ENROLLED HOUSE
BILL NO. 2058

By: Greenwood, Coleman, Vaughn and Perry of the House

and

Hendrick of the Senate

An Act relating to child support; amending 12 O.S. 1991, Sections 1170, as amended by Section 1, Chapter 338, O.S.L. 1995, 1171.2, 1171.3, as amended by Section 23, Chapter 356, O.S.L. 1994, 1171.4, 1173.1, 1173.2 and 1178.1, as amended by Section 10, Chapter 338, O.S.L. 1995 (12 O.S. Supp. 1996, Sections 1170, 1171.3 and 1178.1), which relate to income assignments and garnishments; modifying and adding definitions relating to child support; amending 56 O.S. 1991, Section 240.1, as amended by Section 6, Chapter 365, O.S.L. 1994 (56 O.S. Supp. 1996, Section 240.1), which relates to child support services; requiring the Department of Human Services to expand support service collections; specifying certain services; updating and clarifying language; and providing an effective date.

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

SECTION 1. AMENDATORY 12 O.S. 1991, Section 1170, as amended by Section 1, Chapter 338, O.S.L. 1995 (12 O.S. Supp. 1996, Section 1170), is amended to read as follows:

Section 1170. A. For the purposes of this subsection and Sections 1171.2 through 1171.4 of this title:

1. "Arrearage" means the total amount of unpaid support obligations;

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

3. "Income" or "earnings" means any form of payment to an individual regardless of source including, but not limited to, wages, salary, commission, compensation as an independent contractor, workers' compensation, disability, annuity and retirement benefits, 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;

4. "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;

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

6. "Person entitled" means the person to whom a duty of support is owed as designated in the support order or as otherwise specified by the court;

7. "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;

8. "Support order" means an order for the payment of child support issued by a district court or the Department of Human Services;

9. "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 designated by the support order or assignment for payment of support or arrearages or both. The income assignment may be initiated when 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 one (1) month. The assignment shall be in an amount which is sufficient to meet the periodic ~~child~~ support arrearages or other maintenance payments or both imposed by the court order or administrative order. The income assignment shall be made a part of the support order; and

10. "Child support" means and includes all payments or other obligations due and owing to the person entitled by the obligor pursuant to a child support order, including but not limited to medical insurance or health care premiums and other medical expenses, day care arrearages and any fixed day care obligations and such other expenses and requirements as specified in Section 118 of Title 43 of the Oklahoma Statutes.

B. For the purposes of prejudgment garnishments, "judgment creditor" includes prejudgment garnishors.

SECTION 2. AMENDATORY 12 O.S. 1991, Section 1171.2, is amended to read as follows:

Section 1171.2 A. Any person awarded custody of and support for a minor child by the district court or awarded periodic child support payments by the Department of Human Services, or the Department of Human Services on behalf of a recipient of ~~aid to families with dependent children~~ temporary assistance for needy families or on behalf of a person not receiving ~~aid to families with dependent children~~ temporary assistance for needy families, upon proper application, shall be entitled to proceed to collect any current child support and child support due and owing through income assignment pursuant to the provisions of this section and Sections ~~12~~ 1171.3 and ~~13~~ 1171.4 of this title or Sections ~~22~~ 240 through ~~25~~ 240.3 of ~~this act~~ Title 56 of the Oklahoma Statutes or by garnishment, if the minor child is in the custody and care of the person entitled to receive the child support or as is otherwise provided by the court or administrative order at the time of the income assignment or garnishment proceedings.

B. The maximum part of the aggregate disposable earnings of any person for any workweek which is subject to garnishment or income assignment for the support of a minor child shall not exceed:

1. Fifty percent (50%) of such person's disposable earnings for that week, if such person is supporting his spouse or a dependent child other than the child with respect to whose support such order is used; and

2. Sixty percent (60%) of such person's disposable earnings for that week if such person is not supporting a spouse or dependent child.

