

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL**No. 1278** Session of
2008

INTRODUCED BY GREENLEAF, COSTA, MELLOW, ERICKSON, M. WHITE,
RAFFERTY, ORIE, FONTANA, WOZNIAK, O'PAKE, VANCE, C. WILLIAMS
AND BROWNE, FEBRUARY 12, 2008

SENATOR GREENLEAF, JUDICIARY, AS AMENDED, MARCH 18, 2008

AN ACT

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

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

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

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

29 * * *

30 (1) Definitions.--As used in this section, the following

1 words and phrases shall have the meanings given to them in this
2 subsection:

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

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

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

16 "Insurer." A foreign or domestic insurance company,
17 association or exchange holding a certificate of authority under
18 the act of May 17, 1921 (P.L.682, No.284), known as The
19 Insurance Company Law of 1921; a risk-assuming preferred
20 provider organization operating under section 630 of The
21 Insurance Company Law of 1921; a health maintenance organization
22 holding a certificate of authority under the act of December 29,
23 1972 (P.L.1701, No.364), known as the Health Maintenance
24 Organization Act; a fraternal benefit society holding a
25 certificate of authority under the former act of December 14,
26 1992 (P.L.835, No.134), known as the Fraternal Benefit Societies
27 Code; a hospital plan corporation holding a certificate of
28 authority under 40 Pa.C.S. Ch. 61 (relating to hospital plan
29 corporations); a professional health service plan corporation
30 holding a certificate of authority under 40 Pa.C.S. Ch. 63

1 (relating to professional health services plan corporations); or
2 a similar entity authorized to do insurance business in this
3 Commonwealth.

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

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

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

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

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

17 (4.1) requires that, if health care coverage is provided
18 through the noncustodial parent's employer and that parent
19 changes employment, the provisions of the order will remain
20 in effect for the duration of the order and will
21 automatically apply to the new employer. The new employer
22 shall enroll the child in health care coverage without need
23 for an amended order unless the noncustodial parent contests
24 the enrollment; and

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

27 "Medical support." Health care coverage, which includes
28 coverage under a health insurance plan or government-subsidized
29 health care coverage, including payment of costs of premiums,
30 copayments, deductibles and capitation fees, and payment for

1 medical expenses incurred on behalf of a child.

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

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

12 § 4351. Costs and fees.

13 * * *

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

23 * * *

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

26 § 4352. Continuing jurisdiction over support orders.

27 * * *

28 (a.1) Automatic review.--[A method shall be developed for
29 the automatic review of] Upon request of either parent, or
30 automatically if there is an assignment under Title IV-A of the

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

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

24 * * *

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

27 § 4374. State disbursement unit.

28 * * *

29 (c) Allocation of collections.--Subject to subsections (d),
30 (e), (f) and (f.1), support collected on behalf of a family

1 shall be distributed as follows:

2 (1) In the case of a family receiving cash assistance
3 from the Commonwealth:

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

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

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

27 (iv) Fourth, pay to the [family] assistance group
28 any amounts collected in excess of the amounts
29 distributed or retained under subparagraphs (i), (ii) and
30 (iii).

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

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

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

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

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

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

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

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

27 (III) third, pay any remaining amount to the
28 family.

29 (C) In the case of arrearages that accrued
30 before the family received cash assistance from the

1 Commonwealth and which are collected after October 1,
2 1998:

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

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

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

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

17 (III) third, pay any remaining amount to the
18 family.

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

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

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

29 (b) retain for the Commonwealth an
30 amount equal to the non-Federal share of the

1 reimbursed amount; and

2 (II) second, pay any remaining amount to the
3 family.

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

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

13 (I) first, to the period after the family
14 ceased to receive assistance;

15 (II) second, to the period before the family
16 received assistance; and

17 (III) third, to the period during which the
18 family received assistance.

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

25 (d) Retention by Commonwealth.--

26 (1) Arrearages collected through use of the Internal
27 Revenue Service Tax Refund Offset Program for a family
28 receiving cash assistance shall be retained by the
29 Commonwealth to the extent past due support has been assigned
30 to the department as a condition of receiving assistance.

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

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

21 * * *

22 § 4378. Assistance recipients to seek support.

23 * * *

24 (b) Assignment.--Acceptance of assistance shall operate as
25 an assignment to the department, by operation of law, of the
26 assistance recipient's rights to receive support on his or her
27 own behalf and on behalf of any family member with respect to
28 whom the recipient is receiving assistance. Such assignment
29 shall be effective only up to the amount of assistance
30 received[.] during the period that a family receives assistance.

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

27 * * *

28 SECTION 5. THE AMENDMENT OF 23 PA.C.S. §§ 4326, 4351, 4352 <—
29 AND 4374(C)(3) SHALL APPLY RETROACTIVELY TO MARCH 31, 2008.

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

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

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

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