

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

HOUSE BILL HB2190

By: Benson of the House

and

Taylor of the Senate

AS INTRODUCED

An Act relating to child support; amending 12 O.S. 1991, Section 1170, as last amended by Section 1, Chapter 422, O.S.L. 1999 (12 O.S. Supp. 1999, Section 1170), which relates to definitions relating to child support; conforming language; amending 43 O.S. 1991, Section 118, as last amended by Section 2, Chapter 422, O.S.L. 1999 (43 O.S. Supp. 1999, Section 118), which relates to determination of child support and definitions; adding and clarifying definitions; providing for passive income and earned income; modifying method for computing gross income; removing certain authority for self-support reserve; removing shared-parenting time authorization and certain computation relating thereto; authorizing certain deviations and adjustments for extended or excess visitation periods; providing for calculations of reasonable child care expenses; removing certain calculations and computations for child care expenses; authorizing certain orders for child care payments and expenses; removing certain monthly contributions for certain costs from addition to monthly child support obligation; removing certain itemization; removing certain documentation requirements; and declaring an emergency.

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

SECTION 1. AMENDATORY 12 O.S. 1991, Section 1170, as last amended by Section 1, Chapter 422, O.S.L. 1999 (12 O.S. Supp. 1999, 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" or "obligee" 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 assignment shall be in an amount which is sufficient to meet the periodic 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;

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~~ current child care obligations, child 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; and

11. "Notice of income assignment" means the standardized form prescribed by the United States Secretary of Health and Human Services that is required to be used in all cases to notify a payor of an order to withhold for payment of child support and other maintenance payments.

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

SECTION 2. AMENDATORY 43 O.S. 1991, Section 118, as last amended by Section 2, Chapter 422, O.S.L. 1999 (43 O.S. Supp. 1999, Section 118), is amended to read as follows:

Section 118. A. 1. Except in those cases where parties represented by counsel have agreed to a different disposition, there shall be a rebuttable presumption in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the following guidelines is the correct amount of child support to be awarded. The district or administrative court may deviate from the level of child support suggested by these guidelines where the amount of support so indicated is unjust, inequitable, unreasonable, or inappropriate under the circumstances, or not in the best interests of any child involved.

2. The court shall not take into account any stepchildren of such parent in making the determination, but in making such determination, the court may take into account the reasonable

support obligations of either parent as to only natural, legal, or legally adopted minor children in the custody of the parent.

3. If the district or administrative court deviates from the amount of support indicated by these guidelines, it shall make specific findings of fact supporting such action.

B. For purposes of this section and in determining child support, the noncustodial parent shall be designated the obligor and the custodial parent shall be designated the obligee.

C. The child support guidelines are as follows:

1. All child support shall be computed as a percentage of the combined gross income of both parents. The Child Support Guideline Schedule as provided in Section 119 of this title shall be used for such computation. The child support obligations of each parent shall be computed. The obligor's share shall be paid monthly to the obligee and shall be due on a specific date;

2. a. (1) "Gross income", subject to subparagraphs a, b, c, d and e of paragraph 3 of this subsection, includes earned and passive income from any source, except as excluded in this section.

(2) "Earned income" is defined as income received from labor, or the sale of goods or services and includes, but is not limited to, income from:

- ~~(1)~~ (a) salaries,
- ~~(2)~~ (b) wages,
- ~~(3)~~ (c) commissions,
- ~~(4)~~ (d) bonuses, and
- (e) severance pay.

(3) "Passive income" is defined as all other income and includes, but is not limited to, income from:

- ~~(5)~~ (a) dividends,
- ~~(6)~~ ~~severance pay,~~
- ~~(7)~~ (b) pensions,

- ~~(8)~~ (c) rent,
- ~~(9)~~ (d) interest income,
- ~~(10)~~ (e) trust income,
- ~~(11)~~ (f) annuities,
- ~~(12)~~ (g) social security benefits,
- ~~(13)~~ (h) workers' compensation benefits,
- ~~(14)~~ (i) unemployment insurance benefits,
- ~~(15)~~ (j) disability insurance benefits,
- ~~(16)~~ (k) gifts, ~~and~~
- ~~(17)~~ (l) prizes, and
  - (m) royalties.

b. Specifically excluded from gross income are:

(1) actual child support received for children not before the court, and

(2) benefits received from means-tested public assistance programs including, but not limited to:

(a) Temporary Assistance for Needy Families (TANF),

(b) Supplemental Security Income (SSI),

(c) Food Stamps, and

(d) General Assistance and State Supplemental Payments for Aged, Blind and the Disabled;

3. a. For income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership or closely held corporation, "gross income" is defined as gross receipts minus ordinary and necessary expenses required for self-employment or business operations.

b. Specifically excluded from ordinary and necessary expenses for purposes of this paragraph are amounts determined by the district or administrative court to

be inappropriate for determining gross income for purposes of calculating child support.