The fifty percent (50%) specified in paragraph 1 of this subsection shall be deemed to be fifty-five percent (55%) and the sixty percent (60%) specified in paragraph 2 of this subsection shall be deemed to be sixty-five percent (65%), if and to the extent that such earnings are subject to garnishment or income assignment to enforce a support

order with respect to a period which is prior to the twelve-week period which ends with the beginning of such workweek.

SECTION 3. AMENDATORY 12 O.S. 1991, Section 1171.3, as amended by Section 23, Chapter 356, O.S.L. 1994 (12 O.S. Supp. 1996, Section 1171.3), is amended to read as follows:

Section 1171.3 A. Any person or entity entitled to receive ~~child~~ support payments for the current or for any prior month or months, or such person's legal representative may initiate income assignment proceedings by filing with the court an application signed under oath specifying:

1. 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 one (1) month;

2. A certified copy of the support order and all subsequent modifications or orders relating thereto;

3. That some person or entity, known or unknown, is indebted to or has earnings in his/its possession or under his control belonging to the obligor;

4. That the indebtedness or earnings specified in the affidavit, to the best of the knowledge and belief of the person making such affidavit, are not exempt by law; and

5. The amount of the support order and the amount of arrearage.

B. 1. Upon application by the person or entity entitled to receive ~~child~~ support payments or such person's legal representative, the court shall mail, by certified mail, return receipt requested, to the last-known address of the obligor, or shall serve in accordance with law, a notice of delinquency. The notice of delinquency shall be postmarked or issued no later than ten (10) days after the date on which the application was filed and shall specify:

a. that the obligor is alleged to be delinquent under a support order in a specified amount;

b. that an assignment will become effective against the obligor's earnings unless within fifteen (15) days of the date of mailing or service on the obligor of the delinquency notice, said date of mailing to be specified in the notice, the obligor requests a hearing with the district court pursuant to this section;

c. that on or prior to the date of the hearing, in any case in which services are not being provided under the state child support plan as provided under Section 237 of Title 56 of the Oklahoma Statutes, the obligor may prevent the income assignment from taking effect by paying the full amount of the arrearage plus costs and attorney's fees provided, that the obligor shall only be entitled to prevent such income assignment from taking effect under this subparagraph a maximum of two times, thereafter, payment of any arrearages will not prevent an income assignment from taking effect;

d. that at the hearing, if requested, the obligor may contest the claimed delinquency only with regards to mistake of identity, or to the existence or the amount of the delinquency; and

e. that the assignment shall remain in effect for as long as current ~~child~~ support is due or ~~child~~ support arrearages remain unpaid and that payment of any arrearages, except as provided in subparagraph c of

this subsection, will not prevent an income assignment from taking effect.

2. a. An obligor may request a hearing with the court pursuant to this section on or before the fifteenth day from date of mailing or service of the delinquency notice. Upon request for hearing, the court shall set the matter for a hearing. A file-stamped copy of the request and a copy of the order for hearing shall be served in accordance with law upon the person or entity filing the affidavit for income assignment or his/its legal representative. The court shall promptly hear and determine the matter and, unless the obligor successfully shows that there is a mistake of identity or a mistake as to the existence or the amount of delinquency, the court shall order that the income assignment take effect against the disposable earnings of the obligor;

b. The court may order an obligor to pay all court costs and attorneys' fees involved in an income assignment proceeding pursuant to this subsection;

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; and

d. In all cases of paternity and for arrearage of child support, the court shall make inquiry to determine if the noncustodial parent has been denied reasonable visitation. If reasonable visitation has been denied by the custodial parent to the noncustodial parent, the court or administrative judge shall include visitation provisions in the support order.

C. The court shall send a notice of the income assignment to the payor to effectuate the assignment pursuant to subsection E of this section.

D. If, within fifteen (15) days of the date of mailing or service on the obligor of the delinquency notice, the obligor fails to request a hearing pursuant to subsection B of this section, the court shall send a notice of the income assignment to the payor pursuant to subsection E of this section to effectuate the assignment.

