

HOUSE BILL No. 2015

AN ACT concerning domestic relations; relating to marital property; dissolution of marriage; service of process; enforcement of support orders; amending K.S.A. 39-7,148 and K.S.A. 2012 Supp. 23-2601, 23-2704, 23-3102, 23-3103, 23-3104, 23-3105 and 39-7,147 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2012 Supp. 23-2601 is hereby amended to read as follows: 23-2601. The property, real and personal, which any person in this state may own at the time of the person's marriage, and the rents, issues, profits or proceeds thereof, and any real, personal or mixed property which shall come to a person by descent, devise or bequest, and the rents, issues, profits or proceeds thereof, or by gift from any person ~~except the person's spouse~~, shall remain the person's sole and separate property, notwithstanding the marriage, and not be subject to the disposal of the person's spouse or liable for the spouse's debts, *except as provided in K.S.A. 33-101 et seq. and 33-201 et seq., and amendments thereto.*

Sec. 2. K.S.A. 2012 Supp. 23-2704 is hereby amended to read as follows: 23-2704. (a) *Verification of petition.* The truth of the allegations of any petition under this article must be verified by the petitioner in person or by the guardian of an incapacitated person.

(b) *Captions.* All pleadings shall be captioned, "In the matter of the marriage of _____ and _____." In the caption, the name of the petitioner shall appear first and the name of the respondent shall appear second, but the respective parties shall not be designated as such.

(c) *Contents of petition.* The grounds for divorce, annulment or separate maintenance shall be alleged as nearly as possible in the general language of the statute, without detailed statement of facts. If there are minor children of the marriage, the petition shall state their names and dates of birth and shall contain, or be accompanied by an affidavit which contains, the information required by K.S.A. 2012 Supp. 23-37,209, and amendments thereto.

(d) *Bill of particulars.* The opposing party may demand a statement of the facts which shall be furnished in the form of a bill of particulars. The facts stated in the bill of particulars shall be the specific facts upon which the action shall be tried. If interrogatories have been served on or a deposition taken of the party from whom the bill of particulars is demanded, the court in its discretion may refuse to grant the demand for a bill of particulars. A copy of the bill of particulars shall be delivered to the judge. The bill of particulars shall not be filed with the clerk of the court or become a part of the record except on appeal, and then only when the issue to be reviewed relates to the facts stated in the bill of particulars. The bill of particulars shall be destroyed by the district judge unless an appeal is taken, in which case the bill of particulars shall be destroyed upon receipt of the final order from the appellate court.

(e) *Service of process.* Service of process shall be made in the manner provided in article ~~27~~ 3 of chapter ~~23~~ 60 of the Kansas Statutes Annotated, and amendments thereto.

New Sec. 3. (a) On and after July 1, 2015, notwithstanding any other law to the contrary, for any order of support required to be paid through the central unit for collection and disbursement of support payments designated pursuant to K.S.A. 2012 Supp. 39-7,135, and amendments thereto, regardless of when such order was entered or modified, amounts collected by such central unit shall be distributed in accordance with rules and regulations adopted by the secretary of the department for children and families. Such rules and regulations shall be based on child support distribution requirements as set forth in part D of title IV of the federal social security act, 42 U.S.C. § 651 et seq., as amended, and federal regulations promulgated pursuant thereto.

(b) Prior to July 1, 2015, the secretary of the department for children and families shall adopt rules and regulations to implement the provisions of this section. Such rules and regulations shall not become effective until July 1, 2015.

New Sec. 4. (a) Except as otherwise provided in this section, an income withholding order for attachment of a lump sum payment shall have the effect of attaching: (1) Any intangible property, funds, credits or other indebtedness of a non-recurring nature belonging or owing to the obligor which is due from the payor or in the possession or under the control of the payor at the time of service of the order; and (2) all such personal

property becoming due to the obligor between the time the order is served on the payor and the 35th day after the date the order is served.

(b) The payor shall hold the attached funds, credits or indebtedness at least 14 days following the date the income withholding order for attachment of a lump sum payment was served. Thereafter, except as otherwise provided in this section, the payor shall remit the amount attached no later than the date the lump sum payment would have been paid to the obligor or 21 days after the date the order was served, whichever is later.

(c) The payor shall hold the attached funds, credits or indebtedness until further order of the court if, before remitting funds pursuant to subsection (b), the payor receives notice of a hearing on the obligor's claim of exemption concerning the income withholding order for attachment of a lump sum payment.

