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CHAPTER 22

SENATE BILL 1010

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)

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

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

25-315. Temporary order or preliminary injunction; effect; definition

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

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

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

(b) That both parties are enjoined from:

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

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

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

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

2. The preliminary injunction shall include the following statement:

Warning

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

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

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

3. The preliminary injunction is effective against the petitioner when the petition is filed and against the respondent on service of a copy of the

order or on actual notice of the order, whichever is sooner. If service is by registered mail under the Arizona rules of ~~civil~~ FAMILY LAW procedure, the order is effective on receipt of the order. The order remains effective until further order of the court or the entry of a decree of dissolution, legal separation or annulment.

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

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

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

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

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

2. Providing other injunctive relief proper in the circumstances.

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

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

F. A temporary order or preliminary injunction:

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

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

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

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

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

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

2. A peace officer ~~may~~, with or without a warrant, MAY arrest a person if the peace officer has probable cause to believe that an offense under this subsection has been committed and has probable cause to believe that the person to be arrested has committed the offense, whether the offense is a felony or a misdemeanor and whether such offense was committed within or without the presence of the peace officer. The release procedures available under section 13-3883, SUBSECTION A, paragraph 4 and section 13-3903 are not applicable to arrests made pursuant to this subsection.

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

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

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

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

1. Cash.

2. Traveler's checks.

3. Cash in financial institutions.

4. Lottery winnings.

Sec. 2. Section 25-325, Arizona Revised Statutes, is amended to read:

25-325. Decree; finality; restoration of maiden name

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

B. Either party to a decree of legal separation may file a petition for dissolution of marriage in accordance with the requirements of section 25-314. The petition shall be filed under the same case number as the legal separation but shall be considered and shall proceed as a new and separate action with service of process in accordance with rule ~~4~~ 40 of the ARIZONA rules of ~~civil~~ FAMILY LAW procedure. The court may enter a decree of dissolution of marriage in the new action in accordance with section 25-312 ~~upon such~~ ON terms ~~as~~ THAT are just and without regard to section 25-327, subsection A, except that the provisions as to property disposition in the decree of legal separation or any property settlement agreement approved by the court may not be revoked or modified, unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

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

Sec. 3. Section 25-408, Arizona Revised Statutes, is amended to read:

25-408. Rights of noncustodial parent; parenting time; relocation of child; exception; enforcement; access to records

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

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

1. Relocate the child outside the state.

2. Relocate the child more than one hundred miles within the state.

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

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

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

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

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

2. A parent who shares joint custody and substantially equal physical custody and who is required by circumstances of health or safety or employment of that parent or that parent's spouse to relocate in less than

sixty days after written notice has been given to the other parent may temporarily relocate with the child only if both parents execute a written agreement to permit relocation of the child.

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

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

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

1. The factors prescribed under section 25-403.

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

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

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

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

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

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

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

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

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

Sec. 4. Section 25-415, Arizona Revised Statutes, is amended to read:

25-415. <u>Custody by nonparent; presumption; grounds; definitions</u>

A. IN ADDITION TO SECTION 25-401, a child custody proceeding may ~~also~~ be commenced in the superior court by a person other than a legal parent by filing a verified petition, or by FILING a petition supported by an

affidavit, in the county in which the child is permanently resident or is found. The petition shall include detailed facts supporting the petitioner's right to file the petition. The petitioner shall provide notice as required by subsection E OF THIS SECTION. Notice shall include a copy of the petition and any affidavits. The court shall summarily deny a petition unless it finds that the petitioner by the pleadings established that all of the following are true:

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

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

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

4. One of the following applies:

(a) One of the legal parents is deceased.

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

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

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

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

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

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

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

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

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

1. The child's parents.

2. A person who has court ordered custody or visitation rights.

3. The child's guardian or guardian ad litem.

4. A person or agency that has physical custody of the child or that claims to have custody or visitation rights.

5. Any other person or agency that has previously appeared in the action.

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

G. For the purposes of this chapter:

1. "In loco parentis" means a person who has been treated as a parent by the child and who has formed a meaningful parental relationship with the child for a substantial period of time.

