

HOUSE BILL REPORT

ESHB 1760

As Passed House
March 12, 1993

Title: An act relating to obligations for child support and spousal maintenance.

Brief Description: Regulating obligations for child support and spousal maintenance.

Sponsors: By House Committee on Judiciary (originally sponsored by Representatives H. Myers, Brough, Appelwick, Miller, Johanson, Chappell, Ludwig, Scott and Mastin.)

Brief History:

Reported by House Committee on:
Judiciary, February 23, 1993, DPS;
Passed House, March 12, 1993, 98-0.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 17 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Ballasiotes, Assistant Ranking Minority Member; Campbell; Chappell; Forner; Johanson; Locke; Long; Mastin; H. Myers; Riley; Schmidt; Scott; Tate; and Wineberry.

Staff: Patricia Shelledy (786-7149).

Background: A variety of provisions exist to enforce support obligations ordered for a dependent child. In 1984, the Legislature enacted provisions to enhance existing collection mechanisms by allowing custodians of dependant children to enforce support by obtaining a "wage assignment order" which directs the obligor's employer to deduct the support ordered from the obligor's wages. Unlike a garnishment, a wage assignment order is an ongoing order with which the employer must comply until directed otherwise.

The definition of the "duty of support" in the provisions governing wage assignments provides that the "duty includes any obligation to make monetary payments, to pay expenses, including spousal maintenance, ..." That definition has been interpreted to allow the enforcement of spousal

maintenance through a wage assignment order only if support for a dependent child is also due.

Employers must make child support payments to the Washington state support registry unless the court orders otherwise. Obligors may make spousal maintenance payments directly to the ex-spouse.

Federal law provides that wages or other "remuneration for employment" of federal employees may be collected for child support or spousal maintenance. Remuneration for employment includes payments of pensions, retirement or retired pay, annuities, dependents' or survivors' benefits, and "black lung" benefits. Currently, "remuneration for employment" is not included in the definition of "earnings" against which a mandatory wage assignment benefit may be enforced.

An employer served with a mandatory wage assignment order must hold a wage assignment order for one year after the employee has left employment. The wage assignment order remains in effect during that time. If the employee returns to employment within the year, the employer must continue to deduct support pursuant to the wage assignment order.

Wage assignment orders for child support have priority over other garnishments or wage assignments against the obligor's earnings, except other child support garnishments or wage assignment orders. If more than one child support wage assignment order is in effect, the employer must divide the earnings among the various obligees equally.

Contempt is a remedy to enforce support ordered for a dependent child.

The prevailing party is entitled to recover costs and reasonable attorneys' fees in an action to enforce support for a dependent child. The obligor may not be considered the prevailing party unless the obligee acted in bad faith.

If an obligor who has been ordered to obtain health insurance coverage for his or her dependents fails to obtain or maintain the insurance coverage, the obligee or the Office of Support Enforcement may enforce the coverage by requiring the employer to enroll the dependents in the health insurance plan. The provisions governing enforcement of health benefits do not explicitly provide that the obligee or department may enforce collection of any deductible paid under the plan or any out-of-pocket medical expenses incurred that are not covered by the plan. In practice, the obligee or the department may enforce collection of those expenses if a court order requires enforcement.

Summary of Bill: Spousal maintenance may be collected by use of a mandatory wage assignment order. Spousal maintenance may be collected even if child support is not also due. A contempt action may also be used to enforce a spousal maintenance order. The court has continuing jurisdiction to enforce a support or maintenance order and may use contempt to collect all sums due, including arrearages.

The mandatory wage assignment order may be asserted against "remuneration for employment" as payable by the United States to the obligor.

Withheld earnings may be delivered to the Washington state support registry or, if the wage assignment is just for spousal maintenance, to the addressee specified in the wage assignment order.

The wage assignment order will remain in effect for one year after the employee has left employment or the employer is no longer in possession of any earnings or remuneration owed to the employee, whichever is later.

Child support wage assignment orders continue to have priority over spousal maintenance wage assignment orders but spousal maintenance wage assignment orders have priority over other garnishments. If more than one spousal maintenance order is asserted against the obligor's wages and the total due exceeds the amount of available disposable earnings, the wages will be divided among the obligees equally.

The provision concerning the award of reasonable attorneys' fees and costs to the prevailing party is amended to specify that a "support order" also includes a maintenance order.

The obligee and the Office of Support Enforcement are expressly authorized to collect the obligor's portion of any deductible paid for medical expenses, or any medical expenses incurred that exceed the coverage under the plan. The amount must be reduced to a sum certain in a court order before the obligee or the department may enforce collection through a wage assignment order.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Mandatory wage assignments have proven to be far more effective than garnishments to collect child support. Garnishments and existing methods of enforcing

judgments are ineffective ways to enforce continuous compliance with an order of spousal maintenance.

Testimony Against: None.

Witnesses: Joyce Brekke, Evergreen Legal Services (pro); Olivene Christensen, private citizen (pro); and Paula Crane, Washington State Bar Association, Family Law Section (pro).