

DOMESTIC RELATIONS (23PA.C.S.) - OMNIBUS AMENDMENT

Act of Jul. 2, 1993, P.L. 431, No. 62

Cl. 23

Session of 1993

No. 1993-62

AN ACT

HB 1340

Amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, defining "genetic tests"; further providing for information to consumer credit bureau and for rights of the Department of Public Welfare for postsecondary educational costs; providing for publication of delinquent support obligors; further providing for expedited paternity and support procedure; providing for professional licensure sanctions against support delinquents; and further providing for voluntary acknowledgement of paternity.

It is the intention of the General Assembly by enacting 23 Pa.C.S. § 4327 (relating to postsecondary educational costs) to codify the decision of the Superior Court in the case of *Ulmer v. Sommerville*, 200 Pa. Superior Ct. 640, 190 A.2d 182 (1963), and the subsequent line of cases interpreting *Ulmer* prior to the decision of the Pennsylvania Supreme Court in *Blue v. Blue*, 532 Pa. 521, 616 A.2d 628 (1992), decided on November 13, 1992.

Further, the General Assembly finds that it has a rational and legitimate governmental interest in requiring some parental financial assistance for a higher education for children of parents who are separated, divorced, unmarried or otherwise subject to an existing support obligation.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 4302 of Title 23 of the Pennsylvania Consolidated Statutes is amended by adding a definition to read:
§ 4302. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

"Genetic tests." Includes any blood or tissue testing processes used to confirm or exclude parentage.

* * *

Section 2. Section 4306 of Title 23 is amended to read:
§ 4306. Duties of district attorney **and rights of Department of Public Welfare .**

(a) General rule.--The district attorney shall at all times aid in the enforcement of the duty of support and shall cooperate with the domestic relations section in the presentation of complaints or in any proceeding designed to

obtain compliance with any order of the court.

(b) Representation of complainant.--The district attorney, upon the request of the court or a Commonwealth or local public welfare official, shall represent any complainant in any proceeding under this subchapter.

(c) Joinder of Department of Public Welfare.--Whenever the record in any support action or proceeding indicates that the persons for whom support is sought have received public assistance from the Department of Public Welfare at any time since the initiation of the matter, the department may become a party to the action or proceeding by filing an entry of appearance. This entry of appearance may be entered without leave of court at any time and at any stage of the action or proceeding.

Section 3. Title 23 is amended by adding sections to read:

§ 4309. Publication of delinquent support obligors.

(a) General rule.--Any county, through its domestic relations section, may publish the names of delinquent support obligors who are in arrears 30 days or more in newspapers of general or special circulation in the county.

(b) Immunity.--The county, its officials and newspapers shall be immune from any and all criminal and civil liability as a result of the publication of names and identities under subsection (a), unless the publication is a result of intentional misconduct by the county, its officials or newspapers.

§ 4327. Postsecondary educational costs.

(a) General rule.--Where applicable under this section, a court may order either or both parents who are separated, divorced, unmarried or otherwise subject to an existing support obligation to provide equitably for educational costs of their child whether an application for this support is made before or after the child has reached 18 years of age. The responsibility to provide for postsecondary educational expenses is a shared responsibility between both parents. The duty of a parent to provide a postsecondary education for a child is not as exacting a requirement as the duty to provide food, clothing and shelter for a child of tender years unable to support himself. This authority shall extend to postsecondary education, including periods of undergraduate or vocational education after the child graduates from high school. An award for postsecondary educational costs may be entered only after the child or student has made reasonable efforts to apply for scholarships, grants and work-study assistance.

(b) Action to recover educational expenses.--An action to recover educational costs may be commenced:

- (1) by the student if over 18 years of age; or
- (2) by either parent on behalf of a child under 18 years of age, but, if the student is over 18 years of age, the student's written consent to the action must be secured.

(c) Calculation of educational costs.--In making an award under this section, the court shall calculate educational costs as defined in this section.

