STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

HOUSE BILL NO. 1536 By: Kirby

AS INTRODUCED

An Act relating to child support; amending 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), which relates to child support program; adding definitions; requiring certain notices; providing for contents; providing for hearings; providing procedures; providing for appeals; limiting issues; providing for suspension, nonrenewal, or nonissuance of certain licenses by court or administrative processes; providing for compliance; providing procedures for noncompliance; authorizing certain agreements; providing for promulgation of rules; requiring boards to submit certain information; specifying contents; prohibiting certain board action; providing reports; specifying contents; amending Section 6, Chapter 307, O.S.L. 1993 (56 O.S. Supp. 1994, Section 240.11), which relates to court orders to enforce child support; providing for notice and hearing; defining terms; providing procedures; providing for nonissuance, nonrenewal or suspension of licenses; providing for definition of issues; authorizing probation; providing for termination;

providing for suspension of driver's licenses; providing procedures; authorizing temporary licenses; providing for rules; authorizing agreements; providing for notice and hearing; providing for rules; providing for recodification; providing for codification; 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 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;

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 <u>of this state or by any court or agency of another state</u>;

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. "Board" means any bureau, board, agency or commission of this state or of a municipality in this state that issues a license authorizing a person to engage in a business, occupation, profession or industry;

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 written agreement with the Department of Human Services or in making periodic payments as set forth in an order of 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 evidencing admission to or granting authority to engage in a profession, occupation, business or industry;

18. "Licensee" means any individual holding a license, certification, registration, permit, approval or other similar document evidencing admission to or granting authority to engage in a profession, occupation, business or industry; and

19. "Commission" means the Commission for Human Services.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 240.11a of Title 56, unless there is created a duplication in numbering, reads as follows:

A. The Child Support Enforcement Division of the Department of Human Services is authorized to serve notice upon an obligor who is in noncompliance with an order for support that informs the obligor of the Division's intention to submit the obligor's name to any appropriate board as a licensee or applicant for license who is in noncompliance with an order for support. The notice must inform the obligor that:

1. The obligor may request an administrative hearing to contest the issue of noncompliance;

2. A request for hearing must be made in writing and must be received by the Division within twenty (20) days of service;

3. If the obligor requests a hearing within twenty (20) days of service, the Division shall stay action to certify the obligor to

any board for noncompliance with an order for support pending a decision after hearing;

4. If the obligor does not request a hearing within twenty (20) days of service and is in noncompliance with an order for support, the Division shall certify to any appropriate board that the obligor is in noncompliance with an order for support;

5. If the Department certifies to a board that the obligor is in noncompliance with an order of support, the board shall suspend the obligor's license, or refuse to issue or reissue a license as applicable until the obligor provides the board with a release from the Department that states the obligor is in compliance with the obligor's support order;

6. If the obligor files a motion to modify support with the court or requests the Department to amend a support debt or support obligation established by an administrative decision, the Department shall stay action to certify to any board that the obligor is in noncompliance with an order for support; and

7. The obligor can come into compliance with a support order by:

a. paying current support,

b. paying all past due support or, if unable to pay all past due support and a periodic payment for arrearages has not been ordered by the court, by making periodic payments in accordance with a written payment agreement with the Division, and

c. meeting the obligor's health insurance obligation.

The notice must include the address and telephone number of the Division and a statement of the need to obtain a release from that office as provided in subsection H of this section. The Division shall attach a copy of the obligor's support order to the notice. Service of the notice shall be made by certified mail, return receipt requested, or by personal service. For purposes of this

section, authorized representatives of the Department may serve the notice.

B. An obligor may request an administrative hearing upon service of the notice described in subsection A of this section. The request for hearing shall be made in writing and must be received by the Department within twenty (20) days of service. The issues that may be determined at hearing are limited to whether the obligor is required to pay child support pursuant to a court or administrative order and whether the obligor is in compliance with a support order.

C. The Division shall render an administrative order after hearing without undue delay as to whether the obligor is in noncompliance with the obligor's order for support. The administrative order shall be based on the hearing record and rules promulgated by the Commission. The administrative order shall inform the obligor that the obligor may file a petition for judicial review of the decision within thirty (30) days of the date of the administrative order. The Department shall send an attested copy of the administrative order to the obligor by regular mail to the obligor's most recent address of record.

D. If the obligor appeals the Division's administrative order under subsection C of this section, the court may hear and determine any issues raised at the hearing.

E. If an obligor timely requests a hearing to contest the issue of compliance, the Division shall not certify the name of the obligor to a board for noncompliance with an order for support until the Department issues an administrative order after hearing that finds the obligor is in noncompliance with an order of support.

