

COMMITTEE ON JUDICIARY
SENATE AMENDMENTS TO S.B. 1151
(Reference to printed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 25-318, Arizona Revised Statutes, is amended to
3 read:

4 25-318. Disposition of property; retroactivity; notice to
5 creditors; assignment of debts; contempt of court

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

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

23 C. This section does not prevent the court from considering all
24 actual damages and judgments from conduct that resulted in criminal
25 conviction of either spouse in which the other spouse or a child was the

1 victim or excessive or abnormal expenditures, destruction, concealment or
2 fraudulent disposition of community, joint tenancy and other property held
3 in common.

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

8 E. IN ASSESSING THE VALUE OF A GOING CONCERN THAT IS OWNED AS
9 COMMUNITY PROPERTY FOR THE PURPOSES OF DETERMINING THE COMMUNITY SHARE TO
10 BE PAID TO THE SPOUSE WHO WILL NO LONGER MAINTAIN THAT SPOUSE'S INTEREST IN
11 THE GOING CONCERN, THE COURT SHALL ASSESS THE VALUE OF THE GOING CONCERN AS
12 OF THE DATE OF SERVICE OF THE PETITION FOR DISSOLUTION OF MARRIAGE, LEGAL
13 SEPARATION OR ANNULMENT, AND, BEGINNING ON THE DATE OF SERVICE OF THE
14 PETITION, THAT SPOUSE IS NOT ENTITLED TO ANY SHARE OF THE GOING CONCERN'S
15 PROFITS AND IS NOT RESPONSIBLE FOR ANY NEW LIABILITIES INCURRED BY THE
16 GOING CONCERN. THE COURT SHALL INCLUDE THE ASSESSED VALUE OF THE GOING
17 CONCERN IN DETERMINING SPOUSAL MAINTENANCE OR CHILD SUPPORT.

18 ~~F.~~ F. The court may impress a lien on the separate property of
19 either party or the marital property awarded to either party in order to
20 secure the payment of:

- 21 1. Any interest or equity the other party has in or to the property.
- 22 2. Community debts that the court has ordered to be paid by the
23 parties.
- 24 3. An allowance for child support or spousal maintenance, or both.
- 25 4. All actual damages and judgments from conduct that resulted in
26 criminal conviction of either spouse in which the other spouse or a child
27 was the victim.

28 ~~F.~~ G. The decree or judgment shall specifically describe by legal
29 description any real property affected and shall specifically describe any
30 other property affected.

1 required by law to provide information as to the balance and
2 account status of any debts for which the requesting spouse may
3 be liable to the creditor. You may wish to use the following
4 form, or one that is similar, to contact your creditors:

5 Creditor notification

6 Date: _____

7 Creditor name and

8 Address: _____

9 _____

10 _____

11 Within thirty days after receipt of this notice, you are
12 requested to provide the balance and account status of any debt
13 identified by account number for which the requesting party may
14 be liable to you.

15 Name: _____

16 Address: _____

17 _____

18 _____

19 _____

20 (signature)

21 _____

22 (printed name)

23 ~~J.~~ J. On the written request of any party to a pending dissolution
24 of marriage, annulment or legal separation action, the court, except for
25 good cause shown, shall issue an order requiring any credit reporting
26 agency to release the credit report as to the spouse of the requesting
27 party on payment by the requesting party of any customary fee for providing
28 the credit report.

29 ~~K.~~ K. On the request of either party and except for good cause
30 shown, the court shall require the parties to submit a debt distribution
31 plan that states the following:

- 32 1. How community creditors will be paid.

1 2. Whether any agreements have been entered into between the parties
2 as to responsibility for the payment of community debts, including what, if
3 any, collateral will secure the payment of the debt.

4 3. Whether the parties have entered into agreements with creditors
5 through which a community debt will be the sole responsibility of one
6 party.

