

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

COMMITTEE SUBSTITUTE

FOR HOUSE BILL NO. 1692

By: Fallin

COMMITTEE SUBSTITUTE

An Act relating to child support; amending 12 O.S. 1991, Section 95, as amended by Section 1, Chapter 344, O.S.L. 1992 (12 O.S. Supp. 1992, Section 95), which relates to statute of limitations; specifying time periods for certain actions; making certain actions unlawful; amending 43 O.S. 1991, Sections 114, 116, 118, as amended by Section 1, Chapter 251, O.S.L. 1992 (43 O.S. Supp. 1992, Section 118), and 137, which relate to child support orders; requiring certain payments of interest; prohibiting certain transfers; defining terms; requiring certain bonds or security; requiring certain enforcement; removing dormancy and exceptions; amending 56 O.S. 1991, Section 240, which relates to income assignments; modifying terms; providing for suspension of certain licenses or certificates; providing for procedures; providing for determination of issues; providing for petitions; requiring certain information from certain agencies and other entities; requesting certain guidelines; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY 12 O.S. 1991, Section 95, as amended by Section 1, Chapter 344, O.S.L. 1992 (12 O.S. Supp. 1992, Section 95), is amended to read as follows:

Section 95. Civil actions other than for the recovery of real property can only be brought within the following periods, after the cause of action shall have accrued, and not afterwards:

~~First.~~ 1. Within five (5) years: An action upon any contract, agreement or promise in writing.

~~Second.~~ 2. Within three (3) years: An action upon a contract express or implied not in writing; an action upon a liability created by statute other than a forfeiture or penalty; and an action on a foreign judgment.

~~Third.~~ 3. Within two (2) years: An action for trespass upon real property; an action for taking, detaining or injuring personal property, including actions for the specific recovery of personal property; an action for injury to the rights of another, not arising on contract, and not hereinafter enumerated; an action for relief on the ground of fraud - the cause of action in such case shall not be deemed to have accrued until the discovery of the fraud.

~~Fourth.~~ 4. Within one (1) year: An action for libel, slander, assault, battery, malicious prosecution, or false imprisonment; an action upon a statute for penalty or forfeiture, except where the statute imposing it prescribes a different limitation.

~~Fifth.~~ 5. An action upon the official bond or undertaking of an executor, administrator, guardian, sheriff, or any other officer, or upon the bond or undertaking given in attachment, injunction, arrest or in any case whatever required by the statute, can only be brought within five (5) years after the cause of action shall have accrued.

~~Sixth.~~ 6. An action based on intentional conduct brought by any person for recovery of damages for injury suffered as a result of childhood sexual abuse incidents or exploitation as defined by Section 845 of Title 21 of the Oklahoma Statutes or incest can only be brought within the latter of the following periods:

- a. within two (2) years of the act alleged to have caused the injury or condition, or
- b. within two (2) years of the time the victim discovered or reasonably should have discovered that the injury or condition was caused by said act or that the act caused the injury for which the claim is brought.

Provided, however, that the time limit for commencement of an action pursuant to this paragraph is tolled for a child until the child reaches the age of eighteen (18) years. No action may be brought against the alleged perpetrator or the estate of the alleged perpetrator after the death of such alleged perpetrator.

An action pursuant to this paragraph must be based upon objective verifiable evidence in order for the victim to recover damages for injuries suffered by reason of such sexual abuse, exploitation or incest. The evidence should include both proof that the victim had psychologically repressed the memory of the facts upon which the claim was predicated and that there was corroborating evidence that the sexual abuse, exploitation or incest actually occurred. The victim need not establish which act in a series of continuing sexual abuse incidents, exploitation incidents or incest caused the injury complained of, but may compute the date of discovery from the date of discovery of the last act by the same perpetrator which is part of a common scheme or plan of sexual abuse, exploitation or incest. Provided further, any action based on intentional conduct specified in paragraph 6 of this section must be commenced within twenty (20) years of the victim reaching the age of eighteen (18).

~~Seventh.~~ 7. An action to establish paternity and to enforce support obligations can be brought any time before the eighteenth birthday of the child.

