Senate Engrossed

State of Arizona
Senate
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 195

SENATE BILL 1156

AN ACT

AMENDING SECTIONS 25-320, 25-501, 25-503 AND 25-809, ARIZONA REVISED STATUTES; RELATING TO FAMILY SUPPORT DUTIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:
2 Section 1. Section 25-320, Arizona Revised Statutes, is amended to
3 read:
4 25-320. Child support; factors; methods of payment; additional
5 enforcement provisions; definitions
6 A. In a proceeding for dissolution of marriage, legal separation,
7 maintenance or child support, the court may order either or both parents
8 owing a duty of support to a child, born to or adopted by the parents, to pay
9 an amount reasonable and necessary for support of the child, without regard
10 to marital misconduct.
11 B. If child support has not been ordered by a child support order and
12 if the court deems child support appropriate, the court shall direct, using
13 a retroactive application of the child support guidelines to the date of
14 filing a dissolution of marriage, legal separation, maintenance or child
15 support proceeding, the amount that the parents shall pay for the past
16 support of the child and the manner in which payment shall be paid, taking
17 into account any amount of temporary or voluntary support that has been
18 paid. Retroactive child support is enforceable in any manner provided by
19 law.
20 C. IF THE PARTIES LIVED APART BEFORE THE DATE OF THE FILING FOR
21 DISSOLUTION OF MARRIAGE, LEGAL SEPARATION, MAINTENANCE OR CHILD SUPPORT AND
22 IF CHILD SUPPORT HAS NOT BEEN ORDERED BY A CHILD SUPPORT ORDER, THE COURT MAY
23 ORDER CHILD SUPPORT RETROACTIVELY TO THE DATE OF SEPARATION, BUT NOT MORE
24 THAN THREE YEARS BEFORE THE DATE OF THE FILING FOR DISSOLUTION OF MARRIAGE,
25 LEGAL SEPARATION, MAINTENANCE OR CHILD SUPPORT. THE COURT MUST FIRST
26 CONSIDER ALL RELEVANT CIRCUMSTANCES, INCLUDING THE CONDUCT OR MOTIVATION OF
27 THE PARTIES IN THAT FILING AND THE DILIGENCE WITH WHICH SERVICE OF PROCESS
28 WAS ATTEMPTED ON THE OBLIGOR SPOUSE OR WAS FRUSTRATED BY THE OBLIGOR
29 SPOUSE. IF THE COURT DETERMINES THAT CHILD SUPPORT IS APPROPRIATE, THE COURT
30 SHALL DIRECT, USING A RETROACTIVE APPLICATION OF THE CHILD SUPPORT
31 GUIDELINES, THE AMOUNT THAT THE PARENTS MUST PAY FOR THE PAST SUPPORT OF THE
32 CHILD AND THE MANNER IN WHICH PAYMENTS MUST BE PAID, TAKING INTO ACCOUNT ANY
33 AMOUNT OF TEMPORARY OR VOLUNTARY SUPPORT THAT HAS BEEN PAID.
34 D. The supreme court shall establish guidelines for determining the
35 amount of child support. The amount resulting from the application of these
36 guidelines is the amount of child support ordered unless a written finding
37 is made, based on criteria approved by the supreme court, that application
38 of the guidelines would be inappropriate or unjust in a particular case. The
39 supreme court shall review the guidelines at least once every four years to
40 ensure that their application results in the determination of appropriate
41 child support amounts. The supreme court shall base the guidelines and
42 criteria for deviation from them on all relevant factors, including:
43 1. The financial resources and needs of the child.
44 2. The financial resources and needs of the custodial parent.

3. The standard of living the child would have enjoyed had the marriage not been dissolved.

4. The physical and emotional condition of the child, and the child's educational needs.

5. The financial resources and needs of the noncustodial parent.

6. Excessive or abnormal expenditures, destruction, concealment or fraudulent disposition of community, joint tenancy and other property held in common.

7. The duration of parenting time and related expenses.

~~B.~~ E. In the case of a mentally or physically disabled child, if the court, after considering the factors set forth in subsection ~~A~~ D of this section, deems it appropriate, the court may order support to continue past the age of majority and to be paid to the custodial parent, guardian or child, even if at the DATE OF SEPARATION, AT THE time of the filing of a petition or at the time of the final decree, the child has reached the age of majority.

