House Engrossed Senate Bill

FILED
KEN BENNETT
SECRETARY OF STATE

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

CHAPTER 61

SENATE BILL 1045

AN ACT

AMENDING SECTIONS 25-513, 25-522 AND 25-535, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 14, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1954.01; AMENDING SECTION 46-408, ARIZONA REVISED STATUTES; RELATING TO THE DEPARTMENT OF ECONOMIC SECURITY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

Section 1. Section 25-513, Arizona Revised Statutes, is amended to read:

25-513. Employer cooperation; violation; classification

A. On written request delivered ~~by first class mail~~ to an employer, payor or self-employed person by the department or its agent or the child support enforcement entity of any other state or its agent that administers a child support enforcement program as required by title IV-D of the social security act or by either party to a proceeding for support or maintenance, the employer, payor or self-employed person to whom the request is directed within twenty days of delivery shall notify the requesting party of the following information that the employer, payor or self-employed person possesses concerning the person who is obligated to pay support or maintenance or against whom this obligation is sought or to whom this obligation is owed:

1. Complete name.
2. Social security number.
3. Date and place of birth.
4. Present and past employment status.
5. Earnings, income, entitlements or other monies without regard to source.
6. Current or last known address.
7. Assets.
8. Availability and description of present or previous health insurance coverage for a dependent child.
9. Health insurance benefits paid or applied for under a health insurance policy for a dependent child.
10. Other benefits, including disability payments or payments made pursuant to a pension or retirement program.

B. The information required pursuant to subsection A, paragraphs 5, 7, 8, 9 and 10 shall not be requested or provided unless paternity has been established.

C. If any legal action is necessary for the requesting party to obtain the information requested pursuant to subsection A, the requesting party is entitled to receive costs and attorney fees from the employer, payor or self-employed person who fails to cooperate as prescribed in subsection A.

D. A party shall not request or receive address information protected by an order of protection, an injunction against harassment or any other court order in a domestic violence matter. The employer, payor or self-employed person is not required to determine whether an order of protection, an injunction against harassment or any other court order in a domestic violence matter exists before releasing the information requested pursuant to subsection A.

E. A party other than the department or its agent or the child support enforcement entity of any other state or its agent that administers a child support enforcement program as required by title IV-D of the social security act may make a request for information pursuant to this section not more than once in any three month period.

F. THE DEPARTMENT OR ITS AGENT OR THE CHILD SUPPORT ENFORCEMENT ENTITY OF ANY OTHER STATE OR ITS AGENT THAT ADMINISTERS A CHILD SUPPORT ENFORCEMENT PROGRAM AS REQUIRED BY TITLE IV-D OF THE SOCIAL SECURITY ACT MAY DELIVER THE REQUEST ALLOWED IN SUBSECTION A ELECTRONICALLY. ON REQUEST OF THE DEPARTMENT, AN EMPLOYER SHALL PROVIDE ITS LAST KNOWN ELECTRONIC CONTACT INFORMATION.

~~F.~~ G. A party may request and obtain information pursuant to subsection A only for the following purposes:

1. To identify and locate a person who is under an obligation to pay support.

2. To identify and locate a person against whom an obligation is sought.

3. To identify and locate a person to whom an obligation is owed.

4. To identify and locate information pursuant to subsection A, paragraphs 5, 7, 8, 9 and 10 relating to a person who is obligated to pay support.

~~G.~~ H. A party who requests or obtains information pursuant to subsection A for purposes other than those prescribed in subsection ~~F~~ G is guilty of a class 1 misdemeanor.

Sec. 2. Section 25-522, Arizona Revised Statutes, is amended to read:

25-522. <u>Administrative review; notice; determination; judicial review; definitions</u>

A. An obligor may contest an enforcement action by the department or its agent by filing a request for administrative review. An obligee may contest the distribution or disbursement of support payments by the department or its agent by filing a request for administrative review. The obligor, the obligee or the caretaker may contest the disbursement of support to a noncustodial person other than the state by filing a request for administrative review pursuant to section 46-444. The request shall be in writing, shall be signed by the requesting party, shall include a residential and mailing address and may be transmitted electronically. The request shall state the basis for the dispute and shall include any relevant information to assist the department or its agent, including a copy of any order issued, documentation of support payments made and any notice sent by the department or its agent.

B. Within ten business days after receipt of the request for review, the department or its agent shall send a notice of acknowledgment of receipt of request for administrative review to the person filing the request and shall specify any additional information the department or its agent requires to complete the review. The department or its agent on its own initiative

may also request any other additional information it deems necessary to make its determination. The department or its agent shall also notify the obligee of the obligor's request for review of enforcement actions.