E. 1. The notice of the income assignment required pursuant to subsections B, C and D of this section shall be sent by the court to the payor listed on the application. The notice shall be sent by certified mail, return receipt requested or served according to 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 person entitled to the ~~child~~ support within ten (10) days after the date upon which the obligor is paid. The payor shall include with each payment a statement reporting the date on which the obligor's support obligation was withheld;

b. the amount specified in the support order and the amount of the arrearage to be withheld from the obligor's earnings. 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 this title;

c. that the withholding is binding upon the payor until further order of the court or as long as the order for support on which it is based remains in effect;

d. that 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. that two or more income assignments may be levied concurrently, but if the total levy exceeds the maximum permitted under Section 1171.2 of this title, all current ~~child~~ support due shall be paid before the payment of any arrearages. If total current child support exceeds the maximum permitted under Section 1171.2 of this title, the amount available shall be paid pro rata by the percentage of total current support owed to all obligees. After current support, the sums due under the first assignment issued under this section shall be paid before the payment of any sums due on any subsequent income assignment; provided, that the court which issued the initial income assignment, upon notice to all interested parties, is authorized to prorate the payment of the support between two or more income assignments levied concurrently;

f. If the amount of support due under the assignments exceeds the maximum amount authorized by Section 1171.2 of this title, the payor shall pay the amount due up to the statutory limit, and payor shall send written notice to the court and person entitled to support that the amount due exceeds the amount subject to withholding; if 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. that, if the payor is the obligor's employer, the payor shall notify the person entitled to the support payment, and the court when the obligor terminates employment. The payor shall provide by written notice to the person entitled to support and to the court, the obligor's last-known address and the name of the obligor's new employer, if known;

h. that if the payor has no income due or to be due to the obligor in his possession or control, or if the obligor has terminated employment with the payor prior to the receipt of notice required pursuant to subsection C of this section, the payor shall send written notice to the court and the person entitled to support within ten (10) days of receipt of said notice. Failure to notify the person entitled to support and the court 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; and

i. that the payor may also be fined not more than Two Hundred Dollars ($200.00) for failure to make the required deductions.

2. The payor may combine withheld amounts from earnings of two or more obligors subject to the same support order 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; provided, however, income assignments issued pursuant to the provisions of this section and garnishments for ~~child~~ support issued pursuant to the provisions of Section 1173.1 of this title shall be of equal priority, except as may otherwise be provided for in this section.

4. The payor may deduct from any earnings of the obligor a sum not exceeding Five Dollars ($5.00) per pay period as reimbursement for costs incurred in the income assignment.

5. The assignment shall remain effective upon notice to the new payor.

6. The income assignment issued pursuant to this section shall remain in effect for as long as current ~~child~~ support is due or until all arrearages for support are paid, whichever is later. Payment of any arrearages shall not prevent the income assignment from taking effect.

7. The payor may not discipline, suspend, or discharge an obligor because of an 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.

F. Upon written notification of the name and address of a new employer or payor and payment of the required fees for mailing by the person or entity entitled to support, the court shall issue a new notice of income assignment pursuant to subsection E of this section.

G. Any existing support order or income assignment which is brought before the court shall be modified by such court to conform to the provisions of this section.

H. Any person obligated to pay support, who has left or is beyond the jurisdiction of the court, may be prosecuted under any other proceedings available pursuant to the laws of this state for the enforcement of the duty of support and maintenance.

I. 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:

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

2. In the county in Oklahoma in which the obligee resides; or

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

J. 1. Effective November 1, 1989, in all child support orders wherein child support is being paid to a recipient of ~~Aid to Families with Dependent Children (AFDC)~~ Temporary Assistance for Needy Families (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 on the effective date of this act.

