

REFERENCE TITLE: family law rules; conforming statutes

State of Arizona
Senate
Forty-ninth Legislature
First Regular Session
2009

SB 1010

Introduced by
Senator Gray L

AN ACT

AMENDING SECTIONS 25-315, 25-325, 25-408, 25-415, 25-502, 25-503, 25-504 AND 25-812, ARIZONA REVISED STATUTES; RELATING TO MARITAL AND DOMESTIC RELATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 25-315, Arizona Revised Statutes, is amended to
3 read:

4 25-315. Temporary order or preliminary injunction: effect:
5 definition

6 A. In all actions for dissolution of marriage, for legal separation or
7 for annulment, the clerk of the court shall pursuant to order of the superior
8 court issue a preliminary injunction in the following manner:

9 1. The preliminary injunction shall be directed to each party to the
10 action and contain the following orders:

11 (a) That both parties are enjoined from transferring, encumbering,
12 concealing, selling or otherwise disposing of any of the joint, common or
13 community property of the parties except if related to the usual course of
14 business, the necessities of life or court fees and reasonable attorney fees
15 associated with an action filed under this article, without the written
16 consent of the parties or the permission of the court.

17 (b) That both parties are enjoined from:

18 (i) Molesting, harassing, disturbing the peace of or committing an
19 assault or battery on the person of the other party or any natural or adopted
20 child of the parties.

21 (ii) Removing any natural or adopted child of the parties then
22 residing in Arizona from the jurisdiction of the court without the prior
23 written consent of the parties or the permission of the court.

24 (iii) Removing or causing to be removed the other party or the
25 children of the parties from any existing insurance coverage, including
26 medical, hospital, dental, automobile and disability insurance.

27 (c) That both parties shall maintain all insurance coverage in full
28 force and effect.

29 2. The preliminary injunction shall include the following statement:

30 Warning

31 This is an official court order. If you disobey this
32 order the court may find you in contempt of court. You may also
33 be arrested and prosecuted for the crime of interfering with
34 judicial proceedings and any other crime you may have committed
35 in disobeying this order.

36 You or your spouse may file a certified copy of this order
37 with your local law enforcement agency. A certified copy may be
38 obtained from the clerk of the court that issued this order. If
39 you are the person that brought this action, you must also file
40 evidence with the law enforcement agency that this order was
41 served on your spouse.

42 This court order is effective until a final decree of
43 dissolution, legal separation or annulment is filed or the
44 action is dismissed.

1 3. The preliminary injunction is effective against the petitioner when
2 the petition is filed and against the respondent on service of a copy of the
3 order or on actual notice of the order, whichever is sooner. If service is
4 by registered mail under the Arizona rules of ~~civil~~ FAMILY LAW procedure, the
5 order is effective on receipt of the order. The order remains effective
6 until further order of the court or the entry of a decree of dissolution,
7 legal separation or annulment.

8 4. At the time of filing the petition for dissolution, legal
9 separation or annulment, the copies of the preliminary injunction shall be
10 issued to the petitioner or the agent, servant or employee filing the
11 petition for dissolution, legal separation or annulment. The petitioner is
12 deemed to have accepted service of the petitioner's copy of the preliminary
13 injunction and to have actual notice of its contents by filing or causing to
14 be filed a petition for dissolution, legal separation or annulment. The
15 petitioner shall cause a copy of the preliminary injunction to be served on
16 the respondent with a copy of the summons and petition for dissolution, legal
17 separation or annulment.

18 5. The preliminary injunction has the force and effect of an order of
19 the superior court signed by a judge and is enforceable by all remedies made
20 available by law, including contempt of court. ~~Rules 65(a)(1) and 65(e) of~~
21 ~~the rules of civil procedure do not apply to the preliminary injunction.~~

22 B. In a proceeding for dissolution of marriage, for legal separation,
23 for annulment or for maintenance or support following dissolution of the
24 marriage by a court that lacked personal jurisdiction over the absent spouse,
25 either party may move for an order for equal possession of the liquid assets
26 of the marital property, temporary maintenance or temporary support of a
27 child, natural or adopted, common to the parties entitled to support. The
28 court shall provide for an order for equal possession of the liquid assets of
29 the marital property that existed as of the date the petition for dissolution
30 or legal separation or annulment was served, unless the court finds that
31 there is good cause not to divide those assets. The court's division of
32 liquid assets held by financial institutions does not invalidate applicable
33 law or any provision of an account agreement that assesses penalties against
34 the account holder for premature or unscheduled withdrawals of account funds.
35 The motion shall be accompanied by an affidavit setting forth ~~the liquid~~
36 ~~assets of the parties,~~ the factual basis for the motion and the amounts
37 requested AND, IF APPROPRIATE, THE LIQUID ASSETS OF THE PARTIES. An order
38 for equal possession of the liquid assets of the marital property does not
39 prejudice any final division of the marital community. This subsection does
40 not eliminate the application of the preliminary injunction.

41 C. As a part of a motion for temporary maintenance or support or by
42 independent motion accompanied by affidavit, either party may request the
43 court to issue a temporary restraining order or preliminary injunction for
44 any of the following relief:

1 1. Excluding a party from the family home or from the home of the
2 other party on a showing that physical or emotional harm may otherwise
3 result.

4 2. Providing other injunctive relief proper in the circumstances.

5 D. The court may issue a temporary restraining order without requiring
6 notice to the other party only if it finds on the basis of the moving
7 affidavit or other evidence that irreparable injury will result to the moving
8 party if no order is issued until the time for responding has elapsed. A
9 bond is not required unless the court deems it appropriate.

10 E. On the basis of the showing made, and in conformity with sections
11 25-318 and 25-319, the court may issue a preliminary injunction and an order
12 for temporary maintenance or support in amounts and on terms just and proper
13 in the circumstances. The court may also make temporary orders respecting
14 the property of the parties, as may be necessary.

15 F. A temporary order or preliminary injunction:

16 1. Does not prejudice the rights of the parties or ~~OF~~ any child ~~which~~
17 ~~THAT~~ are to be adjudicated at the subsequent hearings in the proceeding.

18 2. May be revoked or modified before final decree on a showing by
19 affidavit of the facts necessary to revocation or modification of a final
20 decree under section 25-327 ~~and as provided in rule 65 of the rules of civil~~
21 ~~procedure.~~

22 3. That provided for ~~joint~~ EQUAL possession of liquid assets of the
23 marital property does not prejudice either party's claim for temporary
24 maintenance, child support or attorney fees.

25 4. Terminates when the final decree is entered or when the petition
26 for dissolution, legal separation or annulment is dismissed.

