

HOUSE BILL 1163

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2000 Regular Session
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By: **Delegates Montague, Gladden, Griffith, Grosfeld, Menes, Cole, Barkley,
and Giannetti**

Introduced and read first time: February 11, 2000

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Family Law - Child and Spousal Support - Earnings Withholding**

3 FOR the purpose of authorizing the Child Support Enforcement Administration to
4 serve an earnings withholding notice on an employer of an obligor under certain
5 circumstances; altering provisions relating to the amount of earnings
6 withholding under an earnings withholding order or earnings withholding
7 notice; establishing certain procedures for earnings withholding if there is more
8 than one earnings withholding order or earnings withholding notice against a
9 single obligor; requiring a court to order that payments under an earnings
10 withholding order be made through the State disbursement unit; altering
11 provisions relating to the right of an obligor to contest an earnings withholding
12 notice; requiring an employer to send the amount withheld under an earnings
13 withholding order or earnings withholding notice to the State disbursement
14 unit; establishing a certain criminal offense and imposing a certain penalty;
15 altering the circumstances under which a court may terminate earnings
16 withholding; requiring the Administration to notify an employer to terminate
17 earnings withholding under certain circumstances; making certain conforming
18 changes; defining certain terms; and generally relating to support enforcement
19 and earnings withholding.

20 BY renumbering

21 Article - Family Law
22 Section 10-124, 10-128, 10-129, 10-130, 10-133, 10-135, and 10-136,
23 respectively
24 to be Section 10-126, 10-130, 10-131, 10-132, 10-135, 10-137, and 10-138,
25 respectively
26 Annotated Code of Maryland
27 (1999 Replacement Volume and 1999 Supplement)

28 BY repealing and reenacting, with amendments,

29 Article - Family Law
30 Section 10-120, 10-121, 10-122, 10-122.1, 10-123, 10-125, 10-126, 10-127,
31 10-131, 10-132, and 10-134

1 Annotated Code of Maryland
2 (1999 Replacement Volume and 1999 Supplement)

3 BY adding to
4 Article - Family Law
5 Section 10-120
6 Annotated Code of Maryland
7 (1999 Replacement Volume and 1999 Supplement)

8 BY repealing and reenacting, without amendments,
9 Article - Family Law
10 Section 10-301(x)
11 Annotated Code of Maryland
12 (1999 Replacement Volume and 1999 Supplement)

13 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
14 MARYLAND, That Section(s) 10-124, 10-128, 10-129, 10-130, 10-133, 10-135, and
15 10-136, respectively, of Article - Family Law of the Annotated Code of Maryland be
16 renumbered to be Section(s) 10-126, 10-130, 10-131, 10-132, 10-135, 10-137, and
17 10-138, respectively.

18 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
19 read as follows:

20 **Article - Family Law**

21 10-120.

22 (A) IN THIS PART III OF THIS SUBTITLE THE FOLLOWING WORDS HAVE THE
23 MEANINGS INDICATED.

24 (B) "EARNINGS WITHHOLDING NOTICE" MEANS A NOTICE IN A FORMAT
25 PRESCRIBED BY FEDERAL LAW ISSUED BY THE ADMINISTRATION TO AN EMPLOYER
26 REQUIRING THE EMPLOYER TO DEDUCT SUPPORT PAYMENTS FROM THE EARNINGS
27 OF AN OBLIGOR.

28 (C) "EARNINGS WITHHOLDING ORDER" MEANS AN ORDER IN A FORMAT
29 PRESCRIBED BY FEDERAL LAW ISSUED BY A TRIBUNAL TO AN EMPLOYER REQUIRING
30 THE EMPLOYER TO DEDUCT SUPPORT PAYMENTS FROM THE EARNINGS OF AN
31 OBLIGOR.

