

State of Arkansas
83rd General Assembly
Regular Session, 2001

A Bill

HOUSE BILL 2488

By: Representative M. Smith

For An Act To Be Entitled

AN ACT TO AMEND ARKANSAS CODE 9-12-312 TO DEFINE
CIRCUMSTANCES WHICH ARE THE EQUIVALENT OF
REMARRIAGE FOR PURPOSES OF ALIMONY AND CHILD
SUPPORT; AND FOR OTHER PURPOSES.

Subtitle

AN ACT TO AMEND ARKANSAS CODE 9-12-312
TO DEFINE CIRCUMSTANCES WHICH ARE THE
EQUIVALENT OF REMARRIAGE FOR PURPOSES OF
ALIMONY AND CHILD SUPPORT.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code 9-12-312 is amended to read as follows:

9-12-312. Alimony - Child support - Bond - Method of payment.

(a)(1) When a decree is entered, the court shall make such orders concerning the alimony of the wife or the husband and the care of the children, if there are any, as are reasonable from the circumstances of the parties and the nature of the case. ~~Unless otherwise ordered by the court or agreed to by the parties, the~~ The liability for alimony shall automatically cease upon the earlier of:

(A) The date of the remarriage of the person who was awarded the alimony; ~~or~~

(B) The performance of a marriage ceremony, or, in the absence of a ceremony, the establishment of a relationship that produces a child or children, and for which the recipient of the alimony is responsible for or shares responsibility for the subsequent family unit. The

responsibility shall be defined as any responsibility normally exercised in a marital relationship, including, but not limited to, emotional, childcare, social and financial. Any of these circumstances shall be considered the equivalent of remarriage;

~~(B)(C)~~ The establishment of a relationship that produces a child or children and results in a court order directing another person to pay support to the recipient of alimony, which circumstances shall be considered the equivalent of remarriage; ~~or~~

~~(C)(D)~~ The establishment of a relationship that produces a child or children and results in a court order directing the recipient of alimony to provide support of another person who is not a descendant by birth or adoption of the payer of the alimony, which circumstances shall be considered the equivalent of remarriage; ~~or~~

(E) The establishment of a relationship that produces a child or children in which either of the parents of the child or children claim marital status in any legal document or proceeding, which circumstances shall be considered the equivalent of remarriage.

(2) In determining a reasonable amount of support, initially or upon review to be paid by the noncustodial parent, the court shall refer to the most recent revision of the family support chart. It shall be a rebuttable presumption for the award of child support that the amount contained in the family support chart is the correct amount of child support to be awarded. Only upon a written finding or specific finding on the record that the application of the support chart would be unjust or inappropriate, as determined under established criteria set forth in the family support chart, shall the presumption be rebutted.

(3) The family support chart shall be revised at least once every four (4) years by a committee to be appointed by the Chief Justice of the Arkansas Supreme Court to ensure that the support amounts are appropriate for child support awards. The committee shall also establish the criteria for deviation from use of the chart amount.

(4) The Arkansas Supreme Court shall approve the family support chart and criteria upon revision by the committee for use in this state and shall publish same through per curiam order of the court.

(5)(A) The court may provide for the payment of support beyond the eighteenth birthday of the child to address the educational needs of a

1 child whose eighteenth birthday falls prior to graduation from high school so
2 long as such support is conditional on the child remaining in school.

3 (B) The court may also provide for the continuation of
4 support for an individual with a disability which affects the ability of the
5 individual to live independently from the custodial parent.

6 (b) In addition to any other remedies available, alimony may be
7 awarded, under proper circumstances, to either party in fixed installments
8 for a specified period of time, subject to the contingencies of the death of
9 either party, the remarriage of the receiving party, or such other
10 contingencies as are set forth in the award, so that the payments qualify as
11 periodic payments within the meaning of the Internal Revenue Code.

12 (c)(1) Where the order provides for payment of money for the support
13 and care of any children, the court, in its discretion, may require the
14 person ordered to make the payments to furnish and file with the clerk of the
15 court a bond or post security or give some other guarantee in such amount and
16 with such sureties as the court shall direct.

17 (2) The bond, security, or guarantee is to be conditioned on
18 compliance with that part of the order of the court concerning the support
19 and care of the children.