2. "Legal parent" means a biological or adoptive parent whose parental rights have not been terminated.

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

25-502. <u>Jurisdiction, venue and procedure; additional enforcement provisions</u>

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

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

1. An action does not exist under this title.

2. Paternity was established without a court order pursuant to section 36-334.

C. A person or the department or its agent must file a petition to establish or modify a child support order in the superior court in the county of the last order issued under this title if an order exists in this state. If a person wishes the case transferred to the county of this state where the child resides or, if the child resides out of state, the county of this state where the party requesting the transfer resides, the person must file a request for transfer with the clerk of the superior court that issued the last order.

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

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

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

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

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

I. On filing of the petition and, if applicable, after a transfer is completed, the court shall issue an order requiring the responding party to appear at the time and place set for the hearing on the petition. Service of the order and a copy of the petition shall be as provided in the Arizona rules of ~~civil~~ FAMILY LAW procedure. If the responding party receives notice of a hearing but fails to appear, the court may issue a child support arrest warrant as provided in article 5 of this chapter and shall require that the responding party pay at the time of arrest an amount set by the court to secure the responding party's release from custody pending an appearance at the next scheduled hearing. The court also may find the party to be in contempt of court pursuant to section 12-864.01 and set an amount to be paid to purge the contempt. Any purge amount set by the court shall supersede the

amount required to be set to secure the responding party's release, and the responding party shall pay only the purge amount as a condition of release from custody. Any amounts paid under this section shall be deposited with the clerk of the court or the support payment clearinghouse and credited first to the responding party's current child support obligation and then to arrearages. The court may grant a default judgment for arrearages on a prima facie showing of the amount due.

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

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

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

25-503. <u>Order for support; methods of payment; modification; termination; statute of limitations; judgment on arrearages; notice; security</u>

A. In any proceeding in which there is at issue the support of a child, the court may order either or both parents to pay any amount necessary for the support of the child. If the court order does not specify the date when current support begins, the support obligation begins to accrue on the first day of the month following the entry of the order. If a personal check for support payments and handling fees is rightfully dishonored by the payor bank or other drawee, any subsequent support payments and handling fees shall be paid only by cash, money order, cashier's check, traveler's check or certified check. The department may collect from the drawer of a dishonored check or draft an amount allowed pursuant to section 44-6852. Pursuant to sections 35-146 and 35-147, the department shall deposit monies collected

1 pursuant to this subsection in a child support enforcement administration
2 fund. If a party required to pay support other than by personal check
3 demonstrates full and timely payment for twenty-four consecutive months, that
4 party may pay support by personal check if these payments are for the full
5 amount, are timely tendered and are not rightfully dishonored by the payor
6 bank or other drawee. On a showing of good cause, the court may order that
7 the party or parties required to pay support give reasonable security for
8 these payments. If the court sets an appearance bond and the obligor fails
9 to appear, the bond is forfeited and credited against any support owed by the
10 party required to pay support. This subsection does not apply to payments
11 that are made by means of a wage assignment.
12 B. On a showing that an income withholding order has been ineffective
13 to secure the timely payment of support and that an amount equal to six
14 months of current support has accrued, the court shall require the obligor to
15 give security, post bond or give some other guarantee to secure overdue
16 support.
17 C. In title IV-D cases, and in all other cases subject to an income
18 withholding order issued on or after January 1, 1994, after notice to the
19 party entitled to receive support, the department or its agent may direct the
20 party obligated to pay support or other payor to make payment to the support
21 payment clearinghouse. The department or its agent shall provide notice by
22 first class mail.
23 D. The obligation for current child support shall be fully met before
24 any payments under an order of assignment may be applied to the payment of
25 arrearages. If a party is obligated to pay support for more than one family
26 and the amount available is not sufficient to meet the total combined current
27 support obligation, any monies shall be allocated to each family as follows:
28 1. The amount of current support ordered in each case shall be added
29 to obtain the total support obligation.
30 2. The ordered amount in each case shall be divided by the total
31 support obligation to obtain a percentage of the total amount due.
32 3. The amount available from the obligor's income shall be multiplied
33 by the percentage under paragraph 2 of this subsection to obtain the amount
34 to be allocated to each family.
35 E. Any order for child support may be modified or terminated on a
36 showing of changed circumstance that is substantial and continuing, except as
37 to any amount that may have accrued as an arrearage before the date of notice
38 of the motion or order to show cause to modify or terminate. The addition of
39 health insurance coverage as defined in section 25-531 or a change in the
40 availability of health insurance coverage may constitute a continuing and
41 substantial change in circumstance. Modification and termination are
42 effective on the first day of the month following notice of the petition for
43 modification or termination unless the court, for good cause shown, orders
44 the change to become effective at a different date but not earlier than the
45 date of filing the petition for modification or termination. The order of

