

1 SB103
2 146862-1
3 By Senator Orr
4 RFD: Finance and Taxation General Fund
5 First Read: 05-FEB-13

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8 SYNOPSIS: This bill would amend Sections 30-3-61,
9 30-3-62, 30-3-65 and 30-3-66, Code of Alabama 1975,
10 relating to withholding orders for child support to
11 remove the provisions concerning making support
12 payments to the clerk of the court and to provide
13 that if support services are being provided
14 pursuant to Title IV-D of the Social Security Act,
15 employers who receive withholding orders for
16 payment of arrears shall notify the Department of
17 Human Resources prior to payments of \$500 or more.

18
19 A BILL
20 TO BE ENTITLED
21 AN ACT
22

23 To amend Sections 30-3-61, 30-3-62, 30-3-65 and
24 30-3-66, Code of Alabama 1975, relating to withholding orders
25 for child support to remove the provisions concerning making
26 support payments to the clerk of the court and to add a
27 requirement for employers to notify the Department of Human

1 Resources in certain instances when receiving an order prior
2 to payments of \$500 or more.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Sections 30-3-61, 30-3-62, 30-3-65 and
5 30-3-66, Code of Alabama 1975 are hereby amended to read as
6 follows:

7 "§30-3-61.

8 (a) Any provision of Section 8-5-21, to the contrary
9 notwithstanding, any original decree, judgment, or order
10 issued by a court of this state for the payment of support,
11 any decree or judgment entered pursuant to a petition to
12 modify an original decree or award of support, any decree or
13 judgment of contempt of court for failure to pay support as
14 previously ordered by a court of this state, or any decree or
15 judgment for criminal or civil nonsupport shall include as a
16 separate section a withholding order subject to subsection (c)
17 of this section directing any employer of the obligor to
18 withhold and pay over to ~~the clerk of the court or the~~
19 Department of Human Resources, or its designee, whichever is
20 appropriate, out of income due or to become due the obligor at
21 each pay period, an amount ordered to be paid for support. The
22 withholding order shall not under any circumstances be waived
23 by mutual agreement of the parties to the case.

24 (b) The withholding order shall recite the amount to
25 be withheld ~~of the obligor's continuing support obligation~~ and
26 shall require the withholding of the support obligation from
27 the income due or becoming due to the obligor ~~at each pay~~

1 ~~period and payment to the clerk of the court out of which the~~
2 ~~order is issued or the department or its designee, whichever~~
3 ~~is appropriate~~ within seven business days of the date the
4 obligor is paid the paycheck from which the support is
5 withheld. Provided, if the obligor's support obligation is
6 ordered to be paid monthly and the obligor's pay periods are
7 at more frequent intervals, the employer may withhold at each
8 pay period an amount cumulatively sufficient to equal the
9 total monthly support obligation and pay the amount withheld
10 at each pay period over to the ~~clerk of the court or the~~
11 department or its designee, within seven business days of the
12 date the obligor is paid the paycheck from which the amount is
13 withheld. The employer shall withhold the obligation amount as
14 directed in the income withholding order, except that when an
15 employer receives an income withholding order issued by
16 another state, the employer shall apply the income withholding
17 law of the state of the obligor's principal place of
18 employment in determining the following:

19 (1) The employer's fee for processing an income
20 withholding order.

21 (2) The maximum amount permitted to be withheld from
22 an obligor's income.

23 (3) The time periods within which the employer is
24 required to implement the income withholding order and forward
25 the obligor's payment.

26 (4) The priorities for withholding and allocating
27 income withheld for multiple child support obligees.

1 (5) Any withholding terms or conditions not
2 specified in the order.

3 (c) The withholding order shall also recite the duty
4 of the obligor and the employer to notify the collecting
5 agency of any change in employment or termination of income of
6 the obligor as provided in this article.

7 (d) A withholding order issued pursuant to this
8 section shall be a continuing order and shall remain in effect
9 and be binding upon any employer upon whom it is served until
10 further order of the court. Where any order of support is
11 entered or modified, the withholding order issued pursuant to
12 this section shall be served immediately upon the obligor's
13 employer and shall take effect immediately; except immediate
14 withholding shall not be implemented in any case where one of
15 the parties demonstrates, and the court finds, there is good
16 cause not to require immediate income withholding, or a
17 written agreement is reached between both parties which
18 provides for an alternative arrangement. In such cases, income
19 withholding shall be implemented if the absent parent fails to
20 make payments in an amount equal to one month's support
21 obligation, or the absent parent requests immediate
22 withholding, or the payee or the department requests that
23 withholding begin and the absent parent has failed to make a
24 payment or payments on the date or dates due.

