good cause not to require immediate
33 withholding must be based on, at least, a written
34 determination and an explanation by the court that
35 implementing immediate wage withholding would not be in the
36 best interests of the child and proof of timely payments of
37 previously ordered support in cases involving the
38 modification of support orders; or

39 (2) A written agreement is reached between the parties
40 that provides for an alternative arrangement.

41 If the income of an obligor is not withheld as of the
42 effective date of the support order, pursuant to subdivision
43 (1) or (2) of this subsection, or otherwise, such obligor's
44 income shall become subject to withholding pursuant to this
45 section without further exception on the date on which the
46 obligor becomes delinquent in maintenance or child support
47 payments in an amount equal to one month's total support
48 obligation **or after ninety days of partial child support**

49 **payments, whichever is earlier.** Such withholding shall be
50 initiated in the manner provided in subsection 4 of this
51 section. All IV-D orders entered or modified by the court
52 shall contain a provision notifying the obligor that he or
53 she shall notify the family support division regarding the
54 availability of medical insurance coverage through an
55 employer or a group plan, provide the name of the insurance
56 provider when coverage is available, and inform the division
57 of any change in access to such insurance coverage. Any
58 income withheld pursuant to this section for a support order
59 initially entered on or after October 1, 1999, shall be paid
60 to the payment center pursuant to section 454.530. Any
61 order of the court entered on or after October 1, 1999,
62 establishing the withholding for a support order as defined
63 in section 454.460, or notice from the clerk issued on or
64 after October 1, 1999, pursuant to this section for a
65 support order shall require payment to the payment center
66 pursuant to section 454.530.

67 3. The provisions of section 432.030 to the contrary
68 notwithstanding, if income withholding has not been
69 initiated on the effective date of the initial or modified
70 order, the obligated party may execute a voluntary income
71 assignment at any time, which assignment shall be filed with
72 the court and shall take effect after service on the
73 employer or other payer.

74 4. The circuit clerk, upon application of the obligee
75 or the family support division, shall send, by certified
76 mail, return receipt requested, a written notice to the
77 employer or other payer listed on the application when the
78 obligated party is subject to withholding pursuant to the
79 child support order or subsection 2 of this section. For
80 orders entered or modified in cases known by the circuit

81 clerk to be IV-D cases in which income withholding is to be
82 initiated on the effective date of the order, and effective
83 January 1, 1994, for all orders entered or modified by the
84 court in which income withholding is to be initiated on the
85 effective date of the order, the circuit clerk shall send
86 such notice to the employer or other payer in the manner
87 provided by this section at the time the order is entered
88 without application of any party when an employer or other
89 payer is identified to the circuit clerk by inclusion in the
90 pleadings pursuant to section 452.312, or otherwise. The
91 notice of income withholding shall be prepared by the person
92 entitled to support pursuant to the order, or the legal
93 representative of that person, on a form prescribed by the
94 court, and shall be presented to the clerk of the court at
95 the time the order of support is entered. The notice shall
96 direct the employer or other payer to withhold each month an
97 amount equal to one month's child support and maintenance
98 until further notice from the court. In the event of a
99 delinquency in child support or maintenance payments in an
100 amount equal to one month's total support obligation, the
101 notice further shall direct the employer or other payer to
102 withhold each month an additional amount equal to fifty
103 percent of one month's child support and maintenance until
104 the support delinquency is paid in full. The notice shall
105 also include a statement of exemptions which may apply to
106 limit the portion of the obligated party's disposable
107 earnings which are subject to the withholding pursuant to
108 federal or state law and notify the obligor that the obligor
109 may request a hearing and related information pursuant to
110 this section. The notice shall contain the Social Security
111 number of the obligor if available. The circuit clerk shall
112 send a copy of this notice by regular mail to the last known

address of the obligated party. A notice issued pursuant to this section shall be binding on the employer or other payer, and successor employers and payers, two weeks after mailing, and shall continue until further order of the court or the family support division. If the notice does not contain the Social Security number of the obligor, the employer or other payer shall not be liable for withholding from the incorrect obligor. The obligated party may, within that two-week period, request a hearing on the issue of whether the withholding should take effect. The withholding shall not be held in abeyance pending the outcome of the hearing. The obligor may not obtain relief from the withholding by paying overdue support, if any. The only basis for contesting the withholding is a mistake of fact. For the purpose of this section, "mistake of fact" shall mean an error in the amount of arrearages, if applicable, or an error as to the identity of the obligor. The court shall hold its hearing, enter its order disposing of all issues disputed by the obligated party, and notify the obligated party and the employer or other payer, within forty-five days of the date on which the withholding notice was sent to the employer.

5. For each payment the employer may charge a fee not to exceed six dollars per month, which shall be deducted from each obligor's moneys, income or periodic earnings, in addition to the amount deducted to meet the support or maintenance obligation subject to the limitations contained in the federal Consumer Credit Protection Act (15 U.S.C. Section 1673).

6. Upon termination of the obligor's employment with an employer upon whom a withholding notice has been served, the employer shall so notify the court in writing. The

145 employer shall also inform the court, in writing, as to the
146 last known address of the obligor and the name and address
147 of the obligor's new employer, if known.

