

HOUSE BILL No. 2787

By Committee on Federal and State Affairs

3-14

1 AN ACT concerning enforcement of support orders; relating to income
2 withholding; income withholding act; support enforcement services;
3 amending K.S.A. 39-7,147 and K.S.A. 2011 Supp. 23-3102, 23-3103,
4 23-3104, 23-3105 and 39-756 and repealing the existing sections.
5

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

7 New Section 1. (a) From and after July 1, 2013, for any order of
8 support required to be paid through the central unit for collection and
9 disbursement of support payments designated pursuant to K.S.A. 2011
10 Supp. 39-7,135, and amendments thereto, regardless of when such order
11 was entered or modified, amounts collected by such central unit shall be
12 distributed based on child support distribution requirements as set forth in
13 part D of title IV of the federal social security act, 42 U.S.C. § 651 *et seq.*,
14 as amended, and federal regulations promulgated pursuant thereto.

15 (b) Prior to July 1, 2013, the secretary of social and rehabilitation
16 services shall adopt rules and regulations to implement the provisions of
17 this section. Such rules and regulations shall not become effective until
18 July 1, 2013.

19 New Sec. 2. (a) Except as otherwise provided in this section, an
20 income withholding order for attachment of a lump sum payment shall
21 have the effect of attaching: (1) Any intangible property, funds, credits or
22 other indebtedness of a non-recurring nature belonging or owing to the
23 obligor which is due from the payor or in the possession or under the
24 control of the payor at the time of service of the order; and (2) all such
25 personal property becoming due to the obligor between the time the order
26 is served on the payor and the 35th day after the date the order is served.

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

34 (c) The payor shall hold the attached funds, credits or indebtedness
35 until further order of the court if, before remitting funds pursuant to
36 subsection (b), the payor receives notice of a hearing on the obligor's

1 claim of exemption concerning the income withholding order for
2 attachment of a lump sum payment.

3 (d) This section shall be part of and supplemental to the income
4 withholding act, K.S.A. 2011 Supp. 23-3101 *et seq.*, and amendments
5 thereto.

6 New Sec. 3. (a) Immediately following the date the income
7 withholding order for attachment of a lump sum payment is served on the
8 payor, the person or public office seeking the withholding shall send a
9 notice to the obligor, notifying the obligor: (1) That an income
10 withholding order to attach a lump sum payment has been served on the
11 payor and the effect of such order; (2) of the obligor's right to assert any
12 claim of exemption allowed under the income withholding act; and (3) of
13 the obligor's right to a hearing on such claim. The notice shall be
14 substantially in compliance with the form developed pursuant to K.S.A.
15 2011 Supp. 23-3113, and amendments thereto, and shall contain a
16 description of the exemptions that are applicable under the income
17 withholding act and the procedure by which the obligor can assert any
18 claim of exemption.

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

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

34 (d) This section shall be part of and supplemental to the income
35 withholding act, K.S.A. 2011 Supp. 23-3101 *et seq.*, and amendments
36 thereto.

37 New Sec. 4. (a) The secretary of social and rehabilitation services
38 may collect, pursuant to the income withholding act, K.S.A. 2011 Supp.
39 23-3101 *et seq.*, and amendments thereto, support owed in a title IV-D
40 case from unemployment insurance benefits payable to the obligor. Such
41 collections may be remitted directly to the secretary. The secretary, and
42 any other agency affected, shall use electronic processes to the greatest
43 extent feasible.

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

8 (c) This section shall be part of and supplemental to the income
9 withholding act, K.S.A. 2011 Supp. 23-3101 *et seq.*, and amendments
10 thereto.

11 Sec. 5. K.S.A. 2011 Supp. 23-3102 is hereby amended to read as
12 follows: 23-3102. As used in the income withholding act:

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

20 (b) "Business day" means a day on which state offices in Kansas are
21 open for regular business.