(d) This section shall be part of and supplemental to the income withholding act, K.S.A. 2012 Supp. 23-3101 et seq., and amendments thereto.

New Sec. 5. (a) Immediately following the date the income withholding order for attachment of a lump sum payment is served on the payor, the person or public office seeking the withholding shall send a notice to the obligor, notifying the obligor: (1) That an income withholding order to attach a lump sum payment has been served on the payor and the effect of such order; (2) of the obligor's right to assert any claim of exemption allowed under the income withholding act; and (3) of the obligor's right to a hearing on such claim. The notice shall be substantially in compliance with the form developed pursuant to K.S.A. 2012 Supp. 23-3113, and amendments thereto, and shall contain a description of the exemptions that are applicable under the income withholding act and the procedure by which the obligor can assert any claim of exemption.

(b) If the obligor requests a hearing to assert any claim of exemption, the request shall be filed no later than 10 days following the date the notice is served on the obligor. If a hearing is requested, the hearing shall be held by the court no sooner than five days nor later than 10 days after the request is filed. At the time the request for hearing is filed, the obligor shall obtain from the clerk of the court the date and time for the hearing which shall be noted on the request form. Immediately after the request for hearing is filed, the obligor shall hand-deliver or mail, by first-class mail, a copy of the request for hearing to the payor and to the person or public office seeking the withholding or such person's attorney, if the person is represented by an attorney.

(c) If a hearing is held, the obligor shall have the burden of proof to show that some or all of the property subject to the withholding is exempt, and the court shall enter an order determining the exemption and such other order as is appropriate.

(d) This section shall be part of and supplemental to the income withholding act, K.S.A. 2012 Supp. 23-3101 et seq., and amendments thereto.

New Sec. 6. (a) (1) The secretary of the department for children and families may collect, pursuant to the income withholding act, K.S.A. 2012 Supp. 23-3101 et seq., and amendments thereto, support owed in a title IV-D case from unemployment insurance benefits payable to the obligor. Such collections may be remitted directly to the secretary. The secretary, and any other agency affected, shall use electronic processes to the greatest extent feasible.

(2) All provisions of the income withholding act shall apply to the withholding of support from unemployment insurance benefits from the state employment security agency, which shall be considered a payor for the purposes of the income withholding act, except that any cost recovery fee as a result of such withholding shall be paid by the department for children and families and shall not be paid by the obligor.

(b) If the secretary of the department for children and families receives an income withholding collection directly from another state agency for a debtor with more than one income withholding order and the payor agency does not identify the amount to be applied to each withholding order, the secretary may apply the collection in any manner allowed under title IV-D, provided that all current support due for the month under the withholding orders is satisfied first.

(c) This section shall be part of and supplemental to the income withholding act, K.S.A. 2012 Supp. 23-3101 et seq., and amendments thereto.

Sec. 7. K.S.A. 2012 Supp. 23-3102 is hereby amended to read as follows: 23-3102. As used in the income withholding act:

(a) “Arrearage” means the total amount of unpaid support which is due and unpaid under an order for support, based upon the due date specified in the order for support or, if no specific date is stated in the order, the last day of the month in which the payment is to be made. If the order for support includes a judgment for reimbursement, an arrearage equal to or greater than the amount of support payable for one month exists on the date the order for support is entered.

(b) “Business day” means a day on which state offices in Kansas are open for regular business.

(c) “Health benefit plan” means any benefit plan, other than public assistance, which is able to provide hospital, surgical, medical, dental or any other health care or benefits for a child, whether through insurance or otherwise, and which is available through a parent’s employment or other group plan.

(d) “Income” means any form of ~~periodic~~ payment to an individual, regardless of source, including, but not limited to, wages, salary, trust, royalty, commission, bonus, compensation as an independent contractor, annuity and retirement benefits, workers compensation and any other periodic payments made by any person, private entity or federal, state or local government or any agency or instrumentality thereof. “Income” does not include: (1) Any amounts required by law to be withheld, other than creditor claims, including, but not limited to, federal and state taxes, social security tax and other retirement and disability contributions; (2) any amounts exempted by federal law; (3) public assistance payments; and (4) unemployment insurance benefits except to the extent otherwise provided by law. Any other state or local laws which limit or exempt income or the amount or percentage of income that can be withheld shall not apply. Workers compensation shall be considered income only for the purposes of child support and not for the purposes of maintenance. *Unemployment insurance benefits shall be considered income for purposes of this act when such funds are sought by the secretary of the department for children and families, or the secretary’s designee, in administration of the title IV-D program.*

(e) “Income withholding agency” means the department for children and families.

