

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas *As Engrossed: S1/18/99 S2/2/99 S2/4/99 H3/26/99 H3/29/99 H4/8/99*

2 82nd General Assembly

A Bill

Act 1514 of 1999

3 Regular Session, 1999

SENATE BILL 25

4

5 By: Senator Mahony

6

7

For An Act To Be Entitled

8

"AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS CODE

9

ANNOTATED RELATING TO CHILD SUPPORT ENFORCEMENT

10

PROCEEDINGS; AND FOR OTHER PURPOSES. "

11

12

Subtitle

13

"TO AMEND VARIOUS SECTIONS OF THE

14

ARKANSAS CODE RELATING TO CHILD SUPPORT

15

ENFORCEMENT PROCEEDINGS. "

16

17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

19

20 SECTION 1. *Arkansas Code 9-10-109(b)(1) is amended to read as follows:*

21

"(1) Beginning January 1, 1998, and continuing thereafter, all orders directing payments through the registry of the court or through the Arkansas child support clearinghouse shall set forth a fee to be paid by the noncustodial parent or obligated spouse in the amount of thirty-six dollars (\$36.00) per year. The fee shall be collected from the noncustodial parent or obligated spouse at the time of the first support payment and during the anniversary month of the entry of the order each year thereafter, or ~~twelve dollars (\$12.00)~~ nine dollars (\$9.00) per quarter at the option of the obligated parent, until no children remain minor and the support obligation is extinguished and any arrears are completely satisfied. Until January 1, 1998, all orders directing payments through the registry of the court or through the Arkansas child support clearinghouse shall set forth a fee to be paid by the noncustodial parent or obligated spouse in the amount of twenty-four dollars (\$24.00) per year."

35

36

SECTION 2. *Arkansas Code Annotated § 9-10-115(d) & (e) is amended to*

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1 read as follows:

2 " (d) ~~A person may request that a court set aside his voluntary~~
 3 ~~acknowledgment of paternity. Any signatory to a voluntary acknowledgment of~~
 4 ~~paternity may rescind the acknowledgment by completing a form provided for~~
 5 ~~that purpose and filing the form with the Division of Vital Records:~~

6 (1) ~~On the~~ Prior to the date that an administrative or judicial
 7 proceeding, including a proceeding to establish a support order, is held
 8 relating to the child and the person executing the voluntary acknowledgment of
 9 paternity is a party; or

10 (2) Within sixty (60) days of executing the voluntary
 11 acknowledgment of paternity, whichever date occurs first.

12 (e) ~~Beyond the sixty-day period set forth in subsection (d) of this~~
 13 ~~section, a motion person may petition the court of competent jurisdiction to~~
 14 ~~set aside a paternity establishment pursuant to a voluntary acknowledgment of~~
 15 ~~paternity may only be~~ only if the petition is based on allegations of whether
 16 that the acknowledgment was obtained by fraud, duress, or material mistake of
 17 fact. The court may, after making such finding, direct the mother, the child,
 18 and the presumed father to submit to scientific testing for paternity as
 19 provided by 9-10-108.

20 (1) The burden of proof shall be upon the person challenging the
 21 establishment of paternity; and

22 (2) The duty to pay child support and other legal obligations
 23 shall not be suspended while the motion is pending, except for good cause
 24 shown. The specific basis supporting good cause findings shall be recited in
 25 the court's order."

26

27 SECTION 3. Arkansas Code 9-12-312(e)(1) is amended to read as follows:

28 "(1)(A) Except as set forth in subdivision (e)(5) of this section, all
 29 orders directing payments through the registry of the court or through the
 30 Arkansas child support clearinghouse shall set forth a fee to be paid by the
 31 noncustodial parent or obligated spouse in the amount of thirty-six dollars
 32 (\$36.00) per year. The fee shall be collected from the noncustodial parent or
 33 obligated spouse at the time of the first support payment and during the
 34 anniversary month of the entry of the order each year thereafter, or ~~twelve~~
 35 ~~dollars (\$12.00)~~ nine dollars (\$9.00) per quarter at the option of the
 36 obligated parent, until no children remain minor and the support obligation is

1 extinguished and any arrears are completely liquidated.