27 G. A person who disobeys or resists an injunction issued pursuant to
28 subsection A, paragraph 1, subdivision (b) or subsection C, paragraph 1 of
29 this section is subject to arrest and prosecution for interference with
30 judicial proceedings pursuant to section 13-2810 and the following procedures
31 apply:

32 1. Any party may cause a certified copy of the injunction and return
33 of service on the other party to be registered with the sheriff having
34 jurisdiction of the area in which the party resides. The party originally
35 registering the injunction shall register any changes or modifications of the
36 injunction with the sheriff. For enforcement by arrest and prosecution for
37 interference with judicial proceedings, a certified copy of the injunction,
38 whether or not registered with the sheriff, is presumed to be a valid
39 existing order of the court until a final decree of dissolution, legal
40 separation or annulment is entered or the action for dissolution or legal
41 separation is dismissed.

42 2. A peace officer ~~may~~, with or without a warrant, ~~MAY~~ arrest a person
43 if the peace officer has probable cause to believe that an offense under this
44 subsection has been committed and has probable cause to believe that the
45 person to be arrested has committed the offense, whether the offense is a

1 felony or a misdemeanor and whether such offense was committed within or
2 without the presence of the peace officer. The release procedures available
3 under section 13-3883, **SUBSECTION A**, paragraph 4 and section 13-3903 are not
4 applicable to arrests made pursuant to this subsection.

5 3. A peace officer making an arrest pursuant to this subsection is not
6 civilly or criminally liable for the arrest if the officer acts on probable
7 cause and without malice.

8 4. A person arrested pursuant to this subsection may be released from
9 custody in accordance with the rules of criminal procedure or other
10 applicable statute. An order for release, with or without an appearance
11 bond, shall include pretrial release conditions necessary to provide for the
12 protection of the alleged victim and other specifically designated persons
13 and may provide additional conditions ~~which~~ **THAT** the court deems appropriate,
14 including participation in any counseling programs available to the
15 defendant.

16 5. The remedies provided in this subsection for enforcement of the
17 preliminary injunction are in addition to any other civil or criminal
18 remedies available, including civil contempt of court. The use of one remedy
19 does not prevent the simultaneous or subsequent use of any other.

20 H. For the purposes of this section, "liquid assets" means:

- 21 1. Cash.
- 22 2. Traveler's checks.
- 23 3. Cash in financial institutions.
- 24 4. Lottery winnings.

25 Sec. 2. Section 25-325, Arizona Revised Statutes, is amended to read:
26 **25-325. Decree; finality; restoration of maiden name**

27 A. A decree of dissolution of marriage or of legal separation is final
28 when entered, subject to the right of appeal. An appeal from the decree of
29 dissolution that does not challenge the finding that the marriage is
30 irretrievably broken does not delay the finality of that provision of the
31 decree ~~which~~ **THAT** dissolves the marriage beyond the time for appealing from
32 that provision, and either of the parties may remarry pending appeal. An
33 order directing payment of money for support or maintenance of the spouse or
34 the minor child or children shall not be suspended or the execution of the
35 order stayed pending the appeal.

36 B. Either party to a decree of legal separation may file a petition
37 for dissolution of marriage in accordance with the requirements of section
38 25-314. The petition shall be filed under the same case number as the legal
39 separation but shall be considered and shall proceed as a new and separate
40 action with service of process in accordance with rule ~~4-40~~ of the rules of
41 ~~civil~~ **FAMILY LAW** procedure. The court may enter a decree of dissolution of
42 marriage in the new action in accordance with section 25-312 ~~upon such~~ **ON**
43 terms ~~as~~ **THAT** are just and without regard to section 25-327, subsection A,
44 except that the provisions as to property disposition in the decree of legal
45 separation or any property settlement agreement approved by the court may not

1 be revoked or modified, unless the court finds the existence of conditions
2 that justify the reopening of a judgment under the laws of this state.

3 C. ~~Upon~~ ON request by a party at any time ~~prior to~~ BEFORE the signing
4 of the decree of dissolution or annulment by the court, the court shall order
5 that THE party's requested former name be restored.

6 Sec. 3. Section 25-408, Arizona Revised Statutes, is amended to read:
7 25-408. Rights of noncustodial parent; parenting time;
8 relocation of child; exception; enforcement; access
9 to records

10 A. A parent who is not granted custody of the child is entitled to
11 reasonable parenting time rights to ensure that the minor child has frequent
12 and continuing contact with the noncustodial parent unless the court finds,
13 after a hearing, that parenting time would endanger seriously the child's
14 physical, mental, moral or emotional health.

15 B. If by written agreement or court order both parents are entitled to
16 custody or parenting time and both parents reside in the state, at least
17 sixty days' advance written notice shall be provided to the other parent
18 before a parent may do either of the following:

- 19 1. Relocate the child outside the state.
- 20 2. Relocate the child more than one hundred miles within the state.

21 C. The notice required by this section shall be made by certified
22 mail, return receipt requested, or pursuant to the Arizona rules of ~~civil~~
23 FAMILY LAW procedure. A parent who does not comply with the notification
24 requirements of this subsection is subject to court sanction. The court may
25 impose a sanction that will affect custody or parenting time only in
26 accordance with the child's best interests.

27 D. Within thirty days after notice is made the nonmoving parent may
28 petition the court to prevent relocation of the child. After expiration of
29 this time any petition or other application to prevent relocation of the
30 child may be granted only on a showing of good cause. This subsection does
31 not prohibit a parent who is seeking to relocate the child from petitioning
32 the court for a hearing, on notice to the other parent, to determine the
33 appropriateness of a relocation that may adversely affect the other parent's
34 custody or parenting time rights.

35 E. Subsection B of this section does not apply if provision for
36 relocation of a child has been made by a court order or a written agreement
37 of the parties that is dated within one year of the proposed relocation of
38 the child.

39 F. Pending the determination by the court of a petition or application
40 to prevent relocation of the child:

- 41 1. A parent with sole custody or a parent with joint custody and
42 primary physical custody who is required by circumstances of health or safety
43 or employment of that parent or that parent's spouse to relocate in less than
44 sixty days after written notice has been given to the other parent may
45 temporarily relocate with the child.

1 2. A parent who shares joint custody and substantially equal physical
2 custody and who is required by circumstances of health or safety or
3 employment of that parent or that parent's spouse to relocate in less than
4 sixty days after written notice has been given to the other parent may
5 temporarily relocate with the child only if both parents execute a written
6 agreement to permit relocation of the child.

7 G. The court shall determine whether to allow the parent to relocate
8 the child in accordance with the child's best interests. The burden of
9 proving what is in the child's best interests is on the parent who is seeking
10 to relocate the child. To the extent practicable the court shall also make
11 appropriate arrangements to ensure the continuation of a meaningful
12 relationship between the child and both parents.

13 H. The court shall not deviate from a provision of any parenting plan
14 or other written agreement by which the parents specifically have agreed to
15 allow or prohibit relocation of the child unless the court finds that the
16 provision is no longer in the child's best interests. There is a rebuttable
17 presumption that a provision from any parenting plan or other written
18 agreement is in the child's best interests.