20 (3) If such action is taken due to a delinquency under the
21 order, proper advance notice to the noncustodial parent shall be given.

22 (4) In case of any dispute related to any contract which the
23 court has approved as part of a divorce decree, the original court of record
24 shall retain the authority to modify the contract upon petition by either
25 party.

26 (5) A contractual agreement which is part of a divorce decree,
27 and does not relate to the maintenance of the payor's offspring, may be
28 terminated upon presentation to the court of evidence of any conduct which
29 may be construed as an effort to circumvent, by deception, the intent of the
30 agreement.

31 (d) All orders requiring payments of money for the support and care of
32 any children shall direct the payments to be made through the registry of the
33 court unless the court, in its discretion, determines that it would be in the
34 best interest of the parties to direct otherwise. However, in all cases
35 brought pursuant to Title IV-D of the Social Security Act, the court shall
36 order that all payments be made through the Arkansas child support

1 clearinghouse in accordance with § 9-14-801 et seq.

2 (e)(1)(A) Except as set forth in subdivision (e)(5) of this section,
3 all orders directing payments through the registry of the court or through
4 the Arkansas child support clearinghouse shall set forth a fee to be paid by
5 the noncustodial parent or obligated spouse in the amount of thirty-six
6 dollars (\$36.00) per year.

7 (B) The fee shall be collected from the noncustodial
8 parent or obligated spouse at the time of the first support payment and
9 during the anniversary month of the entry of the order each year thereafter,
10 or nine dollars (\$9.00) per quarter at the option of the obligated parent,
11 until no children remain minor and the support obligation is extinguished and
12 any arrears are completely liquidated.

13 (2) The clerk, upon direction from the court and as an
14 alternative to collecting the annual fee during the anniversary month each
15 year after entry of the order, may prorate the first fee collected at the
16 time of the first payment of support under the order to the number of months
17 remaining in the calendar year and thereafter collect all fees as provided in
18 this subsection during the month of January of each year.

19 (3) Payments made for this fee shall be made on an annual basis
20 in the form of a check or money order payable to the clerk of the court or
21 such other legal tender which the clerk may accept. This fee payment shall be
22 separate and apart from the support payment, and under no circumstances shall
23 the support payment be reduced to fulfill the payment of this fee.

24 (4) Upon the nonpayment of the annual fee by the noncustodial
25 parent within ninety (90) days, the clerk may notify the payor under the
26 order of income withholding for child support who shall withhold the fee in
27 addition to any support and remit such to the clerk.

28 (5) In counties where an annual fee is collected and the court
29 grants at least two thousand five hundred (2,500) divorces each year, the
30 court may require that the initial annual fee be paid by the noncustodial
31 parent or obligated spouse prior to the filing of the order.

32 (6) All moneys collected by the clerk as a fee as provided in
33 this subsection shall be used by the clerk's office to offset administrative
34 costs as a result of this subchapter. At least twenty percent (20%) of the
35 moneys collected annually shall be used to purchase, maintain, and operate an
36 automated data system for use in administering the requirements of this

1 subchapter. The acquisition and update of software for the automated data
2 system shall be a permitted use of these funds. All fees collected under this
3 subsection shall be paid into the county treasury to the credit of the fund
4 to be known as the "support collection costs fund". Moneys deposited in this
5 fund shall be appropriated and expended for the uses designated in this
6 subdivision (e)(6) by the quorum court at the direction of the clerk of the
7 court.

8 (f) The clerk of the court shall maintain accurate records of all
9 support orders and payments made under this section and shall post to
10 individual child support account ledgers maintained in the clerk's office all
11 payments received directly by the Office of Child Support Enforcement and
12 reported to the clerk by the Office of Child Support Enforcement. The Office
13 of Child Support Enforcement shall provide the clerk with sufficient
14 information to identify the custodial and noncustodial parents, a docket
15 number, and the amount and date of payment. The clerk shall keep on file the
16 information provided by the Office of Child Support Enforcement for audit
17 purposes.

18 (g) The clerk may accept the support payment in any form of cash or
19 commercial paper, including personal check, and may require that the
20 custodial parent or nonobligated spouse be named as payee thereon.