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

27 (d) "Income" means any form of ~~periodic~~ payment to an individual,
28 regardless of source, including, but not limited to, wages, salary, trust,
29 royalty, commission, bonus, compensation as an independent contractor,
30 annuity and retirement benefits, workers compensation and any other
31 periodic payments made by any person, private entity or federal, state or
32 local government or any agency or instrumentality thereof. "Income" does
33 not include: (1) Any amounts required by law to be withheld, other than
34 creditor claims, including but not limited to federal and state taxes, social
35 security tax and other retirement and disability contributions; (2) any
36 amounts exempted by federal law; (3) public assistance payments; and (4)
37 unemployment insurance benefits except to the extent otherwise provided
38 by law. Any other state or local laws which limit or exempt income or the
39 amount or percentage of income that can be withheld shall not apply.
40 Workers compensation shall be considered income only for the purposes of
41 child support and not for the purposes of maintenance. *Unemployment*
42 *insurance benefits shall be considered income for purposes of this act*
43 *when such funds are sought by the secretary of the department of social*

1 *and rehabilitation services, or the secretary's designee, in administration*
2 *of the title IV-D program.*

3 *(e) "Income withholding agency" means the department of social and*
4 *rehabilitation services.*

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

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

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

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

21 ~~(h)~~ *(j) "Nonparticipating parent" means, if one parent is a*
22 *participating parent as defined in this section, the other parent.*

23 ~~(i)~~ *(k) "Obligee" means the person or entity to whom a duty of*
24 *support is owed.*

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

27 ~~(k)~~ *(m) "Order for support" means any order of a court, or of an*
28 *administrative agency authorized by law to issue such an order, which*
29 *provides for payment of funds for the support of a child, or for*
30 *maintenance of a spouse or ex-spouse, and includes an order which*
31 *provides for modification or resumption of a previously existing order;*
32 *payment of uninsured medical expenses; payment of an arrearage accrued*
33 *under a previously existing order; a reimbursement order, including but not*
34 *limited to an order established pursuant to K.S.A. 39-718a or 39-718b, and*
35 *amendments thereto; an order established pursuant to K.S.A. 23-451 et*
36 *seq., and amendments thereto; or a medical child support order.*

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

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

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

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

11 (⊕) (r) "Title IV-D" means part D of title IV of the federal social
12 security act, (42 U.S.C. § 651 *et seq.*) , and amendments thereto, as in
13 effect on December 31, ~~1999~~ 2009. "Title IV-D cases" means those cases
14 required by title IV-D to be processed by the department of social and
15 rehabilitation services under the state's plan for providing title IV-D
16 services.

17 Sec. 6. K.S.A. 2011 Supp. 23-3103 is hereby amended to read as
18 follows: 23-3103. (a) Any new or modified order for support shall include
19 a provision for the withholding of income to enforce the order for support.

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

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

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

36 (c) Except as otherwise provided in this subsection or subsections (j)
37 or (⊕) (m), if no income withholding order is in effect to enforce the
38 support order, an income withholding order shall be issued by the court
39 upon request of the obligee or public office, provided that the obligor
40 accrued an arrearage equal to or greater than the amount of support
41 payable for one month and the requirements of subsections (d) and (h)
42 have been met. The income withholding order shall be issued without
43 further notice to the obligor and shall specify an amount sufficient to

1 satisfy the order for support and to defray any arrearage. The income
2 withholding order shall be issued regardless of whether a payor subject to
3 the jurisdiction of this state can be identified at the time the income
4 withholding order is issued.

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

8 (1) The obligee or public office may apply for an income withholding
9 order by filing with the court an affidavit stating: (A) The date that the
10 notice was served on the obligor and the manner of service; (B) that the
11 obligor has not filed a motion to stay issuance of the income withholding
12 order or, if a motion to stay has been filed, the reason an income
13 withholding order must be issued immediately; (C) a specified amount to
14 be withheld by the payor to satisfy the order of support and to defray any
15 arrearage; (D) whether the income withholding order is to include a
16 medical withholding order; and (E) that the amount of the arrearage as of
17 the date the notice to the obligor was prepared was equal to or greater than
18 the amount of support payable for one month. In addition to any other
19 penalty provided by law, the filing of such an affidavit with knowledge of
20 the falsity of a material declaration is punishable as a contempt.

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

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

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

41 (2) An income withholding order which does not include a medical
42 withholding order shall require the payor to withhold from any income
43 due, or to become due, to the obligor a specified amount sufficient to

1 satisfy the order of support and to defray any arrearage and shall include
2 notice of and direction to comply with the provisions of K.S.A. 2011 Supp.
3 23-3104 and 23-3105, and amendments thereto.

