

House Engrossed Senate Bill

~~chiropractic; technical correction~~
(now: community property; spousal maintenance; documentation)

State of Arizona
Senate
Fifty-sixth Legislature
First Regular Session
2023

SENATE BILL 1151

AN ACT

AMENDING SECTIONS 25-318 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 marriage, for annulment or
7 for legal separation, or in a proceeding for disposition of property
8 following dissolution of the marriage by a court that previously lacked
9 personal jurisdiction over the absent spouse or previously lacked
10 jurisdiction to dispose of the property, the court shall assign each
11 spouse's sole and separate property to such spouse. Except as provided in
12 section 25-318.02, the court shall also divide the community, joint
13 tenancy and other property held in common equitably, though not
14 necessarily in kind, without regard to marital misconduct. For the
15 purposes of this section only, property acquired by either spouse outside
16 this state shall be deemed to be community property if the property would
17 have been community property if acquired in this state.

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

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

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

33 E. IN ASSESSING THE VALUE OF A BUSINESS INTEREST FOR THE PURPOSES
34 OF DETERMINING THE COMMUNITY SHARE TO BE PAID TO THE SPOUSE WHO WILL NO
35 LONGER MAINTAIN THAT SPOUSE'S INTEREST IN THE BUSINESS, THE COURT SHALL
36 ASSESS THE VALUE OF THE BUSINESS AS OF THE DATE OF SERVICE OF THE PETITION
37 FOR DISSOLUTION OF MARRIAGE, LEGAL SEPARATION OR ANNULMENT UNLESS THE
38 COURT DETERMINES ANOTHER DATE WOULD BE MORE APPROPRIATE AS THE RESULT OF
39 AN EXTREME MARKET CONDITION OR THE PARTIES AGREE OTHERWISE. BEGINNING ON
40 THE DATE OF SERVICE OF THE PETITION, THAT SPOUSE IS NOT ENTITLED TO ANY
41 SHARE OF THE BUSINESS'S PROFITS AND IS NOT RESPONSIBLE FOR ANY NEW
42 LIABILITIES EARNED OR INCURRED BY THE BUSINESS AFTER THAT DATE. ANY
43 COMPENSATION TO THE BUSINESS OWNER THAT IS INCLUDED IN THE VALUE OF THE
44 BUSINESS SHALL NOT BE USED FOR THE PURPOSES OF CALCULATING SPOUSAL
45 MAINTENANCE OR CHILD SUPPORT.

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

5 1. A legal description of the real property.

6 2. A copy of the note and recorded security instrument, the
7 repayment of which is to be assigned or modified by the agreement with a
8 creditor.

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

12 (a) The terms for the repayment of the debt remain unchanged.

13 (b) The terms for the repayment of the debt have been modified and,
14 beginning on the date of the execution of the acknowledgment, the creditor
15 has agreed that one of the debtors assumes the sole responsibility for the
16 debt and that the other debtor is released from any further liability on
17 the debt.

18 (c) The debt is paid in full and all parties to the debt are
19 released from any further liability.

20 ~~N~~. O. An agreement executed pursuant to subsection ~~M~~ N of this
21 section shall be recorded by either party in the county in which the real
22 property is located.

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

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

36 ~~Q~~. R. Within thirty days after receipt of a written request for
37 information from a spouse who is a party to a dissolution of marriage or
38 legal separation action, which includes the court and case number of the
39 action, a creditor shall provide the balance and account status of any
40 debts of either or both spouses identified by account number for which the
41 requesting spouse may be liable to the creditor.

42 ~~R~~. S. If any part of the court's division of joint, common or
43 community property is in the nature of child support or spousal
44 maintenance, the court shall make specific findings of fact and supporting
45 conclusions of law in its decree.

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

3 25-320. Child support; factors; methods of payment;
4 additional enforcement provisions; definitions

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

10 B. If child support has not been ordered by a child support order
11 and if the court deems child support appropriate, the court shall direct,
12 using a retroactive application of the child support guidelines to the
13 date of filing a dissolution of marriage, legal separation, maintenance or
14 child support proceeding, the amount that the parents shall pay for the
15 past support of the child and the manner in which payment shall be paid,
16 taking into account any amount of temporary or voluntary support that has
17 been paid. Retroactive child support is enforceable in any manner
18 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
21 and if child support has not been ordered by a child support order, the
22 court may order child support retroactively to the date of separation, but
23 not more than three years before the date of the filing for dissolution of
24 marriage, legal separation, maintenance or child support. The court must
25 first consider all relevant circumstances, including the conduct or
26 motivation of the parties in that filing and the diligence with which
27 service of process was attempted on the obligor spouse or was frustrated
28 by the obligor spouse. If the court determines that child support is
29 appropriate, the court shall direct, using a retroactive application of
30 the child support guidelines, the amount that the parents must pay for the
31 past support of the child and the manner in which payments must be paid,
32 taking into account any amount of temporary or voluntary support that has
33 been paid.