2 (B) Until January 1, 1998, all orders directing payments through
3 the registry of the court or through the Arkansas child support clearinghouse
4 shall set forth a fee to be paid by the noncustodial parent or obligated
5 spouse in the amount of twenty-four dollars (\$24.00) per year."
6

7 SECTION 4. Arkansas Code Annotated § 9-14-108(a), as enacted by Acts
8 1997, No. 1072, is amended to read as follows:

9 "(a) As used in this section, 'child support order' means a judgment,
10 decree, or order, whether temporary, final, or subject to modification, issued
11 by a court or an administrative agency of competent jurisdiction, for the
12 support and maintenance of a child, including a child who has attained the age
13 of majority under the law of the issuing state, or ~~a child and~~ of the parent
14 with whom the child is living, which provides for monetary support, health
15 care, arrearages, or reimbursement, and which may include related costs and
16 fees, interest and penalties, income withholding, attorney's fees and other
17 relief."
18

19 SECTION 5. The Arkansas Code Revision shall appropriately renumber
20 Arkansas Code Annotated § 9-14-108, as enacted by Acts 1997, No. 1072 and as
21 amended by Section 4 of this act.
22

23 SECTION 6. Arkansas Code Annotated § 9-14-108(a), as enacted by Acts
24 1997, No. 1296, is amended to read as follows:

25 "~~(a)(1) The court where the final adjudication of child support is~~
26 ~~rendered shall retain jurisdiction of all matters following the entry of the~~
27 ~~decree. In child support proceedings, when a complaint for child support is~~
28 ~~filed in a chancery court, or juvenile division thereof, of one (1) chancery~~
29 ~~district and the final adjudication is rendered by the court and, if more than~~
30 ~~six (6) months subsequent to the final adjudication, however, each of the~~
31 ~~parties to the action and the mother, father, or physical custodian has~~
32 ~~established a residence in a county of another chancery district, further~~
33 ~~action upon such case may be brought in the county where the mother, father or~~
34 ~~physical custodian resides as provided herein. The court where the child~~
35 ~~support adjudication is rendered shall retain jurisdiction for a minimum of~~
36 ~~six (6) months following adjudication of child support within the state, one~~

1 (1) or both of the parties may petition the court which entered the final
2 adjudication to request that the case be transferred to another county. The
3 case shall not be transferred absent a showing that the best interest of the
4 parties justifies the transfer. If a justification for transfer of the case
5 has been made, there shall be an initial presumption for transfer of the case
6 to the county of residence of the physical custodian of the child."
7

8 SECTION 7. Arkansas Code Annotated § 9-14-201 is amended to read as
9 follows:

10 "9-14-201. Definitions.

11 As used in this ~~chapter~~ Code:

12 (1) 'Accrued arrearage' means a delinquency owed under a court order or
13 an order of an administrative process established under state law for support
14 of any child or children which is past due and unpaid. 'Accrued arrearage' may
15 include past due support which has been reduced to a judgment if the support
16 obligation under the order has not been terminated;

17 (2) 'Court or its representative' means the chancery court of this
18 state or a similar district court of another state when the context so
19 requires, a court official of the chancery court, or the state or local child
20 support enforcement attorney operating pursuant to an agreement with the court
21 in cases related to Title IV-D of the Social Security Act;

22 (3) 'Payor' means an employer, person, general contractor, independent
23 contractor, subcontractor, or legal entity which has or may have in the future
24 in its possession moneys, income, or periodic earnings due the noncustodial
25 parent. 'Payor' shall include all agencies, boards, commissions, institutions,
26 and other instrumentalities of the United States Government and the State of
27 Arkansas and all cities of the first class, cities of the second class,
28 incorporated towns and counties and their agencies, boards, commissions,
29 institutions and other instrumentalities, and school districts;

30 (4) 'Noncustodial parent' means a natural or adoptive parent who does
31 not reside with his dependent child; ~~and~~

