

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

SENATE BILL 1149

AN ACT

AMENDING SECTIONS 25-320, 25-516 AND 25-535, ARIZONA REVISED STATUTES;
RELATING TO FAMILY SUPPORT DUTIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 25-320, Arizona Revised Statutes, is amended to
3 read:

4 25-320. Child support; factors; methods of payment; additional
5 enforcement provisions; definitions

6 A. In a proceeding for dissolution of marriage, legal separation,
7 maintenance or child support, the court may order either or both parents
8 owing a duty of support to a child, born to or adopted by the parents, to pay
9 an amount reasonable and necessary for support of the child, without regard
10 to marital misconduct.

11 B. If child support has not been ordered by a child support order and
12 if the court deems child support appropriate, the court shall direct, using a
13 retroactive application of the child support guidelines to the date of filing
14 a dissolution of marriage, legal separation, maintenance or child support
15 proceeding, the amount that the parents shall pay for the past support of the
16 child and the manner in which payment shall be paid, taking into account any
17 amount of temporary or voluntary support that has been paid. Retroactive
18 child support is enforceable in any manner provided by law.

19 C. If the parties lived apart before the date of the filing for
20 dissolution of marriage, legal separation, maintenance or child support and
21 if child support has not been ordered by a child support order, the court may
22 order child support retroactively to the date of separation, but not more
23 than three years before the date of the filing for dissolution of marriage,
24 legal separation, maintenance or child support. The court must first
25 consider all relevant circumstances, including the conduct or motivation of
26 the parties in that filing and the diligence with which service of process
27 was attempted on the obligor spouse or was frustrated by the obligor spouse.
28 If the court determines that child support is appropriate, the court shall
29 direct, using a retroactive application of the child support guidelines, the
30 amount that the parents must pay for the past support of the child and the
31 manner in which payments must be paid, taking into account any amount of
32 temporary or voluntary support that has been paid.

33 D. The supreme court shall establish guidelines for determining the
34 amount of child support. The amount resulting from the application of these
35 guidelines is the amount of child support ordered unless a written finding is
36 made, based on criteria approved by the supreme court, that application of
37 the guidelines would be inappropriate or unjust in a particular case. The
38 supreme court shall review the guidelines at least once every four years to
39 ensure that their application results in the determination of appropriate
40 child support amounts. The supreme court shall base the guidelines and
41 criteria for deviation from them on all relevant factors, including:

- 42 1. The financial resources and needs of the child.
- 43 2. The financial resources and needs of the custodial parent.
- 44 3. The standard of living the child would have enjoyed had the
45 marriage not been dissolved.

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

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

4 6. The medical support plan for the child. The plan should include
5 the child's medical support needs, the availability of medical insurance or
6 services provided by the Arizona health care cost containment system and
7 whether a cash medical support order is necessary.

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

11 8. The duration of parenting time and related expenses.

12 E. Even if a child is over the age of majority when a petition is
13 filed or at the time of the final decree, the court may order support to
14 continue past the age of majority if all of the following are true:

15 1. The court has considered the factors prescribed in subsection D of
16 this section.

17 2. The child is severely mentally or physically disabled ~~as~~
18 ~~demonstrated by the fact that~~ AND the child is unable to live independently
19 and be self-supporting.

20 3. The child's disability began before the child reached the age of
21 majority.

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

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

40 H. Subsection G of this section does not apply to payments made by
41 means of an assignment.

42 I. If after reasonable efforts to locate the obligee the clerk or
43 support payment clearinghouse is unable to deliver payments for the period
44 prescribed in section 25-503 due to the failure of the person to whom the
45 support has been ordered to be paid to notify the clerk or support payment

1 clearinghouse of a change in address, the clerk or support payment
2 clearinghouse shall not deliver further payments and shall return the
3 payments to the obligor consistent with the requirements of section 25-503.

4 J. An order for child support shall assign responsibility for
5 providing medical insurance for the child who is the subject of the support
6 order and shall assign responsibility for the payment of any medical costs of
7 the child that are not covered by insurance. Each parent shall provide
8 information to the court regarding the availability of medical insurance for
9 the child that is accessible and available at a reasonable cost. In title
10 IV-D cases, the parent responsible pursuant to court order for providing
11 medical insurance for the child shall notify the child support enforcement
12 agency in the department of economic security if medical insurance has been
13 obtained or if the child is no longer covered under an insurance plan.

14 K. If the court finds that neither parent has the ability to obtain
15 medical insurance for the child that is accessible and available at a
16 reasonable cost, the court shall:

17 1. Establish a reasonable monthly cash medical support order to be
18 paid by the obligor. If medical assistance is being provided to a child
19 under title XIX of the social security act, cash medical support is assigned
20 to the state pursuant to section 46-407.