4 (3) An income withholding order which consists only of a medical
5 withholding order shall include notice of the medical child support order
6 and shall conform to the requirements of K.S.A. 2011 Supp. 23-3116, and
7 amendments thereto. The medical withholding order shall include notice of
8 and direction to comply with the requirements of K.S.A. 2011 Supp. 23-
9 3104, 23-3105, 23-3114 and 23-3117, and amendments thereto.

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

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

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

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

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

39 (h) Except as provided in subsection (k) or ⊕ (m), at any time
40 following entry of an order for support the obligee or public office may
41 serve upon the obligor a written notice of intent to initiate income
42 withholding. If any notice in the court record indicates that title IV-D
43 services are being provided in the case, whether or not the IV-D services

1 include enforcement of current support, the person or public office
2 requesting issuance of the income withholding order shall obtain the
3 consent of the IV-D agency to the terms of the proposed income
4 withholding order.

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

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

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

27 (j) (1) In a nontitle IV-D case, upon presentation to the court of a
28 written agreement between the parties providing for an alternative
29 arrangement, no income withholding order shall be issued pursuant to
30 subsection (b). In any case, before entry of a new or modified order for
31 support, a party may request that no income withholding order be issued
32 pursuant to subsection (b) if notice of the request has been served on all
33 interested parties and: (A) The party demonstrates, and the court finds, that
34 there is good cause not to require immediate income withholding, or (B) a
35 written agreement among all interested parties provides for an alternative
36 arrangement. If child support and maintenance payments are both made to
37 an obligee by the same obligor, and if the court has determined that good
38 cause has been shown that direct child support payments to the obligee
39 may be made, then the court shall provide for direct maintenance
40 payments to the obligee and no income withholding order shall be issued
41 pursuant to subsection (b). In a title IV-D case, the determination that there
42 is good cause not to require immediate income withholding must include a
43 finding that immediate income withholding would not be in the child's best

1 interests and, if an obligor's existing obligation is being modified, proof of
2 timely payment of previously ordered support.

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

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

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

23 (A) The agreement was not in writing;

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

25 (C) the terms of the agreement or alternative arrangement are not
26 being met;

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

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

31 (5) The procedures and requirements of K.S.A. 2011 Supp. 23-3106,
32 and amendments thereto, apply to any motion pursuant to paragraph (3) or
33 (4) of this subsection (j).

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

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

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

43 (4) No bond shall be required for the issuance of an income

1 withholding order to enforce an interlocutory order pursuant to this act.

2 (l) *All remittances from any income withholding order, regardless of*
3 *when such order was entered or modified, shall be required to be directed*
4 *to the central unit for collection and disbursement of support payments*
5 *designated pursuant to K.S.A. 2011 Supp. 39-7,135, and amendments*
6 *thereto.*

7 (H) (m) All new or modified orders for maintenance of a spouse or ex-
8 spouse, except orders for a spouse or ex-spouse living with a child for
9 whom an order of support is also being enforced, entered on or after July
10 1, 1992, shall include a provision for the withholding of income to enforce
11 the order of support. Unless the parties consent in writing to earlier
12 issuance of a withholding order, withholding shall take effect only after
13 there is an arrearage in an amount equal to or greater than the amount of
14 support payable for two months and after service of a notice as provided in
15 subsection (h).

16 Sec. 7. K.S.A. 2011 Supp. 23-3104 is hereby amended to read as
17 follows: 23-3104. (a) It shall be the affirmative duty of any payor to
18 respond within 10 days to written or electronic requests for information
19 presented by the public office concerning: (1) The full name of the obligor;
20 (2) the current address of the obligor; (3) the obligor's social security
21 number; (4) the obligor's work location; (5) the number of the obligor's
22 claimed dependents; (6) the obligor's gross income; (7) the obligor's net
23 income; (8) an itemized statement of deductions from the obligor's
24 income; (9) the obligor's pay schedule; (10) the obligor's health insurance
25 coverage; and (11) whether or not income owed the obligor is being
26 withheld pursuant to this act. This is an exclusive list of the information
27 that the payor is required to provide under this section.

