

HB0414S01 compared with HB0414

~~{deleted text}~~ shows text that was in HB0414 but was deleted in HB0414S01.

Inserted text shows text that was not in HB0414 but was inserted into HB0414S01.

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Representative Cheryl K. Acton proposes the following substitute bill:

CHILD SUPPORT ~~{COLLECTION}~~MODIFICATION AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Cheryl K. Acton

Senate Sponsor: _____

LONG TITLE

General Description:

This bill ~~{modifies provisions regarding the Office of Recovery Services}~~requires that the divorce education course provide information about modifying a child support order.

Highlighted Provisions:

This bill:

- ▶ ~~{authorizes or}~~ requires that the ~~{Office of Recovery Services to review and modify}~~divorce education course provide information about modifying a child support ~~{orders, under certain circumstances; and~~
→ ~~makes technical changes}~~order.

Money Appropriated in this Bill:

None

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Other Special Clauses:

~~{ This bill provides a special effective date. }~~ None

Utah Code Sections Affected:

AMENDS:

~~{62A-11-104}~~30-3-11.3, as last amended by Laws of Utah ~~{2015, Chapter 45~~
~~62A-11-304.2~~, as last amended by Laws of Utah 2008, Chapters 3 and 382
~~62A-11-320.5~~, as repealed and reenacted by Laws of Utah 1997, Chapter 232
~~62A-11-320.6~~, as enacted by Laws of Utah 1997, Chapter 232
~~78B-12-104~~, as renumbered and amended by Laws of Utah 2008, Chapter 3
~~78B-14-202~~, as renumbered and amended by Laws of Utah 2008, Chapter 3
~~78B-14-205~~, as last amended by Laws of Utah 2015, Chapter 45
~~78B-14-207~~, as and further amended by Revisor Instructions, Laws of Utah 2013,
Chapter 245
{2016, Chapter 91

Be it enacted by the Legislature of the state of Utah:

Section 1. Section 30-3-11.3 is amended to read:

30-3-11.3. Mandatory educational course for divorcing parents -- Purpose -- Curriculum -- Exceptions.

(1) The Judicial Council shall approve and implement a mandatory course for divorcing parents in all judicial districts. The mandatory course is designed to educate and sensitize divorcing parties to their children's needs both during and after the divorce process.

(2) The Judicial Council shall adopt rules to implement and administer this program.

(3) As a prerequisite to receiving a divorce decree, both parties are required to attend a mandatory course on their children's needs after filing a complaint for divorce and receiving a docket number, unless waived under Section 30-3-4. If that requirement is waived, the court may permit the divorce action to proceed.

(4) The court may require unmarried parents to attend this educational course when those parents are involved in a visitation or custody proceeding before the court.

(5) The mandatory course shall instruct both parties:

(a) about divorce and its impacts on:

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- (i) their child or children;
- (ii) their family relationship; and
- (iii) their financial responsibilities for their child or children; ~~[and]~~
- (b) that domestic violence has a harmful effect on children and family relationships~~[-];~~

and

(c) on the available methods, implications, and associated costs for modifying a child support order.

(6) The course may be provided through live instruction, video instruction, or an online provider. The online and video options must be formatted as interactive presentations that ensure active participation and learning by the parent.

(7) The Administrative Office of the Courts shall administer the course pursuant to Title 63G, Chapter 6a, Utah Procurement Code, through private or public contracts and organize the program in each of Utah's judicial districts. The contracts shall provide for the recoupment of administrative expenses through the costs charged to individual parties, pursuant to Subsection (9).

(8) A certificate of completion constitutes evidence to the court of course completion by the parties.

(9) (a) Each party shall pay the costs of the course to the independent contractor providing the course at the time and place of the course. A fee of \$8 shall be collected, as part of the course fee paid by each participant, and deposited in the Children's Legal Defense Account, described in Section 51-9-408.

(b) Each party who is unable to pay the costs of the course may attend the course without payment upon a prima facie showing of impecuniosity as evidenced by an affidavit of impecuniosity filed in the district court. In those situations, the independent contractor shall be reimbursed for its costs from the appropriation to the Administrative Office of the Courts for "Mandatory Educational Course for Divorcing Parents Program." Before a decree of divorce may be entered, the court shall make a final review and determination of impecuniosity and may order the payment of the costs if so determined.

(10) Appropriations from the General Fund to the Administrative Office of the Courts for the "Mandatory Educational Course for Divorcing Parents Program" shall be used to pay the costs of an indigent parent who makes a showing as provided in Subsection (9)(b).

