

SOUTH CAROLINA BILL TEXT

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 20-7-851 SO AS TO PROVIDE THAT THE DEPARTMENT OF SOCIAL SERVICES SHALL ESTABLISH A FEDERALLY REQUIRED STATE DISBURSEMENT UNIT FOR THE COLLECTION AND DISBURSEMENT OF CHILD, SPOUSAL, OR CHILD AND SPOUSAL SUPPORT; TO AMEND SECTION 20-7-1140, AS AMENDED, RELATING TO PROVIDING NOTICE TO THE NONREGISTERING PARTY UNDER THE UNIFORM INTERSTATE FAMILY SUPPORT ACT WHEN AN ORDER OF SUPPORT IS REGISTERED IN ANOTHER STATE, SO AS TO PROVIDE THAT NOTICE MUST BE GIVEN BY FIRST-CLASS, CERTIFIED, OR REGISTERED MAIL OR BY OTHER AUTHORIZED FORMS OF PERSONAL SERVICE; BY ADDING SECTIONS 20-7-1300 AND 20-7-1310 SO AS TO PROVIDE THAT THE CENTRALIZED STATE DISBURSEMENT UNIT FOR THE COLLECTION AND DISBURSEMENT OF SUPPORT IS TO BE IMPLEMENTED ON A COUNTY-BY-COUNTY BASIS, TO PROVIDE THAT STATUTORY CHANGES TO ACCOMPLISH THIS IMPLEMENTATION TAKE EFFECT ON A COUNTY-BY-COUNTY BASIS, AND TO REQUIRE THE DEPARTMENT OF SOCIAL SERVICES TO NOTIFY EACH AFFECTED SUPPORT PAYOR OF THE DATE ON WHICH THESE CHANGES TAKE EFFECT; TO AMEND SECTION 20-7-1315, AS AMENDED, RELATING TO PROCEDURES FOR INCOME WITHHOLDING TO SECURE PAYMENT OF SUPPORT OBLIGATIONS, SO AS TO REVISE THESE PROCEDURES TO CONFORM TO THE FEDERALLY REQUIRED STATE DISBURSEMENT UNIT FOR THE COLLECTION AND DISBURSEMENT OF SUPPORT AND TO PROVIDE THAT IF A PERSON ORDERED TO PAY SUPPORT IS IN ARREARAGE IN AN AMOUNT EQUALING THREE MONTHS SUPPORT, THE PERSON'S WAGES MUST BE WITHHELD FOR THE COLLECTION OF THE PERSON'S SUPPORT OBLIGATION; TO AMEND SECTIONS 20-7-1326 AND 20-7-1328, RELATING, RESPECTIVELY, TO PROCEDURES FOR THE RECEIPT AND DISBURSEMENT OF SUPPORT PAYMENTS BY THE CLERK OF COURT PURSUANT TO INCOME WITHHOLDING PROCEDURES AND TO VOLUNTARY INCOME WITHHOLDING PROCEDURES, SO AS TO REVISE THESE PROCEDURES TO CONFORM WITH THE FEDERALLY REQUIRED STATE DISBURSEMENT UNIT FOR THE COLLECTION AND DISBURSEMENT OF SUPPORT; AND TO AMEND SECTION 20-7-420, AS AMENDED, RELATING TO THE JURISDICTION OF THE FAMILY COURT IN DOMESTIC MATTERS, INCLUDING THE AUTHORITY TO ISSUE ORDERS FOR THE PAYMENT OF SUPPORT, SO AS TO CLARIFY PROVISIONS RELATING TO THE OBLIGATION TO PAY CHILD SUPPORT UP TO AND AFTER AGE EIGHTEEN.

TEXT:

Be it enacted by the General Assembly of the State of South Carolina:

State Disbursement Unit

SECTION 1. Subarticle 3, Article 9, Chapter 7, Title 20 of the 1976 Code is amended by adding:

'Section 20-7-851. (A) The Department of Social Services shall establish a State Disbursement Unit for the collection and disbursement of all child, spousal, or child and spousal support payments.

(B) The State Disbursement Unit shall be operated and administered by either (1) the Child Support Enforcement Division of the Department of Social Services, or (2) a contractor directly responsible to the Department of Social Services.