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

34 (c) Within seven business days of the time the obligor is normally
35 paid, the payor shall pay the amount withheld as directed by the income
36 withholding agency pursuant to K.S.A. 2011 Supp. 23-3105, and
37 amendments thereto, as directed by the income withholding order or by a
38 rule of the Kansas supreme court. The payor shall identify each payment
39 with the name of the obligor, the county and case number of the income
40 withholding order, and the date the income was withheld from the obligor.
41 The payor shall pay the amounts withheld and identify each payment in
42 the same business day. A payor subject to more than one income
43 withholding order payable to the same payee may combine the amounts

1 withheld into a single payment, but only if the amount attributable to each
2 income withholding order is clearly identified. Premiums required for a
3 child's coverage under a health benefit plan shall be remitted as provided
4 in the health benefit plan and shall not be combined with any other support
5 payment required by the income withholding order.

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

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

16 (f) The entire sum withheld by the payor, including the cost recovery
17 fee and premiums due from the obligor which are incurred solely because
18 of a medical withholding order, shall not exceed ~~the limits provided for~~
19 ~~under section 303(b)~~ *50% of the obligor's disposable income as defined by*
20 *section 302(b) of the consumer credit protection act, (15 U.S.C. § 1673(b))*
21 *1672(b).* If amounts of earnings required to be withheld exceed the
22 maximum amount of earnings which may be withheld ~~according to the~~
23 ~~consumer credit protection act under this section~~, priority shall be given to
24 payment of current and past due support, and the payor shall promptly
25 notify the holder of the limited power of attorney of any nonpayment of
26 premium for a health benefit plan on the child's behalf. An income
27 withholding order issued pursuant to this act shall not be considered a
28 wage garnishment as defined in subsection (b) of K.S.A. 60-2310, and
29 amendments thereto. If amounts of earnings required to be withheld in
30 accordance with this act are less than the maximum amount of earnings
31 which could be withheld according to *section 303(b) of the consumer*
32 *credit protection act, 15 U.S.C. § 1673(b)*, the payor shall honor
33 garnishments filed by other creditors to the extent that the total amount
34 taken from earnings does not exceed consumer credit protection act
35 limitations.

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

43 (~~g~~) (h) The payor shall promptly notify the court or agency that issued

1 the income withholding order of the termination of the obligor's
2 employment or other source of income, or the layoff of the obligor from
3 employment, and provide the obligor's last known address and the name
4 and address of the individual's current employer, if known.

5 ~~(h)~~ (i) A payor who complies with a copy of an income withholding
6 order that is regular on its face shall not be subject to civil liability to any
7 person or agency for conduct in compliance with the income withholding
8 order. As used in this section, "regular on its face" means a completed
9 document ~~in the standard format for any income withholding notice that~~
10 ~~has been adopted by the United States secretary of health and human~~
11 ~~services in a final rule or a certified copy of the income withholding order~~
12 ~~that is in compliance with subsection (e)(1) of K.S.A. 2011 Supp. 23-3103,~~
13 ~~and amendments thereto.~~

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

26 ~~(h)~~ (k) In addition to any judgment authorized by subsection (i), a
27 payor shall be subject to a civil penalty not exceeding \$500 and other
28 equitable relief as the court considers proper if the payor: (1) Discharges,
29 refuses to employ or takes disciplinary action against an obligor subject to
30 an income withholding order because of such withholding and the
31 obligations or additional obligations which it imposes upon the payor; or
32 (2) fails to withhold support from income or to pay such amounts in the
33 manner required by this act.

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

37 Sec. 8. K.S.A. 2011 Supp. 23-3105 is hereby amended to read as
38 follows: 23-3105. (a) An income withholding order shall have priority over
39 any other legal process under state law against the same income.
40 Withholding of income under this section shall be made without regard to
41 any prior or subsequent garnishments, attachments, wage assignments or
42 other claims of creditors.

43 (b) Except as provided by K.S.A. 60-2310, and amendments thereto,

1 any state law which limits or exempts income from legal process or the
2 amount or percentage of income that can be withheld shall not apply to
3 withholding income under this act.

