

REFERENCE TITLE: *dissolution of marriage*

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

## **SB 1206**

Introduced by  
Senators Gray L: Gray C, Harper, Huppenthal, Verschoor; Representatives  
Barto, Biggs, Burges, Crandall, Crump, Kavanagh, Lesko, Quelland

AN ACT

AMENDING SECTIONS 25-318, 25-319 AND 25-320, ARIZONA REVISED STATUTES;  
RELATING TO DISSOLUTION OF MARRIAGE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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

2 Section 1. Section 25-318, Arizona Revised Statutes, is amended to  
3 read:

4 25-318. Disposition of property; retroactivity; notice to  
5 creditors; assignment of debts; contempt of court

6 A. In a proceeding for dissolution of the marriage, or for legal  
7 separation, or in a proceeding for disposition of property following  
8 dissolution of the marriage by a court ~~which~~ THAT previously lacked personal  
9 jurisdiction over the absent spouse or previously lacked jurisdiction to  
10 dispose of the property, the court shall assign each spouse's sole and  
11 separate property to such spouse. It ~~shall~~ also SHALL divide the community,  
12 joint tenancy and other property held in common equitably, though not  
13 necessarily in kind, ~~without regard to marital misconduct~~. For the purposes  
14 of this section only, property acquired by either spouse outside this state  
15 ~~shall be~~ IS deemed to be community property if the property would have been  
16 community property if acquired in this state.

17 B. In dividing property, the court may consider all debts and  
18 obligations that are related to the property, including accrued or accruing  
19 taxes that would become due on the receipt, sale or other disposition of the  
20 property. The court may also consider the exempt status of particular  
21 property pursuant TO title 33, chapter 8.

22 C. This section does not prevent the court from considering all actual  
23 damages and judgments from conduct that resulted in criminal conviction of  
24 either spouse in which the other spouse or a child was the victim or  
25 excessive or abnormal expenditures, destruction, concealment or fraudulent  
26 disposition of community, joint tenancy and other property held in common.

27 D. The community, joint tenancy and other property held in common for  
28 which no provision is made in the decree shall be ~~from the date of the decree~~  
29 held by the parties FROM THE DATE OF THE DECREE as tenants in common, each  
30 possessed of an undivided one-half interest.

31 E. The court may impress a lien on the separate property of either  
32 party or the marital property awarded to either party in order to secure the  
33 payment of:

- 34 1. Any interest or equity the other party has in or to the property.
- 35 2. Community debts that the court has ordered to be paid by the  
36 parties.
- 37 3. An allowance for child support or spousal maintenance, or both.
- 38 4. All actual damages and judgments from conduct that resulted in  
39 criminal conviction of either spouse in which the other spouse or a child was  
40 the victim.

41 F. The decree or judgment shall specifically describe by legal  
42 description any real property affected and shall specifically describe any  
43 other property affected.

44 G. This section applies through both prospective and retrospective  
45 operation to property without regard to the date of acquisition.

1 H. In all actions for the dissolution of marriage or legal separation,  
2 the court shall require the following statement in the materials provided to  
3 the petitioner and to be served on the respondent:

4 Notice

5 In your property settlement agreement or decree of dissolution  
6 or legal separation, the court may assign responsibility for  
7 certain community debts to one spouse or the other. Please be  
8 aware that a court order that does this is binding on the  
9 spouses only and does not necessarily relieve either of you from  
10 your responsibility for these community debts. These debts are  
11 matters of contract between both of you and your creditors (such  
12 as banks, credit unions, credit card issuers, finance companies,  
13 utility companies, medical providers and retailers).

14 Since your creditors are not parties to this court case, they  
15 are not bound by court orders or any agreements you and your  
16 spouse reach in this case. On request, the court may impose a  
17 lien against the separate property of a spouse to secure payment  
18 of debts that the court orders that spouse to pay.