~~(e)~~(f) “Income withholding order” means an order issued under this act which requires a payor to withhold income to satisfy an order for support or to defray an arrearage.

(g) “Lump sum payment” means income in the form of a bonus, commission, an amount paid in lieu of vacation or other leave time, or any other payment to an obligor. “Lump sum payment” does not include payments made on regular paydays as compensation, reimbursement of expenses incurred by the obligor on behalf of the payor, or an amount paid as severance pay on termination of employment.

~~(f)~~(h) “Medical child support order” means an order requiring a parent to provide coverage for a child under a health benefit plan and, where the context requires, may include an order requiring a payor to enroll a child in a health benefit plan.

~~(g)~~(i) “Medical withholding order” means an income withholding order which requires an employer, sponsor or other administrator of a health benefit plan to enroll a child under the health coverage of a parent.

~~(h)~~(j) “Nonparticipating parent” means, if one parent is a participating parent as defined in this section, the other parent.

~~(i)~~(k) “Obligee” means the person or entity to whom a duty of support is owed.

~~(j)~~(l) “Obligor” means any person who owes a duty to make payments or provide health benefit coverage under an order for support.

~~(k)~~(m) “Order for support” means any order of a court, or of an administrative agency authorized by law to issue such an order, which provides for payment of funds for the support of a child, or for maintenance of a spouse or ex-spouse, and includes an order which provides for modification or resumption of a previously existing order; payment of uninsured medical expenses; payment of an arrearage accrued under a previously existing order; a reimbursement order, including, but not limited to, an order established pursuant to K.S.A. 39-718a or 39-718b, and

amendments thereto; an order established pursuant to K.S.A. 23-451 et seq., and amendments thereto; or a medical child support order.

~~(n)~~ (n) “Participating parent” means a parent who is eligible for single coverage under a health benefit plan as defined in this section, regardless of the type of coverage actually in effect, if any.

~~(o)~~ (o) “Payor” means any person or entity owing income to an obligor or any self-employed obligor and includes, with respect to a medical child support order, the sponsor or administrator of a health benefit plan.

(p) “Periodic payment” means wages, salary, royalties, trust payments, annuity payments, retirement payments and any other regularly occurring, scheduled payment to an obligor.

~~(q)~~ (q) “Public office” means any elected or appointed official of the state or any political subdivision or agency of the state, or any subcontractor thereof, who is or may become responsible by law for enforcement of, or who is or may become authorized to enforce, an order for support, including but not limited to, the department of social and rehabilitation services, court trustees, county or district attorneys and other subcontractors.

~~(r)~~ (r) “Title IV-D” means part D of title IV of the federal social security act, 42 U.S.C. § 651 et seq., and amendments thereto, as in effect on December 31, ~~1999~~ 2009. “Title IV-D cases” means those cases required by title IV-D to be processed by the department of social and rehabilitation services for children and families under the state’s plan for providing title IV-D services.

Sec. 8. K.S.A. 2012 Supp. 23-3103 is hereby amended to read as follows: 23-3103. (a) Any new or modified order for support shall include a provision for the withholding of income to enforce the order for support.

(b) Except as otherwise provided in subsection (j), (k) or ~~(m)~~, all new or modified orders for support shall provide for immediate issuance of an income withholding order. *The income withholding order shall be issued regardless of whether a payor subject to the jurisdiction of this state can be identified at the time the order for support is entered.* The income withholding order shall be issued without further notice to the obligor and shall specify ~~an amount sufficient to satisfy the order for support and to defray any arrearage.~~ *The income withholding order shall be issued regardless of whether a payor subject to the jurisdiction of this state can be identified at the time the order for support is entered.*

(1) *If the income withholding order is to attach to periodic payments, an amount sufficient to satisfy the order for support and to defray any arrearage; or*

(2) *if the income withholding order is to attach a lump sum payment, the amount the payor is required to withhold for support from the lump sum payment.*

(c) Except as otherwise provided in this subsection or subsections (j) or ~~(m)~~, if no income withholding order is in effect to enforce the support order, an income withholding order shall be issued by the court upon request of the obligee or public office, provided that the obligor accrued an arrearage equal to or greater than the amount of support payable for one month and the requirements of subsections (d) and (h) have been met. The income withholding order shall be issued without further notice to the obligor and shall specify an amount sufficient to satisfy the order for support and to defray any arrearage. The income withholding order shall be issued regardless of whether a payor subject to the jurisdiction of this state can be identified at the time the income withholding order is issued.