(d) Grants and scholarships.--The court shall deduct from the educational costs all grants and scholarships awarded to the

student.

(e) Other relevant factors.--After calculating educational costs and deducting grants and scholarships, the court may order either parent or both parents to pay all or part of the remaining educational costs of their child. The court shall consider all relevant factors which appear reasonable, equitable and necessary, including the following:

- (1) The financial resources of both parents.
- (2) The financial resources of the student.
- (3) The receipt of educational loans and other financial assistance by the student.
- (4) The ability, willingness and desire of the student to pursue and complete the course of study.
- (5) Any willful estrangement between parent and student caused by the student after attaining majority.
- (6) The ability of the student to contribute to the student's expenses through gainful employment. The student's history of employment is material under this paragraph.
- (7) Any other relevant factors.

(f) When liability may not be found.--A court shall not order support for educational costs if any of the following circumstances exist:

- (1) Undue financial hardship would result to the parent.
- (2) The educational costs would be a contribution for postcollege graduate educational costs.
- (3) The order would extend support for the student beyond the student's twenty-third birthday. If exceptional circumstances exist, the court may order educational support for the student beyond the student's twenty-third birthday.

(g) Parent's obligation.--A parent's obligation to contribute toward the educational costs of a student shall not include payments to the other parent for the student's living expenses at home unless the student resides at home with the other parent and commutes to school.

(h) Termination or modification of orders.--Any party may request modification or termination of an order entered under this section upon proof of change in educational status of the student, a material change in the financial status of any party or other relevant factors.

(i) Applicability.--

(1) This act shall apply to all divorce decrees, support agreements, support orders, agreed or stipulated court orders, property settlement agreements, equitable distribution agreements, custody agreements and/or court orders and agreed to or stipulated court orders in effect on, executed or entered since, November 12, 1992.

(2) In addition, this act shall apply to all pending actions for support. This section shall not supersede or modify the express terms of a voluntary written marital settlement agreement or any court order entered pursuant thereto.

(j) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Educational costs." Tuition, fees, books, room, board and

other educational materials.

"Postsecondary education." An educational or vocational program provided at a college, university or other postsecondary vocational, secretarial, business or technical school.

Section 4. Section 4342 of Title 23 is amended by adding subsections to read:

§ 4342. Expedited procedure.

* * *

(c) Long arm procedures.--The Supreme Court shall by general rule establish procedures for the exercise of long arm jurisdiction to establish paternity and to establish and enforce support. Long arm jurisdiction shall be used in preference to proceedings under Chapter 45 (relating to reciprocal enforcement of support orders) unless it would be more effective to proceed otherwise. Long arm proceedings may be commenced or continued in any county where the plaintiff resides regardless of whether the parties maintained a family domicile in that county.

(d) Jurisdiction over nonresident.--In a proceeding to establish, enforce or modify a support order or to determine parentage, any court of this Commonwealth may exercise personal jurisdiction over a nonresident individual if:

(1) the individual is personally served with notice within this Commonwealth;

(2) the individual submits to the jurisdiction of this Commonwealth by consent, by entering a general appearance or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

(3) the individual resided with the child in this Commonwealth;

(4) the individual resided in this Commonwealth and provided prenatal expenses or support for the child;

(5) the child resides in this Commonwealth as a result of the acts or directives of the individual;

(6) the individual engaged in sexual intercourse in this Commonwealth and the child may have been conceived by that act of intercourse;

(7) the individual asserted parentage in the affidavit filed under the act of June 29, 1953 (P.L.304, No.66), known as the Vital Statistics Law of 1953; or

(8) there is any other basis consistent with the Constitution of the United States and the Constitution of Pennsylvania for the exercise of personal jurisdiction.

Section 5. Title 23 is amended by adding a section to read:

§ 4355. Denial or suspension of license to engage in remunerative employment.