(C) Amounts collected through the State Disbursement Unit are subject to court costs pursuant to Section 20-7-1440(C).'

Notice of support order registration

SECTION 2. Section 20-7-1140(A) of the 1976 Code, as last amended by Act 80 of 2007, is further amended to read:

'(A) When a support order or income-withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. Notice must be given by first-class, certified, or registered mail or by any means of personal service authorized by the law of this State. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.'

Mandate for and implementation of State Disbursement Unit

SECTION 3. Chapter 7, Title 20 of the 1976 Code is amended by adding:

'Section 20-7-1300. (A) The federal government mandates that every state must have a centralized statewide disbursement unit which collects and disburses child support payments. The federal requirement will result in substantial changes in how spousal and child support payments are collected and disbursed in this State. The required technical solution cannot practically be deployed in every county at the same time and, as a result, the amendments to Sections 20-7-1315, 20-7-1326, and 20-7-1328 will take effect on a county-by-county basis. The General Assembly finds that the amendments are necessary to comply with the federal requirements.

(B) To implement procedures that will accompany deployment of the statewide disbursement unit, the Department of Social Services and the clerks of court shall provide notice to payors as required in subsection (C) below. The Department of Social Services and the clerks of court shall provide general notice to the public showing the date each county will implement the State Disbursement Unit by posting the notice required in subsection (C) on their web sites. This posting constitutes notice of the effective date of the amendments to Sections 20-7-1315, 20-7-1326, and 20-7-1328.

(C) Upon full deployment of the federally mandated single statewide system for child support, the Department of Social Services is authorized to transition to a State Disbursement Unit that will include all child and spousal support, as provided in this Act. The department and the clerks of court shall cooperate fully in developing and implementing a transition plan that meets federal requirements and avoids federal financial penalties. The department shall provide notice to each affected support payor directing the payor to make all future payments, beginning thirty days after the department's notices to the payor, to the State Disbursement Unit.

Section 20-7-1310. The amendments to Sections 20-7-1315, 20-7-1326, and 20- 7-1328 concerning direct payments to the State Disbursement Unit are effective as to all payors receiving the notice specified in Section 20-7-1300 thirty days after the date of the notice, and effective as to all new cases filed in the county after that date.'

Income withholding

SECTION 4. Section 20-7-1315 of the 1976 Code, as last amended by Act 121 of 2005, is further amended to read:

'Section 20-7-1315. (A) As used in this section:

(1) 'Order for support' means any order of a court or an administrative agency of competent jurisdiction which provides for periodic payments of funds for the support of a child or maintenance of a spouse or former spouse, whether temporary or final, whether incidental to a proceeding for divorce, separation, separate maintenance, paternity, guardianship, or otherwise and includes any order providing for a modification of support payment of an arrearage or reimbursement of support.

(2) 'Delinquency' means when a support payment owed by an obligor pursuant to an order of support is overdue in an amount equal to at least one month's support obligation.

(3) 'Arrearage' means the total amount of unpaid support obligations.

(4) 'Court' as used in this section means Family Court.

(5) 'Income' means any periodic form of payment to an individual regardless of source including, but not limited to, wages, salary, commission, bonuses, compensation as an independent contractor, workers' compensation, disability, annuity and retirement benefits, payments made pursuant to a retirement program, interest, and any other payments made by a person or an agency or department of the federal, state, or local government provided the income excludes:

(a) amounts required to by law to be withheld, other than creditor claims, including, but not limited to, federal, state, and local taxes, social security and other retirement deductions, and disability contributions;

(b) amounts exempted by federal law;

(c) public assistance payments.

Any other state or local laws which limit or exempt income or the amount or percentage of income that can be withheld do not apply.

(6) 'Obligor' means an individual who is required to make payments pursuant to order for support.

(7) 'Obligee' means an individual or the individual's assignee who is entitled to receive payments pursuant to an order of support.

(8) 'Payor' means any payor of income to an obligor. For purposes of this section, the South Carolina Employment Security Commission is not considered to be a payor.

