

STATE OF OKLAHOMA

2nd Session of the 44th Legislature (1994)

CONFERENCE COMMITTEE  
SUBSTITUTE FOR ENGROSSED  
HOUSE BILL NO. 2657

By: Vaughn (Ray) of the House

and

Cain of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to child support; amending 56 O.S. 1991, Section 240, as amended by Section 5, Chapter 307, O.S.L. 1993, 238.1, 238.3a, 238.4, 238.6A, 240.1, 240.2, 240.3 and 240.4 (56 O.S. Supp. 1993, Section 240), which relate to administration of child support by the Department of Human Services; adding and modifying definitions; clarifying duties of the Child Support Enforcement Division of the Department of Human Services; modifying contents of notice of support debt; authorizing administrative orders under certain circumstances; requiring filing of orders; specifying mailing procedure for orders; clarifying hearing procedure pursuant to a notice of support debt; specifying contents of orders; modifying appeal process; specifying the contents of the record on appeal; providing for costs of transcript; providing circumstances under which current support payments may be redirected; clarifying procedures between the district court and the administrative court; authorizing enforcement proceedings under certain circumstances; authorizing inclusion of certain fee into any judgment; limiting amount of certain fee; modifying procedure of enforcement proceedings; modifying information contained in notice to initiate enforcement proceedings; modifying hearing procedure; authorizing certain orders; authorizing income assignments; modifying contents of notice of income assignment; modifying reimbursement to payor for costs incurred pursuant to an income assignment; modifying effectiveness of income assignments; modifying procedures related to filing or orders; providing for admissibility of certain reports; providing for filing of administrative orders; providing for liens; amending 43 O.S. 1991, Sections 115, 116 and 117, which relate to court orders for support of minor children; requiring certain orders to contain income assignments; providing exceptions; authorizing certain administrative orders; providing for codification; providing for recodification; and providing an effective date.

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

SECTION 1. AMENDATORY 56 O.S. 1991, Section 240, as amended by Section 5, Chapter 307, O.S.L. 1993 (56 O.S. Supp. 1993, Section 240), is amended to read as follows:

Section 240. For the purposes of ~~this section and Sections 240.1 and 240.4~~ 238 through 240.14 of this title:

1. The "Child Support Enforcement Division of the Department of Human Services", hereinafter referred to as the "Division", is the state agency designated to administer the child support enforcement program for the State of Oklahoma and its District Offices, which may be administered through contract or cooperative agreements. The District Offices provide enforcement services to individuals receiving Aid to Families with Dependent Children, hereinafter referred to as "AFDC", and to individuals not receiving AFDC who have made proper application for enforcement services to the Division;

2. "Office of Administrative Hearings: Child Support (Legal Division, Department of Human Services, State of Oklahoma)", hereinafter referred to as "OAH", conducts child support enforcement administrative hearings. All hearings are conducted by administrative law judges assigned to OAH;

3. "Support debt" means a debt owed to the State of Oklahoma by the natural, legal or adoptive parents who are responsible for support of a child or children receiving public assistance money from the Department or the reasonable expenses of providing for a child or children. The amount of the debt shall be determined in accordance with the provisions of Section 118 of Title 43 of the Oklahoma Statutes;

4. "Arrearage" means the total amount of unpaid support obligations;

~~2.~~ 5. "Delinquency" means any payment under an order for support which becomes due and remains unpaid;

~~3. "Income"~~ 6. "Gross income", "income" or "earnings" means income from any source and includes but is not limited to income

from salaries, wages, commissions, bonuses, dividends, severance pay, pensions, rent, interest income, trust income, annuities, compensation as an independent contractor, social security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, prizes, any form of periodic payment to an individual regardless of source including but not limited to wages, salary, commission, compensation as an independent contractor, workers' compensation, disability, annuity and retirement benefits, and any other payments made by any person, private entity, federal or state government, any unit of local government, school district, or any entity created by law. Income specifically excluded are actual child support received for children not before the court and benefits received from means-tested public assistance programs, including but not limited to AFDC, Supplemental Security Income (SSI), Food Stamps, General Assistance and State Supplemental Payments for Aged, Blind and the Disabled.