32 (5) ~~As used in this Code, 'child~~ 'Child support order' or 'support
33 order' means a judgment, decree, or order, whether temporary, final, or
34 subject to modification, issued by a court or an administrative agency of
35 competent jurisdiction, for the support and maintenance of a child, including
36 a child who has attained the age of majority under the law of the issuing

1 state, or ~~a child and~~ of the parent with whom the child is living, which
2 provides for monetary support, health care, arrearages, or reimbursement, and
3 which may include related costs and fees, interest and penalties, income
4 withholding, attorney's fees, and other relief-;

5 (6) ~~As used in this title, including § 9-17-101 et seq., 'notice'~~
6 'Notice' means any form of personal service authorized under Arkansas law-;

7 (7) ~~As used in this title, and for all child support purposes, 'income'~~
8 'Income' means any periodic form of payment due to an individual, regardless
9 of source, including wages, salaries, commissions, bonuses, workers'
10 compensation, disability, payments pursuant to a pension or retirement
11 program, and interest. The definition of 'income' may be expanded by the
12 Arkansas Supreme Court from time to time in the Guidelines for Child Support
13 Enforcement-;

14 (8) 'Overdue support' means a delinquency pursuant to an obligation
15 created under a court decree, order, or judgment, or an order of an
16 administrative process established under the laws of another state for the
17 support and maintenance of a minor child;

18 (9) 'Past-due support' means the total amount of support determined
19 under a court order established under state law, which remains unpaid."

20
21 SECTION 8. Arkansas Code Annotated § 9-14-205(b)(2) is amended to read
22 as follows:

23 "(2) In any subsequent child support enforcement action between the
24 parties, upon sufficient showing that diligent effort has been made to
25 ascertain the location of such a party, the chancery court ~~may~~ shall deem that
26 state due process requirements for notice and service of process have been met
27 with respect to the party, upon delivery of written notice to the most recent
28 residential or employer address filed with the chancery court pursuant to this
29 subsection."

30
31 SECTION 9. Arkansas Code Annotated § 9-14-208(g) is amended to read as
32 follows:

33 "(g) In cases in which there is a overdue child support arrearage, and
34 in an effort to ~~secure~~ seize assets to satisfy any current support obligation
35 and the arrearage, the Office of Child Support Enforcement is authorized to:

36 (1) Intercept or seize periodic or lump-sum payments from:

1 (A) A state or local agency, including unemployment
2 compensation, worker's compensation, or other benefits; and

3 (B) Judgments, settlements, prizes, and lotteries;

4 (2) Attach and seize assets of the obligated parent held in
5 financial institutions;

6 (3) Attach public and private retirement funds, including any
7 union retirement fund, and railroad retirement; ~~and~~

8 (4) Impose liens in accordance with subsection (b) of this
9 section and, in appropriate cases, to force sale of property and distribution
10 of proceeds."

11
12 SECTION 10. Arkansas Code Annotated § 9-14-212(d) is amended to read as
13 follows.

14 ~~"(d) In all IV-D cases, after non-Temporary Assistance to Needy
15 Families costs are charged to a recipient of IV-D services, such amounts shall
16 constitute a judgment by operation of law against the noncustodial parent,
17 which shall be recovered by the Office of Child Support Enforcement through
18 income withholding, or any other available process for the collection of child
19 support, and refunded to the custodial parent or the physical custodian, as
20 appropriate. Any fee or cost for services generated because of either a breach
21 by the noncustodial parent of an agreement or of an order of the court shall
22 be incorporated into the request for relief and reduced to a judgment in favor
23 of and payable to the Office of Child Support Enforcement."~~

24
25 SECTION 11. Arkansas Code Annotated § 9-14-209(a) is amended to read as
26 follows:

27 "(a) As used in this section, unless the context otherwise requires: and
28 ~~(1)~~ 'Consumer reporting agency' means any person who, for monetary fees, dues,
29 or on a cooperative, nonprofit basis, regularly engages, in whole or in part,
30 in the practice of assembling or evaluating consumer credit information or
31 other information on consumers for the purpose of furnishing consumer reports
32 to third parties. This term also includes any person who uses any means or
33 facility of interstate commerce for the purpose of preparing or furnishing
34 consumer reports; and