19 I. In determining the child's best interests the court shall consider
20 all relevant factors including:

21 1. The factors prescribed under section 25-403.

22 2. Whether the relocation is being made or opposed in good faith and
23 not to interfere with or to frustrate the relationship between the child and
24 the other parent or the other parent's right of access to the child.

25 3. The prospective advantage of the move for improving the general
26 quality of life for the custodial parent or for the child.

27 4. The likelihood that the parent with whom the child will reside
28 after the relocation will comply with parenting time orders.

29 5. Whether the relocation will allow a realistic opportunity for
30 parenting time with each parent.

31 6. The extent to which moving or not moving will affect the emotional,
32 physical or developmental needs of the child.

33 7. The motives of the parents and the validity of the reasons given
34 for moving or opposing the move including the extent to which either parent
35 may intend to gain a financial advantage regarding continuing child support
36 obligations.

37 8. The potential effect of relocation on the child's stability.

38 J. The court shall assess attorney fees and court costs against either
39 parent if the court finds that the parent has unreasonably denied, restricted
40 or interfered with court-ordered parenting time.

41 K. Pursuant to section 25-403.06, the noncustodial parent is entitled
42 to have access to documents and other information about the child unless the
43 court finds that access would endanger seriously the child's or the custodial
44 parent's physical, mental, moral or emotional health.

1 Sec. 4. Section 25-415, Arizona Revised Statutes, is amended to read:
2 25-415. Custody by nonparent; presumption; grounds; definitions

3 A. IN ADDITION TO SECTION 25-401, a child custody proceeding may ~~also~~
4 be commenced in the superior court by a person other than a legal parent by
5 filing a verified petition, or by FILING a petition supported by an
6 affidavit, in the county in which the child is permanently resident or is
7 found. The petition shall include detailed facts supporting the petitioner's
8 right to file the petition. The petitioner shall provide notice as required
9 by subsection E OF THIS SECTION. Notice shall include a copy of the petition
10 and any affidavits. The court shall summarily deny a petition unless it
11 finds that the petitioner by the pleadings established that all of the
12 following are true:

13 1. The person filing the petition stands in loco parentis to the
14 child.

15 2. It would be significantly detrimental to the child to remain or be
16 placed in the custody of either of the child's living legal parents who wish
17 to retain or obtain custody.

18 3. A court of competent jurisdiction has not entered or approved an
19 order concerning the child's custody within one year before the person filed
20 a petition pursuant to this section, unless there is reason to believe the
21 child's present environment may seriously endanger the child's physical,
22 mental, moral or emotional health.

23 4. One of the following applies:

24 (a) One of the legal parents is deceased.

25 (b) The child's legal parents are not married to each other at the
26 time the petition is filed.

27 (c) There is a pending proceeding for dissolution of marriage or for
28 legal separation of the legal parents at the time the petition is filed.

29 B. If a person other than a child's legal parent is seeking custody
30 there is a rebuttable presumption that it is in the child's best interest to
31 award custody to a legal parent because of the physical, psychological and
32 emotional needs of the child to be reared by the child's legal parent. To
33 rebut this presumption that person must show by clear and convincing evidence
34 that awarding custody to a legal parent is not in the child's best interests.

35 C. The superior court may grant a person who stands in loco parentis
36 to a child, including grandparents and great-grandparents, AND who ~~meet~~ MEETS
37 the requirements of section 25-409 reasonable visitation rights to the child
38 on a finding that the visitation is in the child's best interests and that
39 any of the following is true:

40 1. One of the legal parents is deceased or has been missing at least
41 three months.

42 2. The child's legal parents are not married to each other at the time
43 the petition is filed.

44 3. There is a pending proceeding for dissolution of marriage or for
45 legal separation of the legal parents at the time the petition is filed.

1 D. A grandparent, a great-grandparent or a person who stands in loco
2 parentis to a child may bring a proceeding for visitation rights with a child
3 by filing a verified petition in the county in which the child is permanently
4 resident or is found.

5 E. Notice of a custody or visitation proceeding filed pursuant to this
6 section shall be served pursuant to the ARIZONA rules of ~~civil~~ FAMILY LAW
7 procedure to all of the following:

- 8 1. The child's parents.
- 9 2. A person who has court ordered custody or visitation rights.
- 10 3. The child's guardian or guardian ad litem.
- 11 4. A person or agency that has physical custody of the child or that
12 claims to have custody or visitation rights.
- 13 5. Any other person or agency that has previously appeared in the
14 action.

15 F. A person shall file proceedings for custody or visitation under
16 this chapter in the same action in which the legal parents had their marriage
17 dissolved or any other proceeding in which a previous custody order has been
18 entered regarding the child.

19 G. For the purposes of this chapter:

- 20 1. "In loco parentis" means a person who has been treated as a parent
21 by the child and who has formed a meaningful parental relationship with the
22 child for a substantial period of time.
- 23 2. "Legal parent" means a biological or adoptive parent whose parental
24 rights have not been terminated.

25 Sec. 5. Section 25-502, Arizona Revised Statutes, is amended to read:

26 25-502. Jurisdiction, venue and procedure: additional
27 enforcement provisions

28 A. The superior court has original jurisdiction in proceedings brought
29 by the department, its agents, a person having physical custody of a child or
30 a party to the case to establish, enforce or modify the duties of support as
31 prescribed in this chapter. All such proceedings are civil actions except as
32 provided in section 25-511. Proceedings to enforce the duties of support as
33 prescribed in this chapter may be originated in the county of residence of
34 the respondent or the petitioner or of the child or children who are the
35 subject of the action.

36 B. A proceeding to establish support must originate in the county
37 where the child resides or, if the child resides out of state, the county of
38 this state where the party filing the petition to establish support resides,
39 if either of the following applies:

- 40 1. An action does not exist under this title.
- 41 2. Paternity was established without a court order pursuant to section
42 36-334.

43 C. A person or the department or its agent must file a petition to
44 establish or modify a child support order in the superior court in the county
45 of the last order issued under this title if an order exists in this state.

1 If a person wishes the case transferred to the county of this state where the
2 child resides or, if the child resides out of state, the county of this state
3 where the party requesting the transfer resides, the person must file a
4 request for transfer with the clerk of the superior court that issued the
5 last order.

6 D. A request for transfer pursuant to subsection C of this section
7 must include a petition or motion regarding support, a statement of payments
8 in default, if applicable, and the transmittal fee prescribed in section
9 12-284. The responding party may object to the transfer by filing an
10 objection and affidavit within twenty days after service of the request to
11 transfer.