~~C.~~ F. If a child reaches the age of majority while the child is attending high school or a certified high school equivalency program, support shall continue to be provided during the period in which the child is actually attending high school or the equivalency program but only until the child reaches nineteen years of age unless the court enters an order pursuant to subsection ~~B~~ E of this section. Notwithstanding any other provision of law, a parent paying support for a child over the age of majority pursuant to this section is entitled to obtain all records related to the attendance of the child in the high school or equivalency program.

~~D.~~ G. If a personal check for support payments and handling fees is rightfully dishonored by the payor bank or other drawee, the person obligated to pay support shall make any subsequent support payments and handling fees only by cash, money order, cashier's check, traveler's check or certified check. If a person required to pay support other than by personal check demonstrates full and timely payment for twenty-four consecutive months, that person may pay support by personal check if these payments are for the full amount, are timely tendered and are not rightfully dishonored by the payor bank or other drawee.

~~E.~~ H. Subsection ~~D~~ G of this section does not apply to payments made by means of an assignment.

~~F.~~ I. If after reasonable efforts to locate the obligee the clerk or support payment clearinghouse is unable to deliver payments for the period prescribed in section 25-503 due to the failure of the person 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 not deliver further payments and shall return the payments to the obligor consistent with the requirements of section 25-503.

~~G.~~ J. An order for child support shall assign responsibility for providing medical insurance for the child who is the subject of the support

order and shall assign responsibility for the payment of any medical costs of the child that are not covered by insurance. In title IV-D cases, the parent responsible pursuant to court order for providing medical insurance for the child shall notify the support payment clearinghouse prescribed in section 46-441 if the child is no longer covered under an employer's insurance plan. The support payment clearinghouse shall notify the child support enforcement agency in the department of economic security of the lapse in insurance coverage.

~~H.~~ K. In title IV-D cases the superior court shall accept for filing any documents that are received through electronic transmission if the electronically reproduced document states that the copy used for the electronic transmission was certified before it was electronically transmitted.

~~I.~~ L. The court shall presume, in the absence of contrary testimony, that a noncustodial parent is capable of full-time employment at least at the federal adult minimum wage. This presumption does not apply to noncustodial parents who are under the age of eighteen and who are attending high school.

~~J.~~ M. An order for support shall provide for an assignment pursuant to sections 25-504 and 25-323.

~~K.~~ N. Each licensing board or agency that issues professional, recreational or occupational licenses or certificates shall record on the application the social security number of the applicant and shall enter this information in its ~~data base~~ DATABASE in order to aid the department of economic security in locating parents or their assets or to enforce child support orders. This subsection does not apply to a license that is issued pursuant to title 17 and that is not issued by an automated drawing system. If a licensing board or agency allows an applicant to use a number other than the social security number on the face of the license or certificate while the licensing board or agency keeps the social security number on file, the licensing board or agency shall advise an applicant of this fact.

~~L.~~ O. For the purposes of this section:

1. "Child support guidelines" means the child support guidelines that are adopted by the state supreme court pursuant to 42 United States Code sections 651 through 669B.

2. "DATE OF SEPARATION" MEANS THE DATE THE MARRIED PARENTS CEASED TO COHABIT.

~~2.~~ 3. "Support" has the same meaning prescribed in section 25-500.

~~3.~~ 4. "Support payments" means the amount of money ordered by the court to be paid for the support of the minor child or children.

Sec. 2. Section 25-501, Arizona Revised Statutes, is amended to read:

25-501. <u>Duties of support; exemption</u>

A. Except as provided in subsection F of this section, every person has the duty to provide all reasonable support for that person's natural and adopted minor, unemancipated children, regardless of the presence or