4 (c) Subject to the provisions of K.S.A. 2011 Supp. 23-36,503, and
5 amendments thereto, if more than one income withholding order requires
6 withholding from the same source of income of a single obligor, the payor
7 shall withhold and disburse as ordered the total amount required by all
8 income withholding orders if such amount does not exceed the limits of
9 subsection (f) of K.S.A. 2011 Supp. 23-3104, and amendments thereto,~~as~~
10 ~~shown in the withholding order which specifies the highest percentage of~~
11 ~~income allowed to be withheld.~~ If the total amount required by all income
12 withholding orders, including premiums due from the obligor which are
13 incurred solely because of a medical withholding order, exceeds such
14 limits, the payor shall withhold the amount permitted to be withheld under
15 such limits and from the amount withheld the payor shall retain any cost
16 recovery fee charged by the payor. The remaining funds shall first be
17 prorated by the payor among all income withholding orders for the obligor
18 that require payment of current support. When all current support for the
19 month has been satisfied, any remaining funds shall be prorated among all
20 income withholding orders for the obligor that require payment of an
21 amount for arrearages. With respect to a medical withholding order, the
22 payor shall promptly notify the affected holder of the limited power of
23 attorney of any nonpayment of premium. The payor may request
24 assistance from the income withholding agency in determining the amount
25 to be disbursed for each income withholding order, but such assistance
26 shall not relieve the payor from any responsibility under this act. Upon
27 request of a public office or of any obligee whose income withholding
28 order is affected by this subsection, the payor shall provide the county,
29 case number and terms of all the obligor's income withholding orders.

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

33 Sec. 9. K.S.A. 2011 Supp. 39-756 is hereby amended to read as
34 follows: 39-756. (a) (1) The secretary of social and rehabilitation services
35 shall make support enforcement services required under part D of title IV
36 of the federal social security act (, 42 U.S.C. § 651 *et seq.*), or acts
37 amendatory thereof or supplemental thereto, and federal regulations
38 promulgated pursuant thereto, including but not limited to the location of
39 parents, the establishment of paternity and the enforcement of child
40 support obligations, available to persons not subject to the requirements of
41 K.S.A. 39-709, and amendments thereto, and not receiving support
42 enforcement services pursuant to subsection (b). Persons who previously
43 received public assistance but who are not receiving support enforcement

1 services pursuant to subsection (b) may apply for or receive support
2 enforcement services pursuant to this subsection.

3 (2) By applying for or receiving support enforcement services
4 pursuant to subsection (a)(1), the applicant or recipient shall be deemed to
5 have assigned to the secretary on behalf of the state any accrued, present
6 or future rights to support from any other person such applicant may have
7 in behalf of any family member, including the applicant, for whom the
8 applicant is applying for or receiving support enforcement services. The
9 assignment shall automatically become effective upon the date of
10 application for or receipt of support enforcement services, whichever is
11 earlier, and shall remain in full force and effect so long as the secretary
12 provides support enforcement services on behalf of the applicant, recipient
13 or child. By applying for or receiving support enforcement services
14 pursuant to subsection (a)(1), the applicant, recipient or obligee is also
15 deemed to have appointed the secretary or the secretary's designee as an
16 attorney in fact to perform the specific act of negotiating and endorsing all
17 drafts, checks, money orders or other negotiable instruments representing
18 support payments received by the secretary in behalf of any person for
19 whom the secretary is providing support enforcement services. This
20 limited power of attorney shall be effective from the date support rights are
21 assigned and shall remain in effect until the assignment is terminated in
22 full.

23 (3) Nothing in this subsection shall affect or limit any existing
24 assignment or claim for repayment of any unreimbursed portion of
25 assistance pursuant to K.S.A. 39-709, and amendments thereto, or affect or
26 limit any subsequent assignment of support rights.

27 (b) (1) Upon discontinuance of all public assistance giving rise to an
28 assignment of support rights pursuant to K.S.A. 39-709, and amendments
29 thereto, the secretary shall continue to provide all appropriate support
30 enforcement services required under title IV-D of the federal social
31 security act for the persons who were receiving assistance, unless the
32 recipient requests that support enforcement services be discontinued.