(a) General rule.--Where the domestic relations section has been unable to attach the income of an obligor pursuant to section 4348 (relating to attachment of income) and the obligor owes support in an amount equal to or greater than three months of the monthly support obligation, the court shall issue an order directing any licensing authority to:

(1) prohibit the issuance or renewal of a license of the obligor; or

(2) require the suspension of the license of the obligor.

(b) Notice to obligor.--

(1) Prior to the issuance of an order to suspend, nonrenew or deny a license, the court shall send written notice to the obligor. The notice shall specify:

(i) The amount of arrears owed.

(ii) How, when and where the notice can be contested.

(iii) That the grounds for contesting the notice shall be limited to mistakes of fact. Mistakes of fact shall be limited to errors in the amount of arrears owed or mistaken identity of the obligor.

(iv) That an order to the licensing authority to automatically suspend, nonrenew or deny the license will occur in all cases 30 days after issuance of the notice unless the arrearage is paid or a periodic payment schedule is approved by the court.

(2) If the obligor is a member of the bar and has an attorney's license issued by the Supreme Court of Pennsylvania, the court shall send written notice to the disciplinary board of the Supreme Court so that appropriate action may be taken.

(c) Order.--

(1) Thirty days after the issuance of the notice, if the obligor has not paid the arrearage or entered into a court-approved periodic payment schedule, the court shall cause an order to be issued to the licensing authority to suspend or deny the issuance or renewal of a license. Upon receipt, the licensing authority shall immediately comply with the order.

(2) An order providing for a periodic payment schedule shall also provide that failure to comply with the schedule shall result in the immediate suspension, nonrenewal or denial of the obligor's license.

(3) To contest the order, the obligor must appear before the domestic relations section not later than ten days after issuance of the order. The grounds for contesting shall be limited to mistakes of fact. If, as determined by the domestic relations section, a mistake of fact has occurred, the action shall be modified accordingly within ten days.

(d) Reinstatement or issuance of license.--Where the court has issued an order pursuant to subsection (c) and the obligor has satisfied the arrearage, the court shall order the licensing authority to reinstate or issue the license to the obligor. Upon receipt of the order, the licensing authority shall reinstate or issue the license immediately, provided that the obligor meets any and all other requirements for issuance or reinstatement.

(e) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"License." A license, certificate, permit or other authorization to engage in a profession, trade or business in this Commonwealth or a political subdivision or agency thereof.

"Licensing authority." Any entity of the Commonwealth, political subdivision or agency thereof which issues a license.

Section 6. Section 5103 of Title 23 is amended by adding a subsection to read:

§ 5103. Acknowledgment and claim of paternity.

* * *

(c) Duty of hospital or birthing center.--Upon the birth of a child to an unmarried woman, an agent of the hospital or birthing center where the birth occurred shall:

(1) Provide the newborn's birth parents with an opportunity to complete an affidavit acknowledging paternity. The completed, signed and notarized affidavit shall be sent to the Department of Public Welfare. A copy shall be given to each of the birth parents. This affidavit shall contain:

(i) A sworn, signed statement by the birth mother consenting to the assertion of paternity.

(ii) A signed, notarized statement by the birth father acknowledging his paternity.

(iii) A written explanation of the parental duties and parental rights which arise from signing such a statement.

(iv) The Social Security numbers and addresses of both birth parents.

(2) Provide written information, furnished by the Department of Public Welfare to the birth mother, which explains the benefits of having the child's paternity established, the availability of paternity establishment services and the availability of child support enforcement agencies.

Section 7. The addition of 23 Pa.C.S. § 4306(c) shall apply to actions pending on the effective date of this act under section 8(3) of this act.

Section 8. This act shall take effect as follows:

(1) The addition of 23 Pa.C.S. §§ 4309 and 4355 shall take effect in 60 days.

(2) The amendment of 23 Pa.C.S. § 5103 shall take effect in 90 days.

(3) The remainder of this act shall take effect immediately.

APPROVED--The 2nd day of July, A. D. 1993.

MARK L. SINGEL
ACTING GOVERNOR