

SENATE BILL No. 160

By Senator Lynn

2-9

1 AN ACT concerning child support; relating to collection of support
2 payments; amending K.S.A. 2010 Supp. 23-4,107 and 75-6202 and
3 repealing the existing sections.
4

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

6 Section 1. K.S.A. 2010 Supp. 23-4,107 is hereby amended to read as
7 follows: 23-4,107. (a) Any new or modified order for support shall
8 include a provision for the withholding of income to enforce the order for
9 support.

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

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

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

32 (1) The obligee or public office may apply for an income
33 withholding order by filing with the court an affidavit stating: (A) The
34 date that the notice was served on the obligor and the manner of service;
35 (B) that the obligor has not filed a motion to stay issuance of the income
36 withholding order or, if a motion to stay has been filed, the reason an

1 income withholding order must be issued immediately; (C) a specified
2 amount to be withheld by the payor to satisfy the order of support and to
3 defray any arrearage; (D) whether the income withholding order is to
4 include a medical withholding order; and (E) that the amount of the
5 arrearage as of the date the notice to the obligor was prepared was equal
6 to or greater than the amount of support payable for one month. In
7 addition to any other penalty provided by law, the filing of such an
8 affidavit with knowledge of the falsity of a material declaration is
9 punishable as a contempt.

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

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

23 (e) (1) An income withholding order shall be directed to any payor
24 of the obligor. Notwithstanding any other requirement of this act as to
25 form or content, any income withholding order prepared in a standard
26 format prescribed by the secretary of social and rehabilitation services
27 shall be deemed to be in compliance with this act.

28 (2) An income withholding order which does not include a medical
29 withholding order shall require the payor to withhold from any income
30 due, or to become due, to the obligor a specified amount sufficient to
31 satisfy the order of support and to defray any arrearage and shall include
32 notice of and direction to comply with the provisions of K.S.A. 23-4,108
33 and 23-4,109, and amendments thereto.

34 (3) An income withholding order which consists only of a medical
35 withholding order shall include notice of the medical child support order
36 and shall conform to the requirements of K.S.A. 23-4,121, and
37 amendments thereto. The medical withholding order shall include notice
38 of and direction to comply with the requirements of K.S.A. 23-4,108, 23-
39 4,109, 23-4,119 and 23-4,122, and amendments thereto.

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

43 (f) (1) Upon written request and without the requirement of further

1 notice to the obligor, the clerk of the district court shall cause a copy of
2 the income withholding order to be served on the payor only by personal
3 service or registered mail, return receipt requested.

4 (2) Without the requirement of further notice to the obligor, the
5 *court trustee* or IV-D agency may cause a copy of any income
6 withholding order to be served on the payor only by personal service or
7 registered mail, return receipt requested or by any alternate method
8 acceptable to the payor. No payor shall be liable to any person solely
9 because of the method of service accepted by the payor.

10 (3) As used in this section, "copy of the income withholding order"
11 means any document or notice, regardless of format, that advises the
12 payor of the same general duties, requires the same amount to be
13 withheld from income and requires medical withholding to the same
14 extent as the original income withholding order.

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

22 (h) Except as provided in subsection (k) or (l), at any time following
23 entry of an order for support the obligee or public office may serve upon
24 the obligor a written notice of intent to initiate income withholding. If any
25 notice in the court record indicates that title IV-D services are being
26 provided in the case, whether or not the IV-D services include
27 enforcement of current support, the person or public office requesting
28 issuance of the income withholding order shall obtain the consent of the
29 IV-D agency to the terms of the proposed income withholding order.

30 The notice of intent to initiate income withholding shall be served on
31 the obligor only by personal service or registered mail, return receipt
32 requested. The notice served on the obligor must state: (1) The terms of
33 the order of support and the total arrearage as of the date the notice was
34 prepared; (2) the amount of income that will be withheld, not including
35 premiums to satisfy a medical withholding order; (3) whether a medical
36 withholding order will be included; (4) that the provision for withholding
37 applies to any current or subsequent payor; (5) the procedures available
38 for contesting the withholding and that the only basis for contesting the
39 withholding is a mistake of fact concerning the amount of the support
40 order, the amount of the arrearage, the amount of income to be withheld
41 or the proper identity of the obligor; (6) the period within which the
42 obligor must act to stay issuance of the income withholding order and
43 that failure to take such action within the specified time will result in

1 payors' being ordered to begin withholding; and (7) the action which will
2 be taken if the obligor contests the withholding.

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

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

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

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

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

43 (4) If a notice pursuant to subsection (h) has been served in a title

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

7 (A) The agreement was not in writing;

8 (B) the agreement was not approved by all interested parties;

9 (C) the terms of the agreement or alternative arrangement are not
10 being met;

11 (D) the agreement or alternative arrangement is not in the best
12 interests of the child; or

13 (E) the agreement or alternative arrangement places an unnecessary
14 burden upon the obligor, obligee or a public office.

