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**HOUSE BILL 806**

**45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001**

**INTRODUCED BY**

**Bengie Regensberg**

**AN ACT**

**RELATING TO DOMESTIC AFFAIRS; AMENDING THE SUPPORT ENFORCEMENT  
ACT TO PROVIDE AN ADDITIONAL GROUND TO CONTEST A NOTICE TO  
WITHHOLD INCOME.**

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:**

**Section 1. Section 40-4A-7 NMSA 1978 (being Laws 1985,  
Chapter 105, Section 7, as amended) is amended to read:**

**"40-4A-7. PROCEDURE TO AVOID INCOME WITHHOLDING. --**

**A. Except as provided in Section 40-4A-4.1 NMSA  
1978, the obligor may contest the notice to withhold income by  
filing a petition with the clerk of the district court within  
twenty days after service of the notice of delinquency.**

**Grounds for the contest shall be limited to:**

**(1) a dispute concerning the existence or  
amount of the delinquency or noncompliance with the Support**

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1 Enforcement Act; or

2 (2) in the case of a child support order, a  
3 claim that the obligee has refused to comply with the  
4 obligor's visitation rights as set forth in the custody  
5 arrangement.

6 B. The clerk of the district court shall notify  
7 the obligor and the obligee or public office, as appropriate,  
8 of the time and place of the hearing on the petition. The  
9 court shall hold the hearing pursuant to the provisions of  
10 Section 40-4A-9 NMSA 1978. "

11 Section 2. Section 40-4A-9 NMSA 1978 (being Laws 1985,  
12 Chapter 105, Section 9, as amended) is amended to read:

13 "40-4A-9. PETITIONS TO MODIFY, SUSPEND OR TERMINATE  
14 NOTICE OF WITHHOLDING. --

15 A. When an obligor files a petition pursuant to  
16 Section 40-4A-7 NMSA 1978, the court, after due notice to all  
17 parties, shall hear and resolve the matter no later than  
18 forty-five days following the service of the notice of  
19 delinquency; ~~[where]~~ provided that failure to meet the time  
20 requirement shall not constitute a defense to the notice to  
21 withhold income.

22 (1) If the petition alleges a dispute  
23 pursuant to Paragraph (1) of Subsection A of Section 40-4A-7  
24 NMSA 1978, and the court cannot promptly resolve the issues  
25 alleged in the petition, the court may order immediate

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1 execution of an amended notice to withhold income as to any  
2 undisputed amounts and may continue the hearing on the  
3 disputed issues for such reasonable length of time as required  
4 under the circumstances. [~~Failure to meet the time~~  
5 ~~requirements shall not constitute a defense to the notice to~~  
6 ~~withhold income.~~]

7 (2) If the petition alleges noncompliance  
8 with visitation rights pursuant to Paragraph (2) of Subsection  
9 A of Section 40-4A-7 NMSA 1978 and the court finds that the  
10 obligee has, without cause, refused to comply with the  
11 obligor's visitation rights, then the court shall terminate  
12 the notice of withholding. If, after the obligee complies  
13 with the obligor's visitation rights, the obligor subsequently  
14 becomes delinquent in payment of the order for support, the  
15 obligee may serve another notice to withhold income pursuant  
16 to the Support Enforcement Act.

17 B. At any time, an obligor or obligee or the  
18 public office may petition the court to:

19 (1) modify, suspend or terminate the notice  
20 to withhold income because of a corresponding modification,  
21 suspension or termination of the underlying order for support;

22 (2) modify the amount of income to be  
23 withheld to increase the rate of payment of the delinquency;  
24 or

25 (3) suspend the notice to withhold income

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1 because of the inability of the public office to deliver  
2 income withheld to the obligee due to the obligee's failure to  
3 provide a mailing address or other means of delivery.

4 C. Except for orders to withhold issued pursuant  
5 to Section 40-4A-4.1 NMSA 1978, an obligor may petition the  
6 court at any time to terminate the withholding of income  
7 because payments pursuant to the notice to withhold income  
8 have been made for at least three years and all delinquencies  
9 have been paid. The court shall suspend the notice to  
10 withhold income, absent good cause for denying the petition.  
11 If the obligor subsequently becomes delinquent in payment of  
12 the order for support, the obligee or public office may serve  
13 another notice to withhold income by complying with all  
14 requirements for notice and service pursuant to the Support  
15 Enforcement Act. "