

CHILD SUPPORT COLLECTION 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.

Highlighted Provisions:

This bill:

- ▶ authorizes or requires the Office of Recovery Services to review and modify child support orders, under certain circumstances; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

- 62A-11-104**, 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- 62A-11-320.5**, as repealed and reenacted by Laws of Utah 1997, Chapter 232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



28 **78B-14-207**, as and further amended by Revisor Instructions, Laws of Utah 2013,
29 Chapter 245



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

32 Section 1. Section **62A-11-104** is amended to read:

33 **62A-11-104. Duties of office.**

34 (1) The office has the following duties:

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

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

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

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

40 (b) to carry out the obligations of the department contained in this chapter and in Title
41 78B, Chapter 12, Utah Child Support Act; Title 78B, Chapter 14, Utah Uniform Interstate
42 Family Support Act; and Title 78B, Chapter 15, Utah Uniform Parentage Act, for the purpose
43 of collecting child support;

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

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

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

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

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

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

58 (i) the amount of monthly or other periodic support owed under the order, and other

59 amounts, including arrearages, interest, late payment penalties, or fees, due or overdue under
60 the order;

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

62 (iii) the distribution of collected amounts;

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

64 and

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

66 (i) to contract with the Department of Workforce Services to establish and maintain the
67 new hire registry created under Section [35A-7-103](#);

68 (j) to determine whether an individual who has applied for or is receiving cash
69 assistance or Medicaid is cooperating in good faith with the office as required by Section
70 [62A-11-307.2](#);

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

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

77 (m) to conduct a review and modification of a child support order under Section
78 [62A-11-304.2](#).

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

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

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

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

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

88 (3) The Division of Child and Family Services is not entitled to child support, for a
89 child to whom the child support relates, for a calendar month when child support services may

90 not be provided under Subsection (2).

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

92 **62A-11-304.2. Issuance or modification of an order -- Compliance with court**
93 **order -- Authority of office -- Stipulated agreements -- Notification requirements.**

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

96 (a) determines paternity;

97 (b) determines whether an obligor owes support;

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

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

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

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

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

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

109 (i) renews an administrative judgment.

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

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

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

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

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

119 (a) the office may establish a new obligation in those cases in which the juvenile court
120 has ordered the parties to meet with the office to determine the support pursuant to Section

121 78A-6-1106; ~~or~~

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

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

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

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

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

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

133 (a) the obligor's current address;

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

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

136 (d) applicable health insurance policy information.

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

138 **62A-11-320.5. Review and adjustment of child support order in three-year cycle.**

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

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

143 ~~or]~~

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

145 (ii) the office has jurisdiction to modify the child support order under Title 78B,

146 Chapter 14, Utah Uniform Interstate Family Support Act; or

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

149 ~~[(2) If the office conducts a review under Subsection (1), the office shall determine if~~
150 ~~there is a difference of 10% or more between the amount ordered and the amount that would be~~
151 ~~required under the child support guidelines. If there is such a difference and the difference is~~

152 ~~not of a temporary nature, the office shall: (a) with respect to a child support order issued or~~
153 ~~modified by the office, adjust the amount to that which is provided for in the guidelines; or]~~
154 ~~[(b) with respect to a child support order issued or modified by a court, file a petition~~
155 ~~with the court to adjust the amount to that which is provided for in the guidelines.]~~

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

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

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

163 (c) the difference described in Subsection (2)(b) is not of a temporary nature.

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

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

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

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

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

175 ~~[(3)]~~ (4) The office may use automated methods to:

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

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

181 ~~[(4) (a) A parent or legal guardian who requests a review under Subsection (1)(a) shall~~
182 ~~provide notice of the request to the other parent within five days and in accordance with~~

183 ~~Section 62A-11-304.4.]~~

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

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

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

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

191 (a) a proposed adjustment; or

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

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

197 ~~[(6)]~~ (7) A showing of a substantial change in circumstances is not necessary for an
198 adjustment under this section.

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

200 **62A-11-320.6. Review and adjustment of support order for substantial change in**
201 **circumstances outside three-year cycle.**

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

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

207 (i) material changes in custody;

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

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

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

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

212 (vi) material changes in the legal responsibilities of either parent for the support of
213 others.

214 (2) Upon receiving a request under Subsection (1), the office shall review the order,
215 taking into account the best interests of the child involved, to determine whether the substantial
216 change in circumstance has occurred, and if so, whether the change resulted in a difference of
217 15% or more between the amount of child support ordered and the amount that would be
218 required under the child support guidelines. If there is such a difference and the difference is
219 not of a temporary nature, the office shall~~[-(a) with respect to a support order issued or~~
220 ~~modified by the office,] adjust the amount in accordance with the guidelines[; or].~~

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

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

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

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

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

233 Section 5. Section 78B-12-104 is amended to read:

234 **78B-12-104. Jurisdiction to modify or vacate a support order.**

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

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

240 Section 6. Section 78B-14-202 is amended to read:

241 **78B-14-202. Duration of personal jurisdiction.**

242 Personal jurisdiction acquired by a tribunal of this state in a proceeding under this
243 chapter or other law of this state relating to a support order continues as long as a tribunal of
244 this state has continuing~~[, exclusive]~~ jurisdiction to modify its order or continuing jurisdiction

245 to enforce its order as provided by Sections [78B-14-205](#), [78B-14-206](#), and [78B-14-211](#).

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

247 **78B-14-205. Continuing jurisdiction to modify a child support order.**

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

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

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

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

259 ~~[(2)]~~ (3) A tribunal of this state that has issued a child support order consistent with the
260 law of this state may not exercise continuing~~[-exclusive]~~ jurisdiction to modify the order if:

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

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

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

267 ~~[(3)]~~ (4) If a tribunal of another state has issued a child support order pursuant to the
268 Uniform Interstate Family Support Act or a law substantially similar to the act, which modifies
269 a child support order of a tribunal of this state, tribunals of this state shall recognize the
270 continuing, exclusive jurisdiction of the tribunal of the other state.

271 ~~[(4)]~~ (5) A tribunal of this state that lacks continuing~~[-exclusive]~~ jurisdiction to modify
272 a child support order may serve as an initiating tribunal to request a tribunal of another state to
273 modify a support order issued in that state.

274 ~~[(5)]~~ (6) A temporary support order issued ex parte or pending resolution of a
275 jurisdictional conflict does not create continuing~~[-exclusive]~~ jurisdiction in the issuing

276 tribunal.

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

278 **78B-14-207. Determination of controlling child support order.**

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

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

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

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

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

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

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

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

307 (6) A tribunal of this state that determines by order which is the controlling order under
308 Subsection (2)(a), (b), or (3) that issues a new controlling order under Subsection (2)(c), shall
309 state in that order:

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

311 (b) the amount of prospective support, if any; and

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

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

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

323 Section 9. **Effective date.**

324 This bill takes effect on January 1, 2019.

Legislative Review Note
Office of Legislative Research and General Counsel