ENGROSSED HOUSE
BILL NO. 1194 By: Pettigrew

(child support and poor persons - amending 43 O.S., Sections 139 and 139.1 - revocation, suspension, and nonissuance or nonrenewal of certain licenses - amending 56 O.S., Section 237.7 - child support - codification - effective date)

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

SECTION 1. AMENDATORY Section 1, Chapter 354, O.S.L. 1995 (43 O.S. Supp. 1996, Section 139), is amended to read as follows:

Section 139. 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~~ requiring the district courts of this state and the Department of Human Services to order the revocation or suspension of, or nonissuance or nonrenewal of, an occupational, professional or business license ~~or~~, any recreational license or permit including but not limited to a hunting and fishing license or other authorization issued pursuant to the Oklahoma Wildlife Conservation Code and certificates of title for vessels and

motors and other licenses of registration issued pursuant to the Oklahoma Vessel and Motor Registration Act and the driving privilege of or to order probation for a parent who is in noncompliance with an order for support for at least ninety (90) days~~;~~.

SECTION 2. AMENDATORY Section 2, Chapter 354, O.S.L. 1995, as amended by Section 18, Chapter 97, O.S.L. 1996 (43 O.S. Supp. 1996, Section 139.1), is amended to read as follows:

Section 139.1 A. As used in this section, Section 230.3 of Title 56 of the Oklahoma Statutes, and Section 6-201.1 of Title 47 of the Oklahoma Statutes:

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 has failed to make child support payments required by a child support order in an amount equal to the child support payable for at least ninety (90) days or has failed to make full payments pursuant to a court-ordered payment plan for at least ninety (90) days or has failed to obtain or maintain health insurance coverage as required by an order for support for at least ninety (90) days;

3. "Order for support" means any judgment or order for the support of dependent children issued by any court of this state or other 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, certificate, 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, any recreational licenses or permits including but not limited to hunting and fishing licenses or other authorizations issued pursuant to the Oklahoma Wildlife

Conservation Code and certificates of title for vessels and motors and other licenses or registrations issued pursuant to the Oklahoma Vessel and Motor Registration Act or a driver license or other permit issued pursuant to Title 47 of the Oklahoma Statutes;

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/or that incorporates voluntary or involuntary income assignment or a similar plan for periodic payment on an arrearage 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~~ shall order the revocation or suspension of, or nonissuance or nonrenewal of, a license or the placement of the obligor on probation 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. Pursuant to Section 6-201.1 of Title 47 of the Oklahoma Statutes, the district courts of this state ~~are hereby authorized to~~ shall order the revocation or suspension of, or nonissuance or

nonrenewal of, a driver license of an obligor who is in noncompliance with an order of support. In addition, the court may, in case of extreme and unusual hardship, provide for a modification of the issuance or renewal, revocation, or suspension of the driver license of an obligor who is in noncompliance with an order of support.

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

C. 1. At any hearing involving 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 or is applying for licensure by any licensing board, the court, in addition to any other enforcement action available, may direct the licensing board to suspend ~~or~~, revoke or not renew the license of or issue a license to the obligor who is in noncompliance with the order of support until the obligor no longer is delinquent in the payments.

2. Upon a showing that a suspension or revocation or continued suspension or revocation of, or nonissuance or nonrenewal 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 place the obligor on probation and allow the obligor to practice or continue to practice the obligor's profession, occupation or business. Probation shall be conditioned upon full compliance with the order. If the court grants probation, the probationary period shall not exceed three (3) years, and the terms of probation shall provide for automatic suspension or revocation of the license if the obligor does not provide monthly proof to the court and to the person entitled to support of full compliance with the order. Proof of payment may be filed with the court clerk in the manner and form as required by the court.

D. 1. When the court determines that the support debt or support obligation is paid in full, it shall direct the licensing board to terminate the order of suspension or revocation of or to renew the license or probation of the obligor. The court shall send a copy of the order to the licensing board, the obligor and the person entitled to support.

2. Entry of this order does not limit the ability of the court to issue a new order requiring the licensing board to revoke or suspend or not renew the license of the same obligor in the event of another delinquency.

E. 1. The court shall not lift the suspension or revocation of, or nonissuance or nonrenewal of, the license or terminate the probation of the obligor until the obligor files with the court proof showing that the obligor is current in the obligor's payments as required by the court.