C. Except for obligee complaints made under section 46-408 as to distribution of support, the department or its agent shall issue a written determination within forty-five business days after sending the notice of acknowledgment of receipt of request for administrative review, or if additional information is required, forty-five business days after receipt of this information. If additional information is not received from the requesting party or another person within thirty business days after the date of the department's or the agent's request for additional information, the department shall issue a final written determination within ten business days after the due date for receipt of the additional information based on the available information. The final determination shall be in writing, and a copy shall be served on all parties by first class mail OR MAY BE DELIVERED ELECTRONICALLY IF ELECTRONIC CONTACT INFORMATION IS INCLUDED IN THE REQUEST FOR ADMINISTRATIVE REVIEW.

D. Notwithstanding subsections B and C of this section, if the basis for the request for review is issuance of an income withholding order by the department pursuant to section 25-505.01 or a levy made pursuant to section 25-521, the department shall review the request and issue a final determination within ten business days after it receives the request for review. The department shall send a copy of the final determination by first class mail to all parties.

E. Notwithstanding subsections B, C and D of this section, if the basis for the request for review is a mistake in identity pursuant to section 25-521, the department shall issue a final determination by first class mail to all parties within two business days after the receipt of the request. The request shall include adequate documentation to affirm the mistake in identity.

F. A department determination made pursuant to this section is subject to judicial review under title 12, chapter 7, article 6, except that an appeal by an obligee of a department determination made pursuant to this section regarding the distribution of support payments shall be made pursuant to title 41, chapter 14, article 3.

G. For THE purposes of this section:

1. "Business day" means a day on which state offices are open for regular business.

2. "Department" includes the department's agent.

3. "Enforcement action" means an action taken by the department to:

(a) Suspend or deny a license.

(b) Issue a notice of lien against real or personal property.

(c) Issue a notice of levy against assets held by or on behalf of an obligor.

(d) Issue an income withholding order or order to modify or terminate an income withholding order.

(e) Report an obligor to a consumer reporting agency.

(f) Issue a medical support notice of enrollment prescribed by the United States secretary of health and human services.

(g) Offset federal payments.

(h) Disburse support to a caretaker.

Sec. 3. Section 25-535, Arizona Revised Statutes, is amended to read:

25-535. Enforcement of health insurance coverage; medical support notice; administrative review; service

A. In a title IV-D case, a parent who is required by an administrative or court order to provide health insurance coverage for a child shall provide the department or its agent with the name of the health insurance coverage plan under which the child is covered, the effective date of the coverage, a description of the coverage, the name of the employer and any other necessary information, forms or documents related to the health insurance coverage as provided to all new members within thirty days after the support order is established.

B. If an administrative or court order requires a parent to obtain health insurance coverage for the parent's child, the department or its agent may deliver by first class mail OR ELECTRONIC MEANS to the obligated parent's employer a medical support notice to enroll the child in an insurance program as prescribed by that order. The department or its agent shall use the medical support notice to enroll prescribed by the United States secretary of health and human services pursuant to 42 United States Code section 651. The employer shall deliver or mail by first class mail or by electronic means a copy of the medical support notice to enroll to the obligated parent within ten days after the employer receives the notice. The notice serves to enroll the child in the obligated parent's health insurance coverage plan. That parent may contest the notice by filing a written request for an administrative review within ten days after the parent receives a copy of the notice from the employer. The department shall conduct an administrative review pursuant to section 25-522. If a parent contests the notice, the department or its agent shall notify the employer by first class mail or electronic means that the parent has contested the medical support notice to enroll. The employer shall send the employee contributions until the department notifies the employer to cease withholding. An administrative review is limited to determining if:

1. Medical support is unlawful or inconsistent with an administrative or court order.

2. A mistaken identity exists.

3. The responsible party pursuant to the order provides alternative coverage.

4. The other parent is already providing medical insurance for the child pursuant to court order.

5. The cost of the insurance coverage is reasonable as prescribed pursuant to section 25-320, subsection J.

C. If an employee on whom an income withholding order or order of assignment and notice is served is a new employee who is entered into the state directory of new hires pursuant to section 23-722.01, the department or its agent shall provide the medical support notice to enroll to the obligated parent's employer within two days after the date of entry in the state directory of new hires unless the responsible party pursuant to the order provides alternative coverage.

D. If the obligated parent who is required by a court or an administrative order to obtain health insurance coverage changes employment and the new employer is known to the department or its agent, the department or its agent shall use the medical support notice to enroll to transfer notice to the new employer. Within thirty days after the obligated parent changes employment the obligated parent shall provide the department or its agent with the name of the health insurance coverage plan under which the child is covered, the effective date of the coverage, a description of the coverage, the name of the employer and any other necessary information, forms or documents related to the health insurance coverage as provided to all new members. Within twenty business days after it receives the medical support notice to enroll the employer shall transfer the notice to the appropriate health insurance plan that provides coverage for which the child is eligible.