For purposes of computing gross income of the parents, gross income shall include for each parent all actual monthly income described in this paragraph, the average of the gross monthly income for the time actually employed during the previous three (3) years, or the minimum wage paid for a forty-hour week, whichever is the most equitable. If equitable, gross monthly income for either parent may be imputed in an amount that a person with comparable education, training and experience could reasonably expect to earn. If a person is permanently physically or mentally incapacitated, the child support obligation shall be computed on the basis of actual monthly gross income;

4. 7. "Disposable income" means income or earnings less any amounts required by law to be withheld, including but not limited to federal, state, and local taxes, Social Security, and public assistance payments;

5. 8. "Obligor" means the person who is required to make payments under an order for support and/or the natural, legal, or adoptive parents who are responsible for the support of such child or children;

~~6.~~ 9. "Person entitled" means the person or entity to whom a duty of support is owed;

~~7.~~ 10. "Payor" means any person or entity paying monies, income or earnings to an obligor. In the case of a self-employed person, the "payor" and "obligor" may be the same person;

~~8.~~ 11. "Support order" means an order for the payment of support issued by a district or administrative court ~~or the Department of Human Services; and~~

~~9.~~ 12. "Income assignment" is a provision of a support order which directs the obligor to assign a portion of the monies, income, or periodic earnings due and owing to the obligor to the person entitled to the support or to another person or entity designated by the support order or assignment for payment of support ~~or arrearages or both. An income assignment may be initiated when the obligor has failed to make child support payments required by a child support order as provided in Section 1171.3 of Title 12 of the Oklahoma Statutes,~~ the support debt, and/or arrearages. In all other child support orders wherein child support is being paid to a recipient of 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. 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 this title, the court or administrative law judge shall order the wages of any person required by the court or administrative order to pay support be subject to immediate income assignment, unless:

- a. one of the parties demonstrates and the district or administrative court finds good cause not to require immediate income withholding, or
- b. a written agreement is reached between the parties which provides for an alternative arrangement.

The assignment shall be in an amount which is sufficient to meet the ~~periodic child support arrearages~~ monthly child support payments, payments on support debt and arrearages or other

maintenance payments ~~or both~~ imposed by the ~~court order~~ district or administrative court order. The income assignment shall be made a part of ~~the~~ a support order or any order granting a judgment for a support debt or arrearages, or a review or modification of a support order pursuant to Section 118.1 of Title 43 of the Oklahoma Statutes;

13. "Voluntary acknowledgment" means a written acknowledgment executed by the obligor wherein the obligor acknowledges paternity, support liability, a support debt or arrearage amount, and agrees to a judgment and an immediate income assignment to pay monthly support and payments on the support debt or arrearage judgments; and

14. "Notice" means a written announcement served upon an obligor, a custodial person or any person or entity which might be affected by the noticed proceeding.

SECTION 2. AMENDATORY 56 O.S. 1991, Section 238.1, is amended to read as follows:

Section 238.1 A. For the purposes of establishing the amount of the debt which has accrued as provided for ~~by the provisions of~~ in Section 238 of this title, or to establish an obligation for support in the absence of a court order of support, the ~~Department~~ Division may issue a notice of a support debt accrued or accruing based upon payment of public assistance to or for the benefit of any dependent child or if no public assistance is paid, the amount of monthly child support required by the custodian of the minor child as determined by the ~~Department~~ Division. ~~Said~~ The notice of debt shall be served upon the ~~debtor~~ obligor in the same manner prescribed for the service of summons in a civil action. The notice of debt shall include:

1. A statement of the support debt accrued, if any, based on payment of public assistance to or for the benefit of any dependent child and support debt accruing, if any, based on the payment of public assistance for the benefit of ~~said~~ the child or when public assistance has not been paid, the reasonable expenses of providing for the child; and

2. A statement of the amount of monthly public assistance payment or if no payment is made, the amount of monthly child support required by the custodian of the minor child as determined by the ~~Department~~ Child Support Guidelines, Section 118 of Title 43 of the Oklahoma Statutes; ~~and~~

3. A statement that the ~~debtor will~~ obligor shall be required to maintain health insurance for the child whenever the ~~debtor~~ obligor has such insurance available through his employment or other group insurance plan; ~~and~~

4. A statement that the obligor shall be required to keep the Division informed of the name and address of the current employer of the obligor and access to health insurance and other insurance policy information of the obligor;

