Resolution 07-02-2018 Family Code suspension of licenses.pdf

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RESOLUTION 07-02-2018

DIGEST
Child Support: Repeal Suspension of Driver’s License for Non-Payment
Deletes Family Code section 17520 to remove the suspension of a driver’s licenses for non-payment of child support.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to delete Family Code section 17520 to read as follows:

§ 17520.
(a) As used in this section:
(1) “Applicant” means a person applying for issuance or renewal of a license.
(2) “Board” means an entity specified in Section 101 of the Business and Professions Code, the entities referred to in Sections 1000 and 3600 of the Business and Professions Code, the State Bar, the Bureau of Real Estate, the Department of Motor Vehicles, the Secretary of State, the Department of Fish and Wildlife, and any other state commission, department, committee, examiner, or agency that issues a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession, or to the extent required by federal law or regulations, for recreational purposes. This term includes all boards, commissions, departments, committees, examiners, entities, and agencies that issue a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession. The failure to specifically name a particular board, commission, department, committee, examiner, entity, or agency that issues a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession does not exclude that board, commission, department, committee, examiner, entity, or agency from this term.
(3) “Certified list” means a list provided by the local child support agency to the Department of Child Support Services in which the local child support agency verifies, under penalty of perjury, that the names contained therein are support obligors found to be out of compliance with a judgment or order for support in a case being enforced under Title IV-D of the federal Social Security Act.
(4) “Compliance with a judgment or order for support” means that, as set forth in a judgment or order for child or family support, the obligor is no more than 30 calendar days in arrears in making payments in full for current support, in making periodic payments in full, whether court ordered or by agreement with the local child support agency, on a support arrearage, or in making periodic payments in full, whether court ordered or by agreement with the local child support agency, on a judgment for reimbursement for public assistance, or has obtained a judicial finding that equitable estoppel as provided in statute or case law precludes enforcement of the order. The local child support agency is authorized to use this section to enforce orders for spousal support only when the local child support agency is also enforcing a related child support obligation owed to the obligee parent by the same obligor, pursuant to Sections 17400 and 17604.
(5) “License” includes membership in the State Bar, and a certificate, credential, permit,
registration, or any other authorization issued by a board that allows a person to engage in a business, occupation, or profession, or to operate a commercial motor vehicle, including appointment and commission by the Secretary of State as a notary public. “License” also includes any driver’s license issued by the Department of Motor Vehicles, any commercial fishing license issued by the Department of Fish and Wildlife, and to the extent required by federal law or regulations, any license used for recreational purposes. This term includes all licenses, certificates, credentials, permits, registrations, or any other authorization issued by a board that allows a person to engage in a business, occupation, or profession. The failure to specifically name a particular type of license, certificate, credential, permit, registration, or other authorization issued by a board that allows a person to engage in a business, occupation, or profession, does not exclude that license, certificate, credential, permit, registration, or any other authorization from this term.

(6) “Licensee” means a person holding a license, certificate, credential, permit, registration, or any other authorization issued by a board, to engage in a business, occupation, or profession, or a commercial driver’s license as defined in Section 15210 of the Vehicle Code, including an appointment and commission by the Secretary of State as a notary public. “Licensee” also means a person holding a driver’s license issued by the Department of Motor Vehicles, a person holding a commercial fishing license issued by the Department of Fish and Game, and, to the extent required by federal law or regulations, a person holding a license used for recreational purposes. This term includes all persons holding a license, certificate, credential, permit, registration, or any other authorization to engage in a business, occupation, or profession, and the failure to specifically name a particular type of license, certificate, credential, permit, registration, or other authorization issued by a board does not exclude that person from this term. For licenses issued to an entity that is not an individual person, “licensee” includes an individual who is either listed on the license or who qualifies for the license.

(b) The local child support agency shall maintain a list of those persons included in a case being enforced under Title IV-D of the federal Social Security Act against whom a support order or judgment has been rendered by, or registered in, a court of this state, and who are not in compliance with that order or judgment. The local child support agency shall submit a certified list with the names, social security numbers, and last known addresses of these persons and the name, address, and telephone number of the local child support agency who certified the list to the department. The local child support agency shall verify, under penalty of perjury, that the persons listed are subject to an order or judgment for the payment of support and that these persons are not in compliance with the order or judgment. The local child support agency shall submit to the department an updated certified list on a monthly basis.