E. A medical support notice to enroll has the same effect as an enrollment application that is signed by the parent.

F. If the employer does not have existing dependent coverage when it receives the medical support notice to enroll, the employer is not required to create this coverage. The employer shall notify the department or its agent of this fact within ten days after receiving the medical support notice to enroll.

G. SERVICE BY MAIL AS AUTHORIZED IN THIS SECTION IS COMPLETE AS TO THE EMPLOYER WHEN THE MAILING IS RECEIVED. SERVICE BY ELECTRONIC MEANS AS AUTHORIZED IN THIS SECTION IS COMPLETE ON TRANSMISSION TO THE EMPLOYER.

Sec. 4. Title 41, chapter 14, article 1, Arizona Revised Statutes, is amended by adding section 41-1954.01, to read:

41-1954.01. <u>Electronic communication by department; applicability</u>

A. NOTWITHSTANDING ANY LAW TO THE CONTRARY, ANY AGENCY, DIVISION, PROGRAM OR PART OF THE DEPARTMENT OR ITS AGENTS THAT ARE REQUIRED TO PROVIDE ADMINISTRATIVE ORDERS, NOTICES, DECISIONS OR LETTERS TO AN APPLICANT, CLAIMANT, RECIPIENT, EMPLOYER OR CLIENT MAY SEND ADMINISTRATIVE ORDERS, NOTICES, DECISIONS OR LETTERS BY ELECTRONIC MEANS IF THE PARTY BEING SERVED OR NOTIFIED CONSENTS.

B. CONSENT MAY BE OBTAINED IN WRITING ON A FORM APPROVED BY THE DEPARTMENT, VERBALLY ON THE RECORD IN A HEARING OR ELECTRONICALLY THROUGH THE DEPARTMENT'S WEBSITE BY THE APPLICANT, CLAIMANT, RECIPIENT, EMPLOYER OR

CLIENT FOLLOWING AN AFFIRMATIVE CONSENT PROCEDURE. AT THE TIME OF CONSENT, THE PARTY MUST BE ADVISED OF THE NATURE OF THE NOTICES TO BE DELIVERED OR SERVED, THE LEGAL CONSEQUENCE OF THE CHOICE AND THE RIGHT TO REVOKE THE CONSENT. CONSENT MAY BE PROVIDED FOR A PROCEEDING OR FOR NOTICES PROVIDED ON AN ONGOING BASIS.

C. DELIVERY OR SERVICE BY ELECTRONIC MEANS IS COMPLETE ON TRANSMISSION UNLESS IT IS ESTABLISHED THAT DELIVERY OR TRANSMISSION OF THE ELECTRONIC DOCUMENT FAILED DUE TO DEPARTMENT ERROR OR FAILURE OF THE RECIPIENT TO RECEIVE THE ELECTRONIC DOCUMENT FOR ANY OTHER REASON OUTSIDE THE CONTROL OF THE RECIPIENT.

D. CONSENT MAY BE REVOKED IN WRITING TO THE DEPARTMENT OR BY FOLLOWING AN AFFIRMATIVE REVOCATION PROCEDURE ESTABLISHED ON THE DEPARTMENT'S WEBSITE.

E. IF THE DEPARTMENT RECEIVES ELECTRONIC NOTICE THAT THE ELECTRONIC ADDRESS TO WHICH THE ADMINISTRATIVE ORDER, NOTICE, DECISION OR LETTER IS BEING SENT IS NO LONGER VALID OR IS OTHERWISE NOT FUNCTIONING, THE DEPARTMENT SHALL DEEM THE CONSENT TO ELECTRONIC NOTICE TO HAVE BEEN REVOKED AND THE ORDER, NOTICE, DECISION OR LETTER SHALL BE SERVED BY MAIL.

F. THIS SECTION IS LIMITED TO NOTICES, DECISIONS AND ORDERS REQUIRED FOR SERVICES AND PROGRAMS IN THE DIVISION OF BENEFITS AND MEDICAL ELIGIBILITY, THE DIVISION OF CHILDREN, YOUTH AND FAMILIES RELATED TO CHILD PROTECTIVE SERVICES AND FOSTER CARE, THE DIVISION OF CHILD SUPPORT ENFORCEMENT AND THE DIVISION OF EMPLOYMENT AND REHABILITATION SERVICES, OR THEIR SUCCESSOR DIVISIONS, IN THE DEPARTMENT. THIS SECTION DOES NOT APPLY TO A NOTICE THAT IS REQUIRED IN CONNECTION WITH LITIGATION BEFORE A COURT OF RECORD IN THIS STATE.

