

**421.17B Administrative wage assignment cooperative agreement.**

1. *Definitions.* As used in this section, unless the context otherwise requires:

a. “*Employer*” means any person or entity that pays an obligor to do a specific task. “*Employer*” only includes such a person or entity in an employer-employee relationship and does not include an obligor acting as a contractor, distributor, agent, or in any representative capacity in which the obligor receives any form of consideration.

b. “*Employment*” means the performance of personal services for another. “*Employment*” only includes parties in an employer-employee relationship and does not include one acting as a self-employer, contractor, distributor, agent, or in any representative capacity.

c. “*Facility*” means the centralized debt collection facility of the department of revenue established pursuant to section 421.17, subsection 27.

d. “*Obligor*” means a person who is indebted to the state or a state agency for any delinquent accounts, charges, fees, loans, taxes, or other indebtedness due the state or indebtedness being collected by the state.

e. “*Wage*” means any form of compensation due to an obligor. “*Wage*” includes, but is not limited to, wages, salary, bonus, commission, or other payment directly or indirectly related to employment. If a wage is assigned to the facility, wage only includes a payment in the form of money.

2. *Purpose and use.*

a. Notwithstanding other statutory provisions which provide for the execution, attachment, garnishment, or levy against accounts, the facility may utilize the process established in this section to collect delinquent accounts, charges, fees, loans, taxes, or other indebtedness due the facility or being collected by the facility provided all administrative remedies have been waived or exhausted by the obligor. Any exemptions or exceptions which specifically apply to enforcement of such obligations also apply to this section. Administrative wage assignment under this section is the equivalent of condemning funds under chapter 642. It is expressly provided that these remedies shall be cumulative and that no action taken by the director or the attorney general shall be construed to be an election on the part of the state or any of its officers or representatives to pursue any other remedy provided by law.

b. An obligor is subject to this section if the obligor’s debt is being collected by the facility.

c. Any amount forwarded to the facility by an employer under this section shall not exceed the delinquent or accrued amount of the obligor’s debt being collected by the facility.

3. *Notice of intent to the obligor.*

a. (1) The facility may proceed under this section only if twenty days’ notice has been provided by regular mail to the last known address of the obligor, notifying the obligor that the obligor is subject to this section. If the facility determines that collection of the debt may be in jeopardy, the facility may request that the employer deliver notice of the wage assignment simultaneously with the remainder of or in lieu of the obligor’s compensation due from the employer.

(2) The facility may obtain one or more wage assignments of an obligor who is subject to this section. If the obligor has more than one employer, the facility may receive wage assignments from one or more of the employers until the full debt obligation of the obligor is satisfied. If an obligor has more than one employer, the facility shall give notice to all employers from whom an assignment is sought.

b. The notice from the facility to the obligor shall contain all of the following:

(1) The name and social security number of the obligor.

(2) A statement that the obligor is believed to have employment with the stated employer.

(3) A statement that pursuant to the provisions of this section, the obligor’s wages will be assigned to the facility for payment of the specified debts and that the employer is authorized and required to forward moneys to the facility.

(4) The maximum amount to be forwarded by the employer, which shall not exceed the delinquent or accrued amount of debt being collected by or owed to the facility by the obligor.

(5) The prescribed time frames the employer must meet in forwarding any amounts.

(6) A statement that any challenge to the action must be in writing and must be received by the facility within ten days of the date of the notice to the obligor.

(7) The address of the facility and the account number utilized by the facility for the obligor.

(8) The telephone number of the agent for the facility initiating the action.

4. *Verification of employment and immunity from liability.*

a. The facility may contact an employer to obtain verification of employment, and any specific information from the employer that the facility needs to initiate, effectuate, or maintain collection of the obligation. Contact with an employer may be by telephone, fax, or by written communication. The employer may require proof of authority from the person from the facility and the telephone number of the authorized person from the facility before releasing an obligor's employment information by telephone.

b. The employer is immune from any civil or criminal liability for information released by the employer to the facility pursuant to this section.

5. *Costs.* The facility is not liable for any costs incurred or imposed for initiating, effectuating, or maintaining an administrative wage assignment under this section. Such costs will be the sole responsibility of the obligor and will be added to the amount to be collected by the facility.

6. *Administrative wage assignment — notice to the employer.*

a. If an obligor is subject to this section, the facility may initiate an administrative wage assignment to have compensation due the obligor to be assigned by the employer to the facility up to the amount of the full debt to be collected by the facility.

b. The facility shall send a notice to the employer within fourteen days of sending notice of the wage assignment to the obligor. The notice shall inform the employer of the amount to be assigned to the facility from each wage, salary, or payment period that is due the obligor. The facility may receive assignment of up to one hundred percent of the obligor's disposable income, salary, or payment for any given period until the full obligation to the facility is paid in full.

c. The notice to the employer shall contain all of the following:

(1) The name and social security number of the obligor.