7 ✕ L. The following form may be used to verify agreements with
8 creditors:

Agreement with creditor

9 The parties to this agreement include _____
10 and _____ who are parties to a dissolution of
11 marriage action filed in _____ county superior
12 court, Arizona, case number _____ and _____
13 who is a duly authorized representative of _____
14 (creditor).
15

16 The undersigned parties agree that the debt owed by the
17 parties to _____ (creditor) is to be disposed of
18 as follows (check one):

19 ___ The debt is the joint responsibility of the parties,
20 with payment to be made on the following
21 terms: _____
22 _____
23 _____

24 ___ The balance of the debt is the sole responsibility
25 of _____ and the creditor releases
26 _____ from any further liability for that debt,
27 with payment to be made on the following terms:
28 _____
29 _____
30 _____

31 ___ The debt has been paid in full as of this date.
32 We the undersigned acknowledge this agreement.
33 Dated: _____

1 debt and that the other debtor is released from any further liability on
2 the debt.

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

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

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

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

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

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

1 Sec. 2. Section 25-319, Arizona Revised Statutes, is amended to
2 read:

3 25-319. Maintenance; guidelines; computation factors

4 A. In a proceeding for dissolution of marriage or legal separation,
5 or a proceeding for maintenance following dissolution of the marriage by a
6 court that lacked personal jurisdiction over the absent spouse, the court
7 may grant a maintenance order for either spouse for any of the following
8 reasons if it finds that the spouse seeking maintenance:

9 1. Lacks sufficient property, including property apportioned to the
10 spouse, to provide for that spouse's reasonable needs.

11 2. Lacks earning ability in the labor market that is adequate to be
12 self-sufficient.

13 3. Is the parent of a child whose age or condition is such that the
14 parent should not be required to seek employment outside the home.

15 4. Has made a significant financial or other contribution to the
16 education, training, vocational skills, career or earning ability of the
17 other spouse or has significantly reduced that spouse's income or career
18 opportunities for the benefit of the other spouse.

19 5. Had a marriage of long duration and is of an age that may
20 preclude the possibility of gaining employment adequate to be
21 self-sufficient.

22 B. The supreme court shall establish guidelines for determining and
23 awarding spousal maintenance. The court may award spousal maintenance
24 pursuant to the guidelines only for a period of time and in an amount
25 necessary to enable the receiving spouse to become self-sufficient. The
26 amount of spousal maintenance resulting from the application of the
27 guidelines shall be the amount of spousal maintenance ordered by the court,
28 unless the court finds in writing that applying the guidelines would be
29 inappropriate or unjust. The supreme court shall base the guidelines and
30 criteria for deviation from the guidelines on the following relevant
31 factors ~~listed in paragraphs 1 through 13 of this subsection and~~ considered
32 together and weighed in conjunction with each other:

- 1 1. The standard of living established during the marriage.
- 2 2. The duration of the marriage.
- 3 3. The age, employment history, earning ability and physical and
4 emotional condition of the spouse seeking maintenance.
- 5 4. The ability of the spouse from whom maintenance is sought to meet
6 that spouse's needs while meeting those of the spouse seeking maintenance.
- 7 5. The comparative financial resources of the spouses, including
8 their comparative earning abilities in the labor market.
- 9 6. The contribution of the spouse seeking maintenance to the earning
10 ability of the other spouse.
- 11 7. The extent to which the spouse seeking maintenance has reduced
12 that spouse's income or career opportunities for the benefit of the other
13 spouse.
- 14 8. The ability of both parties after the dissolution to contribute
15 to the future educational costs of their mutual children.
- 16 9. The financial resources of the party seeking maintenance,
17 including marital property apportioned to that spouse, and that spouse's
18 ability to meet that spouse's own needs independently.
- 19 10. The time necessary to acquire sufficient education or training
20 to enable the party seeking maintenance to find appropriate employment and
21 whether such education or training is readily available.
- 22 11. Excessive or abnormal expenditures, destruction, concealment or
23 fraudulent disposition of community, joint tenancy and other property held
24 in common.
- 25 12. The cost for the spouse who is seeking maintenance to obtain
26 health insurance and the reduction in the cost of health insurance for the
27 spouse from whom maintenance is sought if the spouse from whom maintenance
28 is sought is able to convert family health insurance to employee health
29 insurance after the marriage is dissolved.
- 30 13. All actual damages and judgments from conduct that resulted in
31 criminal conviction of either spouse in which the other spouse or a child
32 was the victim.

