

ENGROSSED HOUSE AMENDMENT
TO
ENGROSSED SENATE BILL NO. 579

By: Shedrick, Leftwich and
Muegge of the Senate

and

Anthony of the House

An Act relating to child support; providing for
refusal to issue and suspension of driver licenses;
* * * providing for codification; and providing an
effective date.

AUTHORS: Remove Anthony as principal House author and substitute
Blackburn as principal House author and add the following
House Coauthors: Wells, Anthony, Boyd (Laura) and Kirby

AMENDMENT NO. 1. Strike the title, enacting clause and entire bill
and insert

"(child support - revoke or suspend certain occupational,
professional and business licenses - amending 56 O.S.,
Section 237.7 - repealing 56 O.S., Section 240.11 -
codification - effective date)

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 139 of Title 43, unless there is
created a duplication in numbering, reads as follows:

The Legislature finds and declares that child support is a basic legal right of the state's parents and children, that mothers and fathers have a legal obligation to provide financial support for their children and that child support payments can have a substantial impact on child poverty and state welfare expenditures. It is therefore the Legislature's intent to encourage payment of child support to decrease overall costs to the state's taxpayers while increasing the amount of financial support collected for the state's children by authorizing the district courts of this state and the Department of Human Services to revoke or suspend the occupational, professional or business license of a noncustodial parent who is in noncompliance with an order for support.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 139.1 of Title 43, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Licensing board" means any bureau, department, division, board, agency or commission of this state or of a municipality in this state that issues a license;

2. "Noncompliance with an order for support" means that the obligor is at least ninety (90) days in arrears in making payments in full for current support, in making periodic payments on a support arrearage pursuant to a payment plan with the court or in making periodic payments as set forth in an order for support or has failed to obtain or maintain health insurance coverage as required by an order for support;

3. "Order for support" means any judgment or order for the support of dependent children issued by any court of the state or another state or any judgment or order issued in accordance with an administrative procedure established by state law that affords substantial due process and is subject to judicial review;

4. "Department" means the Department of Human Services;

5. "License" means a license, certification, registration, permit, approval or other similar document issued by a licensing board granting to an individual a right or privilege to engage in a profession, occupation, or business;

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

7. "Person entitled" means:

- a. a person to whom a support debt or support obligation is owed,
- b. the Department of Human Services or a public agency of another state that has the right to receive current or accrued support payments or that is providing support enforcement services, or
- c. a person designated in a support order or as otherwise specified by the court; and

8. "Payment plan" includes but is not limited to a plan approved by the court that provides sufficient security to ensure compliance with a support order and that incorporates voluntary or involuntary income assignment or a similar plan for periodic payment of a support debt and, if applicable, current and future support.

B. 1. Except as otherwise provided by this subsection, the district courts of this state are hereby authorized to revoke or suspend or place on probation the occupational, professional or business license of a noncustodial parent who is in noncompliance with an order for support.

2. If the obligor is a licensed attorney, the court may report the matter to the Oklahoma Bar Association for appropriate action in accordance with the rules of professional conduct.

3. The remedy under this section is in addition to any other enforcement remedy available to the court.

C. At any hearing concerning the support of a child, if the district court finds evidence presented at the hearing that an

obligor is in noncompliance with an order for support and the obligor is licensed by any licensing board, the court, in addition to any other enforcement action available, may direct the licensing board to suspend or revoke the license of the obligor who is in noncompliance with the order of support, or place the obligor on probation until the obligor no longer is delinquent in such payments.

D. Upon receipt of an order for suspension or revocation of a license, a licensing board shall implement the suspension or revocation of the license by:

1. Determining if the licensing board has issued a license to the individual whose name appears on the order for support;
2. Entering the suspension or revocation of the license on the appropriate records;
3. Reporting the suspension or revocation of the license as appropriate; and
4. If required by law, demanding surrender of the license.

E. Upon a showing that the suspension or revocation or continued suspension or revocation of a license would create a significant hardship to the obligor, to the obligor's employees, to legal dependents residing in the obligor's household, or to persons, businesses, or other entities served by the obligor, the court may:

1. Stay the suspension or revocation of the license of the obligor. A stay terminates upon:
 - a. termination of the circumstances upon which a hardship is based,
 - b. failure by the obligor to abide by the terms and conditions of a payment plan, or
 - c. the date of termination, if any, provided in the order staying the suspension or revocation of the license;or

2. Allow the licensee to practice or continue to practice his profession, occupation or business on probation. Probation shall be conditioned upon full compliance with the order. If the court grants probation, the period shall not exceed three (3) years and the terms of probation shall provide for automatic suspension of the license if the licensee does not provide monthly proof to the court of full compliance with the order.