19 You may want to contact your creditors to discuss your debts as  
20 well as the possible effects of your court case on your debts.  
21 To assist you in identifying your creditors, you may obtain a  
22 copy of your spouse's credit report by making a written request  
23 to the court for an order requiring a credit reporting agency to  
24 release the report to you. Within thirty days after receipt of  
25 a request from a spouse who is party to a dissolution of  
26 marriage or legal separation action, which includes the court  
27 and case number of the action, creditors are required by law to  
28 provide information as to the balance and account status of any  
29 debts for which the requesting spouse may be liable to the  
30 creditor. You may wish to use the following form, or one that  
31 is similar, to contact your creditors:

32 Creditor notification

33 Date: \_\_\_\_\_

34 Creditor name and

35 Address: \_\_\_\_\_

36 \_\_\_\_\_

37 \_\_\_\_\_

38 Within thirty days after receipt of this notice, you are  
39 requested to provide the balance and account status of any debt  
40 identified by account number for which the requesting party may  
41 be liable to you.

42 Name: \_\_\_\_\_

43 Address: \_\_\_\_\_

44 \_\_\_\_\_

45 \_\_\_\_\_



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Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public

L. If the parties are not able to agree to a joint debt distribution plan pursuant to subsection J, the court may order each party to submit a proposed debt distribution plan to the court. In its orders relating to the division of property, the court shall reflect the debt distribution plan approved by the court and shall confirm that any community debts that are made the sole responsibility of one of the parties by agreement with a creditor are the sole responsibility of that party.

M. An agreement with a creditor pursuant to subsection K that assigns or otherwise modifies repayment responsibility for community debts secured by real property located in this state shall include all of the following:

- 1. A legal description of the real property.
- 2. A copy of the note and recorded security instrument, the repayment of which is to be assigned or modified by the agreement with a creditor.

3. A written and notarized acknowledgment that is executed by all parties to the debt, including the lender, and that states one of the following:

- (a) The terms for the repayment of the debt remain unchanged.
- (b) The terms for the repayment of the debt have been modified and, beginning on the date of the execution of the acknowledgment, the creditor has agreed that one of the debtors assumes the sole responsibility for the debt and that the other debtor is released from any further liability on the debt.
- (c) The debt is paid in full and all parties to the debt are released from any further liability.

N. An agreement executed pursuant to subsection M shall be recorded by either party in the county in which the real property is located.

O. After an agreement is recorded pursuant to subsection N, either party may request that on payment of the title company's fees for the document a title company authorized to do business in this state provide the requesting party with a lien search report or other documentary evidence of liens and other agreements of record in the title to the property.

P. If a party fails to comply with an order to pay debts, the court may enter orders transferring property of that spouse to compensate the other party. If the court finds that a party is in contempt as to an order to pay community debts, the court may impose appropriate sanctions under the law. A party must bring an action to enforce an order to pay a debt pursuant to this subsection within two years after the date in which the debt should have been paid in full.

Q. Within thirty days after receipt of a written request for information from a spouse who is a party to a dissolution of marriage or

1 legal separation action, which includes the court and case number of the  
2 action, a creditor shall provide the balance and account status of any debts  
3 of either or both spouses identified by account number for which the  
4 requesting spouse may be liable to the creditor.

5 R. If any part of the court's division of joint, common or community  
6 property is in the nature of child support or spousal maintenance, the court  
7 shall make specific findings of fact and supporting conclusions of law in its  
8 decree.

9 Sec. 2. Section 25-319, Arizona Revised Statutes, is amended to read:

10 25-319. Maintenance; computation factors

11 A. In a proceeding for dissolution of marriage or legal separation, or  
12 a proceeding for maintenance following dissolution of the marriage by a court  
13 that lacked personal jurisdiction over the absent spouse, the court may grant  
14 a maintenance order for either spouse for any of the following reasons if it  
15 finds that the spouse seeking maintenance:

16 1. Lacks sufficient property, including property apportioned to the  
17 spouse, to provide for that spouse's reasonable needs.

18 2. Is unable to be self-sufficient through appropriate employment or  
19 is the custodian of a child whose age or condition is such that the custodian  
20 should not be required to seek employment outside the home or lacks earning  
21 ability in the labor market adequate to be self-sufficient.

22 3. Contributed to the educational opportunities of the other spouse.