1 residence of the child in this state. In the case of mentally or physically
2 disabled children, if the court, after considering the factors set forth in
3 section 25-320, subsection ~~A~~ D, deems it appropriate, the court may order
4 support to continue past the age of majority. If a child reaches the age of
5 majority while the child is attending high school or a certified high school
6 equivalency program, support shall continue to be provided while the child
7 is actually attending high school or the equivalency program but only until
8 the child reaches nineteen years of age unless the court enters an order
9 pursuant to section 25-320, subsection ~~B~~ E.
10 B. A child who is born as the result of artificial insemination is
11 entitled to support from the mother as prescribed by this section and the
12 mother's spouse if the spouse either is the biological father of the child
13 or agreed in writing to the insemination before or after the insemination
14 occurred.
15 C. The child support guidelines shall be used in determining the
16 ability to pay child support and the amount of payments. The obligation to
17 pay child support is primary and other financial obligations are secondary.
18 D. All duties of support as prescribed in this chapter may be enforced
19 by all civil and criminal remedies provided by law.
20 E. Remedies provided by this chapter are cumulative and do not affect
21 the availability of remedies under other law.
22 F. The court may determine that a parent is not obligated to
23 contribute to the support of the parent's minor child if maternity or
24 paternity is the result of the parent's sexual contact with a person who, as
25 a result of that contact, has been found guilty of sexual conduct with a
26 minor under section 13-1405 or sexual assault UNDER SECTION 13-1406. The
27 court may also apply this exemption to the parent's parents or legal
28 guardian.
29 Sec. 3. Section 25-503, Arizona Revised Statutes, is amended to read:
30 25-503. <u>Order for support; methods of payment; modification;</u>
31 <u>termination; statute of limitations; judgment on</u>
32 <u>arrearages; notice; security</u>
33 A. In any proceeding in which there is at issue the support of a
34 child, the court may order either or both parents to pay any amount necessary
35 for the support of the child. If a personal check for support payments and
36 handling fees is rightfully dishonored by the payor bank or other drawee, any
37 subsequent support payments and handling fees shall be paid only by cash,
38 money order, cashier's check, traveler's check or certified check. The
39 department may collect from the drawer of a dishonored check or draft an
40 amount allowed pursuant to section 44-6852. Pursuant to sections 35-146 and
41 35-147, the department shall deposit monies collected pursuant to this
42 subsection in a child support enforcement administration fund. If a party
43 required to pay support other than by personal check demonstrates full and
44 timely payment for twenty-four consecutive months, that party may pay support
45 by personal check if these payments are for the full amount, are timely

1 tendered and are not rightfully dishonored by the payor bank or other drawee.
2 On a showing of good cause, the court may order that the party or parties
3 required to pay support give reasonable security for these payments. If the
4 court sets an appearance bond and the obligor fails to appear, the bond is
5 forfeited and credited against any support owed by the party required to pay
6 support. This subsection does not apply to payments that are made by means
7 of a wage assignment.
8 B. On a showing that an income withholding order has been ineffective
9 to secure the timely payment of support and that an amount equal to six
10 months of current support has accrued, the court shall require the obligor
11 to give security, post bond or give some other guarantee to secure overdue
12 support.
13 C. In title IV-D cases, and in all other cases subject to an income
14 withholding order issued on or after January 1, 1994, after notice to the
15 party entitled to receive support, the department or its agent may direct the
16 party obligated to pay support or other payor to make payment to the support
17 payment clearinghouse. The department or its agent shall provide notice by
18 first class mail.
19 D. The obligation for current child support shall be fully met before
20 any payments under an order of assignment may be applied to the payment of
21 arrearages. If a party is obligated to pay support for more than one family
22 and the amount available is not sufficient to meet the total combined current
23 support obligation, any monies shall be allocated to each family as follows:
24 1. The amount of current support ordered in each case shall be added
25 to obtain the total support obligation.
26 2. The ordered amount in each case shall be divided by the total
27 support obligation to obtain a percentage of the total amount due.
28 3. The amount available from the obligor's income shall be multiplied
29 by the percentage under paragraph 2 of this subsection to obtain the amount
30 to be allocated to each family.
31 E. Any order for child support may be modified or terminated on a
32 showing of changed circumstance that is substantial and continuing, except
33 as to any amount that may have accrued as an arrearage before the date of
34 notice of the motion or order to show cause to modify or terminate. The
35 addition of health insurance coverage as defined in section 25-531 or a
36 change in the availability of health insurance coverage may constitute a
37 continuing and substantial change in circumstance. Modification and
38 termination are effective on the first day of the month following notice of
39 the petition for modification or termination unless the court, for good cause
40 shown, orders the change to become effective at a different date but not
41 earlier than the date of filing the petition for modification or
42 termination. The order of modification or termination may include an award
43 of attorney fees and court costs to the prevailing party.
44 F. Notwithstanding subsection E of this section, in a title IV-D case
45 a party, or the department or its agent if there is an assignment of rights

