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HOUSE BILL 392

**46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004**

INTRODUCED BY

W. Ken Martinez

AN ACT

RELATING TO CHILD SUPPORT ENFORCEMENT; ELIMINATING THE  
ATTORNEY-CLIENT RELATIONSHIP BETWEEN A CHILD SUPPORT  
ENFORCEMENT ATTORNEY AND ANOTHER PARTY; REDUCING THE INTEREST  
RATE FOR DELINQUENT CHILD SUPPORT; CHANGING JUDGMENTS AND  
ORDERS FOR RETROACTIVE CHILD SUPPORT; ESTABLISHING AN ARREARS  
MANAGEMENT PROGRAM FOR UNPAID CHILD SUPPORT INTEREST AMNESTY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 27-2-27 NMSA 1978 (being Laws 1981,  
Chapter 90, Section 1, as amended) is amended to read:

"27-2-27. SINGLE STATE AGENCY--POWERS AND DUTIES.--

A. The department is designated as the single state  
agency for the enforcement of child and spousal support  
obligations pursuant to Title IV D of the federal act with the  
following duties and powers to:

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1 (1) establish the paternity of a child in the  
2 case of the child born out of wedlock with respect to whom an  
3 assignment of support rights has been executed in favor of the  
4 department;

5 (2) establish an order of support for children  
6 receiving aid to families with dependent children and, at the  
7 option of the department, for the spouse or former spouse with  
8 whom such children are living, but only if a support obligation  
9 has been established with respect to such spouse or former  
10 spouse, for whom no order of support currently exists and seek  
11 modification, based upon the noncustodial parent's ability to  
12 pay, of existing orders in which the support order is  
13 inadequate to properly care for the child and the spouse or  
14 former spouse with whom the child is living;

15 (3) enforce as the real party in interest any  
16 existing order for the support of children who are receiving  
17 aid to families with dependent children or of the spouse or  
18 former spouse with whom such children are living;

19 (4) provide services to non-aid families with  
20 dependent children in the establishment and enforcement of  
21 paternity and child support obligations, including locating the  
22 absent parent. For these services, the department is  
23 authorized to establish and collect fees, costs and charges  
24 permitted or required by federal law or by regulations adopted  
25 pursuant to that federal law; and

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1 (5) adopt regulations for the disposition of  
2 unclaimed child, spousal or medical support payments.

3 B. In all cases handled by the department pursuant  
4 to the provisions of this section, the child support  
5 enforcement division [~~of the department and any~~] or an attorney  
6 employed by the division represent the department, to the  
7 exclusion of any other party, in establishing, modifying and  
8 enforcing support obligations.

9 C. An attorney employed to provide the Title IV D  
10 services represents only the department's interests and no  
11 attorney-client relationship shall exist between the attorney  
12 and another party.

13 D. The department shall, at the time an application  
14 for child support services is made, inform the applicant that  
15 neither the Title IV D agency nor the attorney who provides  
16 services under this section is the applicant's attorney and  
17 that the attorney who provides services under this section  
18 shall not provide legal representation to the applicant.

19 E. The department may initiate an action or may  
20 intervene in an action involving child support.

21 F. The attorney employed by the department pursuant  
22 to this section shall not act as a guardian ad litem for the  
23 applicant.

24 G. A court shall not disqualify the department in a  
25 legal action filed pursuant to the Support Enforcement Act of

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1 the federal Social Security Act because the department has  
2 previously provided services to a party whose interests are now  
3 adverse to the relief requested."

4 Section 2. Section 40-4-7.3 NMSA 1978 (being Laws 1999,  
5 Chapter 299, Section 1) is amended to read:

6 "40-4-7.3. ACCRUAL OF INTEREST--DELINQUENT CHILD AND  
7 SPOUSAL SUPPORT.--

8 A. Interest shall accrue on delinquent child  
9 support at the rate of four percent and spousal support at the  
10 rate set forth in Section 56-8-4 NMSA 1978 in effect when the  
11 support payment becomes due and shall accrue from the date the  
12 support is delinquent until the date the support is paid [~~or~~  
13 ~~consolidated in a judgment~~].