23 4. Had a marriage of long duration and is of an age that may preclude  
24 the possibility of gaining employment adequate to be self-sufficient.

25 B. The maintenance order shall be in an amount and for a period of  
26 time as the court deems just, ~~without regard to marital misconduct,~~ and after  
27 considering all relevant factors, including:

28 1. The standard of living established during the marriage.

29 2. The duration of the marriage.

30 3. The age, employment history, earning ability and physical and  
31 emotional condition of the spouse seeking maintenance.

32 4. The ability of the spouse from whom maintenance is sought to meet  
33 that spouse's needs while meeting those of the spouse seeking maintenance.

34 5. The comparative financial resources of the spouses, including their  
35 comparative earning abilities in the labor market.

36 6. The contribution of the spouse seeking maintenance to the earning  
37 ability of the other spouse.

38 7. The extent to which the spouse seeking maintenance has reduced that  
39 spouse's income or career opportunities for the benefit of the other spouse.

40 8. The ability of both parties after the dissolution to contribute to  
41 the future educational costs of their mutual children.

42 9. The financial resources of the party seeking maintenance, including  
43 marital property apportioned to that spouse, and that spouse's ability to  
44 meet that spouse's own needs independently.

1           10. The time necessary to acquire sufficient education or training to  
2 enable the party seeking maintenance to find appropriate employment and  
3 whether such education or training is readily available.

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

7           12. The cost for the spouse who is seeking maintenance to obtain health  
8 insurance and the reduction in the cost of health insurance for the spouse  
9 from whom maintenance is sought if the spouse from whom maintenance is sought  
10 is able to convert family health insurance to employee health insurance after  
11 the marriage is dissolved.

12           13. All actual damages and judgments from conduct that ~~results~~ RESULTED  
13 in criminal conviction of either spouse in which the other spouse or A child  
14 was the victim.

15           C. If both parties agree, the maintenance order and a decree of  
16 dissolution of marriage or of legal separation may state that its maintenance  
17 terms shall not be modified.

18           D. Except as provided in subsection C of this section or section  
19 25-317, subsection G, the court shall maintain continuing jurisdiction over  
20 the issue of maintenance for the period of time maintenance is awarded.

21           Sec. 3. Section 25-320, Arizona Revised Statutes, is amended to read:

22           25-320. Child support; factors; methods of payment; additional  
23 enforcement provisions; definitions

24           A. In a proceeding for dissolution of marriage, legal separation,  
25 maintenance or child support, the court may order either or both parents  
26 owing a duty of support to a child, born to or adopted by the parents, to pay  
27 an amount reasonable and necessary for support of the child, ~~without regard~~  
28 ~~to marital misconduct~~.

29           B. If child support has not been ordered by a child support order and  
30 if the court deems child support appropriate, the court shall direct, using a  
31 retroactive application of the child support guidelines to the date of filing  
32 a dissolution of marriage, legal separation, maintenance or child support  
33 proceeding, the amount that the parents shall pay for the past support of the  
34 child and the manner in which payment shall be paid, taking into account any  
35 amount of temporary or voluntary support that has been paid. Retroactive  
36 child support is enforceable in any manner provided by law.

37           C. If the parties lived apart before the date of the filing for  
38 dissolution of marriage, legal separation, maintenance or child support and  
39 if child support has not been ordered by a child support order, the court may  
40 order child support retroactively to the date of separation, but not more  
41 than three years before the date of the filing for dissolution of marriage,  
42 legal separation, maintenance or child support. The court must first  
43 consider all relevant circumstances, including the conduct or motivation of  
44 the parties in that filing and the diligence with which service of process  
45 was attempted on the obligor spouse or was frustrated by the obligor spouse.  
46 If the court determines that child support is appropriate, the court shall

1 direct, using a retroactive application of the child support guidelines, the  
2 amount that the parents must pay for the past support of the child and the  
3 manner in which payments must be paid, taking into account any amount of  
4 temporary or voluntary support that has been paid.