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(11) The Administrative Office of the Courts shall adopt a program to evaluate the effectiveness of the mandatory educational course. Progress reports shall be provided if requested by the Judiciary Interim Committee.

~~{ Section 1. Section 62A-11-104 is amended to read:~~

~~62A-11-104. Duties of office:~~

~~(1) The office has the following duties:~~

~~(a) except as provided in Subsection (2), to provide child support services if:~~

~~(i) the office has received an application for child support services;~~

~~(ii) the state has provided public assistance; or~~

~~(iii) a child lives out of the home in the protective custody, temporary custody, or custody or care of the state;~~

~~(b) to carry out the obligations of the department contained in this chapter and in Title 78B, Chapter 12, Utah Child Support Act, Title 78B, Chapter 14, Utah Uniform Interstate Family Support Act, and Title 78B, Chapter 15, Utah Uniform Parentage Act, for the purpose of collecting child support;~~

~~(c) to collect money due the department which could act to offset expenditures by the state;~~

~~(d) to cooperate with the federal government in programs designed to recover health and social service funds;~~

~~(e) to collect civil or criminal assessments, fines, fees, amounts awarded as restitution, and reimbursable expenses owed to the state or any of its political subdivisions, if the office has contracted to provide collection services;~~

~~(f) to implement income withholding for collection of child support in accordance with Part 4, Income Withholding in IV-D Cases, of this chapter;~~

~~(g) to enter into agreements with financial institutions doing business in the state to develop and operate, in coordination with such financial institutions, a data match system in the manner provided for in Section 62A-11-304.5;~~

~~(h) to establish and maintain the state case registry in the manner required by the Social Security Act, 42 U.S.C. Sec. 654a, which shall include a record in each case of:~~

~~(i) the amount of monthly or other periodic support owed under the order, and other amounts, including arrearages, interest, late payment penalties, or fees, due or overdue under~~

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~~the order;~~

~~—— (ii) any amount described in Subsection (1)(h)(i) that has been collected;~~

~~—— (iii) the distribution of collected amounts;~~

~~—— (iv) the birth date of any child for whom the order requires the provision of support;~~

~~and~~

~~—— (v) the amount of any lien imposed with respect to the order pursuant to this part;~~

~~—— (i) to contract with the Department of Workforce Services to establish and maintain the new hire registry created under Section 35A-7-103;~~

~~—— (j) to determine whether an individual who has applied for or is receiving cash assistance or Medicaid is cooperating in good faith with the office as required by Section 62A-11-307.2;~~

~~—— (k) to finance any costs incurred from collections, fees, General Fund appropriation, contracts, and federal financial participation; [and]~~

~~—— (l) to provide notice to a noncustodial parent in accordance with Section 62A-11-304.4 of the opportunity to contest the accuracy of allegations by a custodial parent of nonpayment of past-due child support, prior to taking action against a noncustodial parent to collect the alleged past-due support[.]; and~~

~~—— (m) to conduct a review and modification of a child support order under Section 62A-11-304.2.~~

~~—— (2) The office may not provide child support services to the Division of Child and Family Services for a calendar month when the child to whom the child support services relate is:~~

~~—— (a) in the custody of the Division of Child and Family Services; and~~

~~—— (b) lives in the home of a custodial parent of the child for more than seven consecutive days, regardless of whether:~~

~~—— (i) the greater than seven consecutive day period starts during one month and ends in the next month; and~~

~~—— (ii) the child is living in the home on a trial basis.~~

~~—— (3) The Division of Child and Family Services is not entitled to child support, for a child to whom the child support relates, for a calendar month when child support services may not be provided under Subsection (2).~~

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~~Section 2. Section 62A-11-304.2 is amended to read:~~

~~62A-11-304.2. Issuance or modification of an order -- Compliance with court order -- Authority of office -- Stipulated agreements -- Notification requirements:~~

~~(1) Through an adjudicative proceeding the office may issue or modify an administrative order that:~~

~~(a) determines paternity;~~

~~(b) determines whether an obligor owes support;~~

~~(c) determines temporary orders of child support upon clear and convincing evidence of paternity in the form of genetic test results or other evidence;~~

~~(d) requires an obligor to pay a specific or determinable amount of present and future support;~~

~~(e) determines the amount of past-due support;~~

~~(f) orders an obligor who owes past-due support and is obligated to support a child receiving public assistance to participate in appropriate work activities if the obligor is unemployed and is not otherwise incapacitated;~~

~~(g) imposes a penalty authorized under this chapter;~~

~~(h) determines an issue that may be specifically contested under this chapter by a party who timely files a written request for an adjudicative proceeding with the office; and~~