F. 1. The court shall not lift the suspension or revocation of the license or terminate the probation of the obligor until the obligor files with the court proof showing that he is current in his payments.

2. Before the court may terminate probation or remove a suspension or revocation, the court shall provide written notice by certified mail, return receipt requested, to the person entitled to child support informing such person that the obligor has proven to the satisfaction of the court that the obligor is current in his payments. Such notice shall also include an opportunity for the person entitled to protest such termination or removal upon a claim and proof that the obligor is not current in his payments. A protest must be commenced within thirty (30) days of receipt of the notice.

G. An order issued by the court for the suspension or revocation of a license or placing the obligor on probation shall be processed by the licensing board without any additional review or hearing involving the licensing board. An order issued by the court for the suspension or revocation of a license or placing the obligor on probation shall be implemented by the licensing board and shall continue until the court advises the licensing board by court order that the suspension or revocation or probation has been stayed or terminated.

H. 1. When the court determines that the support debt or support obligation is paid in full, it shall terminate the order of

suspension or revocation of the license or probation of the obligor. The court shall send a copy of such order to the licensing board, the obligor and the person entitled to support.

2. Entry of such an order does not limit the ability of the court to issue a new order revoking or suspending the license of the same obligor in the event of another delinquency.

I. The licensing board has no jurisdiction to modify, remand, reverse, vacate, or stay the order of the court in the suspension or revocation of a license or placement of the obligor on probation.

J. In the event of suspension or revocation of a license, any funds paid by the obligor to the licensing board for costs related to issuance, renewal, or maintenance of a license shall not be refunded to the obligor.

K. A licensing board subject to this section may charge the obligor a fee to cover the administrative costs incurred by the licensing board under this section. Fees collected pursuant to this section by a licensing board which has a revolving fund shall be deposited in the revolving fund for the use by the licensing board to pay the costs of administering this section.

L. The licensing board shall promulgate rules necessary for the implementation and administration of this section.

M. The licensing board is exempt from liability to the obligor for activities conducted in compliance with this section.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 139.2 of Title 43, unless there is created a duplication in numbering, reads as follows:

Each licensing board shall require an applicant for a license or for a renewal of a license to certify on the application form, under penalty of perjury, that such applicant is not more than thirty (30) days delinquent in complying with a child support order. Every application shall state that failure to so certify may result in suspension or revocation of the license and that making a false

statement may subject the applicant to contempt of court. The licensing board shall notify each applicant who acknowledges a delinquency or who, contrary to his certification, is found to be delinquent, that the licensing board intends to take disciplinary action. Accordingly, the licensing board shall provide written notice of the facts or conduct upon which the licensing board will rely to support its proposed action and the applicant shall be given an opportunity for a hearing in accordance with the provisions of Article II of the Administrative Procedures Act or as otherwise provided by law. Any delinquency in complying with a child support order can be remedied by arranging for payment of past due and current support. Upon a final finding of delinquency, the licensing board shall revoke or suspend the license.

SECTION 4. AMENDATORY 56 O.S. 1991, Section 240, as last amended by Section 1, Chapter 365, O.S.L. 1994, and as renumbered by Section 14, Chapter 365, O.S.L. 1994 (56 O.S. Supp. 1994, Section 237.7), is amended to read as follows:

Section 237.7 For the purposes of Sections 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;

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

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, 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;

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;

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;

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

- a. a person to whom a support debt or support obligation is owed,
- b. the Department of Human Services or a public agency of another state that has the right to receive current or accrued support payments or that is providing support enforcement services, or
- c. a person designated in a support order or as otherwise specified by the court;

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;

11. "Support order" means an order for the payment of support issued by a district or administrative court of this state or by any court or agency of another state;

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, 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 monthly child support payments, payments on support debt and arrearages or other maintenance payments imposed by the district or administrative court order. The income assignment shall be made a part of 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;

15. "Licensing board" means any bureau, department, division, board, agency or commission of this state or of a municipality in this state that issues a license;

16. "Noncompliance with an order for support" means that the obligor is at least ninety (90) days in arrears in making payments in full for current support, in making periodic payments on a support arrearage pursuant to a payment plan with the Department of Human Services, or in making periodic payments as set forth in an order for support or has failed to obtain or maintain health insurance coverage as required by a support order;

17. "License" means a license, certification, registration, permit, approval or other similar document issued by a board or granting to an individual a right or privilege to engage in a profession, occupation, or business or industry;

18. "Commission" means the Commission for Human Services; and

19. "Payment plan" includes but is not limited to a plan approved by the support enforcement entity that provides sufficient security to ensure compliance with a support order and that incorporates voluntary or involuntary income assignment or a similar plan for periodic payment of a support debt and, if applicable, current and future support.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 240.15 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. 1. The Department of Human Services is authorized to order the revocation or suspension or placement on probation of the

occupational, professional or business license of a noncustodial parent who is in noncompliance with an order for support.