21 2. Order one parent to provide medical insurance when it becomes
22 accessible and available at a reasonable cost.

23 3. Order that medical costs in excess of the cash medical support
24 amount shall be paid by each parent according to the percentage assigned for
25 payment of uninsured costs.

26 L. If the court orders ~~one~~ THE NONCUSTODIAL parent to provide medical
27 insurance, the court shall also set an alternative cash medical support order
28 to be paid by that parent if the child is not covered under an insurance plan
29 within ninety days after entry of the order or if the child is no longer
30 covered by insurance. THE COURT SHALL NOT ORDER THE CUSTODIAL PARENT TO PAY
31 CASH MEDICAL SUPPORT.

32 M. IF THE OBLIGOR OBTAINS PRIVATE INSURANCE, THE OBLIGOR MUST NOTIFY
33 AND PROVIDE VERIFICATION OF THIS COVERAGE TO THE COURT, OR IN A TITLE IV-D
34 CASE, TO THE DEPARTMENT AND THE OTHER PARENT. THE CASH MEDICAL SUPPORT ORDER
35 TERMINATES ON THE EFFECTIVE DATE OF THE POLICY OR THE DATE OF NOTIFICATION
36 AND VERIFICATION TO THE COURT, OR IN A TITLE IV-D CASE, TO THE DEPARTMENT AND
37 OTHER PARENT, WHICHEVER IS LATER.

38 ~~M.~~ N. In title IV-D cases the superior court shall accept for filing
39 any documents that are received through electronic transmission if the
40 electronically reproduced document states that the copy used for the
41 electronic transmission was certified before it was electronically
42 transmitted.

43 ~~N.~~ O. The court shall presume, in the absence of contrary testimony,
44 that a parent is capable of full-time employment at least at the applicable
45 state or federal adult minimum wage, whichever is higher. This presumption

1 does not apply to noncustodial parents who are under the age of eighteen and
2 who are attending high school.

3 ~~0-~~ P. An order for support shall provide for an assignment pursuant
4 to sections 25-504 and 25-323.

5 ~~P-~~ Q. Each licensing board or agency that issues professional,
6 recreational or occupational licenses or certificates shall record on the
7 application the social security number of the applicant and shall enter this
8 information in its database in order to aid the department of economic
9 security in locating parents or their assets or to enforce child support
10 orders. This subsection does not apply to a license that is issued pursuant
11 to title 17 and that is not issued by an automated drawing system. If a
12 licensing board or agency allows an applicant to use a number other than the
13 social security number on the face of the license or certificate while the
14 licensing board or agency keeps the social security number on file, the
15 licensing board or agency shall advise an applicant of this fact.

16 ~~0-~~ R. For the purposes of this section:

17 1. "Accessible" means that insurance is available in the geographic
18 region where the child resides.

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

22 3. "Date of separation" means the date the married parents ceased to
23 cohabit.

24 4. "Reasonable cost" means an amount that does not exceed the higher
25 of five per cent of the gross income of the obligated parent or an
26 income-based numeric standard that is prescribed in the child support
27 guidelines.

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

29 6. "Support payments" means the amount of money ordered by the court
30 to be paid for the support of the minor child or children.

31 Sec. 2. Section 25-516, Arizona Revised Statutes, is amended to read:

32 ~~25-516.~~ Lien; notice; priority; recording; reciprocity;
33 electronic notification

34 A. Notwithstanding section 25-514, in a title IV-D case if a person
35 obligated to pay child support is in arrears for an amount equal to at least
36 two months' child support, the unpaid amounts constitute a lien by operation
37 of law on all property presently owned and later acquired by the obligor.
38 The department may perfect a lien by filing a notice of lien with the county
39 recorder in the county in which the obligor has property or with a state
40 agency or a political subdivision of this state that files personal property
41 liens for recording on its official record. The notice of lien recorded
42 under this section shall specify the nature of the debt, the amount, and the
43 name and last known address of the obligor. A liquidated judgment is not
44 required to establish a lien. Recordation is constructive notice of the lien
45 to the creditors of the owner or subsequent purchasers, against the personal

1 or real property presently owned or later acquired. The lien has priority
2 over other liens against this property except for liens arising from
3 mortgages, deeds of trust, contracts, conveyances or security agreements
4 created by the property owner and previously recorded or filed.