- c. The district or administrative court shall carefully review income and expenses from self-employment or operation of a business to determine an appropriate level of gross income available to the parent to satisfy a child support obligation.
  - d. The district or administrative court shall deduct from self-employment gross income an amount equal to the employer contribution for F.I.C.A. tax which an employer would withhold from an employee's earnings on an equivalent gross income amount. A determination of business income for tax purposes shall not control for purposes of determining a child support obligation.
  - e. Expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business shall be counted as income if they are significant and reduce personal living expenses. Such payments may include but are not limited to a company car, free housing, or reimbursed meals;
4. a. For purposes of computing gross income of the parents, the district or administrative court shall include for each parent, whichever is most equitable, either:
- (1) ~~the actual~~ all earned and passive monthly income,
  - (2) ~~if a parent has both principal and secondary employment, the greater of:~~
    - ~~(a) the actual monthly income derived from the principal employment, or~~
    - ~~(b) the combined actual monthly income derived from both the principal and the secondary employment, but not to exceed the parent's~~

~~actual monthly income for more than forty-four hours per week~~ all passive income, and earned income equivalent to a forty-hour work week plus such overtime and supplemental income as the court deems equitable,

(3) the average of the gross monthly income for the time actually employed during the previous three

(3) years, or

(4) the minimum wage paid for a forty-hour week.

b. If equitable, the district or administrative court may instead impute as gross monthly income for either parent the amount a person with comparable education, training and experience could reasonably expect to earn.

c. If a parent is permanently physically or mentally incapacitated, the child support obligation shall be computed on the basis of actual monthly gross income.

~~d. In order to provide a self-support reserve for an obligor and to offset the effect of the Internal Revenue Service Earned Income Tax Credit, when the gross monthly income of the obligor is below One Thousand Dollars (\$1,000.00) for one child, One Thousand One Hundred Dollars (\$1,100.00) for two children, One Thousand Two Hundred Dollars (\$1,200.00) for three children, or One Thousand Two Hundred Fifty Dollars (\$1,250.00) for four or more children, and the obligee is entitled to the Earned Income Tax Credit for the children due support, in calculating the monthly child support obligation, the gross monthly income of the obligor shall be used as the combined gross monthly income of the parties. If the monthly~~

~~child support obligation is higher than the amount calculated by using the combined monthly income of the two parents, the obligor shall pay the lesser of the two results.~~

~~e. After the monthly base child support obligation is determined from the Child Support Guideline Schedule, based solely on the income of the obligor, all other calculations shall be based on the proportionate share of both parents' actual monthly combined income;~~

5. The amount of any preexisting district or administrative court order for current child support for children not before the court or for support alimony arising in a prior case shall be deducted from gross income to the extent payment is actually made under the order;

6. The amount of reasonable expenses of the parties attributable to debt service for preexisting, jointly acquired debt of the parents may be deducted from gross income to the extent payment of the debt is actually made. In any case where deduction for debt service is made, the district or administrative court may provide for prospective upward adjustments of support made possible by the reasonably anticipated reduction or elimination of any debt service;

7. The results of paragraphs 2, 3, 4, 5, and 6 of this subsection shall be denominated "adjusted gross income";

8. In cases in which one parent has sole custody, the adjusted monthly gross income of both parents shall be added together and the Child Support Guideline Schedule consulted for the total combined base monthly obligation for child support;

9. After the total combined child support is determined, the percentage share of each parent shall be allocated by computing the percentage contribution of each parent to the combined adjusted gross income and allocating that same percentage to the child

support obligation to determine the base child support obligation of each parent;

10. a. ~~In cases where shared parenting time has been ordered by a district court or agreed to by the parents, the base monthly obligation shall be adjusted. "Shared parenting time" means that each parent has physical custody of the child or children overnight for more than ninety-two (92) nights each year.~~
- b. ~~An adjustment for shared parenting time shall be made to the base monthly child support obligation by the following formula: The total combined base monthly child support obligation shall be multiplied by one and one-half (1 1/2). The result shall be designated the adjusted combined child support obligation.~~
- c. ~~To determine each parent's adjusted child support obligation, the adjusted combined child support obligation shall be divided between the parents in proportion to their respective adjusted gross incomes.~~
- d. (1) ~~The percentage of time a child spends with each parent shall be calculated by determining the number of nights the child is in the physical custody of each parent and dividing that number by three hundred and sixty-five (365).~~  
(2) ~~Each parent's share of the adjusted combined child support obligation shall then be multiplied by the percentage of time the child spends with the other parent to determine the base child support obligation owed to the other parent. For each parent, this amount is then subtracted from the respective share of the adjusted combined child support obligation.~~

