

HOUSE BILL No. 2393

AN ACT concerning child support enforcement; amending K.S.A. 23-4,119 and 60-2403 and K.S.A. 2006 Supp. 23-495, 32-918, 32-930 and 39-756 and repealing the existing sections; also repealing K.S.A. 2006 Supp. 39-756b.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2006 Supp. 23-495 is hereby amended to read as follows: 23-495. The court trustee shall have the responsibility:

(a) For collection of support or restitution from the obligor upon the written request of the obligee or upon the order of the court; and

(b) *to compile a list of individuals who owe arrearages under a support order or have failed, after appropriate notice, to comply with a subpoena issued pursuant to a duty of support. The court trustee shall deliver such list to the secretary of social and rehabilitation services on a quarterly basis or more frequently as requested by the secretary.*

Sec. 2. K.S.A. 23-4,119 is hereby amended to read as follows: 23-4,119. (a) Whether or not a medical child support order has previously been entered, the court ~~may~~ *shall address the medical needs of the child, and if necessary,* enter a medical child support order. *Subject to any requirements in child support guidelines adopted by the supreme court pursuant to K.S.A. 20-165, and amendments thereto, the medical child support order may require either parent or both parents to furnish coverage under any health benefit plan as provided in this section, allocate between the parents responsibility for deductibles and copayments, allocate between the parents responsibility for medical costs not covered by any health benefit plan, include costs of coverage under a health benefit plan in the calculation of a current child support order, require cash medical support as an adjustment to a current support order, and make any other provision that justice may require. Before requiring either parent to provide coverage under any health benefit plan available to the parent after consideration of,* the court shall consider whether the benefits of the plan are accessible to the child and the cost of coverage, including deductibles and copayments, in relation to the overall financial circumstances. In no event shall the court consider as a factor the availability of medical assistance to any person. Nothing in this section shall prevent the court from prospectively ordering a parent to provide coverage under any health benefit plan which may become available to the parent.

(b) Except for good cause shown, if more than one health benefit plan is available for *and accessible to* a child, the court shall give preference to the plan: (1) Designated by court order or agreement of the parties, or, if none, then (2) in which the child already has benefits, or, if none, then (3) with terms closest to those designated by court order or agreement of the parties, or, if none, then (4) in which the parent or members of the parent's household have benefits, or, if none, then (5) in which the child will receive the greatest benefits.

(c) When a medical child support order has been entered, the obligor shall be deemed to have granted by operation of law a limited power of attorney to submit claims to a health benefit plan on the child's behalf and to endorse and negotiate any check or other negotiable instrument issued in full or partial payment of the child's claim. Except as otherwise provided in this subsection, the limited power of attorney shall be held by the obligee. If the child is receiving medical assistance from the secretary of social and rehabilitation services, the secretary of social and rehabilitation services shall be deemed the sole holder of the limited power of attorney with respect to payments subject to the secretary's claim for reimbursement. Upon termination of medical assistance in this state for the child, the secretary of social and rehabilitation services shall retain the limited power of attorney with respect to medical assistance already provided until the claim of the secretary for reimbursement is satisfied. If the child is receiving medical assistance under Title XIX of the federal social security act in another state or jurisdiction, the agency or official responsible for administering the Title XIX program in that state or jurisdiction shall be deemed the sole holder of the limited power of attorney with respect to payments subject to the claim of that agency or official for reimbursement. Upon termination of medical assistance in that state or jurisdiction for the child the agency or official administering the Title XIX program shall retain the limited power of attorney with respect to medical assistance already provided until the claim of that agency or official for reimbursement is satisfied.

(d) In any case in which a participating parent is required by a court

or administrative order to provide health coverage for a child, the participating parent is eligible for family health coverage, and the child is otherwise eligible for family health coverage, without regard to any enrollment season restrictions the employer, sponsor or other administrator of a health benefit plan: (1) Shall permit the participating parent to enroll the child for coverage; or (2) if the participating parent is enrolled but has not applied for coverage for the child, shall permit the holder of a limited power of attorney pursuant to subsection (c) to enroll the child. A child enrolled under this subsection shall be treated, with regard to any preexisting condition, as though enrollment occurred during the normal open enrollment period.