(B)(1) For all Title IV-D cases in which support orders are issued or modified after October 31, 1990, and for all nontitle IV-D cases in which support orders are issued or modified after January 3, 1994, the income of an obligor is subject to immediate withholding as of the effective date of the order without the requirement that an arrearage accumulate. However, income is not subject to withholding if:

(a) one of the parties demonstrates and the court finds that there is good cause not to require immediate income withholding; or

(b) a written agreement is reached between both parties which provides for an alternative arrangement.

(2) All orders for support entered or modified in the State before October 1, 1996, if not otherwise subject to wage withholding, are subject to withholding if a delinquency occurs without the need for a judicial or administrative hearing. These orders must be construed to contain this withholding provision even if the provision has been omitted from the written order; however, the court may order withholding to begin immediately for good cause shown. The court is required to make specified written findings to support immediate withholding.

(3) Income withholding must be initiated in all Title IV-D cases upon the request of the obligee without the necessity of a delinquency, if the State approves the request in accordance with the procedures and standards as it may establish. If the obligee requests income withholding pursuant to this subsection, notice of the request must be provided to the obligor by the clerk of court, and if the obligor objects to the income withholding within ten days after the postmarked date of the notice, a hearing must be held, and the family court shall subject the obligor's income to withholding unless the court finds that there is good cause not to require immediate income withholding. Where there is no objection by the obligor after proper notice, the clerk of court shall implement immediate income withholding.

(4) If an obligor, whose wages are not withheld and who is not required to pay through the family court, is found to be, or is found to have been, delinquent pursuant to an order for support in an amount equal to three or more month's support obligation, the clerk of court must order the obligor's wages enrolled for wage withholding to begin immediately for the payment of the obligor's support obligation, even if the arrearage has been fully or partially paid at the time of the hearing.

(C)(1) An obligor may petition the court at any time prior to the occurrence of a delinquency seeking an order for income withholding procedures to begin immediately.

(2) Where the obligor makes payments directly to the obligee pursuant to an order for support and where income withholding procedures take effect, the provisions to pay directly are superseded by the withholding process and the obligor and the payor on behalf of the obligor during the period of withholding must pay this support through the State Disbursement Unit.

(D)(1) If a delinquency occurs, the clerk of court shall prepare, file, and

serve on the obligor a verified notice of delinquency within fifteen calendar days of the delinquency if the obligor's address is known or if the address is not known, within fifteen calendar days of locating the obligor. If the obligor makes payments pursuant to an order for support directly to the obligee and the obligee seeks income withholding, the notice of delinquency must be verified by the obligee and then served on the obligor by the clerk of court as with any other notice of delinquency.

(2) The verified notice of delinquency must be served on the obligor by regular mail addressed to the obligor's last known address or place of employment. Upon mailing the notice, the clerk of court shall file a certificate of mailing stating the name and address to which the notice was mailed and the date on which it was mailed. If service cannot be effected as set forth in this subsection, the obligor may be served as prescribed for service in civil actions.

(3) The notice of delinquency shall inform the obligor that a delinquency has occurred and shall recite the monthly support obligations of the obligor pursuant to the order of support, the total amount of the arrearage as of the date of the notice, and the amount of income to be withheld. The notice must clearly state that a notice to withhold will be sent to the obligor's current or subsequent payor, income withholding will begin, and that a judgment lien may be imposed against the obligor's personal or real property in the amount of the arrearage pursuant to Section 20-7-1316, unless the obligor files a petition to stay service in accordance with subsection (E).

(E)(1) The obligor may prevent a notice to withhold from being served on the obligor's payor and prevent the recording of the arrearage pursuant to Section 20-7-1316 by filing a petition to stay service with the clerk of court with jurisdiction of the matter within ten days of the date that the notice of delinquency is postmarked; however, the grounds for granting the petition to stay service are limited to a dispute concerning the identity of the obligor or the existence or amount of the arrearage.

(2) Filing of a petition to stay service within the ten days required under this subsection prohibits the clerk of court from serving the notice to withhold on any payor of the obligor and prohibits the recordation of the arrearage.

(3) If a petition to stay service is filed, a hearing on the petition must be held within thirty days of its filing. The obligor, obligee, and Department of Social Services, where appropriate, must be notified by the clerk of court of the date, time, and place of the hearing and the court must decide the matter, notify the obligor, and enter an order granting or denying relief or amending the notice of delinquency within forty-five days of the date the notice of delinquency was mailed to the obligor. If the court finds that a delinquency existed when the notice of delinquency was mailed, the court shall order immediate service of the notice to withhold and the arrearage may be recorded immediately pursuant to Section 20-7-1316. The court shall inform the obligor of the time frame within which withholding is to begin and shall provide the obligor in writing with the information contained in the notice to withhold to be served on the payor with respect to the withholding.

