

2018 Kansas Statutes

- 23-3104. Payor's duties; cost recovery fee authorized; limit on amount withheld; violations by payor; penalties.** (a) It shall be the affirmative duty of any payor to respond within 10 days to written or electronic requests for information presented by the public office concerning: (1) The full name of the obligor; (2) the current address of the obligor; (3) the obligor's social security number; (4) the obligor's work location; (5) the number of the obligor's claimed dependents; (6) the obligor's gross income; (7) the obligor's net income; (8) an itemized statement of deductions from the obligor's income; (9) the obligor's pay schedule; (10) the obligor's health insurance coverage; and (11) whether or not income owed the obligor is being withheld pursuant to this act. This is an exclusive list of the information that the payor is required to provide under this section.
- (b) It shall be the duty of any payor who has been served a copy of an income withholding order for payment of an order for cash support that meets the requirements of subsection (i) to deduct and pay over income as provided in this section. The payor shall begin the required deductions no later than the next payment of income due the obligor after 14 days following service of the order on the payor.
- (c) Within seven business days of the time the obligor is normally paid, the payor shall pay the amount withheld as directed by the income withholding agency pursuant to K.S.A. 2018 Supp. 23-3105, and amendments thereto, as directed by the income withholding order or by a rule of the Kansas supreme court. The payor shall identify each payment with the name of the obligor, the county and case number of the income withholding order, and the date the income was withheld from the obligor. The payor shall pay the amounts withheld and identify each payment in the same business day. A payor subject to more than one income withholding order payable to the same payee may combine the amounts withheld into a single payment, but only if the amount attributable to each income withholding order is clearly identified. Premiums required for a child's coverage under a health benefit plan shall be remitted as provided in the health benefit plan and shall not be combined with any other support payment required by the income withholding order.
- (d) The payor shall continue to withhold income as required by the income withholding order until further order of the court or agency.
- (e) From income due the obligor, the payor may withhold and retain to defray the payor's costs a cost recovery fee of \$5 for each pay period for which support is withheld from a periodic payment or \$10 for each month for which support is withheld from a periodic payment, whichever is less. For income withholding from a lump sum payment, a cost recovery fee of up to \$10 per withholding may be withheld by the payor and shall be in addition to any cost recovery fee charged for withholding from periodic payments. Any such cost recovery fee shall be in addition to the amount withheld as support.
- (f) The entire sum withheld by the payor, including the cost recovery fee and premiums due from the obligor which are incurred solely because of a medical withholding order, shall not exceed 50% of the obligor's disposable income as defined by section 302(b) of the consumer credit protection act, 15 U.S.C. § 1672(b). If amounts of earnings required to be withheld exceed the maximum amount of earnings which may be withheld under this section, priority shall be given to payment of current and past due support, and the payor shall promptly notify the holder of the limited power of attorney of any nonpayment of premium for a health benefit plan on the child's behalf. An income withholding order issued pursuant to this act shall not be considered a wage garnishment as defined in subsection (b) of K.S.A. 60-2310, and amendments thereto. If amounts of earnings required to be withheld in accordance with this act are less than the maximum amount of earnings which could be withheld according to section 303(b) of the consumer credit protection act, 15 U.S.C. § 1673(b), the payor shall honor garnishments filed by other creditors to the extent that the total amount taken from earnings does not exceed consumer credit protection act limitations.
- (g) A payor who has been served an income withholding order by the IV-D agency which includes an amount to defray an arrearage shall contact the IV-D agency no less than 14 days prior to making payment of any lump sum amount to the obligor. The payor may make payment of the lump sum to the obligor once 14 days have passed after providing such contact unless additional process, or notice of intended process, has been received.
- (h) The payor shall promptly notify the court or agency that issued the income withholding order of the termination of the obligor's employment or other source of income, or the layoff of the obligor from employment, and provide the obligor's last known address and the name and address of the individual's current employer, if known.
- (i) A payor who complies with a copy of an income withholding order that is regular on its face shall not be subject to civil liability to any person or agency for conduct in compliance with the income withholding order. As used in this section, "regular on its face" means a completed document that is in compliance with subsection (e) (1) of K.S.A. 2018 Supp. 23-3103, and amendments thereto.
- (j) Except as provided further, if any payor violates the provisions of this act, the court may enter a judgment against the payor for the total amount which should have been withheld and paid over. If the payor, without just cause or excuse, fails to pay over income within the time established in subsection (c) and the obligee files a motion to have such income paid over, the court shall enter a judgment against the payor and in favor of the obligee for three times the amount of the income owed and reasonable attorney fees. If the payor, without good cause, fails to pay over the income and identify each payment in the same business day, the court shall enter a judgment against the payor and in favor of the obligee for twice the amount of the cost recovery fee, as established in subsection (e), per obligor.
- (k) In addition to any judgment authorized by subsection (i), a payor shall be subject to a civil penalty not exceeding \$500 and other equitable relief as the court considers proper if the payor: (1) Discharges, refuses to employ or takes disciplinary action against an obligor subject to an income withholding order because of such withholding and the obligations or additional obligations which it imposes upon the payor; or (2) fails to withhold support from income or to pay such amounts in the manner required by this act.
- (l) The provisions of this section as amended by this act shall apply to all income withheld on or after July 1, 2013, regardless of when the applicable income withholding order was entered or modified.
- History:** L. 1985, ch. 115, § 4; L. 1986, ch. 137, § 12; L. 1992, ch. 254, § 2; L. 1994, ch. 301, § 22; L. 1995, ch. 197, § 1; L. 1997, ch. 182, § 25; L. 2001, ch. 195, § 2; L. 2013, ch. 124, § 9; July 1.