

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 411

BY: SMITH of the SENATE

and

PILGRIM of the HOUSE

COMMITTEE SUBSTITUTE AN ACT RELATING TO CIVIL PROCEDURE; AMENDING SECTION 12, CHAPTER 297, O.S.L. 1985, AS LAST AMENDED BY SECTION 7, CHAPTER 309, O.S.L. 1990 (12 O.S. SUPP. 1990, SECTION 1171.3), WHICH RELATES TO INCOME ASSIGNMENTS FOR COLLECTION OF CHILD SUPPORT; CLARIFYING APPLICATION OF CERTAIN PROVISIONS; STATING BASIS FOR FINDING OF GOOD CAUSE; MODIFYING EFFECTIVE DATE FOR AND CLARIFYING APPLICATION OF CERTAIN PROVISIONS RELATING TO CASES NOT WITHIN CERTAIN PLAN; REQUIRING GOOD CAUSE NOT TO REQUIRE INCOME WITHHOLDING OR ALTERNATIVE WRITTEN ARRANGEMENT; AND DECLARING AN EMERGENCY.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY Section 12, Chapter 297, O.S.L. 1985, as last amended by Section 7, Chapter 309, O.S.L. 1990 (12 O.S. Supp. 1990, Section 1171.3), is amended to read as follows:

Section 1171.3 A. Any person or entity entitled to receive child support payments for the current or for any prior month or months, or such person's legal representative may initiate income

assignment proceedings by filing with the court an application signed under oath specifying:

1. That the obligor has failed to make child support payments required by a child support order in an amount equal to the child support payable for at least one (1) month;

2. A certified copy of the support order and all subsequent modifications or orders relating thereto;

3. That some person or entity, known or unknown, is indebted to or has earnings in his/its possession or under his control belonging to the obligor;

4. That the indebtedness or earnings specified in the affidavit, to the best of the knowledge and belief of the person making such affidavit, are not exempt by law; and

5. The amount of the support order and the amount of arrearage.

B. 1. Upon application by the person or entity entitled to receive child support payments or such person's legal representative, the court shall mail, by certified mail, return receipt requested, to the last-known address of the obligor, or shall serve in accordance with law, a notice of delinquency. The notice of delinquency shall be postmarked or issued no later than ten (10) days after the date on which the application was filed and shall specify:

- a. that the obligor is alleged to be delinquent under a support order in a specified amount;
- b. that an assignment will become effective against the obligor's earnings unless within fifteen (15) days of the date of mailing or service on the obligor of the delinquency notice, said date of mailing to be specified in the notice, the obligor requests a hearing with the district court pursuant to this section;

- c. that on or prior to the date of the hearing, in any case in which services are not being provided under the state child support plan as provided under Section 237 of Title 56 of the Oklahoma Statutes, the obligor may prevent the income assignment from taking effect by paying the full amount of the arrearage plus costs and attorney's fees provided, that the obligor shall only be entitled to prevent such income assignment from taking effect under this subparagraph a maximum of two times, thereafter, payment of any arrearages will not prevent an income assignment from taking effect;
 - d. that at the hearing, if requested, the obligor may contest the claimed delinquency only with regards to mistake of identity, or to the existence or the amount of the delinquency; and
 - e. that the assignment shall remain in effect for as long as current child support is due or child support arrearages remain unpaid and that payment of any arrearages, except as provided in subparagraph c of this subsection, will not prevent an income assignment from taking effect.
2. a. An obligor may request a hearing with the court pursuant to this section on or before the fifteenth day from date of mailing or service of the delinquency notice. Upon request for hearing, the court shall set the matter for a hearing. A file-stamped copy of the request and a copy of the order for hearing shall be served in accordance with law upon the person or entity filing the affidavit for income assignment or his/its legal representative. The court shall promptly hear and determine the matter and, unless the

obligor successfully shows that there is a mistake of identity or a mistake as to the existence or the amount of delinquency, the court shall order that the income assignment take effect against the disposable earnings of the obligor;

- b. The court may order an obligor to pay all court costs and attorneys' fees involved in an income assignment proceeding pursuant to this subsection;
- c. The order shall be a final judgment for purposes of appeal. The effect of the income assignment shall not be stayed on appeal except by order of the court; and
- d. In all cases of paternity and for arrearage of child support, the court shall make inquiry to determine if the noncustodial parent has been denied reasonable visitation. If reasonable visitation has been denied by the custodial parent to the noncustodial parent, the court or administrative judge shall include visitation provisions in the support order.

