

## Part 1 General Provisions

### 78B-12-101 Title.

This chapter is known as the "Utah Child Support Act."

Renumbered and Amended by Chapter 3, 2008 General Session

### 78B-12-102 Definitions.

As used in this chapter:

- (1) "Adjusted gross income" means income calculated under Subsection 78B-12-204(1).
- (2) "Administrative agency" means the Office of Recovery Services or the Department of Human Services.
- (3) "Administrative order" means an order that has been issued by the Office of Recovery Services, the Department of Human Services, or an administrative agency of another state or other comparable jurisdiction with similar authority to that of the office.
- (4) "Base child support award" means the award that may be ordered and is calculated using the guidelines before additions for medical expenses and work-related child care costs.
- (5) "Base combined child support obligation table," "child support table," "base child support obligation table," "low income table," or "table" means the appropriate table in Part 3, Tables.
- (6) "Cash medical support" means an obligation to equally share all reasonable and necessary medical and dental expenses of children.
- (7) "Child" means:
  - (a) a son or daughter under the age of 18 years who is not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States;
  - (b) a son or daughter over the age of 18 years, while enrolled in high school during the normal and expected year of graduation and not otherwise emancipated, self-supporting, married, or a member of the armed forces of the United States; or
  - (c) a son or daughter of any age who is incapacitated from earning a living and, if able to provide some financial resources to the family, is not able to support self by own means.
- (8) "Child support" means a base child support award, or a monthly financial award for uninsured medical expenses, ordered by a tribunal for the support of a child, including current periodic payments, all arrearages which accrue under an order for current periodic payments, and sum certain judgments awarded for arrearages, medical expenses, and child care costs.
- (9) "Child support order" or "support order" means a judgment, decree, or order of a tribunal whether interlocutory or final, whether or not prospectively or retroactively modifiable, whether incidental to a proceeding for divorce, judicial or legal separation, separate maintenance, paternity, guardianship, civil protection, or otherwise which:
  - (a) establishes or modifies child support;
  - (b) reduces child support arrearages to judgment; or
  - (c) establishes child support or registers a child support order under Chapter 14, Utah Uniform Interstate Family Support Act.
- (10) "Child support services" or "IV-D child support services" means services provided pursuant to Part D of Title IV of the Social Security Act, 42 U.S.C. Section 651 et seq.
- (11) "Court" means the district court or juvenile court.
- (12) "Guidelines" means the directions for the calculation and application of child support in Part 2, Calculation and Adjustment.

- (13) "Income" means earnings, compensation, or other payment due to an individual, regardless of source, whether denominated as wages, salary, commission, bonus, pay, allowances, contract payment, or otherwise, including severance pay, sick pay, and incentive pay. "Income" includes:
  - (a) all gain derived from capital assets, labor, or both, including profit gained through sale or conversion of capital assets;
  - (b) interest and dividends;
  - (c) periodic payments made under pension or retirement programs or insurance policies of any type;
  - (d) unemployment compensation benefits;
  - (e) workers' compensation benefits; and
  - (f) disability benefits.
- (14) "Joint physical custody" means the child stays with each parent overnight for more than 30% of the year, and both parents contribute to the expenses of the child in addition to paying child support.
- (15) "Medical expenses" means health and dental expenses and related insurance costs.
- (16) "Obligee" means an individual, this state, another state, or another comparable jurisdiction to whom child support is owed or who is entitled to reimbursement of child support or public assistance.
- (17) "Obligor" means any person owing a duty of support.
- (18) "Office" means the Office of Recovery Services within the Department of Human Services.
- (19) "Parent" includes a natural parent, or an adoptive parent.
- (20) "Split custody" means that each parent has physical custody of at least one of the children.
- (21) "State" includes any state, territory, possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Native American Tribe, or other comparable domestic or foreign jurisdiction.
- (22) "Temporary" means a period of time that is projected to be less than 12 months in duration.
- (23) "Third party" means an agency or a person other than the biological or adoptive parent or a child who provides care, maintenance, and support to a child.
- (24) "Tribunal" means the district court, the Department of Human Services, Office of Recovery Services, or court or administrative agency of any state, territory, possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Native American Tribe, or other comparable domestic or foreign jurisdiction.
- (25) "Work-related child care costs" means reasonable child care costs for up to a full-time work week or training schedule as necessitated by the employment or training of a parent under Section 78B-12-215.
- (26) "Worksheets" means the forms used to aid in calculating the base child support award.