25 (e) In the event the obligor becomes delinquent in
26 the support payments in a dollar amount equal to one or more
27 month's support obligation, or a withholding order entered at

1 the request of the department was not immediately served upon
2 the employer, or at such time as the obligor wishes to have
3 the income withholding order served upon his employer, the
4 obligee or the obligor may file with the clerk of the court a
5 sworn affidavit stating the appropriate basis upon which
6 service of the income withholding order is now being sought.
7 Upon the filing of the affidavit and the payment of a docket
8 fee in the same amount as is prescribed by Section 12-19-75
9 for the filing of a garnishment proceeding, a copy of the
10 withholding order issued pursuant to this section shall be
11 served upon the employer pursuant to the Alabama Rules of
12 Civil Procedure. A copy shall be served upon the obligor by
13 first class mail. Provided, the cost of the filing shall not
14 be prepaid if, upon the filing of an affidavit of substantial
15 hardship, the obligee or obligor is found by the court to be
16 incapable of prepaying the cost or if the affidavit is filed
17 by the department or a representative of the department, but
18 in such cases the cost of the filing shall be taxed as costs
19 against the obligor at the time service of the order is
20 requested and shall be withheld from the obligor's first pay
21 period subjected to the income withholding order.
22 Additionally, when service upon the employer is requested by
23 means of certified mail, the actual cost of the service shall
24 be prepaid in all cases at the time the service is requested.

25 (f) In the event that the obligor with a support
26 obligation imposed by a support order issued or modified in
27 the state before October 1, 1996, becomes delinquent in

1 support payments in a dollar amount equal to one or more
2 month's support obligation, the income of the obligor, if not
3 otherwise subject to withholding, shall become subject to
4 withholding, without the need for a judicial or administrative
5 hearing.

6 (g) If support services are being provided pursuant
7 to Title IV-D of the Social Security Act, as amended, an
8 employer upon whom an income withholding order has been served
9 which includes a provision for payment of arrears shall notify
10 the department at least forty-five (45) days prior to the
11 payment of five hundred dollars (\$500) or more to the obligor
12 when paid in addition to or in lieu of the obligor's regularly
13 scheduled pay period. The employer shall not release said
14 monies to the obligor until thirty (30) days after the
15 intended date of the payment or until authorization is
16 received from the department, whichever is earlier.

17 "§30-3-62.

18 (a) Section 8-5-21 to the contrary notwithstanding,
19 and in addition to and independent of any other remedy
20 provided by law for the enforcement of support, the obligee,
21 district attorney, or representative of the Department of
22 Human Resources may file with a court of this state, as
23 defined in this article, a petition seeking an order of income
24 withholding. Additionally, for all existing support orders
25 issued in the State of Alabama that do not provide for income
26 withholding and upon the filing of an application for support
27 services by the obligee with the department, the department

1 shall petition the court for an income withholding order
2 pursuant to this section. The obligee, district attorney, or
3 representative of the department shall file with the clerk of
4 the court the following documents:

5 (1) Three copies of a petition seeking the income
6 withholding order, that include the name and address of both
7 the obligor and obligee.

8 (2) One certified copy and two additional copies of
9 the original support order with all modifications thereof.

10 (3) A sworn affidavit of the obligee, or a certified
11 statement of the agency, of the arrearages, if any, and any
12 assignment of support rights.

13 (4) Two copies of a notice of the proposed income
14 withholding. The notice shall advise the obligor that an
15 income withholding order shall be issued by the court in
16 accordance with this section.

17 (b) The obligor shall be served by the methods
18 authorized in the Alabama Rules of Civil Procedure with a copy
19 of all the documents listed in subsection (a) of this section.