8. An action to establish paternity can be brought by a child if commenced within two (2) years of the child reaching the age of eighteen (18).

9. An action to collect child support obligations can be brought at any time before the twentieth birthday of the child.

10. An action for relief, not hereinbefore provided for, can only be brought within five (5) years after the cause of action shall have accrued.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 852.2 of Title 21, unless there is created a duplication in numbering, reads as follows:

Any person who shall knowingly feed, lodge, clothe, arm, equip in whole or in part, harbor, aid, assist or conceal in any manner any person seeking to avoid providing necessary food, clothing, shelter, court-ordered monetary child support or medical attendance for a child pursuant to Section 852 of Title 21 of the

Oklahoma Statutes shall, upon conviction thereof, be guilty of a misdemeanor.

SECTION 3. AMENDATORY 43 O.S. 1991, Section 114, is amended to read as follows:

Section 114. ~~When ordered by the~~ The court, shall require that court-ordered child support payments and court-ordered payments of suit moneys ~~shall~~ draw interest at the rate of ten percent (10%) per year from the date they become delinquent, and the interest shall be collected in the same manner as the payments upon which the interest accrues.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 115.1 of Title 43, unless there is created a duplication in numbering, reads as follows:

A. A transfer made or obligation incurred by an obligor is fraudulent as to a person entitled to receive child support, whether the claim of the person entitled to receive child support arose before or after the transfer was made or the obligation was incurred, if the obligor made the transfer or incurred the obligation:

1. With actual intent to hinder, delay, or defraud the person entitled to receive child support of the obligor; or

2. Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the obligor:

a. was engaged or was about to engage in a business or a transaction for which the remaining assets of the obligor were unreasonably small in relation to the business or transaction, or

b. intended to incur, or believed or reasonably should have believed that he would incur, debts beyond his ability to pay as they became due.

B. In determining actual intent pursuant to the provisions of paragraph 1 of subsection A of this section, consideration may be given, among other factors, to whether:

1. The transfer or obligation was to a relative;

2. The obligor retained possession or control of the property transferred after the transfer;

3. The transfer or obligation was disclosed or concealed;
4. Before the transfer was made or obligation was incurred, the obligor had been sued or threatened with suit;
5. The transfer was of substantially all the obligor's assets;
6. The obligor absconded;
7. The obligor removed or concealed assets;
8. The value of the consideration received by the obligor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred;
9. The transfer occurred shortly before or shortly after a child support order was issued; and
10. The obligor transferred the essential assets of the business to a lienor who transferred the assets to a relative of the obligor.

C. For purposes of this section:

1. "Relative" means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and include an individual in an adoptive relationship within the third degree; and
2. "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance.

SECTION 5. AMENDATORY 43 O.S. 1991, Section 116, is amended to read as follows:

Section 116. The court ~~may~~ shall 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 6. AMENDATORY 43 O.S. 1991, Section 118, as amended by Section 1, Chapter 251, O.S.L. 1992 (43 O.S. Supp. 1992, Section 118), is amended to read as follows:

Section 118. Except in those cases where parties represented by counsel have agreed to a different disposition, there shall be a rebuttable presumption in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the following guidelines is the correct amount of child support to be awarded. The court may deviate from the level of child support suggested by these guidelines where the amount of support so indicated is unjust, inequitable, unreasonable or inappropriate under the circumstances, or not in the best interests of the child or children involved. In making such determination, the court may take into account the reasonable support obligations of either parent as to other children in the custody of said parent. If the court deviates from the amount of support indicated by these guidelines, it shall make specific findings of fact supporting such action.