35 ~~(2) 'Overdue support' means a delinquency pursuant to an
36 obligation created under a court order or an order of an administrative~~

1 ~~process established under state law for the support and maintenance of a minor~~
2 ~~child as verified by the Office of Child Support Enforcement."~~

3
4 SECTION 12. Arkansas Code Annotated § 9-14-218(c) is amended to read as
5 follows:

6 "(c)(1) Any forms necessary to provide notice, affidavits, or any other
7 matter which is required by this subchapter to enforce the payment of child
8 support shall be devised by the State Commission on Child Support with advice
9 from the Administrative Office of the Courts.

10 (2) Upon the approval of the forms by the Chief Justice of the
11 Arkansas Supreme Court, they shall be used on a statewide basis in all cases
12 requiring an order or notice of income withholding for child support.

13 (3) Any necessary changes in the forms shall be the
14 responsibility of the Arkansas Supreme Court.

15 (4) Distribution of the forms shall be the responsibility of the
16 Administrative Office of the Courts."

17
18 SECTION 13. Arkansas Code Annotated 9-14-222(b) is amended to read as
19 follows:

20 (b) ~~The notice order and notice of income withholding may be served on~~
21 ~~the payor as if it were a summons pursuant to Rule 4 of the Arkansas Rules of~~
22 ~~Civil Procedure or may be sent to the payor by first class mail. If the payor~~
23 ~~does not remit the wage withholding in accordance with (d) (11) of this~~
24 ~~section, a second notice shall be sent by any form of mail requiring a signed~~
25 ~~receipt pursuant to RULE 4 of the Arkansas Rules of Civil Procedure.~~

26
27 SECTION 14. Arkansas Code Annotated § 9-14-231 is amended to read as
28 follows:

29 "9-14-231. Overdue support as lien on personal property.

30 (a)(1) Support which has been ordered paid through the registry of the
31 court or through the Arkansas child support clearinghouse and which has become
32 overdue shall become a lien on all personal property owned by the noncustodial
33 parent wherever it may be found and need not be limited to the confines of the
34 county where the court is sitting. Such lien originating in another state
35 shall be accorded full faith and credit as if such lien originated in the
36 State of Arkansas.

1 (2) Upon proof that the noncustodial parent has refused or failed
 2 to support his child or children pursuant to the order, the court may cause
 3 the property to be immediately surrendered to the sheriff of the county where
 4 the property is located and may direct the sheriff to take such action as
 5 necessary to have it sold and apply the proceeds from any sale thereof toward
 6 the costs of the sale, any superior liens, the support obligation, including
 7 court costs and any attorney's fees awarded pursuant thereto, and any inferior
 8 liens.

9 (3) Any amounts in excess of the overdue support, costs, fees,
 10 and other liens shall be paid to the noncustodial parent.

11 (4) Any person who may purchase any personal property owned by
 12 the noncustodial parent for value and without notice of the lien for support
 13 shall take the property free of the lien.

14 ~~(b) For purposes of this section, 'overdue support' means a delinquency~~
 15 ~~pursuant to an obligation created under a court decree, order, or judgment, or~~
 16 ~~an order of an administrative process established under state law for the~~
 17 ~~support and maintenance of a minor child.~~

18 ~~(c)~~ (b) The lien against personal property created in this section
 19 shall bear the same priority as set forth in § 4-9-312."

20
 21 SECTION 15. Arkansas Code Annotated § 9-14-233(b)(2) is amended to read
 22 as follows:

23 "(2) When the right to child support has been assigned to the State of
 24 Arkansas under ~~§ 20-76-410(c)~~ § 9-14-109 or § 20-77-109, reimbursement to the
 25 state under such assignment shall have priority over all other claims, after
 26 the payment of current support."