(e) When a child has been enrolled for coverage pursuant to subsection (d), the employer, sponsor or other administrator of a health benefit plan shall not disenroll or eliminate coverage of the child unless the employer, sponsor or administrator is provided: (1) Satisfactory written evidence that the court or administrative order requiring the parent to provide health coverage is no longer in effect for the child and either the participating parent has requested a change or discontinuance of the child's coverage, or the child is otherwise ineligible for continued coverage; or (2) satisfactory written evidence, signed by all holders of a limited power of attorney pursuant to subsection (c), that the child is or will be enrolled in comparable health coverage through another insurer or health benefit plan which will take effect no later than the effective date of the disenrollment. An employer may also disenroll or eliminate coverage for the child if the employer has eliminated family health coverage for all of its employees.

(f) The provisions of this section and the income withholding act and amendments thereto shall apply to all orders for support, including all medical child support orders, entered in this state regardless of the date the order was entered.

Sec. 3. K.S.A. 2006 Supp. 39-756 is hereby amended to read as follows: 39-756. (a) (1) The secretary of social and rehabilitation services shall make support enforcement services required under part D of title IV of the federal social security act (42 U.S.C. § 651 et seq.), or acts amendatory thereof or supplemental thereto, and federal regulations promulgated pursuant thereto, including but not limited to the location of parents, the establishment of paternity and the enforcement of child support obligations, available to persons not subject to the requirements of K.S.A. 39-709 and amendments thereto and not receiving support enforcement services pursuant to subsection (b). Persons who previously received public assistance but who are not receiving support enforcement services pursuant to subsection (b) may apply for or receive support enforcement services pursuant to this subsection.

(2) By applying for or receiving support enforcement services pursuant to subsection (a)(1), the applicant or recipient shall be deemed to have assigned to the secretary on behalf of the state any accrued, present or future rights to support from any other person such applicant may have in behalf of any family member, including the applicant, for whom the applicant is applying for or receiving support enforcement services. The assignment shall automatically become effective upon the date of application for or receipt of support enforcement services, whichever is earlier, and shall remain in full force and effect so long as the secretary provides support enforcement services on behalf of the applicant, recipient or child. By applying for or receiving support enforcement services pursuant to subsection (a)(1), the applicant, recipient or obligee is also deemed to have appointed the secretary or the secretary's designee as an attorney in fact to perform the specific act of negotiating and endorsing all drafts, checks, money orders or other negotiable instruments representing support payments received by the secretary in behalf of any person for whom the secretary is providing support enforcement services. This limited power of attorney shall be effective from the date support rights are assigned and shall remain in effect until the assignment is terminated in full.

(3) Nothing in this subsection shall affect or limit any existing assignment or claim for repayment of any unreimbursed portion of assistance pursuant to K.S.A. 39-709 and amendments thereto or affect or limit any subsequent assignment of support rights.

(b) (1) Upon discontinuance of all public assistance ~~in accordance with a plan under which federal moneys are expended on behalf of the applicant, recipient or child for: (A) Aid to families with dependent children, (B) medical assistance, or (C) the expenses of a child in the secretary's care or custody pursuant to K.S.A. 38-1501 et seq., and amendments thereto, or K.S.A. 2006 Supp. 38-2301 et seq., and amendments thereto, giving rise to an assignment of support rights pursuant to K.S.A. 39-709, and amendments thereto,~~ the secretary shall continue to provide all appropriate support enforcement services required under title IV-D of the federal social security act for the persons who were receiving assistance, unless the recipient requests that support enforcement services be discontinued.