5 B. The department shall notify an obligor who is at least two months
6 in arrears in making child support payments, periodic payments on a support
7 arrearage or periodic payments pursuant to a court order of support that a
8 notice of lien may be filed against the obligor. The department shall notify
9 the obligor by first class mail at the obligor's current address, or after a
10 reasonable attempt to ascertain the obligor's location, at the obligor's last
11 known address. The notice shall state the following:

12 1. The obligor is at least two months in arrears in making child
13 support payments.

14 2. The obligor may request in writing an administrative review to
15 contest the arrears pursuant to section 25-522.

16 3. The obligor may request in writing an administrative review within
17 fifteen days from the date of mailing of the notice.

18 4. If the obligor requests an administrative review, the department
19 shall stay further action until a determination has been made at the
20 administrative review.

21 5. If the obligor fails to respond to the notice, the department shall
22 file a notice of lien against the obligor.

23 6. The address and telephone number of the department.

24 7. The obligor may request a copy of the order.

25 C. If an obligor fails to respond to the notice within fifteen days
26 from the date of mailing, the department shall send the obligor a second
27 notice by first class mail. The second notice shall include the information
28 under subsection B of this section and shall state the following:

29 1. If the obligor fails to contact the department within fifteen days
30 from the date of mailing of the second notice, a notice of lien shall be
31 filed against the obligor.

32 2. This is the final notice the obligor will receive.

33 D. If the obligor requests an administrative review pursuant to this
34 section, the department shall determine whether to proceed with filing the
35 notice of lien based on whether the obligor is required to pay child support,
36 whether the obligor is in arrears, ~~and~~ and any other information relevant to the
37 case. The decision of the department shall be in writing, and the department
38 shall provide a copy to the obligor.

39 E. If the department determines that the obligor is at least two
40 months in arrears and determines at the administrative review to record a
41 notice of lien against the property of the obligor or if the obligor fails to
42 respond to the second notice, a notice of lien shall be recorded and a copy
43 sent to the obligor by certified mail to the obligor's last known address.

1 F. The department ~~may~~, at any time, MAY release the property subject
2 to the lien from the lien. Notice by the department to the effect that the
3 property ~~had~~ HAS been released from the lien is conclusive evidence that the
4 property ~~had~~ HAS been released. If any lien imposed pursuant to this section
5 is satisfied and a notice of lien has been recorded, the department shall
6 issue a release of the lien to the obligor against whom the lien was claimed.
7 The department shall record the lien release in any county, agency or
8 political subdivision where the original lien was recorded.

9 G. This state shall give a lien recorded in another state full faith
10 and credit if the state agency, party or other entity seeking to enforce the
11 lien complies with the notice requirements of this section and records the
12 lien pursuant to the applicable laws of this state.

13 H. IF AN OBLIGOR HAS AGREED TO RECEIVE NOTICE FROM THE DEPARTMENT
14 ELECTRONICALLY, THE DEPARTMENT MAY SEND A NOTICE REQUIRED BY THIS SECTION TO
15 THE OBLIGOR ELECTRONICALLY RATHER THAN BY MAIL.

16 Sec. 3. Section 25-535, Arizona Revised Statutes, is amended to read:
17 25-535. Enforcement of health insurance coverage; medical
18 support notice; administrative review

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

27 B. If an administrative or court order requires a parent to obtain
28 health insurance coverage for the parent's child, the department or its agent
29 may deliver by first class mail to the obligated parent's employer a medical
30 support notice to enroll the child in an insurance program as prescribed by
31 that order. The department or its agent shall use the medical support notice
32 to enroll prescribed by the United States secretary of health and human
33 services pursuant to 42 United States Code section 651. The employer shall
34 deliver or mail by first class mail or by electronic means a copy of the
35 medical support notice to enroll to the obligated parent within ten days
36 after the employer receives the notice. The notice serves to enroll the
37 child in the obligated parent's health insurance coverage plan. That parent
38 may contest the notice by filing a written request for an administrative
39 review within ten days after the parent receives a copy of the notice from
40 the employer. The department shall conduct an administrative review pursuant
41 to section 25-522. If a parent contests the notice, the department or its
42 agent shall notify the employer by first class mail or electronic means that
43 the parent has contested the medical support notice to enroll. The employer
44 shall send the employee contributions until the department notifies the

1 employer to cease withholding. An administrative review is limited to
2 determining if:

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

5 2. A mistaken identity exists.

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

8 4. THE OTHER PARENT IS ALREADY PROVIDING MEDICAL INSURANCE FOR THE
9 CHILD PURSUANT TO COURT ORDER.

10 5. THE COST OF THE INSURANCE COVERAGE IS A REASONABLE COST AS DEFINED
11 IN SECTION 25-320.

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

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

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

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