

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 193

BY JUDICIARY, RULES AND ADMINISTRATION COMMITTEE

AN ACT

1
2 RELATING TO CHILD SUPPORT; AMENDING SECTION 7-1206, IDAHO CODE, TO PROVIDE
3 THAT A LIEN FOR CHILD SUPPORT DELINQUENCY ATTACHES TO CERTAIN PROPER-
4 TIES; AND AMENDING SECTION 32-706, IDAHO CODE, TO ESTABLISH PROVISIONS
5 REGARDING CALCULATION OF A SELF-EMPLOYED PARENT'S FINANCIAL RESOURCES
6 FOR PURPOSES OF DETERMINING CHILD SUPPORT AND TO MAKE TECHNICAL CORREC-
7 TIONS.

8 Be It Enacted by the Legislature of the State of Idaho:

9 SECTION 1. That Section 7-1206, Idaho Code, be, and the same is hereby
10 amended to read as follows:

11 7-1206. DEPARTMENT LIEN FOR CHILD SUPPORT DELINQUENCY. (1) Upon a
12 delinquency under a child support order for which the department is or has
13 been providing child support enforcement services, a lien arises upon and
14 attaches to the real and personal property of an obligor. In the case of a
15 self-employed obligor, such lien also attaches to:

16 (a) The property of any business owned by such obligor;

17 (b) Intellectual property owned by such obligor; and

18 (c) The obligor's share of any business or intellectual property in
19 which the obligor has an ownership interest.

20 (2) When the amount of the a lien described in subsection (1) of this
21 section is equal to or greater than the total support owing for at least
22 ninety (90) days, or two thousand dollars (\$2,000), whichever is less, the
23 lien may be perfected by a filing with the office of the secretary of state.
24 A perfected lien shall include all subsequently arising delinquencies.
25 When a lien has been perfected pursuant to this section and the underlying
26 delinquency reaches a zero balance or is otherwise satisfied, the lien is
27 automatically released. Any support order or decree issued or modified af-
28 ter the effective date of this act shall include a provision notifying the
29 obligor that a lien will arise automatically upon a delinquency. A notice of
30 release of lien shall be filed pursuant to section 45-1908, Idaho Code.

31 (23) A lien arising out of a child support order or delinquency under
32 the laws of another state shall be given full faith and credit as if the lien
33 arose out of a child support order or delinquency under Idaho law.

34 (34) The department shall notify each obligor by certified mail of the
35 filing of the lien at the same time the notice is delivered to the secretary
36 of state. No such lien may be enforced until ten (10) days after notice of the
37 filing of the lien has been given to the obligor.

38 SECTION 2. That Section 32-706, Idaho Code, be, and the same is hereby
39 amended to read as follows:

1 32-706. CHILD SUPPORT. (1) In a proceeding for divorce or child sup-
2 port, the court may order either or both parents owing a duty of support to a
3 child to pay an amount reasonable or necessary for his or her support and edu-
4 cation until the child is eighteen (18) years of age, without regard to mari-
5 tal misconduct, after considering all relevant factors, which may include:

6 (a) The financial resources of the child;

7 (b) The financial resources, needs, and obligations of both the cus-
8 todial and noncustodial parents, which ordinarily shall not include
9 a parent's community property interest in the financial resources or
10 obligations of a spouse who is not a parent of the child, unless com-
11 pelling reasons exist;

12 (c) The standard of living the child enjoyed during the marriage;

13 (d) The physical and emotional condition and needs of the child and his
14 or her educational needs;

15 (e) The availability of medical coverage for the child at reasonable
16 cost as defined in section 32-1214B, Idaho Code; and

17 (f) The actual tax benefit recognized by the party claiming the federal
18 child dependency exemption.

19 (2) If the child continues ~~his~~ high school education subsequent to
20 reaching the age of eighteen (18) years, the court may, in its discretion,
21 and after considering all relevant factors ~~which include~~ including those set
22 forth in subsection (1) of this section, order the continuation of support
23 payments until the child discontinues ~~his~~ high school education or reaches
24 the age of nineteen (19) years, whichever is sooner.

25 (3) All child support orders shall notify the obligor that the order
26 will be enforced by income withholding pursuant to chapter 12, title 32,
27 Idaho Code. Failure to include this provision does not affect the validity
28 of the support order. The court shall require that the social security num-
29 bers of both the obligor and obligee be included in the order or decree.

30 (4) In a proceeding for the support of a child or a minor parent, the
31 court may order the parent(s) of each minor parent to pay an amount reason-
32 able or necessary for the support and education of the child born to the minor
33 parent(s) until the minor parent is eighteen (18) years of age, after consid-
34 ering all relevant factors, which may include:

35 (a) The financial resources of the child;

36 (b) The financial resources of the minor parent;

37 (c) The financial resources, needs and obligations of the parent of the
38 minor parent;

39 (d) The physical and emotional condition and needs of the child and his
40 or her educational needs; and

41 (e) The availability of medical coverage for the child at reasonable
42 cost as defined in section 32-1214B, Idaho Code.

43 (5) The legislature hereby authorizes and encourages the supreme court
44 of the state of Idaho to adopt and to periodically review for modification
45 guidelines that utilize and implement the factors set forth in subsections
46 (1) through (4) and subsection (7) of this section to create a uniform pro-
47 cedure for reaching fair and adequate child support awards. There shall be
48 a rebuttable presumption that the amount of the award which would result
49 from the application of the guidelines is the amount of child support to be
50 awarded, unless evidence is presented in a particular case that indicates

1 that an application of the guidelines would be unjust or inappropriate. If
2 the court determines that circumstances exist to permit a departure from
3 the guidelines, the judge making the determination shall make a written or
4 specific finding on the record that the application of the guidelines would
5 be unjust or inappropriate in the particular case before the court. When
6 adopting guidelines, the supreme court shall provide that in a proceeding to
7 modify an existing award, children of the party requesting the modification
8 who are born or adopted after the entry of the existing order shall not be
9 considered.

10 (6) If the court awards one (1) parent the right to claim tax benefits
11 associated with ~~his~~ the child or children, the court order need not list
12 every applicable tax benefit. The parent who was awarded the tax benefits
13 for the child or children shall attach a copy of the court order to his in-
14 come tax return. The state tax commission shall recognize the award of tax
15 benefits with respect to the child or children as applying to the child tax
16 credit under section 63-3029L, Idaho Code, the food tax credit under section
17 63-3024A, Idaho Code, and any and all other state and federal tax deductions,
18 exemptions, and credits for which the parent qualifies, unless the court
19 order specifies otherwise.

20 (7) When determining the financial resources of a self-employed par-
21 ent for purposes of calculating child support, whether for an initial sup-
22 port order or for modification of an existing support order, the court may
23 order the self-employed parent to undergo an audit of such parent's most re-
24 cent federal and state tax returns, which audit must be performed by an ac-
25 countant licensed under chapter 2, title 54, Idaho Code. The self-employed
26 parent is responsible for the cost of such audit. The self-employed parent
27 must also provide to the court a thorough accounting of the adjusted gross
28 income of any business in which the self-employed parent has an ownership in-
29 terest. The percentage of the adjusted gross income equal to the percentage
30 of the self-employed parent's ownership interest will be considered finan-
31 cial resources of the self-employed parent for purposes of calculating any
32 child support owed by the self-employed parent.