27
 28 SECTION 16. Arkansas Code Annotated § 9-14-233(d)(1) is amended to read
 29 as follows:

30 "(d)(1) In all cases brought pursuant to Title IV-D of the Social
 31 Security Act wherein the custodial parent or children receive Temporary
 32 Assistance for Needy Families (TANF), and the obligated parent owes ~~past-due~~
 33 overdue child support, the court shall order the obligated parent to pay the
 34 ~~past-due~~ overdue amount according to a plan approved by the court and in
 35 compliance with this Code."

1 SECTION 17. Arkansas Code Annotated § 9-14-239(b) is amended to read as
2 follows:

3 "(b)(1)(A) Unless a noncustodial parent executes an installment
4 agreement or makes other necessary and proper arrangements with the office,
5 the office shall notify the department or other licensing entity to suspend
6 the license or permanent license plate of the noncustodial parent whenever the
7 office determines that one (1) of the following conditions exists:

8 (i) The noncustodial parent is delinquent on a court-
9 ordered child support payment or an adjudicated arrearage in an amount equal
10 to ~~six (6)~~ three (3) months' obligation or more; or

11 (ii) The noncustodial parent is the subject of an
12 outstanding failure to appear warrant, a body attachment, or a bench warrant
13 related to a child support proceeding.

14 (B) Prior to the notification to suspend the license of the
15 noncustodial parent, the office shall determine whether the noncustodial
16 parent holds a license or permanent license plate with the department or other
17 licensing entity.

18 (2)(A) The office shall notify the noncustodial parent that a
19 request will be made to the department to suspend the license or permanent
20 license plate ~~ninety (90)~~ sixty (60) days after the notification, unless a
21 hearing with the office is requested in writing within ~~sixty (60)~~ thirty (30)
22 days to determine whether one (1) of the conditions of suspension does not
23 exist.

24 (B) Notification shall be sufficient under this subdivision
25 (2) if mailed to the noncustodial parent at either the last known address
26 provided to the court by the parent pursuant to § 9-14-205, or to the address
27 used by the noncustodial parent on the license or the application for a
28 permanent license plate."
29

30 SECTION 18. Arkansas Code Annotated § 9-14-239, authorizing the
31 suspension of specified licenses and permanent license plates for failure to
32 pay child support, is amended by adding a new subsection to read as follows:

33 "(i) Nothing provided herein shall be interpreted to prohibit the
34 chancery court, or the juvenile division thereof, from suspending a permanent
35 license plate or a license through contempt proceedings resulting from the
36 nonpayment of child support."

1
2 SECTION 19. Arkansas Code Annotated § 9-14-401, as amended by Acts 1997,
3 No. 1354, is repealed.

4 ~~§ 9-14-401. Creation. [As amended by Acts 1997, No. 1354.]~~

5 ~~(a) There is hereby established the State Commission on Child Support~~
6 ~~to be composed of not more than twenty-five (25) members appointed by the~~
7 ~~Governor and to be representative of custodial parents, noncustodial parents,~~
8 ~~Office of Child Support Enforcement personnel, legislators, judges, court~~
9 ~~clerks, child welfare agencies, and other professionals with an interest in~~
10 ~~support enforcement.~~

11 ~~(b)(1) Members of the commission shall be appointed by the Governor and~~
12 ~~shall serve for a period of three (3) years, subject to reappointment.~~

13 ~~(2) Members shall serve without compensation, but shall be~~
14 ~~entitled to per diem and mileage allowances for attendance at commission~~
15 ~~meetings at the same rate authorized by law for legislators' attendance at~~
16 ~~meetings of interim committees of the General Assembly.~~

17 ~~(c) The chairman of the commission shall be selected annually by~~
18 ~~majority vote of the commission.~~

19 ~~(d) All commission members shall be notified thirty (30) days in~~
20 ~~advance of any commission meeting.~~

21 ~~(e) Any commission member who is absent without excuse approved by the~~
22 ~~chairman for three (3) meetings shall be deemed to have removed himself from~~
23 ~~the commission. The secretary of the commission shall notify the Secretary of~~
24 ~~State of the removal so that proper notification can be forwarded to the~~
25 ~~member to notify him of his removal. A copy of the notification shall be~~
26 ~~forwarded to the Governor for appointment of a replacement.~~

27 ~~(f) Expense reimbursement shall be paid from funds appropriated to the~~
28 ~~Office of Child Support Enforcement of the Revenue Division of the Department~~
29 ~~of Finance and Administration for such purposes.~~

30
31 SECTION 20. Arkansas Code Annotated § 9-14-804 is amended to read as
32 follows:

33 "9-14-804. Payments - Effect.