(2) When support enforcement services are provided pursuant to subsection (b)(1), the assignment of support rights and limited power of attorney pursuant to K.S.A. 39-709 and amendments thereto shall remain in full force and effect. When the secretary is no longer providing support enforcement services related to support obligations accruing after the date assistance was discontinued, the assignment of support rights shall remain in effect to the extent provided in K.S.A. 39-756a, *and amendments thereto.*

(3) Nothing in this subsection shall affect or limit any existing assignment or claim for repayment of any unreimbursed portion of assistance pursuant to K.S.A. 39-709 and amendments thereto or affect or limit any subsequent assignment of support rights.

(c) The secretary shall fix by rules and regulations ~~a fee or fees for services rendered pursuant to this section as required by federal law or federal regulations, or both. Such fees shall conform to the requirements of title IV-D of the federal social security act. Any fees imposed by the secretary upon a person required to make payments under a support order shall be in addition to any amount the person is required to pay as support.~~

(d) ~~Subject to subsection (g) of K.S.A. 39-709 and amendments thereto, amounts~~ *Except as otherwise provided in this subsection, assigned support that is collected on behalf of persons while a person is receiving services pursuant to subsection (a) or (b) shall be paid to them unless the secretary of social and rehabilitation services retains an assignment of support rights pursuant to K.S.A. 39-709 and amendments thereto. Except as otherwise provided in subsection (g) of K.S.A. 39-709 and amendments thereto if such an assignment is retained by the secretary, current support payments shall be paid to the obligee and the secretary may retain any support arrearage to which social and rehabilitation services has a claim. Any support arrearage collected in excess of the amount assigned to social and rehabilitation services shall be paid to the obligee distributed as required by title IV-D of the federal social security act. If federal law authorizes the secretary to elect to distribute more support to any families than would otherwise be permitted, the secretary may make such election by adopting rules and regulations for that purpose.*

(e) ~~In any action brought pursuant to this section or pursuant to subsection (g) of K.S.A. 39-709 and amendments thereto, or any action brought by a governmental agency or contractor, to establish paternity or to establish or enforce a support obligation, the social and rehabilitation services' attorney or the attorneys with whom such agency contracts to provide such services shall represent the state department of social and rehabilitation services. If any attorney provides legal services on behalf of the secretary in any case in which the secretary is furnishing title IV-D services, such attorney shall have an attorney-client relationship only with the secretary. The provisions of this subsection shall apply whether the attorney is an employee of the state, a contractor subject to the requirements of K.S.A. 75-5365, and amendments thereto, or an employee of such a contractor. Nothing in this section subsection shall be construed to modify any statutory mandate, authority or confidentiality required by any governmental agency. Any representation~~ *No action by such attorney shall not be construed to create an attorney-client relationship between the attorney and any party person, other than the state department of social and rehabilitation services secretary.*

Sec. 4. K.S.A. 2006 Supp. 32-918 is hereby amended to read as fol-

lows: 32-918. (a) Upon request of the secretary of social and rehabilitation services, the secretary of wildlife and parks shall not allow any license, permit, stamp, tag or other issue of the department of wildlife and parks to be purchased by any applicant except as provided in this section. The secretary of social and rehabilitation services may make such a request by providing the secretary of wildlife and parks, on a quarterly basis, a listing of names and other information sufficient to allow the secretary of wildlife and parks to match applicants against the list with reasonable accuracy. The secretary of social and rehabilitation services may include an individual on the listing if, at the time the listing is compiled, the individual owes arrearages under a support order in a title IV-D case or has failed, after appropriate notice, to comply with an outstanding warrant or subpoena directed to the individual in a title IV-D case. *The secretary of social and rehabilitation services shall include an individual on the listing if, at the time the listing is compiled, the individual owes arrearages under a support order, as reported to the secretary of social and rehabilitation services by the court trustee or has failed, after appropriate notice, to comply with a subpoena directed to the individual by the court trustee and as reported to the secretary of social and rehabilitation services by the court trustee.*