33 (2) When support enforcement services are provided pursuant to
34 subsection (b)(1), the assignment of support rights and limited power of
35 attorney pursuant to K.S.A. 39-709, and amendments thereto, shall remain
36 in full force and effect. When the secretary is no longer providing support
37 enforcement services related to support obligations accruing after the date
38 assistance was discontinued, the assignment of support rights shall remain
39 in effect to the extent provided in K.S.A. 39-756a, and amendments
40 thereto.

41 (3) Nothing in this subsection shall affect or limit any existing
42 assignment or claim for repayment of any unreimbursed portion of
43 assistance pursuant to K.S.A. 39-709, and amendments thereto, or affect or

1 limit any subsequent assignment of support rights.

2 (c) The secretary shall fix by rules and regulations fees for services
3 rendered pursuant to this section, *except that the secretary shall not use*
4 *K.A.R. 30-44-2 to charge a percentage-based fee on child support*
5 *enforcement collections*. Such fees shall conform to the requirements of
6 title IV-D of the federal social security act. Any fees imposed by the
7 secretary upon a person required to make payments under a support order
8 shall be in addition to any amount the person is required to pay as support.

9 (d) Except as otherwise provided in this subsection, assigned support
10 that is collected while a person is receiving services pursuant to subsection
11 (a) or (b) shall be distributed as required by title IV-D of the federal social
12 security act. If federal law authorizes the secretary to elect to distribute
13 more support to any families than would otherwise be permitted, the
14 secretary may make such election by adopting rules and regulations for
15 that purpose.

16 (e) If any attorney provides legal services on behalf of the secretary in
17 any case in which the secretary is furnishing title IV-D services, such
18 attorney shall have an attorney-client relationship only with the secretary.
19 The provisions of this subsection shall apply whether the attorney is an
20 employee of the state, a contractor subject to the requirements of K.S.A.
21 75-5365, and amendments thereto, or an employee of such a contractor.
22 Nothing in this subsection shall be construed to modify any statutory
23 mandate, authority or confidentiality required by any governmental
24 agency. No action by such attorney shall be construed to create an
25 attorney-client relationship between the attorney and any person, other
26 than the secretary.

27 Sec. 10. K.S.A. 39-7,147 is hereby amended to read as follows: 39-
28 7,147. (a) Except as otherwise provided in ~~K.S.A. 23-4,107~~ or K.S.A. 39-
29 7,149 *or K.S.A. 2011 Supp. 23-3103*, and amendments thereto, if no
30 income withholding order is in effect to enforce a support order in a title
31 IV-D case, an income withholding order may be entered by the secretary. A
32 notice of intent to initiate income withholding, as described in ~~K.S.A. 23-~~
33 ~~4,107~~ *K.S.A. 2011 Supp. 23-3103*, and amendments thereto, shall be served
34 on the responsible parent at least seven days before the secretary issues the
35 income withholding order. If the amount of arrearages is less than the
36 amount of current support due for one month, the requirements of
37 subsection (d) must be met. The income withholding order shall conform
38 to the requirements of the income withholding act and amendments thereto
39 and shall have the same force and effect as an income withholding order
40 issued by a district court of this state.

41 (b) If an income withholding order is issued by the secretary to
42 enforce a support order entered by a court of this state, the original
43 document shall be delivered for filing to the clerk of the court that entered

1 the support order. Thereafter, if the secretary is no longer providing title
2 IV-D services in the case, the clerk of the district court shall use the
3 income withholding order issued by the secretary in the same manner as an
4 income withholding order issued by the court.

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

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

12 (1) Any arrearages are owed;

13 (2) a medical child support order exists;

14 (3) the secretary determines that immediate issuance of the income
15 withholding order was required by ~~K.S.A. 23-4,107~~ *K.S.A. 2011 Supp. 23-*
16 *3103*, and amendments thereto, or by a similar law of another state, but no
17 income withholding order was entered;

18 (4) the responsible parent consents;

19 (5) required payments have been received after the due date at least
20 twice within the preceding 12 months, regardless of whether any
21 arrearages are owed; or

22 (6) the support order was entered by a tribunal of another state.

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

29 Sec. 11. K.S.A. 39-7,147 and K.S.A. 2011 Supp. 23-3102, 23-3103,
30 23-3104, 23-3105 and 39-756 are hereby repealed.

31 Sec. 12. This act shall take effect and be in force from and after its
32 publication in the statute book.