32 (D) "SUPPORT" INCLUDES:

33 (1) CHILD SUPPORT;

34 (2) SPOUSAL SUPPORT;

35 (3) NONDIFFERENTIATED CHILD AND SPOUSAL SUPPORT; AND

1 (4) ANY MEDICAL SUPPORT ORDERED BY THE COURT, INCLUDING
2 CONVERTED FUNDS AS DEFINED IN § 15-122.2 OF THE HEALTH - GENERAL ARTICLE.

3 (E) "TRIBUNAL" HAS THE MEANING STATED IN §10-301(X) OF THIS TITLE.

4 [10-120.] 10-121.

5 (a) Any order under this Part III of this subtitle that is passed on or after July
6 1, 1985 shall constitute an immediate and continuing withholding order on all
7 earnings of the obligor that are due on or after the date of the support order.

8 (b) (1) Any order under this Part III of this subtitle that is passed before
9 July 1, 1985 shall become an immediate and continuing withholding order on all
10 earnings of the obligor that are due on or after the date of the withholding order on
11 the filing by the recipient or support enforcement agency of:

12 (i) a motion for a withholding order on the earnings of the obligor;
13 and

14 (ii) a current support order.

15 (2) Notice of the filing of the motion and a statement that the support
16 order constitutes an earnings withholding order subject to the conditions of this Part
17 III of this subtitle shall be sent to the obligor by certified mail, return receipt
18 requested and first class mail, at the last known home address or, if the home address
19 is unknown, the place of employment of the obligor.

20 [(c) For purposes of this Part III of this subtitle, support shall include:

21 (1) child support;

22 (2) spousal support;

23 (3) nondifferentiated child and spousal support; and

24 (4) any medical support ordered by the court, including converted funds
25 as defined in § 15-122.2 of the Health - General Article.]

26 [(d)] (C) Any support order or modification of support order not subject to
27 immediate withholding under [§ 10-122] § 10-123 of this subtitle, that is passed on or
28 after July 1, 1985, and any notice and statement issued under subsection (b)(2) of this
29 section shall include a statement that:

30 (1) if the obligor accumulates support payments arrears amounting to
31 more than 30 days of support, the obligor shall be subject to earnings withholding;

32 (2) the obligor is required to notify the court within 10 days of any
33 change of address or employment so long as the support order is in effect; and

1 (3) failure to comply with item (2) of this subsection will subject the
2 obligor to a penalty not to exceed \$250 and may result in the obligor's not receiving
3 notice of proceedings for earnings withholding.

4 [10-121.] 10-122.

5 (a) The amount of the earnings withholding shall:

6 (1) be enough to pay the support and any arrearage included in the
7 payments required by the support order; and

8 (2) include any arrearage accrued since the support order.

9 (b) (1) (I) When arrearages under subsection (a)(2) of this section are part
10 of an earnings withholding order OR EARNINGS WITHHOLDING NOTICE, the [court
11 shall order] the total arrearage withheld SHALL BE in [1] ONE lump-sum payment
12 or apportioned over a period of time.

13 (II) THE AMOUNT OF THE ARREARAGE WITHHELD UNDER
14 SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL BE DETERMINED BY THE TRIBUNAL
15 OR THE ADMINISTRATION.

16 (2) The amount of arrears under subsection (a)(2) of this section
17 apportioned to each payment [shall be at least 10% but not more than 25% of the
18 current support payment] COMBINED WITH THE CURRENT SUPPORT OBLIGATION,
19 MAY NOT EXCEED THE LIMITS OF THE FEDERAL CONSUMER CREDIT PROTECTION
20 ACT.

21 (C) IF THERE IS MORE THAN ONE EARNINGS WITHHOLDING ORDER OR
22 EARNINGS WITHHOLDING NOTICE AGAINST A SINGLE OBLIGOR, THE
23 ADMINISTRATION SHALL ALLOCATE AMOUNTS AVAILABLE FOR WITHHOLDING,
24 GIVING PRIORITY TO CURRENT SUPPORT, UP TO THE LIMITS IMPOSED BY THE
25 FEDERAL CONSUMER CREDIT PROTECTION ACT.

