House Engrossed Senate Bill

State of Arizona
Senate
Forty-fifth Legislature
First Regular Session
2001

CHAPTER 81

SENATE BILL 1057

AN ACT

AMENDING SECTIONS 8-514.04, 25-327, 25-503, 25-503.01 AND 25-508, ARIZONA REVISED STATUTES; REPEALING SECTION 46-405, ARIZONA REVISED STATUTES; RELATING TO FAMILY SUPPORT DUTIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 8-514.04, Arizona Revised Statutes, is amended to read:

8-514.04. Kinship care program; pilot program; requirements

A. The kinship care program is established in the department of economic security. On or before January 1, 2001, the department shall implement a pilot program for kinship care in at least two locations in this state. One location shall be in a county with a population of at least one million two hundred thousand persons. The goals of the program include:

1. To streamline, expedite and coordinate existing services and referrals.

2. To preserve families.

3. To help meet the protection, developmental, cultural and permanency needs of children.

4. To enable families to sustain support for a child who cannot live with the child's parents.

B. The department shall adopt rules to prescribe application and eligibility requirements that provide an expedited process for kinship care families to receive child only temporary assistance for needy families.

C. The department shall use existing measures for outreach and marketing in order to facilitate community awareness regarding the pilot program.

D. The department shall submit an amendment to modify the temporary assistance for needy families state plan to the United States department of health and human services. The amendment shall waive the face-to-face requirement for relative caregivers applying for temporary assistance for needy families, for a child only case.

E. Any kinship care family that applies for or receives cash assistance under this section on behalf of a dependent child who is under eighteen years of age shall conform to the requirements established pursuant to sections 46-292~~,~~ AND 46-295 ~~and 46-405~~ and department rule unless the requirements have been modified pursuant to this section.

F. The department shall keep confidential information it obtains pursuant to this section.

Sec. 2. Section 25-327, Arizona Revised Statutes, is amended to read:

25-327. Modification and termination of provisions for maintenance, support and property disposition

A. Except as otherwise provided in section 25-317, subsections F and G, the provisions of any decree respecting maintenance or support may be modified only as to installments accruing ~~subsequent to~~ AFTER notice of the motion for modification to the opposing party and only on a showing of changed circumstances ~~which~~ THAT are substantial and continuing. The provisions as to property disposition may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state. Modifications are effective on the first day of the month following the filing of the petition for modification

unless the court, for good cause shown, orders the change to become effective at a later date.

B. Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated on the death of either party or the remarriage of the party receiving maintenance.

C. Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a minor child are not terminated by the death of a parent obligated to support the child. ~~When~~ IF a parent obligated to pay support dies, the amount of future support may be modified, revoked or commuted to a lump sum payment to the extent just and appropriate in the circumstances and ~~shall have~~ HAS priority equal to the right for family allowance in section 14-2404. Past due support ~~shall have~~ HAS priority equal to claims provided for in section 14-3805, subsection A, paragraph 6.

D. Notwithstanding any other law, pursuant to a petition filed pursuant to this section the court may suspend the imposition of FUTURE interest that accrues on a judgment for support issued pursuant to this article for the period of time that the petitioner is incarcerated or ~~otherwise incapacitated.~~ PHYSICALLY OR MENTALLY DISABLED TO THE EXTENT THAT THE PERSON IS UNABLE TO MAINTAIN EMPLOYMENT.

Sec. 3. Section 25-503, Arizona Revised Statutes, is amended to read:

25-503. Order for support; methods of payment; modification; revocation; statute of limitations; judgment on arrearages; notice; security

A. In any proceeding in which there is at issue the support of a child, the court may order either or both parents to pay any amount necessary for the support of the child. If a personal check for support payments and handling fees is rightfully dishonored by the payor bank or other drawee, any subsequent support payments and handling fees shall be paid only by cash, money order, cashier's check, traveler's check or certified check. If a ~~person~~ PARTY required to pay support other than by personal check demonstrates full and timely payment for twenty-four consecutive months, that ~~person~~ PARTY shall be permitted to pay support by personal check as long as such payments are for the full amount, are timely tendered and are not rightfully dishonored by the payor bank or other drawee. On a showing of good cause, the court may order that the ~~parent or parents~~ PARTY OR PARTIES required to ~~make payments of~~ PAY support give reasonable security for these payments. If the court sets an appearance bond and the obligor fails to appear, the bond ~~shall be~~ IS forfeited and credited against any support owed by the ~~person~~ PARTY required to pay support. This subsection does not apply to payments that are made by means of a wage assignment.