5. A statement containing the name of the child and the name of the custodian of the child; ~~and~~

~~5.~~ 6. A statement that the ~~debtor~~ obligor may object to all or any part of the notice of support debt and, within twenty (20) days of the date of service, may request a hearing which will be held at a given location on a date specified in the notice to show cause why ~~said debtor~~ the obligor should not be determined liable for the support requested in the notice and for any or all of the debt accrued or accruing, and the amount to be paid thereon; and

~~6.~~ 7. A statement that if no hearing is requested on or before twenty (20) days from the date of the service or if the obligor requests a hearing but fails to appear at the hearing, the monthly support requested and the support debt shall be made an administrative order subject to collection action and may shall be docketed with filed in the office of the district court clerk in the county of residence of the custodian of the child or, if the custodian resides out of state, ~~with the district court~~ in the county of residence of the obligor or elsewhere as provided in this act. The ~~support debt~~ administrative order shall be enforced in the same manner as an order of the district court.

B. The ~~Department~~ Division may accept voluntary acknowledgments of support liability and stipulated support amounts. The ~~debtor~~ obligor shall be informed, in the notice

specified by this section, that he may make such voluntary acknowledgments.

SECTION 3. AMENDATORY 56 O.S. 1991, Section 238.3a, is amended to read as follows:

Section 238.3a If the ~~debtor~~ obligor fails to request a hearing on or before twenty (20) days after proper service of the notice of support debt, fails to appear at the hearing on the date and at the hearing place given in the notice or appears but absents the hearing prior to its conclusion, an administrative order will be entered. Such order shall include findings of facts and conclusions of law and shall be consistent with the notice ~~of support debt~~ of support debt served upon the obligor. The order shall be subject to collection action, and ~~may shall be docketed with~~ shall be filed in the office of the district court clerk in the county of residence of the custodian of the child or, if the custodian resides out of state, ~~with the district court~~ in the county of residence of the obligor or elsewhere as provided in this act. The administrative order shall be enforced by the district court in the same manner as an order of the district court. A copy of such order shall be mailed to the ~~debtor~~ obligor by the ~~Department~~ District Office at the last known address of the obligor by certified or registered mail, with return receipt requested.

SECTION 4. AMENDATORY 56 O.S. 1991, Section 238.4, is amended to read as follows:

Section 238.4 A. If requested, a hearing shall be ~~scheduled at the earliest available time~~ held at the time and place given on the notice of support debt served upon the obligor or the attorney of the obligor with a duly qualified ~~hearing examiner~~ administrative law judge appointed for that purpose by the Department. ~~The notice of hearing shall be served upon the debtor or upon his attorney of record by delivering a copy to said debtor or his attorney, or by mailing such notice, by certified mail, return receipt requested, at his last known address.~~ The hearing shall be held in the county of residence of the custodial parent or guardian of the child or if the custodian resides out of state, the hearing shall be held in the county of residence of the

obligor. The hearing shall be conducted according to rules promulgated by the Department. The rules shall provide to both parties the right to confront and cross-examine witnesses, to present witnesses, to be represented by an attorney or other person, and to be notified of these rights in writing. After the evidence has been presented at a hearing, the ~~hearing examiner~~ administrative law judge shall enter an order which shall be in writing and contain findings of fact and conclusions of law as to each contested issue ~~of fact and law, as well as the order based on said findings and conclusions.~~ Each order shall include provisions requiring obligor to inform the Division of the name and address of the current employer, access to health insurance and other insurance policy information. The order shall be ~~prepared in writing and copies~~ submitted to the ~~Department~~ District Office and to the ~~debtor~~ obligor or the attorney of the obligor by hand delivery by the administrative law judge or by certified mail, return receipt requested, within twenty (20) days after the conclusion of the hearing.

B. If, during the hearing, the ~~examiner~~ administrative law judge finds that the issues presented will require further ~~disposition~~ consideration or evidence either administratively or through the district court before adjudication, the ~~examiner~~ administrative law judge may enter a temporary order for child support, pending resolution of those issues during a subsequent administrative or court hearing. Such temporary order shall be ~~docketed and enforced as a final order~~ until superseded by a final administrative order or district court order and may be filed in the office of the court clerk.