26 [10-122.] 10-123.

27 (a) Except as otherwise provided for in this section and notwithstanding any
28 other provision of this Part III, a court shall immediately authorize service of an
29 earnings withholding order when:

30 (1) (i) a support order or modification of support order is passed on or
31 after April 9, 1991;

32 (ii) a case is being enforced by a support enforcement agency; and

33 (iii) the recipient or support enforcement agency requests service of
34 an earnings withholding order; or

35 (2) the Department of Health and Mental Hygiene requests service of an
36 earnings withholding order for court ordered medical support.

1 (b) Except as provided in subsection (d) of this section, for all child support
2 orders that are initially issued in the State on or after January 1, 1994, regardless of
3 whether child support payments are in arrears, a court shall immediately authorize
4 service of an earnings withholding order on the effective date of the order.

5 (c) [(1) Except as provided in paragraph (2) of this subsection, when] WHEN
6 a court orders immediate service of an earnings withholding order on or after July 1,
7 1994, the court shall order payments[:

8 (i) through a support enforcement agency; or

9 (ii) directly to the obligee's bank account.

10 (2) A party may request and the court may order that an employer send
11 payments directly to the obligee] THROUGH THE STATE DISBURSEMENT UNIT.

12 (d) A court may not authorize the immediate service of an earnings
13 withholding order if:

14 (1) any party demonstrates, and the court finds, that there is good cause
15 to not require immediate earnings withholding; or

16 (2) the court approves of the terms of a written agreement of the parties
17 providing for an alternative method of payment.

18 (e) If the court authorizes the immediate service of an earnings withholding
19 order, the court shall immediately cause a copy of the earnings withholding order to
20 be served on any employer of the obligor.

21 [10-122.1.] 10-124.

22 (a) Except as otherwise provided in this [section and notwithstanding any
23 other provision of this] Part III, the Administration may serve [a] AN EARNINGS
24 withholding [order] NOTICE on an employer of an obligor [when] WITHOUT THE
25 NEED FOR ANY MODIFICATION OF THE SUPPORT ORDER OR ANY FURTHER ACTION
26 BY A TRIBUNAL IF:

27 (1) (i) [a court has passed an immediate and continuing withholding
28 order on all earnings of the obligor;] A TRIBUNAL HAS ISSUED A SUPPORT ORDER;
29 AND

30 (ii) the Administration is providing child support services under
31 Title IV, Part D, of the Social Security Act; [and

32 (iii) an arrears of support payments has accrued under a support
33 order;] or

34 (2) an obligor requests the service of an earnings withholding [order]
35 NOTICE.

1 (b) The Administration may serve an employer with an earnings withholding
2 [order] NOTICE using an electronic format if the employer has entered into an
3 agreement with the Administration to accept service of AN earnings withholding
4 [orders] NOTICE in this manner.

5 (c) When the Administration serves an employer with an earnings
6 withholding [order] NOTICE under this section, the Administration shall send to the
7 obligor, by certified mail, return receipt requested, and first-class mail, at the
8 obligor's last known home address or, if the home address is unknown, the place of
9 employment last reported to the court:

10 (1) a copy of the earnings withholding [order] NOTICE;

11 (2) a statement of the procedures under [§ 10-132] § 10-134 of this
12 subtitle that the obligor must follow to terminate earnings withholding;

13 (3) [the form authorized under § 10-132 of this subtitle;

14 (4) a statement of the obligor's right to contest [service of an earnings
15 withholding order by moving for a stay of the order] THE ACCURACY OF THE
16 INFORMATION PROVIDED IN THE EARNINGS WITHHOLDING NOTICE BY REQUESTING
17 AN INVESTIGATION no later than 15 days after a copy of the withholding [order]
18 NOTICE is mailed to the obligor under this section; and

19 [(5)] (4) a statement of the amount of arrears apportioned to each
20 payment that is to be included in the amount of earnings withheld under [§ 10-121]
21 § 10-122 of this subtitle.