2. If the obligor is a licensed attorney, the Department may report the matter to the Oklahoma Bar Association for appropriate action in accordance with the rules of professional conduct.

3. The remedy under this section is in addition to any other enforcement remedy available to the Department.

B. Upon the petition of a person entitled to child support alleging the noncompliance with an order for support and the obligor is licensed by any licensing board, the Department of Human Services may issue a notice of intent to suspend or revoke the license or place the obligor on probation.

C. The notice must be served upon the obligor personally or by certified mail.

The notice must state that the obligor's license will be suspended or revoked thirty (30) days after service unless within that time the obligor:

1. Pays the entire support debt stated in the notice;
2. Enters into a payment plan approved by the Department; or
3. Appears and shows cause in a hearing before the Department that suspension or revocation of a license or probation is not appropriate.

D. To show cause why suspension or revocation of a license or probation would not be appropriate, the obligor shall request a hearing from the Department. The request shall be within thirty (30) days of the date of service of the notice.

E. Upon receipt of a request for hearing from an obligor, the Department shall schedule a hearing for the purpose of determining if suspension or revocation of the obligor's license or probation is appropriate. The Department shall stay action on the license pending the outcome of the hearing.

F. The only issues that may be determined in a hearing under this section are the amount of the support debt or support obligation, if any, whether or not the obligor is in noncompliance with an order for support, and whether or not the obligor has entered or will enter into a payment plan.

G. If an obligor fails to respond to a notice of intent to order the suspension or revocation of a license or probation, fails to timely request a hearing, or fails to appear at a regularly scheduled hearing, the obligor's defenses, objections, or request for a payment plan must be considered to be without merit and the Department shall enter a final decision and order accordingly.

H. If the Department determines that the obligor is in noncompliance with an order for support and that the obligor has not entered into a payment plan, the Department shall issue an order suspending or revoking the obligor's license and ordering the obligor to refrain from engaging in the licensed activity or placing the obligor on probation. The Department shall send a copy of the order of suspension or revocation of a license or probation to the licensing board and to the obligor.

I. The determinations of the Department under this section are a final agency decision and are subject to judicial review pursuant to Section 240.3 of Title 56 of the Oklahoma Statutes.

J. A determination made by the Department under this section is independent of any proceeding of the licensing board to suspend, revoke, deny, terminate, or renew a license.

K. The Department has the authority to order the suspension or revocation of a license or placement of an obligor on probation without any action by the licensing board. The licensing board shall, upon receipt of an order issued by the Department, suspend or revoke the license of the named individual or place the obligor on probation.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 240.16 of Title 56, unless there is created a duplication in numbering, reads as follows:

Upon a showing that suspension or revocation or continued suspension or revocation of a license would create a significant hardship to the obligor, to the obligor's employees, to legal dependents residing in the obligor's household, or to persons, businesses, or other entities served by the obligor, the Department may:

1. Stay the suspension or revocation of a license to the obligor. A stay terminates upon:
 - a. termination of the circumstances upon which a hardship is based,
 - b. failure by the obligor to abide by the terms and conditions of a payment plan, or
 - c. the date of termination, if any, provided in the order staying the suspension or revocation of the license;or

2. Allow the obligor to practice or continue to practice his profession, occupation or business on probation. Probation shall be conditioned upon full compliance with the order. If the Department grants probation, the period shall not exceed three (3) years and the terms of probation shall provide for automatic suspension of the license if the obligor does not provide monthly proof to the Department of full compliance with the order.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 240.17 of Title 56, unless there is created a duplication in numbering, reads as follows:

The Department shall not lift the suspension or revocation of the license or probation of an obligor until the obligor files with the Department proof showing that he is current in his payments. Before the Department may terminate probation or remove a suspension

or revocation, the Department shall provide written notice by certified mail, return receipt requested, to the person entitled to child support informing such person that the obligor has proven to the satisfaction of the Department that the obligor is current in his payments. Such notice shall also include an opportunity for the person entitled to protest such termination or removal upon a claim and proof that the obligor is not current in his payments. A protest must be commenced within thirty (30) days of receipt of the notice.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 240.18 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. Upon receipt of an order of suspension or revocation of a license or probation, the licensing board shall implement the suspension or revocation of the license or probation of the obligor by:

1. Determining if it has issued a license to the person whose name appears on the order;
2. Entering the suspension, revocation or probation on the appropriate records;
3. Reporting the suspension or revocation or probation as appropriate; and
4. If required by law, demanding the license.