C. 1. ~~If the debtor feels aggrieved by the findings and judgment of the hearing examiner, within~~ Within ten (10) days of receipt of notice of the rendition of a final judgment by said examiner the final order of the administrative law judge, said debtor may the obligor or the Division shall give written notice to the ~~Department~~ OAH and other parties of his intention the intent to appeal said the decision to the district court of the county in which said child resides. ~~Said~~ The appeal must be filed



in the district court in the county where the District Office is located or in the county in which a district court order of support is filed within fifteen (15) days after the mailing date of said notice of intent to appeal and reviewed pursuant to the provisions of Sections 318 through 323 of Title 75 of the Oklahoma Statutes.

~~Any decision by the hearing examiner as to the amount of support owed or to be owed in the future by the debtor will be superseded by the decision of the district court.~~

2. The certified transcript, exhibits, pleadings, recordings of the hearing and any written orders shall constitute the record on appeal to the district court. OAH shall prepare or direct the preparation of the official transcript by a licensed court reporter, if a transcript is requested. The party seeking a copy of the transcript of the hearing shall prepay all costs of transcription and pay a reasonable deposit or adequate indemnity prior to preparation of the transcript. If a party is financially unable to pay the transcription costs, the party shall provide OAH and the District Office with an informa pauperis affidavit which verifies the inability to pay. If OAH determines the party is financially unable to pay transcription costs, a transcript will be provided by OAH. The transcript shall not be provided prior to full payment of all transcription costs or an order finding OAH will bear the cost of transcription.

D. If an appeal is not made by the ~~debtor~~ obligor or District Office, the order of the ~~hearing examiner~~ administrative law judge shall be final, subject to collection action, and ~~may~~ shall be ~~docketed with~~ filed in the office of the district court clerk in the county of residence of the custodian of the child or, if the custodian resides out of state, ~~with the district court of~~ in the county of residence of the obligor, or elsewhere as provided in this act. The administrative order shall be enforced by the district court in the same manner as an order of the district court.

E. If the ~~debtor~~ obligor requests a hearing pursuant to this section but fails to appear for the hearing after proper service,

an administrative order will be entered. Such order shall include findings of facts and conclusions of law and shall be subject to collection action, and ~~may shall be docketed with~~ filed in the office of the district court clerk in the county of residence of the custodian of the child or, if the custodian resides out of state, ~~with the district court~~ in the county of the residence of the obligor, or elsewhere as provided in this act. The administrative order shall be enforced by the district court in the same manner as an order of the district court.

F. Any order for periodic support payments made pursuant to the provisions of this title shall be payable ~~through the Department to the Division~~ for as long as the ~~Department Division~~ is providing support enforcement. Thereafter, if AFDC is not being paid, the custodian or guardian notifies the Division in writing that IV-D services are no longer requested and/or the obligor has not applied for services, current support payments shall be made redirected to the custodian or guardian of the child until further order of the district or administrative court, or until the debtor obligor is notified by the Department Division that said the child has been recertified for receipt of public assistance, or until said the child reaches the age of majority.

SECTION 5. AMENDATORY 56 O.S. 1991, Section 238.6A, is amended to read as follows:

Section 238.6A A. In any case in which the same issues of fact involving minor children are pending before the district court and before the ~~Administrative Law Unit of the Department of Human Services OAH~~, those issues ~~shall~~ may be decided and relief granted by the district court ~~and not by the Administrative Law Unit, unless said issues are or be remanded by the district court to OAH for determination to the Administrative Law Unit by the district court.~~

B. In any case in which different issues of fact involving minor children are pending before the district court and before the ~~Administrative Law Unit of the Department of Human Services OAH~~, all issues may be decided and all relief granted by the district court ~~and not by the Administrative Law Unit~~, if the

district court finds ~~that~~ it is in the interests of justice and judicial economy.