22 (d) The only issues that may be [adjudicated at a hearing] CONTESTED under
23 subsection [(c)(4)] (C)(3) of this section are:

24 (1) [whether an arrearage existed;

25 (2)] the amount of the WITHHOLDING OR THE AMOUNT OF ANY
26 arrearage;

27 [(3)] (2) the identity of the obligor; [and] OR

28 [(4)] (3) that the amount of the withholding [order] NOTICE exceeds the
29 limits of the federal Consumer Credit Protection Act.

30 (E) (1) IF AN OBLIGOR CONTESTS AN ISSUE UNDER SUBSECTION (D) OF THIS
31 SECTION, THE ADMINISTRATION SHALL:

32 (I) CONDUCT AN INVESTIGATION; AND

33 (II) ON COMPLETION OF THE INVESTIGATION, NOTIFY THE
34 OBLIGOR OF THE RESULTS OF THE INVESTIGATION AND THE OBLIGOR'S RIGHT TO
35 APPEAL THE DECISION OF THE ADMINISTRATION TO THE OFFICE OF
36 ADMINISTRATIVE HEARINGS.

1 (2) AN APPEAL UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION SHALL
2 BE CONDUCTED IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE
3 GOVERNMENT ARTICLE.

4 [10-123.] 10-125.

5 Except as provided for in [§ 10-122] § 10-123 of this subtitle, the court may not
6 cause a copy of the earnings withholding order to be served on any employer of the
7 obligor until the court receives a request for service of the earnings withholding order
8 under [§ 10-124] § 10-126 of this subtitle and the requirements of [§§ 10-125 and
9 10-131] §§ 10-127 AND 10-133 of this subtitle have been met.

10 [10-125.] 10-127.

11 (a) When the court receives a request for service of the earnings withholding
12 order under [§ 10-124] § 10-126 of this subtitle, the court shall send to the obligor, by
13 certified mail, return receipt requested and first class mail, at the home address or, if
14 the home address is unknown, the place of employment last reported to the court:

15 (1) a copy of the earnings withholding order;

16 (2) a copy of the request for service of the earnings withholding order;

17 (3) a statement of the procedures under [§ 10-131] § 10-133 of this
18 subtitle that the obligor must follow to contest the earnings withholding;

19 (4) the form permitted under [§ 10-131(b)(3)] § 10-133(B)(3) of this
20 subtitle;

21 (5) a statement of the issues that may be adjudicated under [§ 10-131]
22 § 10-133 of this subtitle; and

23 (6) notice that:

24 (i) the order will be served on the employer and will include
25 arrears as alleged in the request for service of the earnings withholding order unless
26 the obligor moves for a stay of service within 15 days of mailing the notice under this
27 section; and

28 (ii) the arrears accrued since the issuance of the support order will
29 be apportioned according to the requirements of [§ 10-121] § 10-122 of this subtitle.

30 (b) If the obligor fails to move for a stay under [§ 10-131] § 10-133 of this
31 subtitle, the court shall immediately cause a copy of the earnings withholding order to
32 be served on the employer of the obligor.

33 [10-126.] 10-128.

34 (a) [The] AN earnings withholding order OR AN EARNINGS WITHHOLDING
35 NOTICE sent to the obligor's employer shall:

1 (1) be a separate document, and not include any other orders or
2 pleadings; and

3 (2) include only the following information:

4 (i) the amount to be withheld from the obligor's earnings including
5 explanation of the application of the federal Consumer Credit Protection Act limits;

6 (ii) that subject to further orders of the [court] TRIBUNAL, the
7 employer is required to withhold the stated amount on a regular and continuing basis
8 commencing on the beginning of the next pay period after receipt of the EARNINGS
9 WITHHOLDING order OR THE EARNINGS WITHHOLDING NOTICE;

10 (iii) that the employer may deduct and retain from the employee's
11 earnings an additional \$2 for each deduction made under the EARNINGS
12 WITHHOLDING order OR EARNINGS WITHHOLDING NOTICE;

13 (iv) that the net amount withheld is to be sent promptly to the
14 [support enforcement agency or to the recipient as specified in the order] STATE
15 DISBURSEMENT UNIT; and

16 (v) any other information that the employer needs to comply with
17 the earnings withholding order OR EARNINGS WITHHOLDING NOTICE.

18 (b) An earnings withholding order OR EARNINGS WITHHOLDING NOTICE is
19 binding on each present and future employer of the obligor on whom a copy of the
20 EARNINGS WITHHOLDING order OR EARNINGS WITHHOLDING NOTICE is served.

21 (c) Subject to federal law, an earnings withholding order OR EARNINGS
22 WITHHOLDING NOTICE under this Part III of this subtitle has priority over any other
23 lien or legal process.

24 (d) The copy of the earnings withholding order OR EARNINGS WITHHOLDING
25 NOTICE served on the employer of the obligor shall contain a statement that upon
26 willful violation of the EARNINGS WITHHOLDING order OR EARNINGS WITHHOLDING
27 NOTICE the employer shall be subject to civil penalties.

28 [10-127.] 10-129.

29 (a) On receipt of a copy of an earnings withholding order OR EARNINGS
30 WITHHOLDING NOTICE an employer shall, beginning with the next pay period after
31 receipt of the EARNINGS WITHHOLDING order OR EARNINGS WITHHOLDING NOTICE:

32 (1) deduct the amount of the withholding from the obligor's earnings on
33 a regular basis; and

34 (2) send the deducted net amount directly to the [support enforcement
35 agency or the recipient] STATE DISBURSEMENT UNIT, as specified in the EARNINGS
36 WITHHOLDING order OR EARNINGS WITHHOLDING NOTICE, within 7 days not

1 including Saturday, Sunday, or a legal holiday after the day on which the earnings are
2 paid to the obligor.

3 (b) An employer may deduct and retain from the obligor's wages an additional
4 \$2 for each deduction made under the EARNINGS WITHHOLDING order OR EARNINGS
5 WITHHOLDING NOTICE.

6 (c) (1) An employer may not use the withholding as a basis for:

7 [(1)] (I) reprisal against the obligor;

8 [(2)] (II) dismissal of the obligor from employment; or

9 [(3)] (III) refusal to hire or to promote the obligor.

10 (2) AN EMPLOYER WHO VIOLATES ANY OF THE PROVISIONS OF
11 PARAGRAPH (1) OF THIS SUBSECTION IS GUILTY OF A MISDEMEANOR AND ON
12 CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$1,500.

13 (d) (1) Subject to the provisions of [§ 10-129] § 10-131 of this subtitle:

14 (i) the recipient or the support enforcement agency may bring a
15 civil action against an employer who willfully violates subsection (a) of this section;
16 and

17 (ii) an employer is liable for damages under this subsection in an
18 amount equal to the amount of any withholding that the employer failed to deduct
19 from the obligor's earnings or failed to send within the time required under
20 subsection (a) of this section.

21 (2) The employer's liability under this subsection shall be in addition to
22 any amounts paid directly or indirectly by the obligor.

23 [10-131.] 10-133.

24 (a) Except as provided in [§ 10-122 or § 10-122.1] § 10-123 OR § 10-124 of this
25 subtitle, an obligor may contest the issuance of an earnings withholding order by
26 moving for a stay of the order no later than 15 days after a copy of the withholding
27 order is mailed to the obligor under [§ 10-125] § 10-127 of this subtitle.