B. On a showing that an income withholding order has been ineffective to secure the timely payment of support and that an amount equal to six months of current support has accrued, the court shall require the obligor to give security, post bond or give some other guarantee to secure overdue support.

C. In title IV-D cases, and in all other cases subject to an income withholding order issued on or after January 1, 1994, after notice to the ~~custodial parent~~ PARTY ENTITLED TO RECEIVE SUPPORT, the department or its agent may direct the ~~person~~ PARTY obligated to pay support or other payor to make payment to the support payment clearinghouse. The department or its agent shall provide notice by first class mail.

D. The obligation for current child support shall be fully met before any payments under an order of assignment may be applied to the payment of arrearages. If a ~~person~~ PARTY is obligated to pay support for more than one family and the amount available is not sufficient to meet the total combined current support obligation, any monies shall be allocated to each family ~~or payor~~ as follows:

1. The amount of current support ordered in each case shall be added to obtain the total support obligation.

2. The ordered amount in each case shall be divided by the total support obligation to obtain a percentage of the total amount due.

3. The amount available from the obligor's income shall be multiplied by the percentage under paragraph 2 of this subsection to obtain the amount to be allocated to each family.

E. ~~In a case where the court has ordered that support be paid directly to the custodial parent,~~ If ~~the~~ A payment is not received within ten days of the date in the court order for payment of support THAT IS TO BE PAID DIRECTLY TO THE PARTY ENTITLED TO RECEIVE SUPPORT, the ~~person receiving~~ support ORDER may ~~enforce the support order~~ BE ENFORCED by all civil remedies provided by law.

F. Any order for child support may be modified or revoked ~~upon~~ ON a showing of changed circumstance ~~which~~ THAT is substantial and continuing, except as to any amount that may have accrued as an arrearage ~~prior to~~ BEFORE the date of the filing of the notice of the motion or order to show cause to modify or revoke. The addition of health insurance coverage as defined in section 25-531 or a change in the availability of health insurance coverage may constitute a continuing and substantial change in circumstance. The order of modification or revocation may be made retroactive to the date of the filing of the notice of motion or order to show cause to modify or to revoke or to any date ~~subsequent to such~~ AFTER THE filing. The order of modification or revocation may include an award of attorney fees and court costs to the prevailing party.

G. Notwithstanding subsection F of this section, in a title IV-D case a party, or the department or its agent if there is an assignment of rights under section 46-407, may request every three years that an order for child support be reviewed and, if appropriate, adjusted. The request may be made without a specific showing of a changed circumstance that is substantial and continuing. The department or its agent shall conduct the review in accordance with the child support guidelines of this state. If appropriate, the department shall file a petition in the superior court to adjust the support amount. Every three years the department or its agent shall notify

the parties of their right to request a review of the order for support. The department or its agent shall notify the parties by first class mail at their last known address or by including the notice in an order.

H. If a party in a title IV-D case requests a review and adjustment sooner than three years, the party shall demonstrate a changed circumstance that is substantial and continuing.

I. The right of a ~~parent, guardian or custodian~~ PARTY ENTITLED TO RECEIVE SUPPORT or the department to receive child support payments as provided in the court order vests as each installment falls due. Each vested child support installment is enforceable as a final judgment by operation of law. Unless it is reduced to a written money judgment, an unpaid child support judgment that became a judgment by operation of law expires three years after the emancipation of the last remaining unemancipated child who was included in the court order. Beginning on January 1, 2000, child support orders, including modified orders, must notify the parties of this expiration date. The filing of a request for a written money judgment before the end of that period preserves the right to judgment until the court grants a judgment or the court denies the request. A request does not need to be filed within three years if:

1. The court later determines that the actions or conduct of an obligor impeded the establishment of a written money judgment, including avoiding service or notice of that action, changing a name or social security number or leaving the state where the last support order was entered without notifying the ~~parent, guardian or custodian~~ PARTY to whom support is ordered to be paid or the court or the department of that ~~person's~~ PARTY'S residential and mailing addresses.

