

and

Shurden of the Senate

An Act relating to marriage and divorce; creating the Child Support Enforcement Fairness Act of 2000; providing for legislative findings; providing for award of attorney fees; providing for retroactivity of certain orders; requiring consideration of certain factors; providing for relief of certain orders; providing for conditions; prohibiting certain order set asides; providing for rescission of voluntary paternity affidavits; providing procedures; providing for forms; providing for contents; providing for results of genetic testing; providing for release of child support payments in certain cases; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6001 of Title 43, unless there is created a duplication in numbering, reads as follows:

A. This act shall be known and may be cited as the "Child Support Enforcement Fairness Act of 2000".

B. The Legislature finds and declares as follows:

1. The efficient and fair enforcement of child support orders is essential to ensuring compliance with those orders and respect for the administration of justice;

2. A large number of child support orders are obtained by a default judgment. Very often, by the time a support obligor receives actual notice of the support order, the accumulated amount of arrearages totals tens of thousands of dollars. These arrearage amounts, particularly for a low-wage earner, are a significant obstacle to good faith compliance. Ensuring prompt, actual notice

of a child support obligation will prevent the accumulation of large amounts of arrearages and encourages greater timely compliance; and

3. Thousands of individuals each year are mistakenly identified as being liable for child support actions. As a result of that action, the ability to earn a living is severely impaired, assets are seized, and family relationships are often destroyed. It is the moral, legal, and ethical obligation of all enforcement agencies to take prompt action to recognize those cases where a person is mistakenly identified as a support obligor in order to minimize the harm and correct any injustice to that person.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6002 of Title 43, unless there is created a duplication in numbering, reads as follows:

Except as against a governmental agency, an order modifying, terminating, or setting aside a support order may include an award of attorney fees and court costs to the prevailing party.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6003 of Title 43, unless there is created a duplication in numbering, reads as follows:

A. An order modifying or terminating a support order may be made retroactive to the date of the filing of the notice of motion or order to show cause to modify or terminate, or to any subsequent date, except as provided in subsection B of this section or by federal law (42 U.S.C. Sec. 666(a)(9)).

B. If an order modifying or terminating a support order is entered due to the unemployment of either the support obligor or the support obligee, the order shall be made retroactive to the later of the date of the service on the opposing party of the notice of motion or order to show cause to modify or terminate or the date of unemployment, subject to the notice requirements of federal law (42 U.S.C. Sec. 666(a)(9)), unless the court finds good cause not to make the order retroactive and states its reasons on the record.

C. If an order decreasing or terminating a support order is entered retroactively pursuant to this section, the support obligor may be entitled to, and the support obligee may be ordered to repay, according to the terms specified in the order, any amounts previously paid by the support obligor pursuant to the prior order that are in excess of the amounts due pursuant to the retroactive order. The court may order that the repayment by the support obligee shall be made over any period of time and in any manner, including, but not limited to, by an offset against future support payments or wage assignment, as the court deems just and reasonable. In determining whether to order a repayment, and in establishing the terms of repayment, the court shall consider all of the following factors:

1. The amount to be repaid;

2. The duration of the support order prior to modification or termination;

3. The financial impact on the support obligee of any particular method of repayment such as an offset against future support payments or wage assignment; and

4. Any other facts or circumstances that the court deems relevant.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6004 of Title 43, unless there is created a duplication in numbering, reads as follows:

A. The court may, on any terms that may be just, relieve a party from a support order, or any part or parts thereof, after the six-month time limit specified in Section 70 of Title 10 of the Oklahoma Statutes has run, based on the grounds, and within the time limits, provided in this section.

B. In all proceedings under this section, before granting relief, the court shall find that the facts alleged as the grounds for relief materially affected the original order and that the

moving party would materially benefit from the granting of the relief.

C. The grounds and time limits for an action or motion to set aside a support order, or any part or parts thereof, are governed by this section and shall be one of the following:

1. Where the defrauded party was kept in ignorance or in some other manner, other than the party's own lack of care or attention, was fraudulently prevented from fully participating in the proceeding. An action or motion based on fraud shall be brought within six (6) months after the date on which the complaining party discovered or reasonably should have discovered the fraud;

2. An action or motion based on perjury shall be brought within six (6) months after the date on which the complaining party discovered or reasonably should have discovered the perjury;

3. a. When service of a summons has not resulted in notice to a party in time to defend the action for support and a default or default judgment has been entered against the party in the action, the party may serve and file a notice of motion to set aside the default and for leave to defend the action. The notice of motion shall be served and filed within a reasonable time, but in no event later than six (6) months after the party obtains or reasonably should have obtained notice,
- (1) of the support order, or
 - (2) that the party's income and assets are subject to attachment pursuant to the order.
- b. A notice of motion to set aside a support order pursuant to this section shall be accompanied by an affidavit showing, under oath, that the party's lack of notice in time to defend the action was not caused by the party's avoidance of service or inexcusable

neglect. The party shall serve and file with the notice a copy of the answer, motion, or other pleading proposed to be filed in the action.

c. The court may not set aside or otherwise relieve a party from a support order pursuant to this section if service of the summons was accomplished in accordance with existing requirements of law regarding service of process.

