

SHORT TITLE: Child support; suspension of professional licenses and driver's licenses; hearings and rules; codification; effective date.

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

SENATE BILL NO. 579

By: Shedrick

AS INTRODUCED

An Act relating to child support; amending Section 6, Chapter 307, O.S.L. 1993 (56 O.S. Supp. 1994, Section 240.11), which relates to certain actions on certain licenses for failure to comply with certain child support orders; adding definitions; providing for suspension, nonissuance, or nonrenewal of certain licenses for noncompliance with certain child support orders; providing procedures; providing for notice and hearing; providing for evidence and determination of issues; authorizing probation; removing obsolete language; providing for reinstatement; prohibiting certain actions; providing for certain notices; 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 enforcement; modifying and adding to definitions; providing procedures; providing for notice and hearing; providing for contents of notice; providing for information to a board; requiring notifications; providing for revocation, suspension, and refusal to issue or renew certain licenses; providing for promulgation of rules; authorizing certain agreements; requiring submission of certain information; requiring certain reports; providing for refusal to issue and

suspension of driver licenses; authorizing certain temporary licenses; providing for promulgation of 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 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. As used in this section:

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;

2. "Not in compliance with a court order of support" means that the obligor is at least ninety (90) days in arrears in making payments in full for support, in making full periodic payments on a support arrearage pursuant to a written agreement with a court, or in making full periodic payments as required by an order of support, or in obtaining or maintaining health insurance coverage as required by an order of a court;

3. "Court ordered support" means any judgment, order, or decree for the support of dependent children issued by any court of this state or of another state, or any judgment, order, or decree 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 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 authority to engage in a profession, occupation, business, or industry; and

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

B. 1. Upon the petition of any person or entity entitled to receive child support payments, if the court finds that the obligor is or may be licensed by a licensing board established pursuant to the laws of this state and the obligor is not in compliance with an order of support, the court may direct the licensing board to conduct a hearing pursuant to this section.

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 for disciplinary proceedings.

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

C. At a hearing to enforce child support, if the district court ~~or the Department of Human Services, as applicable,~~ finds, based on evidence presented at the hearing, that ~~a person ordered to pay child support~~ an obligor is at least three (3) months in arrears not in compliance with an order of support and ~~is or~~ has made an application to be licensed ~~or certified under the laws of this state~~ 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 refuse to issue, refuse to renew a license or certificate, or suspend the license or certificate of the person delinquent in such child support payments obligor who is not in compliance with an order of support, or place

~~such person~~ the obligor on probation until the ~~person no longer~~  
obligor is delinquent in such payments compliance. ~~Except as~~  
~~otherwise provided by law, for~~

D. 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~~ an obligor who is not in compliance with an order of support, to place ~~such person~~ the obligor on probation, or to ~~not~~ refuse to issue or renew such the obligor's license ~~or certificate.~~

~~B. E.~~ 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~~ issuance, renewal, or suspension of a license ~~or certificate~~ of a ~~person~~ an obligor found by the court ~~or the Department of Human Services, as applicable,~~ not to be in arrears for the ~~payment of child support~~ compliance with an order of support, the board shall, within thirty (30) days from receipt of the order, provide notice to the licensee ~~or certificate holder~~ and hold a hearing ~~within thirty (30)~~ not less than twenty (20) days nor more than forty-five (45) days after mailing the notification ~~on the matter~~ to the obligor. ~~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.~~

~~C. F.~~ The only issues to be determined by the board are whether the person named in the order of support is a licensee or applicant, whether the arrearages have been paid and whether suspension, probation, or refusal to issue or renew is appropriate.

G. 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~~ 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~~ the licensee's 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~~ of support or any modification thereof.