1 under section 46-407, may request every three years that an order for child
2 support be reviewed and, if appropriate, adjusted. The request may be made
3 without a specific showing of a changed circumstance that is substantial and
4 continuing. The department or its agent shall conduct the review in
5 accordance with the child support guidelines of this state. If appropriate,
6 the department shall file a petition in the superior court to adjust the
7 support amount. Every three years the department or its agent shall notify
8 the parties of their right to request a review of the order for support. The
9 department or its agent shall notify the parties by first class mail at their
10 last known address or by including the notice in an order.
11 G. If a party in a title IV-D case requests a review and adjustment
12 sooner than three years, the party shall demonstrate a changed circumstance
13 that is substantial and continuing.
14 H. The right of a party entitled to receive support or the department
15 to receive child support payments as provided in the court order vests as
16 each installment falls due. Each vested child support installment is
17 enforceable as a final judgment by operation of law. Unless it is reduced
18 to a written money judgment, an unpaid child support judgment that became a
19 judgment by operation of law expires three years after the emancipation of
20 the last remaining unemancipated child who was included in the court order.
21 Beginning on January 1, 2000, child support orders, including modified
22 orders, must notify the parties of this expiration date. The filing of a
23 request for a written money judgment before the end of that period preserves
24 the right to judgment until the court grants a judgment or the court denies
25 the request. A request does not need to be filed within three years if:
26 1. The court later determines that the actions or conduct of an
27 obligor impeded the establishment of a written money judgment, including
28 avoiding service or notice of that action, changing a name or social security
29 number or leaving the state where the last support order was entered without
30 notifying the party to whom support is ordered to be paid or the court or the
31 department of that party's residential and mailing addresses.
32 2. The court later finds that the obligor threatened, defrauded or
33 wrongfully coerced the obligee into not filing a request to reduce any
34 support arrearages to a written money judgment.
35 I. The department or its agent or a party entitled to receive support
36 may file a request for judgment for support arrearages not later than three
37 years after the emancipation of all of the children who were the subject of
38 the court order. In such a proceeding there is no bar to establishing a
39 money judgment for all of the unpaid child support arrearages for all of the
40 children who were the subject of the court order. Notwithstanding any other
41 law, formal written judgments for support and for associated costs and
42 attorney fees are exempt from renewal and are enforceable until paid in full.
43 If emancipation is disputed, this subsection shall be liberally construed to
44 effect its intention of diminishing the limitation on the collection of child
45 support arrearages.

J. If a party entitled to receive child support or spousal maintenance or the department or its agent enforcing an order of support has not received court ordered payments, the party entitled to receive support or spousal maintenance or the department or its agent may file with the clerk of the superior court a request for judgment of arrearages and an affidavit indicating the name of the party obligated to pay support and the amount of the arrearages. 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.

K. If after reasonable efforts to locate the obligee the clerk or support payment clearinghouse is unable to deliver payments for a period of one hundred twenty days after the date the first payment is returned as undeliverable due to the failure of 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 that and all other unassigned payments to the obligor unless there is an agreement of the obligor to pay assigned arrears and other debts owed to the state.

L. If the obligee of a child support order marries the obligor of the child support order, that order automatically terminates on the last day of the month in which the marriage takes place and arrearages do not accrue after that date. However, the obligee or the state may collect child support arrearages that accrued before that date. The obligee, the obligor or the department or its agent in a title IV-D case may file a request or stipulation to terminate or adjust any existing order of assignment, pursuant to section 25-504 or section 25-505.01.