(d) Not less than seven days after the obligee or public office has served a notice pursuant to subsection (h), the obligee or public office may initiate income withholding pursuant to paragraph (1) or (2).

(1) The obligee or public office may apply for an income withholding order by filing with the court an affidavit stating: (A) The date that the notice was served on the obligor and the manner of service; (B) that the obligor has not filed a motion to stay issuance of the income withholding order or, if a motion to stay has been filed, the reason an income withholding order must be issued immediately; (C) a specified amount to be withheld by the payor to satisfy the order of support and to defray any arrearage; (D) whether the income withholding order is to include a medical withholding order; and (E) that the amount of the arrearage as of the

date the notice to the obligor was prepared was equal to or greater than the amount of support payable for one month. In addition to any other penalty provided by law, the filing of such an affidavit with knowledge of the falsity of a material declaration is punishable as a contempt.

Upon the filing of the affidavit, the income withholding order shall be issued without further notice to the obligor, hearing or amendments of the support order. Payment of all or part of the arrearage before issuance of the income withholding order shall not prevent issuance of the income withholding order, unless the arrearage is paid in full and the order for support does not include an amount for the current support of a person. No affidavit is required if the court, upon hearing a motion to stay issuance of the income withholding order or otherwise, issues an income withholding order.

(2) In a title IV-D case, the IV-D agency may issue an income withholding order as authorized by K.S.A. 39-7,147, and amendments thereto. Any such income withholding order shall be considered an income withholding order issued pursuant to this act.

(e) (1) An income withholding order shall be directed to any payor of the obligor. Notwithstanding any other requirement of this act as to form or content, ~~any only an~~ income withholding order prepared in a standard format prescribed by the secretary of ~~social and rehabilitation services~~ *the department for children and families, or the standard federal notices and forms promulgated under 42 U.S.C. § 652 (a)(11) and 42 U.S.C. § 666 (b)(A)(ii)*, shall be deemed to be in compliance with this act.

(2) An income withholding order which does not include a medical withholding order shall require the payor to withhold from any income due, or to become due, to the obligor a specified amount sufficient to satisfy the order of support and to defray any arrearage and shall include notice of and direction to comply with the provisions of K.S.A. 2012 Supp. 23-3104 and 23-3105, and amendments thereto.

(3) An income withholding order which consists only of a medical withholding order shall include notice of the medical child support order and shall conform to the requirements of K.S.A. 2012 Supp. 23-3116, and amendments thereto. The medical withholding order shall include notice of and direction to comply with the requirements of K.S.A. 2012 Supp. 23-3104, 23-3105, 23-3114 and 23-3117, and amendments thereto.

(4) An income withholding order which includes both a medical withholding order and an income withholding order for cash support shall meet the requirements of paragraphs (2) and (3).

(f) (1) Upon written request and without the requirement of further notice to the obligor, the clerk of the district court shall cause a copy of the income withholding order to be served on the payor ~~only by personal service or registered mail, return receipt requested~~ *by first-class mail*.

(2) Without the requirement of further notice to the obligor, the court trustee or IV-D agency may cause a copy of any income withholding order to be served on the payor ~~only by personal service or registered mail, return receipt requested by first-class mail~~ or by any alternate method acceptable to the payor, *including, but not limited to: Facsimile transmission, electronic mail attachment or electronic interface allowing for the download of a document or transmission of the terms of the income withholding order*. No payor shall be liable to any person solely because of the method of service accepted by the payor.

(3) As used in this section, “copy of the income withholding order” means *a copy of* any document or notice, regardless of *copy* format, that advises the payor of the same general duties, requires the same amount to be withheld from income and requires medical withholding to the same extent as the original income withholding order *that complies with the requirements of subsection (e)(1)*.

(g) An income withholding order shall be binding on any existing or future payor on whom a copy of the order is served and shall require the continued withholding of income from each periodic payment of income until further order of the court or agency that issued the income withholding order. At any time following issuance of an income withholding order, a copy of the income withholding order may be served on any payor without the requirement of further notice to the obligor.

(h) Except as provided in subsection (k) or ~~(l)~~ *(m)*, at any time following entry of an order for support the obligee or public office may serve

upon the obligor a written notice of intent to initiate income withholding. If any notice in the court record indicates that title IV-D services are being provided in the case, whether or not the IV-D services include enforcement of current support, the person or public office requesting issuance of the income withholding order shall obtain the consent of the IV-D agency to the terms of the proposed income withholding order.