14 B. Interest shall accrue on a consolidated judgment  
15 for delinquent child support at the rate [~~provided in Section~~  
16 ~~56-8-4 NMSA 1978 in effect~~] of four percent when the  
17 consolidated judgment is entered until the judgment is  
18 satisfied.

19 C. Unless the order, judgment, decree or wage  
20 withholding order specifies a due date other than the first day  
21 of the month, support shall be due on the first day of each  
22 month and, if not paid by that date, shall be delinquent.

23 D. In calculation of support arrears, payments of  
24 support shall be first applied to the current support  
25 obligation, next to any delinquent support, next to any

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1 consolidated judgment of delinquent support, next to any  
2 accrued interest on delinquent support and next to any interest  
3 accrued on a consolidated judgment of delinquent support.

4 E. The human services department shall have the  
5 authority to forgive accrued interest on delinquent child  
6 support assigned to the state not otherwise specified in an  
7 order, judgment, decree or income withholding order if, in the  
8 judgment of the secretary of human services, forgiveness will  
9 likely result in the collection of more child support, spousal  
10 support or other support and will likely result in the  
11 satisfaction of the judgment, decree or wage withholding order.  
12 This authority shall include the ability to authorize the  
13 return of suspended licenses."

14 Section 3. A new section of the Support Enforcement Act  
15 is enacted to read:

16 "[NEW MATERIAL] UNPAID CHILD SUPPORT INTEREST ARREARS  
17 MANAGEMENT PROGRAM.--The department shall designate an arrears  
18 management program starting on or after December 15, 2004 to  
19 provide amnesty for child support arrears, pursuant to  
20 procedures adopted by the department. The arrears management  
21 program shall not exceed more than twelve months and shall only  
22 be authorized thereafter every two years. The department  
23 shall, before renewing the next arrears management program,  
24 provide to the interim welfare reform oversight committee a  
25 report on the previous arrears management program."

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1           Section 4. Section 40-11-15 NMSA 1978 (being Laws 1986,  
2 Chapter 47, Section 15, as amended) is amended to read:

3           "40-11-15. JUDGMENT OR ORDER.--

4           A. The judgment or order of the court determining  
5 the existence or nonexistence of the parent and child  
6 relationship is determinative for all purposes.

7           B. If the judgment or order of the court is at  
8 variance with the child's birth certificate, the court shall  
9 order that a new birth certificate be issued.

10           C. The judgment or order may contain any other  
11 provision directed against or on behalf of the appropriate  
12 party to the proceeding concerning the duty of past and future  
13 support, the custody and guardianship of the child, visitation  
14 with the child, the furnishing of bond or other security for  
15 the payment of the judgment or any other matter within the  
16 jurisdiction of the court. The judgment or order may direct  
17 the father to pay the reasonable expenses of the mother's  
18 pregnancy, birth and confinement. The court shall order child  
19 support retroactive to the date of the child's birth, but not  
20 to exceed twelve years unless there is a substantial showing  
21 that paternity could not have been established and an action  
22 for child support could not have been brought within twelve  
23 years of the child's birth pursuant to the provisions of  
24 Sections 40-4-11 through 40-4-11.3 NMSA 1978; provided that, in  
25 deciding whether or how long to order retroactive support, the

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1 court shall consider:

2 (1) whether the alleged or presumed father has  
3 absconded or could not be located; and

4 (2) whether equitable defenses are applicable.

5 D. A determination of parentage and adjudication of  
6 support is binding on:

7 (1) a signatory on an acknowledgment of  
8 paternity;

9 (2) a nonresident party subject to the court's  
10 jurisdiction pursuant to Section 40-6A-201 NMSA 1978; and

11 (3) the child, if:

12 (a) the determination was based on an  
13 acknowledgment of paternity and the acknowledgment is  
14 consistent with the results of genetic testing;

15 (b) the child was a party or was  
16 represented in the proceeding by a guardian ad litem;

17 (c) there is a stipulation or admission  
18 in the final order that the parties are the parents of the  
19 child; or

20 (d) in a proceeding to dissolve a  
21 marriage or establish support, a final order expressly  
22 identified the child as a "child of the marriage", "issue of  
23 the marriage", "child of the parties" or similar words that  
24 indicate the parties are the parents of the child and, if  
25 applicable, the court had personal jurisdiction over any

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1 nonresident party pursuant to Section 40-6A-201 NMSA 1978.