(b) If any applicant for a license, permit, stamp, tag or other issue of the department of wildlife and parks is not allowed to complete a purchase pursuant to this section, the vendor of the license, permit, stamp, tag or other issue of the department of wildlife and parks shall immediately deliver to the applicant a written notice, furnished by the state of Kansas, stating the basis for the action and how the applicant may dispute the action or request other relief. *Such notice shall inform the applicant who owes arrearages in an IV-D case to contact social and rehabilitation services and in a non-IV-D case to contact the court trustee.*

(c) Immediately upon receiving a release executed by an authorized agent of the secretary of social and rehabilitation services *or the court trustee*, the secretary of wildlife and parks may allow the applicant to purchase any license, permit, stamp, tag or other issue of the department of wildlife and parks. The applicant shall have the burden of obtaining and delivering the release. The secretary of social and rehabilitation services *or the court trustee* may limit the duration of the release.

(d) Upon request the secretary of social and rehabilitation services shall issue a release if, as appropriate:

- (1) The arrearages are paid in full or a tribunal of competent jurisdiction has determined that no arrearages are owed;
- (2) an income withholding order in the case has been served upon the applicant's current employer or payor;
- (3) an agreement has been completed or an order has been entered setting minimum payments to defray the arrearages, together with receipt of the first minimum payment; ~~or~~
- (4) the applicant has complied with the warrant or subpoena or the warrant or subpoena has been quashed or withdrawn; *or*
- (5) *the court trustee notifies the secretary of social and rehabilitation services that the applicant has paid the arrearages in full or has complied with the subpoena or the subpoena has been quashed or withdrawn.*

(e) Individuals previously included in a quarterly listing may be omitted from any subsequent listing by the secretary of social and rehabilitation services. When a new listing takes effect, the secretary of wildlife and parks may allow any individual not included in the new listing to purchase any license, permit, stamp, tag or other issue of the department of wildlife and parks, whether or not the applicant had been included in a previous listing.

(f) Nothing in this section shall be construed to require or permit the secretary of wildlife and parks to determine any issue related to *a child support order or related to* the title IV-D case, including questions of mistaken identity or the adequacy of any notice provided pursuant to this section. *In a title IV-D case*, the secretary of social and rehabilitation services shall provide an opportunity for fair hearing pursuant to K.S.A. 75-3306, and amendments thereto, to any person who has been denied any license, permit, stamp, tag or other issue of the department of wildlife and parks pursuant to this section, provided that the person complies with the requirements of the secretary of social and rehabilitation services

for requesting such fair hearing. *In a non-IV-D case, the applicant shall contact the court trustee.*

(g) The term “title IV-D” has the meaning ascribed thereto in K.S.A. 32-930, and amendments thereto.

(h) The secretary of social and rehabilitation services and the secretary of wildlife and parks may enter into an agreement for administering the provisions of this section.

(i) The secretary of social and rehabilitation services and the secretary of wildlife and parks may each adopt rules and regulations necessary to carry out the provisions of this section.

(j) *Upon receipt of such list, the secretary of wildlife and parks shall send by first class mail, a letter to any new individual on the listing who has a current license, permit, stamp, tag or other issue of the department of wildlife and parks informing such individual of the provisions of this section.*

Sec. 5. K.S.A. 2006 Supp. 32-930 is hereby amended to read as follows: 32-930. (a) Except as provided in subsection (c), the secretary or the secretary’s designee is authorized to issue to any Kansas resident a lifetime fishing, hunting or furharvester or combination hunting and fishing license upon proper application made therefor to the secretary or the secretary’s designee and payment of a license fee as follows: (1) A total payment made at the time of purchase in the amount prescribed pursuant to K.S.A. 32-988 and amendments thereto; or (2) payment may be made over a two-year period in eight quarter-annual installments in the amount prescribed pursuant to K.S.A. 32-988 and amendments thereto. If payment is in installments, the license shall not be issued until the final installment has been paid. A person making installment payments shall not be required to obtain the appropriate annual license, and each installment payment shall be deemed to be such an annual license for a period of one year following the date of the last installment payment made. If an installment payment is not received within 30 days after it is due and owing, the secretary may consider the payments in default and may retain any payments previously received. Any lifetime license issued to a Kansas resident shall not be made invalid by reason of the holder thereof subsequently residing outside the state of Kansas. Any nonresident holder of a Kansas lifetime hunting or combination hunting and fishing license shall be eligible under the same conditions as a Kansas resident for a big game or wild turkey permit upon proper application to the secretary. Any nonresident holder of a lifetime fishing license issued before July 1, 1989, shall be eligible under the same conditions as a Kansas resident for a big game or wild turkey permit upon proper application to the secretary.

