

ENGROSSED HOUSE
BILL NO. 2698

By: Ervin and Blackburn of
the House

and

Henry of the Senate

An Act relating to poor persons; amending 56 O.S. 1991, Sections 240.1, as amended by Section 6, Chapter 365, O.S.L. 1994, and 240.2, as amended by Section 7, Chapter 365, O.S.L. 1994 (56 O.S. Supp. 1995, Sections 240.1 and 240.2), which relate to support services; providing for certain fees; providing for maximum amount; providing for fee schedule; providing for payment of certain administrative costs and expenses; requiring payment of certain costs, expenses and interest; providing for additional amount collected; providing for deposit; clarifying language; providing for payments; providing inclusion of certain costs, expenses and interest in certain payments; providing for deposits; providing for collection of certain interest; requiring the Department of Human Services to collect and deposit certain payments; requiring implementation of certain tracking and accounting system; requiring certain reports; providing for contents; providing for effectiveness of certain income assignments; and declaring an emergency.

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

SECTION 1. AMENDATORY 56 O.S. 1991, Section 240.1, as amended by Section 6, Chapter 365, O.S.L. 1994 (56 O.S. Supp. 1995, Section 240.1), is amended to read as follows:

Section 240.1 A. 1. 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:~~ to:

- a. effectuate an income assignment; ~~to,~~
- b. receive current support and judgment payments; ~~to,~~
- c. review and modify support orders pursuant to child support guidelines in Section 118 of Title 43 of the Oklahoma Statutes; ~~and to~~
- d. initiate any other legal proceeding in the district or administrative court to implement the collection of support from an obligor.

2. 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) until a fee schedule for child support services is established pursuant to Section 240.5 of this title, 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.

3. a. The Department of Human Services may require the obligor to pay for any administrative costs or other expenses incurred by the Department pursuant to Sections 237 through 240.21 of this title or as

otherwise provided by law in collecting the child support so owed.

- b. In any hearing on a notice of delinquency or other enforcement proceeding pursuant to this section, the district or administrative court shall include the amount of any administrative costs and other expenses incurred by the Department in the collection of the child support so owed, and the amount of interest on such child support, costs and expenses as authorized by subsection D of this section in any judgment against the obligor.

4. Any administrative costs or expenses collected pursuant to this paragraph by the Department shall be in addition to the amount collected for child support and shall be deposited in the Child Support Revenue Enhancement Fund.

B. The Division is authorized to initiate enforcement proceedings and receive payments pursuant to Section 240.2 of this title to effectuate an income assignment for ~~spousal~~:

1. 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; and

~~C. The Division is authorized to initiate enforcement proceedings and receive payments pursuant to Section 240.2 of this title to effectuate an income assignment for any~~ 2. 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 this title or found to be responsible for the support of a minor child pursuant to Sections 238.1 through 238.6 of this title.

~~D. C. 1.~~ Upon application by ~~an obligor~~ a person entitled to spousal support or other support who requests support enforcement services from the Department, the Division is authorized to initiate

any proceedings necessary to provide support enforcement services to the ~~obligor~~ applicant and to receive payments of the support obligation or any other judgment.

2. 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) until a fee schedule for child support services is established pursuant to Section 240.5 of this title, shall be paid by the applicant. 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 applicant in any judgment against the person owing the spousal support or other support.

3. a. The Department of Human Services may require the person owing spousal support or other support to pay for any administrative costs or other expenses incurred by the Department in collecting any support so owed.
- b. In any hearing on a notice of delinquency or other enforcement proceeding pursuant to this section, the district or administrative court may include the amount of any administrative costs and other expenses incurred by the Department in the collection of any support so owed, and shall include the amount of interest on such child support, costs and expenses as authorized by subsection D of this section in any judgment against the obligor.
- c. Any administrative costs or expenses collected pursuant to this paragraph by the Department shall be in addition to the amount collected for support and shall be deposited in the Child Support Revenue Enhancement Fund.

D. District or administrative court-ordered support payments, payments of suit moneys and expenses or other costs incurred by the Department in the collection of support pursuant to Sections 237 through 240.21 of this title or as otherwise provided by law 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.

