

2A: 17-56.8

LEGISLATIVE HISTORY CHECKLIST
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(Child support--
withholding of
income)

LAWS OF: 1990

CHAPTER: 92

Bill No: S2359

Sponsor(s): Costa

Date Introduced: March 5, 1990

Committee: Assembly: Judiciary

Senate: Judiciary

Amended during passage: Yes

Amendments during passage
denoted by asterisks.

Date of Passage: Assembly: June 28, 1990

Senate: May 24, 1990

Date of Approval: September 4, 1990

Following statements are attached if available:

Sponsor statement: Yes

Committee Statement: Assembly: Yes

Senate: Yes

Fiscal Note: No

Veto Message: No

Message on signing: No

Following were printed:

Reports: No

Hearings: No

See newspaper clippings--attached:

KBG/SLJ

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[FIRST REPRINT]
SENATE, No. 2359

STATE OF NEW JERSEY

INTRODUCED MARCH 5, 1990

By Senator COSTA

1 AN ACT concerning child support enforcement and amending
2 and supplementing P.L.1981, c.417.

3

4 BE IT ENACTED *by the Senate and General Assembly of the*
5 *State of New Jersey:*

6 1. Section 2 of P.L.1981, c.417 (C.2A:17-56.8) is amended to
7 read as follows:

8 2. Every complaint, notice or pleading for the entry or
9 modification of an order of a court entered or modified [for
10 alimony, maintenance or child support payments] which includes
11 child support shall include a written notice to the obligor stating
12 that the ¹child support provision of the¹ order shall be enforced
13 by an income withholding upon the current or future income due
14 from the obligor's employer or successor employers and upon
15 the unemployment compensation benefits due the obligor and
16 against debts, income, trust funds, profits or income from any
17 other source due the obligor except as provided in section 3 of
18 P.L.1981, c.417 (C.2A:17-56.9). The written notice shall also
19 state that the amount of ¹a IV-D¹ child support order shall be
20 reviewed and updated, as necessary, at least every ¹[two] three¹
21 years.

22 The court shall ensure that in the case of each obligor against
23 whom a support order is or has been issued or modified, the
24 obligor's income shall be withheld to comply with the order. An
25 amount shall be withheld to pay the support obligation and it
26 shall include an amount to be applied toward liquidation of
27 arrearages reduced to judgments and payments for paternity
28 testing procedures. The income withholding provisions shall also
29 be applicable to all orders issued on or before the effective date
30 of this act.

31 (cf: P.L.1985, c.278, s.2)

32 2. Section 3 of P.L.1981, c.417 (C.2A:17-56.9) is amended to
33 read as follows:

34 3. The income withholding shall be initiated by the probation
35 department of the county in which the obligor resides
36 immediately after the [obligor has failed to make a required
37 alimony, maintenance or child support payment that has
38 arrearages accrued in all amount equal to the amount of the
39 support payable for 14 days. Subject to the provisions of this

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SJU committee amendments adopted May 14, 1990.

1 act, the income withholding shall take effect without
2 amendment to the support order or further court or
3 quasi-judicial action] court order has been issued; except that
4 immediate withholding shall not apply in those cases in which
5 the obligor and obligee agree in writing to an alternative
6 arrangement or the obligor or obligee demonstrates and the
7 court finds good cause for establishing an alternative
8 arrangement. If an immediate withholding is not ordered, due to
9 the above exception or an order entered prior to the effective
10 date of this act, the income withholding shall be initiated when
11 the obligor has failed to make a required child support payment
12 allocated or unallocated that has arrearages accrued equal to
13 the amount of the support payable for 14 days. Subject to the
14 provision of this act, the income withholding shall take effect
15 without amendment to the support order or further court or
16 quasi-judicial action and without regard to any alternative
17 arrangements entered into by the parties.

18 The total amount of income to be withheld shall not exceed
19 the maximum amount permitted under section 303 (b) of the
20 federal Consumer Credit Protection Act (15 U.S.C. § 1673 (b)).
21 The income withholding shall be carried out in full compliance
22 with all procedural due process requirements. The
23 Administrative Office of the Courts shall establish procedures
24 for promptly terminating the withholding when necessary and
25 for promptly refunding amounts which have been improperly
26 withheld.

