

An Act

ENROLLED HOUSE
BILL NO. 2757

By: Kirby of the House

and

Shortey of the Senate

An Act relating to child support; amending 43 O.S. 2011, Sections 114, as amended by Section 2, Chapter 253, O.S.L. 2012, 118A, 118C and 118I (43 O.S. Supp. 2015, Section 114), which relate to interest on past-due child support and child support guidelines; decreasing interest rate on certain payments; modifying term; updating statutory citation; permitting income adjustment for child born after the child in the support order; providing calculation for after-born child; directing court to apply principles of equity in modification due to change in circumstances; authorizing court to approve modification that deviates from the guidelines; removing notice requirement; and providing an effective date.

SUBJECT: Child support

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

SECTION 1. AMENDATORY 43 O.S. 2011, Section 114, as amended by Section 2, Chapter 253, O.S.L. 2012 (43 O.S. Supp. 2015, Section 114), is amended to read as follows:

Section 114. Court-ordered past-due child support payments, court-ordered payments of suit ~~moneys~~ monies and judgments for support pursuant to Section 83 of Title 10 of the Oklahoma Statutes and Sections 238.1 and 238.6B of Title 56 of the Oklahoma Statutes shall draw interest at the rate of ~~ten percent (10%)~~ two percent (2%) per year. Past-due child support payments accruing after the

establishment of the current support order shall draw interest from the date they become delinquent. Lump-sum judgments pursuant to Titles 10 and 56 of the Oklahoma Statutes for support owed prior to the establishment of current support shall draw interest from the first day of the month after the lump-sum judgment is entered. The interest shall be collected in the same manner as the payments upon which the interest accrues.

SECTION 2. AMENDATORY 43 O.S. 2011, Section 118A, is amended to read as follows:

Section 118A. As used in this act:

1. "Adjusted Gross Income" (AGI) means the net determination of the income of a parent, calculated by modifying the gross income of the parent as follows:

- a. adding to the gross income of the parent any ~~social security~~ Social Security benefit paid to the child on the account of the parent,
- b. deducting from gross income the amount of any support alimony arising in a prior case to the extent that payment is actually made,
- c. deducting from gross income any deductions as set forth for other prior-born or after-born children for whom the parent is legally responsible and is actually supporting, pursuant to Section 4 118C of this ~~act~~ title, and
- d. deducting the amount of reasonable expenses of the parties attributable to debt service for preexisting, jointly acquired debt of the parents;

2. "Base child support obligation" means the amount of support displayed on the Schedule of Basic Child Support Obligations which corresponds to the combined AGI of both parents and the number of children for whom support is being determined. This amount is rebuttably presumed to be the appropriate amount of basic child support to be provided by both parents in the case immediately under consideration, prior to consideration of any adjustments for medical and child care costs, and any other additional expenses;

3. "~~Current Monthly Child Support Obligation~~ monthly child support obligation" means the base child support obligation and the proportional share of any medical insurance and annualized child care costs;

4. "Custodial person" means a parent or third-party caretaker who has physical custody of a child more than one hundred eighty-two (182) days per year;

5. "Noncustodial parent" means a parent who has physical custody of a child one hundred eighty-two (182) days per year or less;

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

7. "Obligee" or "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;

8. "Other contributions" means recurring monthly medical expenses and visitation transportation costs that are not included in the current monthly child support obligation;

9. "Overnight" means the child is in the physical custody and control of a parent for an overnight period of at least twelve (12) hours, and that parent has made a reasonable expenditure of resources for the care of the child;

10. "Parent" means an individual who has a parent-child relationship under the Uniform Parentage Act;

11. "Parenting time adjustment" means an adjustment to the base child support amount based upon parenting time; and

12. "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.

SECTION 3. AMENDATORY 43 O.S. 2011, Section 118C, is amended to read as follows:

Section 118C. A. Deductions for other children of either parent who are qualified under this section may be considered by the court for the purpose of reducing the gross income of the parent. Adjustments are available for a child:

1. Who is the biological, legal, or adopted child of the parent;
2. Who was born prior to or after the child in the case under consideration;
3. Whom the parent is actually supporting; and
4. Who is not before the court to set, modify, or enforce support in the case immediately under consideration.