12 E. If the clerk does not receive an objection and affidavit pursuant
13 to subsection D of this section, the clerk shall issue the transfer order and
14 transfer the proceeding and all related court files to the other county
15 within thirty days after service of the request to transfer. If the clerk
16 receives an objection and affidavit within the time prescribed in subsection
17 D of this section, the clerk shall notify all parties of the date of the
18 hearing at least ten days before the hearing date. The court may hear
19 evidence relevant only to the issue of the transfer. If after that hearing
20 the court orders the transfer, the clerk shall transfer the proceeding and
21 court files within ten days after the order. The county to which the
22 transfer is made retains the court files and venue for all purposes and the
23 transferring county shall not retain a copy of those files.

24 F. The county to which a transfer is made pursuant to subsection D or
25 E of this section shall proceed as if the proceeding was brought in that
26 county originally. A judgment from that county has the same effect and may
27 be enforced or modified as a judgment from the original county.

28 G. The party who petitioned for transfer must pay the postadjudication
29 fee prescribed in section 12-284 to the county to which the proceeding was
30 transferred within ten days after the date the clerk of the court mails the
31 notice of the requirement to pay the postadjudication fee. If the party does
32 not pay the fee by that date, the transfer order is automatically nullified
33 and the court clerk shall return the proceeding and all related court files
34 to the original county.

35 H. Except as provided in section 25-510, in title IV-D cases the
36 superior court shall accept for filing any documents that are received
37 through electronic transmission if the electronically reproduced document
38 states that the copy used for the electronic transmission was certified
39 before it was electronically transmitted.

40 I. On filing of the petition and, if applicable, after a transfer is
41 completed, the court shall issue an order requiring the responding party to
42 appear at the time and place set for the hearing on the petition. Service of
43 the order and a copy of the petition shall be as provided in the Arizona
44 rules of ~~civil~~ FAMILY LAW procedure. If the responding party receives notice
45 of a hearing but fails to appear, the court may issue a child support arrest

1 warrant as provided in article 5 of this chapter and shall require that the
2 responding party pay at the time of arrest an amount set by the court to
3 secure the responding party's release from custody pending an appearance at
4 the next scheduled hearing. The court also may find the party to be in
5 contempt of court pursuant to section 12-864.01 and set an amount to be paid
6 to purge the contempt. Any purge amount set by the court shall supersede the
7 amount required to be set to secure the responding party's release, and the
8 responding party shall pay only the purge amount as a condition of release
9 from custody. Any amounts paid under this section shall be deposited with
10 the clerk of the court or the support payment clearinghouse and credited
11 first to the responding party's current child support obligation and then to
12 arrearages. The court may grant a default judgment for arrearages on a prima
13 facie showing of the amount due.

14 J. The department or its agent or a parent, guardian or custodian may
15 file with the clerk of the superior court a request to establish child
16 support. The request must include a proposed order, the worksheet for child
17 support and a notice of the right to request a hearing within twenty days
18 after service in this state or within thirty days after service outside this
19 state. The request, proposed order, worksheet and notice shall be served
20 pursuant to the Arizona rules of ~~civil~~ FAMILY LAW procedure on all parties,
21 and in a title IV-D case, on the department or its agent. In a title IV-D
22 case, the department or its agent may serve all parties by certified mail,
23 return receipt requested. If a party does not request a hearing within the
24 time prescribed by this subsection, the court shall review the proposed order
25 and worksheet and enter an appropriate order or set the matter for a hearing.
26 In a title IV-D case, the department or its agent shall enforce the order.

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

38 Sec. 6. Section 25-503, Arizona Revised Statutes, is amended to read:

39 25-503. Order for support; methods of payment; modification;
40 termination; statute of limitations; judgment on
41 arrearages; notice; security

42 A. In any proceeding in which there is at issue the support of a
43 child, the court may order either or both parents to pay any amount necessary
44 for the support of the child. If the court order does not specify the date
45 when current support begins, the support obligation begins to accrue on the

1 first day of the month following the entry of the order. If a personal check
2 for support payments and handling fees is rightfully dishonored by the payor
3 bank or other drawee, any subsequent support payments and handling fees shall
4 be paid only by cash, money order, cashier's check, traveler's check or
5 certified check. The department may collect from the drawer of a dishonored
6 check or draft an amount allowed pursuant to section 44-6852. Pursuant to
7 sections 35-146 and 35-147, the department shall deposit monies collected
8 pursuant to this subsection in a child support enforcement administration
9 fund. If a party required to pay support other than by personal check
10 demonstrates full and timely payment for twenty-four consecutive months, that
11 party may pay support by personal check if these payments are for the full
12 amount, are timely tendered and are not rightfully dishonored by the payor
13 bank or other drawee. On a showing of good cause, the court may order that
14 the party or parties required to pay support give reasonable security for
15 these payments. If the court sets an appearance bond and the obligor fails
16 to appear, the bond is forfeited and credited against any support owed by the
17 party required to pay support. This subsection does not apply to payments
18 that are made by means of a wage assignment.

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

24 C. In title IV-D cases, and in all other cases subject to an income
25 withholding order issued on or after January 1, 1994, after notice to the
26 party entitled to receive support, the department or its agent may direct the
27 party obligated to pay support or other payor to make payment to the support
28 payment clearinghouse. The department or its agent shall provide notice by
29 first class mail.

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

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

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

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

42 E. Any order for child support may be modified or terminated on a
43 showing of changed circumstance that is substantial and continuing, except as
44 to any amount that may have accrued as an arrearage before the date of notice
45 of the motion or order to show cause to modify or terminate. The addition of

1 health insurance coverage as defined in section 25-531 or a change in the
2 availability of health insurance coverage may constitute a continuing and
3 substantial change in circumstance. Modification and termination are
4 effective on the first day of the month following notice of the petition for
5 modification or termination unless the court, for good cause shown, orders
6 the change to become effective at a different date but not earlier than the
7 date of filing the petition for modification or termination. The order of
8 modification or termination may include an award of attorney fees and court
9 costs to the prevailing party.

10 F. On petition of a person who has been ordered to pay child support
11 pursuant to a presumption of paternity established pursuant to section
12 25-814, the court may order the petitioner's support to terminate if the
13 court finds based on clear and convincing evidence that paternity was
14 established by fraud, duress or material mistake of fact. Except for good
15 cause shown, the petitioner's support obligations continue in effect until
16 the court has ruled in favor of the petitioner. The court shall order the
17 petitioner, each child who is the subject of the petition and the child's
18 mother to submit to genetic testing and shall order the appropriate testing
19 procedures to determine the child's inherited characteristics, including
20 blood and tissue type. If the court finds that the petitioner is not the
21 child's biological father, the court shall vacate the determination of
22 paternity and terminate the support obligation. Unless otherwise ordered by
23 the court, an order vacating a support obligation is prospective and does not
24 alter the petitioner's obligation to pay child support arrearages or any
25 other amount previously ordered by the court. If the court finds that it is
26 in the child's best interests, the court may order the biological father to
27 pay restitution to the petitioner for any child support paid before the court
28 ruled in favor of the petitioner pursuant to this subsection.