27 (cf: P.L.1985, c.278, s.3)

28 3. Section 5 of P.L.1981, c.417 (C.2A:17-56.11) is amended to
29 read as follows:

30 5. An income withholding made under this act shall be binding
31 upon the payor and successor payors [14 days] immediately after
32 service upon the payor by the probation department of a copy of
33 the income withholding, by registered or certified mail with
34 return receipt requested until further order. The payor is to pay
35 the withheld amount to the probation department at the same
36 time the obligor is paid. The payor shall implement withholding
37 no later than the first pay period that [occurs 14 days] ends
38 immediately after the date the notice was postmarked. For
39 each payment, other than payment received from the
40 unemployment compensation fund, the payor may receive \$1.00,
41 which shall be deducted from the obligor's income in addition to
42 the amount of the support order.

43 Notice to the payor shall include, but not be limited to, the
44 amount to be withheld from the obligor's income and a
45 statement that the amount actually withheld for support and
46 other purposes may not be in excess of the maximum [amounts]
47 amount permitted under section 303 (b) of the federal Consumer
48 Credit Protection Act (15 U.S.C. § 1673 (b)); that the payor shall
49 send the amount to the probation department at the same time

1 the obligor is paid, unless the probation department directs that
2 payment be made to another individual or entity; that the payor
3 may deduct a fee of \$1.00 in addition to the amount of the
4 support order except when the payment is received from the
5 unemployment compensation fund; that withholding is binding on
6 the payor until further notice by the probation department; that
7 the payor is subject to a fine for discharging an obligor from
8 employment, refusing to employ, or taking disciplinary action
9 against an obligor because of the withholding; that if the payor
10 fails to withhold wages in accordance with the provisions of the
11 notice, the payor is liable for any amount up to the accumulated
12 amount the payor should have withheld from the obligor's
13 income; that the withholding shall have priority over any other
14 legal process under State law against the same wages; that the
15 payor may combine withheld amounts from the obligor's wages
16 in a single payment to each appropriate agency requesting
17 withholding and separately identify the portion of the single
18 payment which is attributable to each individual obligor; that if
19 there is more than one support order for withholding against a
20 single obligor, the payor shall withhold the payments on a pro
21 rata basis to fully comply with the support orders, to the extent
22 that the total amount withheld does not exceed the limits
23 imposed under section 303 (b) of the federal Consumer Credit
24 Protection Act (15 U.S.C. § 1673 (b)); that the payor shall
25 implement withholding no later than the first [day] pay period
26 that [occurs 14 days] ends immediately after the date the notice
27 was postmarked; and that the payor shall notify the probation
28 department promptly upon the termination of the obligor's
29 employment benefits and provide the obligor's last known
30 address and the name and address of the obligor's new payor, if
31 known.

32 (cf: P.L.1989, c.215, s.1)

33 4. Section 8 of P.L.1981, c.417 (C.2A:17-56.14) is amended to
34 read as follows:

35 8. An obligee who [does not receive payments made through
36 the probation department] has not established a IV-D case
37 through the probation department shall file an affidavit when
38 applying for the income withholding, stating that the payments
39 not made for support have accrued arrearages in an amount
40 equal to the amount of support payable for 14 days. The
41 probation department shall administer the withholding in
42 accordance with procedures specified for keeping adequate
43 records to document, track, and monitor support payments or
44 establish or permit the establishment of alternative procedures
45 for the collection and distribution of amounts withheld by an
46 entity other than a designated public agency. Alimony,
47 maintenance or child support payments not presently made
48 through the probation department shall be so made upon
49 application of [the obligee] either party unless the [obligor]

1 other party upon application to the court shows good cause to
2 the contrary.

3 A monitoring fee of \$25.00 annually shall be applied upon
4 the request of either the obligor or obligee for the payment of
5 support through the probation department, regardless of whether
6 or not arrearages exist or withholding procedures have been
7 instituted. The probation department shall monitor all amounts
8 paid and the dates of payments and record them [on a separate
9 form] separately. The court and the probation department shall
10 follow the procedures established in this act.