148 7. Amounts withheld by the employer or other payer
149 shall be transmitted, in accordance with the notice, within
150 seven business days of the date that such amounts were
151 payable to the obligated party. For purposes of this
152 section, "business day" means a day that state offices are
153 open for regular business. The employer or other payer
154 shall, along with the amounts transmitted, provide the date
155 each amount was withheld from each obligor. If the employer
156 or other payer is withholding amounts for more than one
157 order, the employer or other payer may combine all such
158 withholdings that are payable to the same circuit clerk or
159 the family support payment center and transmit them as one
160 payment, together with a separate list identifying the cases
161 to which they apply. The cases shall be identified by court
162 case number, name of obligor, the obligor's Social Security
163 number, the IV-D case number, if any, the amount withheld
164 for each obligor, and the withholding date or dates for each
165 obligor, to the extent that such information is known to the
166 employer or other payer. An employer or other payer who
167 fails to honor a withholding notice pursuant to this section
168 may be held in contempt of court and is liable to the
169 obligee for the amount that should have been withheld.
170 Compliance by an employer or other payer with the
171 withholding notice operates as a discharge of liability to
172 the obligor as to that portion of the obligor's periodic
173 earnings or other income so affected.

174 8. As used in this section, the term "employer"
175 includes the state and its political subdivisions.

176 9. An employer shall not discharge or otherwise
177 discipline, or refuse to hire, an employee as a result of a
178 withholding notice issued pursuant to this section. Any
179 obligor who is aggrieved as a result of a violation of this
180 subsection may bring a civil contempt proceeding against the
181 employer by filing an appropriate motion in the cause of
182 action from which the withholding notice issued. If the
183 court finds that the employer discharged, disciplined, or
184 refused to hire the obligor as a result of the withholding
185 notice, the court may order the employer to reinstate or
186 hire the obligor, or rescind any wrongful disciplinary
187 action. If, after the entry of such an order, the employer
188 refuses without good cause to comply with the court's order,
189 or if the employer fails to comply with the withholding
190 notice, the court may, after notice to the employer and a
191 hearing, impose a fine against the employer, not to exceed
192 five hundred dollars. Proceeds of any such fine shall be
193 distributed by the court to the county general revenue fund.

194 10. A withholding entered pursuant to this section
195 may, upon motion of a party and for good cause shown, be
196 amended by the court. The clerk shall notify the employer
197 of the amendment in the manner provided for in subsection 4
198 of this section.

199 11. The court, upon the motion of obligor and for good
200 cause shown, may terminate the withholding, except that the
201 withholding shall not be terminated for the sole reason that
202 the obligor has fully paid past due child support and
203 maintenance.

204 12. A withholding effected pursuant to this section
205 shall have priority over any other legal process pursuant to
206 state law against the same wages, except that where the
207 other legal process is an order issued pursuant to this

208 section or section 454.505, the processes shall run
209 concurrently, up to applicable wage withholding
210 limitations. If concurrently running wage withholding
211 processes for the collection of support obligations would
212 cause the amounts withheld from the wages of the obligor to
213 exceed applicable wage withholding limitations and includes
214 a wage withholding from another state pursuant to section
215 454.932, the employer shall first satisfy current support
216 obligations by dividing the amount available to be withheld
217 among the orders on a pro rata basis using the percentages
218 derived from the relationship each current support order
219 amount has to the sum of all current child support
220 obligations. Thereafter, delinquencies shall be satisfied
221 using the same pro rata distribution procedure used for
222 distributing current support, up to the applicable
223 limitation. If concurrently running wage withholding
224 processes for the collection of support obligations would
225 cause the amounts withheld from the wages of the obligor to
226 exceed applicable wage withholding limitations and does not
227 include a wage withholding from another state pursuant to
228 section 454.932, the employer shall withhold and pay to the
229 payment center an amount equal to the wage withholding
230 limitations. The payment center shall first satisfy current
231 support obligations by dividing the amount available to be
232 withheld among the orders on a pro rata basis using the
233 percentages derived from the relationship each current
234 support order amount has to the sum of all current child
235 support obligations. Thereafter, arrearages shall be
236 satisfied using the same pro rata distribution procedure
237 used for distributing current support, up to the applicable
238 limitation.

239 13. The remedy provided by this section applies to
240 child support and maintenance orders entered prior to August
241 13, 1986, notwithstanding the absence of the notice to the
242 obligor provided for in subsection 1 of this section,
243 provided that prior notice from the circuit clerk to the
244 obligor in the manner prescribed in subsection 5 of section
245 452.345 is given.

246 14. Notwithstanding any provisions of this section to
247 the contrary, in a case in which support rights have been
248 assigned to the state or in which the family support
249 division is providing support enforcement services pursuant
250 to section 454.425, the director of the family support
251 division may amend or terminate a withholding order issued
252 pursuant to this section, as provided in this subsection
253 without further action of the court. The director may amend
254 or terminate a withholding order and issue an administrative
255 withholding order pursuant to section 454.505 when the
256 director determines that children for whom the support order
257 applies are no longer entitled to support pursuant to
258 section 452.340, when the support obligation otherwise ends
259 and all arrearages are paid, when the support obligation is
260 modified pursuant to section 454.500, or when the director
261 enters an order that is approved by the court pursuant to
262 section 454.496. The director shall notify the employer and
263 the circuit clerk of such amendment or termination. The
264 director's administrative withholding order or withholding
265 termination order shall preempt and supersede any previous
266 judicial withholding order issued pursuant to this or any
267 other section.

268 15. For the purpose of this section, "income" means
269 any periodic form of payment due to an individual,
270 regardless of source, including wages, salaries,

271 commissions, bonuses, workers' compensation benefits,
272 disability benefits, payments pursuant to a pension or a
273 retirement program and interest.

274 16. If the secretary of the Department of Health and
275 Human Services promulgates a final standard format for an
276 employer income withholding notice, the court shall use or
277 require the use of such notice.

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