1. All child support shall be computed as a percentage of the combined gross income of both parents. The Child Support Guideline Schedule as provided in Section ~~1277.8~~ 119 of this title shall be used for such computation. The child support obligations of each parent shall be computed, and the noncustodial parent's share shall be paid monthly to the custodial parent;

2. Gross income includes income from any source, except as excluded in this act, and includes but is not limited to income from salaries, wages, commissions, bonuses, dividends, severance pay, pensions, rent, interest income, trust income, annuities, social security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts and prizes. 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 Aid to Families with Dependent Children (AFDC), Supplemental Security Income (SSI), Food Stamps, General Assistance and State Supplemental Payments for Aged, Blind and the Disabled;

3. For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, gross income is defined as gross receipts minus ordinary and necessary expenses required for self-employment or business operation. Specifically excluded from ordinary and necessary expenses for purposes of this section are amounts determined by the court to be inappropriate for determining gross income for purposes of calculating child support. The court shall carefully review income and expenses from self-employment or operation of a business to determine an appropriate level of gross income available to the parent to satisfy a child support obligation. A determination of business income for tax purposes shall not control for purposes of determining a child support obligation.

Expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business shall be counted as income if they are significant and reduce personal living expenses. Such payments may include but are not limited to a company car, free housing, or reimbursed meals;

4. For purposes of computing gross income of the parents, the court shall include for each parent, either the actual monthly income, 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, the court may instead impute as gross monthly income for either parent the amount a person with comparable education, training and experience could reasonably expect to earn; provided, however, that if a person is permanently physically or mentally incapacitated, the child support obligation shall be computed on the basis of actual monthly gross income;

5. The amount of any preexisting court order for child support for children not before the court or for support alimony arising in a prior case shall be deducted from gross income to the extent payment is actually made under such order;

6. The amount of reasonable expenses of the parties attributable to debt service for preexisting, jointly acquired debt of the parties may be deducted from gross income to the extent payment of such expenses is actually made. In any case where deduction for such debt service is made, the court may make provision for prospective upward adjustments of support made possible by the reasonable anticipated reduction or elimination of such debt service;

7. The results of paragraphs 2, 3, 4, 5 and 6 of this section shall be denominated "adjusted gross income";

8. The adjusted gross income of both parents shall be added together and the Child Support Guideline Schedule consulted for the total combined child support;

9. After the total combined child support is determined, the percentage share of each parent shall be allocated by computing the percentage contribution of each parent to the combined adjusted gross income and allocating that same percentage to the child support obligation to determine the base child support obligation of each parent;

10. The actual dependent medical insurance premium shall be determined by the court. The premium shall be allocated between the parents in the same proportion as base child support;

11. The payor shall receive credit for the payee's allocated share of medical insurance premium which the payor pays directly to the provider. The payor shall pay his or her (payor's) allocated share of the medical insurance premiums to payee, if payee pays the premium to the provider;

12. The court shall then determine the "actual" child care expenses reasonably necessary to enable both parents to maintain employment or to conduct an active search for employment;

13. The actual child care costs incurred due to employment or active employment search of either parent, or incurred as a result of either parent actually attending school for the purpose of enhancing their employment or income, shall be allocated in the same proportion as base child support. Provided, if the court determines that it will not cause detriment to the child, in lieu

of payment of child care costs incurred while the custodial parent is attending school, the noncustodial parent may be allowed to provide alternate care of the child during such time. The noncustodial parent shall be designated the "payor". The custodial parent shall be designated the "payee". Payor's proportionate amount of the child care fee for that month shall be paid to the payee on or before the date the child care fee is due to the provider. The court shall require the payee to provide payor with timely documentation of any change in the amount of the child care fee;

14. Visitation transportation expenses shall be determined by the court on a case by case basis and may be allocated in addition to or as a credit against the child support obligation of the payor. Such expenses may be adjusted at any time the court deems it equitable;

15. Payment of reasonable and necessary medical, dental, orthodontic, optometrical, psychological or any other physical or mental health expenses of the child not reimbursed by insurance shall be determined by the court on a case by case basis and may be allocated in addition to the child support obligation of the payor, as a percentage contribution by each parent toward future expenses;

16. If the court adopts a joint custody plan meeting the requirements of Section ~~1275.4~~ 109 of this title, the plan must provide for the support of the child equivalent to the amount of combined support the child would otherwise receive under these guidelines. The court shall have the authority, however, to accept a plan which allocates the payment of actual expenses of the children, rather than designating one custodial parent the "payor" and one the "payee", if the court finds the payments allocated to each respective parent are substantially equivalent to the amount of the child support obligation of the parent under these guidelines;