B. Children for whom support is being determined in the case under consideration, stepchildren, and other minors in the home that the parent has no legal obligation to support shall not be considered in the calculation of this deduction.

C. If the court finds a parent has a parent-child relationship with a child not before the court, the court may grant a deduction for that child as set forth in subsection D of this section.

D. Calculation of deduction for qualified other children.

1. Out-of-home children.

- a. To receive a deduction against gross income for child support provided pursuant to a court order for qualified other children whose primary residence is not in the home of the parent seeking deduction, the parent shall establish the existence of a support order and provide documented proof of support paid for the other child consistently over a reasonable and extended period of time prior to the initiation of the proceeding that is immediately under consideration by

the tribunal, but in any event, such time period shall not be less than twelve (12) months.

b. Documented proof of support includes:

- (1) physical evidence of monetary payments to the caretaker of the child, such as canceled checks or money orders, and
- (2) evidence of payment of child support under another child support order, such as a payment history from a tribunal clerk or child support office or from the Internet child support payment history of the Department of Human Services.

c. The available deduction against gross income for either parent's qualified children not in the home of the parent is the actual documented court-ordered current monthly child support obligation of the qualified other children, averaged to a monthly amount of support paid over the most recent twelve-month period.

2. In-home children.

- a. To receive a deduction against gross income for qualified other prior-born ~~other~~ or after-born children whose primary residence is with the parent seeking deduction, but who are not part of the case being determined, the parent must establish a legal duty of support and that the child resides with the parent more than fifty percent (50%) of the time. Documents that may be used to establish that the parent and child share the same residence include the school or medical records showing the address of the child and the utility bills of the parents mailed to the same address, court orders reflecting the parent is the primary residential parent or that the parent shares the parenting time of the child fifty percent (50%) of the time.
- b. The deduction for other qualified children shall be computed as a hypothetical child support order calculated using the deduction worksheet, the gross income of the parents, the total number of qualified

other children living in the home of the parent, and the Child Support Guideline Schedule. The deduction worksheet shall be prepared by the Department of Human Services and shall be published by the Administrative Office of the Courts.

- c. The available deduction against gross income for the qualified in-home children of either parent is seventy-five percent (75%) of a hypothetical support order calculated according to these Guidelines, using the Deduction Worksheet, the gross income of the parent less any self-employment taxes paid, the total number of qualified other children living in the home of the parents, and the Child Support Guideline Schedule.

SECTION 4. AMENDATORY 43 O.S. 2011, Section 118I, is amended to read as follows:

Section 118I. A. 1. Child support orders may be modified upon a material change in circumstances which includes, but is not limited to, an increase or decrease in the needs of the child, an increase or decrease in the income of the parents, changes in actual annualized child care expenses, changes in the cost of medical or dental insurance, or when one of the children in the child support order reaches the age of majority or otherwise ceases to be entitled to support pursuant to the support order. The court shall apply the principles of equity in modifying any child support order due to changes in the circumstances of either party as it relates to the best interests of the children.

2. Modification of the Child Support Guideline Schedule shall not alone be a material change in circumstances for child support orders.

3. 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 have 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. When the last child of the parents ceases to be entitled to support, the child support obligation is automatically terminated as to prospective child support only.

D. 1. 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.

2. 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.

3. Requested information may include verification of income, proof and cost of medical insurance of the children, 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.

4. Exchange of requested information may occur once a year or less often, by regular mail.

5. a. If the parents agree to a modification of a child support order, their agreement shall be in writing using standard modification forms and the child support computation form provided for in Section 120 of Title 43 of the Oklahoma Statutes.

- b. The standard modification forms and the standard child support computation form shall be submitted to the district or administrative court. ~~The~~ Either court shall review the modification forms to confirm that the child support obligation complies with the child support guidelines ~~and that all necessary parties pursuant to Section 112 of Title 43 of the Oklahoma Statutes have been notified or, if agreed to by the parties,~~ the court may approve a deviation from the child support guidelines as provided in subsection B of Section 118H of this title. If the court approves the modification forms, they shall be filed with the court.

SECTION 5. This act shall become effective November 1, 2016.

Passed the House of Representatives the 4th day of May, 2016.

Presiding Officer of the House
of Representatives

Passed the Senate the 21st day of April, 2016.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____