

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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:

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

(2) establish an order of support for children receiving aid to families with dependent children and, at the option of the department, for the spouse or former spouse with whom such children are living, but only if a support obligation has been established with respect to

1 such spouse or former spouse, for whom no order of support
2 currently exists and seek modification, based upon the
3 noncustodial parent's ability to pay, of existing orders in
4 which the support order is inadequate to properly care for
5 the child and the spouse or former spouse with whom the child
6 is living;

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

11 (4) provide services to non-aid families
12 with dependent children in the establishment and enforcement
13 of paternity and child support obligations, including
14 locating the absent parent. For these services, the
15 department is authorized to establish and collect fees, costs
16 and charges permitted or required by federal law or by
17 regulations adopted pursuant to that federal law; and

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

20 B. In all cases handled by the department pursuant
21 to the provisions of this section, the child support
22 enforcement division or an attorney employed by the division
23 represent the department, to the exclusion of any other
24 party, in establishing, modifying and enforcing support
25 obligations.

1 C. An attorney employed to provide the Title IV D
2 services represents only the department's interests and no
3 attorney-client relationship shall exist between the attorney
4 and another party.

5 D. The department shall, at the time an
6 application for child support services is made, inform the
7 applicant that neither the Title IV D agency nor the attorney
8 who provides services under this section is the applicant's
9 attorney and that the attorney who provides services under
10 this section shall not provide legal representation to the
11 applicant.

12 E. The department may initiate an action or may
13 intervene in an action involving child support.

14 F. The attorney employed by the department
15 pursuant to this section shall not act as a guardian ad litem
16 for the applicant.

17 G. A court shall not disqualify the department in
18 a legal action filed pursuant to the Support Enforcement Act
19 of the federal Social Security Act because the department has
20 previously provided services to a party whose interests are
21 now adverse to the relief requested."

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

24 "40-4-7.3. ACCRUAL OF INTEREST--DELINQUENT CHILD AND
25 SPOUSAL SUPPORT.--

1 A. Interest shall accrue on delinquent child
2 support at the rate of four percent and spousal support at
3 the rate set forth in Section 56-8-4 NMSA 1978 in effect when
4 the support payment becomes due and shall accrue from the
5 date the support is delinquent until the date the support is
6 paid.

7 B. Interest shall accrue on a consolidated
8 judgment for delinquent child support at the rate of four
9 percent when the consolidated judgment is entered until the
10 judgment is satisfied.

11 C. Unless the order, judgment, decree or wage
12 withholding order specifies a due date other than the first
13 day of the month, support shall be due on the first day of
14 each month and, if not paid by that date, shall be
15 delinquent.

16 D. In calculation of support arrears, payments of
17 support shall be first applied to the current support
18 obligation, next to any delinquent support, next to any
19 consolidated judgment of delinquent support, next to any
20 accrued interest on delinquent support and next to any
21 interest accrued on a consolidated judgment of delinquent
22 support.

23 E. The human services department shall have the
24 authority to forgive accrued interest on delinquent child
25 support assigned to the state not otherwise specified in an

1 order, judgment, decree or income withholding order if, in
2 the judgment of the secretary of human services, forgiveness
3 will likely result in the collection of more child support,
4 spousal support or other support and will likely result in
5 the satisfaction of the judgment, decree or wage withholding
6 order. This authority shall include the ability to authorize
7 the return of suspended licenses."

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

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

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

23 "40-11-15. JUDGMENT OR ORDER.--

24 A. The judgment or order of the court determining
25 the existence or nonexistence of the parent and child

1 relationship is determinative for all purposes.

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

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

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

25 (2) whether equitable defenses are

1 applicable.

2 D. A determination of parentage and adjudication
3 of support is binding on:

4 (1) a signatory on an acknowledgment of
5 paternity;

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

9 (3) the child, if:

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

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

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

18 (d) in a proceeding to dissolve a
19 marriage or establish support, a final order expressly
20 identified the child as a "child of the marriage", "issue of
21 the marriage", "child of the parties" or similar words that
22 indicate the parties are the parents of the child and, if
23 applicable, the court had personal jurisdiction over any
24 nonresident party pursuant to Section 40-6A-201 NMSA 1978.

25 E. Support judgments or orders ordinarily shall be SJC/SB 48
Page 7

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

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

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

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

19 "40-11-16. COSTS.--The court may order reasonable fees
20 of counsel, experts and the child's guardian and other costs
21 of the action and pretrial proceedings, including blood or
22 genetic tests, to be paid by any party in proportions and at
23 times determined by the court, but not to exceed twelve years
24 unless there is a substantial showing that paternity could
25 not have been established and an action for child support

1 could not have been brought within twelve years of the
2 child's birth. The court may order the proportion of any
3 indigent party to be paid from court funds."

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

6 "40-11-23. LIMITATION.--An action to determine a parent
7 and child relationship under the Uniform Parentage Act shall
8 be brought no later than three years after the child has
9 reached the age of majority."

10 Section 7. Section 56-8-4 NMSA 1978 (being Laws
11 1851-1852, p. 255, as amended) is amended to read:

12 "56-8-4. JUDGMENTS AND DECREES--BASIS OF COMPUTING
13 INTEREST.--

14 A. Interest shall be allowed on judgments and
15 decrees for the payment of money from entry and shall be
16 calculated at the rate of eight and three-fourths percent per
17 year, unless:

18 (1) the judgment is rendered on a written
19 instrument having a different rate of interest, in which case
20 interest shall be computed at a rate no higher than specified
21 in the instrument; or

22 (2) the judgment is based on tortious
23 conduct, bad faith or intentional or willful acts, in which
24 case interest shall be computed at the rate of fifteen
25 percent.