11 (cf: P.L.1985, c.278, s.8)

12 5. (New section) At least once every three ¹years all ¹IV-D¹
13 orders for child support payments shall be subject to review in
14 accordance with the rules promulgated by the IV-D Agency ¹in
15 consultation with the Supreme Court¹. Such review shall take
16 into account any changes in the financial situation or related
17 circumstances of both parties and whether the order of child
18 support is in full compliance with the Child Support Guidelines
19 set forth in the Rules Governing the Courts of the State of New
20 Jersey, R.5:6A.

21 Upon completing the review and if a change in the amount of
22 child support is recommended, the State IV-D or designee shall
23 so notify the obligor and obligee in writing of the child support
24 amount that is recommended. The obligor and obligee shall be
25 afforded not less than 30 days after such notification to ¹file
26 with the IV-D agency and the court a¹ challenge ¹to¹ such
27 proposed adjustment or determination. The child support
28 amount will be adjusted accordingly ¹by the court¹ if either
29 party does not challenge the recommended award within the
30 prescribed time or fails to show good cause ¹[or]¹ why the
31 adjustment should not occur.

32 6. (New section) ¹a.¹ The Commissioner of Human Services
33 shall, in accordance with the "Administrative Procedure Act,"
34 P.L.1968, c.410 (C.52:14B-1 et seq.), adopt and promulgate such
35 rules and regulations as may be necessary for the
36 implementation of this act.

37 ¹b. The Supreme Court shall promulgate rules and procedures
38 as may be necessary for the implementation of this act by the
39 courts and probation departments.¹

40 7. This act shall take effect on the 180th day after
41 enactment or October 1, 1990, whichever is sooner.

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44

DOMESTIC RELATIONS

45

46 Provides for automatic, immediate withholding of income for
47 payment of child support orders.

1 A monitoring fee of \$25.00 annually shall be applied upon
2 the request of either the obligor or obligee for the payment of
3 support through the probation department, regardless of whether
4 or not arrearages exist or withholding procedures have been
5 instituted. The probation department shall monitor all amounts
6 paid and the dates of payments and record them [on a separate
7 form] separately. The court and the probation department shall
8 follow the procedures established in this act.

9 (cf: P.L.1985, c.278, s.8)

10 5. (New section) At least once every three years all orders
11 for child support payments shall be subject to review in
12 accordance with the rules promulgated by the IV-D Agency.
13 Such review shall take into account any changes in the financial
14 situation or related circumstances of both parties and whether
15 the order of child support is in full compliance with the Child
16 Support Guidelines set forth in the Rules Governing the Courts
17 of the State of New Jersey, R.5:6A.

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19 child support is recommended, the State IV-D or designee shall
20 so notify the obligor and obligee in writing of the child support
21 amount that is recommended. The obligor and obligee shall be
22 afforded not less than 30 days after such notification to
23 challenge such proposed adjustment or determination. The child
24 support amount will be adjusted accordingly if either party does
25 not challenge the recommended award within the prescribed
26 time or fails to show good cause or why the adjustment should
27 not occur.

28 6. (New Section) The Commissioner of Human Services shall,
29 in accordance with the "Administrative Procedure Act,"
30 P.L.1968, c.410 (C.52:14B-1 et seq.), adopt and promulgate such
31 rules and regulations as may be necessary for the
32 implementation of this act.

33 7. This act shall take effect on the 180th day after
34 enactment or October 1, 1990, whichever is sooner.

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37 STATEMENT

38
39 This bill amends the "New Jersey Support Enforcement Act,"
40 P.L.1981, c.417 (C.2A:17-56.7 et seq.) to require immediate,
41 automatic withholding upon the current or future income of a
42 person under court to make child support payments. This change
43 in the law, from 14 days to immediate withholding, will ensure
44 regularity of support payments to dependent children and will
45 avoid lengthy waits for court hearings.

46 While income withholding will be automatic rather than
47 triggered by accumulated arrearages or delinquency in payment
48 in most cases, the bill provides that the immediate withholding
49 shall not apply when both parties to the court order agree to an

1 alternative arrangement or one party demonstrates good cause
2 for establishing an alternative arrangement. The bill also
3 requires county welfare agencies, in cooperation with the
4 Administrative Office of the Courts and the Probation
5 Department, to review every court order for child support
6 payments at least once every three years to ensure that the
7 order is in full compliance with the Child Support Guidelines set
8 forth in the Rules Governing the Courts of New Jersey. This bill
9 would also bring New Jersey into compliance with the federal
10 "Family Support Act of 1988" (P.L.100-485).

