

By: Vaughn of the House
and
Cain of the Senate

An Act relating to child support; amending 12 O.S. 2001, Section 1171.3, which relates to procedures for payment of child support; clarifying procedures for payment; updating language; deleting outdated language; removing priority and equal treatment for certain actions; authorizing certain exceptions for not requiring immediate income assignments; providing restrictions; defining term; amending 36 O.S. 2001, Section 6058A, as last amended by Section 1, Chapter 19, O.S.L. 2003 (36 O.S. Supp. 2003, Section 6058A), which relates to enrollment of children under the health plan of a parent; modifying requirement of insurers regarding enrollment of child under the health care plan of noncustodial parent; amending 43 O.S. 2001, Section 118.2, as amended by Section 2, Chapter 19, O.S.L. 2003 (43 O.S. Supp. 2003, Section 118.2), which relates to child support requirements for health coverage; updating language; modifying requirements relating thereto; repealing 12 O.S. 2001, Section 1173.1, which relates to garnishment for collection of child support; and declaring an emergency.

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

SECTION 1. AMENDATORY 12 O.S. 2001, Section 1171.3, is amended to read as follows:

Section 1171.3 A. ~~Any person or entity entitled to receive support payments for the current or for any prior month or months, or the person's legal representative may initiate income assignment proceedings by filing with the court a notice of delinquency or other notice of enforcement. Notice shall be served upon the obligor in the same manner prescribed for the service of summons in a civil action. The notice shall inform the obligor of the following:~~

- ~~1. The amount of support owed, if any;~~

~~2. That the obligor may object to all or any part of the notice at a hearing which will be held at a given location on a date specified in the notice to show cause why the obligor should not be determined liable for the relief requested in the notice;~~

~~3. That at the hearing the obligor may contest the allegations in the notice only with regards to mistake of identity, or to the existence or the amount of support owed; and~~

~~4. That the assignment shall remain in effect for as long as current support is due or support arrearages remain unpaid and that any payment will not prevent an income assignment from taking effect.~~

~~B. 1. 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 of current or delinquent support, the court shall enter a judgment, determine the amount of judgment payments, if any, and order that the income assignment take effect against the disposable earnings or other income of the obligor.~~

~~2. The court may order an obligor to pay all court costs and attorneys' fees involved in an income assignment proceeding pursuant to this subsection.~~

~~3. 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.~~

~~4. In all cases of paternity and for arrearage of child support, the district 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 district court shall include visitation provisions in the support order.~~

~~C. Once an income assignment has been ordered by the court, the applicant shall file the original notice of income assignment with~~

~~the court and send a copy of the notice of income assignment to the payor to effectuate the assignment pursuant to subsection E of this section.~~

~~D. If the obligor fails to appear at the hearing, the court shall enter an order granting judgment for the amount of any arrearage, establishing a judgment payment plan, if appropriate, and approving the income assignment. After the court has ordered an income assignment, the applicant shall file the original notice with the court and send a copy of the notice of income assignment to the payor pursuant to subsection E of this section to effectuate the assignment.~~

~~E. In all child support cases arising out of an action for divorce, paternity or other proceedings, the court shall order the payment of child support as provided under Section 115 of Title 43 of the Oklahoma Statutes.~~

~~B. 1. The A notice of income assignment ~~required pursuant to subsections B, C, and D of this section~~ shall be sent by the applicant to the payor on a standardized form prescribed by the Secretary of the United States Department of Health and Human Services and available through the Administrative Office of the Courts. 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 and the provisions stated in the notice.~~

~~2. The income assignment shall take effect on the next payment of earnings to the obligor after the payor receives notice ~~thereof and the~~. The amount withheld shall be sent to the ~~person entitled to the support~~ Centralized Support Registry as provided for in Section 413 of Title 43 of the Oklahoma Statutes within seven (7) 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.~~

3. Each pay period the payor shall withhold the amounts specified in the notice from the obligor's income and 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.

4. The income assignment is binding upon the payor until released or until further order of the court.

5. All payments shall be made through the Centralized Support Registry as provided in Section 413 of Title 43 of the Oklahoma Statutes.

6. If the amount of support due under all income assignments against the obligor 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 the payor shall send written notice to the person or agency designated to receive payments that the amount due exceeds the amount subject to withholding. If the payor fails to pay or notify as required ~~herein~~ in this subsection, the payor may be liable for an amount up to the accumulated amount ~~that is due and owing~~ upon receipt of the notice.

7. If the payor is the obligor's employer, the payor shall send written notice to the person or agency designated to receive payments within ten (10) days of the date the obligor terminates employment, and shall provide the obligor's last-known address and the name of the obligor's new employer, if known.