Sec. 5. Section 46-408, Arizona Revised Statutes, is amended to read:

46-408. <u>Assignment of support rights; priority; definitions</u>

A. The assignment under section 46-407 is subject to all of the following:

1. Terminates with respect to current support when the person entitled to receive support is no longer receiving temporary assistance for needy families.

2. While receiving temporary assistance for needy families the assignment applies to any rights to support from any other person. Before October 1, 2009, the assignment applies to any support that accrued before receiving temporary assistance for needy families. On or after October 1, 2009, the assignment does not apply to any support that accrued before receiving temporary assistance for needy families.

3. Does not preclude enforcement of support in the name of the person entitled to receive support.

4. Does not bind any person who lawfully pays support to the person entitled to receive support.

5. Does not assign amounts that exceed the amount of temporary assistance for needy families paid to the person entitled to receive support to which the state is entitled to be reimbursed.

6. When the person entitled to receive support is not receiving temporary assistance for needy families, amounts paid for support shall be credited first to that month's current court ordered support up to an amount equal to the amount of the court order in effect at the time of payment and the excess, if any, shall be subject to the assignment.

7. The assignment applies to arrearages provided in the court order subject to the following priorities:

(a) If the person entitled to receive support is currently receiving temporary assistance for needy families, the state's claim for arrearages shall have priority over all other support claims except for current support.

(b) If the person entitled to receive support is not currently receiving temporary assistance for needy families, the state and the person entitled to receive support shall have a proportionate claim for any arrearages owed to the state and the custodial parent under a child support order. The arrearage payment shall be distributed on the total outstanding arrearage amount and the percentage of the total outstanding arrearage owed to the state and the person entitled to receive support.

B. Notwithstanding subsection A, paragraph 7 of this section, for distributions that occur or should have occurred beginning October 1, 1997, the department shall distribute support payments as prescribed in title IV-D of the social security act and its implementing regulations as follows:

1. Distribute to the family amounts not subject to the assignment.

2. Pay the federal government the federal share of the amount collected.

3. Retain the state share of the amount collected.

4. Retain payments collected through the federal income tax refund intercept program to the extent past due support has been assigned to the state. Any amount collected in excess of the past due support assigned to the state shall be distributed to the past due support owed to the family.

C. An obligee who disagrees with the distribution or disbursement of support payments pursuant to subsection B of this section may request an administrative review pursuant to section 25-522 within thirty business days after the date of the department's notice to the obligee of the distribution and disbursement of support received for the prior period. ~~In title IV-D cases with a receipt of support, the department shall send notice to the obligee each month.~~

D. In title IV-D cases ~~that have never involved public assistance and in public assistance cases that do not have any receipts of support for the last quarter~~, the department shall send written notice to the obligee regarding distribution and disbursement of support ~~only~~ for the most recent quarter of the year. The obligee has thirty business days after the date of that notice to submit a written request for an administrative review. The department or its agent shall send a written notice of acknowledgment of receipt of request for administrative review to the obligee within ten business days after it receives a timely request for review. If the

department or its agent needs additional information from the obligee to respond to the request for review, the department shall indicate this fact in writing. The department or its agent may also request information from other sources. The department or its agent shall issue a written determination not later than thirty business days after the date of the notice of acknowledgment of receipt of request for administrative review or, if additional information is required, not later than thirty business days after it receives this information. If additional information requested by the department or its agent is not received within thirty business days after the request for more information, the department or its agent shall issue a written determination within ten business days after the due date based on the information available. The department or its agent shall send a copy of the written determination to the obligee by first class mail.

E. The obligee shall make any appeal of the department's or its agent's determination in writing pursuant to title 41, chapter 14, article 3 and shall file it in the department's office of appeals within thirty business days after the date of the written determination. An obligee may appeal the department's final determination pursuant to section 41-1993.

F. A payment that is credited against past due support shall be applied first to principal and then to interest.

G. The department may adopt rules addressing interest and distribution of all monies received by the department in child support cases.

H. For the purposes of this section:

1. "Arrearage" has the same meaning prescribed in section 25-500.

2. "Business day" means a day on which state offices are open for regular business.

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

APPROVED BY THE GOVERNOR APRIL 12, 2011.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 12, 2011.

Passed the House April 4, 20 11,

by the following vote: 54 Ayes,

5 Nays, 1 Not Voting

Speaker of the House

Cheryl Laube

Chief Clerk of the House

Passed the Senate January 27, 20 11,

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

President of the Senate

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. 1045

SENATE CONCURS IN HOUSE AMENDMENTS AND FINAL PASSAGE

Passed the Senate April 7, 20 11

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

7 day of April, 20 11

at 4:45 o'clock P. M.

Secretary to the Governor

Approved this 12th day of

April

at 10:55 o'clock A. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 12th day of April, 20 11

at 4:01 o'clock P M.

Secretary of State

S.B. 1045