

REVENUE: No revenue impact

FISCAL: No fiscal impact

Action:	Do Pass
Vote:	9 - 0 - 1
Yeas:	Barton, Cameron, Garrett, Olson, Shields, Smith J., Stiegler, Whisnant, Barker
Nays:	0
Exc.:	Krieger
Prepared By:	Lisa Nuss, Counsel
Meeting Dates:	5/21

WHAT THE MEASURE DOES: Makes an employer liable to both parents when the employer fails to pay to the Support Enforcement Division in a timely manner wages withheld as a result of a support enforcement order. Restates current law that employer is liable for failing to withhold wages and for withholding too much. Eliminates cap on damages for employer withholding violations. Provides that in addition to liability for amounts improperly paid, the employer is also liable for any damages suffered by the employee or the parent receiving the support. Continues the provision that in cases of willful or gross negligence, the employer is liable for a penalty not to exceed \$250 and reasonable attorney fees.

ISSUES DISCUSSED:

- Need to protect innocent noncustodial parents who are working to support their children
- Sends a message that exploiting withheld wages will not be tolerated

EFFECT OF COMMITTEE AMENDMENT: No amendment.

BACKGROUND: The Support Enforcement Division of the Oregon Department of Justice will attach the wages of anyone owing child support regardless of whether the person is in arrears. This is a federal requirement. The division does so by serving a writ of attachment upon the person's employer. The employer has a legal duty to withhold. Currently, if the employer fails to do so or withholds too much, the employer is liable for the actual amounts and damages not to exceed that amount.

In *Arvidson v. Kurahashi*, 217 Or. App. 74 (2007), the employer first properly withheld the employee's wages, but then periodically delayed forwarding the withholdings to improve cash flow. As a result, the employee was subject to fines, fees and assessments for late payment. The employee sued his now former employer. The Court of Appeals found that the statute did not allow the employee to recover damages resulting from delayed payments. This bill would allow an employee to do so when the employer delayed paying the withholding.

All of the withholding violations create a private right of action so that either parent can bring the suit, in addition to the Division of Child Support or district attorney.