~~(i) renews an administrative judgment.~~

~~(2) (a) An abstract of a final administrative order issued under this section or a notice of judgment-lien under Section 62A-11-312.5 may be filed with the clerk of any district court.~~

~~(b) Upon a filing under Subsection (2)(a), the clerk of the court shall:~~

~~(i) docket the abstract or notice in the judgment docket of the court and note the time of receipt on the abstract or notice and in the judgment docket; and~~

~~(ii) at the request of the office, place a copy of the abstract or notice in the file of a child support action involving the same parties.~~

~~(3) If a judicial order has been issued, the office may not issue an order under Subsection (1) that is not based on the judicial order, except:~~

~~(a) the office may establish a new obligation in those cases in which the juvenile court has ordered the parties to meet with the office to determine the support pursuant to Section 78A-6-1106; [or]~~

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~~_____ (b) the office may issue an order of current support in accordance with the child support guidelines if the conditions of Subsection 78B-14-207(2)(c) are met[.], or~~

~~_____ (c) the office may review and modify a child support order.~~

~~_____ (4) The office may proceed under this section in the name of this state, another state under Section 62A-11-305, any department of this state, the office, or the obligee.~~

~~_____ (5) The office may accept voluntary acknowledgment of a support obligation and enter into stipulated agreements providing for the issuance of an administrative order under this part.~~

~~_____ (6) The office may act in the name of the obligee in endorsing and cashing any drafts, checks, money orders, or other negotiable instruments received by the office for support.~~

~~_____ (7) The obligor shall, after a notice of agency action has been served on the obligor in accordance with Section 63G-4-201, keep the office informed of:~~

~~_____ (a) the obligor's current address;~~

~~_____ (b) the name and address of current payors of income;~~

~~_____ (c) availability of or access to health insurance coverage; and~~

~~_____ (d) applicable health insurance policy information.~~

~~_____ Section 3. Section 62A-11-320.5 is amended to read:~~

~~_____ **62A-11-320.5. Review and adjustment of child support order in three-year cycle.**~~

~~_____ (1) If a child support order has not been issued, modified, or reviewed within the previous three years, the office shall review [a] the child support order, taking into account the best interests of the child involved, if:~~

~~_____ [(a) requested by a parent or legal guardian involved in a case receiving IV-D services; or]~~

~~_____ (a) (i) the office provides child support services for the child support order; and~~

~~_____ (ii) the office has jurisdiction to modify the child support order under Title 78B, Chapter 14, Utah Uniform Interstate Family Support Act; or~~

~~_____ (b) there has been an assignment under Section 35A-3-108 and the office determines that a review is appropriate.~~

~~_____ [(2) If the office conducts a review under Subsection (1), the office shall determine if there is a difference of 10% or more between the amount ordered and the amount that would be required under the child support guidelines. If there is such a difference and the difference is not of a temporary nature, the office shall: (a) with respect to a child support order issued or~~

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~~modified by the office, adjust the amount to that which is provided for in the guidelines; or]~~

~~—— [(b) with respect to a child support order issued or modified by a court, file a petition with the court to adjust the amount to that which is provided for in the guidelines.]~~

~~—— (2) The office shall make a proposed adjustment to a child support order reviewed under Subsection (1), if:~~

~~—— (a) the controlling child support order followed the child support guidelines at the time the order was issued or modified;~~

~~—— (b) there is a difference of 10% or more between the amount ordered in the child support order and the amount that would currently be required under the child support guidelines; and~~

~~—— (c) the difference described in Subsection (2)(b) is not of a temporary nature;~~

~~—— (3) The office shall file a petition or a motion with a court to modify a child support order reviewed under Subsection (1), if:~~

~~—— (a) (i) the controlling child support order deviated from the child support guidelines at the time the child support order was last modified, or if the child support order was not modified, at the time the child support order was issued;~~

~~—— (ii) there is a difference of 10% or more between the amount ordered in the child support order and the amount that would currently be required under the child support guidelines; and~~

~~—— (iii) the difference described in Subsection (2)(b) is not of a temporary nature; or~~

~~—— (b) the office determines that due to the complexity of the review or modification of the child support order, a court should review and modify the child support order.~~

~~—— [(3)] (4) The office may use automated methods to:~~

~~—— (a) collect information and [conduct reviews] make determinations under Subsection (2) or (3); and~~

~~—— (b) identify child support orders in which there is a difference of 10% or more between the amount of child support ordered and the amount that would be required under the child support guidelines for review under Subsection (1)(b).~~

~~—— [(4) (a) A parent or legal guardian who requests a review under Subsection (1)(a) shall provide notice of the request to the other parent within five days and in accordance with Section 62A-11-304.4.]~~

