

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2252 Session of 2008

INTRODUCED BY CALTAGIRONE, MARSICO, BELFANTI, FRANKEL, HARKINS, HENNESSEY, HERSHEY, MUNDY, SIPTROTH AND YOUNGBLOOD, FEBRUARY 29, 2008

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, MARCH 31, 2008

AN ACT

1 Amending Title 23 (Domestic Relations) of the Pennsylvania
2 Consolidated Statutes, further providing for child medical
3 support, FOR annual fees, FOR review of orders of support,
4 FOR effect of incarceration, FOR pass-through of support and
5 FOR assignment of support. <—

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

8 Section 1. Section 4326(a), (b), (c), (d) and (l) of Title
9 23 of the Pennsylvania Consolidated Statutes are amended to
10 read:

11 § 4326. Mandatory inclusion of child medical support.

12 (a) General rule.--In every proceeding to establish or
13 modify an order which requires the payment of child support, the
14 court shall ascertain the ability of each parent to provide
15 [health care coverage] medical support for the children of the
16 parties, and the order shall [provide health care coverage for
17 each child as appropriate.] include a requirement for medical
18 support to be provided by either or both parents, provided that

1 such medical support is accessible to the children.

2 (b) Noncustodial parent requirement.--If [health care
3 coverage] medical support is available at a reasonable cost to a
4 noncustodial parent [on an employment-related or other group
5 basis], the court shall require that the noncustodial parent
6 provide such [coverage] medical support to the children of the
7 parties. In cases where there are two noncustodial parents
8 having such [coverage] medical support available, the court
9 shall require one or both parents to provide [coverage] medical
10 support.

11 (c) Custodial parent requirement.--If [health care coverage]
12 medical support is available at a reasonable cost to a custodial
13 parent [on an employment-related or other group basis], the
14 court shall require that the custodial parent provide such
15 [coverage] medical support to the children of the parties,
16 unless adequate [health care coverage] medical support has
17 already been provided through the noncustodial parent. In cases
18 where the parents have shared custody of the child and
19 [coverage] medical support is available to both, the court shall
20 require one or both parents to provide [coverage] medical
21 support, taking into account the financial ability of the
22 parties and the extent of [coverage] medical support available
23 to each parent.

24 (d) Additional requirement.--If the court finds that [health
25 care coverage] medical support is not available to either parent
26 at a reasonable cost [on an employment-related or other group
27 basis], the court shall order either parent or both parents to
28 obtain medical support for the parties' children [health
29 insurance coverage] which is available at reasonable cost.

30 * * *

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

4 "Birth-related expenses." Costs of reasonable and necessary
5 health care for the mother or child or both incurred before,
6 during or after the birth of a child born in or out of wedlock
7 which are the result of the pregnancy or birth and which benefit
8 either the mother or child. Charges not related to the pregnancy
9 or birth shall be excluded.

10 "Child." A child to whom a duty of child support is owed.

11 "Health care coverage." Coverage for medical, dental,
12 orthodontic, optical, psychological, psychiatric or other health
13 care services for a child. For the purposes of this section,
14 medical assistance under Subarticle (f) of Article IV of the act
15 of June 13, 1967 (P.L.31, No.21), known as the Public Welfare
16 Code, shall not be considered health care coverage.

17 "Insurer." A foreign or domestic insurance company,
18 association or exchange holding a certificate of authority under
19 the act of May 17, 1921 (P.L.682, No.284), known as The
20 Insurance Company Law of 1921; a risk-assuming preferred
21 provider organization operating under section 630 of The
22 Insurance Company Law of 1921; a health maintenance organization
23 holding a certificate of authority under the act of December 29,
24 1972 (P.L.1701, No.364), known as the Health Maintenance
25 Organization Act; a fraternal benefit society holding a
26 certificate of authority under the former act of December 14,
27 1992 (P.L.835, No.134), known as the Fraternal Benefit Societies
28 Code; a hospital plan corporation holding a certificate of
29 authority under 40 Pa.C.S. Ch. 61 (relating to hospital plan
30 corporations); a professional health service plan corporation

1 holding a certificate of authority under 40 Pa.C.S. Ch. 63
2 (relating to professional health services plan corporations); or
3 a similar entity authorized to do insurance business in this
4 Commonwealth.