29 G. Notwithstanding subsection E of this section, in a title IV-D case
30 a party, or the department or its agent if there is an assignment of rights
31 under section 46-407, may request every three years that an order for child
32 support be reviewed and, if appropriate, adjusted. The request may be made
33 without a specific showing of a changed circumstance that is substantial and
34 continuing. The department or its agent shall conduct the review in
35 accordance with the child support guidelines of this state. If appropriate,
36 the department shall file a petition in the superior court to adjust the
37 support amount. Every three years the department or its agent shall notify
38 the parties of their right to request a review of the order for support. The
39 department or its agent shall notify the parties by first class mail at their
40 last known address or by including the notice in an order.

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

44 I. The right of a party entitled to receive support or the department
45 to receive child support payments as provided in the court order vests as

1 each installment falls due. Each vested child support installment is
2 enforceable as a final judgment by operation of law. The department or its
3 agent or a party entitled to receive support may also file a request for
4 written judgment for support arrearages.

5 J. If the obligee, the department or their agents make efforts to
6 collect a child support debt more than ten years after the emancipation of
7 the youngest child subject to the order, the obligor may assert as a defense,
8 and has the burden to prove, that the obligee or the department unreasonably
9 delayed in attempting to collect the child support debt. On a finding of
10 unreasonable delay a tribunal, as defined in section 25-1202, may determine
11 that some or all of the child support debt is no longer collectible after the
12 date of the finding.

13 K. Notwithstanding any other law, any judgment for support and for
14 associated costs and attorney fees is exempt from renewal and is enforceable
15 until paid in full.

16 L. If a party entitled to receive child support or spousal maintenance
17 or the department or its agent enforcing an order of support has not received
18 court ordered payments, the party entitled to receive support or spousal
19 maintenance or the department or its agent may file with the clerk of the
20 superior court a request for judgment of arrearages and an affidavit
21 indicating the name of the party obligated to pay support and the amount of
22 the arrearages. The request must include notice of the requirements of this
23 section and the right to request a hearing within twenty days after service
24 in this state or within thirty days after service outside this state. The
25 request, affidavit and notice must be served pursuant to the Arizona rules of
26 ~~civ~~ FAMILY LAW procedure on all parties including the department or its
27 agents in title IV-D cases. In a title IV-D case, the department or its
28 agent may serve all parties by certified mail, return receipt requested.
29 Within twenty days after service in this state or within thirty days after
30 service outside this state, a party may file a request for a hearing if the
31 arrearage amount or the identity of the person is in dispute. If a hearing
32 is not requested within the time provided, or if the court finds that the
33 objection is unfounded, the court must review the affidavit and grant an
34 appropriate judgment against the party obligated to pay support.

35 M. If after reasonable efforts to locate the obligee the clerk or
36 support payment clearinghouse is unable to deliver payments for a period of
37 one hundred twenty days after the date the first payment is returned as
38 undeliverable due to the failure of a party to whom the support has been
39 ordered to be paid to notify the clerk or support payment clearinghouse of a
40 change in address, the clerk or support payment clearinghouse shall return
41 that and all other unassigned payments to the obligor unless there is an
42 agreement of the obligor to pay assigned arrears and other debts owed to the
43 state.

44 N. If the obligee of a child support order marries the obligor of the
45 child support order, that order automatically terminates on the last day of

1 the month in which the marriage takes place and arrearages do not accrue
2 after that date. However, the obligee or the state may collect child support
3 arrearages that accrued before that date. The obligee, the obligor or the
4 department or its agent in a title IV-D case may file a request or
5 stipulation to terminate or adjust any existing order of assignment, pursuant
6 to section 25-504 or section 25-505.01.

7 0. For the purposes of this chapter, a child is emancipated:

8 1. On the date of the child's marriage.

9 2. On the child's eighteenth birthday.

10 3. When the child is adopted.

11 4. When the child dies.

12 5. On the termination of the support obligation if support is extended
13 beyond the age of majority pursuant to section 25-501, subsection A or
14 section 25-320, subsections E and F.

15 Sec. 7. Section 25-504, Arizona Revised Statutes, is amended to read:

16 25-504. Order of assignment; ex parte order of assignment;
17 responsibilities; violation; termination

18 A. In a proceeding in which the court orders a person to pay support
19 the court shall, and in a proceeding in which the court orders a person to
20 pay spousal maintenance the court may, assign to the person or agency
21 entitled to receive the support or spousal maintenance that portion of the
22 person's income necessary to pay the amount ordered by the court. In a
23 proceeding in which spousal maintenance is ordered to be paid the court shall
24 order the assignment on either party's request.

25 B. A person who is obligated by an order to pay support or spousal
26 maintenance, the person to whom support or spousal maintenance is ordered to
27 be paid or the department or its agent in a title IV-D case may file a
28 verified request with the clerk of the superior court requesting the clerk to
29 issue an ex parte order of assignment for support or spousal maintenance.
30 The ex parte order of assignment may include a payment for current support
31 and any other support, current spousal maintenance, spousal maintenance
32 arrearages and interest on spousal maintenance arrearages. A request filed
33 by the department or its agent need not be verified. The request shall
34 state:

35 1. The name of the person or agency entitled to receive support or
36 spousal maintenance.

37 2. The monthly amount of any current support and the monthly amount of
38 any spousal maintenance ordered by the court.

39 3. The specific amount requested for any support arrearages, spousal
40 maintenance arrearages or interest.

41 4. The name and address of the payor to whom it is requested the order
42 of assignment be directed and the name of the person obligated to pay support
43 or spousal maintenance.

44 C. After receipt of a request for an ex parte order of assignment the
45 clerk of the superior court, without a hearing or notice to the person

1 obligated to pay support or spousal maintenance, shall issue an order of
2 assignment of that portion of the person's income as is sufficient to pay the
3 amount requested to the person or agency entitled to receive the support or
4 spousal maintenance. The order of assignment shall include the social
5 security number of the obligated person. On issuance of an ex parte order of
6 assignment, the clerk shall issue a notice directed to the obligor in
7 substantially the following form, which shall also be in Spanish:

8 Notice

9 To: The obligor (the person ordered to pay support or
10 spousal maintenance)

11 This is to notify you that part of your income or other
12 monies is being taken away by the enclosed order of assignment
13 that was issued on a request for an order of assignment that
14 also is enclosed. The order of assignment has been issued for
15 currently accruing child support or spousal maintenance, or
16 both, based on the requesting party's claim that you are
17 obligated to pay this. In addition, the requesting party may be
18 claiming a right to collect other support, as defined in section
19 25-500, Arizona Revised Statutes, arrearages on spousal
20 maintenance or interest on a judgment for unpaid spousal
21 maintenance.