Amended by Chapter 45, 2015 General Session

**78B-12-103 District court jurisdiction.**

The district court shall have jurisdiction of all proceedings brought under this chapter.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-12-104 Continuing jurisdiction.**

The court shall retain jurisdiction to modify or vacate the order of support where justice requires.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-12-105 Duty of parents.**

- (1) Every child is presumed to be in need of the support of the child's mother and father. Every mother and father shall support their children.
- (2) Except as limited in a court order under Section 30-3-5, 30-4-3, or 78B-12-212:
  - (a) The expenses incurred on behalf of a minor child for reasonable and necessary medical and dental expenses, and other necessities are chargeable upon the property of both parents, regardless of the marital status of the parents.
  - (b) Either or both parents may be sued by a creditor for the expenses described in Subsection (2) (a) incurred on behalf of minor children.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-12-106 Ward of state -- Natural or adoptive parent has primary obligation to support -- Right of third party to recover support.**

- (1) A natural or an adoptive parent whose minor child has become a ward of this or any other state is not relieved of the primary obligation to support that child until the child reaches the age of majority, regardless of any agreements or legal defenses that may exist between the parents or other care providers. Any state that provides support for a child shall have the right to reimbursement.
- (2) Nothing contained in this chapter may act to relieve the natural parent or adoptive parent of the primary obligation of support.
- (3) A third party has the same right to recover support from the natural or adoptive parent as a custodial parent.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-12-107 Duty of obligor regardless of presence or residence of obligee.**

An obligor present or resident in this state has the duty of support as defined in this chapter regardless of the presence or residence of the obligee.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-12-108 Support follows the child.**

- (1) Obligations ordered for child support and medical expenses are for the use and benefit of the child and shall follow the child.
- (2) Except in cases of joint physical custody and split custody as defined in Section 78B-12-102, when physical custody changes from that assumed in the original order, the parent without physical custody of a child shall be required to pay the amount of support determined in accordance with Sections 78B-12-205 and 78B-12-212, without the need to modify the order for:
  - (a) the parent who has physical custody of the child;
  - (b) a relative to whom physical custody of the child has been voluntarily given; or
  - (c) the state when the child is residing outside of the home in the protective custody, temporary custody, or custody or care of the state or a state-licensed facility for at least 30 days.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-12-109 Waiver and estoppel.**

- (1) Waiver and estoppel shall apply only to the custodial parent when there is no order already established by a tribunal if the custodial parent freely and voluntarily waives support specifically and in writing.
- (2) Waiver and estoppel may not be applied against any third party or public entity that may provide support for the child.
- (3) A noncustodial parent, or alleged biological father in a paternity action, may not rely on statements made by the custodial parent of the child concerning child support unless the statements are reduced to writing and signed by both parties.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-12-110 Appeals.**

Appeals may be taken from orders and judgments under this chapter as in other civil actions.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-12-111 Court order -- Medical expenses of dependent children -- Assigning responsibility for payment -- Insurance coverage -- Income withholding.**

The court shall include the following in its order:

- (1) a provision assigning responsibility for the payment of reasonable and necessary medical expenses for the dependent children;
- (2) a provision requiring the purchase and maintenance of appropriate insurance for the medical expenses of dependent children, if coverage is or becomes available at a reasonable cost; and
- (3) provisions for income withholding, in accordance with Title 62A, Chapter 11, Part 4, Income Withholding in IV-D Cases, and Part 5, Income Withholding in Non IV-D Cases.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-12-112 Payment under child support order -- Judgment.**

- (1) All monthly payments of child support shall be due on the 1st day of each month pursuant to Title 62A, Chapter 11, Part 3, Child Support Services Act, Part 4, Income Withholding in IV-D Cases, and Part 5, Income Withholding in Non IV-D Cases.
- (2) For purposes of child support services and income withholding pursuant to Title 62A, Chapter 11, Part 3, Child Support Services Act, and Part 4, Income Withholding in IV-D Cases, child support is not considered past due until the 1st day of the following month. For purposes other than those specified in Subsection (1) support shall be payable 1/2 by the 5th day of each month and 1/2 by the 20th day of that month, unless the order or decree provides for a different time for payment.
- (3) Each payment or installment of child or spousal support under any support order, as defined by Section 78B-12-102, is, on and after the date it is due:
  - (a) a judgment with the same attributes and effect of any judgment of a district court, except as provided in Subsection (4);
  - (b) entitled, as a judgment, to full faith and credit in this and in any other jurisdiction; and
  - (c) not subject to retroactive modification by this or any other jurisdiction, except as provided in Subsection (4).