The notice of intent to initiate income withholding shall be served on the obligor ~~only~~ by personal service, *first-class mail* or registered mail, return receipt requested. The notice served on the obligor must state: (1) The terms of the order of support and the total arrearage as of the date the notice was prepared; (2) the amount of income that will be withheld, not including premiums to satisfy a medical withholding order; (3) whether a medical withholding order will be included; (4) that the provision for withholding applies to any current or subsequent payor; (5) the procedures available for contesting the withholding and that the only basis for contesting the withholding is a mistake of fact concerning the amount of the support order, the amount of the arrearage, the amount of income to be withheld or the proper identity of the obligor; (6) the period within which the obligor must act to stay issuance of the income withholding order and that failure to take such action within the specified time will result in payors' being ordered to begin withholding; and (7) the action which will be taken if the obligor contests the withholding.

The obligor may, at any time, waive in writing the notice required by this subsection.

(i) On request of an obligor, the court shall issue an income withholding order which shall be honored by a payor regardless of whether there is an arrearage. Nothing in this subsection shall limit the right of the obligee to request modification of the income withholding order.

(j) (1) In a nontitle IV-D case, upon presentation to the court of a written agreement between the parties providing for an alternative arrangement, no income withholding order shall be issued pursuant to subsection (b). In any case, before entry of a new or modified order for support, a party may request that no income withholding order be issued pursuant to subsection (b) if notice of the request has been served on all interested parties and: (A) The party demonstrates, and the court finds, that there is good cause not to require immediate income withholding; or (B) a written agreement among all interested parties provides for an alternative arrangement. If child support and maintenance payments are both made to an obligee by the same obligor, and if the court has determined that good cause has been shown that direct child support payments to the obligee may be made, then the court shall provide for direct maintenance payments to the obligee and no income withholding order shall be issued pursuant to subsection (b). In a title IV-D case, the determination that there is good cause not to require immediate income withholding must include a finding that immediate income withholding would not be in the child's best interests and, if an obligor's existing obligation is being modified, proof of timely payment of previously ordered support.

(2) Notwithstanding the provisions of subsection (j)(1), the court shall issue an income withholding order when an affidavit pursuant to subsection (d) is filed if an arrearage exists in an amount equal to or greater than the amount of support payable for one month.

(3) If a notice pursuant to subsection (h) has been served in a title IV-D case, there is no arrearage or the arrearage is less than the amount of support payable for one month, and the obligor files a motion to stay issuance of the income withholding order based upon the court's previous finding of good cause not to require immediate income withholding pursuant to subsection (j)(1), the obligor must demonstrate the continued existence of good cause. Unless the court again finds that good cause not to require immediate income withholding exists, the court shall issue the income withholding order.

(4) If a notice pursuant to subsection (h) has been served in a title IV-D case, there is no arrearage or the arrearage is less than the amount of support payable for one month, and the obligor files a motion to stay issuance of an income withholding order based upon a previous agreement of the interested parties for an alternative arrangement pursuant to subsection (j)(1), the court shall issue an income withholding order, notwithstanding any previous agreement, if the court finds that:

(A) The agreement was not in writing;

- (B) the agreement was not approved by all interested parties;
 - (C) the terms of the agreement or alternative arrangement are not being met;
 - (D) the agreement or alternative arrangement is not in the best interests of the child; or
 - (E) the agreement or alternative arrangement places an unnecessary burden upon the obligor, obligee or a public office.
- (5) The procedures and requirements of K.S.A. 2012 Supp. 23-3106, and amendments thereto, apply to any motion pursuant to paragraph (3) or (4) of this subsection.
- (k) (1) An ex parte interlocutory order for support may be enforced pursuant to subsection (b) only if the obligor has consented to the income withholding in writing.
- (2) An ex parte interlocutory order for support may be enforced pursuant to subsection (c) only if 14 or more days have elapsed since the order for support was served on the obligor.
- (3) Any other interlocutory order for support may be enforced by income withholding pursuant to this act in the same manner as a final order for support.
- (4) No bond shall be required for the issuance of an income withholding order to enforce an interlocutory order pursuant to this act.
- (l) *All remittances from any income withholding order, regardless of when such order was entered or modified, shall be required to be directed to the central unit for collection and disbursement of support payments designated pursuant to K.S.A. 2012 Supp. 39-7,135, and amendments thereto.*

~~(k)~~(m) All new or modified orders for maintenance of a spouse or ex-spouse, except orders for a spouse or ex-spouse living with a child for whom an order of support is also being enforced, entered on or after July 1, 1992, shall include a provision for the withholding of income to enforce the order of support. Unless the parties consent in writing to earlier issuance of a withholding order, withholding shall take effect only after there is an arrearage in an amount equal to or greater than the amount of support payable for two months and after service of a notice as provided in subsection (h).