(4) Upon filing an affidavit with the court stating that a petition to stay service was not timely filed because the notice of delinquency was not received and that grounds exist for a petition to stay service as stated in subsection (E)(1), the obligor is permitted to file a petition to withdraw the notice to withhold, terminate the withholding procedures, and remove the judgment created by the recording of the arrearage. Income withholding, however, may not be interrupted unless the court enters an order granting the relief sought by the obligor based on the limited grounds for a petition to stay service.

(F)(1) Fifteen days following the mailing of the notice of the delinquency to the obligor and if no petition to stay service has been filed, the clerk of court shall serve a notice to withhold on the payor or its agent by regular mail and may record the arrearage pursuant to Section 20-7-1316.

(2) The notice to withhold shall:

(a) direct any payor to withhold at the obligor's regularly scheduled pay periods an amount which over the period of one month would constitute one month's support obligation plus applicable fees pursuant to this section and costs as provided by Section 20-7-1440;

(b) direct any payor to withhold an additional amount toward any arrearage until the arrearage is paid in full; however, amounts to be withheld under this item and item (2)(a) may not exceed the limits set forth by the Federal Consumer Credit Protection Act (15 U.S.C. Section 1673(b));

(c) direct any payor to notify the clerk if health insurance is available to the obligor for the benefit of children for whom child support is being withheld;

(d) state the rights, responsibilities, and liabilities of the payor under this section.

(3) The payor shall then deduct the designated amount pursuant to the notice to withhold beginning no later than the next regularly scheduled pay period following the pay period during which the payor was served. Payors need not change their regular payroll pattern and may combine all withheld amounts into one payment to the State Disbursement Unit with an itemized statement showing accounts attributable to each obligor for each obligee. For each instance of withholding of income, the payor is entitled to receive a fee of up to three dollars to be deducted from the income of the obligor in addition to the amounts withheld pursuant to the notice to withhold unless the fee is waived by the payor.

(4) If there is more than one notice to withhold on a single obligor, the payor must comply with the notices by withholding the amounts designated in the notices to the extent possible pursuant to the Federal Consumer Credit Protection Act (15 U.S.C. Section 1673(b)). If the payor cannot fully comply with the notices because the amounts to be withheld would exceed the limits under the Federal Consumer Credit Protection Act, the payor shall notify the court in writing as to its reasons for failing to fully comply. Priority must be given to current support obligations. In no case may the allocation result in a withholding for one of the support obligations not being implemented.

(5) The employer shall promptly pay the amount withheld to the State Disbursement Unit within seven working days of the date income is withheld, in accordance with the notice to withhold and in accordance with any notification received from the clerk of court concerning withholding. The payor shall provide the date on which the income is withheld.

(6) After the obligor's arrearage has been satisfied, the clerk of court shall serve the payor by regular mail a notice of reduction of withholding. The notice shall inform the payor of the satisfied amount and direct the payor to discontinue withholding the additional amount as prescribed in the notice.

(7) Within twenty days after the obligor is no longer employed by the payor, the payor shall return a copy of the notice to withhold to the clerk of court and shall notify the clerk of court in writing of the date the obligor's employment terminated, the date of the obligor's final paycheck, the obligor's home address, and obligor's new employer and address, if known.

(8) Withholding of income from an obligor under this section has priority over any other legal process under state law against the same wages. Payment pursuant to a notice to withhold is a complete defense by the payor against any claims of the obligor or the obligor's creditors as to the sum paid.

(9) No payor may discharge, refuse to hire, or otherwise penalize any obligor because of the duty to withhold income.

(10) The responsibility of a payor who employs an obligor to withhold support from the pay of the obligor ends when the obligor leaves the employ of the payor. If this termination of employment occurs during the middle of a pay period, the final amount required to be withheld must be proportionately reduced in the same percentage that the time worked has to the time of the full pay period.