(b) For the purposes of subsection (a), the term “resident” shall have the meaning defined in K.S.A. 32-701, and amendments thereto, except that a person shall have maintained that person’s place of permanent abode in this state for a period of not less than one year immediately preceding the person’s application for a lifetime fishing, hunting or furharvester or combination hunting and fishing license.

(c) (1) Upon request of the secretary of social and rehabilitation services, the secretary of wildlife and parks shall not issue a lifetime fishing, hunting or furharvester or combination hunting and fishing license to an applicant except as provided in this subsection. The secretary of social and rehabilitation services may make such a request if, at the time of the request, the applicant:

(A) Owed arrearages under a support order in a title IV-D case being administered by the secretary of social and rehabilitation services ~~or~~;

(B) had outstanding a warrant or subpoena, directed to the applicant, in a title IV-D case being administered by the secretary of social and rehabilitation services;

(C) *owes arrearages under a support order, as reported to the secretary of social and rehabilitation services by the court trustee; or*

(D) *has failed, after appropriate notice, to comply with a subpoena directed to the individual by the court trustee as reported to the secretary of social and rehabilitation services by the court trustee.*

(2) Upon receiving a release from an authorized agent of the secretary of social and rehabilitation services *or the court trustee*, the secretary of wildlife and parks may issue the lifetime fishing, hunting or furharvester

or combination hunting and fishing license. The applicant shall have the burden of obtaining and delivering the release.

(3) The secretary of social and rehabilitation services shall issue a release upon request if, as appropriate:

~~(1)~~ (A) The arrearages are paid in full or a tribunal of competent jurisdiction has determined that no arrearages are owed;

~~(2)~~ (B) an income withholding order has been served upon the applicant's current employer or payor;

~~(3)~~ (C) an agreement has been completed or an order has been entered setting minimum payments to defray the arrearages, together with receipt of the first minimum payment; ~~or~~

~~(4)~~ (D) the applicant has complied with the warrant or subpoena or the warrant or subpoena has been quashed or withdrawn; *or*

(E) *the court trustee notifies the secretary of social and rehabilitation services that the applicant has paid the arrearages in full or has complied with the subpoena or the subpoena has been quashed or withdrawn.*

(d) (1) *Upon request of the secretary of social and rehabilitation services, the secretary of wildlife and parks shall suspend a lifetime fishing, hunting or furharvester or combination hunting and fishing license to a licensee as provided in this subsection. The secretary of social and rehabilitation services may make such a request if, at the time of the request, the applicant owed arrearages under a support order or had outstanding a warrant or subpoena as stated in subsection (c)(1).*

(2) *Upon receiving a release from an authorized agent of the secretary of social and rehabilitation services or the court trustee, the secretary of wildlife and parks may reinstate the lifetime fishing, hunting or furharvester or combination hunting and fishing license. The licensee shall have the burden of obtaining and delivering the release.*

(3) *The secretary of social and rehabilitation services shall issue a release upon request if the requirements of subsection (c)(3) are met.*

(e) Nothing in ~~this~~ subsection (c) or (d) shall be construed to require or permit the secretary of wildlife and parks to determine any issue related to a child support order or related to the title IV-D case ~~except~~ including to resolve questions of mistaken identity or determine the adequacy of any notice relating to ~~this~~ subsection (c) or (d) that the secretary of wildlife and parks provides to the applicant.