2. The court later finds that the obligor threatened, defrauded or wrongfully coerced the obligee into not filing a request to reduce any support arrearages to a written money judgment.

J. The department or its agent or a ~~parent, guardian or custodian~~ PARTY ENTITLED TO RECEIVE SUPPORT may file a request for judgment for support arrearages not later than three years after the emancipation of all of the children who were the subject of the court order. In such a proceeding there is no bar to the establishment of a money judgment for all of the unpaid child support arrearages for all of the children who were the subject of the court order. Notwithstanding any other law, formal written judgments for support and for associated costs and attorney fees are exempt from renewal and are enforceable until paid in full. If emancipation is disputed, this subsection shall be liberally construed to effect its intention of diminishing the limitation on the collection of child support arrearages.

K. If the department or its agent or a ~~person~~ PARTY entitled to receive child support or spousal maintenance if the spousal maintenance is combined with a child support order has not received court ordered payments, the department or its agent or a ~~person~~ PARTY may file with the clerk of the superior court A REQUEST FOR JUDGMENT OF ARREARAGES AND an affidavit indicating the name of the ~~person~~ PARTY obligated to pay support and the

amount of the arrearages. ~~The department or its agent or a person filing the affidavit shall provide notice to the person obligated to pay support, pursuant to the Arizona rules of civil procedure or by certified mail, return receipt requested, of the provisions of this section, including the person's right to request a hearing within twenty days, and that an affidavit of arrearages has been filed with the clerk of the superior court for purposes of obtaining a judgment against the person and shall attach a copy of the affidavit. The department or its agent or a person shall provide the clerk with proof of service of the notice or a notice of mailing stating that the notice required by this subsection was sent to the person obligated to pay support, the name of the person to whom the notice was sent, the date of mailing to the person and the date of receipt by the person and shall attach the copy of the return receipt. Within twenty days after receipt of the notice, the person alleged to be in arrears may request a hearing in the superior court if the arrearage amount or identity of the person is in dispute. The court shall hold the hearing within ten days after receiving the request. If the person alleged to be in arrears fails to request a hearing within the time provided, or if the court finds that the objection is unfounded, the court shall review the affidavit and grant an appropriate judgment against the person obligated to pay support.~~ THE REQUEST MUST INCLUDE NOTICE OF THE REQUIREMENTS OF THIS SECTION AND THE RIGHT TO REQUEST A HEARING WITHIN TWENTY DAYS AFTER SERVICE IN THIS STATE OR WITHIN THIRTY DAYS AFTER SERVICE OUTSIDE THIS STATE. THE REQUEST, AFFIDAVIT AND NOTICE MUST BE SERVED PURSUANT TO THE ARIZONA RULES OF CIVIL PROCEDURE ON ALL PARTIES INCLUDING THE DEPARTMENT OR ITS AGENTS IN TITLE IV-D CASES. IN A TITLE IV-D CASE, THE DEPARTMENT OR ITS AGENT MAY SERVE ALL PARTIES BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED. WITHIN TWENTY DAYS AFTER SERVICE IN THIS STATE OR WITHIN THIRTY DAYS AFTER SERVICE OUTSIDE THIS STATE, A PARTY MAY FILE A REQUEST FOR A HEARING IF THE ARREARAGE AMOUNT OR THE IDENTITY OF THE PERSON IS IN DISPUTE. IF A HEARING IS NOT REQUESTED WITHIN THE TIME PROVIDED, OR IF THE COURT FINDS THAT THE OBJECTION IS UNFOUNDED, THE COURT MUST REVIEW THE AFFIDAVIT AND GRANT AN APPROPRIATE JUDGMENT AGAINST THE PARTY OBLIGATED TO PAY SUPPORT.