~~(3) The respective adjusted base child support obligations for each parent are then offset, with the parent owing more base child support paying the difference between the two amounts to the other parent. The base child support obligation of the parent owing the lesser amount is then set at zero dollars.~~

~~e. The parent owing the greater amount of base child support shall pay the difference between the two amounts as a child support order. In no case, shall the amount of child support ordered to be paid exceed the amount of child support which would otherwise be ordered to be paid if the parents did not participate in shared parenting time. In the event the noncustodial parent is awarded visitation in excess of one-third (1/3) of the overnights each year or for extended daytime visitation, the court may consider a deviation from the child support guideline schedule and allocation of the actual expenses of the children and may make such adjustment as the court deems equitable;~~

11. a. The actual medical and dental insurance premium for the child shall be allocated between the parents in the same proportion as their adjusted gross income and shall be added to the base child support obligation. If the insurance policy covers a person other than the child before the court, only that portion of the premium attributed to the child before the court shall be allocated and added to the base child support obligation.
- b. If the obligor pays the medical insurance premium, the obligor shall receive credit against the base child

support obligation for the obligee's allocated share of the medical insurance premium.

- c. If the obligee pays the medical insurance premium, the obligor shall pay the obligor's allocated share of the medical insurance premium to the obligee as part of the base child support obligation;

12. In cases of split custody, where each parent is awarded custody of at least one of their natural or legally adopted children, the child support obligation for each parent shall be calculated by application of the child support guidelines for each custodial arrangement. The parent with the larger child support obligation shall pay the difference between the two amounts to the parent with the smaller child support obligation;

13. a. Child care expenses shall be ~~added to the~~ allocated in the same proportion as base child support ~~obligation~~.

Child care expenses are actual reasonable costs incurred by either parent on behalf of a child to allow a ~~custodial~~ parent to:

- (1) be employed,
- (2) seek employment, or
- (3) attend school or training to enhance employment income.

- b. ~~In cases in which child care expenses will be incurred by agreement of the parties or by order of the district or administrative court, expenses shall be determined by calculating the amount paid annually for child care expenses, which shall be determined by the actual reasonable expenses, not to exceed the expense required to provide high quality care for children from a licensed provider, projected over the next twelve (12) months, and modified and allocated as follows:~~

- ~~(1) the annual child support amount shall be converted to a monthly child care expense by dividing the amount by twelve (12),~~
- ~~(2) the monthly child care expense shall be reduced by subtracting one-twelfth (1/12) of the annual child care tax credit, if any. If the gross monthly income of the party claiming child care expenses falls below the applicable level, the monthly child care tax credit shall not apply and the monthly child care expenses shall not be reduced:~~

- ~~(a) 1 child \$1,400.00~~
- ~~(b) 2 children \$2,050.00~~
- ~~(c) 3 children \$2,600.00~~
- ~~(d) 4 children \$3,100.00~~
- ~~(e) 5 children \$3,600.00~~
- ~~(f) 6 children \$4,100.00~~

- ~~(3) if the gross monthly income of the party claiming child care expenses exceeds the level indicated in this subparagraph, the monthly child care expense shall be reduced by the following amounts to simulate the child care tax credit:~~

- ~~(a) one child in child care, the lesser of:
  - ~~i. 25% of the monthly child care expenses,~~
  - ~~or~~
  - ~~ii. \$50.00 per month,~~~~
- ~~(b) two or more children in child care, the lesser of:
  - ~~i. twenty-five percent (25%) of monthly child care expenses, or~~
  - ~~ii. Eighty Dollars (\$80.00) per month,~~~~

~~(4) the monthly child care expense, minus one-twelfth (1/12) of the annual child care tax credit, if any, shall be allocated between the obligor and the obligee in the same proportion as the base child support amount and added to the base monthly child support obligation, The district court or administrative court in its discretion may:~~

~~(1) order the payment of child care as incurred subject to documentation of the expense as ordered, or~~

~~(2) average the projected child care expense and prorate the payments for such period as the court deems equitable.~~

c. If the court determines that it will not cause detriment to the child or will not cause undue hardship to either parent, in lieu of payment of child care expenses incurred during employment, employment search, or while the obligee is attending school or training, the obligor may provide care for the child during that time;