modification or termination may include an award of attorney fees and court costs to the prevailing party.

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

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

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

I. The right of a party entitled to receive support or the department to receive child support payments as provided in the court order vests as each installment falls due. Each vested child support installment is enforceable as a final judgment by operation of law. The department or its agent or a party entitled to receive support may also file a request for written judgment for support arrearages.

J. If the obligee, the department or their agents make efforts to collect a child support debt more than ten years after the emancipation of the youngest child subject to the order, the obligor may assert as a defense, and has the burden to prove, that the obligee or the department unreasonably

delayed in attempting to collect the child support debt. On a finding of unreasonable delay a tribunal, as defined in section 25-1202, may determine that some or all of the child support debt is no longer collectible after the date of the finding.

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

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

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

N. If the obligee of a child support order marries the obligor of the child support order, that order automatically terminates on the last day of the month in which the marriage takes place and arrearages do not accrue after that date. However, the obligee or the state may collect child support arrearages that accrued before that date. The obligee, the obligor or the department or its agent in a title IV-D case may file a request or stipulation to terminate or adjust any existing order of assignment, pursuant to section 25-504 or section 25-505.01.

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

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

2. On the child's eighteenth birthday.

3. When the child is adopted.

4. When the child dies.

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

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

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

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

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

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

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

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

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

C. After receipt of a request for an ex parte order of assignment the clerk of the superior court, without a hearing or notice to the person obligated to pay support or spousal maintenance, shall issue an order of assignment of that portion of the person's income as is sufficient to pay the amount requested to the person or agency entitled to receive the support or spousal maintenance. The order of assignment shall include the social security number of the obligated person. On issuance of an ex parte order of assignment, the clerk shall issue a notice directed to the obligor in substantially the following form, which shall also be in Spanish:

Notice

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

1 This is to notify you that part of your income or other
2 monies is being taken away by the enclosed order of assignment
3 that was issued on a request for an order of assignment that
4 also is enclosed. The order of assignment has been issued for
5 currently accruing child support or spousal maintenance, or
6 both, based on the requesting party's claim that you are
7 obligated to pay this. In addition, the requesting party may be
8 claiming a right to collect other support, as defined in section
9 25-500, Arizona Revised Statutes, arrearages on spousal
10 maintenance or interest on a judgment for unpaid spousal
11 maintenance.
12 If you believe the enclosed order of assignment is
13 improper or unlawful, that your property is exempt by law or
14 that your employer or other payor is withholding more than is
15 permitted by law, you may request a hearing before the superior
16 court. You must file a request to terminate or adjust the order
17 of assignment on forms provided by the clerk of the court within
18 seven days after your receipt of the order for assignment,
19 request for an order of assignment and this notice. If you
20 request a hearing, it will be held no more than ten days after
21 you file your request with the court.
22 Here are some other important things you should know:
23 The order of assignment is effective immediately on
24 service of the order on your employer or another payor. The
25 first employer or payor served shall not withhold or deduct
26 amounts specified in the ex parte order of assignment for
27 fourteen calendar days from the date of service to allow you,
28 the obligor, an opportunity to contest the order of assignment
29 as provided in section 25-504, Arizona Revised Statutes. A
30 future employer or payor may begin deductions sooner than the
31 fourteen day period after the order of assignment is received.
32 If you request a hearing, the court, after considering the
33 financial resources of both parties and the reasonableness of
34 the positions each party has taken, may order a party to pay a
35 reasonable amount to the other for the attorney fees and costs
36 of filing or defending the request.
37 Under state law (section 33-1131, Arizona Revised
38 Statutes) no more than one-half of your disposable earnings for
39 any pay period may be taken to satisfy an order issued for
40 support or spousal maintenance. The amount of disposable
41 earnings exempt from the order of assignment must be paid to you
42 when due. Disposable income means the remaining portion of your
43 wages, salary or compensation for personal services, including
44 bonuses and commissions, or otherwise, and includes payments
45 pursuant to a pension or retirement program or a deferred

compensation plan, after deducting from such earnings the amounts required by law to be withheld.

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

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

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

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

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

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

Unless a court has expressly ordered otherwise, you must notify the clerk of the court or the support payment clearinghouse in writing of the address of your residence and of your employment and, within ten days, of a change in either one. Your failure to do so may subject you to sanctions for contempt of court, including reasonable attorney fees and costs pursuant to state law (section 25-504, subsection R, Arizona Revised Statutes). Official notices will be delivered to you at the most recent addresses you have provided to the clerk or support payment clearinghouse.

D. Any order of assignment shall be issued only for support, spousal maintenance, spousal maintenance arrearages, interest on spousal maintenance arrearages and handling fees. The order of assignment shall state the total amount that the payor shall withhold. The order of assignment also shall specify the monthly amount of current support and any other payment ordered

for support, the monthly amount of any current spousal maintenance, the monthly amount of any spousal maintenance arrearages and any monthly interest payment. If the obligor's disposable earnings from the primary employer or other payor do not meet the support obligation, the court shall issue an order of assignment to a secondary employer or other payor of the obligor in order to meet the full support obligation.

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

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

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

court. The obligor may contest the withholding for any of the following reasons:

1. There is an error in the identity of the obligor.

2. There is an error in the amount of support or spousal maintenance.

3. Invalidity of the order for support or spousal maintenance.

4. Current support or spousal maintenance is no longer owed, if the order of assignment includes a payment for current support or spousal maintenance.

5. Arrearages are not owed if the order of assignment includes a payment for arrearages.

H. Any employer or other payor who has received any order of assignment shall withhold the amount specified in the order of assignment, together with the handling fee as provided in section 25-510, from the income of the person obligated to pay support or spousal maintenance and shall transmit the withheld monies to the support payment clearinghouse within two business days after the obligor is paid or after the payment to the obligor is due. The handling fee shall be deducted and transmitted monthly. For the cost of compliance the employer or payor may also withhold and retain an additional one dollar per payment but not more than four dollars per month for each obligor. An employer or payor may combine in a single payment withheld monies for more than one obligor, shall separately identify the portion of the remittance that is attributable to each obligor and shall include each obligor's social security number. An employer or payor shall notify the clerk or support payment clearinghouse in writing when the obligor is no longer employed or the right to receive income or other monies has been terminated. The employer or payor shall also notify the clerk or support payment clearinghouse in writing of the obligor's social security number and last known address and the name and address of the obligor's new employer, if known, within ten days. In a non-title IV-D case, within ten days after receiving this information the support payment clearinghouse shall notify the clerk of the superior court in the county where the support or maintenance order was issued. If within ninety days of the last payment, the employer or other payor reemploys the obligor or becomes obligated to pay the obligor, the employer or payor is again bound by the order of assignment and is required to perform as required by this section. In a title IV-D case the order of assignment may be reinstated pursuant to section 25-505.01. An employer or payor who fails without good cause to comply with the terms of an order of assignment is liable for amounts not paid to the clerk or support payment clearinghouse pursuant to the order of assignment and reasonable attorney fees, costs and other expenses incurred in procuring compliance and may be subject to contempt.