SECTION 6. AMENDATORY 56 O.S. 1991, Section 240.1, is amended to read as follows:

Section 240.1 A. ~~The Department, upon application, by a person entitled to receive child support who is not receiving Aid to Families with Dependent Children,~~ In cases where child support services are being provided by the Division, the Division may initiate enforcement proceedings to obtain a judgment for arrearages; to effectuate an income assignment and receive payments pursuant to Section 24 of this act; to receive current support and judgment payments; to review and modify support orders pursuant to child support guidelines in Section 118 of Title 43 of the Oklahoma Statutes; and to initiate any other legal proceeding in the district or administrative court to implement the collection of support from an obligor. A reasonable fee and costs may be assessed for the services pursuant to the rules and regulations promulgated by the Department. Such fee, not to exceed Twenty-five Dollars (\$25.00), shall be paid by the applicant and such other costs shall be in addition to the amount withheld pursuant to the income assignment. In any hearing on a notice of delinquency or other enforcement proceeding, the district or administrative court may include the amount of the fee paid by the person entitled to support payments in any judgment against the obligor.

B. ~~The Department~~ Division is authorized to initiate enforcement proceedings and receive payments pursuant to Section ~~24~~ 240.2 of this ~~act~~ title to effectuate an income assignment for spousal support or the support of a minor child or both for an applicant or any person who is the recipient of Aid to Families with Dependent Children.

C. ~~The Department of Human Services~~ Division is authorized to initiate enforcement proceedings and receive payments pursuant to Section ~~24~~ 240.2 of this ~~act~~ title to effectuate an income assignment for any debt due and owing to this state by the natural or adoptive parents or parent who are responsible for the support

of a minor child pursuant to Section 238 of ~~Title 56 of the~~  
~~Oklahoma Statutes this title~~ or found to be responsible for the  
support of a minor child pursuant to Sections 238.1 through 238.6  
of ~~Title 56 of the Oklahoma Statutes this title~~.

D. Upon application by an obligor who requests support  
enforcement services, the Division is authorized to initiate any  
proceedings necessary to provide support enforcement services to  
the obligor and to receive payments of the support obligation or  
any judgment. A reasonable fee and costs may be assessed for the  
services pursuant to the rules promulgated by the Department.  
Such fee, not to exceed Twenty-five Dollars (\$25.00), shall be  
paid by the applicant.

SECTION 7. AMENDATORY 56 O.S. 1991, Section 240.2, is  
amended to read as follows:

Section 240.2 A. ~~The person entitled to receive child  
support payments may request an income assignment order to take  
effect by submitting to the Department an affidavit 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 one (1) month;~~

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

~~3. The amount of the support order and the amount of  
arrearage;~~

~~4. That some person or entity, known or unknown, is indebted  
to or has earnings in his possession or under his control  
belonging to the obligor; and~~

~~5. That the indebtedness or earnings specified in the  
affidavit are, to the best of the knowledge and belief of the  
person making such affidavit, not exempt by law.~~

~~B. 1. Upon application by the person entitled to receive  
child support payments, verifying that the obligor has failed to  
make child support payments in an amount equal to the child  
support payable for one (1) month, the Department After receiving  
a referral or application for services, the Division may initiate~~

enforcement proceedings, as defined in Section 240.1 of this title.

1. The Division shall advise the obligor of the intention to effectuate income assignment initiate enforcement proceedings by a notice of delinquency, support debt or other notice. ~~The Department may~~ Division shall give such notice by mailing the notice of delinquency, by certified mail, return receipt requested, to the last-known address of the obligor, a notice of delinquency. ~~The notice of delinquency shall be postmarked no later than ten (10) days after the date on which the application was submitted by serving the obligor in the same manner prescribed for the service of summons in a civil action.~~ The notice shall inform the obligor of the following:

- a. ~~that the obligor is alleged to be delinquent under a support order in a specified~~ the amount of support monies owed, if any,
- b. ~~that an assignment will become effective against the obligor's earnings unless~~ the obligor requests a hearing within fifteen (15) days of the date of mailing service of the ~~delinquency notice, said date of mailing to be specified in the notice, the obligor requests a hearing,~~
- c. ~~that at the hearing, if requested,~~ the obligor may contest the ~~claimed delinquency~~ allegations in the notice only with regards to mistakes of identity or ~~to the existence or the amount of the delinquency support monies owed, and~~
- d. ~~that the assignment shall remain in effect for~~ as long as the order ~~for support~~ upon which it is based ~~and that payment is in effect.~~ Payment of any arrearages support monies will not prevent an income assignment from taking effect, and
- e. the obligor shall be required to keep the Division informed of the name and address of the current employer of the obligor and access to health

insurance and other insurance policy information of the obligor.