~~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.~~

3. If the licensee ~~or certificate holder~~ is placed on probation, the board may, without a hearing, defer the ~~revoking~~ revocation 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.~~

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

~~E. H.~~ The board shall not lift the suspension or refusal to issue or renew until the licensee files with the board proof showing that the licensee is current in the licensee's support payments. 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 provide written notice by certified mail, return receipt requested, to the person to whom child support is owed informing ~~such~~ the person that the licensee ~~or certificate holder~~ has proven to the satisfaction of the board that ~~he~~ the licensee is current in ~~his~~ the licensee's payments. ~~Such~~ This notice shall also include an opportunity for ~~such~~ the person to protest ~~such~~ the termination of probation, removal of suspension, or issuance or renewal ~~upon a claim and proof that such person is not current in his payments of a license.~~ A protest must be commenced within thirty (30) days of receipt of the notice.

~~F. I.~~ 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 is current in ~~his~~ the licensee's payments.

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

SECTION 2. 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, this state and~~ which may ~~be administered~~ administer the program 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. a. "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 the Aged, Blind, and the Disabled.

b. 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~~ of support ~~and/or the natural, legal, or adoptive parents who are responsible for the support of such child or~~

9. "~~Person entitled~~ Obligee" 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 court or administrative ~~court~~ agency 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~~ that 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~~ agency 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 court or administrative ~~court~~ agency 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 court~~ court 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, or 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. "Not in compliance with a court order of 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, in making periodic payments as set forth in an order of support, or in obtaining or maintaining health insurance coverage as required by a support order;

17. "License" means a license, certification, registration, permit, approval, or other similar 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 authority to engage in a profession, occupation, business, or industry; and

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

SECTION 3. 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. 1. If the Department of Human Services finds that an obligor is or may be licensed by a licensing board established pursuant to the laws of this state and the obligor is not in compliance with an order of support, the Division may direct the board to conduct a hearing pursuant to this section.

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

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

B. The Child Support Enforcement Division of the Department of Human Services is authorized to serve notice upon an obligor who is not in compliance with an order of 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 who is not in compliance with an order of support. The notice shall 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 after service;

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

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

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

5. If the Department certifies to a board that the obligor is not in compliance with an order of support, the board shall suspend the obligor's license, or refuse to issue or renew a license as applicable until the obligor provides the board with a release from the Department that states that 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 not in compliance with an order of support; and

7. The obligor can comply 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 I of this section. 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.

C. An obligor may request an administrative hearing upon service of the notice described in subsection B of this section. The request for hearing shall be made in writing and must be received by the Department within twenty (20) days after service of the notice. The issues that may be determined at the 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 all support orders.

D. The Division shall render an administrative order after hearing without undue delay as to whether the obligor is not in compliance with the obligor's order of 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 after 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.

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

F. 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 of support until the Department issues an administrative order after hearing that finds the obligor is not in compliance with an order of support.

G. The Department may certify in writing to any appropriate board that an obligor is not in compliance with an order of support if:

1. The obligor does not timely request a hearing upon service of a notice issued under subsection B of this section and is not in

compliance with an order of support twenty-one (21) days after service of the notice;

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

3. The court enters a judgment on a petition for judicial review that finds the obligor is not in compliance with an order of 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.

H. A board shall notify an obligor certified by the Division under subsection G of this section 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 because the obligor's name has been certified by the Division as an obligor who is not in compliance with an order of support.

I. When an obligor who is served notice under subsection B 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.

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

K. 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.

L. 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.

M. 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.

N. The Division, upon receipt of the information referred to in subsection M 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 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 I of this section.

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

P. In furtherance of the public policy of increasing collection of child support, the Division shall report the following to the President Pro Tempore of the Senate, the Speaker of the House of Representatives 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 not in compliance 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 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 this title, 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 from a court or from an administrative agency, that an obligor who owns or operates a motor vehicle is not in compliance with an order of 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 administrative agency issues a release that states that the obligor is in compliance with the order of support or a court orders reinstatement.

C. 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.

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 driver's license, permit, or privilege to operate a vehicle has been suspended under this section, the Commissioner of Public Safety may issue the individual a temporary driver's 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 1 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.

45-1-0717 KSM