11 Income withholding has proved to be an effective method of
12 collection for child support payments due a parent, when the
13 absent parent falls behind in support payments; however,
14 withholding in response to delinquency is not nearly as effective
15 as universal withholding. Of the total New Jersey caseload, 95%
16 fall into arrears at some point during their case lifetime, and
17 approximately 85% are currently in arrears.

18 It is estimated that automatic, immediate income withholding
19 will increase aid to families with dependent children child
20 support collections by \$20 million. Under the current system,
21 when there is an arrearage, seven to eight months may elapse
22 before the default is detected, the obligor located, and
23 employment and income verified. Because of these delays,
24 millions of dollars are not collected, families do not receive the
25 support to which they are entitled and the State is obligated to
26 provide financial assistance to families with an absent parent
27 because these families have no other means of support.

28 Immediate income withholding will reduce the stigma
29 associated with the use of income withholding primarily for
30 delinquency cases. Further, it will provide greater assurance of
31 regularity of payment to dependent children, and lessen the need
32 for public assistance by these dependent children and their
33 caretaker parent.

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36

DOMESTIC RELATIONS

37

38 Provides for automatic, immediate withholding of income for
39 payment of child support orders.

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY
COMMITTEE

STATEMENT TO

[FIRST REPRINT]

SENATE, No. 2359

STATE OF NEW JERSEY

DATED: JUNE 25, 1990

The Assembly Judiciary, Law and Public Safety Committee reports favorably Senate Bill No. 2359 (1R).

Under amendments to the federal Family Support Act enacted in 1988, each state is required to institute automatic wage withholding as a means of enforcing child support orders by November 1, 1990 for cases involving families receiving "Aid for Dependent Children" and by January 1, 1994 for all other cases. States which do not enact legislation providing for automatic withholding risk the loss of federal welfare funds. In response to this federal mandate, this bill would provide that when a court orders a person to pay child support, that obligation shall be enforced by the institution of immediate, automatic income withholding.

This bill also provides that immediate withholding would not apply when both parties agree to an alternative arrangement or if one party demonstrates good cause for establishing an alternative agreement.

Additionally, the bill requires county welfare agencies, in cooperation with the Administrative Office of the Courts and the county probation department to review every court order for child support payments at least once every three years, as amended, to ensure that the order is in full compliance with the child support guidelines set forth in New Jersey's Court rules.

The bill also provides:

1. That any administrative rules required in connection with the periodic review of IV-D support orders be adopted by the Department of Human Services in consultation with the Supreme Court.
2. That any proposed change in a child support order be ratified by the courts.
3. That the Supreme Court may adopt rules necessary for implementation of the act by the courts and county probation departments.

This bill is identical to Assembly Bill No. 3479 (1R) of 1990.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE, No. 2359

with Senate committee amendments

STATE OF NEW JERSEY

DATED: MAY 14, 1990

The Senate Judiciary Committee reports favorably and with committee amendments Senate Bill No. 2359.

Under amendments to the federal Family Support Act enacted in 1988, each state is required to institute automatic wage withholding as a means of enforcing child support orders by November 1, 1990 for cases involving families receiving "Aid for Dependent Children" and by January 1, 1994 for all other cases. States which do not enact legislation providing for automatic withholding risk the loss of federal welfare funds. In response to this federal mandate, this bill would provide that when a court orders a person to pay child support, that obligation shall be enforced by the institution of immediate, automatic income withholding.

This bill also provides that immediate withholding would not apply when both parties agree to an alternative arrangement or if one party demonstrates good cause for establishing an alternative agreement.

Additionally, the bill requires county welfare agencies, in cooperation with the Administrative Office of the Courts and the county probation department to review every court order for child support payments at least once every three years, as amended, to ensure that the order is in full compliance with the child support guidelines set forth in New Jersey's Court rules.

The committee amended the bill to provide:

1. That any administrative rules required in connection with the periodic review of IV-D support orders be adopted by Human Services in consultation with the Supreme Court.
2. That any proposed change in a child support order be ratified by the courts.
3. That the Supreme Court may adopt rules necessary for implementation of the act by the courts and county probation departments.