22 If you believe the enclosed order of assignment is
23 improper or unlawful, that your property is exempt by law or
24 that your employer or other payor is withholding more than is
25 permitted by law, you may request a hearing before the superior
26 court. You must file a request to terminate or adjust the order
27 of assignment on forms provided by the clerk of the court within
28 seven days after your receipt of the order for assignment,
29 request for an order of assignment and this notice. If you
30 request a hearing, it will be held no more than ten days after
31 you file your request with the court.

32 Here are some other important things you should know:

33 The order of assignment is effective immediately on
34 service of the order on your employer or another payor. The
35 first employer or payor served shall not withhold or deduct
36 amounts specified in the ex parte order of assignment for
37 fourteen calendar days from the date of service to allow you,
38 the obligor, an opportunity to contest the order of assignment
39 as provided in section 25-504, Arizona Revised Statutes. A
40 future employer or payor may begin deductions sooner than the
41 fourteen day period after the order of assignment is received.

42 If you request a hearing, the court, after considering the
43 financial resources of both parties and the reasonableness of
44 the positions each party has taken, may order a party to pay a

1 reasonable amount to the other for the attorney fees and costs
2 of filing or defending the request.

3 Under state law (section 33-1131, Arizona Revised
4 Statutes) no more than one-half of your disposable earnings for
5 any pay period may be taken to satisfy an order issued for
6 support or spousal maintenance. The amount of disposable
7 earnings exempt from the order of assignment must be paid to you
8 when due. Disposable income means the remaining portion of your
9 wages, salary or compensation for personal services, including
10 bonuses and commissions, or otherwise, and includes payments
11 pursuant to a pension or retirement program or a deferred
12 compensation plan, after deducting from such earnings the
13 amounts required by law to be withheld.

14 An employer or other payor who receives the order of
15 assignment may deduct from amounts due to you one dollar for
16 each pay period, but not more than four dollars per month, for
17 costs. The employer or payor also must deduct a monthly amount
18 for the support payment handling fee required by state law
19 (section 25-510, Arizona Revised Statutes).

20 The employer or other payor on whom the order of
21 assignment is served will continue to withhold the amount set in
22 the order and will forward the payment to the support payment
23 clearinghouse until you file with the clerk one of the
24 following:

25 1. A verified request to adjust the order of assignment,
26 and the court adjusts the order of assignment because there has
27 been a change of circumstances since the time of the issuance of
28 the order or there is other good cause to do so.

29 2. A verified request for a hearing to terminate the
30 order of assignment and, after a hearing, the court terminates
31 the order of assignment if all obligations have been satisfied
32 or will be satisfied within ninety days.

33 3. A notarized stipulation stating that the obligation to
34 pay support or spousal maintenance has ended and that all
35 arrearages either have been satisfied or have been waived, and
36 the clerk terminates the order of assignment.

37 An employer may not refuse to hire, may not discharge or
38 may not otherwise discipline you as a result of the order of
39 assignment. If you are wrongfully refused employment,
40 discharged or otherwise disciplined you may recover damages
41 suffered, plus reinstatement if appropriate, plus reasonable
42 attorney fees and costs incurred against the employer.

43 Unless a court has expressly ordered otherwise, you must
44 notify the clerk of the court or the support payment
45 clearinghouse in writing of the address of your residence and of

1 your employment and, within ten days, of a change in either one.
2 Your failure to do so may subject you to sanctions for contempt
3 of court, including reasonable attorney fees and costs pursuant
4 to state law (section 25-504, subsection R, Arizona Revised
5 Statutes). Official notices will be delivered to you at the
6 most recent addresses you have provided to the clerk or support
7 payment clearinghouse.

8 D. Any order of assignment shall be issued only for support, spousal
9 maintenance, spousal maintenance arrearages, interest on spousal maintenance
10 arrearages and handling fees. The order of assignment shall state the total
11 amount that the payor shall withhold. The order of assignment also shall
12 specify the monthly amount of current support and any other payment ordered
13 for support, the monthly amount of any current spousal maintenance, the
14 monthly amount of any spousal maintenance arrearages and any monthly interest
15 payment. If the obligor's disposable earnings from the primary employer or
16 other payor do not meet the support obligation, the court shall issue an
17 order of assignment to a secondary employer or other payor of the obligor in
18 order to meet the full support obligation.

19 E. An order of assignment shall be served on any employer or other
20 payor by first class mail, electronic transmission or personal delivery or
21 pursuant to the Arizona rules of ~~civil~~ FAMILY LAW procedure. The order of
22 assignment is effective immediately on receipt by any employer or other payor
23 and any future employer or future payor. Any employer or other payor of
24 monies shall begin withholding no later than fourteen days after receipt of
25 an order of assignment. The employer or other payor, if feasible, may begin
26 withholding sooner than the fourteen day period if a payment to the obligor
27 is due sooner.

28 F. Two copies of an ex parte order of assignment and of the request
29 for an order of assignment, together with a copy of the notice required by
30 this section, shall be served on any employer or other payor in the same
31 manner as other orders of assignment under this section. Within five days
32 after receipt, the employer or payor shall serve by personal delivery or by
33 registered mail one copy of the ex parte order of assignment and of the
34 request and the notice on the employee or other payee. The ex parte order of
35 assignment is effective on any employer or other payor, and as an assignment
36 by operation of law is effective on any future employers or other future
37 payors, immediately on receipt. The first employer or other payor served
38 shall not withhold or deduct amounts specified in the ex parte order of
39 assignment for fourteen calendar days to allow the obligor an opportunity to
40 contest the order of assignment as provided in this section. Any future
41 employers or future payors shall begin withholding not later than fourteen
42 days after receipt of an ex parte order of assignment but, if feasible, may
43 begin withholding sooner than fourteen days if a payment to the obligor is
44 due sooner.

1 G. After service of an ex parte order of assignment on the employer or
2 payor that initially receives the order of assignment, an obligor may request
3 a hearing to contest the ex parte order of assignment. The request shall be
4 made in writing, and the obligor shall state under oath the specific reason
5 for the request. The request shall be filed with the court together with a
6 notice of hearing form. The court shall hold a hearing within ten days after
7 the request and notice of hearing form is filed. Immediately on the
8 scheduling of the hearing, the obligor shall serve a copy of the request for
9 and notice of hearing on the person entitled to receive support, and in a
10 title IV-D case to the department. If the obligor files a request for
11 hearing within seven days after receipt of the order of assignment, the court
12 may order the support payment clearinghouse not to disburse any monies
13 received pursuant to the order of assignment until further order of the
14 court. The obligor may contest the withholding for any of the following
15 reasons:

- 16 1. There is an error in the identity of the obligor.
- 17 2. There is an error in the amount of support or spousal maintenance.
- 18 3. Invalidity of the order for support or spousal maintenance.
- 19 4. Current support or spousal maintenance is no longer owed, if the
20 order of assignment includes a payment for current support or spousal
21 maintenance.
- 22 5. Arrearages are not owed if the order of assignment includes a
23 payment for arrearages.

