

IN THE SENATE

SENATE BILL NO. 1119

BY JUDICIARY AND RULES COMMITTEE

AN ACT

RELATING TO MANDATORY INCOME WITHHOLDING FOR CHILD SUPPORT; AMENDING SECTION 32-1206, IDAHO CODE, TO PROVIDE THAT INCOME WITHHOLDING ORDERS USE A CERTAIN FORM AND TO PROVIDE THAT INCOME WITHHOLDING PAYMENTS BY EMPLOYERS BE REMITTED TO THE DEPARTMENT OF HEALTH AND WELFARE; AND AMENDING SECTION 32-1210, IDAHO CODE, TO PROVIDE THAT INCOME WITHHOLDING PAYMENTS BY EMPLOYERS BE REMITTED TO THE DEPARTMENT OF HEALTH AND WELFARE.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 32-1206, Idaho Code, be, and the same is hereby amended to read as follows:

32-1206. JUDICIAL PROCEEDINGS FOR INCOME WITHHOLDING. (1) A proceeding to enforce a duty of support is commenced:

(a) By filing a petition or complaint for an original action; or

(b) By motion in an existing action or under an existing case number.

(2) Venue for the action is in the district court of the county where the dependent child resides or is present, where the obligor resides, or where the prior support order was entered. The petition or motion may be filed by the obligee, the state, or any agency providing care or support to the dependent child.

(3) A filing fee shall not be assessed in cases brought on behalf of the state of Idaho.

(4) A petition or motion shall include a sworn statement by the obligee, stating the facts authorizing the issuance of the income withholding order, pursuant to section 32-1204 or 32-1205, Idaho Code, and:

(a) The name, address, and social security number of the obligor;

(b) A copy of the support order;

(c) The name and address of the obligor's employer;

(d) The amount of any delinquency; and

(e) In cases not filed by the state, whether the obligee has received public assistance from any source on behalf of the minor child, and, if so, from which source(s).

(5) Upon receipt of a petition or motion, the court shall issue an income withholding order pursuant to section 32-1204 or 32-1205, Idaho Code, to the employer utilizing the required income withholding for support form and shall provide a form for an answer to the income withholding order which shall be returned to the court within ten (10) days. The court shall also order the employer to remit the amount withheld to the ~~person or entity designated in the income withholding order~~ department of health and welfare within seven (7) business days after the date the amount would have been paid or credited to the obligor. The department shall supply each county with ~~forms for income withholding orders~~ the required income withholding

1 for support form and answers that comply with the rules promulgated by the
2 department, and which include:

3 (a) The maximum amount of current support, if any, to be withheld from
4 the obligor's earnings each month, or from each earnings disbursement;
5 and

6 (b) The total amount of the arrearage or reimbursement judgment previ-
7 ously entered by the court, if any, together with interest, if any; and

8 (c) The amount of arrearage payments specified in the support order, if
9 any.

10 (6) If the petition or motion indicates the obligee has received public
11 assistance from any source on behalf of a minor child, the clerk shall imme-
12 diately forward a copy of the petition or the motion to the department.

13 (7) The court retains continuing jurisdiction under this chapter until
14 all duties of support of the obligor, including any delinquency, have been
15 satisfied or until the order is otherwise unenforceable.

16 SECTION 2. That Section 32-1210, Idaho Code, be, and the same is hereby
17 amended to read as follows:

18 32-1210. EMPLOYER'S DUTIES AND RESPONSIBILITIES -- FEE FOR EM-
19 PLOYER. (1) Upon receiving an income withholding order from the court, the
20 employer shall answer the income withholding order on forms supplied with
21 the income withholding order within ten (10) days after the date of service.
22 The employer shall deliver the original answer to the court, and shall mail
23 one (1) copy to the obligee or obligee's attorney, and shall deliver one (1)
24 copy to the obligor as soon as is reasonably possible. The answer shall state
25 whether the obligor is employed by or receives income from the employer,
26 whether the employer will honor the income withholding order, and whether
27 there are multiple child support income withholding orders or garnishments
28 against the obligor. Upon receiving an income withholding order from the
29 department, the employer shall begin income withholding pursuant to this
30 section.