2. Before the court orders termination of probation or removal of a suspension ~~or~~, revocation, or nonrenewal or nonissuance, the court shall provide written notice by certified mail, return receipt requested, to the person entitled to child support informing the person that the obligor has proven to the satisfaction of the court that the obligor is current in the payments. The notice shall also include an opportunity for the person entitled to child support to protest the termination ~~or~~, removal, renewal or issuance, upon a claim and proof that the obligor is not current in the obligor's payments. A protest must be commenced within thirty (30) days of receipt of the notice and, upon the filing of a protest, the matter shall be set for hearing. At the hearing, the obligor shall submit proof that the obligor is current in the payments as required by the court.

F. Upon receipt of a court order to suspend or revoke the license of an obligor or end probation, the licensing board shall

implement the suspension or revocation of the license or placement of the obligor on probation by:

1. Determining if the licensing board has issued a license to the individual whose name appears on the order for support;

2. Notifying the obligor of the suspension, revocation or probation;

3. Demanding surrender of the license, if required;

4. Entering the suspension or revocation of the license or probation on the appropriate records; and

5. Reporting the suspension or revocation of the license or the probation as appropriate.

G. Upon receipt of a court order to not renew or not issue the license of an obligor, the licensing board shall implement the nonrenewal of the license by:

1. Determining if the licensing board has received an application from the individual whose name appears on the order of support and an application has been submitted for renewal or issuance of such license;

2. Notifying the obligor of the nonrenewal or nonissuance;

3. Entering the nonrenewal or nonissuance of the license on the appropriate records; and

4. Reporting the nonrenewal or nonissuance of the license as appropriate.

H. An order, issued by the court, directing the licensing board to suspend ~~or~~, revoke or not issue or renew the license of the obligor or place the obligor on probation shall be processed by the licensing board without any additional review or hearing. An order, issued by the court, directing the licensing board to suspend ~~or~~, revoke or not issue or renew the license of the obligor or place the obligor on probation shall be implemented by the licensing board and shall continue until the court, judicial court of review, or Court of Civil Appeals advises the licensing board by order that the

suspension ~~or~~, revocation ~~or~~, probation, or nonissuance or nonrenewal is terminated.

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

~~I.~~ J. In the event of suspension, revocation, or nonrenewal or nonissuance of a license, or a 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 shall not be refunded to the obligor.

~~J.~~ K. A licensing board may charge the obligor a fee to cover the administrative costs incurred by the licensing board to administer the provisions of this section. Fees collected pursuant to this section by a licensing board which has an agency revolving fund shall be deposited in the agency revolving fund for the use by the licensing board to pay the costs of administering this section. Otherwise, the administrative costs shall be deposited in the General Revenue Fund of the state.

~~K.~~ L. Each licensing board shall promulgate rules necessary for the implementation and administration of this ~~section~~ act.

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

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:

Any licensing board in this state may, in addition to the powers and duties guaranteed to it by law, and without a court order, refuse to issue or reissue any license subject to the licensing board's jurisdictional area. Refusal to issue or reissue a license on the grounds of failure to pay child support shall require the

licensing board to provide notice to the obligor of the nonissuance or nonrenewal and an opportunity for a hearing pursuant to the provisions of the enabling statutes granting regulatory authority to the licensing board.

SECTION 4. AMENDATORY 56 O.S. 1991, Section 240, as renumbered by Section 14, Chapter 365, O.S.L. 1994, and as last amended by Section 3, Chapter 354, O.S.L. 1995 (56 O.S. Supp. 1996, 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" or as the "Department", 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~~ Temporary Assistance for Needy Families, hereinafter referred to as ~~"AFDC"~~ "TANF", and to individuals not receiving ~~AFDC~~ TANF 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~~ TANF, 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:

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~~ TANF, 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;

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. "License" means a license, certificate, 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 or industry, <u>any recreational licenses or permits including but not limited to hunting and fishing licenses or other authorizations issued pursuant to the Oklahoma Wildlife Conservation Code and certificates of title for vessels and motors and other licenses or registrations issued pursuant to the Oklahoma Vessel and Motor Registration Act</u> or a driver license or other permit issued pursuant to Title 47 of the Oklahoma Statutes;

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

18. "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/or that incorporates voluntary or involuntary income assignment or a similar plan for periodic payment of past-due support and, if applicable, current and future support.

SECTION 5. This act shall become effective November 1, 1997.

Passed the House of Representatives the 3rd day of March, 1997.

Speaker of the House of Representatives

Passed the Senate the ____ day of _____, 1997.

President of the Senate