24 H. Any employer or other payor who has received any order of
25 assignment shall withhold the amount specified in the order of assignment,
26 together with the handling fee as provided in section 25-510, from the income
27 of the person obligated to pay support or spousal maintenance and shall
28 transmit the withheld monies to the support payment clearinghouse within two
29 business days after the obligor is paid or after the payment to the obligor
30 is due. The handling fee shall be deducted and transmitted monthly. For the
31 cost of compliance the employer or payor may also withhold and retain an
32 additional one dollar per payment but not more than four dollars per month
33 for each obligor. An employer or payor may combine in a single payment
34 withheld monies for more than one obligor, shall separately identify the
35 portion of the remittance that is attributable to each obligor and shall
36 include each obligor's social security number. An employer or payor shall
37 notify the clerk or support payment clearinghouse in writing when the obligor
38 is no longer employed or the right to receive income or other monies has been
39 terminated. The employer or payor shall also notify the clerk or support
40 payment clearinghouse in writing of the obligor's social security number and
41 last known address and the name and address of the obligor's new employer, if
42 known, within ten days. In a non-title IV-D case, within ten days after
43 receiving this information the support payment clearinghouse shall notify the
44 clerk of the superior court in the county where the support or maintenance
45 order was issued. If within ninety days of the last payment, the employer or

1 other payor reemploys the obligor or becomes obligated to pay the obligor,
2 the employer or payor is again bound by the order of assignment and is
3 required to perform as required by this section. In a title IV-D case the
4 order of assignment may be reinstated pursuant to section 25-505.01. An
5 employer or payor who fails without good cause to comply with the terms of an
6 order of assignment is liable for amounts not paid to the clerk or support
7 payment clearinghouse pursuant to the order of assignment and reasonable
8 attorney fees, costs and other expenses incurred in procuring compliance and
9 may be subject to contempt.

10 I. If a person is obligated to pay child support for more than one
11 family and the amount available for withholding is not sufficient to meet the
12 total combined current child support obligation, any monies withheld from the
13 obligor's income shall be allocated to each family by the employer or payor
14 as follows:

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

17 2. The amount of current child support ordered in each case shall be
18 divided by the total current child support obligation to obtain the
19 percentage of the total current child support obligation to be allocated to
20 each case.

21 3. The amount withheld from the obligor shall be multiplied by the
22 percentage for each case to obtain the amount to be allocated to each case.

23 J. The person or agency entitled to receive support or spousal
24 maintenance shall notify the clerk of the superior court or support payment
25 clearinghouse in writing of any change of residential address and of any
26 other information required pursuant to section 46-443, within ten days of any
27 change. If after reasonable efforts to locate the obligee the clerk or
28 support payment clearinghouse is unable to deliver payments under an order of
29 assignment for the period prescribed in section 25-503 due to the failure of
30 an obligee to comply with the notice requirement of this subsection, the
31 clerk or support payment clearinghouse shall not make further payment under
32 the order of assignment and shall return payments to the obligor as
33 prescribed in section 25-503. Under these circumstances the court, clerk or
34 department or its agent shall order the release of the employer or payor from
35 the order of assignment on request of the employer, the payor, the department
36 or its agent or on the clerk's own initiative. Any order of assignment from
37 which an employer or payor has been released may be reinstated by following
38 the procedures for obtaining an ex parte order of assignment pursuant to this
39 section or, in a title IV-D case, an administrative income withholding order
40 pursuant to section 25-505.01.

41 K. Unless a court has ordered otherwise, the person ordered to pay
42 support or spousal maintenance shall notify the clerk of the superior court
43 or the support payment clearinghouse in writing of the obligor's residential
44 address and the name and address of any employer, and within ten days of any

1 change. Failure to do so may subject the person to sanctions for contempt of
2 court, including reasonable attorney fees and costs.

3 L. Any order of assignment may be adjusted if there has been a change
4 of circumstances since the date the order of assignment was issued or for
5 good cause. The department or its agent or a person obligated to pay or
6 entitled to receive support or spousal maintenance shall file with the clerk
7 of the superior court a request to adjust the order of assignment and a
8 proposed order of assignment. The request shall specify the adjustment
9 sought and the reason for the request. A copy of the request shall be served
10 pursuant to the Arizona rules of ~~eivi+~~ FAMILY LAW procedure, or by the
11 department or its agent in a title IV-D case by first class mail, on all
12 other parties and on the state if the department is providing title IV-D
13 support services or has a claim for arrearages. The party receiving the
14 request and proposed order may request a hearing within twenty days or within
15 thirty days if service is made outside this state. On proof of service and
16 if a hearing has not been requested within the time allowed, the clerk shall
17 issue the order of assignment as appropriate. Within two business days after
18 the date the order of assignment is issued, the clerk shall transmit a copy
19 of the order of assignment to the employer or payor, the department or its
20 agent and all parties. Unless ordered otherwise by the court, in a title
21 IV-D case any order of assignment may be adjusted pursuant to section
22 25-505.01.

23 M. The department or its agent or a person obligated to pay or
24 entitled to receive support or spousal maintenance may file a request to
25 terminate any order of assignment if the obligation to pay support or spousal
26 maintenance has ended or will end within ninety days after the filing of the
27 request and if all arrearages either have been paid or will be paid within
28 the period or have been waived. The request shall state the reason why
29 termination is requested and shall contain the name and address of the
30 employer or payor of the person obligated to pay support. A copy of the
31 request shall be served pursuant to the Arizona rules of ~~eivi+~~ FAMILY LAW
32 procedure, or by the department or its agent in a title IV-D case by first
33 class mail, on all other parties and on the state if the department is
34 providing title IV-D support services or has a claim for arrearages. A party
35 receiving this notice may request a hearing within twenty days or within
36 thirty days if service is made outside this state. On proof of service and
37 if a hearing has not been requested within the time allowed, the clerk shall
38 issue an order terminating the order of assignment as appropriate. Within
39 two business days after the date the order is issued, the clerk shall
40 transmit a copy of the order terminating the order of assignment to the
41 employer or payor and to the department or its agent. If a hearing is
42 requested, the court shall set the hearing within twenty days after receiving
43 the request and shall issue an appropriate order. A person who is ordered to
44 pay support may request the court to terminate an order of assignment at any
45 time if an employer is making deductions on multiple assignments for an

1 obligation for the same minor children. Notwithstanding any law to the
2 contrary, the clerk shall not charge a fee to a person who files a request to
3 terminate an order of assignment if an employer is making deductions on
4 multiple assignments for an obligation for the same minor children.

5 N. If a request to adjust or terminate an order of assignment is
6 filed, the court in its discretion may order that the clerk of the superior
7 court or support payment clearinghouse not disburse any monies in dispute
8 until further order of the court.