5 "Medical child support order." An order which relates to the
6 child's right to receive certain health care coverage and which:

7 (1) includes the name and last known mailing address of
8 the parent providing health care coverage and the name and
9 last known mailing address of the child;

10 (2) includes a reasonable description of the type of
11 coverage to be provided or includes the manner in which
12 coverage is to be determined;

13 (3) designates the time period to which the order
14 applies;

15 (4) if coverage is provided through a group health plan,
16 designates each plan to which the order applies as of the
17 date the order is written;

18 (4.1) requires that, if health care coverage is provided
19 through the noncustodial parent's employer and that parent
20 changes employment, the provisions of the order will remain
21 in effect for the duration of the order and will
22 automatically apply to the new employer. The new employer
23 shall enroll the child in health care coverage without need
24 for an amended order unless the noncustodial parent contests
25 the enrollment; and

26 (5) includes the name and address of the custodial
27 parent.

28 "Medical support." Health care coverage, which includes
29 coverage under a health insurance plan or government-subsidized
30 health care coverage, including payment of costs of premiums,

1 copayments, deductibles and capitation fees, and payment for
2 medical expenses incurred on behalf of a child.

3 "Reasonable cost." Cost of health care coverage that does
4 not exceed 5% of the party's net monthly income and, if the
5 obligor is to provide health care coverage, the cost of the
6 premium when coupled with a cash child support obligation and
7 other child support-related obligations does not exceed the
8 amounts allowed by the Federal threshold set forth in the
9 Consumer Credit Protection Act (Public Law 90-321, 15 U.S.C. §
10 1601 et seq.).

11 Section 2. Section 4351 of Title 23 is amended by adding a
12 subsection to read:

13 § 4351. Costs and fees.

14 * * *

15 (a.1) Annual fee.--The Commonwealth shall impose a AN ANNUAL <—
16 fee of \$25 in each case in which an individual has never
17 received assistance under Title IV-A of the Social Security Act
18 (49 Stat. 620, 42 U.S.C. § 301 et seq.) and for whom the
19 Commonwealth has collected at least \$500 of support in a Federal
20 fiscal year. The Commonwealth shall pay the ANNUAL \$25 fee for <—
21 those cases in which the annual collection is between \$500 and
22 \$1,999.99. The \$25 fee shall be collected from the custodial
23 parent in cases where annual collections equal \$2,000 or more.
24 IN ALL CASES IN WHICH A FEE IS IMPOSED UNDER THIS SUBSECTION. <—

25 * * *

26 Section 3. Section 4352(a.1) of Title 23 is amended and the
27 section is amended by adding a subsection to read:

28 § 4352. Continuing jurisdiction over support orders.

29 * * *

30 (a.1) Automatic review.--[A method shall be developed for

1 the automatic review of] Upon request of either parent, or
2 automatically if there is an assignment under Title IV-A of the
3 Social Security Act (49 Stat. 620, 42 U.S.C. § 301 et seq.),
4 each order of support shall be reviewed at least once every
5 three years from the date of establishment or the most recent
6 review[,]. The review shall be for the purpose of making any
7 appropriate increase, decrease, modification or rescission of
8 the order. During the [automatic] review, taking into the
9 account the best interest of the child involved, the court shall
10 adjust the order, without requiring proof of a change in
11 circumstances, by applying the Statewide guidelines or a cost-
12 of-living adjustment in accordance with a formula developed by
13 general rule. Automated methods, including automated matches
14 with wage or State income tax data, may be used to identify the
15 support orders eligible for review and implement appropriate
16 adjustments. [If, however, it is determined that such a review
17 would not be in the best interests of the child and neither
18 parent nor the department, if it has an assignment or other
19 interest, has requested a review, no review shall be required.]

20 (a.2) Effect of incarceration.--Incarceration, except
21 incarceration for nonpayment of support, shall constitute a
22 material and substantial change in circumstance that may warrant
23 modification or termination of an order of support where the
24 obligor lacks verifiable income or assets sufficient to enforce
25 and collect amounts due.

26 * * *

27 Section 4. Sections 4374(c) and (d) and 4378(b) of Title 23
28 are amended to read:

29 § 4374. State disbursement unit.