(c) The department shall consolidate the certified lists received from the local child support agencies and, within 30 calendar days of receipt, shall provide a copy of the consolidated list to each board that is responsible for the regulation of licenses, as specified in this section.

(d) On or before November 1, 1992, or as soon thereafter as economically feasible, as determined by the department, all boards subject to this section shall implement procedures to accept and process the list provided by the department, in accordance with this section. Notwithstanding any other law, all boards shall collect social security numbers or individual taxpayer identification numbers from all applicants for the purposes of matching the names of the certified list provided by the department to applicants and licensees and of responding to requests for this information made by child support agencies.
(e) (1) Promptly after receiving the certified consolidated list from the department, and
prior to the issuance or renewal of a license, each board shall determine whether the applicant is
on the most recent certified consolidated list provided by the department. The board shall have
the authority to withhold issuance or renewal of the license of an applicant on the list.
(2) If an applicant is on the list, the board shall immediately serve notice as specified in
subdivision (f) on the applicant of the board’s intent to withhold issuance or renewal of the
license. The notice shall be made personally or by mail to the applicant’s last known mailing
address on file with the board. Service by mail shall be complete in accordance with Section
1013 of the Code of Civil Procedure.
(A) The board shall issue a temporary license valid for a period of 150 days to any
applicant whose name is on the certified list if the applicant is otherwise eligible for a license.
(B) Except as provided in subparagraph (D), the 150-day time period for a temporary
license shall not be extended. Except as provided in subparagraph (D), only one temporary
license shall be issued during a regular license term and it shall coincide with the first 150 days
of that license term. As this paragraph applies to commercial driver’s licenses, “license term”
shall be deemed to be 12 months from the date the application fee is received by the Department
of Motor Vehicles. A license for the full or remainder of the license term shall be issued or
renewed only upon compliance with this section.
(C) In the event that a license or application for a license or the renewal of a license is
denied pursuant to this section, any funds paid by the applicant or licensee shall not be refunded
by the board.
(D) This paragraph shall apply only in the case of a driver’s license, other than a
commercial driver’s license. Upon the request of the local child support agency or by order of
the court upon a showing of good cause, the board shall extend a 150-day temporary license for a
period not to exceed 150 extra days.
(3) (A) The department may, when it is economically feasible for the department and the
boards to do so as determined by the department, in cases where the department is aware that
certain child support obligors listed on the certified lists have been out of compliance with a
judgment or order for support for more than four months, provide a supplemental list of these
obligors to each board with which the department has an interagency agreement to implement
this paragraph. Upon request by the department, the licenses of these obligors shall be subject to
suspension, provided that the licenses would not otherwise be eligible for renewal within six
months from the date of the request by the department. The board shall have the authority to
suspend the license of any licensee on this supplemental list.
(B) If a licensee is on a supplemental list, the board shall immediately serve notice as
specified in subdivision (f) on the licensee that his or her license will be automatically suspended
150 days after notice is served, unless compliance with this section is achieved. The notice shall
be made personally or by mail to the licensee’s last known mailing address on file with the
board. Service by mail shall be complete in accordance with Section 1013 of the Code of Civil
Procedure.
(C) The 150-day notice period shall not be extended.
(D) In the event that any license is suspended pursuant to this section, any funds paid by
the licensee shall not be refunded by the board.
(E) This paragraph shall not apply to licenses subject to annual renewal or annual fee.
(f) Notices shall be developed by each board in accordance with guidelines provided by
the department and subject to approval by the department. The notice shall include the address
and telephone number of the local child support agency that submitted the name on the certified list, and shall emphasize the necessity of obtaining a release from that local child support agency as a condition for the issuance, renewal, or continued valid status of a license or licenses.

(1) In the case of applicants not subject to paragraph (3) of subdivision (e), the notice shall inform the applicant that the board shall issue a temporary license, as provided in subparagraph (A) of paragraph (2) of subdivision (e), for 150 calendar days if the applicant is otherwise eligible and that upon expiration of that time period the license will be denied unless the board has received a release from the local child support agency that submitted the name on the certified list.

(2) In the case of licensees named on a supplemental list, the notice shall inform the licensee that his or her license will continue in its existing status for no more than 150 calendar days from the date of mailing or service of the notice and thereafter will be suspended indefinitely unless, during the 150-day notice period, the board has received a release from the local child support agency that submitted the name on the certified list. Additionally, the notice shall inform the licensee that any license suspended under this section will remain so until the expiration of the remaining license term, unless the board receives a release along with applications and fees, if applicable, to reinstate the license during the license term.