D. A support order may not be set aside simply because the court finds that it was inequitable when made, nor simply because subsequent circumstances caused the support ordered to become excessive or inadequate.

E. When ruling on an action or motion to set aside a support order, the court shall set aside only those provisions materially affected by the circumstances leading to the court's decision to grant relief. However, the court has discretion to set aside the entire order, if necessary, for equitable considerations.

F. Except as otherwise specifically provided by law, an original order for child support may be made retroactive to the date of filing the petition, complaint, or other initial pleading. If the parent ordered to pay support was not served with the petition, complaint, or other initial pleading within ninety (90) days after filing and the court finds that the parent was not intentionally evading service, the child support order shall be effective no earlier than the date of service.

G. Except as provided in this section, an original order for child support may be made retroactive to the date of filing the petition, complaint, or other initial pleading. If the parent ordered to pay support was not served with the petition, complaint, or other initial pleading within ninety (90) days after filing and the court finds that the parent was not intentionally evading

service, the child support order shall be effective no earlier than the date of service.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 6005 of Title 43, unless there is created a duplication in numbering, reads as follows:

A. Either parent may rescind a paternity affidavit by filing a rescission form with the Department of Human Services within sixty (60) days of the date of execution of the declaration by the attesting father or attesting mother, whichever signature is later, unless a court order for custody, visitation, or child support has been entered in an action in which the signatory seeking to rescind was a party. The Department of Human Services shall develop a form to be used by parents to rescind the paternity affidavit and instruction on how to complete and file the rescission with the Department of Human Services. The form shall include a declaration under penalty of perjury completed by the person filing the rescission form that certifies that a copy of the rescission form was sent by any form of mail requiring a return receipt to the other person who signed the paternity affidavit. A copy of the return receipt shall be attached to the rescission form when filed with the Department of Human Services. The form and instructions shall be written in simple, easy to understand language and shall be made available at the local family support office and the office of local registrar of births and deaths. The Department shall, upon written request, provide to a court a copy of any rescission form filed with the Department that is relevant to proceedings before the court.

B. 1. If the court finds that the conclusions of all of the experts based upon the results of the genetic tests are that the man who signed the paternity affidavit is not the father of the child, the court may set aside the paternity affidavit.

2. The notice of motion for genetic tests under this section may be filed not later than two (2) years from the date of the

child's birth by either the mother, the man who signed the paternity affidavit as the child's father, or in an action to determine the existence or nonexistence of the father and child relationship in any action to establish an order for child custody, visitation, or child support based upon the paternity affidavit.

3. The notice of motion for genetic tests pursuant to this section shall be supported by a declaration under oath submitted by the moving party stating the factual basis for putting the issue of paternity before the court.

C. 1. Nothing in this section shall be construed to prejudice or bar the rights of either parent to file an action or motion to set aside the paternity affidavit. If the action or motion to set aside the paternity affidavit is for fraud or perjury, the act must have induced the defrauded parent to sign the paternity affidavit. If the action or motion to set aside a judgment is required to be filed within a specified time period, the period within which the action or motion to set aside the paternity affidavit must be filed shall commence on the date that the court makes a finding of paternity based upon the paternity affidavit in an action for custody, visitation, or child support.

2. The parent seeking to set aside the paternity affidavit shall have the burden of proof.

3. Any order for custody, visitation, or child support shall remain in effect until the court determines that the paternity affidavit should be set aside, subject to the court's power to modify the orders as otherwise provided by law.

4. Nothing in this section is intended to restrict a court from acting as a court of equity.

5. If the paternity affidavit is set aside pursuant to this subsection, the court shall order that the mother, child, and alleged father submit to genetic tests. If the court finds that the conclusions of all the experts, as disclosed by the evidence based

upon the genetic tests, are that the person who executed the paternity affidavit is not the father of the child, the question of paternity shall be resolved accordingly. If the person who executed the declaration as the father of the child is not excluded as a possible father, the question of paternity shall be resolved as otherwise provided by law. If the person who executed the paternity affidavit is ultimately determined to be the father of the child, any child support that accrued under an order based upon the paternity affidavit shall remain due and owing.

6. The Office of the Administrative Director of the Courts shall develop the forms and procedures necessary to effectuate this section.

SECTION 6. This act shall become effective November 1, 2000.

Passed the House of Representatives the 1st day of March, 2000.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 2000.

President of the Senate