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

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

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

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

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

K. Unless a court has ordered otherwise, the person ordered to pay support or spousal maintenance shall notify the clerk of the superior court or the support payment clearinghouse in writing of the obligor's residential address and the name and address of any employer, and within ten days of any change. Failure to do so may subject the person to sanctions for contempt of court, including reasonable attorney fees and costs.

L. Any order of assignment may be adjusted if there has been a change of circumstances since the date the order of assignment was issued or for good cause. The department or its agent or a person obligated to pay or entitled to receive support or spousal maintenance shall file with the clerk of the superior court a request to adjust the order of assignment and a proposed order of assignment. The request shall specify the adjustment sought and the reason for the request. A copy of the request shall be served pursuant to the Arizona rules of ~~civil~~ FAMILY LAW procedure, or by the department or its agent in a title IV-D case by first class mail, on all other parties and on the state if the department is providing title IV-D support services or has a claim for arrearages. The party receiving the request and proposed order may request a hearing within twenty days or within thirty days if service is made outside this state. On proof of service and if a hearing has not been requested within the time allowed, the clerk shall

issue the order of assignment as appropriate. Within two business days after the date the order of assignment is issued, the clerk shall transmit a copy of the order of assignment to the employer or payor, the department or its agent and all parties. Unless ordered otherwise by the court, in a title IV-D case any order of assignment may be adjusted pursuant to section 25-505.01.

M. The department or its agent or a person obligated to pay or entitled to receive support or spousal maintenance may file a request to terminate any order of assignment if the obligation to pay support or spousal maintenance has ended or will end within ninety days after the filing of the request and if all arrearages either have been paid or will be paid within the period or have been waived. The request shall state the reason why termination is requested and shall contain the name and address of the employer or payor of the person obligated to pay support. A copy of the request shall be served pursuant to the Arizona rules of ~~civil~~ FAMILY LAW procedure, or by the department or its agent in a title IV-D case by first class mail, on all other parties and on the state if the department is providing title IV-D support services or has a claim for arrearages. A party receiving this notice may request a hearing within twenty days or within thirty days if service is made outside this state. On proof of service and if a hearing has not been requested within the time allowed, the clerk shall issue an order terminating the order of assignment as appropriate. Within two business days after the date the order is issued, the clerk shall transmit a copy of the order terminating the order of assignment to the employer or payor and to the department or its agent. If a hearing is requested, the court shall set the hearing within twenty days after receiving the request and shall issue an appropriate order. A person who is ordered to pay support may request the court to terminate an order of assignment at any time if an employer is making deductions on multiple assignments for an obligation for the same minor children. Notwithstanding any law to the contrary, the clerk shall not charge a fee to a person who files a request to terminate an order of assignment if an employer is making deductions on multiple assignments for an obligation for the same minor children.

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

O. The clerk of the superior court shall issue an order terminating the order of assignment if the parties, including the department or its agent in a title IV-D case, file a notarized stipulation with the clerk that all obligations of support or spousal maintenance have been satisfied and that the obligor is no longer obligated to pay support or spousal maintenance. The stipulation shall state that the current obligation of support or spousal maintenance no longer exists and that all arrearages either have been satisfied or waived. The stipulation shall also contain the name and address of the employer or payor of the person obligated to pay support or spousal

maintenance. Within five business days after the date the stipulation is filed, the clerk shall transmit a copy of the order terminating the order of assignment to the employer or payor and to the department or its agent. Notwithstanding any law to the contrary, the clerk shall not charge a fee to a party who files a stipulation pursuant to this subsection.

