

Assembly Bill No. 1426

CHAPTER 371

An act to amend Section 5241 of the Family Code, relating to child support.

[Approved by Governor September 28, 2001. Filed with Secretary of State October 1, 2001.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1426, Wright. Child support: earnings assignment.

Existing law provides for the enforcement of child support. Employers are required to withhold child support payments from employees' earnings that are subject to an earnings assignment order. If an employer withholds support pursuant to an earnings assignment order, but fails to forward the support to the obligee, the local child support agency is required to take appropriate action to collect the withheld sums.

This bill would provide that the child support obligee or the local child support agency upon application may obtain an order requiring payment of support by electronic transfer from the employer's bank account when the employer has willfully failed to comply with the assignment order or when the employer has otherwise failed to comply with the assignment order on 3 separate occasions within a 12-month period. The bill would also provide that the court may impose a civil penalty on the employer of up to 50% of the support amount that has not been received by the obligee under specified circumstances. In addition, the employer would be liable to the obligee for any interest incurred as a result of the employer's failure to forward the payment pursuant to the assignment order.

The people of the State of California do enact as follows:

SECTION 1. Section 5241 of the Family Code is amended to read:

5241. (a) An employer who willfully fails to withhold and forward support pursuant to a currently valid assignment order entered and served upon the employer pursuant to this chapter is liable to the obligee for the amount of support not withheld, forwarded, or otherwise paid to the obligee, including any interest thereon.

(b) If an employer withholds support as required by the assignment order, the obligor shall not be held in contempt or subject to criminal prosecution for nonpayment of the support that was withheld by the



employer but not received by the obligee. In addition, the employer is liable to the obligee for any interest incurred as a result of the employer's failure to timely forward the withheld support pursuant to an assignment earnings order.

(c) In addition to any other penalty or liability provided by law, willful failure by an employer to comply with an assignment order is punishable as a contempt pursuant to Section 1218 of the Code of Civil Procedure.

(d) If an employer withholds support, as required by the assignment order, but fails to forward the support to the obligee, the local child support agency shall take appropriate action to collect the withheld sums from the employer. The child support obligee or the local child support agency upon application may obtain an order requiring payment of support by electronic transfer from the employer's bank account if the employer has willfully failed to comply with the assignment order or if the employer has failed to comply with the assignment order on three separate occasions within a 12-month period. Where a court finds that an employer has willfully failed to comply with the assignment order or has otherwise failed to comply with the assignment order on three separate occasions within a 12-month period, the court may impose a civil penalty, in addition to any other penalty required by law, of up to 50 percent of the support amount that has not been received by the obligee.

(e) To facilitate employer awareness, the local support agency shall make reasonable efforts to notify any employer subject to an assignment order pursuant to this chapter of the electronic fund transfer provision and enhanced penalties provided by this act.

(f) Notwithstanding any other provision of law, any penalty payable pursuant to this subdivision shall be payable directly to the obligee. The local child support agency shall not be required to establish or collect this penalty on behalf of the obligee. The penalty shall not be included when determining the income of the obligee for the purpose of determining the eligibility of the obligee for benefits payable pursuant to state supplemental income programs. A court may issue the order requiring payment of support by electronic transfer from the employer's bank account and impose the penalty described in this subdivision, after notice and hearing. This provision shall not be construed to expand or limit the duties and obligations of the Labor Commissioner, as set forth in Section 200 and following of the Labor Code.