M. For the purposes of subsections H and I 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~~ E and ~~C~~ F.

1 Sec. 4. Section 25-809, Arizona Revised Statutes, is amended to read:
2 25-809. Judgment
3 A. Except as provided in section 25-501, subsection F, if a defendant
4 admits parentage or if the issue is decided in the affirmative in an action
5 instituted during the child's minority, the court shall direct, subject to
6 applicable equitable defenses and using a retroactive application of the
7 current child support guidelines, the amount, if any, the defendant shall pay
8 for the past support of the child and the manner in which payment shall be
9 made. The court may also direct the defendant to pay the costs of
10 litigation.
11 B. The court shall enter an order for support determined to be due for
12 the period between the commencement of the proceeding and the date that
13 current child support is ordered to begin. The court shall not order past
14 support retroactive to more than three years before the commencement of the
15 proceeding unless the court makes a written finding of good cause after
16 considering all relevant circumstances, including:
17 1. The circumstances, conduct or motivation of the party who claims
18 entitlement to past support in not seeking an earlier establishment of
19 maternity or paternity.
20 2. The circumstances, conduct or motivation of the party from whom
21 past support is sought in impeding the establishment of maternity or
22 paternity.
23 3. The diligence with which service of process was attempted on the
24 defendant.
25 C. The court shall also direct the amount the father shall pay for the
26 actual costs of the pregnancy, childbirth and any genetic testing and other
27 related costs subject to production of billing statements or other
28 documentation. This documentation is prima facie evidence of amounts
29 incurred and is admissible in evidence without the need for foundation
30 testimony or other proof of authenticity or accuracy.
31 D. In any proceeding under this article the court shall order either
32 parent or both parents to pay any monies reasonable and necessary for the
33 support of the minor unemancipated child until the child reaches the age of
34 majority or is emancipated. In determining the amount of support for the
35 child, the court shall apply the child support guidelines pursuant to section
36 25-320, subsection ~~A~~ D. If a child reaches the age of majority while the
37 child is attending high school or a certified high school equivalency
38 program, support shall continue to be provided while the child is actually
39 attending high school or the equivalency program but only until the child
40 reaches nineteen years of age unless the court enters an order pursuant to
41 subsection F of this section.
42 E. The court may modify an order of support pursuant to section
43 25-503, subsection D.
44 F. If the child is physically or mentally disabled and the court deems
45 it appropriate, the court may order support to continue past the age of

1 majority and to be paid to the custodial parent, guardian or child, even if
2 at the time of filing the complaint the child has reached the age of
3 majority.
4 G. After considering the financial resources of both parties and the
5 reasonableness of the positions each party has taken throughout the
6 proceedings, the court may order a party to pay a reasonable amount to the
7 other party for the costs and expenses of maintaining or defending any
8 proceeding under this article. The court may order the party to pay these
9 amounts directly to the attorney. The attorney may enforce the order in the
10 attorney's name with the same force and effect and in the same manner as if
11 the order had been made on behalf of any party to the action. For the
12 purposes of this subsection, "costs and expenses" includes attorney fees,
13 deposition costs, appellate costs and other reasonable expenses the court
14 determines were necessary.
15 H. The court has contempt powers to enforce its orders.
16 I. In any proceeding after judgment the court shall determine amounts
17 owing under the existing orders of the court and shall provide for the
18 payment of that amount.
19 J. The parties may terminate an action brought under this article by
20 agreement and compromise only if the court has approved the terms of the
21 agreement and compromise.

APPROVED BY THE GOVERNOR MAY 5, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 5, 2004.

Passed the House April 28, 2004,

by the following vote: 45 Ayes,

8 Nays, 7 Not Voting

Jake Flake
Speaker of the House

Norman L. Moore
Chief Clerk of the House

Passed the Senate March 16, 2004,

by the following vote: 29 Ayes,

1 Nays, 0 Not Voting

Ken Bennett
President of the Senate

Charmine Billington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR
This Bill was received by the Governor this

29th day of April, 2004,

at 2:15 o'clock P. M.

Jennifer Upshaw
Secretary to the Governor

Approved this 5 day of

May, 2004,

at 10:30 o'clock A. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 5 day of May, 2004,

at 11:35 o'clock A. M.

Jeanne K. Brewer
Secretary of State

S.B. 1156

Senate Engrossed

State of Arizona
Senate
Forty-sixth Legislature
Second Regular Session
2004

CHAPTER 196

SENATE BILL 1389

AN ACT

AMENDING SECTIONS 42-1001, 42-1106, 43-105, 43-1021, 43-1022, 43-1121 AND 43-1122, ARIZONA REVISED STATUTES; RELATING TO TAXATION.

(TEXT OF BILL BEGINS ON NEXT PAGE)