

Marital Property; Enforcement of Support Orders; HB 2015

HB 2015 amends the law concerning marital property, service of process in dissolution of marriage proceedings, and enforcement of support orders. Specifically, the bill amends 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 are included in the list of sole and separate property. There are exceptions, however, for transfers that violate the Statute of Frauds and Uniform Fraudulent Transfer Act. The bill also makes 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 creates new sections and amends 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 directs 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 for Children and Families (Secretary), based on child support distribution requirements set forth in Title IV-D of the federal Social Security Act and accompanying federal regulations. This section is effective on and after July 1, 2015, and the Secretary must adopt rules and regulations implementing the section by July 1, 2015, which will not take effect until that date.

The bill also allows an income withholding order to attach to a "lump sum payment," which includes bonuses, commissions, vacation or other leave time payments, or any other payment to an obligor. This payment form does not include regular payday compensation, reimbursement of expenses, or severance pay. An order for attachment of a lump sum payment attaches to 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 must contact the Title IV-D agency at least 14 days prior to making payment of any lump sum amount to the obligor. The payor could 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 sets 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.

The bill adds requirements for providing notice to an obligor of an income withholding order for attachment of a lump sum payment. The new section allows 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 are specified, as well as the obligor's burden of proof.

Additionally, the bill authorizes the Secretary 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 is 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) are paid by DCF and not by the obligor. The Secretary could 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 amends 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 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 amends 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.