E. 1. On the effective date of this act, the Department shall collect and deposit in the Child Support Revenue Enhancement Fund any district or administrative court-authorized payments for administrative costs and other expenses incurred by the Department for the collection of support and of the interest thereon.

2. By July 1, 1996, the Department shall have implemented a system for tracking and accounting for the collection of the payments for costs, expenses and interest specified by this section.

F. On and after January 1, 1997, and each January thereafter, the Department of Human Services shall submit a report to the Speaker of the House of Representatives and the President Pro Tempore of the Senate detailing administrative costs and other expenses incurred by the Department as a result of the collection of support for persons not receiving Aid to Families with Dependent Children who have requested support collection services pursuant to this section. In addition, the report shall include the total amount of fees, costs, expenses and the interest thereon collected pursuant to this section from obligors for support services provided by the Department.

SECTION 2. AMENDATORY 56 O.S. 1991, Section 240.2, as amended by Section 7, Chapter 365, O.S.L. 1994 (56 O.S. Supp. 1995, Section 240.2), is amended to read as follows:

Section 240.2 A. After receiving a referral or application for services, the Division may initiate enforcement proceedings, as defined provided in Section 240.1 of this title.

1. The Division shall advise the obligor of the intention to initiate enforcement proceedings by a notice of delinquency, support debt or other notice. The Division shall give notice 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. the amount of support monies owed, if any,
- b. an assignment will become effective against the obligor's earnings unless the obligor requests a hearing within fifteen (15) days of the date of service of the notice,
- c. the obligor may contest the allegations in the notice only with regards to mistakes of identity or the existence or the amount of support monies owed,
- d. the assignment shall remain as long as the order upon which it is based is in effect. Payment of any 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 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 service of the notice. On receipt of the hearing request, the Division shall promptly enter the appearance of the obligor on the administrative court hearing docket. The administrative court shall hear and determine the matter and, unless the obligor successfully shows

there is a mistake of identity or a mistake in the existence or the amount of support monies owed, the administrative court shall enter a judgment, determine the amount of judgment payments, if any, and order the assignment of nonexempt earnings of the obligor pay the judgment and future monthly support payments.

- b. The administrative court may order an obligor to pay all administrative costs and other expenses involved in 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 Division shall send a notice of the income assignment to the payor to effectuate the assignment pursuant to subsection D of this section and shall file the original of such notice with OAH.

B. If within fifteen (15) days of date of service of the notice, the obligor fails to request a hearing, pursuant to subsection A of this section, 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. The administrative order shall thereafter be subject to collection action and shall be filed in the office of the court 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.

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 D of this section to effectuate the assignment.

D. 1. The notice of the income assignment required pursuant to subsections A and B of this section shall be sent by the Division to the payor. 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 receives notice thereof and the amount withheld shall be sent to the 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 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. the income assignment is binding upon the payor until modified by order of the district or administrative court;
- d. 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. 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;
- g. if the payor is the obligor's employer, the payor shall notify the Division within ten (10) days of the date when the obligor terminates employment or if the employment of the obligor is terminated and shall provide the Division with the obligor's last-known address and the name of the obligor's new employer, if known;
- h. if the payor has no current or future income due to the obligor in his possession or control, or if the obligor has terminated employment prior to the receipt of the notice required pursuant to subsection C of

this section, the payor shall send written notice to the Division within ten (10) days of receipt of said notice. Failure to notify the 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;

- 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 regardless of any change of a payor.

6. The income assignment issued pursuant to this section shall remain in effect as long as any support monies or administrative costs or other expenses incurred by the Department as required by the district or administrative court are owed. Payment of any support monies shall not prevent the income assignment from taking effect.

7. If the employer of the obligor is the payor, the payor shall verify employment of the obligor upon the request of the 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.

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.

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~~ person entitled to support:

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

2. In the county in Oklahoma in which the ~~obligee~~ person entitled to support resides; or

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

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

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.

I. The obligated party may execute a voluntary income assignment and acknowledgment at any time and submit it to the District Office.

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

K. The 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 3. 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.

Passed the House of Representatives the 6th day of March, 1996.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1996.

President of the Senate