

CHILD SUPPORT COLLECTION FEE

AMENDMENT

2003 GENERAL SESSION

STATE OF UTAH

Sponsor: Judy Ann Buffmire

This act modifies the Human Services Code. This act clarifies that in addition to the child support amount paid, the Office of Recovery Services assesses a check processing fee against the payor. The act makes technical changes.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

62A-11-406, as last amended by Chapter 161, Laws of Utah 2000

62A-11-407, as last amended by Chapter 232, Laws of Utah 1997

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **62A-11-406** is amended to read:

62A-11-406. Notice to payor.

Upon compliance with the applicable provisions of this part, the office shall mail or deliver to each payor at the payor's last-known address written notice stating:

(1) the amount of child support to be withheld from income;

(2) that in addition to the child support amount, a check processing fee in the amount of \$5 per check, with a maximum of \$10 per month, is to be assessed against the payor;

~~[(2)]~~ (3) that the child support must be withheld from the obligor's income each time the obligor is paid, but that the amount withheld may not exceed the maximum amount permitted under Section 303 (b) of the Consumer Credit Protection Act, 15 U.S.C. Sec. 1673(b);

~~[(3)]~~ (4) that the payor must mail or deliver the withheld income to the office within seven business days of the date the amount would have been paid or credited to the employee but for this section;



[~~(4)~~] (5) that the payor may deduct from the obligor's income an additional amount which is equal to the amount payable to a garnishee under Rule 64D of the Utah Rules of Civil Procedure, as the payor's fee for administrative costs, but the total amount withheld may not exceed the maximum amount permitted under Section 303(b) of the Consumer Credit Protection Act, 15 U.S.C. Sec. 1673(b);

[~~(5)~~] (6) that the notice to withhold is binding on the payor and on any future payor until further notice by the office or a court;

[~~(6)~~] (7) (a) that if the payor fails to mail or deliver withheld income to the office within the time period set in Subsection [~~(3)~~] (4), the payor is liable to the office for a late fee of \$50 or 10% of the withheld income, whichever is greater, for each payment that is late, per obligor; and

(b) that if the payor willfully fails to withhold income in accordance with the notice, the payor is liable to the office for \$1,000 or the accumulated amount the payor should have withheld, whichever is greater, plus interest on that amount;

[~~(7)~~] (8) that the notice to withhold is prior to any other legal process under state law;

[~~(8)~~] (9) that the payor must begin to withhold income no later than the first time the obligor's earnings are normally paid after five working days from the date the payor receives the notice;

[~~(9)~~] (10) that the payor must notify the office within five days after the obligor terminates employment or the periodic income payment is terminated, and provide the obligor's last-known address and the name and address of any new payor, if known;

[~~(10)~~] (11) that if the payor discharges, refuses to employ, or takes disciplinary action against an obligor because of the notice to withhold, the payor is liable to the obligor as provided in Section 62A-11-316, and to the office for the greater of \$1,000 or the amount of child support accumulated to the date of discharge which the payor should have withheld, plus interest on that amount; and

[~~(11)~~] (12) that, in addition to any other remedy provided in this section, the payor is liable for costs and reasonable attorneys' fees incurred in enforcing any provision in a notice to withhold mailed or delivered to the payor's last-known address.

Section 2. Section **62A-11-407** is amended to read:

62A-11-407. Payor's procedures for income withholding.

(1) (a) A payor is subject to the requirements, penalties, and effects of a notice served on the payor under Section 62A-11-406.

(b) A payment of withheld income mailed to the office in an envelope postmarked within seven business days of the date the amount would have been paid or credited to the obligor but for this section satisfies Subsection 62A-11-406~~(3)~~ (4).

(2) (a) If a payor fails to comply with a notice served upon him under Section 62A-11-406, the office, the obligee, if an assignment has not been made under Section 35A-7-108, or the obligor may proceed with a civil action against the payor to enforce a provision of the notice.

(b) In addition to a civil action under Subsection (2)(a), the office may bring an administrative action pursuant to Title 63, Chapter 46b, Administrative Procedures Act, to enforce a provision of the notice.

(c) If an obligee or obligor brings a civil action under Subsection (2)(a) to enforce a provision of the notice, the obligee or obligor may recover any penalty related to that provision under Section 62A-11-406 in place of the office.

(3) If the obligor's child support is owed monthly and the payor's pay periods are at more frequent intervals, the payor, with the consent of the office may withhold an equal amount at each pay period cumulatively sufficient to pay the monthly child support obligation.

(4) A payor may combine amounts which he has withheld from the incomes of multiple obligors into a single payment to the office. If such a combined payment is made, the payor shall specify the amount attributable to each individual obligor by name and Social Security number.

(5) In addition to the child support amount, a check processing fee in the amount of \$5 per check, with a maximum of \$10 per month shall be assessed against the payor.

~~[(5)]~~ (6) In addition to any other remedy provided in this section, a payor is liable to the office, obligee, or obligor for costs and reasonable attorneys' fees incurred in enforcing a provision in the notice mailed or delivered under Section 62A-11-406.

~~[(6)]~~ (7) Notwithstanding this section or Section 62A-11-406, if a payor receives an income withholding order or notice issued by another state, the payor shall apply the income withholding law of the state of the obligor's principal place of employment in determining:

(a) the payor's fee for processing income withholding;

- 90 (b) the maximum amount permitted to be withheld from the obligor's income;
91 (c) the time periods within which the payor must implement income withholding and
92 forward child support payments;
93 (d) the priorities for withholding and allocating withheld income for multiple child
94 support obligees; and
95 (e) any term or condition for withholding not specified in the notice.

Legislative Review Note
as of 8-22-02 11:09 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel