



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB1827

Introduced 2/9/2011, by Sen. Dan Kotowski

SYNOPSIS AS INTRODUCED:

305 ILCS 5/10-1	from Ch. 23, par. 10-1
305 ILCS 5/10-15.1 new	
305 ILCS 5/10-16.5	
735 ILCS 5/12-109	from Ch. 110, par. 12-109

Amends the Illinois Public Aid Code. Adds provisions concerning the judicial registration of administrative support orders. Provides that notwithstanding any other law to the contrary, the Department of Healthcare and Family Services shall have no further duty or authority to enforce and collect interest accrued on support obligations established under the Code or under any other law, including any interest on support accrued and deemed to have been assigned to the State under previous law. Amends the Code of Civil Procedure. Provides that interest on child support obligations may be collected by any means available under State law for the collection of child support judgments (rather than by any means available under federal and State laws, rules, and regulations providing for the collection of child support). Effective immediately.

LRB097 05092 KTG 45134 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning child support.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Illinois Public Aid Code is amended by
5 changing Sections 10-1 and 10-16.5 and by adding Section
6 10-15.1 as follows:

7 (305 ILCS 5/10-1) (from Ch. 23, par. 10-1)

8 Sec. 10-1. Declaration of Public Policy - Persons Eligible
9 for Child Support Enforcement Services - Fees for
10 Non-Applicants and Non-Recipients.) It is the intent of this
11 Code that the financial aid and social welfare services herein
12 provided supplement rather than supplant the primary and
13 continuing obligation of the family unit for self-support to
14 the fullest extent permitted by the resources available to it.
15 This primary and continuing obligation applies whether the
16 family unit of parents and children or of husband and wife
17 remains intact and resides in a common household or whether the
18 unit has been broken by absence of one or more members of the
19 unit. The obligation of the family unit is particularly
20 applicable when a member is in necessitous circumstances and
21 lacks the means of a livelihood compatible with health and
22 well-being.

23 It is the purpose of this Article to provide for locating

1 an absent parent or spouse, for determining his financial
2 circumstances, and for enforcing his legal obligation of
3 support, if he is able to furnish support, in whole or in part.
4 The Department of Healthcare and Family Services shall give
5 priority to establishing, enforcing and collecting the current
6 support obligation, and then to past due support owed to the
7 family unit, except with respect to collections effected
8 through the intercept programs provided for in this Article.

9 The child support enforcement services provided hereunder
10 shall be furnished dependents of an absent parent or spouse who
11 are applicants for or recipients of financial aid under this
12 Code. It is not, however, a condition of eligibility for
13 financial aid that there be no responsible relatives who are
14 reasonably able to provide support. Nor, except as provided in
15 Sections 4-1.7 and 10-8, shall the existence of such relatives
16 or their payment of support contributions disqualify a needy
17 person for financial aid.

18 By accepting financial aid under this Code, a spouse or a
19 parent or other person having custody of a child shall be
20 deemed to have made assignment to the Illinois Department for
21 aid under Articles III, IV, V and VII or to a local
22 governmental unit for aid under Article VI of any and all
23 rights, title, and interest in any support obligation,
24 excluding ~~including~~ statutory interest thereon, up to the
25 amount of financial aid provided. The rights to support
26 assigned to the Department of Healthcare and Family Services

1 (formerly Illinois Department of Public Aid) or local
2 governmental unit shall constitute an obligation owed the State
3 or local governmental unit by the person who is responsible for
4 providing the support, and shall be collectible under all
5 applicable processes.

6 The Department of Healthcare and Family Services shall also
7 furnish the child support enforcement services established
8 under this Article in behalf of persons who are not applicants
9 for or recipients of financial aid under this Code in
10 accordance with the requirements of Title IV, Part D of the
11 Social Security Act. The Department may establish a schedule of
12 reasonable fees, to be paid for the services provided and may
13 deduct a collection fee, not to exceed 10% of the amount
14 collected, from such collection. The Department of Healthcare
15 and Family Services shall cause to be published and distributed
16 publications reasonably calculated to inform the public that
17 individuals who are not recipients of or applicants for public
18 aid under this Code are eligible for the child support
19 enforcement services under this Article X. Such publications
20 shall set forth an explanation, in plain language, that the
21 child support enforcement services program is independent of
22 any public aid program under the Code and that the receiving of
23 child support enforcement services in no way implies that the
24 person receiving such services is receiving public aid.

25 (Source: P.A. 94-90, eff. 1-1-06; 95-331, eff. 8-21-07.)

1 (305 ILCS 5/10-15.1 new)

2 Sec. 10-15.1. Judicial registration of administrative
3 support orders.

4 (a) An administrative support order established by the
5 Illinois Department under this Article X may be registered in
6 the appropriate circuit court of this State by the Department
7 or by a party to the order by filing:

8 (1) Two copies, including one certified copy of the
9 order to be registered, and any modification of the
10 administrative support order.

11 (2) A sworn statement by the person requesting
12 registration or a certified copy of the Department payment
13 record showing the amount of any past due support accrued
14 under the administrative support order.

15 (3) The name of the obligor and, if known, the
16 obligor's address and social security number.

17 (4) The name of the obligee and the obligee's address,
18 unless the obligee alleges in an affidavit or pleading
19 under oath that the health, safety, or liberty of the
20 obligee or child would be jeopardized by disclosure of
21 specific identifying information, in which case that
22 information must be sealed and may not be disclosed to the
23 other party or public. After a hearing in which the court
24 takes into consideration the health, safety, or liberty of
25 the party or child, the court may order disclosure of
26 information that the court determines to be in the interest

1 of justice.

2 (b) The filing of an administrative support order under
3 subsection (a) constitutes registration with the circuit
4 court.

5 (c) On receipt of a request for registration the circuit
6 court shall cause the administrative support order to be filed
7 in the court's registry of administrative support orders.

8 (d) A petition or comparable pleading seeking a remedy that
9 must be affirmatively sought under other law of this State may
10 be filed at the same time as the request for registration or
11 later. The pleading must specify the grounds for the remedy
12 sought.

13 (e) When an administrative support order is registered, the
14 court shall notify the nonregistering party and the Illinois
15 Department, unless the Department is requesting registration
16 of its order. The notice must be accompanied by a copy of the
17 registered administrative support order and the documents and
18 relevant information accompanying the order.

19 (f) A notice of registration of an administrative support
20 order must provide the following information:

21 (1) That a registered administrative order is
22 enforceable in the same manner as an order for support
23 issued by the circuit court.

24 (2) That a hearing to contest the validity or
25 enforcement of the registered administrative support order
26 must be requested within 20 days after the date of mailing

1 or personal service of the notice.

2 (3) That failure to contest, in a timely manner, the
3 validity or enforcement of the registered administrative
4 support order shall result in confirmation of the order and
5 enforcement of the order and the alleged arrearages and
6 precludes further contest of that order with respect to any
7 matter that could have been asserted.

8 (4) The amount of any alleged arrearages.

9 (g) A nonregistering party seeking to contest the validity
10 or enforcement of a registered administrative support order
11 shall request a hearing within 20 days after the date of
12 mailing or personal service of notice of the registration. The
13 nonregistering party may seek to vacate the registration, to
14 assert any defense to an allegation of noncompliance with the
15 registered administrative support order, or to contest the
16 remedies being sought or the amount of any alleged arrearages.

17 (h) If the nonregistering party fails to contest the
18 validity or enforcement of the registered administrative
19 support order in a timely manner, the order shall be confirmed
20 by operation of law.

21 (i) If a nonregistering party requests a hearing to contest
22 the validity or enforcement of the registered administrative
23 support order, the circuit court shall schedule the matter for
24 hearing and give notice to the parties and the Illinois
25 Department of the date, time, and place of the hearing.

26 (j) A party contesting the validity or enforcement of a

1 registered administrative support order or seeking to vacate
2 the registration has the burden of proving one or more of the
3 following defenses:

4 (1) The Illinois Department lacked personal
5 jurisdiction over the contesting party.

6 (2) The administrative support order was obtained by
7 fraud.

8 (3) The administrative support order has been vacated,
9 suspended, or modified by a later order.

10 (4) The Illinois Department has stayed the
11 administrative support order pending appeal.

12 (5) There is a defense under the law to the remedy
13 sought.

14 (6) Full or partial payment has been made.

15 (k) If a party presents evidence establishing a full or
16 partial payment defense under subsection (j), the court may
17 stay enforcement of the registered order, continue the
18 proceeding to permit production of additional relevant
19 evidence, and issue other appropriate orders. An uncontested
20 portion of the registered administrative support order may be
21 enforced by all remedies available under State law.

22 (l) If a contesting party does not establish a defense
23 under subsection (j) to the validity or enforcement of the
24 administrative support order, the court shall issue an order
25 confirming the administrative support order. Confirmation of
26 the registered administrative support order, whether by

1 operation of law or after notice and hearing, precludes further
2 contest of the order with respect to any matter that could have
3 been asserted at the time of registration. Upon confirmation,
4 the registered administrative support order shall be treated in
5 the same manner as a support order entered by the circuit
6 court.

7 (305 ILCS 5/10-16.5)

8 Sec. 10-16.5. Interest on support obligations. A support
9 obligation, or any portion of a support obligation, which
10 becomes due and remains unpaid as of the end of each month,
11 excluding the child support that was due for that month to the
12 extent that it was not paid in that month, shall accrue simple
13 interest as set forth in Section 12-109 of the Code of Civil
14 Procedure. An order for support entered or modified on or after
15 January 1, 2006 shall contain a statement that a support
16 obligation required under the order, or any portion of a
17 support obligation required under the order, that becomes due
18 and remains unpaid as of the end of each month, excluding the
19 child support that was due for that month to the extent that it
20 was not paid in that month, shall accrue simple interest as set
21 forth in Section 12-109 of the Code of Civil Procedure. Failure
22 to include the statement in the order for support does not
23 affect the validity of the order or the accrual of interest as
24 provided in this Section.

25 Beginning with the effective date of this amendatory Act of

1 the 97th General Assembly, and notwithstanding any other law to
2 the contrary, the Illinois Department shall have no further
3 duty or authority to enforce and collect interest accrued on
4 support obligations established under this Code or under any
5 other law, including any interest on support accrued and deemed
6 to have been assigned to the State under previous law.

7 (Source: P.A. 94-90, eff. 1-1-06.)

8 Section 10. The Code of Civil Procedure is amended by
9 changing Section 12-109 as follows:

10 (735 ILCS 5/12-109) (from Ch. 110, par. 12-109)

11 Sec. 12-109. Interest on judgments.

12 (a) Every judgment except those arising by operation of law
13 from child support orders shall bear interest thereon as
14 provided in Section 2-1303.

15 (b) Every judgment arising by operation of law from a child
16 support order shall bear interest as provided in this
17 subsection. The interest on judgments arising by operation of
18 law from child support orders shall be calculated by applying
19 one-twelfth of the current statutory interest rate as provided
20 in Section 2-1303 to the unpaid child support balance as of the
21 end of each calendar month. The unpaid child support balance at
22 the end of the month is the total amount of child support
23 ordered, excluding the child support that was due for that
24 month to the extent that it was not paid in that month and

1 including judgments for retroactive child support, less all
2 payments received and applied as set forth in this subsection.
3 The accrued interest shall not be included in the unpaid child
4 support balance when calculating interest at the end of the
5 month. The unpaid child support balance as of the end of each
6 month shall be determined by calculating the current monthly
7 child support obligation and applying all payments received for
8 that month, except federal income tax refund intercepts, first
9 to the current monthly child support obligation and then
10 applying any payments in excess of the current monthly child
11 support obligation to the unpaid child support balance owed
12 from previous months. The current monthly child support
13 obligation shall be determined from the document that
14 established the support obligation. Federal income tax refund
15 intercepts and any payments in excess of the current monthly
16 child support obligation shall be applied to the unpaid child
17 support balance. Any payments in excess of the current monthly
18 child support obligation and the unpaid child support balance
19 shall be applied to the accrued interest on the unpaid child
20 support balance. Interest on child support obligations may be
21 collected by any means available under State law for the
22 collection of child support judgments ~~federal and State laws,~~
23 ~~rules, and regulations providing for the collection of child~~
24 ~~support.~~

25 (Source: P.A. 94-90, eff. 1-1-06.)

26 Section 99. Effective date. This Act takes effect upon

1 becoming law.