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

- 45 1. The financial resources and needs of the child.

1 2. The financial resources and needs of the custodial parent.

2 3. The standard of living the child would have enjoyed if the child
3 lived in an intact home with both parents to the extent it is economically
4 feasible considering the resources of each parent and each parent's need
5 to maintain a home and to provide support for the child when the child is
6 with that parent.

7 4. The physical and emotional condition of the child, and the
8 child's educational needs.

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

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

14 7. Excessive or abnormal expenditures, destruction, concealment or
15 fraudulent disposition of community, joint tenancy and other property held
16 in common.

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

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

21 1. The court has considered the factors prescribed in subsection D
22 of this section.

23 2. The child has severe mental or physical disabilities as
24 demonstrated by the fact that the child is unable to live independently
25 and be self-supporting.

26 3. The child's disability began before the child reached the age of
27 majority.

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

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

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

3 I. If after reasonable efforts to locate the obligee the clerk or
4 support payment clearinghouse is unable to deliver payments for the period
5 prescribed in section 25-503 due to the failure of the person to whom the
6 support has been ordered to be paid to notify the clerk or support payment
7 clearinghouse of a change in address, the clerk or support payment
8 clearinghouse shall not deliver further payments and shall return the
9 payments to the obligor consistent with the requirements of section
10 25-503.

11 J. An order for child support shall assign responsibility for
12 providing medical insurance for the child who is the subject of the
13 support order to one of the parents and shall assign responsibility for
14 the payment of any medical costs of the child that are not covered by
15 insurance according to the child support guidelines. Each parent shall
16 provide information to the court regarding the availability of medical
17 insurance for the child that is accessible and available at a reasonable
18 cost. In title IV-D cases, the parent responsible pursuant to court order
19 for providing medical insurance for the child shall notify the child
20 support enforcement agency in the department of economic security if
21 medical insurance has been obtained or if the child is no longer covered
22 under an insurance plan.

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

26 1. In a title IV-D case, in accordance with established title IV-D
27 criteria, establish a reasonable monthly cash medical support order to be
28 paid by the obligor. If medical assistance is being provided to a child
29 under title XIX of the social security act, cash medical support is
30 assigned to the state pursuant to section 46-407. On verification that
31 the obligor has obtained private insurance, the cash medical support order
32 terminates by operation of law on the first day of the month after the
33 policy's effective date or on the date the court, or the department in a
34 title IV-D case, is notified that insurance has been obtained, whichever
35 is later. If the private insurance terminates, the cash medical support
36 order automatically resumes by operation of law on the first day of the
37 month following the termination date of the policy.

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
42 for payment of uninsured costs.

43 L. In a title IV-D case, if the court orders the noncustodial
44 parent to obtain medical insurance the court shall also set an alternative
45 cash medical support order to be paid by that parent if the child is not

1 covered under an insurance plan within ninety days after entry of the
2 order or if the child is no longer covered by insurance. The court shall
3 not order the custodial parent to pay cash medical support.

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

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

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

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

28 Q. The factors prescribed pursuant to subsection D of this section
29 are stated for direction to the supreme court. Except pursuant to
30 subsection E of this section and sections 25-501 and 25-809, the superior
31 court shall not consider the factors when making child support orders,
32 independent of the child support guidelines.

33 R. IF A PARTY STIPULATES THAT THE PARTY'S INCOME IS AT OR EXCEEDS
34 THE MAXIMUM CHILD SUPPORT INCOME LEVEL UNDER THE CHILD SUPPORT GUIDELINES
35 AND AGREES TO BE RESPONSIBLE FOR ONE HUNDRED PERCENT OF ALL NECESSARY
36 UNCOVERED MEDICAL EXPENSES OF THE COMMON MINOR CHILDREN, THE COURT MAY NOT
37 REQUIRE THAT PARTY TO PROVIDE INCOME DOCUMENTATION FOR THE PURPOSES OF
38 CALCULATING GUIDELINE CHILD SUPPORT UNLESS THE COURT DETERMINES THAT
39 UPWARD DEVIATION FOR CHILD SUPPORT MAY BE APPROPRIATE.

40 ~~R.~~ S. For the purposes of this section:

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

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

1 3. "Date of separation" means the date the married parents ceased
2 to cohabit.

3 4. "Reasonable cost" means an amount that does not exceed the
4 higher of five ~~per cent~~ PERCENT of the gross income of the obligated
5 parent or an income-based numeric standard that is prescribed in the child
6 support guidelines.

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

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