L. If the clerk or support payment clearinghouse is unable to deliver payments for a period of three months due to the failure of ~~the person~~ A PARTY to whom the support has been ordered to be paid to notify the clerk or support payment clearinghouse of a change in address, the clerk or support payment clearinghouse shall return the payments to the obligor.

M. For the purposes of subsections I and J of this section, a child is emancipated:

1. On the date of the child's marriage.
2. On the child's eighteenth birthday.
3. When the child is adopted.
4. When the child dies.

5. On the termination of the support obligation if support is extended beyond the age of majority pursuant to section 25-501, subsection A or section 25-320, subsections B and C.

Sec. 4. Section 25-503.01, Arizona Revised Statutes, is amended to read:

25-503.01. Self-employed parent; monies held as security for payment of support

A. On a showing of good cause, the court may order that a self-employed parent ~~or parents~~ who ~~are~~ IS required to make CHILD support payments forward an amount equal to not more than six months of child support to the department ~~of economic security~~ to hold as security. The department shall release these monies to compensate an obligee for missed CURRENT CHILD support payments.

B. This section does not apply unless the ~~obligor~~ SELF-EMPLOYED PARENT is in arrears for ~~ninety days~~ THREE MONTHS or more.

C. This section does not limit other remedies available to an obligee, THE DEPARTMENT OR ITS AGENTS.

D. If a ~~person~~ SELF-EMPLOYED PARENT who is required to forward monies to the department pursuant to this section demonstrates full and timely support payments for twenty-four consecutive months, the department shall release to that ~~obligor~~ SELF-EMPLOYED PARENT any monies that remain.

Sec. 5. Section 25-508, Arizona Revised Statutes, is amended to read:

25-508. Enforcement of support orders; fee prohibition

A. Any judgment, order or decree, whether arising from a dissolution, divorce, separation, annulment, custody determination, ~~or~~ paternity or maternity determination OR DEPENDENCY PROCEEDING or from a uniform ~~reciprocal~~ INTERSTATE enforcement of support act proceeding and any interlocutory support award in any such proceeding or in any other proceeding regarding support ~~which~~ THAT provides for alimony, spousal maintenance or child support may be enforced as a matter of right by lien, execution, attachment, garnishment, levy, appointment of a receiver, provisional remedies or any ~~such~~ other form of relief provided by law as an enforcement remedy for civil judgments. An affidavit regarding all payments in default under ~~such~~ THE support order, along with a copy of ~~such~~ THE underlying support order, shall be filed with the clerk of the superior court along with the appropriate writ, application, petition or motion.

B. Notwithstanding any law to the contrary, a department of this state or its political subdivisions shall not charge ~~the child support enforcement administration in~~ the department ~~of economic security~~ OR ITS AGENTS a fee for performing an act necessary to enforce a support order as provided by this section.

Sec. 6. Repeal

Section 46-405, Arizona Revised Statutes, is repealed.

APPROVED BY THE GOVERNOR APRIL 9, 2001.
FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 9, 2001.

Passed the House April 02, 2001,

by the following vote: 57 Ayes,

0 Nays, 3 Not Voting

Speaker of the House

Norman L. Moore

Chief Clerk of the House

Passed the Senate February 14, 2001,

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

President of the Senate

Charmin Billington

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

_____
Secretary to the Governor

Approved this _____ day of

_____, 20_____,

at _____ o'clock _____ M.

_____
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

_____
Secretary of State

S.B. 1057

SENATE CONCURS IN HOUSE AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 5, 20 01,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

Randall Gnant
President of the Senate

Charmin Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

5 day of April, 2001,

at 1:07 o'clock P M.

Sandra Ramirez
Secretary to the Governor

APPROVED THIS 9th day of

April, 2001,

at 11:57 o'clock A M.

Jane Dee Hull
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 9 day of April, 20 01,

at 4:33 o'clock P M.

Betsey Bayless
Secretary of State

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