15 (5) The procedures and requirements of K.S.A. 23-4,110, and
16 amendments thereto, apply to any motion pursuant to paragraph (3) or (4)
17 of this subsection (j).

18 (k) (1) An ex parte interlocutory order for support may be enforced
19 pursuant to subsection (b) only if the obligor has consented to the income
20 withholding in writing.

21 (2) An ex parte interlocutory order for support may be enforced
22 pursuant to subsection (c) only if 14 or more days have elapsed since the
23 order for support was served on the obligor.

24 (3) Any other interlocutory order for support may be enforced by
25 income withholding pursuant to this act in the same manner as a final
26 order for support.

27 (4) No bond shall be required for the issuance of an income
28 withholding order to enforce an interlocutory order pursuant to this act.

29 (l) All new or modified orders for maintenance of a spouse or ex-
30 spouse, except orders for a spouse or ex-spouse living with a child for
31 whom an order of support is also being enforced, entered on or after July
32 1, 1992, shall include a provision for the withholding of income to
33 enforce the order of support. Unless the parties consent in writing to
34 earlier issuance of a withholding order, withholding shall take effect only
35 after there is an arrearage in an amount equal to or greater than the
36 amount of support payable for two months and after service of a notice as
37 provided in subsection (h).

38 Sec. 2. K.S.A. 2010 Supp. 75-6202 is hereby amended to read as
39 follows: 75-6202. As used in this act:

40 (a) "Debtor" means any person who:

41 (1) Owes a debt to the state of Kansas or any state agency or any
42 municipality;

43 (2) owes support to an individual, or an agency of another state, who

1 is receiving assistance in collecting that support under K.S.A. 39-756,
2 and amendments thereto, or under part D of title IV of the federal social
3 security act (42 U.S.C. § 651 *et seq.*), as amended; or

4 (3) owes a debt to a foreign state agency.

5 (b) "Debt" means:

6 (1) Any liquidated sum due and owing to the state of Kansas, or any
7 state agency, municipality or foreign state agency which has accrued
8 through contract, subrogation, tort, operation of law, or any other legal
9 theory regardless of whether there is an outstanding judgment for that
10 sum. A debt shall not include special assessments except when the owner
11 of the property assessed petitioned for the improvement and any
12 successor in interest of such owner of property; or

13 (2) any amount of support due and owing an individual, or an
14 agency of another state, who is receiving assistance in collecting that
15 support under *K.S.A. 23-495 or K.S.A. 39-756*, and amendments thereto,
16 or under part D of title IV of the federal social security act (42 U.S.C. §
17 651 *et seq.*), as amended, which amount shall be considered a debt due
18 and owing the district court trustee or the department of social and
19 rehabilitation services for the purposes of this act.

20 (c) "Refund" means any amount of Kansas income tax refund due to
21 any person as a result of an overpayment of tax, and for this purpose, a
22 refund due to a husband and wife resulting from a joint return shall be
23 considered to be separately owned by each individual in the proportion of
24 each such spouse's contribution to income, as the term "contribution to
25 income" is defined by rules and regulations of the secretary of revenue.

26 (d) "Net proceeds collected" means gross proceeds collected through
27 final setoff against a debtor's earnings, refund or other payment due from
28 the state or any state agency minus any collection assistance fee charged
29 by the director of accounts and reports of the department of
30 administration.

31 (e) "State agency" means any state office, officer, department, board,
32 commission, institution, bureau, agency or authority or any division or
33 unit thereof and any judicial district of this state or the clerk or clerks
34 thereof. "State agency" also shall include any district court utilizing
35 collection services pursuant to K.S.A. 75-719, and amendments thereto,
36 to collect debts owed to such court.

37 (f) "Person" means an individual, proprietorship, partnership, limited
38 partnership, association, trust, estate, business trust, corporation, other
39 entity or a governmental agency, unit or subdivision.

40 (g) "Director" means the director of accounts and reports of the
41 department of administration.

42 (h) "Municipality" means any municipality as defined by K.S.A. 75-
43 1117, and amendments thereto.

1 (i) "Payor agency" means any state agency which holds money for,
2 or owes money to, a debtor.

3 (j) "Foreign state or foreign state agency" means the states of
4 Colorado, Missouri, Nebraska or Oklahoma or any agency of such states
5 which has entered into a reciprocal agreement pursuant to K.S.A. 75-
6 6215, and amendments thereto.

7 Sec. 3. K.S.A. 2010 Supp. 23-4,107 and 75-6202 are hereby
8 repealed.

9 Sec. 4. This act shall take effect and be in force from and after its
10 publication in the statute book.

11