20 (c) An income withholding order shall be issued by
21 the court unless the obligor requests a hearing within 10 days
22 of the date of service of the petition and notice. If the
23 obligor requests a hearing, the hearing shall be held and a
24 decision rendered within 45 days of the date of service of the
25 petition and notice upon the obligor unless the obligee,
26 district attorney, or representative of the department
27 requests a continuation of the case to a later date or the

1 court, on its own motion and for good cause shown, continues
2 the case to a later date. An obligor may contest the issuance
3 of an income withholding order under this section only on the
4 basis of mistakes of fact. The income withholding order issued
5 pursuant to this section may be issued by any court competent
6 to adjudicate these proceedings, as that term is defined in
7 this article, and shall be issued without the need for an
8 amendment to the existing support order.

9 (d) An order entered pursuant to this section shall
10 recite the amount to be withheld and ~~required to be withheld~~
11 ~~as continuing support for each month, the total amount of all~~
12 ~~accumulated arrearages, if any, and the amount required to be~~
13 ~~withheld for each month in order to satisfy the arrearage. The~~
14 ~~order~~ shall require withholding from the income due or
15 becoming due the obligor ~~at each pay period~~ and payment to the
16 ~~clerk of the court or the~~ department or its designee,
17 ~~whichever is appropriate,~~ of the amounts ordered pursuant to
18 this section. If the obligor's support obligation is required
19 to be paid on a monthly basis and his or her pay periods are
20 at more frequent intervals, the employer may withhold, at each
21 pay period, amounts cumulatively sufficient to equal the total
22 monthly arrearage due, if any, and the total monthly
23 continuing support obligation and pay over to the ~~clerk of the~~
24 ~~court or the~~ department, or its designee, the amount withheld
25 in accordance with subsection (b) of Section 30-3-61. ~~When~~
26 ~~payments are ordered made directly to the clerk of the court,~~

1 ~~it shall be the responsibility of the clerk to disburse the~~
2 ~~payments in accordance with the court's order.~~

3 (e) Any order entered pursuant to this section shall
4 be continuing and binding upon any employer upon whom it is
5 served until further order of the court. A withholding order
6 issued pursuant to this section shall not be served on the
7 employer and shall not take effect unless the obligor is or
8 becomes delinquent in a dollar amount equal to one month of
9 support payments, the obligor requests that the withholding
10 order take effect at an earlier date, or the court otherwise
11 orders that the withholding order take effect at an earlier
12 date.

13 (f) In the event the obligor becomes delinquent in
14 the support payments in a dollar amount equal to one or more
15 month's support obligation, or at the time as the obligor
16 wishes to have the income withholding served upon his or her
17 employer, the obligee or the obligor may file with the clerk
18 of the court a sworn affidavit stating the appropriate basis
19 upon which service of the income withholding order is now
20 being sought. Upon the filing of the affidavit and the payment
21 of a docket fee in the same amount as is prescribed by Section
22 12-19-75 for the filing of a garnishment proceeding, a copy of
23 the withholding order issued pursuant to this section shall be
24 served upon the employer pursuant to the Alabama Rules of
25 Civil Procedure. A copy shall also be served upon the obligor
26 by first class mail. The cost of such a filing shall not be
27 prepaid if, upon the filing of an affidavit of substantial

1 hardship, the obligee or obligor is found by the court to be
2 incapable of prepaying the cost or if the affidavit is filed
3 by the department or a representative of the department, but
4 in those cases the cost of the filing shall be taxed as costs
5 against the obligor at the time service of the order is
6 requested and shall be withheld from the obligor's first pay
7 period subjected to the income withholding order.

8 Additionally, when service upon the employer is requested by
9 means of certified mail, the actual cost of the service shall
10 be prepaid in all cases at the time the service is requested.

11 (g) When an income withholding order is entered
12 pursuant to this section by a court other than the court which
13 originally entered the support order, a copy of the income
14 withholding order shall be forwarded by the clerk of the court
15 entering the order to the clerk of the court which entered the
16 original support order. The clerk of the court which entered
17 the original order of support shall also be notified whenever
18 the income withholding order is served upon an employer and
19 withholdings are to commence.

