

“They Booted My Car” and “They Took My License”

An Introduction and Overview

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Executive Summary: In October 2007, the Governor signed into law the most comprehensive package of legislation effecting child support enforcement since the introduction of mandatory child support withholdings through the State Disbursement Unit. This package of legislation was heavily backed by the child support enforcement community such as the Illinois Attorney General. The [Illinois Government News Network](#) trumpeted this: “Governor Rod R. Blagojevich today signed a new law that would give the Department of Healthcare and Family Services (HFS) Division of Child Support, the ability to use more aggressive enforcement tools to collect child support payments from deadbeat parents. On behalf of the Governor, Illinois Healthcare and Family Services Director Barry Maram joined more than a dozen Illinois families, legislators and child advocates at the Marcy Newberry Day Care Center to herald Senate Bill 1035 which will add administrative suspension of Illinois driving privileges and allows municipalities to immobilize vehicles for certain child support debtors to the list of enforcement actions available. The legislation also add severance pay to the as the definition of income for wage withholding purposes and authorizes parents and their legal representatives to review case records.” ***The downside to the legislation is that review is limited to Administrative Review.***

Overview and Status of Public Act 95-685

Public Act 95-685 (stemming from [Senate Bill 1035](#)) is “package legislation” which amends the Illinois Public Aid Code, the Illinois Vehicle Code, and the Illinois Income Withholding for Support Act. The full text of the bill can be found on the Illinois General Assembly website. The synopsis of Senate Bill 1035 states (with emphasis added):

Amends the Illinois Public Aid Code, the Illinois Vehicle Code, and the Income Withholding for Support Act. Provides for an obligor's or obligee's access to certain case records in connection with the 99. Provides that the Department of Healthcare and Family Services may provide by rule for certification to municipalities of past due support owed by responsible relatives for the purpose of effecting collection of past due support by ***immobilization and impoundment of vehicles registered to responsible relatives***. Provides for ***denial, refusal to renew, or suspension of a person's driver's license if the person is 90 days or more delinquent in payment of support***. Authorizes municipalities to provide by ordinance for a program of vehicle immobilization and impoundment in cases in which the Department of Healthcare and Family Services has certified to the municipality that the registered owner of a vehicle owes past due support. Provides that for purposes of the Income Withholding for Support Act, ***“income” includes severance pay***. Effective immediately.

Current Status: This legislation is ***effective immediately***.

SECTION ONE:

AMENDMENTS TO ILLINOIS PUBLIC AID CODE ***(305 ILCS 5/1-1 et seq.)***

- A. **Sec. 10-9.5 (new). Access to records.** In any hearing, case, appeal, or other matter arising out of the provisions concerning the determination and enforcement of the support responsibility of relatives, an obligor or obligee, or their legal representatives, shall be entitled to review any case records in the possession of the Illinois Department of Healthcare and Family Services, the State Disbursement Unit, or a circuit clerk with regard to that obligor or obligee that are able to prove any matter relevant to the hearing, case, appeal, or other matter if access to the record or portion of the record is authorized by 42 U.S.C. 654. [This is the law which requires any state plan for child support and spousal support “to have in effect safeguards, applicable to all confidential information handled by the State agency, that are designed to protect the privacy rights of the parties” which includes prohibitions of the location of one party in cases of domestic violence, etc. See subsection (26). See also UIFSA Section 312 for similar provisions.]

Note: The legislation leaves undefined how that individual is to review the case records in possession of HFS (The Illinois Department), the SDU or the Circuit Clerk.

- B. **Sec. 10-17.6. Certification of Past Due Support Information to Licensing Agencies.** The Illinois Department **may provide by rule** for certification to any **State licensing agency** of **(I) the failure of responsible relatives to comply with subpoenas or warrants relating to paternity or child support proceedings** and **(ii) past due support owed by responsible relatives under a support order entered by a court or administrative body of this or any other State on behalf of resident or non-resident persons receiving child support enforcement services under Title IV, Part D of the Social Security Act.** The rule shall provide for notice to and an opportunity to be heard by each responsible relative affected and any final administrative decision rendered by the Department shall be reviewed only under and in accordance with the Administrative Review Law. (Source: P.A. 87-412.)