- (4) A child or spousal support payment under a support order may be modified with respect to any period during which a modification is pending, but only from the date of service of the pleading on the obligee, if the obligor is the petitioner, or on the obligor, if the obligee is the petitioner. If the tribunal orders that the support should be modified, the effective date of the modification shall be the month following service on the parent whose support is affected. Once the tribunal determines that a modification is appropriate, the tribunal shall order a judgment to be entered for any difference in the original order and the modified amount for the period from the service of the pleading until the final order of modification is entered.
- (5) The judgment provided for in Subsection (3)(a), to be effective and enforceable as a lien against the real property interest of any third party relying on the public record, shall be docketed in the district court in accordance with Sections 78B-5-202 and 62A-11-312.5.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-12-113 Enforcement of right of support.**

- (1)
  - (a) The obligee may enforce his right of support against the obligor. The office may proceed pursuant to this chapter or any other applicable statute on behalf of:
    - (i) the Department of Human Services;
    - (ii) any other department or agency of this state that provides public assistance, as defined by Subsection 62A-11-303(3), to enforce the right to recover public assistance; or
    - (iii) the obligee, to enforce the obligee's right of support against the obligor.
  - (b) Whenever any court action is commenced by the office to enforce payment of the obligor's support obligation, the attorney general or the county attorney of the county of residence of the obligee shall represent the office.
- (2)
  - (a) A person may not commence an action, file a pleading, or submit a written stipulation to the court, without complying with Subsection (2)(b), if the purpose or effect of the action, pleading, or stipulation is to:
    - (i) establish paternity;
    - (ii) establish or modify a support obligation;
    - (iii) change the court-ordered manner of payment of support;
    - (iv) recover support due or owing; or
    - (v) appeal issues regarding child support laws.
  - (b)
    - (i) When taking an action described in Subsection (2)(a), a person must file an affidavit with the court at the time the action is commenced, the pleading is filed, or the stipulation is submitted stating whether child support services have been or are being provided under Part IV of the Social Security Act, 42 U.S.C., Section 601 et seq., on behalf of a child who is a subject of the action, pleading, or stipulation.
    - (ii) If child support services have been or are being provided, under Part IV of the Social Security Act, 42 U.S.C., Section 601 et seq., the person shall mail a copy of the affidavit and a copy of the pleading or stipulation to the Office of the Attorney General, Child Support Division.
    - (iii) If notice is not given in accordance with this Subsection (2), the office is not bound by any decision, judgment, agreement, or compromise rendered in the action. For purposes of appeals, service must be made on the Office of the Director for the Office of Recovery Services.

- (c) If IV-D services have been or are being provided, that person shall join the office as a party to the action, or mail or deliver a written request to the Office of the Attorney General, Child Support Division asking the office to join as a party to the action. A copy of that request, along with proof of service, shall be filed with the court. The office shall be represented as provided in Subsection (1)(b).
- (3) Neither the attorney general nor the county attorney represents or has an attorney-client relationship with the obligee or the obligor in carrying out the duties under this chapter.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-12-114 County attorney to assist obligee.**

- (1) The county attorney's office shall provide assistance to an obligee desiring to proceed under this chapter in the following manner:
  - (a) provide forms, approved by the Judicial Council of Utah, for an order of wage assignment if the obligee is not represented by legal counsel;
  - (b) inform the obligee of the right to file impecuniously if the obligee is unable to bear the expenses of the action and assist the obligee with such filing;
  - (c) advise the obligee of the available methods for service of process; and
  - (d) assist the obligee in expeditiously scheduling a hearing before the court.
- (2) The county attorney's office may charge a fee not to exceed \$25 for providing assistance to an obligee under Subsection (1).

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-12-115 Husband and wife privileged communication inapplicable -- Competency of spouses.**

Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable under this chapter. Spouses are competent witnesses to testify to any relevant matter, including marriage and parentage.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-12-116 Social Security number in court records.**

The Social Security number of any individual who is subject to a support order shall be placed in the records relating to the matter.

Renumbered and Amended by Chapter 3, 2008 General Session

**78B-12-117 Rights are in addition to those presently existing.**

The rights created in this chapter are in addition to and not in substitution to any other rights.

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