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~~—— [(b) If the office conducts a review under Subsections (1)(b) and (3)(b), the office shall provide notice to the parties of: (i) a proposed adjustment under Subsection (2)(a); or]~~

~~—— [(ii) a proposed petition to be filed in court under Subsection (2)(b).]~~

~~—— [(5) (a) Within 30 days of notice being sent under Subsection (4)(a), a parent or legal guardian may respond to a request for review filed with the office.]~~

~~—— (5) When the office conducts a review required under Subsection (1), the office shall provide notice to the obligee and obligor of:~~

~~—— (a) a proposed adjustment; or~~

~~—— (b) a motion or petition that the office will file with a court.~~

~~—— [(b)] (6) Within 30 days of notice being sent under Subsection [(4)(b), a parent or legal guardian] (5), an obligee or obligor may contest a proposed adjustment [or petition] by requesting a review [under Subsection (1)(a)] and providing documentation that refutes the adjustment or petition:~~

~~—— [(6)] (7) A showing of a substantial change in circumstances is not necessary for an adjustment under this section:~~

~~—— Section 4. Section **62A-11-320.6** is amended to read:~~

~~—— **62A-11-320.6. Review and adjustment of support order for substantial change in circumstances outside three-year cycle:**~~

~~—— (1) (a) A parent or legal guardian involved in a case receiving IV-D services or the office, if there has been an assignment under Section 35A-3-108, may at any time request the office to review a child support order if there has been a substantial change in circumstances:~~

~~—— (b) For purposes of Subsection (1)(a), a substantial change in circumstances may include:~~

~~—— (i) material changes in custody;~~

~~—— (ii) material changes in the relative wealth or assets of the parties;~~

~~—— (iii) material changes of 30% or more in the income of a parent;~~

~~—— (iv) material changes in the ability of a parent to earn;~~

~~—— (v) material changes in the medical needs of the child; and~~

~~—— (vi) material changes in the legal responsibilities of either parent for the support of others:~~

~~—— (2) Upon receiving a request under Subsection (1), the office shall review the order;~~

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~~taking into account the best interests of the child involved, to determine whether the substantial change in circumstance has occurred, and if so, whether the change resulted in a difference of 15% or more between the amount of child support ordered and the amount that would be required under the child support guidelines. If there is such a difference and the difference is not of a temporary nature, the office shall: (a) with respect to a support order issued or modified by the office,] adjust the amount in accordance with the guidelines[; or].~~

~~—— [(b) with respect to a support order issued or modified by a court, file a petition with the court to adjust the amount in accordance with the guidelines.]~~

~~—— (3) The office may use automated methods to collect information for a review conducted under Subsection (2).~~

~~—— [(4) (a) A parent or legal guardian who requests a review under Subsection (1) shall provide notice of the request to the other parent within five days and in accordance with Section 62A-11-304.4.]~~

~~—— [(b) (4) If the office [initiates and] conducts a review under Subsection (1), the office shall provide notice of the request to any parent or legal guardian within five days and in accordance with Section 62A-11-304.4.~~

~~—— (5) Within 30 days of notice being sent under Subsection (4), a parent or legal guardian may file a response to a request for review with the office.~~

~~—— Section 5. Section **78B-12-104** is amended to read:~~

~~—— **78B-12-104. Jurisdiction to modify or vacate a support order.**~~

~~—— (1) The court shall retain jurisdiction to modify or vacate [the order of support] a support order where justice requires:~~

~~—— (2) The office has jurisdiction to modify a support order, as provided in Title 62A, Chapter 11, Recovery Services or Title 78B, Chapter 14, Utah Uniform Interstate Family Support Act.~~

~~—— Section 6. Section **78B-14-202** is amended to read:~~

~~—— **78B-14-202. Duration of personal jurisdiction.**~~

~~—— Personal jurisdiction acquired by a tribunal of this state in a proceeding under this chapter or other law of this state relating to a support order continues as long as a tribunal of this state has continuing[, exclusive] jurisdiction to modify its order or continuing jurisdiction to enforce its order as provided by Sections 78B-14-205, 78B-14-206, and 78B-14-211.~~

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~~Section 7. Section 78B-14-205 is amended to read:~~

~~78B-14-205. Continuing jurisdiction to modify a child support order.~~

~~(1) A tribunal of this state that has issued a child support order consistent with the law of this state has [and shall exercise] continuing[, exclusive] jurisdiction to modify its child support order if the order is the controlling order, and:~~

~~(a) at the time of the filing of a request for modification, this state is the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued, or~~

