Senate Engrossed House Bill

FILED
JANICE K. BREWER
SECRETARY OF STATE

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CHAPTER 180

HOUSE BILL 2292

AN ACT

AMENDING SECTIONS 25-503 AND 25-510, ARIZONA REVISED STATUTES; RELATING TO CHILD SUPPORT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 25-503, Arizona Revised Statutes, is amended to read:

25-503. Order for support; methods of payment; modification; termination; 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 THE COURT ORDER DOES NOT SPECIFY THE DATE WHEN CURRENT SUPPORT BEGINS, THE SUPPORT OBLIGATION BEGINS TO ACCRUE ON THE FIRST DAY OF THE MONTH FOLLOWING THE ENTRY OF THE ORDER. 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. The department may collect from the drawer of a dishonored check or draft an amount allowed pursuant to section 44-6852. Pursuant to sections 35-146 and 35-147, the department shall deposit monies collected pursuant to this subsection in a child support enforcement administration fund. If a party required to pay support other than by personal check demonstrates full and timely payment for twenty-four consecutive months, that party 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. On a showing of good cause, the court may order that the party or parties required to pay support give reasonable security for these payments. If the court sets an appearance bond and the obligor fails to appear, the bond is forfeited and credited against any support owed by the 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 party entitled to receive support, the department or its agent may direct the 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 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 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. Any order for child support may be modified or terminated on a showing of changed circumstance that is substantial and continuing, except as to any amount that may have accrued as an arrearage before the date of notice of the motion or order to show cause to modify or terminate. 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. Modification and termination are effective on the first day of the month following notice of the petition for modification or termination unless the court, for good cause shown, orders the change to become effective at a different date but not earlier than the date of filing the petition for modification or termination. The order of modification or termination may include an award of attorney fees and court costs to the prevailing party.

F. Notwithstanding subsection E 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.

G. 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.

H. The right of a 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 party to whom support is ordered to be paid or the court or the department of that 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.

I. The department or its agent or a 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 establishing 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.

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 E and F.

Sec. 2. Section 25-510, Arizona Revised Statutes, is amended to read:

25-510. <u>Receiving and disbursing support and maintenance monies; arrearages; interest</u>

A. The support payment clearinghouse established pursuant to section 46-441 shall receive and disburse all monies, including fees and costs, applicable to support and maintenance unless the court has ordered that support or maintenance be paid directly to the party entitled to receive the support or maintenance. Within two business days the clerk of the superior court shall transmit to the support payment clearinghouse any maintenance and support payments received by the clerk. Monies received by the support payment clearinghouse in cases not enforced by the state pursuant to title IV-D of the social security act shall be distributed in the following priority:

1. Current child support or current court ordered payments for the support of a family when combined with the child support obligation.
2. Current spousal maintenance.
3. The current monthly fee prescribed in subsection D of this section to cover the cost of handling support or spousal maintenance payments.

4. Past due support reduced to judgment and then to associated interest.

5. Past due spousal maintenance reduced to judgment and then to associated interest.

6. Past due support not reduced to judgment and then to associated interest.

7. Past due spousal maintenance not reduced to judgment and then to associated interest.

8. Past due amounts of the fee prescribed in subsection D of this section to cover the cost of handling support or spousal maintenance payments.

B. In any proceeding under this chapter regarding a duty of support, the records of payments maintained by the clerk or the support payment clearinghouse are prima facie evidence of all payments made and disbursed to the person or agency to whom the support payment is to be made and are rebuttable only by a specific evidentiary showing to the contrary.

C. At no cost to the clerk of the superior court, the department shall provide electronic access to all records of payments maintained by the support payment clearinghouse, and the clerk shall use this information to provide payment histories to all litigants, attorneys and interested persons and the court. For all non-title IV-D support cases, the clerk shall load new orders, modify order amounts, respond to payment inquiries, research payment related issues, release payments pursuant to orders of the court and update demographic and new employer information. The clerk shall forward orders of assignment to employers for non-title IV-D support orders. Within five business days the clerk shall provide to the department any new address, order of assignment or employment information the clerk receives regarding any support order. The information shall be provided as prescribed by the department of economic security in consultation with the administrative office of the courts.