(3) The notice shall also inform the applicant or licensee that if an application is denied or a license is suspended pursuant to this section, any funds paid by the applicant or licensee shall not be refunded by the board. The Department of Child Support Services shall also develop a form that the applicant shall use to request a review by the local child support agency. A copy of this form shall be included with every notice sent pursuant to this subdivision.

(g) (1) Each local child support agency shall maintain review procedures consistent with this section to allow an applicant to have the underlying arrearage and any relevant defenses investigated, to provide an applicant information on the process of obtaining a modification of a support order, or to provide an applicant assistance in the establishment of a payment schedule on arrearages if the circumstances so warrant.

(2) It is the intent of the Legislature that a court or local child support agency, when determining an appropriate payment schedule for arrearages, base its decision on the facts of the particular case and the priority of payment of child support over other debts. The payment schedule shall also recognize that certain expenses may be essential to enable an obligor to be employed. Therefore, in reaching its decision, the court or the local child support agency shall consider both of these goals in setting a payment schedule for arrearages.

(h) If the applicant wishes to challenge the submission of his or her name on the certified list, the applicant shall make a timely written request for review to the local child support agency who certified the applicant’s name. A request for review pursuant to this section shall be resolved in the same manner and timeframe provided for resolution of a complaint pursuant to Section 17800. The local child support agency shall immediately send a release to the appropriate board and the applicant, if any of the following conditions are met:

(1) The applicant is found to be in compliance or negotiates an agreement with the local child support agency for a payment schedule on arrearages or reimbursement.

(2) The applicant has submitted a request for review, but the local child support agency will be unable to complete the review and send notice of its findings to the applicant within the time specified in Section 17800.

(3) The applicant has filed and served a request for judicial review pursuant to this section, but a resolution of that review will not be made within 150 days of the date of service of
notice pursuant to subdivision (f). This paragraph applies only if the delay in completing the judicial review process is not the result of the applicant's failure to act in a reasonable, timely, and diligent manner upon receiving the local child support agency's notice of findings.

(4) The applicant has obtained a judicial finding of compliance as defined in this section.

(i) An applicant is required to act with diligence in responding to notices from the board and the local child support agency with the recognition that the temporary license will lapse or the license suspension will go into effect after 150 days and that the local child support agency and, where appropriate, the court must have time to act within that period. An applicant's delay in acting, without good cause, which directly results in the inability of the local child support agency to complete a review of the applicant's request or the court to hear the request for judicial review within the 150-day period shall not constitute the diligence required under this section which would justify the issuance of a release.

(j) Except as otherwise provided in this section, the local child support agency shall not issue a release if the applicant is not in compliance with the judgment or order for support. The local child support agency shall notify the applicant in writing that the applicant may, by filing an order to show cause or notice of motion, request any or all of the following:

(1) Judicial review of the local child support agency's decision not to issue a release.

(2) A judicial determination of compliance.

(3) A modification of the support judgment or order.

The notice shall also contain the name and address of the court in which the applicant shall file the order to show cause or notice of motion and inform the applicant that his or her name shall remain on the certified list if the applicant does not timely request judicial review. The applicant shall comply with all statutes and rules of court regarding orders to show cause and notices of motion. This section shall not be deemed to limit an applicant from filing an order to show cause or notice of motion to modify a support judgment or order or to fix a payment schedule on arrearages accruing under a support judgment or order or to obtain a court finding of compliance with a judgment or order for support.

(k) The request for judicial review of the local child support agency's decision shall state the grounds for which review is requested and judicial review shall be limited to those stated grounds. The court shall hold an evidentiary hearing within 20 calendar days of the filing of the request for review. Judicial review of the local child support agency's decision shall be limited to a determination of each of the following issues:

(1) Whether there is a support judgment, order, or payment schedule on arrearages or reimbursement.

(2) Whether the petitioner is the obligor covered by the support judgment or order.

(3) Whether the support obligor is or is not in compliance with the judgment or order of support.

(4) (A) The extent to which the needs of the obligor, taking into account the obligor's payment history and the current circumstances of both the obligor and the obligee, warrant a conditional release as described in this subdivision.

(B) The request for judicial review shall be served by the applicant upon the local child support agency that submitted the applicant's name on the certified list within seven calendar days of the filing of the petition. The court has the authority to uphold the action, unconditionally release the license, or conditionally release the license.