C. The court shall send a notice of the income assignment to the payor to effectuate the assignment pursuant to subsection E of this section.

D. If, within fifteen (15) days of the date of mailing or service on the obligor of the delinquency notice, the obligor fails to request a hearing pursuant to subsection B of this section, the court shall send a notice of the income assignment to the payor pursuant to subsection E of this section to effectuate the assignment.

E. 1. The notice of the income assignment required pursuant to subsections B, C and D of this section shall be sent by the court to the payor listed on the application. The notice shall be sent by certified mail, return receipt requested or served according to law.

The payor shall be required to comply with the provisions of this subsection as stated in the notice. The notice shall specify:

- a. the effective date of the assignment. The assignment shall take effect on the next payment of earnings to the obligor after the payor receives notice thereof and the amount withheld shall be sent to the person entitled to the child support within ten (10) days after the date upon which the obligor is paid;
- b. the amount specified in the support order and the amount of the arrearage to be withheld from the obligor's earnings. The amount withheld by the payor shall not exceed the limits on the percentage of an obligor's income which may be assigned for support pursuant to Section 1171.2 of this title;
- c. that the withholding is binding upon the payor until further order of the court or as long as the order for support on which it is based remains in effect;
- d. that the payor is liable for any amount up to the accumulated amount that should have been withheld if the payor fails to withhold the earnings in accordance with the provisions of the assignment;
- e. that two or more income assignments may be levied concurrently up to the wage holding restrictions, but if the total levy exceeds the maximum permitted under Section 1171.2 of this title, the sums due under the first assignment issued under this section shall be paid before the payment of any sums due on any subsequent income assignment; provided, that the court which issued the initial income assignment, upon notice to all interested parties, is authorized to prorate the payment of the support between two or more income assignments levied concurrently. Any current

support due shall be paid before the payment of any arrearages;

- f. that, if the payor is the obligor's employer, the payor shall notify the person entitled to the support payment, and the court when the obligor terminates employment. The payor shall provide by written notice to the person entitled to support and to the court, the obligor's last-known address and the name of the obligor's new employer, if known;
- g. that if the payor has no income due or to be due to the obligor in his possession or control, or if the obligor has terminated employment with the payor prior to the receipt of notice required pursuant to subsection C of this section, or the amount of the assignment exceeds the amount authorized by Section 1171.2 of this title, the payor shall send written notice to the court and the person entitled to support within ten (10) days of receipt of said notice. Failure to notify the person entitled to support and the court within the required time limit may subject the payor to liability for an amount up to the accumulated amount that is due and owing upon receipt of the notice; and
- h. that the payor may also be fined not more than Two Hundred Dollars (\$200.00) for failure to make the required deductions.

2. The payor may combine withheld amounts from earnings of two or more obligors subject to the same support order in a single payment and separately identify that portion of the single payment which is attributable to each individual obligor.

3. An income assignment issued pursuant to the provisions of this section shall have priority over any prior or subsequent

garnishments of the same wages; provided, however, income assignments issued pursuant to the provisions of this section and garnishments for child support issued pursuant to the provisions of Section 1173.1 of this title shall be of equal priority, except as may otherwise be provided for in this section.

4. The payor may deduct from any earnings of the obligor a sum not exceeding Five Dollars (\$5.00) per pay period as reimbursement for costs incurred in the income assignment.

5. The assignment shall remain effective upon notice to the new payor.

6. The income assignment issued pursuant to this section shall remain in effect for as long as current child support is due or until all arrearages for support are paid, whichever is later. Payment of any arrearages shall not prevent the income assignment from taking effect.

7. The payor may not discipline, suspend, or discharge an obligor because of an assignment executed pursuant to this section. Any payor who violates this section shall be liable to such obligor for all wages and employment benefits lost by the obligor from the period of unlawful discipline, suspension, or discharge to the period of reinstatement.