2. a. An obligor may request a hearing pursuant to this section by delivering written notice, ~~with his address thereon, to the Department of Human Services~~ to the District Office on a form provided which states the date and location of the hearing if requested on or before the 15th day from the date of mailing service of the delinquency notice. On receipt of the hearing request ~~for hearing,~~ the ~~Department~~ Division shall promptly enter the appearance of the obligor, ~~set the matter for a hearing within fifteen (15) days of the request for a hearing, and shall send written notice of the hearing to all parties~~ on the administrative court hearing docket. The ~~Department~~ administrative court shall ~~promptly~~ hear and determine the matter and, unless the obligor successfully shows ~~that~~ in the existence, ~~or the amount of the delinquency support monies owed,~~ the ~~Department~~ administrative court shall enter a judgment, determine the amount of judgment payments, if any, and order that the assignment of nonexempt earnings take effect against the nonexempt earnings of the obligor pay the judgment and future monthly support payments.
- b. The ~~Department~~ administrative court may order an obligor to pay all costs involved in ~~an income assignment proceeding~~ enforcement proceedings under this subsection and shall order interest at the rate of ten percent (10%) per year from the date court-ordered child support payments became delinquent, to be collected in the same manner as the payments upon which the interest accrued.
- 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 pursuant to Section 240.3 of this title.

- d. ~~The Department~~ Division shall send a notice of the income assignment to the payor to effectuate the assignment pursuant to subsection ~~E~~ D of this section and shall file the original of such notice with OAH.

~~C.~~ B. If within fifteen (15) days of date of ~~mailing~~ service of the ~~delinquency~~ notice, the obligor fails to request a hearing, pursuant to subsection ~~B~~ A of this section, ~~the Department or~~ after having requested a hearing fails to appear at the hearing, the administrative court shall enter an order granting judgment for arrearage, if any, establishing a judgment payment plan and approving the income assignment and the. The administrative order shall thereafter be subject to collection action and may shall be docketed with filed in the office of the district court and thereafter clerk in the county of residence of the custodian of the child or, if the custodian resides out of state, in the county of residence of the obligor, or elsewhere as provided in this act. The administrative order shall be enforced by the district court in the same manner as an order of the district court. A copy of the order shall be mailed to the obligor by the District Office at the last known address of the obligor by certified or registered mail, with return receipt requested.

~~D.~~ The Department shall ensure that such documents are in order and C. After the administrative court has ordered an income assignment, the Division shall send a notice of the income assignment to the payor pursuant to subsection ~~E~~ D of this section to effectuate the assignment.

~~E.~~ D. 1. The notice of the income assignment required pursuant to subsections A and B ~~and C~~ of this section shall be sent by the ~~Department~~ Division to the payor ~~listed on the application.~~ The notice shall be sent by certified mail, return receipt requested, or served in accordance with 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 ~~received~~ receives notice thereof and the amount withheld shall be sent to the ~~Department~~ Division within ten (10) days of the date upon which the obligor is paid. The payor shall attach to each payment a statement reporting the date on which the support obligation of the obligor was withheld;
- b. the amount to be withheld from the obligor's earnings each pay period for support ~~and for~~ arrearage monies. 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 Title 12 of the Oklahoma Statutes;
- c. ~~that~~ the income assignment is binding upon the payor until modified by order of the court district or the Department, or as long as the order for support on which it is based administrative court;
- 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 withholding restrictions. Any current support due shall be paid before the payment of any arrearages or support debt judgment;
- f. if the amount of support due under the assignments exceeds the maximum amount authorized by Section 1171.2 of Title 12 of the Oklahoma Statutes, the payor shall pay the amount due up to the statutory limit and shall send written notice to the court, Division and person entitled to support that the amount due exceeds the amount subject to



withholding. If the payor fails to pay or notify as required herein, the payor may be liable for an amount up to the accumulated amount that is due and owing upon receipt of the notice;

~~f.~~ g. if the payor is the obligor's employer, the payor shall notify the ~~Department~~ Division within ten (10) days of the date when the obligor terminates employment. ~~The payor or if the employment of the obligor is terminated and shall provide to the Department,~~ Division with the obligor's last-known address and the name of the obligor's new employer, if known;

~~g.~~ h. if the payor has no current or future 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 the notice required pursuant to subsection ~~D~~ C of this section, ~~or the amount of the assignment exceeds the amount authorized pursuant to Section 1171.2 of Title 12 of the Oklahoma Statutes,~~ the payor shall send written notice to the ~~Department~~ Division within ten (10) days of receipt of said notice. Failure to notify the ~~Department~~ Division 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.~~ i. the payor may also be fined not more than Two Hundred Dollars (\$200.00) for each failure to make the required deductions; and

j. the Division and/or the obligor may bring an action against the payor to enforce the provisions of the notice in the underlying district court case or by separate proceeding in district court.