5 D. The supreme court shall establish guidelines for determining the  
6 amount of child support. The amount resulting from the application of these  
7 guidelines is the amount of child support ordered unless a written finding is  
8 made, based on criteria approved by the supreme court, that application of  
9 the guidelines would be inappropriate or unjust in a particular case. The  
10 supreme court shall review the guidelines at least once every four years to  
11 ensure that their application results in the determination of appropriate  
12 child support amounts. The supreme court shall base the guidelines and  
13 criteria for deviation from them on all relevant factors, including:

- 14 1. The financial resources and needs of the child.
- 15 2. The financial resources and needs of the custodial parent.
- 16 3. The standard of living the child would have enjoyed had the  
17 marriage not been dissolved.
- 18 4. The physical and emotional condition of the child, and the child's  
19 educational needs.
- 20 5. The financial resources and needs of the noncustodial parent.
- 21 6. The medical support plan for the child. The plan should include  
22 the child's medical support needs, the availability of medical insurance or  
23 services provided by the Arizona health care cost containment system and  
24 whether a cash medical support order is necessary.
- 25 7. Excessive or abnormal expenditures, destruction, concealment or  
26 fraudulent disposition of community, joint tenancy and other property held in  
27 common.
- 28 8. The duration of parenting time and related expenses.

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

- 32 1. The court has considered the factors prescribed in subsection D of  
33 this section.
- 34 2. The child is severely mentally or physically disabled as  
35 demonstrated by the fact that the child is unable to live independently and  
36 be self-supporting.
- 37 3. The child's disability began before the child reached the age of  
38 majority.

39 F. If a child reaches the age of majority while the child is attending  
40 high school or a certified high school equivalency program, support shall  
41 continue to be provided during the period in which the child is actually  
42 attending high school or the equivalency program but only until the child  
43 reaches nineteen years of age unless the court enters an order pursuant to  
44 subsection E of this section. Notwithstanding any other law, a parent paying  
45 support for a child over the age of majority pursuant to this section is



1 entitled to obtain all records related to the attendance of the child in the  
2 high school or equivalency program.

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

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

14 I. If after reasonable efforts to locate the obligee the clerk or  
15 support payment clearinghouse is unable to deliver payments for the period  
16 prescribed in section 25-503 due to the failure of the person to whom the  
17 support has been ordered to be paid to notify the clerk or support payment  
18 clearinghouse of a change in address, the clerk or support payment  
19 clearinghouse shall not deliver further payments and shall return the  
20 payments to the obligor consistent with the requirements of section 25-503.

21 J. An order for child support shall assign responsibility for  
22 providing medical insurance for the child who is the subject of the support  
23 order and shall assign responsibility for the payment of any medical costs of  
24 the child that are not covered by insurance. Each parent shall provide  
25 information to the court regarding the availability of medical insurance for  
26 the child that is accessible and available at a reasonable cost. In title  
27 IV-D cases, the parent responsible pursuant to court order for providing  
28 medical insurance for the child shall notify the child support enforcement  
29 agency in the department of economic security if medical insurance has been  
30 obtained or if the child is no longer covered under an insurance plan.

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

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

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

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

43 L. If the court orders one parent to provide medical insurance the  
44 court shall also set an alternative cash medical support order to be paid by  
45 that parent if the child is not covered under an insurance plan within ninety

1 days after entry of the order or if the child is no longer covered by  
2 insurance.

3 M. In title IV-D cases the superior court shall accept for filing any  
4 documents that are received through electronic transmission if the  
5 electronically reproduced document states that the copy used for the  
6 electronic transmission was certified before it was electronically  
7 transmitted.

8 N. The court shall presume, in the absence of contrary testimony, that  
9 a parent is capable of full-time employment at least at the applicable state  
10 or federal adult minimum wage, whichever is higher. This presumption does  
11 not apply to noncustodial parents who are under the age of eighteen and who  
12 are attending high school.

13 O. An order for support shall provide for an assignment pursuant to  
14 sections 25-504 and 25-323.

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

26 Q. For the purposes of this section:

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

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

32 3. "Date of separation" means the date the married parents ceased to  
33 cohabit.

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

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

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