8. If the payor has no income due or to be due to the obligor in the payor's possession or control or if the obligor has terminated employment with the payor prior to the receipt of notice of income assignment required pursuant to subsection ~~C~~ B of this section, the payor shall send written notice to the person or agency designated to receive payments within ten (10) days ~~of receipt of the notice~~. Failure to notify the person or agency 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 of income assignment.

9. The payor is liable for any amount up to the accumulated amount that should have been withheld and paid, and may be fined up to Two Hundred Dollars (\$200.00) for each failure to make the required deductions if the payor:

- a. fails to withhold or pay the support in accordance with the provisions of the income assignment notice, or
- b. fails to notify the person or agency designated to receive payments as required.

10. 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.

11. 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 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.~~

12. The payor may deduct from any earnings of the obligor a sum not exceeding Five Dollars (\$5.00) per pay period but not to exceed Ten Dollars (\$10.00) per month as reimbursement for costs incurred by the payor for the income assignment.

13. The income assignment shall remain effective in effect regardless of a change of payor.

14. The income assignment ~~issued pursuant to this section~~ shall remain in effect ~~for~~ as long as current 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.

15. The payor may not discipline, suspend, discharge, or refuse to promote an obligor because of an income assignment executed pursuant to this section. Any payor who violates this section shall be liable to the obligor for all income, wages, and employment benefits lost by the obligor from the period of unlawful discipline, suspension, discharge, or refusal to promote ~~to~~ until the time of reinstatement or promotion.

~~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 agency designated to receive payments, the applicant shall send a new notice of income assignment pursuant to subsection E of this section.~~

C. Income assignment ~~proceedings~~ shall be available to collect day care ~~and judgments,~~ health ~~expense~~ expenses and arrearages as well as current support alimony payments; provided, child support shall be paid prior to ~~any~~ alimony payments.

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

~~H.~~ E. 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.~~ F. The income assignment proceedings specified in this section shall be available to other states for the enforcement of support and maintenance or to enforce out-of-state orders. Venue for these proceedings is, at the option of the obligee:

1. In the county in this state in which the support order was entered;

2. In the county in this state in which the obligee resides; or

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

~~F.~~ G. 1. In all child support cases 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, all orders for support are subject to immediate income assignment without ~~any~~ need for a hearing by the district or administrative court.

2. 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 income of any parent ordered to pay child support to be subject to immediate income assignment regardless of whether child support payments are in arrears at the time of the order, unless ~~(1)~~:

a. one of the parties demonstrates and the court finds that there is good cause not to require immediate income withholding. Any finding that there is good cause not to require immediate income assignment must be based upon at least:

- (1) a written determination and explanation by the court or administrative authority of why implementing immediate income assignment would not be in the best interests of the child, and
- (2) proof of timely payment of previously ordered support in cases involving modification of support orders, or ~~(2)~~

b. a written agreement is reached between the parties which provides for an alternative arrangement. For purposes of this subparagraph, "written agreement" means a written alternative arrangement signed by both

the custodial and noncustodial parents which has been reviewed by the court and entered into the record by the court or administrative authority.

SECTION 2. AMENDATORY 43 O.S. 2001, Section 118.2, as amended by Section 2, Chapter 19, O.S.L. 2003 (43 O.S. Supp. 2003, Section 118.2), is amended to read as follows:

Section 118.2 A. ~~Where~~ When a parent is required by a court or administrative order to provide health coverage which is available through an employer doing business in this state, the employer is required:

1. To permit the parent to enroll under family coverage any child who is otherwise eligible for coverage without regard to any enrollment season restrictions;

2. ~~If the parent is enrolled but fails to make application to obtain coverage of the child, to~~ To enroll the child under family coverage and to deduct the employee's cost of the coverage from the employee's wages, ~~unless the employer currently pays for the cost or portion of dependent coverage,~~. The enrollment shall be made upon application to the employer by the child's custodial person, by the state agency administering the Medicaid program or the state agency administering the child support program under Title IV-D of the Social Security Act;

3. Not to disenroll or eliminate coverage of a child unless the employer is provided satisfactory written evidence that:

- a. the court order is no longer in effect,
- b. the child is or will be enrolled in comparable coverage which will take effect no later than the effective date of disenrollment, or
- c. the employer has eliminated family health coverage for all of its employees;

4. Upon request, to provide complete information to the custodial person, the state agency administering the Medicaid

program or the state agency administering the child support program under Title IV-D of the Social Security Act regarding any insurance benefits to which the child is entitled, and any forms, publications, or documents necessary to apply for or to utilize the benefits;

5. Permit the custodial person, the designated agency administering the State Medicaid Program, or the provider with approval, to submit claims for covered services without the approval of the noncustodial parent; and

6. Make payments on claims submitted in accordance with paragraph 5 of this subsection directly to the custodial person, the designated agency administering the State Medicaid Program, or the provider.