(C) If the judicial review results in a finding by the court that the obligor is in compliance with the judgment or order for support, the local child support agency shall immediately send a
release in accordance with subdivision

(l) to the appropriate board and the applicant. If the judicial review results in a finding by
the court that the needs of the obligor warrant a conditional release, the court shall make findings
of fact stating the basis for the release and the payment necessary to satisfy the unrestricted
issuance or renewal of the license without prejudice to a later judicial determination of the
amount of support arrearages, including interest, and shall specify payment terms, compliance
with which are necessary to allow the release to remain in effect.

(l) The department shall prescribe release forms for use by local child support agencies.
When the obligor is in compliance, the local child support agency shall mail to the applicant and
the appropriate board a release stating that the applicant is in compliance. The receipt of a release
shall serve to notify the applicant and the board that, for the purposes of this section, the
applicant is in compliance with the judgment or order for support. Any board that has received a
release from the local child support agency pursuant to this subdivision shall process the
release within five business days of its receipt. If the local child support agency determines
subsequent to the issuance of a release that the applicant is once again not in compliance with a
judgment or order for support, or with the terms of repayment as described in this subdivision,
the local child support agency may notify the board, the obligor, and the department in a format
prescribed by the department that the obligor is not in compliance. The department may, when it
is economically feasible for the department and the boards to develop an automated process for
complying with this subdivision, notify the boards in a manner prescribed by the department, that
the obligor is once again not in compliance. Upon receipt of this notice, the board shall
immediately notify the obligor on a form prescribed by the department that the obligor’s license
will be suspended on a specific date, and this date shall be no longer than 30 days from the date
the form is mailed. The obligor shall be further notified that the license will remain suspended
until a new release is issued in accordance with subdivision (h). Nothing in this section shall be
deemed to limit the obligor from seeking judicial review of suspension pursuant to the
procedures described in subdivision (k):

(m) The department may enter into interagency agreements with the state agencies that
have responsibility for the administration of boards necessary to implement this section, to the
extent that it is cost effective to implement this section. These agreements shall provide for the
receipt by the other state agencies and boards of federal funds to cover that portion of costs
allowable in federal law and regulation and incurred by the state agencies and boards in
implementing this section. Notwithstanding any other provision of law, revenue generated by a
board or state agency shall be used to fund the nonfederal share of costs incurred pursuant to this
section.

These agreements shall provide that boards shall reimburse the department for the
nonfederal share of costs incurred by the department in implementing this section. The boards
shall reimburse the department for the nonfederal share of costs incurred pursuant to this section
from moneys collected from applicants and licensees.

(n) Notwithstanding any other law, in order for the boards subject to this section to be
reimbursed for the costs incurred in administering its provisions, the boards may, with the
approval of the appropriate department director, levy on all licensees and applicants a surcharge
on any fee or fees collected pursuant to law, or, alternatively, with the approval of the
appropriate department director, levy on the applicants or licensees named on a certified list or
supplemental list, a special fee.

(o) The process described in subdivision (h) shall constitute the sole administrative
remedy for contesting the issuance of a temporary license or the denial or suspension of a license under this section. The procedures specified in the administrative adjudication provisions of the Administrative Procedure Act (Chapter 4.5 (commencing with Section 11400) and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) shall not apply to the denial, suspension, or failure to issue or renew a license or the issuance of a temporary license pursuant to this section.

(p) In furtherance of the public policy of increasing child support enforcement and collections, on or before November 1, 1995, the State Department of Social Services shall make a report to the Legislature and the Governor based on data collected by the boards and the district attorneys in a format prescribed by the State Department of Social Services. The report shall contain all of the following:

(1) The number of delinquent obligors certified by district attorneys under this section.

(2) The number of support obligors who also were applicants or licensees subject to this section:

(3) The number of new licenses and renewals that were delayed, temporary licenses issued, and licenses suspended subject to this section and the number of new licenses and renewals granted and licenses reinstated following board receipt of releases as provided by subdivision (h) by May 1, 1995.

(4) The costs incurred in the implementation and enforcement of this section.

(q) Any board receiving an inquiry as to the licensed status of an applicant or licensee who has had a license denied or suspended under this section or has been granted a temporary license under this section shall respond only that the license was denied or suspended or the temporary license was issued pursuant to this section. Information collected pursuant to this section by any state agency, board, or department shall be subject to the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code).

(r) Any rules and regulations issued pursuant to this section by any state agency, board, or department may be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). The adoption of these regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare. The regulations shall become effective immediately upon filing with the Secretary of State.