F. The Department may certify in writing to any appropriate board that an obligor is in noncompliance with an order for support if:

1. The obligor does not timely request a hearing upon service of a notice issued under subsection A of this section and is in noncompliance with an order of support twenty-one (21) days after service of the notice;

2. The Division issues an administrative order after hearing that finds the obligor is in noncompliance with an order for support and the obligor has not appealed the decision within the thirty-day appeal period provided in subsection C of this section; or

3. The court enters a judgment on a petition for judicial review that finds the obligor is in noncompliance with an order for support.

The Division shall send by regular mail a copy of any certification of noncompliance filed with a board to the obligor at the obligor's most recent address of record.

G. A board shall notify an obligor certified by the Division under subsection F of this section, without undue delay, that the obligor's application for the issuance or renewal of a license may not be granted or that the obligor's license has been suspended or revoked because the obligor's name has been certified by the Division as an obligor who is in noncompliance with an order for support.

H. When an obligor who is served notice under subsection A of this section subsequently complies with a support order, the Division shall provide the obligor with written confirmation that the obligor is in compliance with the support order.

I. The Commission shall promulgate rules to implement and enforce the requirements of this section.

J. The Division and the various boards shall enter into such agreements as are necessary to carry out the requirements of this section, but only to the extent the Division determines it is cost-effective.

K. Nothing in this section prohibits an obligor from filing a motion to modify support with the court or from requesting the Division to amend a support debt or support order rendered by an administrative decision.

L. On or before April 1, 1996, or as soon as economically feasible and at least annually thereafter, all boards shall provide to the Division specified information, on magnetic tape or other machine-readable form, according to standards established by the Commission, about applicants for licensure and all current licensees of the board. Each board shall provide the specified information for only those current licensees that are residents of this state. The information to be provided must include all of the following information about the licensee or person seeking a license:

1. Name;

2. Address of record;

3. Federal employer identification number or social security number;

4. Type of license;

5. Effective date of license or renewal;

6. Expiration date of license; and

7. Active or inactive status.

M. The Division, upon receipt of the information referred to in subsection L of this section, shall identify and notify each board of the names of any of its licensees or applicants who are obligors subject to this section. The notice must include the social security number and address of the obligor, the name, address and telephone number of the Division and a certification by the Division that it has verified that the licensee or applicant is an obligor subject to this section. When the Division notifies a board under this subsection, the Division shall provide adequate notice of its action to the obligor. The notice must inform the obligor of the right to request a hearing on the issue of whether the obligor is in

compliance with a support order. The board shall not issue or renew a license to a person whose name is on the most recent list from the Department until the board receives a copy of the release specified in subsection H of this section.

N. The board may reissue, renew or otherwise extend the license or certificate of authority in accordance with the board's rules after the board receives a copy of the written confirmation of compliance specified in subsection H of this section.

O. In furtherance of the public policy of increasing collection of child support, the Division shall report the following to the Legislature and the Governor on January 31, 1997:

1. The number of support obligors identified as licensees or applicants subject to this section;

2. The number of obligors known by the Division pursuant to this section who are in noncompliance with an order of support; and

3. The number of actions taken by the Division under this section and the results of those actions.

SECTION 3. AMENDATORY Section 6, Chapter 307, O.S.L. 1993 (56 O.S. Supp. 1994, Section 240.11), is amended to read as follows:

Section 240.11 A. <u>As used in this section:</u>

<u>1. "Board" means any bureau, board, agency or commission of this state or of a municipality in this state that issues a license authorizing a person to engage in a business, occupation, profession or industry;</u>

<u>2. "Noncompliance with a court order for support" means that the support 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 written agreement with the court or in making periodic payments as set forth in a court order of support or has failed to obtain or maintain health insurance coverage as required by a court order of support;</u>

3. "Court-ordered 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 evidencing admission to or granting authority to engage in a profession, occupation, business or industry;

6. "Licensee" means any individual holding a license, certification, registration, permit, approval or other similar document evidencing admission to or granting authority to engage in a profession, occupation, business or industry; and

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

B. At a hearing to enforce child support if the district court ~~or the Department of Human Services, as applicable,~~ finds evidence presented at the hearing that ~~a person ordered to pay child support is at least three (3) months in arrears~~ an obligor is in noncompliance with an order for support and ~~is or~~ has made an application to be licensed ~~or certified under the laws of this state~~ with or is licensed by any board, the court ~~or the Department of Human Services, as applicable,~~ in addition to any other enforcement action available may direct the ~~licensing~~ board to not issue, refuse to renew a license ~~or certificate~~ or suspend the license ~~or certificate~~ of the ~~person delinquent in such child support payments~~ licensee who is in noncompliance with an order for support, or place ~~such person~~ the licensee on probation until the ~~person~~ licensee no longer is delinquent in such payments. ~~Except as otherwise provided by law, for~~

C. For purposes of collection of child support pursuant to the provisions of this section, any ~~professional~~ board established under the laws of this state shall have the authority to suspend the license ~~or certificate~~ of ~~a person delinquent in child support payments~~ a licensee who is in noncompliance with an order for support, to place ~~such person~~ the licensee on probation, or to not issue or renew such license ~~or certificate~~.