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

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

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

Sec. 8. Section 25-812, Arizona Revised Statutes, is amended to read:

25-812. <u>Voluntary acknowledgment of paternity; action to overcome paternity</u>

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

1. A notarized or witnessed statement that contains the social security numbers of both parents and that is signed by both parents acknowledging paternity or two separate substantially similar notarized or witnessed statements acknowledging paternity. If the voluntary acknowledgment is filed with the court, the filing party must redact any social security numbers and file them separately pursuant to section 25-501, subsection G. If another man is presumed to be the child's father pursuant to section 25-814, an acknowledgment of paternity is valid only with the presumed father's written consent or as prescribed pursuant to section 25-814. A statement that is witnessed by an employee of the department of economic security or the department of health services or by an employee of a hospital must contain the printed name and residential or business address of the witness. A statement that is witnessed by any other person must contain the printed name and residential address of the witness. If the

acknowledgment of paternity is witnessed, the witness must be an adult who is not related to either parent by blood or by marriage.

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

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

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

D. A voluntary acknowledgment of paternity executed pursuant to subsection A, paragraph 1 of this section may be filed with the department of economic security, which shall provide a copy to the department of health services. A voluntary acknowledgment of paternity made pursuant to this section is a determination of paternity and has the same force and effect as a superior court judgment.

E. Pursuant to rule ~~60(c)~~ 85(c) of the Arizona rules of ~~civil~~ FAMILY LAW procedure, the mother, father or child, or a party to the proceeding on a rule ~~60(c)~~ 85(c) motion, may challenge a voluntary acknowledgment of paternity established in this state at any time after the sixty day period only on the basis of fraud, duress or material mistake of fact, with the burden of proof on the challenger and under which the legal responsibilities, including child support obligations of any signatory arising from the acknowledgment shall not be suspended during the challenge except for good cause shown. The court shall order the mother, her child or children and the alleged father to submit to genetic testing and shall direct that appropriate testing procedures determine the inherited characteristics, including blood and tissue type. If the court finds by clear and convincing evidence that the genetic tests demonstrate that the established father is not the biological father of the child, the court shall vacate the determination of paternity and terminate the obligation of that party to pay ongoing child support. An order vacating the determination of paternity operates prospectively only and does not alter the obligation to pay child support

1 arrearages or, unless otherwise ordered by the court, any other amount
2 previously ordered to be paid pursuant to section 25-809.
3 F. Before signing a voluntary acknowledgment of paternity pursuant to
4 this section, the parties shall be provided notice of the alternatives to,
5 the legal consequences of and the rights and responsibilities that arise from
6 signing the acknowledgment.
7 G. The department of economic security shall notify the department of
8 health services of all paternity determinations and rescissions.
9 H. The mother or the father may rescind the acknowledgment of
10 paternity within the earlier of:
11 1. Sixty days after the last signature is affixed to the notarized
12 acknowledgment of paternity that is filed with the department of economic
13 security, the department of health services or the clerk of the court.
14 2. The date of a proceeding relating to the child, including a child
15 support proceeding in which the mother or father is a party.
16 I. A rescission authorized pursuant to subsection H of this section
17 must be in writing and a copy of each rescission of paternity shall be filed
18 with the department of economic security. The department of economic
19 security shall mail a copy of the rescission of paternity to the other parent
20 and to the department of health services.
21 J. Voluntary acknowledgments of paternity and rescissions of paternity
22 filed pursuant to this section shall contain data elements in accordance with
23 the requirements of the United States secretary of health and human services.

APPROVED BY THE GOVERNOR JULY 9, 2009.

FILED IN THE OFFICE OF THE SECRETARY OF STATE JULY 9, 2009.