- C. **Sec. 10-17.13 (new). Vehicle immobilization and impoundment.** The Illinois Department may provide by rule for certification to municipalities of past due support owed by responsible relatives under a support order entered by a court or administrative body of this or any other State on behalf of resident or non-resident persons. The purpose of certification shall be to effect collection of past due support by immobilization and impoundment of vehicles registered to responsible relatives pursuant to ordinances established by such municipalities under Section 11-1430 of the Illinois Vehicle Code [the new law addressed below]. The rule shall provide for notice to and an opportunity to be heard by each responsible relative affected, and any final administrative decision rendered by the Department shall be reviewed only under and in accordance with the Administrative Review Law. A responsible relative may avoid certification to a municipality for vehicle immobilization or arrange for discontinuance of vehicle immobilization and impoundment already engaged by payment of past due support or by entering into a plan for payment of past and current child support obligations in a manner satisfactory to the Illinois Department.

Note: This legislation restricts the review to only “*Administrative Review Law.*”

SECTION TWO:

AMENDMENTS TO ILLINOIS VEHICLE CODE **(625 ILCS 5/1-100 et seq.)**

Licensing by Secretary of State

- A. **Sec. 6-103. What persons shall not be licensed as drivers or granted permits.** The Secretary of State shall not issue, renew, or allow the retention of any driver's license nor issue any permit under this Code:

14.5. To any person certified by the Illinois Department of Healthcare and Family Services as being **90 days or more delinquent** in payment of support under an order of support entered by a court or administrative body of this or any other State, subject to the requirements and procedures of Article VII of Chapter 7 of this Code regarding those certifications;

Note: This greatly expands the scope of the previous law regarding license suspension.

Definitions Added/Amended

A. **Sec. 7-100 [Definitions]:** The following definitions are added/amended:

1. **Administrative order of support.** An order for the support of dependent children issued by an administrative body of this or any other State.
2. **Court order of support.** A judgment order for the support of dependent children issued by a court of this State, including a judgment of dissolution of marriage. With regard to a certification by the Department of Healthcare and Family Services under subsection (c) of Section 7-702, the term "court order of support" shall include an order of support entered by a court of this or any other State.

Suspension of License

- A. **Sec. 7-702 [Suspension of driver's license for failure to comply with order to pay child support.]** The following section has been added:

(c) The Secretary of State **shall suspend** a driver's license upon certification by the Illinois Department of Healthcare and Family Services, in a manner and form prescribed by the Illinois Secretary of State, that the person licensed is 90 days or more delinquent in payment of support under an order of support issued by a court or administrative body of this or any other State. The Secretary of State **may reinstate** the person's driver's license if notified by the Department of Healthcare and Family Services that the person has paid the support delinquency in full or has arranged for payment of the delinquency and current support obligation in a manner satisfactory to the Department of Healthcare and Family Services.

Note: The use of the term may for the Secretary of State's responsibilities to reinstate contrasts with their duty to suspend upon certification from HFS. The phrase "has arranged for payment ... in a manner satisfactory to the Department of Healthcare and Family Services" vests broad discretion in HFS.

- B. **Sec. 7-704 [Suspension to continue until compliance with court order of support.]** The following section has been added:

(c) Section 7-704.1, and not this Section, governs the duration of a driver's license suspension if the suspension occurs as the result of a certification by the Illinois Department of Healthcare and Family Services under subsection (c) of Section 7-702.

- C. **Sec. 7-704.1 (new). Duration of driver's license suspension upon certification of Department of Healthcare and Family Services.** The following section has been added:

(a) When a suspension of a driver's license occurs as the result of a certification by the Illinois Department of Healthcare and Family Services under subsection (c) of Section 7-702, the suspension shall remain in effect until the Secretary of State receives notification from the Department that the person whose license was suspended has paid the support delinquency in full or has arranged for payment of the delinquency and current support obligation in a manner satisfactory to the Department.

(b) [Multiple Certifications - Payment in Full] Whenever, after one suspension of an individual's driver's license based on certification of the

Department of Healthcare and Family Services, another certification is received from the Department of Healthcare and Family Services, the Secretary shall again suspend the driver's license of that individual and that suspension shall not be removed unless the obligor is in full compliance with the order of support and has made full payment on all arrearages

Notice and The Battle to Get Your License

- A. **Sec. 7-705. Notice.** This section is amended as follows (with emphasis added):

The Secretary of State, prior to suspending a driver's license under this Chapter, shall serve written notice upon an obligor that the individual's driver's license will be suspended in 60 days from the date on the notice unless (I) the obligor satisfies the court order of support and the circuit clerk notifies the Secretary of State of this compliance or (ii) if the Illinois Department of Healthcare and Family Services has made a certification to the Secretary of State under subsection (c) of Section 7-702, the Department notifies the Secretary of State that the person licensed has paid the support delinquency in full or has arranged for payment of the delinquency and current support obligation in a manner satisfactory to the Department.