14. ~~By order of the court or by agreement of the parties monthly contributions for medical, transportation, or other costs may be added to the base monthly child support obligation.~~

~~a. Medical, dental, orthodontic, optometric, psychological, or any other physical or mental health expenses of the child incurred by either parent and not reimbursed by insurance may be allocated in the same proportion as the parents' adjusted gross income as separate items that are not added to the base child support obligation. If reimbursement is required, the parent who incurs the expense shall be reimbursed by~~

the other parent within thirty (30) days of receipt of documentation of the expense-;

~~b.~~

15. Transportation expenses of a child between the homes of the parents may be divided between the parents in proportion to their adjusted gross income ~~as separate items that are not added to the base child support obligation.~~;

~~15.~~

16. a. (1) Child support orders may be modified upon a material change in circumstances.

(2) Modification of the Child Support Guideline Schedule shall not alone be a material change in circumstances for child support orders in existence on ~~the effective date of this act~~ November 1, 1999.

(3) Providing support for children born to or adopted by either parent after the entry of a child support order shall not alone be considered a material change in circumstances.

(4) An order of modification shall be effective upon the date the motion to modify was filed, unless the parties agree to the contrary or the court makes a specific finding of fact that the material change of circumstance did not occur until a later date.

b. (1) A child support order shall not be modified retroactively regardless of whether support was ordered in a temporary order, a decree of divorce, an order establishing paternity, modification of an order of support, or other action to establish or to enforce support.

(2) All final orders shall state whether past due support and interest has accrued pursuant to any temporary order and the amount due, if any; however, failure to state a past due amount shall not bar collection of that amount after entry of the final support order.

c. The amount of a child support order shall not be construed to be an amount per child unless specified by the district or administrative court in the order. A child reaching the age of majority or otherwise ceasing to be entitled to support pursuant to the support order shall constitute a material change in circumstances, but shall not automatically serve to modify the order;

~~16.~~

17. a. When a child support order is entered or modified, the parents may agree or the district or administrative court may require a periodic exchange of information for an informal review and adjustment process.

b. When an existing child support order does not contain a provision which requires an informal review and adjustment process, either parent may request the other parent to provide the information necessary for the informal review and adjustment process. Information shall be provided to the requesting parent within forty-five (45) days of the request.

c. Requested information may include verification of income, proof and cost of children's medical insurance, and current and projected child care costs. ~~If shared parenting time has been awarded by the court, documentation of past and prospective overnight visits shall be exchanged.~~

- d. Exchange of requested information may occur once a year or less often, by regular mail.
- e.
  - (1) If the parents agree to a modification of a child support order, their agreement shall be in writing on a standard agreed order form provided for in Section 120 of this title and shall comply with the child support guidelines.
  - (2) The standard agreed order form, the standard child support guideline calculation form, and the standard financial affidavit form shall be submitted to the district or administrative court.
  - (3) The standard agreed order form and supporting documents submitted shall be reviewed by the district or administrative court for approval to confirm that the standard agreed order form and documents comply with the child support guidelines and that all necessary parties have been notified. The approved standard agreed order form shall be filed with the court.
  - (4) If the standard agreed order form does not comply with the child support guidelines, or all necessary parties have not been notified, the matter shall be set for hearing.
- f.
  - (1) If the parents fail to cooperate in the exchange of information, either parent may move for a modification hearing or for mediation. The district or administrative court on its own motion may refer the parents to a mediator.
  - (2) If referred to mediation, and modification is subsequently found to be appropriate, the

modification shall be effective on the date the motion was filed.

- (3) Costs for mediation, if any, shall be paid by the parent who failed to cooperate in the exchange of information. Otherwise, the court may assess costs equally between the parents, or as determined by the court;

~~17.~~ 18. Child support orders may include such provisions as the district or administrative court deems appropriate to assure that the child support payments to the custodial parent are used for the support of the child;

~~18.~~ 19. The district or administrative court shall require and enforce a complete disclosure of assets by both parents on a financial affidavit form prescribed by the Administrative Office of the Courts;

~~19.~~ 20. Child support orders issued for prior-born children of the payor may not be modified for the purpose of providing support for later-born children;

~~20.~~ 21. The court, to the extent reasonably possible, shall make provision in an order for prospective adjustment of support to address any foreseen changes including, but not limited to, changes in medical insurance, child care expenses, medical expenses, and extraordinary costs; and

~~21.~~ 22. The social security numbers of both parents and the children who are the subject of the order shall be included in all paternity or child support orders.

SECTION 3. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.