28 (b) A motion for a stay of the withholding order:

29 (1) shall be under oath;

30 (2) shall state the grounds for contesting the earnings withholding,
31 including dates and amount of payments in dispute; and

32 (3) may be on a form that shall be prepared by the court.

1 (c) Any person who willfully makes a false representation of facts on a motion
2 for stay of the withholding order under this section shall be subject to the penalties
3 for perjury.

4 (d) Upon receipt of a motion for a stay of the withholding order under
5 subsection (a) of this section, the court shall immediately notify the recipient and the
6 support enforcement agency, if applicable, and shall schedule a hearing within 15
7 days.

8 (e) The only issues that may be adjudicated at a hearing scheduled under this
9 section are:

10 (1) whether the alleged arrearage existed;

11 (2) the amount of the arrearage;

12 (3) the identity of the obligor; and

13 (4) that the amount of the withholding order exceeds the limits of the
14 federal Consumer Credit Protection Act.

15 (f) Payment of arrearage after the date of the motion for service of the
16 withholding order is not a defense against withholding.

17 (g) After adjudication of the issues under subsection (e) of this section, if the
18 court finds that the obligor owed an amount in excess of 30 days' support at the time
19 the request for service of the withholding order was filed, the court shall cause the
20 earnings withholding order to be served on the obligor's employer immediately and
21 shall deny the stay.

22 (h) If the court finds that the amount of the withholding order exceeds the
23 limits of the federal Consumer Credit Protection Act, the court shall alter the amount
24 of the earnings withholding to the maximum allowed under the federal Consumer
25 Credit Protection Act.

26 (i) In any event, the court shall rule on the request for service of the earnings
27 withholding order within 45 days of the mailing of the notice to the obligor.

28 [10-132.] 10-134.

29 (A) On motion of the obligor[, the] OR THE recipient[, or the support
30 enforcement agency], that may be filed on a form which shall be prepared by the
31 court, the court shall terminate the withholding if:

32 (1) the support obligation is terminated and the total arrearages are
33 paid;

34 (2) [because of the failure of the recipient to give notice of a change of
35 address as required by § 10-129 of this subtitle, the employer or the support

1 enforcement agency has been unable to deliver the support payments for a 2-month
2 period;

3 (3) all of the parties join in a motion for termination of the withholding;
4 or

5 [(4)] (3) within 60 days of the withholding order being served, the court
6 finds[:

7 (i) no history of child support arrearages[; and

8 (ii) the arrearage which gave rise to the withholding order was the
9 result of a bona fide medical emergency involving hospitalization of the obligor or the
10 death of the obligor's parents, spouse, children, or stepchildren].

11 (B) THE ADMINISTRATION SHALL NOTIFY THE EMPLOYER TO TERMINATE THE
12 WITHHOLDING WITHOUT THE NECESSITY OF A FURTHER ORDER WHEN:

13 (1) THE SUPPORT OBLIGATION IS FULFILLED; AND

14 (2) NO ARREARAGE EXISTS.

15 [10-134.] 10-136.

16 (a) Support orders issued out of State shall be enforced in the same manner
17 under this Part III of this subtitle as support orders issued in this State.

18 (b) A recipient of an out-of-state support order may file a request for service
19 of an earnings withholding order under [§ 10-124] § 10-126 of this subtitle by
20 submitting the information required under [§ 10-124] § 10-126 of this subtitle, and a
21 certified support order or a support order registered in this State.

22 (c) (1) A recipient of an out-of-state support order may request that the
23 support enforcement agency file with the court a request for service of an earnings
24 withholding order under [§ 10-124] § 10-126 of this subtitle by submitting a request
25 for service, a certified support order, and a statement of arrears under oath.

26 (2) A request under this subsection may be submitted by the recipient or
27 a support enforcement agency.

28 10-301.

29 (x) "Tribunal" means a court, administrative agency, or quasi-judicial entity
30 authorized to establish, enforce, or modify support orders or to determine parentage.

31 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
32 October 1, 2000.