1 C. A maintenance order shall be made without regard to marital
2 misconduct.

3 D. ~~if~~ UNLESS both parties agree OTHERWISE, the maintenance order and
4 a decree of dissolution of marriage or of legal separation ~~may~~ SHALL state
5 that its maintenance terms shall not be modified.

6 E. IF BOTH PARTIES ENTER INTO AN AGREEMENT THAT A SPOUSAL
7 MAINTENANCE ORDER MAY NOT BE MODIFIED, THE COURT MAY NOT REQUIRE EITHER
8 PARTY TO PROVIDE FURTHER INCOME DOCUMENTATION.

9 ~~E.~~ F. Except as provided in subsection D of this section or section
10 25-317, subsection G, the court shall maintain continuing jurisdiction over
11 the issue of maintenance for the period of time maintenance is awarded.

12 Sec. 3. Section 25-320, Arizona Revised Statutes, is amended to
13 read:

14 25-320. Child support; factors; methods of payment; additional
15 enforcement provisions; definitions

16 A. In a proceeding for dissolution of marriage, legal separation,
17 maintenance or child support, the court may order either or both parents
18 owing a duty of support to a child, born to or adopted by the parents, to
19 pay an amount reasonable and necessary for support of the child, without
20 regard to marital misconduct.

21 B. If child support has not been ordered by a child support order
22 and if the court deems child support appropriate, the court shall direct,
23 using a retroactive application of the child support guidelines to the date
24 of filing a dissolution of marriage, legal separation, maintenance or child
25 support proceeding, the amount that the parents shall pay for the past
26 support of the child and the manner in which payment shall be paid, taking
27 into account any amount of temporary or voluntary support that has been
28 paid. Retroactive child support is enforceable in any manner provided by
29 law.

30 C. If the parties lived apart before the date of the filing for
31 dissolution of marriage, legal separation, maintenance or child support and
32 if child support has not been ordered by a child support order, the court

1 may order child support retroactively to the date of separation, but not
2 more than three years before the date of the filing for dissolution of
3 marriage, legal separation, maintenance or child support. The court must
4 first consider all relevant circumstances, including the conduct or
5 motivation of the parties in that filing and the diligence with which
6 service of process was attempted on the obligor spouse or was frustrated by
7 the obligor spouse. If the court determines that child support is
8 appropriate, the court shall direct, using a retroactive application of the
9 child support guidelines, the amount that the parents must pay for the past
10 support of the child and the manner in which payments must be paid, taking
11 into account any amount of temporary or voluntary support that has been
12 paid.

13 D. The supreme court shall establish guidelines for determining the
14 amount of child support. The amount resulting from the application of
15 these guidelines is the amount of child support ordered unless a written
16 finding is made, based on criteria approved by the supreme court, that
17 application of the guidelines would be inappropriate or unjust in a
18 particular case. The supreme court shall review the guidelines at least
19 once every four years to ensure that their application results in the
20 determination of appropriate child support amounts. The supreme court
21 shall base the guidelines and criteria for deviation from them on all
22 relevant factors, considered together and weighed in conjunction with each
23 other, including:

- 24 1. The financial resources and needs of the child.
- 25 2. The financial resources and needs of the custodial parent.
- 26 3. The standard of living the child would have enjoyed if the child
27 lived in an intact home with both parents to the extent it is economically
28 feasible considering the resources of each parent and each parent's need to
29 maintain a home and to provide support for the child when the child is with
30 that parent.