9 O. The clerk of the superior court shall issue an order terminating
10 the order of assignment if the parties, including the department or its agent
11 in a title IV-D case, file a notarized stipulation with the clerk that all
12 obligations of support or spousal maintenance have been satisfied and that
13 the obligor is no longer obligated to pay support or spousal maintenance.
14 The stipulation shall state that the current obligation of support or spousal
15 maintenance no longer exists and that all arrearages either have been
16 satisfied or waived. The stipulation shall also contain the name and address
17 of the employer or payor of the person obligated to pay support or spousal
18 maintenance. Within five business days after the date the stipulation is
19 filed, the clerk shall transmit a copy of the order terminating the order of
20 assignment to the employer or payor and to the department or its agent.
21 Notwithstanding any law to the contrary, the clerk shall not charge a fee to
22 a party who files a stipulation pursuant to this subsection.

23 P. An assignment ordered pursuant to this section has priority over
24 all other executions, attachments or garnishments. An obligation for current
25 child support shall be fully met before any payments pursuant to an order of
26 assignment may be applied to any other support obligation. An assignment
27 ordered under this section does not apply to amounts made exempt under
28 section 33-1131 or any other applicable exemption law.

29 Q. Any employer or other payor shall not refuse to hire a person and
30 shall not discharge or otherwise discipline an obligor because of service of
31 an order of assignment authorized by this section. An employer or payor who
32 refuses to hire a person or who discharges or otherwise disciplines an
33 employee or obligor because of service of an order of assignment is subject
34 to contempt and sanctions as may be ordered by the court. A person who is
35 wrongfully refused employment, wrongfully discharged or otherwise disciplined
36 is entitled to recover damages sustained by the prohibited conduct,
37 reinstatement, if appropriate, and attorney fees and costs incurred.

38 R. In any proceeding under this section the court, after considering
39 the financial resources of the parties and the reasonableness of the
40 positions each party has taken, may order a party to pay a reasonable amount
41 to another party for the costs and expenses, including attorney fees, of
42 maintaining or defending the proceeding.

1 Sec. 8. Section 25-812, Arizona Revised Statutes, is amended to read:
2 25-812. Voluntary acknowledgment of paternity: action to
3 overcome paternity

4 A. This state or the parent of a child born out of wedlock may
5 establish the paternity of a child by filing one of the following with the
6 clerk of the superior court, the department of economic security or the
7 department of health services:

8 1. A notarized or witnessed statement that contains the social
9 security numbers of both parents and that is signed by both parents
10 acknowledging paternity or two separate substantially similar notarized or
11 witnessed statements acknowledging paternity. If the voluntary
12 acknowledgment is filed with the court, the filing party must redact any
13 social security numbers and file them separately pursuant to section 25-501,
14 subsection G. If another man is presumed to be the child's father pursuant
15 to section 25-814, an acknowledgment of paternity is valid only with the
16 presumed father's written consent or as prescribed pursuant to section
17 25-814. A statement that is witnessed by an employee of the department of
18 economic security or the department of health services or by an employee of a
19 hospital must contain the printed name and residential or business address of
20 the witness. A statement that is witnessed by any other person must contain
21 the printed name and residential address of the witness. If the
22 acknowledgment of paternity is witnessed, the witness must be an adult who is
23 not related to either parent by blood or by marriage.

24 2. An agreement by the parents to be bound by the results of genetic
25 testing including any genetic test previously accepted by a court of
26 competent jurisdiction, or any combination of genetic testing agreed to by
27 the parties, and an affidavit from a certified laboratory that the tested
28 father has not been excluded.

29 B. On filing a document required in subsection A of this section with
30 the clerk of the superior court, the clerk or authorized court personnel
31 shall issue an order establishing paternity, which may amend the name of the
32 child or children, if requested by the parents. The clerk shall transmit a
33 copy of the order of paternity to the department of health services and the
34 department of economic security.

35 C. On entry of an order by the clerk of the superior court, the
36 paternity determination has the same force and effect as a judgment of the
37 superior court. In a non-title IV-D case, the clerk shall transmit a copy of
38 an order granted under this subsection to the state title IV-D agency. The
39 case filing fee prescribed by section 12-284 shall not be charged to any
40 person who, in the same county, initiates or responds to a proceeding to
41 establish child support or to obtain an order for custody or parenting time
42 within ninety days after an order establishing paternity is issued under
43 subsection B of this section.

44 D. A voluntary acknowledgment of paternity executed pursuant to
45 subsection A, paragraph 1 of this section may be filed with the department of

1 economic security, which shall provide a copy to the department of health
2 services. A voluntary acknowledgment of paternity made pursuant to this
3 section is a determination of paternity and has the same force and effect as
4 a superior court judgment.

5 E. Pursuant to rule ~~60(e)~~ 85(c) of the Arizona rules of ~~civil~~ FAMILY
6 LAW procedure, the mother, father or child, or a party to the proceeding on a
7 rule ~~60(e)~~ 85(c) motion, may challenge a voluntary acknowledgment of
8 paternity established in this state at any time after the sixty day period
9 only on the basis of fraud, duress or material mistake of fact, with the
10 burden of proof on the challenger and under which the legal responsibilities,
11 including child support obligations of any signatory arising from the
12 acknowledgment shall not be suspended during the challenge except for good
13 cause shown. The court shall order the mother, her child or children and the
14 alleged father to submit to genetic testing and shall direct that appropriate
15 testing procedures determine the inherited characteristics, including blood
16 and tissue type. If the court finds by clear and convincing evidence that
17 the genetic tests demonstrate that the established father is not the
18 biological father of the child, the court shall vacate the determination of
19 paternity and terminate the obligation of that party to pay ongoing child
20 support. An order vacating the determination of paternity operates
21 prospectively only and does not alter the obligation to pay child support
22 arrearages or, unless otherwise ordered by the court, any other amount
23 previously ordered to be paid pursuant to section 25-809.

24 F. Before signing a voluntary acknowledgment of paternity pursuant to
25 this section, the parties shall be provided notice of the alternatives to,
26 the legal consequences of and the rights and responsibilities that arise from
27 signing the acknowledgment.

28 G. The department of economic security shall notify the department of
29 health services of all paternity determinations and rescissions.

30 H. The mother or the father may rescind the acknowledgment of
31 paternity within the earlier of:

32 1. Sixty days after the last signature is affixed to the notarized
33 acknowledgment of paternity that is filed with the department of economic
34 security, the department of health services or the clerk of the court.

35 2. The date of a proceeding relating to the child, including a child
36 support proceeding in which the mother or father is a party.

37 I. A rescission authorized pursuant to subsection H of this section
38 must be in writing and a copy of each rescission of paternity shall be filed
39 with the department of economic security. The department of economic
40 security shall mail a copy of the rescission of paternity to the other parent
41 and to the department of health services.

42 J. Voluntary acknowledgments of paternity and rescissions of paternity
43 filed pursuant to this section shall contain data elements in accordance with
44 the requirements of the United States secretary of health and human services.