Sec. 9. K.S.A. 2012 Supp. 23-3104 is hereby amended to read as follows: 23-3104. (a) It shall be the affirmative duty of any payor to respond within 10 days to written or electronic requests for information presented by the public office concerning: (1) The full name of the obligor; (2) the current address of the obligor; (3) the obligor's social security number; (4) the obligor's work location; (5) the number of the obligor's claimed dependents; (6) the obligor's gross income; (7) the obligor's net income; (8) an itemized statement of deductions from the obligor's income; (9) the obligor's pay schedule; (10) the obligor's health insurance coverage; and (11) whether or not income owed the obligor is being withheld pursuant to this act. This is an exclusive list of the information that the payor is required to provide under this section.

(b) It shall be the duty of any payor who has been served a copy of an income withholding order for payment of an order for cash support that meets the requirements of subsection ~~(h)~~ (i) to deduct and pay over income as provided in this section. The payor shall begin the required deductions no later than the next payment of income due the obligor after 14 days following service of the order on the payor.

(c) Within seven business days of the time the obligor is normally paid, the payor shall pay the amount withheld as directed by the income withholding agency pursuant to K.S.A. 2012 Supp. 23-3105, and amendments thereto, as directed by the income withholding order or by a rule of the Kansas supreme court. The payor shall identify each payment with the name of the obligor, the county and case number of the income withholding order, and the date the income was withheld from the obligor. The payor shall pay the amounts withheld and identify each payment in the same business day. A payor subject to more than one income withholding order payable to the same payee may combine the amounts withheld into a single payment, but only if the amount attributable to each income withholding order is clearly identified. Premiums required for a child's coverage under a health benefit plan shall be remitted as provided

in the health benefit plan and shall not be combined with any other support payment required by the income withholding order.

(d) The payor shall continue to withhold income as required by the income withholding order until further order of the court or agency.

(e) From income due the obligor, the payor may withhold and retain to defray the payor's costs a cost recovery fee of \$5 for each pay period for which ~~income support~~ is withheld ~~from a periodic payment~~ or \$10 for each month for which ~~income support~~ is withheld ~~from a periodic payment~~, whichever is less. *For income withholding from a lump sum payment, a cost recovery fee of up to \$10 per withholding may be withheld by the payor and shall be in addition to any cost recovery fee charged for withholding from periodic payments. Any such cost recovery fee shall be in addition to the amount withheld as support.*

(f) The entire sum withheld by the payor, including the cost recovery fee and premiums due from the obligor which are incurred solely because of a medical withholding order, shall not exceed ~~the limits provided for under section 303(b)~~ 50% of the obligor's disposable income as defined by section 302(b) of the consumer credit protection act, 15 U.S.C. § ~~1673(b)~~ 1672(b). If amounts of earnings required to be withheld exceed the maximum amount of earnings which may be withheld ~~according to the consumer credit protection act under this section~~, priority shall be given to payment of current and past due support, and the payor shall promptly notify the holder of the limited power of attorney of any non-payment of premium for a health benefit plan on the child's behalf. An income withholding order issued pursuant to this act shall not be considered a wage garnishment as defined in subsection (b) of K.S.A. 60-2310, and amendments thereto. If amounts of earnings required to be withheld in accordance with this act are less than the maximum amount of earnings which could be withheld according to section 303(b) of the consumer credit protection act, 15 U.S.C. § 1673(b), the payor shall honor garnishments filed by other creditors to the extent that the total amount taken from earnings does not exceed consumer credit protection act limitations.

(g) *A payor who has been served an income withholding order by the IV-D agency which includes an amount to defray an arrearage shall contact the IV-D agency no less than 14 days prior to making payment of any lump sum amount to the obligor. The payor may make payment of the lump sum to the obligor once 14 days have passed after providing such contact unless additional process, or notice of intended process, has been received.*

~~(g)~~(h) The payor shall promptly notify the court or agency that issued the income withholding order of the termination of the obligor's employment or other source of income, or the layoff of the obligor from employment, and provide the obligor's last known address and the name and address of the individual's current employer, if known.