(f) "Title IV-D" means part D of title IV of the federal social security act (42 U.S.C. § 651 et seq.) and amendments thereto, as in effect on December 31, 2001, relating to child support enforcement services.

~~(4)~~ (g) The secretary, in accordance with K.S.A. 32-805 and amendments thereto, may adopt rules and regulations necessary to carry out the provisions of this section.

Sec. 6. K.S.A. 60-2403 is hereby amended to read as follows: 60-2403. (a) (1) Except as provided in subsection (b) or (d), if a renewal affidavit is not filed or if execution, including any garnishment proceeding, support enforcement proceeding or proceeding in aid of execution, is not issued, within five years from the date of the entry of any judgment in any court of record in this state, including judgments in favor of the state or any municipality in the state, or within five years from the date of any order reviving the judgment or, if five years have intervened between the date of the last renewal affidavit filed or execution proceedings undertaken on the judgment and the time of filing another renewal affidavit or undertaking execution proceedings on it, the judgment, including court costs and fees therein shall become dormant, and shall cease to operate as a lien on the real estate of the judgment debtor. ~~Except as provided in subsection (b), when~~ *When a judgment becomes and remains dormant for a period of two years, it shall be the duty of the clerk of the court judge to release the judgment of record when requested to do so.*

(2) A "renewal affidavit" is a statement under oath, signed by the judgment creditor or the judgment creditor's attorney, filed in the proceedings in which the judgment was entered and stating the remaining balance due and unpaid on the judgment.

(3) A "support enforcement proceeding" means any civil proceeding to enforce any judgment for payment of child support or maintenance and includes, but is not limited to, any income withholding proceeding under the income withholding act, K.S.A. 23-4,105 through 23-4,118 and amendments thereto, or the interstate income withholding act, K.S.A. 23-

4,125 through 23-4,137 and amendments thereto, any contempt proceeding and any civil proceeding under the ~~revised uniform reciprocal enforcement of support act (1968), K.S.A. 23-457~~ *uniform interstate family support act, K.S.A. 23-9,101 et seq.*, and amendments thereto.

(b) ~~(1) If a judgment for the support of a child becomes dormant before the child's emancipation, it shall be the duty of the clerk of the court to release the judgment of record when requested to do so only if the judgment has remained dormant for the period prior to the child's emancipation plus two years. When, after the child's emancipation, a judgment for the support of a child becomes and remains dormant for a period of two years, it shall be the duty of the clerk of the court to release the judgment of record when requested to do so.~~

~~(2) The provisions of this subsection shall apply only to those judgments which have not become void as of July 1, 1988. Except for those judgments which have become void as of July 1, 2007, no judgment for the support of a child shall be or become dormant for any purpose except as provided in this subsection. If a judgment would have become dormant under the conditions set forth in subsection (a), the judgment shall cease to operate as a lien on the real estate of the judgment debtor as of the date the judgment would have become dormant, but the judgment shall not be released of record pursuant to subsection (a).~~

(c) The time within which action must be taken to prevent a judgment from becoming dormant does not run during any period in which the enforcement of the judgment by legal process is stayed or prohibited.

(d) If a renewal affidavit is not filed or if execution is not issued, within 10 years from the date of the entry of any judgment of restitution in any court of record in this state, the judgment, including court costs and fees therein shall become dormant, and shall cease to operate as a lien on the real estate of the judgment debtor. Except as provided in subsection (b), when a judgment becomes and remains dormant for a period of two years, it shall be the duty of the ~~clerk of the court~~ *judge* to release the judgment of record when requested to do so.

Sec. 7. K.S.A. 23-4,119 and 60-2403 and K.S.A. 2006 Supp. 23-495, 32-918, 32-930, 39-756 and 39-756b are hereby repealed.

Sec. 8. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the HOUSE, and passed that body

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

Passed the SENATE
as amended _____

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

APPROVED _____

Governor.