2. The payor may combine withheld amounts from earnings of two or more obligors 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.

4. The payor may deduct from any earnings of the obligor a sum not exceeding Five Dollars (\$5.00) per pay period but not to exceed Ten Dollars (\$10.00) per month as reimbursement for costs incurred by the payor in complying with the income assignment.

5. The income assignment shall remain effective ~~upon notice to the new payor~~ regardless of any change of a payor.

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

7. ~~The payor, if~~ If the employer of the obligor is the payor, the payor shall verify employment of the obligor ~~with the payor and the last address of the obligor known to the payor~~ upon the request of the ~~Department~~ Division.

8. The payor may not discipline, suspend, or discharge an obligor because of an income 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.~~ E. Any person obligated to pay support, who has left or is beyond the jurisdiction of the court, may be subjected to or prosecuted under any other proceedings available pursuant to the laws of this state for the enforcement of the duty of support and maintenance.

~~G.~~ F. 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.

~~H.~~ G. Any payment made pursuant to the provisions of this section by the payor shall be made payable ~~through~~ to the Department, and in such manner as provided by the administrative order.

~~I.~~ H. 1. In the event the obligor is in arrears, any payment which exceeds the amount due for the period in which the payment is made shall be applied to past due and unpaid amounts owed in the order in which the payments came due.

2. If at any time an obligor is entitled to receive a refund, the Department shall send the excess amount to the obligor within ten (10) working days after such excess is determined.

~~J.~~ I. The obligated party may execute a voluntary income assignment and acknowledgment at any time. ~~The voluntary income assignment shall be submitted and submit it to the Department and shall take effect after service on the payor as required by subsection E of this section~~ District Office.

~~K.~~ ~~The Department of Human Services shall promulgate rules and regulations to effectuate the provisions of this section.~~

~~L.~~ J. The ~~Department~~ Division is authorized to prorate the payment of the support between two or more income assignments levied concurrently.

~~M.~~ K. The ~~Department~~ Division shall distribute the monies due a person entitled to support who is not receiving Aid to Families with Dependent Children within ten (10) working days after receipt of such monies.

SECTION 8. AMENDATORY 56 O.S. 1991, Section 240.3, is amended to read as follows:

Section 240.3 A. 1. Final orders of the ~~Department~~ OAH may be appealed to the district court pursuant to this section and Sections 318 through 323 of Title 75 of the Oklahoma Statutes by any party directly affected and showing aggrievement by the order.

2. An appeal shall be commenced by filing a petition in error with the clerk of the district court, within fifteen (15) days from the date of the ~~order or decision, a petition in error with a copy of the order or decision appealed from.~~ The time limit prescribed in this paragraph for filing the petition in error ~~may~~ shall not be extended. The manner of perfection of the record of the proceedings to be reviewed and the time for its completion shall be in accordance with rules prescribed by the district court.

3. The appeal shall not stay the execution of any order ~~or decision~~ of the ~~Department~~ OAH unless the district court, for cause shown, shall order ~~that said decision or~~ the administrative order be stayed pending such appeal pursuant to Section 319 of Title 75 of the Oklahoma Statutes.

4. The district court may affirm the decision or remand the case for further proceedings. Additionally, the district court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the findings, inferences, or conclusions are not supported by substantial evidence in the record.

B. If an appeal pursuant to subsection A of this section is not made by the person to whom such an order is directed within fifteen (15) days after ~~notice has been sent to the parties~~ the judgment is rendered, the order of the ~~Department~~ administrative court shall become final and binding on all parties ~~and may.~~ The order shall be docketed with filed in the office of the district court clerk in the county of the residence of the custodian of the child or, if the custodian resides out of state, in the county of the residence of the obligor, or otherwise in the district court of Oklahoma County and thereafter elsewhere as provided in this act. The administrative order shall be enforced by the district court in the same manner as an order of the district court.