(2) A statement that the obligor is believed to be employed by the employer.

(3) A statement that pursuant to the provisions of this section, the obligor's wages are subject to assignment and the employer is authorized and required to forward moneys to the facility.

(4) The maximum amount that shall be forwarded by the employer, which shall not exceed the delinquent or accrued amount of debt being collected by or owed to the facility by the obligor.

(5) The prescribed time frame the employer must meet in forwarding any amounts.

(6) The address of the facility and the account number utilized by the facility for the obligor.

(7) The telephone number of the agent for the facility initiating the action.

7. *Responsibilities of employer.* Upon receipt of the notice of wage assignment from the facility, the employer shall do all of the following:

a. Immediately give effect to the wage assignment and hold compensation which the obligor has owing to the extent of the debt indicated in the notice from the facility.

b. No sooner than ten days, and no later than twenty days from the date the employer receives the notice of wage assignment, unless notified by the facility of a challenge of the wage assignment by the obligor, the employer shall begin forwarding the obligor's compensation, to the extent required in the notice, to the facility with the obligor's name and social security number, the facility's account number for the obligor, and any other information required in the notice.

c. The employer may assess a fee against the obligor, not to exceed twenty-five dollars, for forwarding of moneys to the facility. This fee is in addition to the amount owed to or being collected by the facility from the obligor. If insufficient moneys are available from the obligor's compensation to cover the fee and the amount in the notice, the employer may deduct the fee amount prior to forwarding moneys to the facility and the amount credited to the obligor's account with the facility shall be reduced by the fee amount. However, if the employer can present evidence to the facility that the employer's costs were in excess

of twenty-five dollars and that such costs were necessary and reasonable, then the employer may impose a fee in excess of the twenty-five dollar fee limit.

8. *Challenges to action.*

a. Challenges under this section may be initiated only by an obligor. An administrative wage assignment only occurs after the obligor has waived or exhausted administrative remedies. Reviews by the facility of a challenge to an administrative wage assignment are not subject to chapter 17A.

b. The obligor challenging the administrative wage assignment shall submit a written challenge to the person identified as the agent for the facility in the notice, within ten days of the date of the notice of initiation of the assignment.

c. The facility, upon receipt of a written challenge, shall review the facts of the administrative wage assignment with the obligor within ten days of receipt of the challenge. If the obligor is not available for the review on the scheduled date, the review shall take place without the obligor being present. Information in favor of the obligor shall be considered by the facility in the review. The facility may utilize additional information if such information is available. Only a mistake of fact, including, but not limited to, a mistake in the identity of the obligor or a mistake in the amount owed to or being collected by the facility shall be considered as a reason to dismiss or modify the administrative wage assignment.

d. If the facility determines that a mistake of fact has occurred, the facility shall proceed as follows:

(1) If a mistake in identity has occurred or the obligor does not have a delinquent or accrued amount being collected by or owed to the facility, the facility shall notify the employer that the administrative wage assignment has been released. The facility shall provide a copy of the notice to the obligor by regular mail.

(2) If the delinquent or accrued amount being collected by or owed to the facility is less than the amount indicated in the notice, the facility shall provide a notice to the employer of the revised amount, with a copy of the original notice, and issue a notice to the obligor by regular mail. Upon written receipt of the notice from the facility, the employer shall release the funds in excess of the revised amount and forward the revised amount to the facility pursuant to the administrative wage assignment.

(3) Any moneys received by the facility in excess of the amount owed to or to be collected by the obligor shall be returned to the obligor.

e. If the facility finds no mistake of fact, the facility shall provide a notice to that effect to the obligor by regular mail and notify the employer to forward the moneys pursuant to the administrative wage assignment.

f. The obligor shall have the right to file an action for wrongful assignment in district court within thirty days of the date of the notice to the obligor, either in the county where the obligor is located or in Polk county where the facility is located. Actions under this section are in equity and not actions at law.

g. Recovery under this subsection is limited to restitution of the amount that has been wrongfully encumbered or obtained by the department.

h. A challenge to an administrative action under this subsection cannot be used to extend or reopen the statute of limitations to protest other departmental actions or to contest the amount or validity of the tax. Only issues involving the assignment can be raised in a challenge to an administrative action under this subsection.

9. *Validity and duration of a wage assignment notice.*

a. A notice of wage assignment given to the obligor is effective without the serving of another notice until the earliest of either of the following:

(1) The debt owed to the facility is paid in full.

(2) The obligor receives notice that the wage assignment shall cease.

b. Cessation of the wage assignment does not affect the obligor's duties and liabilities respecting the wages already withheld pursuant to the wage assignment.

2002 Acts, ch 1151, §2; 2003 Acts, ch 145, §286; 2004 Acts, ch 1073, §11 – 16; 2011 Acts, ch 25, §143

[T] Code editor directive applied