F. Upon written notification of the name and address of a new employer or payor and payment of the required fees for mailing by the person or entity entitled to support, the court shall issue a new notice of income assignment pursuant to subsection E of this section.

G. Any existing support order or income assignment which is brought before the court shall be modified by such court to conform to the provisions of this section.

H. Any person obligated to pay support, who has left or is beyond the jurisdiction of the court, may be prosecuted under any

other proceedings available pursuant to the laws of this state for the enforcement of the duty of support and maintenance.

I. The income assignment proceedings specified in this section shall be available to other states for the enforcement of child support and maintenance or to enforce out-of-state orders. Venue for such proceedings is, at the option of the obligee:

1. In the county in Oklahoma in which the support order was entered; or

2. In the county in Oklahoma in which the obligee resides; or

3. In the county in Oklahoma in which the obligor resides or receives income.

J. 1. Effective November 1, 1989, in all child support orders wherein child support is being paid to a recipient of Aid to Families with Dependent Children (AFDC), the wages of any parent required by court or administrative order to pay support shall be subject to immediate income assignments regardless of whether support payments by such parent are in arrears on the effective date of this act.

2. Effective November 1, 1990, in all child support orders in which child support services are being provided under the state child support plan as provided under Section 237 of Title 56 of the Oklahoma Statutes, the court or administrative hearing officer shall order the wage of any parent required by court or administrative order to pay support, be subject to immediate income assignment, regardless of whether support payments by such parent are in arrears, unless (1) one of the parties demonstrates and the court or administrative hearing officer finds that there is good cause not to require immediate income withholding or (2) a written agreement is reached between the parties which provides for an alternative arrangement. A finding of good cause shall be based on, at a minimum, a written determination and explanation that implementing immediate withholding would not be in the best interests of the

child, proof of timely payment of previously ordered support in cases involving modification of support orders, or agreement by the parent required to pay support to keep the court advised of his or her current employer and information on any employment-related health insurance coverage to which the parent has access.

3. ~~Effective November 1, 1991~~ January 1, 1994, in all child support cases arising out of an action for divorce, paternity or other proceeding in which services are not being provided under the state child support plan as provided under Section 237 of Title 56 of the Oklahoma Statutes, the court ~~may~~ shall order the wages of any parent ordered to pay child support be subject to immediate income assignment regardless of whether support payments are in arrears at the time of the order, ~~if said court determines that immediate income assignment would be in the best interest of the child unless~~ (1) one of the parties demonstrates and the court finds that there is good cause not to require immediate income withholding, or (2) a written agreement is reached between the parties which provides for an alternative arrangement. A finding of good cause shall be based on, at a minimum, a written determination and explanation of why implementing immediate withholding would not be in the best interests of the child, proof of timely payment of previously ordered support in cases involving modification of support orders, and agreement by the parent required to pay support to keep the court advised of his or her current employer and information on any employment-related health insurance to which that parent has access.

K. ~~The Notwithstanding the provisions of subsection J of this section shall not preclude the establishment of,~~ an income assignment shall be established pursuant to subsections A through I of this section or pursuant to Section 240.2 of Title 56 of the Oklahoma Statutes when there exists a delinquency equal to at least one month's payment ~~through the provisions of subsections A through I of this section or,~~

L. In all orders which are not subject to immediate income withholding pursuant to subsection J of this section and which were issued prior to November 1, 1990, the wages of any parent ordered to pay child support shall be subject to immediate income assignment without regard to whether there is an arrearage, on the earliest of:

1. The date ~~as of which~~ the obligor requests that such withholding begin;

2. The date ~~as of which~~ the custodian requests that such withholding begin ~~to enforce a child support order entered on or before the date of the custodian's request for income withholding if approved by~~ a court of competent jurisdiction finds that immediate income withholding would be in the best interest of the child. In making such determination, the court shall consider, at a minimum, the timeliness of payment of previously ordered support and the agreement of the parent required to pay support to keep the court and custodian advised of his or her current employer and information on any employment-related health insurance coverage to which that parent has access; provided, that any prior judicial finding of good cause not to initiate immediate income withholding, as set forth in subsection J, must be removed by a court of competent jurisdiction by a specific finding that such good cause no longer exists; or

3. Such date as may be ordered by a court of competent jurisdiction.

SECTION 2. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.