31 (2) If the employer possesses any income due and owing to the obligor,
32 the income subject to the income withholding order shall be withheld imme-
33 diately upon receipt of the income withholding order. The withheld income
34 shall be delivered to the ~~person or entity designated in the income withhold-~~
35 ~~ing order~~ department of health and welfare within seven (7) business days af-
36 ter the date the amount would have been paid or credited to the employee.

37 (3) The total amount to be withheld from the obligor's earnings each
38 month, or from each earnings disbursement, shall not exceed fifty percent
39 (50%) of the disposable earnings of the obligor. If the amounts to be paid
40 toward the arrearage are specified in the support order, then the maximum
41 amount to be withheld is the sum of the current support ordered and the amount
42 ordered to be paid toward the arrearage, or fifty percent (50%) of the dis-
43 posable earnings of the obligor, whichever is less. In no event shall the
44 amount to be withheld from the earnings of the obligor exceed the amount
45 specified in section 11-207, Idaho Code.

46 (4) When an employer receives an income withholding order issued by an-
47 other state, the employer shall apply the income withholding law of the state
48 of the obligor's principal place of employment in determining:

49 (a) The employer's fee for processing an income withholding order;

1 (b) The maximum amount permitted to be withheld from the obligor's in-
2 come;

3 (c) The time periods within which the employer must implement the in-
4 come withholding order and forward the child support payment;

5 (d) The priorities for withholding and allocating income withheld for
6 multiple child support obligees; and

7 (e) Any withholding terms or conditions not specified in the income
8 withholding order.

9 (5) If an obligor is subject to two (2) or more income withholding or-
10 ders for child support on behalf of more than one (1) obligee, the employer
11 ~~may shall~~ send the entire amount withheld from that obligor to ~~the clerk of~~
12 ~~the court or, if the department is providing child support services on be-~~
13 ~~half of either obligee, to the department.~~ If the department is providing
14 child support services, the employer shall send the department a copy of each
15 income withholding order under which the obligor owes a support obligation.
16 ~~The clerk of the court or the department shall apportion the amount of in-~~
17 ~~come withheld between all obligees of the obligor as follows: the support~~
18 ~~obligation for the current month shall be paid first. If the amount of nonex-~~
19 ~~empt disposable income withheld is not sufficient to pay the total support~~
20 ~~obligation for the current month for each obligee for whom there is an in-~~
21 ~~come withholding order, the amount withheld shall be divided between each~~
22 ~~obligee for whom there is an income withholding order on a pro rata basis.~~
23 If the amount of the nonexempt disposable earnings withheld is in excess of
24 the total support obligation for the current month for each obligee for whom
25 there is an income withholding order, the excess shall be divided between
26 each obligee for whom there is an income withholding order which includes
27 withholding for any delinquency on a pro rata basis unless otherwise ordered
28 by a court.

29 (6) The employer shall continue to withhold the ordered amounts from
30 nonexempt income of the obligor until notified by the court or the department
31 that the income withholding order has been modified or terminated. The em-
32 ployer shall promptly notify the court or the department when the employee
33 is no longer employed, and of the employee's last known address, and the name
34 and address of his new employer, if known.

35 (7) The employer may deduct a processing fee, not to exceed five dollars
36 (\$5.00), to cover the costs of each withholding. Such fee is to be withheld
37 from the obligor's income in addition to the amount withheld to satisfy the
38 withholding order, but the total amount withheld, including the fee, shall
39 not exceed fifty percent (50%) of the obligor's disposable income.

40 (8) The employer may combine amounts withheld from various employees
41 for a particular entity in a pay period into a single payment for that pay pe-
42 riod, as long as the portion thereof which is attributable to each individual
43 employee is separately designated.

44 (9) An order for income withholding for support entered under this
45 chapter shall have priority over any other wage assignment or garnishment,
46 except for another wage assignment, income withholding order, or garnish-
47 ment for child support.