17. If each parent is awarded custody of one or more children, the child support obligation of each parent shall be computed for each custodial arrangement separately using the

percentage applicable for the children residing with each parent. The payor obligation of each parent shall be compared with the other. The difference between the obligations of each parent shall be paid to the parent with the smaller payor obligation in order to equalize the child support spent on all of the children, regardless of the custodial arrangements. Other minor children of the parties may be taken into account in determining child support;

18. The court may make adjustments to child support guidelines for periods of extended visitation;

19. Child support orders may be modified only upon a material change in circumstances. If the court finds there is a basis for modification, the child support guidelines provided in this act shall be used in computing child support, subject to the court's discretion to deviate from the guidelines where the amount of support is unjust, inequitable, unreasonable or inappropriate under the circumstances, or not in the best interests of the child or children involved, and such deviation is supported by specific findings. The enactment of these guidelines alone shall not constitute a material change in circumstances;

20. The child support computation worksheet provided in Section ~~1277.9~~ 120 of this title shall be signed by the judge; ~~and~~

21. Child support orders may include such provisions as the court deems appropriate to assure that the child support payments to the custodial parent are used for the support of the child; and

22. The court shall require and enforce a complete production of assets by both parents.

SECTION 7. AMENDATORY 43 O.S. 1991, Section 137, is amended to read as follows:

Section 137. A. Any payment or installment of child support ordered pursuant to any order, judgment or decree of the district court or administrative order of the Department of Human Services is on and after the date it becomes past due a judgment by operation of law. Such judgments for past due support shall:

1. Have the full force and effect of any other judgment of this state, including the ability to be enforced by any method

available under the laws of this state to enforce and collect money judgments; and

2. Be entitled to full faith and credit as a judgment in this state and any other state.

B. Such judgments shall be subject to collection action only after the child support obligor has been given notice and opportunity for a court or administrative hearing to determine the amount that is past due, provided that if the obligor has been given a hearing in some other proceeding to contest the amount past due, he shall not be entitled to another hearing to determine whether amounts are past due for the same time period.

~~C. Unless execution is issued and filed within five (5) years from date of judgment or last execution on said judgment as required by law, a judgment for past due child support shall become dormant for all purposes except for enforcement of the judgment by:~~

~~1. An income or wage assignment initiated pursuant to the laws of this state or any other state;~~

~~2. Periodic payments from the judgment debtor by order of the district court or of the Department of Human Services; or~~

~~3. Referral of the past due amount to the Internal Revenue Service and, if appropriate, to the Oklahoma Tax Commission or another state's taxation agency for interception of the judgment debtor's annual state and federal tax refund in cases being enforced by the Department of Human Services.~~

~~D.~~ An order that provides for payment of child support, if willfully disobeyed, may be enforced by indirect civil contempt proceedings, notwithstanding that the support payment is a judgment on and after the date it becomes past due.

D. An arrearage payment schedule set by a court or administrative order shall not exceed three (3) years.

SECTION 8. AMENDATORY 56 O.S. 1991, Section 240, is amended to read as follows:

Section 240. For the purposes of this section and Sections 240.1 and 240.4 of this title:

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

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

3. "Income" or "earnings" means 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;

4. "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. "Obligor" means the person who is required to make payments under an order for support;

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

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

9. "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 in an amount equal to the child support payable for one (1) month.~~ The assignment shall be in an amount which is sufficient to meet the periodic child support arrearages or other maintenance payments or both imposed

by the court order or administrative order. The income assignment shall be made a part of the support order.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 240.11 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. At a hearing upon a petition to enforce child support if the court finds evidence presented at the hearing that a person ordered to pay child support is at least three (3) months in arrears and is or has made application to be licensed or certified under the laws of this state, the court in addition to any other enforcement action available to the court may direct the licensing board to suspend the license or certificate of the individual delinquent in such child support payments until the court notifies the board that the individual no longer is delinquent in such payments.

