

1 AN ACT
2 RELATING TO CHILD SUPPORT ENFORCEMENT; ELIMINATING THE
3 ATTORNEY-CLIENT RELATIONSHIP BETWEEN A CHILD SUPPORT
4 ENFORCEMENT ATTORNEY AND ANOTHER PARTY; REDUCING THE
5 INTEREST RATE FOR DELINQUENT CHILD SUPPORT; CHANGING
6 JUDGMENTS AND ORDERS FOR RETROACTIVE CHILD SUPPORT;
7 ESTABLISHING AN ARREARS MANAGEMENT PROGRAM FOR UNPAID CHILD
8 SUPPORT INTEREST AMNESTY.

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

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

13 "27-2-27. SINGLE STATE AGENCY--POWERS AND DUTIES.--

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

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

20 (2) establish an order of support for children receiving aid to
21 families with dependent children and, at the option of the department, for the
22 spouse or former spouse with whom such children are living, but only if a support
23 obligation has been established with respect to such spouse or former spouse, for
24 whom no order of support currently exists and seek modification, based upon the
25 noncustodial parent's ability to pay, of existing orders in which the support order is
inadequate to properly care for the child and the spouse or former spouse with
whom the child is living;

1 (3) enforce as the real party in interest any existing order for S
2 the support of children who are receiving aid to families with dependent children or J
3 of the spouse or former spouse with whom such children are living; C
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4 (4) provide services to non-aid families with dependent B
5 children in the establishment and enforcement of paternity and child support 4
6 obligations, including locating the absent parent. For these services, the 8
7 department is authorized to establish and collect fees, costs and charges permitted P
8 or required by federal law or by regulations adopted pursuant to that federal law; a
9 and e 2

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

12 B. In all cases handled by the department pursuant to the provisions
13 of this section, the child support enforcement division or an attorney employed by
14 the division represent the department, to the exclusion of any other party, in
15 establishing, modifying and enforcing support obligations.

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

19 D. The department shall, at the time an application for child support
20 services is made, inform the applicant that neither the Title IV D agency nor the
21 attorney who provides services under this section is the applicant's attorney and
22 that the attorney who provides services under this section shall not provide legal
23 representation to the applicant.

24 E. The department may initiate an action or may intervene in an
25 action involving child support.

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

1 G. A court shall not disqualify the department in a legal action filed S
2 pursuant to the Support Enforcement Act of the federal Social Security Act because J
3 the department has previously provided services to a party whose interests are now /
4 adverse to the relief requested." S
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5 Section 2. Section 40-4-7.3 NMSA 1978 (being Laws 1999, Chapter 299, 4
6 Section 1) is amended to read: 8
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7 "40-4-7.3. ACCRUAL OF INTEREST--DELINQUENT CHILD AND a
8 SPOUSAL SUPPORT.-- e

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

13 B. Interest shall accrue on a consolidated judgment for delinquent
14 child support at the rate of four percent when the consolidated judgment is entered
15 until the judgment is satisfied.

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

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

24 E. The human services department shall have the authority to
25 forgive accrued interest on delinquent child support assigned to the state not
otherwise specified in an order, judgment, decree or income withholding order if, in
the judgment of the secretary of human services, forgiveness will likely result in the

1 collection of more child support, spousal support or other support and will likely
2 result in the satisfaction of the judgment, decree or wage withholding order. This
3 authority shall include the ability to authorize the return of suspended licenses."

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

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

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

16 "40-11-15. JUDGMENT OR ORDER.--

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

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

21 C. The judgment or order may contain any other provision directed
22 against or on behalf of the appropriate party to the proceeding concerning the duty
23 of past and future support, the custody and guardianship of the child, visitation with
24 the child, the furnishing of bond or other security for the payment of the judgment or
25 any other matter within the jurisdiction of the court. The judgment or order may
direct the father to pay the reasonable expenses of the mother's pregnancy, birth
and confinement. The court shall order child support retroactive to the date of the

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1 child's birth, but not to exceed twelve years unless there is a substantial showing S
2 that paternity could not have been established and an action for child support could J
3 not have been brought within twelve years of the child's birth pursuant to the C
4 provisions of Sections 40-4-11 through 40-4-11.3 NMSA 1978; provided that, in /
5 deciding whether or how long to order retroactive support, the court shall consider: S
6 (1) whether the alleged or presumed father has absconded B
7 or could not be located; and
8 (2) whether equitable defenses are applicable. 4
9 D. A determination of parentage and adjudication of support is 8
10 binding on: P
11 (1) a signatory on an acknowledgment of paternity; a
12 (2) a nonresident party subject to the court's jurisdiction g
13 pursuant to Section 40-6A-201 NMSA 1978; and e
14 (3) the child, if:
15 (a) the determination was based on an
16 acknowledgment of paternity and the acknowledgment is consistent with the results
17 of genetic testing;
18 (b) the child was a party or was represented in the
19 proceeding by a guardian ad litem;
20 (c) there is a stipulation or admission in the final order
21 that the parties are the parents of the child; or
22 (d) in a proceeding to dissolve a marriage or establish
23 support, a final order expressly identified the child as a "child of the marriage",
24 "issue of the marriage", "child of the parties" or similar words that indicate the
25 parties are the parents of the child and, if applicable, the court had personal
jurisdiction over any nonresident party pursuant to Section 40-6A-201 NMSA 1978.

E. Support judgments or orders ordinarily shall be for periodic

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

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

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

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

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

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

"40-11-23. LIMITATION.--An action to determine a parent and child
relationship under the Uniform Parentage Act shall be brought no later than three

1 years after the child has reached the age of majority."

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

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

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

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

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

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

18 (1) if the plaintiff was the cause of unreasonable delay in the
19 adjudication of the plaintiff's claims; and

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

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

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

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