~~(b) even if this state is not the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued, the parties consent in a record or in open court that [the] a tribunal of this state may continue to exercise jurisdiction to modify its order.~~

~~(2) A tribunal of this state has continuing jurisdiction to modify a controlling order issued by another tribunal of this state, as provided in Title 62A, Chapter 11, Recovery Services.~~

~~[(2)] (3) A tribunal of this state that has issued a child support order consistent with the law of this state may not exercise continuing[, exclusive] jurisdiction to modify the order if:~~

~~(a) all of the parties who are individuals file consent in a record with the tribunal of this state that a tribunal of another state that has jurisdiction over at least one of the parties who is an individual or that is located in the state of residence of the child may modify the order and assume continuing, exclusive jurisdiction; or~~

~~[(b) its order is not the controlling order.]~~

~~(b) a child support ordered issued by a tribunal of another state is the controlling order.~~

~~[(3)] (4) If a tribunal of another state has issued a child support order pursuant to the Uniform Interstate Family Support Act or a law substantially similar to the act, which modifies a child support order of a tribunal of this state, tribunals of this state shall recognize the continuing, exclusive jurisdiction of the tribunal of the other state.~~

~~[(4)] (5) A tribunal of this state that lacks continuing[, exclusive] jurisdiction to modify a child support order may serve as an initiating tribunal to request a tribunal of another state to modify a support order issued in that state.~~

~~[(5)] (6) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing[, exclusive] jurisdiction in the issuing tribunal.~~

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~~Section 8. Section 78B-14-207 is amended to read:~~

~~78B-14-207. Determination of controlling child support order:~~

~~(1) If a proceeding is brought under this chapter and only one tribunal has issued a child support order, the order of that tribunal controls and shall be so recognized.~~

~~(2) If a proceeding is brought under this chapter, and two or more child support orders have been issued by tribunals of this state, another state, or a foreign country with regard to the same obligor and same child, a tribunal of this state having personal jurisdiction over both the obligor and individual obligee shall apply the following rules and by order shall determine which order controls and shall be recognized:~~

~~(a) If only one of the tribunals would have continuing, exclusive jurisdiction under this chapter, the order of that tribunal controls:~~

~~(b) If more than one of the tribunals would have continuing[, exclusive] jurisdiction under this chapter, [an] the most recent order issued by a tribunal in the current home state of the child controls, or if an order has not been issued in the current home state of the child, the order most recently issued controls:~~

~~(c) If none of the tribunals would have continuing[, exclusive] jurisdiction under this chapter, [the] a tribunal of this state shall issue a child support order, which controls:~~

~~(3) If two or more child support orders have been issued for the same obligor and same child, upon request of a party who is an individual or that is a support enforcement agency, a tribunal of this state having personal jurisdiction over both the obligor and the obligee who is an individual shall determine which order controls under Subsection (2). The request may be filed with a registration for enforcement or registration for modification pursuant to Part 6, Registration, Enforcement, and Modification of Support Order, or may be filed as a separate proceeding:~~

~~(4) A request to determine which is the controlling order shall be accompanied by a copy of every child support order in effect and the applicable record of payments. The requesting party shall give notice of the request to each party whose rights may be affected by the determination.~~

~~(5) The tribunal that issued the controlling order under Subsection (1), (2), or (3) has continuing jurisdiction to the extent provided in Section 78B-14-205 or 78B-14-206.~~

~~(6) A tribunal of this state that determines by order which is the controlling order under~~

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~~Subsection (2)(a), (b), or (3) that issues a new controlling order under Subsection (2)(c), shall state in that order:~~

~~—— (a) the basis upon which the tribunal made its determination;~~

~~—— (b) the amount of prospective support, if any, and~~

~~—— (c) the total amount of consolidated arrears and accrued interest, if any, under all of the orders after all payments made are credited as provided by Section 78B-14-209.~~

~~—— (7) Within 30 days after issuance of an order determining which is the controlling order, the party obtaining the order shall file a certified copy of it in each tribunal that issued or registered an earlier order of child support. A party or support enforcement agency obtaining the order that fails to file a certified copy is subject to appropriate sanctions by a tribunal in which the issue of failure to file arises. The failure to file does not affect the validity or enforceability of the controlling order.~~

~~—— (8) An order that has been determined to be the controlling order, or a judgment for consolidated arrears of support and interest, if any, made pursuant to this section shall be recognized in proceedings under this chapter.~~

~~—— Section 9. **Effective date.**~~

~~—— This bill takes effect on January 1, 2019.~~

Legislative Review Note

Office of Legislative Research and General Counsel