(11) If the Division of Child Support of the Department of Social Services is notified by the South Carolina Employment Security Commission in accordance with Section 41-35-140 that an obligor is receiving unemployment insurance benefits, the division must notify the court for the intercept of unemployment insurance benefits if a delinquency occurs and the obligor's case is a Title IV-D case. The intercept of unemployment insurance benefits must be in accordance with Section 41-35-140.

(G)(1) The clerk of court may suspend income withholding because of inability to deliver the income withheld to the obligee due to the obligee's failure to provide a mailing address or other means of delivery. Upon relocating the obligee and upon meeting the requirements of notice and service pursuant to this section, income withholding must be reinstated.

(2) An obligor may petition the court at any time to terminate income withholding pursuant to a notice to withhold:

(a) if there is no longer a current order for support and all arrearages are paid; or

(b) if the obligor requests termination and withholding has not been terminated previously and subsequently reinstated and the obligor meets the conditions for an alternative arrangement.

However, if termination is granted and subsequently a delinquency occurs, the clerk of court shall reinstate withholding procedures by complying with all requirements for notice and service pursuant to this section.

(3) The clerk of court shall serve on the payor by regular mail a copy of any order entered pursuant to this subsection or subsection (E)(4) that affects the duties of the payor. If service cannot be effected as set forth in this subsection, the payor may be served as prescribed for service in civil actions.

(4) The notice to withhold continues to be binding upon the payor until service of any order of the court entered under this subsection or subsection (E)(4) or until notice is served on the payor by the clerk of court that the underlying order is, for other reasons such as expiration of the support obligation, no longer in effect.

(H)(1) An obligee who is receiving income withholding payments under this section shall notify the clerk of court of any change of address within seven days of the change.

(2) An obligee who is a recipient of public aid must send a copy of any notice of delinquency filed pursuant to subsection (D) to the Division of Child Support of the South Carolina Department of Social Services.

(3) An obligor whose income is being withheld or who has been served with a notice of delinquency pursuant to this section shall notify the clerk of court of any new payor and of the availability of health insurance for any children for whom support is ordered within seven days after employment commences.

(4) Upon receiving any other support payment including, but not limited to, a tax offset under federal or state law or any payment toward an arrearage, the Department of Social Services, within the time permitted by Title IV-D of the Social Security Act, shall provide notice of the payment to the clerk of court.

(5) Copies of support payment records certified by the Department of Social Services or the clerk of court shall, without further proof, be admissible as evidence in a dispute concerning support payments.

(6) The Department of Social Services and the Office of Court Administration shall design suggested legal forms for proceeding under this section and Section 20-7-1316 and shall make available to the courts for distribution to parties in support actions these forms and informational materials which describe the procedures and remedies set forth in this section and Section 20-7-1316.

(I)(1) If a payor wilfully fails to withhold or pay over income pursuant to a notice to withhold, the court upon notice and hearing may enter judgment and direct

the issuance of an execution against the payor for the total amount that the payor wilfully failed to withhold. A payor who wilfully refuses to hire or who discharges or otherwise penalizes an obligor as prohibited by subsection (F)(9) or who fails to notify the clerk of the availability of health insurance is subject to a civil fine not to exceed five hundred dollars which may be imposed by the court in its discretion.

(2) If an obligor, obligee, or the Department of Social Services wilfully initiates a false proceeding under this section or wilfully fails to comply with the requirements of this section, punishment for contempt may be imposed.

(J) The rights, remedies, duties, and penalties created by this section are in addition to any other rights, remedies, duties, and penalties otherwise provided by law.

(K) The Office of Court Administration after consultation with the Department of Social Services is authorized to promulgate those regulations necessary to implement this section.

(L) By January 1, 1996, the Child Support Enforcement Division of the Department of Social Services shall create and develop an Employer New Hire Reporting program. The Employer New Hire Reporting program shall provide a means for employers to voluntarily assist in the state's efforts to locate absent parents who owe child support and collect child support from those parents by reporting information concerning newly hired and rehired employees directly to the division. The following provisions apply to the Employer New Hire Reporting program:

(1) An employer doing business in this State may participate in the Employer New Hire Reporting program by reporting to the Child Support Enforcement Division:

(a) the hiring of a person who resides or works in this State to whom the employer anticipates paying earnings; or

(b) the rehiring or return to work of an employee who was laid off, furloughed, separated, granted leave without pay, or terminated from employment.