2. Effective November 1, 1990, 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 Title 56 of the Oklahoma Statutes, the court or administrative hearing officer shall order the wage of any parent required by court or administrative order to pay support, be subject to immediate income assignment, regardless of whether support payments by such parent are in arrears, unless (1) one of the parties demonstrates and the court or administrative hearing officer finds that there is good cause not

to require immediate income withholding or (2) a written agreement is reached between the parties which provides for an alternative arrangement.

3. Effective January 1, 1994, in all child support cases arising out of an action for divorce, paternity or other proceeding in which services are not being provided under the state child support plan as provided under Section 237 of Title 56 of the Oklahoma Statutes, the court shall order the wages of any parent ordered to pay child support be subject to immediate income assignment regardless of whether support payments are in arrears at the time of the order, unless (1) one of the parties demonstrates and the court finds that there is good cause not to require immediate income withholding, or (2) a written agreement is reached between the parties which provides for an alternative arrangement.

K. Notwithstanding the provisions of subsection J of this section, an income assignment shall be established pursuant to subsections A through I of this section or pursuant to Section 240.2 of Title 56 of the Oklahoma Statutes when there exists a delinquency equal to at least one month's payment.

L. In all orders which are not subject to immediate income withholding pursuant to subsection J of this section and which were issued prior to November 1, 1990, the wages of any parent ordered to pay child support shall be subject to immediate income assignment without regard to whether there is an arrearage, on the earliest of:

1. The date the obligor requests that such withholding begin;

2. The date as of which the custodian requests that such withholding begin to enforce a child support order entered on or before the date of the custodian's request for income withholding if a court of competent jurisdiction finds that immediate income withholding would be in the best interest of the child. In making such determination, the court shall consider, at a minimum, the timeliness of payment of previously ordered support and the agreement of the parent required to pay support to keep the court and custodian advised of his or her current employer and information on any employment-related health insurance coverage to which that parent has access; or

3. Such date as may be ordered by a court of competent jurisdiction.

SECTION 4. AMENDATORY 12 O.S. 1991, Section 1171.4, is amended to read as follows:

Section 1171.4 A. Payments made by the payor pursuant to an income assignment initiated by the person entitled to receive the ~~child~~ support payments shall be paid to the person entitled to support or to the court clerk pursuant to Section 1290 of Title 12 of the Oklahoma Statutes, and shall be made in the manner specified in the notice of income assignment.

B. 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 payment came due.

SECTION 5. AMENDATORY 12 O.S. 1991, Section 1173.1, is amended to read as follows:

Section 1173.1 A. Upon proper application, the court may issue an order for continuing garnishment for the collection of child support. The amount of child support withheld shall not exceed the maximum limitations specified in Section 1171.2 of ~~Title 12 of the Oklahoma Statutes~~ this title.

B. Any amount withheld by a payor for a garnishment for collection of ~~child~~ support pursuant to a garnishee summons pursuant to Section 1173 of ~~Title 12 of the Oklahoma Statutes~~ this title

shall have priority over any prior or subsequent garnishments of the same wages.

SECTION 6. AMENDATORY 12 O.S. 1991, Section 1173.2, is amended to read as follows:

Section 1173.2 Upon the filing of such affidavit and the undertaking and, when a hearing is required, after said hearing, where the garnishment is for the collection of ~~child~~ support, garnishee summons shall be issued by the judge of the district court if prejudgment garnishment is sought or by the clerk of the district court if postjudgment garnishment is sought and served upon each of the garnishees, in the manner provided for service of summons, and shall be returned with proof of service within five (5) days of its date except when issued to another county it shall be returned with proof of service within ten (10) days from its date. The garnishee summons shall be on a form prescribed by the Administrative Office of the Courts.

SECTION 7. AMENDATORY 12 O.S. 1991, Section 1178.1, as amended by Section 10, Chapter 338, O.S.L. 1995 (12 O.S. Supp. 1996, Section 1178.1), is amended to read as follows:

Section 1178.1 A. For the purposes of this section, "wages" or "earnings" means any form of payment to an individual including, but not limited to, salary, commission, or other compensation, but does not include reimbursement for travel expenses for state employees.