(s) The department and boards, as appropriate, shall adopt regulations necessary to implement this section.

(t) The Judicial Council shall develop the forms necessary to implement this section, except as provided in subdivisions (f) and (l).

(u) The release or other use of information received by a board pursuant to this section, except as authorized by this section, is punishable as a misdemeanor.

(v) The State Board of Equalization shall enter into interagency agreements with the department and the Franchise Tax Board that will require the department and the Franchise Tax Board to maximize the use of information collected by the State Board of Equalization, for child support enforcement purposes, to the extent it is cost effective and permitted by the Revenue and Taxation Code.

(w) (1) The suspension or revocation of any driver’s license, including a commercial driver’s license, under this section shall not subject the licensee to vehicle impoundment
pursuant to Section 14602.6 of the Vehicle Code.

(2) Notwithstanding any other law, the suspension or revocation of any driver’s license, including a commercial driver’s license, under this section shall not subject the licensee to increased costs for vehicle liability insurance.

(x) If any provision of this section or the application thereof to any person or circumstance is held invalid, that invalidity shall not affect other provisions or applications of this section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

(y) All rights to administrative and judicial review afforded by this section to an applicant shall also be afforded to a licensee.

(Proposed new language underlined, language to be deleted stricken)

PROPOSENENT: San Mateo County Bar Association

STATEMENT OF REASONS

The Problem: In order to be able to pay child support, a parent who is obligated to pay support needs to have a valid driver’s license so that he or she can travel to and from work. In many instances he or she actually drives a motor vehicle in connection with his or her work, such as a bus driver, service technician and many other occupations. Moreover, if the obligor parent has a business, occupational or professional license such license must be valid in order for such parent to work. Under the current statutory scheme, all such licenses are subject to suspension for non-payment of child support.

Family Code section 17520’s approach to the collection of support arrearages is not really effective. For example, according to “Examining Child Support Arrears in California: The Collectibility Study” (March 2003), only $3.8 billion, or 26% of the $14.4 billion owed, would be collected over 10 years. The report concluded that most arrears were owed by individuals who owed more than $20,000, and who had relatively low incomes. Suspending the obligor parent’s driver’s license and business, occupation and professional license actually exacerbates the problem because such parent can no longer work.

The Solution: This resolution would repeal Family Code section 17520, to allow suspensions of a driver’s licenses, professional licenses, and recreational licenses, for failure to pay child support. Family Code section 17520 is harmful because in order to be able to pay child support, non-custodial parents must be able to travel to and from work, and they must also be able to practice their business, occupation or profession.

Further, Family Code section 17520 license suspensions are not necessary because there are several other mechanisms available to collect and enforce child support payments. For example, a parent’s wages can be garnished (Family Code section 17500) and the government can levy financial assets or personal property (Family Code section 17522). See also Family Code sections 17500 – 17561, with numerous methods for “Collections and Enforcement.” Family Code section 17520, to suspend driver’s licenses, professional licenses, and recreational licenses, should be repealed because it hinders collection of child support payments.
IMPACT STATEMENT
42 U.S.C section 666(a)(16), which might affect the state's ability to receive certain federal grant funding. In addition, it would affect Business & Professions Code section 490.5, that provides for the suspension of business, occupational and professional licenses for failure to pay child support.

CURRENT OR PRIOR RELATED LEGISLATION
Family Code section 17520, added by Stats 1999 c. 478 (AB 196); amended by SB 1159 (Lara, 2014), section 10.

Vehicle Code sections 22651(h), 22651(p). [Towing of vehicle for suspended license.]

Vehicle Code section 14602.6(a)(1). [Impoundment of vehicle for suspended license.]

See National Federation of Independent Business v. Sebelius (132 S.Ct. 2566 (2011)), which held that the Patient Protection and Affordable Care Act (commonly referred to as the ACA or Obamacare) improperly coerced the States to expand Medicaid. The ACA's language was classified as “coercive” because it effectively forced States to join the federal program by conditioning the continued provision of Medicaid funds on States agreeing to materially alter Medicaid eligibility to include all individuals who fell below 133% of the poverty line.

See CCBA Resolution 10-05-2017 (adopted), to not suspend driver’s licenses for habitual truancy

See CCBA Resolution 10-06-2017 (adopted), to not suspend driver’s licenses for prostitution

See CCBA Resolution 10-07-2017 (adopted), to not suspend driver’s licenses for graffiti / vandalism

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