~~(h)~~(i) A payor who complies with a copy of an income withholding order that is regular on its face shall not be subject to civil liability to any person or agency for conduct in compliance with the income withholding order. As used in this section, "regular on its face" means a completed document ~~in the standard format for any income withholding notice that has been adopted by the United States secretary of health and human services in a final rule or a certified copy of the income withholding order that is in compliance with subsection (e)(1) of K.S.A. 2012 Supp. 23-3103, and amendments thereto.~~

~~(i)~~(j) Except as provided further, if any payor violates the provisions of this act, the court may enter a judgment against the payor for the total amount which should have been withheld and paid over. If the payor, without just cause or excuse, fails to pay over income within the time established in subsection (c) and the obligee files a motion to have such income paid over, the court shall enter a judgment against the payor and in favor of the obligee for three times the amount of the income owed and reasonable attorney fees. If the payor, without good cause, fails to pay over the income and identify each payment in the same business day, the court shall enter a judgment against the payor and in favor of the obligee for twice the amount of the cost recovery fee, as established in subsection (e), per obligor.

~~(j)~~(k) In addition to any judgment authorized by subsection (i), a payor shall be subject to a civil penalty not exceeding \$500 and other equitable relief as the court considers proper if the payor: (1) Discharges,

refuses to employ or takes disciplinary action against an obligor subject to an income withholding order because of such withholding and the obligations or additional obligations which it imposes upon the payor; or (2) fails to withhold support from income or to pay such amounts in the manner required by this act.

(l) The provisions of this section as amended by this act shall apply to all income withheld on or after July 1, 2013, regardless of when the applicable income withholding order was entered or modified.

Sec. 10. K.S.A. 2012 Supp. 23-3105 is hereby amended to read as follows: 23-3105. (a) An income withholding order shall have priority over any other legal process under state law against the same income. Withholding of income under this section shall be made without regard to any prior or subsequent garnishments, attachments, wage assignments or other claims of creditors.

(b) Except as provided by K.S.A. 60-2310, and amendments thereto, any state law which limits or exempts income from legal process or the amount or percentage of income that can be withheld shall not apply to withholding income under this act.

(c) Subject to the provisions of K.S.A. 2012 Supp. 23-36,503, and amendments thereto, if more than one income withholding order requires withholding from the same source of income of a single obligor, the payor shall withhold and disburse as ordered the total amount required by all income withholding orders if such amount does not exceed the limits of subsection (f) of K.S.A. 2012 Supp. 23-3104, and amendments thereto; ~~as shown in the withholding order which specifies the highest percentage of income allowed to be withheld.~~ If the total amount required by all income withholding orders, including premiums due from the obligor which are incurred solely because of a medical withholding order, exceeds such limits, the payor shall withhold the amount permitted to be withheld under such limits and from the amount withheld the payor shall retain any cost recovery fee charged by the payor. The remaining funds shall first be prorated by the payor among all income withholding orders for the obligor that require payment of current support. When all current support for the month has been satisfied, any remaining funds shall be prorated among all income withholding orders for the obligor that require payment of an amount for arrearages. With respect to a medical withholding order, the payor shall promptly notify the affected holder of the limited power of attorney of any nonpayment of premium. The payor may request assistance from the income withholding agency in determining the amount to be disbursed for each income withholding order, but such assistance shall not relieve the payor from any responsibility under this act. Upon request of a public office or of any obligee whose income withholding order is affected by this subsection, the payor shall provide the county, case number and terms of all the obligor's income withholding orders.

(d) The provisions of this section as amended by this act shall apply to all income withheld on or after July 1, ~~1992~~ 2012, regardless of when the applicable income withholding order was entered or modified.

Sec. 11. K.S.A. 2012 Supp. 39-7,147 is hereby amended to read as follows: 39-7,147. (a) Except as otherwise provided in K.S.A. 39-7,149 or K.S.A. 2012 Supp. 23-3103, and amendments thereto, if no income withholding order is in effect to enforce a support order in a title IV-D case, an income withholding order may be entered by the secretary. A notice of intent to initiate income withholding, as described in K.S.A. 2012 Supp. 23-3103, and amendments thereto, shall be served on the responsible parent at least seven days before the secretary issues the income withholding order. If the amount of arrearages is less than the amount of current support due for one month, the requirements of subsection (d) must be met. The income withholding order shall conform to the requirements of the income withholding act, and amendments thereto and shall have the same force and effect as an income withholding order issued by a district court of this state.