- B. **Sec.7-706. Administrative Hearing** (with emphasis added):

A driver may contest this driver's license sanction by requesting an *administrative hearing* in accordance with Section 2-118 of this Code. If a *written request for this hearing is received prior to the effective date of the suspension, the suspension shall be stayed*. If a stay of the suspension is granted, it shall remain in effect until a hearing decision is entered. At the conclusion of this hearing, the Secretary of State may rescind or impose the driver's license suspension. If *the suspension is upheld*, it shall become effective *10 days from the date the hearing* decision is entered. If the decision is to rescind the suspension, no suspension of driving privileges shall be entered. The *scope of this hearing shall be limited* to the following issues:

(a) Whether the driver is the obligor covered by the court order or administrative order of support.

(b) Whether (I) the authenticated document of a court order of support indicates that the obligor is 90 days or more delinquent or

has been adjudicated in arrears in an amount equal to 90 days obligation or more and has been found in contempt of court for failure to pay child support or (ii) the certification of the Illinois Department of Healthcare and Family Services under subsection (c) or Section 7-702 indicates that the person is 90 days or more delinquent in payment of support under an order of support issued by a court or administrative body of this or any other State.

(c) Whether (I) a superseding authenticated document of any court order of support has been entered or (ii) the Illinois Department of Healthcare and Family Services, in a superseding notification, has informed the Secretary of State that the person certified under subsection (c) of Section 7-702 has paid the support delinquency in full or has arranged for payment of the delinquency and current support obligation in a manner satisfactory to the Department.

C. **Sec. 7-707. Payment of reinstatement fee.** This section has been amended as follows:

When a person ~~an obligor~~ receives notice from the Secretary of State that the suspension of driving privileges has been terminated based upon (I) receipt of notification from the circuit clerk of the person's compliance as obligor with a court order of support or (ii) receipt of notification from the Illinois Department of Healthcare and Family Services that the person whose driving privileges were terminated has paid the delinquency in full or has arranged for payment of the delinquency and the current support obligation in a manner satisfactory to the Department (in a case in which the person's driving privileges were suspended upon a certification by the Department under subsection (c) of Section 7-702), the obligor shall pay a \$70 reinstatement fee to the Secretary of State as set forth in Section 6-118 of this Code. ***

D. **Sec. 7-708. Rules.** This section grants the Secretary of State with authority to suspend licenses for failure to comply with court or administrative orders. It provides:

The Secretary of State, using the authority to license motor vehicle operators, may adopt such rules as may be necessary to establish standards, policies, and procedures for the suspension of driver's licenses for non-compliance with a court or administrative order of support.

Vehicle Immobilization - DAS BOOT!

- A. **Sec. 11-1430. (new.) Vehicle Immobilization.** The following section has been added:

Sec. 11-1430. Vehicle immobilization and impoundment upon certification of the Department of Healthcare and Family Services. *Any municipality may provide by ordinance for a program of vehicle immobilization and impoundment* in cases in which the Department of Healthcare and Family Services has certified to the municipality under Section 10-17.13 of the Illinois Public Aid Code that the registered owner of a vehicle owes past due support. The program *shall provide for immobilization of any eligible vehicle upon the public way* by presence of a restraint in a manner to prevent operation of the vehicle and for subsequent towing and impoundment of such vehicle solely upon the certification of past due support by the Department of Healthcare and Family Services. Further process, hearings, or redetermination of the past due support by the municipality shall not be required under the ordinance. The ordinance shall provide that the municipality may terminate immobilization and impoundment of the vehicle if the registered owner has arranged for payment of past and current support obligations in a manner satisfactory to the Department of Healthcare and Family Services.

SECTION THREE:

AMENDMENTS TO THE INCOME WITHHOLDING FOR SUPPORT ACT
(750 ILCS 28/15 et seq.)

- A. **Severance Pay and Amendments to the IWSA:** Amendments to the Income Withholding for Support Act (750 ILCS 28/15) add one critical word to the definition of income.

1. **Sec. 15. – Income Withholding for Support Act.** This legislation amended the IWSA to include “severance pay” in the definition of “income”.

Note: This incorporates a critical and unrelated expansion to child support legislation. Family lawyers have often encountered cases where one of the issues is the termination of employment and the receipt of a substantial severance package.

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