B. If a professional board established under the laws of this state receives an order from the court referring the issue of suspension of a license or certificate of a person found by the court to be in arrears for the payment of child support, the board shall, within thirty (30) days from receipt of the court order, provide notice to the licensee or certificate holder and hold a hearing within thirty (30) days after notification to determine if the person is licensed by the board. If the board finds the person is licensed and evidence of full payment of all arrearages found to be due by the court is not presented at the hearing, the board shall take action to suspend the license or the certificate. The board shall not lift the suspension until the licensee or certificate holder files with the board proof showing that he is current in his payments.

C. If at the hearing the board determines that the suspension of the license or certificate would create an extreme hardship to either the licensee or certificate holder or to persons who the licensee or certificate holder serves, the board may, in lieu of suspension, allow the licensee or certificate holder to continue to practice his profession on probation. Probation shall be conditioned upon full compliance with the court order which

referred the matter to the board. If the board grants probation, the probation period shall not exceed two (2) years and the terms of probation shall provide for automatic suspension of the license or certificate if the licensee or certificate holder does not provide monthly proof to the board of full compliance with the court order which referred the matter to the board or such further court order if that order is subsequently modified by the court.

D. The only issues to be determined by the board are whether the person named in the court order is a licensee or certificate holder, whether the arrearages have been paid and whether suspension or probation is appropriate. No evidence with respect to the appropriateness of the court order or ability of the person to comply shall be received or considered by the board. If the licensee or certificate holder is placed on probation, the board may, without a hearing, defer the revoking of probation and institution of a suspension until receipt of a ruling by the court upon a showing that a petition for modification of a prior order filed by the licensee or certificate holder is pending before the court. If a licensee or certificate holder has been placed on probation and automatically suspended, he may be automatically reinstated to probation upon providing proof to the board that he is currently in compliance with the court order.

E. Before a board may terminate probation, remove a suspension, issue or renew a license or certificate of a person who has been suspended or placed on probation under this section, it shall contact the court which entered the order referring the matter to the board to determine that the applicant is not in arrears for child support. The board shall not issue or renew a license or certificate until the applicant proves to the board's satisfaction that he is current in his payments.

F. This section applies to child support obligations ordered by any state, territory or district of the United States.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 240.12 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. Each agency of the state or any political subdivision thereof shall provide information necessary to the Department of Human Services when so requested to assist the Department of Human Services in locating a parent delinquent on his court-ordered child support or the assets of said parent.

B. Each corporation or other business operating in this state shall provide information to the Department of Human Services when so requested to assist the Department of Human Services in locating a parent delinquent on his court-ordered child support or the assets of said parent.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 240.13 of Title 56, unless there is created a duplication in numbering, reads as follows:

The Legislature hereby requests the Oklahoma Supreme Court to adopt guidelines for indirect contempt and purge fees which will include the following:

1. A nonsupporting parent has taken measures to avoid the jurisdiction of the Court, or has moved from the jurisdiction of the Court, a requirement that a performance bond be posted with the Court, or collateral be pledged in an amount sufficient to cover the unpaid child support obligation;

2. No proven disability exists on the part of the nonsupporting parent, all adjudged arrearages for and relating to the support of the minor children be paid in no more than three (3) years;

3. The arrearage of child support is an amount in excess of Five Thousand Dollars (\$5,000.00), or if the arrearage is equal to or greater than two (2) years' unpaid support, the required six-month sentence may not be suspended for the nonsupporting parent unless and until the unpaid balance is paid in full. Further, the nonsupporting parent be required to pay a fine in maximum amount as allowed by the Statutes; and

4. The nonsupporting parent had the earning capacity to pay the support, and willfully disobeyed the order of the Court, and the arrearage covers a period of six (6) months or more, but less

than two (2) years, the parent be fined Five Hundred Dollars (\$500.00) as allowed by the Statutes, and sentence be suspended only upon payment of a minimum of fifty percent (50%), or one-half of the arrearage, with the balance of the arrearage to be paid in the following six (6) months.

SECTION 12. 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.

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