20 (h) A withholding order issued under this section or
21 Section 30-3-61 shall be promptly terminated when the obligor
22 requests termination and withholding has not been terminated
23 previously and subsequently initiated and there is a written
24 agreement signed by both the custodial and absent parent, and
25 in IV-D cases in which there is an assignment of support
26 rights to the state, by the department, providing for an
27 alternative arrangement as provided in subsection (c) of

1 Section 30-3-61. In those cases, income withholding shall be
2 reinstated if the absent parent fails to make payments in the
3 amount of one month's support obligation or the absent parent
4 requests immediate income withholding or the payee or the
5 department requests that withholding be reinstated and the
6 absent parent has failed to make a payment or payments on the
7 date or dates due. A withholding order reinstated pursuant to
8 this provision shall be permanent for the duration of the
9 obligation for support, or until such time as the withholding
10 order is modified or terminated pursuant to Section 30-3-64 or
11 Section 30-3-65.

12 (i) A withholding order issued under this section or
13 Section 30-3-61 shall be terminated without the necessity of a
14 hearing when the obligor files with the clerk of the court
15 that issued the withholding order a sworn affidavit stating
16 that all children subject to the order have reached the age of
17 majority and that no arrearage is owed on the withholding
18 order or a spousal support order or stating other conditions
19 of termination as specified in subsection (h) of this section.
20 Upon filing of the affidavit and the payment of the docket fee
21 prescribed by Section 12-19-75 for the filing of a garnishment
22 proceeding, a copy of the affidavit shall be served by first
23 class mail upon the obligee and upon the department when the
24 case is a IV-D case. An order terminating income withholding
25 shall be issued by the court unless the obligee or the
26 department requests a hearing within 20 days of service of the
27 affidavit. If the obligee or the department requests a

1 hearing, the hearing shall be held and a decision rendered
2 within 45 days of the date of service of the affidavit upon
3 the obligee and the department, as appropriate, unless the
4 obligor requests a continuation of the case to a later date or
5 the court, on its own motion and for good cause shown,
6 continues the case to a later date. The termination of the
7 income withholding issued pursuant to this section may be
8 issued without the need for a hearing except as specified in
9 this section. A copy of the termination of income withholding
10 order issued pursuant to this section shall be served upon the
11 employer pursuant to the Alabama Rules of Civil Procedure. A
12 copy shall also be served upon the obligee and the department
13 as appropriate by first class mail. Additionally, when service
14 upon the employer is requested by means of certified mail, the
15 actual cost of the service shall be prepaid in all cases at
16 the time the service is requested.

17 "§30-3-65.

18 (a) An obligee shall notify the clerk of the court,
19 or the Department of Human Resources or its designee,
20 whichever office issued the income withholding order,
21 ~~whichever office is collecting the support payments which have~~
22 ~~been ordered withheld,~~ of any change in address of the
23 obligee.

24 (b) If ~~the clerk of the court,~~ the department or its
25 designee is unable to deliver payments under the order for a
26 period of three consecutive months due to the obligee's
27 failure to notify ~~either of~~ them of an address change, ~~the~~

1 ~~clerk,~~ the department or its designee shall not attempt
2 further payment under the order and shall, upon the court's
3 order, return the payments to the employer and the court shall
4 terminate the income withholding order upon request.

5 "§30-3-66.

6 The obligor and any employer upon whom an income
7 withholding order has actually been served, including
8 successive employers, shall notify the ~~court~~ office collecting
9 the support payments of any changes in employment and the name
10 and address, if known, of any new employer or of any
11 termination of periodic benefits which constitute income. The
12 collecting office shall, in turn, notify the obligee of any
13 such change and of the right to file a written request for
14 service upon any new employer of the obligor. If the income
15 withholding order has previously been served upon an employer,
16 upon the filing of a written request by the obligee indicating
17 the name and address of any new employer of the obligor and
18 the payment of the actual cost of service as further provided
19 in this section, the clerk of the court shall cause to be
20 served, pursuant to Alabama Rules of Civil Procedure, a copy
21 of the income withholding order upon any new employer. The
22 cost of service shall be taxed against the obligor at the time
23 the order is served. The new employer shall file an answer as
24 provided in this article acknowledging receipt of the order
25 within 14 days of actual receipt of the order. Actual cost of
26 service for the purposes of this section shall mean the amount
27 prescribed by law for the service of process upon an

1 additional defendant in a civil proceeding or the actual cost
2 of certified mail when that mode of service is requested.

3 Section 2. The provisions of this act are severable.
4 If any part of the act is declared invalid or
5 unconstitutional, such declaration shall not affect the part
6 which remains.

7 Section 3. This act shall become effective
8 immediately upon its passage and approval by the Governor or
9 its otherwise becoming law.