1 4. The physical and emotional condition of the child, and the
2 child's educational needs.

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

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

8 7. Excessive or abnormal expenditures, destruction, concealment or
9 fraudulent disposition of community, joint tenancy and other property held
10 in common.

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

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

15 1. The court has considered the factors prescribed in subsection D
16 of this section.

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

20 3. The child's disability began before the child reached the age of
21 majority.

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

31 G. If a personal check for support payments and handling fees is
32 rightfully dishonored by the payor bank or other drawee, the person

1 obligated to pay support shall make any subsequent support payments and
2 handling fees only by cash, money order, cashier's check, traveler's check
3 or certified check. If a person required to pay support other than by
4 personal check demonstrates full and timely payment for twenty-four
5 consecutive months, that person may pay support by personal check if these
6 payments are for the full amount, are timely tendered and are not
7 rightfully dishonored by the payor bank or other drawee.

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

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

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

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

1 1. In a title IV-D case, in accordance with established title IV-D
2 criteria, establish a reasonable monthly cash medical support order to be
3 paid by the obligor. If medical assistance is being provided to a child
4 under title XIX of the social security act, cash medical support is
5 assigned to the state pursuant to section 46-407. On verification that the
6 obligor has obtained private insurance, the cash medical support order
7 terminates by operation of law on the first day of the month after the
8 policy's effective date or on the date the court, or the department in a
9 title IV-D case, is notified that insurance has been obtained, whichever is
10 later. If the private insurance terminates, the cash medical support order
11 automatically resumes by operation of law on the first day of the month
12 following the termination date of the policy.

13 2. Order one parent to provide medical insurance when it becomes
14 accessible and available at a reasonable cost.

15 3. Order that medical costs in excess of the cash medical support
16 amount shall be paid by each parent according to the percentage assigned
17 for payment of uninsured costs.

18 L. In a title IV-D case, if the court orders the noncustodial parent
19 to obtain medical insurance the court shall also set an alternative cash
20 medical support order to be paid by that parent if the child is not covered
21 under an insurance plan within ninety days after entry of the order or if
22 the child is no longer covered by insurance. The court shall not order the
23 custodial parent to pay cash medical support.

24 M. In title IV-D cases the superior court shall accept for filing
25 any documents that are received through electronic transmission if the
26 electronically reproduced document states that the copy used for the
27 electronic transmission was certified before it was electronically
28 transmitted.

29 N. The court shall presume, in the absence of contrary testimony,
30 that a parent is capable of full-time employment at least at the applicable
31 state or federal adult minimum wage, whichever is higher. This presumption

1 does not apply to noncustodial parents who are under eighteen years of age
2 and who are attending high school.

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

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

17 Q. The factors prescribed pursuant to subsection D of this section
18 are stated for direction to the supreme court. Except pursuant to
19 subsection E of this section and sections 25-501 and 25-809, the superior
20 court shall not consider the factors when making child support orders,
21 independent of the child support guidelines.

22 R. IF A PARTY STIPULATES THAT THE PARTY'S INCOME IS AT OR EXCEEDS
23 THE MAXIMUM CHILD SUPPORT AMOUNT UNDER THE CHILD SUPPORT GUIDELINES, THE
24 COURT MAY NOT REQUIRE THAT PARTY TO PROVIDE INCOME DOCUMENTATION FOR THE
25 PURPOSES OF CALCULATING CHILD SUPPORT.

26 S. IF BOTH PARTIES ENTER INTO AN AGREEMENT THAT A CHILD SUPPORT
27 ORDER MAY NOT BE MODIFIED, THE COURT MAY NOT REQUIRE EITHER PARTY TO
28 PROVIDE FURTHER INCOME DOCUMENTATION.

29 ~~R.~~ T. For the purposes of this section:

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

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

4 3. "Date of separation" means the date the married parents ceased to
5 cohabit.

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

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

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

13 Amend title to conform

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