

SESSION OF 2013

**CONFERENCE COMMITTEE REPORT BRIEF
HOUSE BILL NO. 2015**

As Agreed to April 3, 2013

Brief*

HB 2015 would amend the law concerning marital property, service of process in dissolution of marriage proceedings, and enforcement of support orders. Specifically, the bill would amend the list of property that remains the sole and separate property of a married person, notwithstanding the marriage, to eliminate an exception for gifts received from the person's spouse. Spousal gifts thus would be included in the list of sole and separate property. Exceptions would be added, however, for transfers that violate the Statute of Frauds and Uniform Fraudulent Transfer Act. The bill also would make a technical amendment to the law concerning service of process in a dissolution of marriage proceeding to correct a reference changed during the domestic recodification enacted in 2011.

Further, the bill would create new sections and amend existing law related to the distribution of child support, income withholding for the enforcement of support orders, and debt setoff procedures. In a new section, the bill would direct that support orders, regardless of when entered or modified, paid through the Kansas Department for Children and Families (DCF) central unit be distributed in accordance with rules and regulations adopted by the Secretary of DCF, which would be based on child support distribution requirements set forth in Title IV-D of the federal Social Security Act and accompanying federal regulations. This section would be

*Conference committee report briefs are prepared by the Legislative Research Department and do not express legislative intent. No summary is prepared when the report is an agreement to disagree. Conference committee report briefs may be accessed on the Internet at <http://www.kslegislature.org/kldr>

effective on and after July 1, 2015, and the Secretary of DCF would be required to adopt rules and regulations implementing the section by July 1, 2015, which would not become effective until that date.

The bill also would allow an income withholding order to attach to a "lump sum payment," which would include bonuses, commissions, vacation or other leave time payments, or any other payment to an obligor. This payment form would not include regular payday compensation, reimbursement of expenses, or severance pay. An order for attachment of a lump sum payment would attach any intangible property, funds, credits, or other indebtedness of a non-recurring nature belonging or owing to the obligor due from the payor or in the possession of the payor at the time of service, as well as any personal property becoming due to the obligor by the 35th day after service. An order must specify the amount the payor is required to withhold for support from the lump sum payment.

A payor who has been served a Title IV-D income withholding order that includes an amount to defray an arrearage would be required to contact the Title IV-D agency at least 14 days prior to making payment of any lump sum amount to the obligor. The payor would be allowed to pay the lump sum to the obligor once 14 days have passed after this contact, unless additional process or notice of the same has been received. Further, the bill would set forth additional procedures for a payor to follow in holding and remitting the attached funds, credits, or indebtedness after receiving service of the income withholding order.

In a new section, the bill would outline requirements for providing notice to an obligor of an income withholding order for attachment of a lump sum payment. The section would allow an obligor to request a hearing to assert any claim of exemption within ten days of notice being served. The notice and timing requests for such a hearing would be specified, as well as the obligor's burden of proof.

Additionally, the bill would authorize the Secretary of DCF to collect support owed in a Title IV-D case from unemployment insurance benefits payable to the obligor. Such collections could be remitted directly to the Secretary, who would be directed to use electronic processes to the greatest extent feasible. Any cost recovery fee as a result of withholding of unemployment insurance benefits from the state employment security agency (Department of Labor) would be paid by DCF and not by the obligor. The Secretary of DCF would be allowed to apply a collection received directly from another state agency for a debtor with more than one income withholding order in any manner allowed under Title IV-D, so long as the payor agency does not identify the amounts to be applied to each order and all current support due for the month is satisfied first.

The bill also would amend existing sections of the Income Withholding Act to:

- Define “periodic payment”;
- Require income withholding orders to be prepared in a standard format prescribed by the Secretary of DCF or pursuant to the standard federal notices and forms;
- Allow service of an income withholding order by first-class mail or by alternate methods acceptable to the payor, including fax, e-mail, or other electronic interface;
- Allow notice of intent to initiate income withholding by first-class mail;
- Require all remittances from any income withholding order, regardless of when such order was entered or modified, to be directed to the DCF central unit for collection and disbursement of support payments;

- Allow a payor to withhold and retain a cost recovery fee of up to \$10 per income withholding from a lump sum payment, which would be in addition to any cost recovery fee charged for withholding from periodic payments and in addition to the amount withheld as support;
- Clarify that the entire sum withheld by the payor shall not exceed 50 percent of the obligor's disposable income as defined by updated references to the federal Consumer Credit Protection Act; and
- Update effective dates.

Finally, the bill would amend income withholding order provisions in sections of law addressing social welfare to correspond with the amendments made to the Income Withholding Act with regard to service by first-class mail.

Conference Committee Action

The Conference Committee agreed to the Senate amendments and to add the revised contents of SB 125. The revised version of SB 125 gives the Secretary of DCF the authority to adopt rules and regulations concerning the distribution of amounts collected pursuant to a support order and removes new section 5, concerning the ability of the Secretary of DCF to contract directly with other agencies that control or process funds sought by DCF for the payment of child support obligations pursuant to Title IV-D.

Background

HB 2015. The bill was introduced by the House Judiciary Committee at the request of the Kansas Judicial Council. The bill is identical to 2011 SB 44, which was requested by the Kansas Bar Association, considered by the

Senate Judiciary Committee, and referred to the Judicial Council for study; and to 2012 SB 297, which was introduced by the Senate Judiciary Committee at the request of the Judicial Council and passed by the Senate.

In the House Judiciary Committee, a representative of the Judicial Council appeared as a proponent, and the Kansas Bar Association offered written testimony in support of the bill. No others offered testimony.

The same conferees offered testimony in the Senate Judiciary Committee. The Senate Committee amended the bill to add the contents of HB 2259.

The fiscal note provided by the Division of the Budget indicates passage of HB 2015 would have no impact on the Judicial Branch.

HB 2259. HB 2259 was introduced at the request of the Office of the Revisor of Statutes to correct a reference changed during the domestic recodification enacted in 2011. No proponents or opponents offered testimony in the House or Senate Committees on Judiciary.

The House Committee recommended the bill be placed on the consent calendar.

The fiscal note provided by the Division of the Budget indicates passage of HB 2259 would have no fiscal effect.

SB 125. In the Senate Judiciary Committee, a representative from DCF testified in support of the bill. The district court trustee of the Seventh Judicial District submitted written testimony opposing the new section of the bill related to distribution of support based on Title IV-D requirements. There were no other conferees.

The Senate Committee amended the bill to change the effective date for the new section related to distribution of support based on Title IV-D requirements, the deadline for

adoption of rules and regulations to implement the provisions of the section, and the effective date of such rules and regulations from July 1, 2014, to July 1, 2015.

The fiscal note prepared by the Division of the Budget on the bill indicates DCF estimates the change in child support distributions would save \$1,150,000 per year. The ability for DCF to contract with the source agency would save \$600,000 per year. The Department of Administration indicates the bill would require modifications to the Statewide Human Resources and Payroll System. One-time modifications would require \$13,500 from agency fee funds. Notification processing would increase annual expenditures by \$2,400. These costs could be partially offset by an additional \$300 per year in revenue from income withholding order fees. Any fiscal effect is not reflected in The FY 2014 Governor's Budget Report.

Domestic relations; marital property; dissolution of marriage; service of process; support orders

ccrb_hb2015_01_0000.odt