34 (a)(1)(A) All child support payments made on cases brought pursuant to
35 Title IV-D shall be paid through the clearinghouse to be operated under the
36 auspices of the office.

1 (B) Alimony payments may be paid through the clearinghouse
2 if an order to pay child support is included in the order of alimony.

3 (C) Support payments under § 9-14-803(b) and any other
4 payments required by court order to be made through the registry of the court
5 or through the clerk of the court shall be made to the clearinghouse.

6 (2) The office shall seek the assistance of the Administrative
7 Office of the Courts for the purposes of securing standing orders when
8 required to facilitate payment transition.

9 (b)(1) *All orders directing payments through the clearinghouse shall
10 set forth a fee to be paid by the noncustodial parent or obligated spouse in
11 the amount of thirty-six dollars (\$36.00) per year, or nine dollars (\$9.00)
12 per quarter at the option of the obligated parent, until no children remain
13 minor, the child support obligation is extinguished, and any arrears are
14 completely satisfied.*

15 (2) *If the court sets an annual fee or a pro rata amount
16 representing the portion of the fee due for the remainder of the calendar
17 year, it shall be collected from the noncustodial parent or obligated spouse
18 at the time of the first payment, and a thirty-six-dollar fee shall be
19 collected in January of each year thereafter until no children remain minor
20 and the support obligation is extinguished.*

21 (3) The office shall have all rights and responsibilities of the
22 clerk of the court, including, but not limited to, those rights and
23 responsibilities set out in §§ 9-10-109 and 9-12-312.

24 (c)(1) In all cases transferred to the clearinghouse by the clerk of
25 the court, the fee paid by the noncustodial parent pursuant to §§ 9-10-109 and
26 9-12-312 paid subsequent to the transfer of the case, shall be paid to the
27 clearinghouse.

28 ~~(2) In cases transferred to the clearinghouse on which the
29 thirty-six-dollar annual fee has been collected by the clerk, the fee shall be
30 payable by the clerk to the office on a pro rata basis upon submission of
31 quarterly billing by the office.~~

32 ~~(3) In the event the full thirty-six-dollar annual fee is not
33 paid on a case which is later transferred to the clearinghouse, distribution
34 of the fee, if collected after transfer, shall be paid by the office to the
35 clerk quarterly on a pro rata basis."~~

36

1 SECTION 21. Arkansas Code Annotated § 17-1-104(b) is amended to read as
2 follows:

3 "(b)(1) The name, address, and social security number of the person
4 shall appear on the application; however, where an application is not
5 required, the name, address, and social security number shall appear on the
6 occupational, professional, or business license.

7 (2) On and after October 1, 2000, the name, address, and social
8 security number of each person issued a noncommercial driver's license under
9 Title 27 of the Arkansas Code Annotated shall appear on the application for
10 the noncommercial driver's license. This information shall be maintained by
11 the Revenue Services Division of the Department of Finance and Administration
12 as confidential information not subject to disclosure under any commercial
13 agreement, Freedom of Information Act request, as well as all applicable state
14 and federal confidentiality requirements."

15
16 SECTION 22. All provisions of this Act of a general and permanent
17 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
18 Code Revision Commission shall incorporate the same in the Code.

19
20 SECTION 23. If any provision of this Act or the application thereof to
21 any person or circumstance is held invalid, such invalidity shall not affect
22 other provisions or applications of the Act which can be given effect without
23 the invalid provision or application, and to this end the provisions of this
24 Act are declared to be severable.

25
26 SECTION 24. All laws and parts of laws in conflict with this Act are
27 hereby repealed.

28 /s/ Mahony

29
30
31 APPROVED: 4/15/1999
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34
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36