(b) If an income withholding order is issued by the secretary to enforce a support order entered by a court of this state, the original document shall be delivered for filing to the clerk of the court that entered the support order. Thereafter, if the secretary is no longer providing title IV-D services in the case, the clerk of the district court shall use the

income withholding order issued by the secretary in the same manner as an income withholding order issued by the court.

(c) If an income withholding order is issued by the secretary to enforce a support order entered by a tribunal of another state, the secretary shall transmit a copy of the income withholding order to the tribunal of the other state.

(d) If there are no arrearages or the amount of arrearages under the support order is less than the amount of current support due for one month, the secretary may initiate income withholding only if:

- (1) Any arrearages are owed;
- (2) a medical child support order exists;
- (3) the secretary determines that immediate issuance of the income withholding order was required by K.S.A. 2012 Supp. 23-3103, and amendments thereto, or by a similar law of another state, but no income withholding order was entered;
- (4) the responsible parent consents;
- (5) required payments have been received after the due date at least twice within the preceding 12 months, regardless of whether any arrearages are owed; or
- (6) the support order was entered by a tribunal of another state.

(e) If the support order was entered by or registered with a court of this state, the notice of intent to initiate income withholding shall be served on the responsible parent by ~~only~~ personal service, *first-class mail* or registered mail, return receipt requested. In all other cases, the notice of intent to initiate income withholding shall be served upon the responsible parent only by personal service or registered mail, return receipt requested.

Sec. 12. K.S.A. 39-7,148 is hereby amended to read as follows: 39-7,148. (a) At any time after issuing an income withholding order, the secretary shall: (1) Modify or terminate the income withholding order because of a modification or termination of the underlying support order; (2) modify the amount of income withheld to reflect payment in full of the arrearages; (3) modify or terminate the income withholding order to reflect the final order in a fair hearing pursuant to K.S.A. 75-3306, and amendments thereto; or (4) modify, or when appropriate terminate, an income withholding order consisting in whole or in part of a medical withholding order because of a modification or termination of the underlying medical child support order.

(b) In addition to modifications required by subsection (a), at any time the secretary may issue a modified income withholding order: (1) To change the amount to be withheld to defray arrearages; or (2) to conform the terms of a medical withholding order to the requirements of a payer. The provisions of this subsection shall apply only to income withholding orders issued pursuant to K.S.A. 39-7,147, and amendments thereto, including any modifications of such orders.

(c) The secretary shall provide notice of any proposed modification to the responsible parent by ~~only~~ personal service, *first-class mail* or registered mail, return receipt requested, at least 14 days before entry of the modified income withholding order. The responsible parent may request: (1) An administrative hearing pursuant to K.S.A. 75-3306, and amendments thereto, for review of the proposed modification by complying with procedures established by the secretary within ten days after service of the notice; or (2) a de novo court review pursuant to K.S.A. 39-7,139, and amendments thereto. If the notice is served by mail, the time for requesting review shall be extended by three days. If the proposed modification increases the total amount to be withheld from the responsible parent's income, entry of the modified income withholding order shall be stayed pending resolution of the review. In all other instances, entry of the proposed modification shall be stayed only for cause. The issues in the administrative hearing shall be limited to whether the amount of current support is as stated in the proposed modification and whether the total arrearages are less than the proposed installment to defray arrearages.

(d) The responsible parent may request that the secretary terminate an income withholding order for cash support if: (1) Withholding has not previously been terminated and reinitiated; and (2) there is a written agreement among the parties that provides for an alternative arrange-

ment. If an income withholding order is terminated and the obligor subsequently accrues any arrearages, the secretary may issue another income withholding order as provided in K.S.A. 39-7,147, and amendments thereto.

(e) If the income withholding order includes both a medical withholding order and an income withholding order for cash support, modification or termination of one portion of the income withholding order shall not modify or terminate any other portion of the income withholding order except as expressly provided in the order.

(f) The provisions of K.S.A. 39-7,147, and amendments thereto, relating to transmitting income withholding orders to the tribunal that issued the underlying support order, shall apply to any order issued modifying or terminating income withholding that is issued pursuant to this section.

Sec. 13. K.S.A. 39-7,148 and K.S.A. 2012 Supp. 23-2601, 23-2704, 23-3102, 23-3103, 23-3104, 23-3105 and 39-7,147 are hereby repealed.

Sec. 14. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and was adopted by that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.