30 * * *

1 (c) Allocation of collections.--Subject to subsections (d),
2 (e), (f) and (f.1), support collected on behalf of a family
3 shall be distributed as follows:

4 (1) In the case of a family receiving cash assistance
5 from the Commonwealth:

6 (i) First, [pay to the Federal Government an amount
7 equal to the Federal share of the amount collected.] from
8 the amount of current support collected, pass through to
9 the assistance group the first \$100 per month for one
10 child or the first \$200 per month for two or more
11 children, or the first \$50 per month for spousal support,
12 without decreasing the amount of cash assistance,
13 provided, however, that in no event may any assistance
14 group be paid more than one support pass-through payment
15 per month.

16 (ii) Second, [after application of subparagraph (i),
17 from the amount remaining, pass through to the assistance
18 group the first \$50 per month of current child or spousal
19 support collected without decreasing the amount of cash
20 assistance, provided, however, that in no event may any
21 assistance group be paid more than one support pass-
22 through payment per month.] calculate the Federal
23 Government's share of the remaining amount collected.

24 (iii) Third, pay the Federal Government's share and
25 retain the remainder of the amount collected to reimburse
26 the Commonwealth until the amount [reimbursed] equals the
27 amount of unreimbursed cash assistance paid to the
28 [family] assistance group.

29 (iv) Fourth, pay to the [family] assistance group
30 any amounts collected in excess of the amounts

1 distributed or retained under subparagraphs (i), (ii) and
2 (iii).

3 (2) In the case of a family that formerly received cash
4 assistance from the Commonwealth:

5 (i) first, pay to the family the current support
6 collected that does not exceed the court-ordered amount
7 to be paid in the month; and

8 (ii) second, treat amounts collected in excess of
9 the current support collected as arrearages and
10 distribute as follows:

11 (A) In the case of arrearages that accrued after
12 the family ceased to receive cash assistance from the
13 Commonwealth and which are collected after October 1,
14 1998:

15 (I) first, pay the family up to the amount
16 of arrearages that accrued after the family
17 ceased to receive cash assistance from the
18 Commonwealth;

19 (II) second, treat the balance as
20 reimbursement of assistance in an amount not to
21 exceed the total amount of unreimbursed cash
22 assistance paid to the family and:

23 (a) pay an amount equal to the Federal
24 share of the reimbursed amount to the Federal
25 Government; and

26 (b) retain for the Commonwealth an
27 amount equal to the non-Federal share of the
28 reimbursed amount; and

29 (III) third, pay any remaining amount to the
30 family.

1 (C) In the case of arrearages that accrued
2 before the family received cash assistance from the
3 Commonwealth and which are collected after October 1,
4 1998:

5 (I) first, pay to the family up to the
6 amount of arrearages that accrued before the
7 family began to receive cash assistance from the
8 Commonwealth;

9 (II) second, treat the balance as
10 reimbursement of assistance in an amount not to
11 exceed the total amount of unreimbursed cash
12 assistance paid to the family and:

13 (a) pay an amount equal to the Federal
14 share of the reimbursed amount to the Federal
15 Government; and

16 (b) retain for the Commonwealth an
17 amount equal to the non-Federal share of the
18 reimbursed amount; and

19 (III) third, pay any remaining amount to the
20 family.

21 (D) In the case of arrearages that accrued while
22 the family received cash assistance from the
23 Commonwealth:

24 (I) first, treat the amount collected as
25 reimbursement of assistance in an amount not to
26 exceed the total amount of unreimbursed cash
27 assistance paid to the family and:

28 (a) pay an amount equal to the Federal
29 share of the reimbursed amount to the Federal
30 Government; and

1 (b) retain for the Commonwealth an
2 amount equal to the non-Federal share of the
3 reimbursed amount; and

4 (II) second, pay any remaining amount to the
5 family.

6 (E) Notwithstanding clauses (A) through (C), the
7 right to any support obligation assigned to the
8 Commonwealth as a condition of receiving cash
9 assistance in effect on September 30, 1997, shall
10 remain assigned after that date.

11 (F) Except for amounts assigned to the
12 Commonwealth under subsection (d), beginning October
13 1, 1998, any support arrearages collected shall be
14 credited as follows:

15 (I) first, to the period after the family
16 ceased to receive assistance;

17 (II) second, to the period before the family
18 received assistance; and

19 (III) third, to the period during which the
20 family received assistance.