B. If 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 Child Support Enforcement Division shall notify the parent's employer to enroll the child in health care coverage available under the employer's plan by sending the employer a National Medical Support Notice issued pursuant to Section 466(a)(19) of the Social Security Act, and Section 609(a)(5)(C) of the Employee Retirement Income Security Act of 1974. The employer shall comply with the National Medical Support Notice. The employer may be fined up to Two Hundred Dollars (\$200.00) per month per child for each failure to comply with the requirements of the National Medical Support Notice. Fines collected shall be remitted to the Child Support Revenue Enhancement Fund created pursuant to Section 225 of Title 56 of the Oklahoma Statutes.

C. An employer may not be fined under this section where an employee fails to contribute his or her portion of a health insurance premium.

D. The Department of Human Services shall promulgate rules as necessary to implement the provisions of this section.

SECTION 3. AMENDATORY 36 O.S. 2001, Section 6058A, as last amended by Section 1, Chapter 19, O.S.L. 2003 (36 O.S. Supp. 2003, Section 6058A), is amended to read as follows:

Section 6058A. A. Notwithstanding any other provision of law, an insurer shall not deny enrollment of a child under the health plan of the child's parent on the grounds that:

1. The child was born out of wedlock;
2. The child is not claimed as a dependent on the parent's federal income tax return; or
3. The child does not reside with the parent or in the insurer's service area.

B. Where a child has health coverage through an insurer of a noncustodial parent the insurer shall:

1. Upon request, provide complete information to the custodial person, the designated agency administering the State Medicaid Program, the state agency administering the provisions of 42 U.S.C., Sections 5 through 669, or the Child Support Enforcement Division of the Department of Human Services, regarding any insurance benefits to which the child is entitled, and any forms, publications, or documents necessary to apply for or to utilize the benefits available through that coverage;

2. Permit the custodial person, the designated agency administering the State Medicaid Program, or the provider with approval, to submit claims for covered services without the approval of the noncustodial parent; and

3. Make payments on claims submitted in accordance with paragraph 2 of this subsection directly to the custodial person, the provider, or the designated agency administering the State Medicaid Program.

C. ~~Where~~ When a parent is required by a court or administrative order to provide health coverage for a child, and the parent is eligible for family health coverage, the insurer shall be required:

1. To permit the parent to enroll, under the family coverage, a child who is otherwise eligible for the coverage without regard to any enrollment season restrictions;

2. ~~If the parent is enrolled but fails to make application to obtain coverage for the child, to~~ To enroll the child under family coverage and deduct the employee's cost of the coverage from the employee's wages~~7~~. The enrollment shall be made upon application ~~of~~ to the employer by the custodial person, the designated agency administering the State Medicaid Program, or the state agency administering the provisions of 42 U.S.C., Sections 5 to 669, the Child Support Enforcement Division; and

3. Not to disenroll, or eliminate coverage for the child unless the insurer is provided satisfactory written evidence that:

- a. the court or administrative order is no longer in effect, or
- b. the child is or will be enrolled in comparable health coverage through another insurer which will take effect not later than the effective date of disenrollment;

provided, however, the provisions of this subsection shall not apply where the coverage is through a group plan and the group's coverage through the insurer is discontinued or the noncustodial parent ceases to be eligible for participation in the group plan.

D. An insurer may not impose requirements on a state agency, which has been assigned the rights of an individual eligible for medical assistance under Medicaid and covered for health benefits from the insurer, that are different from requirements applicable to an agent or assignee of any other individual covered.

E. As used in this section, "insurer" includes a licensed insurance company, not-for-profit hospital service or medical indemnity corporation, a fraternal benefit society, a health maintenance organization, a prepaid plan, a preferred provider

organization, a multiple employer welfare arrangement, a self-insured, the State and Education Employees Group Insurance Board, or any other entity providing a plan of health insurance or health benefits in this state.

F. If 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 Child Support Enforcement Division shall notify the parent's employer to enroll the child in health care coverage available under the employer's plan by sending the employer a National Medical Support Notice issued pursuant to Section 466(a)(19) of the Social Security Act, and Section 609(a)(5)(C) of the Employee Retirement Income Security Act of 1974, as soon as the National Medical Support Notice is promulgated by the United States Department of Health and Human Services. The insurer, upon receipt from the employer of Part B of the National Medical Support Notice to Plan Administrator, shall comply with Part B of the National Medical Support Notice. The insurer may be fined up to Two Hundred Dollars (\$200.00) per month per child for each failure to comply with the requirements of the National Medical Support Notice. Fines collected shall be remitted to the Child Support Revenue Enhancement Fund created pursuant to Section 225 of Title 56 of the Oklahoma Statutes.

G. The Department of Human Services shall promulgate rules as necessary to implement the provisions of this section.

SECTION 4. REPEALER 12 O.S. 2001, Section 1173.1, is hereby repealed.

SECTION 5. 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.

Passed the House of Representatives the 18th day of February,
2004.

Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2004.

Presiding Officer of the Senate