SECTION 9. AMENDATORY 56 O.S. 1991, Section 240.4, is amended to read as follows:

Section 240.4 A report of the payments made by the obligor or payor or of AFDC payments made to a person entitled to support

which is prepared by the Division, the District Office, or by public agencies in other states with a certification of authenticity executed by the ~~Department of Human Services or the court clerk~~ Division, the District Office, or a public agency in another state is admissible into evidence in district court or in an administrative court proceeding as self-authenticated.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 240.14 of Title 56, unless there is created a duplication in numbering, reads as follows:

Whenever the administrative court pursuant to Section 238.3a, 238.4 or 240.2 of this title finds that an obligor is liable for a specified amount, as of that date, the administrative court shall enter such amount as a judgment against the obligor in an administrative order. After the order has been filed in the office of the court clerk in the county in which a prior order of support is filed, or in the county of residence of the custodian of the child or if the custodian resides out-of-state, in the county of residence of the obligor, a true copy of that order, certified by the court clerk, may be filed in the office of the county clerk of any county in which the obligor owns real property and, upon filing, shall become a lien upon the real property of the obligor, have the same force and effect and be subject to the same requirements and limitations as a judgment of the district court against the obligor for that amount, but not for future child support until reduced to judgment.

SECTION 11. AMENDATORY 43 O.S. 1991, Section 115, is amended to read as follows:

Section 115. A. ~~On and after October 1, 1985, a court order or an administrative~~ Every order issued by the Department of Human Services providing for the support of a minor child or a modification of such order, whether issued by a district court or an administrative court, shall contain an immediate income assignment provision. ~~Such income assignment provision may be initiated when 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 one (1) month and by making application to the court pursuant to Sections 12 and 13 of this act or to the Department of Human Services pursuant to Sections 22 through 24 of this act if Aid to Families with Dependent Children is being paid for such children, regardless of whether support payments by such parent are in arrears. In all administrative or district court orders in which child support services are being provided under the state child support plan an immediate income assignment shall be ordered, regardless of whether support payments by such parent are in arrears, unless:~~

1. One of the parties demonstrates and the district or administrative court finds 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.

B. 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, the district court shall order the wage of the obligor 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 district court finds 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.

~~B. Any person entitled to a payment of child support or maintenance pursuant to a support order issued prior to October 1, 1985, which does not contain an income assignment provision may initiate an income assignment when 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 one (1) month by making application to the court pursuant to Sections 12 and 13 of this act or to the Department of Human Services pursuant to Sections 22 through 24 of this act.~~

C. The obligated party may execute a voluntary income assignment at any time. The voluntary assignment shall be filed with the district or administrative court and shall take effect after service on the payor, as required by ~~subsection E of~~ Section ~~12-1171.3~~ of ~~this act~~ Title 12 of the Oklahoma Statutes.

SECTION 12. AMENDATORY 43 O.S. 1991, Section 116, is amended to read as follows:

Section 116. The district or administrative court may order a person obligated to support a minor child to post a security, bond, or other guarantee in a form and amount satisfactory to the court to ensure the payment of child support.

SECTION 13. AMENDATORY 43 O.S. 1991, Section 117, is amended to read as follows:

Section 117. A. Except as otherwise provided by subsection B of this section, the person obligated to pay support or the person entitled to the support may petition the district or administrative court to:

1. Modify, suspend, or terminate the order for income assignment because of a modification, suspension, or termination of the underlying order for support; or

2. Modify the amount of income to be withheld to reflect payment in full of the delinquency by income assignment or otherwise; or

3. Suspend the order for income assignment because of inability to deliver income withheld to the person entitled to support payments due to the failure of the person entitled to support to provide a mailing address or other means of delivery.

B. If the income assignment has been initiated by the Department of Human Services, the district court shall notify the Department of Human Services prior to the termination, modification, or suspension of the income assignment order.

SECTION 14. RECODIFICATION 56 O.S. 1991, Section 240, as last amended by Section 1 of this act, shall be recodified as Section 237.7 of Title 56 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 15. This act shall become effective September 1,  
1994.

44-2-L9770        SCE