~~B.~~ If a ~~professional~~ board ~~established under the laws of this state~~ receives an order from the court ~~or the Department of Human Services, as applicable,~~ referring the issue of nonissuance or nonrenewal or suspension of a license or certificate of a ~~person~~ licensee found by the court ~~or the Department of Human Services, as applicable,~~ to be in ~~arrears for the payment of child support~~ noncompliance with an order for support, the board shall, within thirty (30) days from receipt of the order, provide notice to the licensee or ~~certificate holder~~ applicant and hold a hearing within thirty (30) days after notification to the licensee on the matter. ~~If the board finds the person in arrears, the board shall take action to not issue or nonrenew or suspend the license or the certificate. The board shall not lift the suspension or nonissuance or nonrenewal until the licensee or certificate holder files with the board proof showing that he is current in his payments.~~

D. The only issues to be determined by the board are whether the person named in the order is a licensee or applicant, whether the arrearages have been paid and whether suspension or probation or nonissuance or nonrenewal is appropriate. No evidence with respect to the appropriateness of the order or ability of the person to comply shall be received or considered by the board.

~~C.~~ E. 1. If at the hearing the board determines that the nonissuance or nonrenewal or suspension of the license ~~or certificate~~ would create an extreme hardship to either the licensee or ~~certificate holder~~ applicant or to persons who the licensee ~~or~~

~~certificate holder~~ serves, the board may, in lieu of suspension, nonissuance or nonrenewal, allow the licensee ~~or certificate holder~~ to practice or continue to practice his profession on probation. Probation shall be conditioned upon full compliance with the order which referred the matter to the board.

2. If the board grants probation, the probation period shall not exceed three (3) 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 order which referred the matter to the board or such further order if that order is subsequently modified by the court ~~or the Department of Human Services, as applicable~~.

3. If the licensee 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 is pending before the court.

4. If a licensee has been placed on probation and suspended, the licensee may be automatically reinstated to probation upon providing proof to the board that the licensee is currently in compliance with the order.

~~D. The only issues to be determined by the board are whether the person named in the order is a licensee or certificate holder, whether the arrearages have been paid and whether suspension or probation or nonissuance or nonrenewal is appropriate. No evidence with respect to the appropriateness of the 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 or the Department of Human Services, as applicable, upon a showing~~

~~that a petition for modification of a prior order filed by the licensee or certificate holder is pending before the court or the Department of Human Services, as applicable. 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 order.~~

~~E.~~ F. The board shall not lift the suspension or nonissuance or nonrenewal until the licensee or applicant files with the board proof showing that he is current in his payments. Before a board may terminate probation, remove a suspension, ~~issue~~ or renew a license ~~or certificate~~ of a ~~person~~ licensee who has been suspended or placed on probation ~~under~~ pursuant to this section, it shall provide written notice by certified mail, return receipt requested, to the person to whom child support is owed informing such person that the licensee ~~or certificate holder~~ has proven to the satisfaction of the board that ~~he~~ such licensee is current in ~~his~~ the payments. Such notice shall also include an opportunity for such person to protest such termination, removal or issuance or renewal upon a claim and proof that ~~such person~~ the licensee or applicant is not current in ~~his~~ the payments. A protest must be commenced within thirty (30) days of receipt of the notice.

~~F.~~ G. Except as otherwise provided by this section, the board shall not terminate probation, remove a suspension or issue or renew a license ~~or certificate~~ until the licensee or applicant proves to the board's satisfaction that ~~he~~ the licensee or applicant is current in his payments.

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

SECTION 4. 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 motor vehicle operator's license or permit issued by the state is subject to the requirements of this section.

B. Upon receipt of an order from the district court or from the administrative court of the Department of Human Services, that an obligor 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 and obtain the license of the obligor. The Commissioner of Public Safety shall not reinstate an operator's license suspended for noncompliance with a court or administrative order for support until the court or Department of Human Services issues a release that states the obligor is in compliance with the order for support or a court orders reinstatement.

C. Upon suspending an individual's license, permit or privilege to operate 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 Department of Human Services 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 of receipt of the notice.

D. Upon being presented with a conditional release issued by the court or Department of Human Services and at the request of an individual whose operator's license, permit or privilege to operate has been suspended under this section, the Commissioner of Public

Safety may issue the individual a temporary license valid for a period not to exceed one hundred twenty (120) days.

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

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

SECTION 5. RECODIFICATION Section 6, Chapter 307, O.S.L. 1993 (56 O.S. Supp. 1994, Section 240.11), as amended by Section 3 of this act, shall be recodified as Section 139 of Title 43 of the Oklahoma Statutes, unless there is created a duplication in numbering.

SECTION 6. This act shall become effective November 1, 1995.

45-1-5043 KSM