B. Where the garnishment summons is for the collection of ~~child~~ support and is issued under Section 1173.2 of this title, the garnishee shall, within ten (10) days from the service of the garnishee's summons or within seven (7) days after the end of defendant's current pay period or thirty (30) days from the date of service of this summons, whichever is earlier, file an affidavit with the clerk of the court in which the action is pending and deliver or mail a copy thereof to the judgment creditor's attorney or to the judgment creditor if there is no attorney. The affidavit shall state:

1. Whether the garnishee was the employer of or indebted or under any liability to the defendant named in the notice in any manner or upon any account for earnings or wages specifying, as applicable, the beginning and ending dates of the pay period existing at the time of the service of the affidavit and summons, the total amounts earned in the pay period and all of the facts and circumstances necessary to a complete understanding of such indebtedness or liability. When the garnishee shall be in doubt respecting any such liability or indebtedness, the garnishee may set forth all of the facts and circumstances concerning the same, and submit the question to the court;

2. Whether the garnishee was indebted or under any liability to or had in garnishee's possession or control, any property belonging to the defendant. When the garnishee shall be in doubt respecting any such liability or indebtedness, the garnishee may set forth all of the facts and circumstances concerning the same, and submit the question to the court;

3. If the garnishee shall claim any setoff, defense, other indebtedness, liability, lien, or claim to such property, the facts and circumstances in the affidavit;

4. At the garnishee's option any claim of exemption from execution on the part of the defendant, or other objection known to the garnishee against the right of the judgment creditor, to apply the indebtedness or property disclosed;

5. If the garnishee shall disclose any indebtedness or the possession of any property to which the defendant or any other person, makes claim, at the garnishee's option the names and

addresses of such other claimants and, so far as known, the nature of the claims; and

6. That the garnishee has mailed or hand-delivered a copy of the notice of garnishment and exemptions, application for hearing, and the manner and date of compliance.

C. The answer of the garnishee shall be on a form prescribed by the Administrative Office of the Courts.

SECTION 8. AMENDATORY 56 O.S. 1991, Section 240.1, as amended by Section 6, Chapter 365, O.S.L. 1994 (56 O.S. Supp. 1996, 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 Child Support Enforcement Division of the Department of Human Services, the Division ~~may~~ shall:

a. initiate enforcement proceedings to:

(1) obtain a judgment for arrearages~~; to~~,

(2) effectuate an income assignment~~; to~~,

(3) receive current support and judgment payments~~; to~~, and

(4) review and modify support orders pursuant to child support guidelines in Section 118 of Title 43 of the Oklahoma Statutes~~;~~, and ~~to~~

b. initiate any other legal proceeding in the district or administrative court to implement the collection of support and other court-ordered requirements of support from an obligor including but not limited to medical, insurance premiums and child care costs.

2. A reasonable fee and costs may be assessed for ~~the~~ providing child support enforcement services pursuant to ~~the~~ rules ~~and regulations~~ promulgated by the Department. ~~Such~~ The fee, not to exceed Twenty-five Dollars ($25.00), 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~~ applicant in any judgment against the obligor.

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.~~ benefits under the Temporary Assistance for Needy Families (TANF) program; 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 the person entitled to receive enforcement support services by the Department or to this state by ~~the~~ a natural or adoptive ~~parents or~~ parent or other person who ~~are~~ is or was 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 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 and to receive payments of the support obligation or any judgment.

2. A reasonable fee and costs may be assessed for the services provided for in this subsection pursuant to ~~the~~ rules promulgated by

the Department. Such fee, not to exceed Twenty-five Dollars ($25.00), shall be paid by the applicant.

SECTION 9. This act shall become effective November 1, 1997.

Passed the House of Representatives the 21st day of May, 1997.

Speaker of the House of Representatives

Passed the Senate the 21st day of May, 1997.

President of the Senate