2 E. Support judgments or orders ordinarily shall be  
3 for periodic payments which may vary in amount. In the best  
4 interest of the child, a lump-sum payment or the purchase of an  
5 annuity may be ordered in lieu of periodic payments of support;  
6 provided, however, nothing in this section shall deprive a  
7 state agency of its right to reimbursement from an appropriate  
8 party should the child be a past or future recipient of public  
9 assistance.

10 F. In determining the amount to be paid by a parent  
11 for support of the child, a court, child support hearing  
12 officer or master shall make such determination in accordance  
13 with the provisions of the child support guidelines of Section  
14 40-4-11.1 NMSA 1978.

15 G. Bills for pregnancy, childbirth and genetic  
16 testing are admissible as evidence without requiring  
17 third-party foundation testimony and constitute prima facie  
18 evidence of amounts incurred."

19 Section 5. Section 40-11-16 NMSA 1978 (being Laws 1986,  
20 Chapter 47, Section 16, as amended) is amended to read:

21 "40-11-16. COSTS.--The court may order reasonable fees of  
22 counsel, experts and the child's guardian and other costs of  
23 the action and pretrial proceedings, including blood or genetic  
24 tests, to be paid by any party in proportions and at times  
25 determined by the court, but not to exceed twelve years unless

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1 there is a substantial showing that paternity could not have  
2 been established and an action for child support could not have  
3 been brought within twelve years of the child's birth. The  
4 court may order the proportion of any indigent party to be paid  
5 from court funds."

6 Section 6. Section 40-11-23 NMSA 1978 (being Laws 1986,  
7 Chapter 47, Section 23, as amended) is amended to read:

8 "40-11-23. LIMITATION.--~~[A.]~~ An action to determine a  
9 parent and child relationship under the Uniform Parentage Act  
10 shall be brought no later than three years after the child has  
11 reached the age of majority.

12 ~~[B. The action to establish paternity under that~~  
13 ~~act shall be available for any child for whom a paternity~~  
14 ~~action was brought and dismissed on or after August 16, 1984~~  
15 ~~because of the application of a statute of limitations of less~~  
16 ~~than eighteen years.]"~~

17 Section 7. Section 56-8-4 NMSA 1978 (being Laws  
18 1851-1852, p. 255, as amended) is amended to read:

19 "56-8-4. JUDGMENTS AND DECREES--BASIS OF COMPUTING  
20 INTEREST.--

21 A. Interest shall be allowed on judgments and  
22 decrees for the payment of money from entry and shall be  
23 calculated at the rate of eight and ~~[three-quarters]~~ three-  
24 fourths percent per year, unless:

25 (1) the judgment is rendered on a written

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1 instrument having a different rate of interest, in which case  
2 interest shall be computed at a rate no higher than specified  
3 in the instrument; [~~or~~]

4 (2) the judgment is based on tortious conduct,  
5 bad faith or intentional or willful acts, in which case  
6 interest shall be computed at the rate of fifteen percent; or

7 (3) the judgment is based on unpaid child  
8 support, in which case interest shall be computed at the rate  
9 of four percent.

10 B. Unless the judgment is based on unpaid child  
11 support, the court in its discretion may allow interest of up  
12 to ten percent from the date the complaint is served upon the  
13 defendant after considering, among other things:

14 (1) if the plaintiff was the cause of  
15 unreasonable delay in the adjudication of the plaintiff's  
16 claims; and

17 (2) if the defendant had previously made a  
18 reasonable and timely offer of settlement to the plaintiff.

19 C. Nothing contained in this section shall affect  
20 the award of interest or the time from which interest is  
21 computed as otherwise permitted by statute or common law.

22 D. The state and its political subdivisions are  
23 exempt from the provisions of this section except as otherwise  
24 provided by statute or common law."