B. An order, issued by the Department, of suspension or revocation of a license or placement of the obligor on probation must be processed by the licensing board without any additional review or hearing.

C. An order, issued by the Department, of suspension or revocation of a license or probation must be implemented by the licensing board and shall continue until the Department advises the board that the suspension, revocation or probation has been stayed or terminated.

D. The licensing board shall have no jurisdiction to modify, remand, reverse, vacate, or stay the order of the Department for the suspension or revocation of a license or placing the obligor on probation.

E. In the event of suspension or revocation of a license or probation of the obligor, any funds paid by the obligor to the licensing board for costs related to issuance, renewal, or maintenance of a license may not be refunded to the obligor.

F. The licensing board is exempt from liability to the obligor for activities conducted in compliance with this section.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 240.19 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. When the Department of Human Services determines that the support debt or support obligation is paid in full, it shall terminate the order of suspension or revocation of the license or probation. The Department shall send a copy of said order to the board, the obligor and the person entitled to child support.

B. Entry of such an order does not limit the ability of a Department to issue a new order of suspension or revocation of the license of the same obligor in the event of another delinquency.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 240.20 of Title 56, unless there is created a duplication in numbering, reads as follows:

A licensing board may charge the obligor a fee to cover the administrative costs incurred by the licensing board pursuant to this act. Fees collected pursuant to this act by a licensing board which has a revolving fund must be deposited in the revolving fund for the use by the licensing board to pay the costs of administering this act.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 240.21 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. The Department of Human Services shall promulgate rules necessary for the implementation and administration of this act.

B. The licensing board shall promulgate rules necessary for the implementation and administration of this act.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6-201a of Title 47, unless there is created a duplication in numbering, reads as follows:

A. In addition to other qualifications and conditions established by Title 47 of the Oklahoma Statutes, the right of an individual to hold a driver's license or permit issued by this state is subject to the requirements of this section.

B. Upon receipt of an order for support from a court or from the Department of Human Services that a person obligated to pay child support who owns or operates a motor vehicle is not in compliance with an order for support, the Commissioner of Public Safety shall suspend the driver's license and right to operate a vehicle, and obtain the license of the obligor. The Commissioner of Public Safety shall not reinstate a driver's license suspended for noncompliance with a court or administrative order of support until the court or the Department of Human Services provides a notice that states that the obligor is in compliance with the order of support or a court orders reinstatement; provided, the Commissioner may modify the suspension in cases of extreme and unusual hardship when it is determined by the Commissioner that no other adequate means of transportation exist for the person whose license has been suspended to allow driving in any or all of the following situations:

1. To and from a place of employment;

2. To and from a child care facility, providing the person is a parent or legal guardian with no other means of transporting the child so the parent or legal guardian can maintain employment;

3. To and from a medical facility in the event of an emergency;

4. In the course of employment; or

5. To permit the person to comply with any existing court order.

C. Such modification order shall state the specific times and circumstances under which driving is permitted.

D. Upon the issuance of a modification order pursuant to this section, the person shall pay a modification fee of One Hundred Dollars (\$100.00) to the Department of Public Safety. Fees collected pursuant to the provisions of this section shall be remitted to the State Treasurer to be credited to the General Revenue Fund in the State Treasury.

E. Upon suspending an individual's driver's license, permit, or privilege to operate a vehicle pursuant to this section, the Commissioner of Public Safety shall notify the individual of the suspension. A notice of suspension must specify the reason and statutory grounds for the suspension and the effective date of the suspension and may include any other notices prescribed by the Commissioner of Public Safety. The notice must inform the individual that in order to apply for reinstatement, the individual must obtain a release from the administrative agency or court. The notice must inform the individual that the individual may file a petition for judicial review of the notice of suspension in district court within thirty (30) days after receipt of the notice.

F. The Commissioner of Public Safety shall promulgate rules to implement and enforce the requirements of this section.

G. The Commissioner of Public Safety and the Department of Human Services may enter into an agreement to carry out the requirements of this section.

H. The Commissioner of Public Safety may charge the obligor a fee to cover administrative costs incurred by the Commissioner pursuant to the provisions of this section.

SECTION 13. REPEALER Section 6, Chapter 307, O.S.L. 1993 (56 O.S. Supp. 1994, Section 240.11), is hereby repealed.

SECTION 14. This act shall become effective November 1, 1995."

Passed the House of Representatives the 13th day of April, 1995.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1995.

President of the Senate