(2) The Employer New Hire Reporting program applies to a person who is expected to:

(a) be employed for more than one month's duration;

(b) be paid for more than three hundred fifty hours during a continuous six-month period; or

(c) have gross earnings of more than three hundred dollars in each month of employment.

(3) An employer who voluntarily reports under item (1) shall submit monthly reports regarding each hiring, rehiring, or return to work of an employee during the preceding month. The report must contain:

(a) the employee's name, address, social security number, date of birth, and salary information; and

(b) the employer's name, address, and employer identification number.

(4) Employers reporting to the Employer New Hire Reporting program shall provide information to the Child Support Enforcement Division by:

(a) sending a copy of the new employee's W-4 form;

(b) completing a form supplied by the Child Support Enforcement Division; or

(c) any other means authorized by the Child Support Enforcement Division for conveying the required information, including electronic transmission or magnetic tapes in compatible formats.

(5) An employer is authorized by this section to disclose the information described in item (3) and is not liable to the employee for the disclosure or subsequent use by the Child Support Enforcement Division of the information.

(6) Information received by the South Carolina Employment Security Commission from employers which includes information contained in the reports provided for in this section shall transmit this information to the Department of Social Services within fifteen working days after the end of each quarter.

Information received by the South Carolina Employment Security Commission received from employers which includes information contained in the reports provided for in this section shall transmit this information to the Department of Social Services within fifteen working days after the end of each quarter.

(M) Amounts collected through the State Disbursement Unit are subject to court costs pursuant to Section 20-7-1440(C), with disposition of all these fees made in accordance with Section 14-1-203. Employers shall make payment of the amount withheld to the State Disbursement Unit within seven working days of the date income is withheld. The department shall, in compliance with federal requirements, disburse child support funds received from employers to the custodial parent.'

Income withholding

SECTION 5. Section 20-7-1326 of the 1976 Code, as added by Act 192 of 1985, is amended to read:

'Section 20-7-1326. (a) The notice to withhold shall direct payment to be made to the State Disbursement Unit. The State Disbursement Unit shall promptly transmit payments received pursuant to an order to withhold based on a support order of another jurisdiction entered under this subarticle to the agency or person designated in subitem (c) of item (5) of subsection (b) of Section 20-7-1321.

(b) A support order entered pursuant to Section 20-7-1321 does not nullify and

is not nullified by a support order made by a court of this State pursuant to any other law or by a support order made by a court of any other state. Amounts collected by any withholding of income must be credited against the amounts accruing or accrued for any period under any support orders issued either by this State or by a sister state.'

Voluntary income withholding

SECTION 6. Section 20-7-1328 of the 1976 Code, as added by Act 192 of 1985, is amended to read:

'Section 20-7-1328. Any person who is the obligor on a support order of another jurisdiction may obtain voluntary income withholding by filing with the clerk of court a request for withholding and a certified copy of the support order of a sister state. The clerk of court shall issue a notice to withhold under subsection (2) of subsection (E) of Section 20-7-1315. Payment must be made to the State Disbursement Unit.'

Child support obligation up to and beyond age eighteen

SECTION 7. Section 20-7-420(17) of the 1976 Code, as amended by Act 287 of 1996, is further amended to read:

'(17) To make all orders for support run until further order of the court, except that orders for child support run until the child is eighteen years of age or until the child is married or becomes self-supporting, as determined by the court, whichever occurs first; or without further order, past the age of eighteen years if the child is enrolled and still attending high school, not to exceed high school graduation or the end of the school year after the child reaches nineteen years of age, whichever is later; or in accordance with a preexisting agreement or order to provide for child support past the age of eighteen years; or in the discretion of the court, to provide for child support past age eighteen where there are physical or mental disabilities of the child or other exceptional circumstances that warrant the continuation of child support beyond age eighteen for as long as the physical or mental disabilities or exceptional circumstances continue.'

Time effective

SECTION 8. This act takes effect upon approval by the Governor. The State Disbursement Unit is to be implemented in accordance with Section 20-7-1300 and Section 20-7-1310 as contained in SECTION 3 of this act.