21 (3) In the case of a family that never received cash
22 assistance from the Commonwealth, all support collections
23 shall be paid to the family ~~with the exception of the~~ <—
24 ~~federally mandated \$25 annual fee collected from the~~
25 ~~custodial parent as required under § 4351(a.1) (relating to~~
26 ~~costs and fees).~~

27 ~~(d) Retention by Commonwealth.~~

28 ~~(1) Arrearages collected through use of the Internal~~

29 (D) RETENTION BY COMMONWEALTH.--ARREARAGES COLLECTED THROUGH <—

30 USE OF THE INTERNAL Revenue Service Tax Refund Offset Program

1 for a family receiving cash assistance shall be retained by the
2 Commonwealth to the extent past due support has been assigned to
3 the department as a condition of receiving assistance.
4 Arrearages collected through use of the Internal Revenue Service
5 Tax Refund Offset Program for a family that formerly received
6 cash assistance shall first be applied to the monthly support
7 obligation, and the balance shall be applied to arrears owed the
8 family, including assignments of arrearages that accrued before
9 the family received assistance from the Commonwealth and that
10 were executed between October 1, 1997, and September 30, 2009.
11 Any remaining arrearages shall be paid to the department. The
12 department shall pay to the Federal Government the Federal share
13 of the amounts so retained. In no event shall the total of
14 amounts paid to the Federal Government and retained by the
15 department exceed the total of the amount of cash assistance
16 paid to the family by the Commonwealth. To the extent that the
17 amounts collected exceed the amount retained, the department
18 shall pay the excess to the family.

19 ~~(2) Notwithstanding any other provision of law, the~~ <—
20 ~~federally mandated \$25 annual fee collected from the~~
21 ~~custodial parent as required under § 4351(a.1) shall be~~
22 ~~retained by the department.~~

23 * * *

24 § 4378. Assistance recipients to seek support.

25 * * *

26 (b) Assignment.--Acceptance of assistance shall operate as
27 an assignment to the department, by operation of law, of the
28 assistance recipient's rights to receive support on his or her
29 own behalf and on behalf of any family member with respect to
30 whom the recipient is receiving assistance. Such assignment

1 shall be effective only up to the amount of assistance
2 received[.] during the period that a family receives assistance.
3 The assignment shall exclude arrears that accrued prior to
4 receipt of assistance. The assignment shall take effect at the
5 time that the recipient is determined to be eligible for
6 assistance. Upon termination of assistance payments, the
7 assignment of support rights shall terminate, provided that any
8 amount of unpaid support obligations shall continue as an
9 obligation to and collectible by the department to the extent of
10 any unreimbursed assistance consistent with Federal law.
11 Immediately upon receipt of notification from the department
12 that a recipient has been determined to be eligible for
13 assistance, the clerks of the appropriate courts of the
14 Commonwealth shall transmit any and all support payments that
15 they thereafter receive on behalf of such assistance recipients
16 to the department. Such clerks shall continue transmitting such
17 support payments until notified by the department that it is no
18 longer necessary to do so. While the recipient is receiving
19 assistance, any such support payments made to or on behalf of
20 the assistance recipient shall be allocated to any amount due
21 the department as assignee of the recipient's support rights
22 consistent with Federal law. The assistance recipient shall be
23 deemed to have appointed the department as his attorney-in-fact
24 to endorse over to the department any and all drafts, checks,
25 money orders or other negotiable instruments submitted for
26 payment of support due during the time the recipient is
27 receiving assistance on behalf of himself, herself or any family
28 member.

29 * * *

30 SECTION 5. THE FOLLOWING PROVISIONS SHALL APPLY

←

1 RETROACTIVELY TO MARCH 31, 2008:

2 (1) THE AMENDMENT OF 23 PA.C.S. § 4326(A), (B), (C), (D)
3 AND (L).

4 (2) THE ADDITION OF 23 PA.C.S. § 4351(A.1).

5 (3) THE AMENDMENT OR ADDITION OF 23 PA.C.S. § 4352(A.1)
6 AND (A.2).

7 (4) THE AMENDMENT OF 23 PA.C.S. § 4374(C)(3).

8 Section ~~5~~ 6. This act shall take effect as follows: <—

9 (1) The amendment of 23 Pa.C.S. § 4374(c)(1) and (d)(1)
10 shall take effect October 1, 2008.

11 (2) The amendment of 23 Pa.C.S. § 4378(b) shall take
12 effect October 1, 2009.

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