D. The support payment clearinghouse shall receive a monthly fee of two dollars twenty-five cents to cover the cost of handling support and maintenance payments. The court shall order payment of the handling fee as part of the order for support or maintenance. The handling fee shall not be deducted from the support or maintenance portion of the payment.

E. IN CALCULATING SUPPORT ARREARAGES NOT REDUCED TO A FINAL WRITTEN MONEY JUDGMENT, INTEREST ACCRUES AT THE ANNUAL RATE OF TEN PER CENT PURSUANT TO SECTION 44-1201, BEGINNING AT THE END OF THE MONTH FOLLOWING THE MONTH IN WHICH THE SUPPORT PAYMENT IS DUE. PAST SUPPORT REDUCED TO A FINAL WRITTEN MONEY JUDGMENT ACCRUES INTEREST AT THE ANNUAL RATE OF TEN PER CENT PURSUANT TO SECTION 44-1201, BEGINNING ON ENTRY OF THE JUDGMENT BY THE COURT.

F. ANY DIRECT PAYMENTS NOT PAID THROUGH THE CLEARINGHOUSE OR ANY EQUITABLE CREDITS OF PRINCIPAL OR INTEREST PERMITTED BY LAW AND ALLOWED BY THE COURT AFTER A HEARING SHALL BE APPLIED TO SUPPORT ARREARAGES AS DIRECTED IN THE COURT ORDER. THE COURT SHALL MAKE SPECIFIC FINDINGS IN SUPPORT OF ANY

PAYMENTS OR CREDITS ALLOWED. IF THE COURT ORDER DOES NOT EXPRESSLY STATE THE DATES THE PAYMENTS OR CREDITS ARE TO BE APPLIED, THE PAYMENTS OR CREDITS SHALL BE APPLIED ON THE DATE OF THE ENTRY OF THE ORDER THAT ALLOWS THE PAYMENTS OR CREDITS. IN A TITLE IV-D CASE, IF A COURT ORDER DOES NOT INDICATE ON ITS FACE THAT THE STATE WAS EITHER REPRESENTED AT OR HAD NOTICE OF THE HEARING OR PROCEEDING WHERE THE PAYMENTS OR CREDITS WERE DETERMINED, THE COURT ORDER SHALL NOT REDUCE ANY SUM OWED TO THE DEPARTMENT OR ITS AGENT WITHOUT WRITTEN APPROVAL OF THE DEPARTMENT OR ITS AGENT.

G. ANY WRITTEN AGREEMENT FOR CREDIT AGAINST SUPPORT ARREARAGES, OTHER THAN BY COURT ORDER, SHALL BE MADE ONLY BY WRITTEN AFFIDAVIT OF DIRECT PAYMENT SIGNED BY THE PERSON ORDERED TO MAKE THE SUPPORT PAYMENT AND THE PERSON ENTITLED TO RECEIVE THE SUPPORT. THE AFFIDAVIT OF DIRECT PAYMENT SHALL BE FILED DIRECTLY WITH THE CLERK OF THE COURT, WHO SHALL ENTER THE INFORMATION INTO THE STATEWIDE CASE REGISTRY. ANY CREDITS AGAINST SUPPORT ARREARAGES SHALL BE APPLIED AS OF THE DATES AGREED TO BY THE PARTIES OR THE DATE OF AGREEMENT REFLECTED IN THE AFFIDAVIT IF NO OTHER DATE IS AGREED TO IN THE AFFIDAVIT. IN A TITLE IV-D CASE, THE AGREEMENT AND AFFIDAVIT SHALL NOT REDUCE ANY SUM OWED TO THE DEPARTMENT OR ITS AGENT WITHOUT WRITTEN APPROVAL OF THE DEPARTMENT OR ITS AGENT.

H. AN ARREARAGE CALCULATOR MAY BE DEVELOPED BY A GOVERNMENT AGENCY USING AN AUTOMATED TRANSFER OF DATA FROM THE CLEARINGHOUSE AND THE CHILD SUPPORT REGISTRY. THE ARREARAGE FIGURE PRODUCED BY THIS CALCULATOR IS PRESUMED TO BE THE CORRECT AMOUNT OF THE ARREARAGE.

APPROVED BY THE GOVERNOR APRIL 21, 2006.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 21, 2006.