

## Alabama Divorce Laws

### TITLE 30. MARITAL AND DOMESTIC RELATIONS.

#### CHAPTER 2. DIVORCE AND ALIMONY.

##### § 30-2-1 Grounds; jurisdiction for proceedings; divorce judgment awarded to both parties.

(a) The circuit court has power to divorce persons from the bonds of matrimony, upon a complaint filed by one of the parties, entitled "In re the marriage of \_\_\_\_\_ and \_\_\_\_\_," for the causes following:

(1) In favor of either party, when the other was, at the time of the marriage physically and incurably incapacitated from entering into the marriage state.

(2) For adultery.

(3) For voluntary abandonment from bed and board for one year next preceding the filing of the complaint.

(4) Imprisonment in the penitentiary of this or any other state for two years, the sentence being for seven years or longer.

(5) The commission of the crime against nature, whether with mankind or beast, either before or after marriage.

(6) For becoming addicted after marriage to habitual drunkenness or to habitual use of opium, morphine, cocaine or other like drug.

(7) Upon application of either the husband or wife, when the court is satisfied from all the testimony in the case that there exists such a complete incompatibility of temperament that the parties can no longer live together.

(8) In favor of either party, when the other, after marriage, shall have been confined in a mental hospital for a period of five successive years, if such party from whom a divorce is sought is hopelessly and incurably insane at the time of the filing of the complaint; provided, however, that the superintendent of the mental hospital in which such person is confined shall make a certified statement, under oath, that it is his opinion and belief, after a complete and full study and examination of such person, that such person is hopelessly and incurably insane.

(9) Upon application of either party, when the court finds there has been an irretrievable breakdown of the marriage and that further attempts at reconciliation are impractical or futile and not in the best interests of the parties or family.

(10) In favor of the husband, when the wife was pregnant at the time of marriage, without his knowledge or agency.

(11) In favor of either party to the marriage when the other has committed actual violence on his or her person, attended with danger to life or health, or when from his or her conduct there is reasonable apprehension of such violence.

(12) In favor of the wife when the wife has lived, or shall have lived separate and apart from the bed and board of the husband for two years and without support from him for two years next preceding the filing of the complaint, and she has bona fide resided in this state during said period.

(b) When a judgment of divorce is entered, in effect, it is awarded to both parties to the marriage.

**§ 30-2-2 Divorce from bonds of matrimony after judgment of divorce from bed and board or of separate maintenance in effect for more than two years.**

The circuit court shall have the power to divorce persons from the bonds of matrimony in favor of either party where there has been a final judgment of divorce from bed and board or of separate maintenance, when such judgment has been in force and effect for more than two years. The fact that the party against whom such action is brought may also have some grounds for divorce shall not constitute any defense to any proceeding under this section.

**§ 30-2-3 Divorce to be refused where collusion between parties, condonation, etc.**

No judgment can be entered on the confession of the parties, or either of them, or if it appear that adultery was committed by either, with the consent of the other, for the purpose of obtaining a divorce, or where both parties have committed adultery, or where there has been a condonation of adultery by the admission of the offending party to conjugal embraces after knowledge of the commission of the crime, or when the husband knew of or connived at the adultery of the wife.

**§ 30-2-4 Where complaint to be filed.**

Complaints for divorce may be filed in the circuit court of the county in which the defendant resides, or in the circuit court of the county in which the parties resided when the separation occurred, or if the defendant is a nonresident, then in the circuit court of the county in which the other party to the marriage resides.

**§ 30-2-5 Residency requirement for plaintiff when defendant nonresident.**

When the defendant is a nonresident, the other party to the marriage must have been a bona fide resident of this state for six months next before the filing of the complaint, which must be alleged in the complaint and proved.

**§ 30-2-6 When husband or wife may sue or defend in own name.**

A husband or wife under the age of 19 years may file a complaint for any purpose under this chapter in his or her own name without the intervention of a next friend, guardian or guardian ad litem, and if over the age of 18 years, he or she may defend any action brought under this chapter in his or her own name without the intervention of a next friend, guardian or guardian ad litem.

**§ 30-2-7 Answer of defendant not required to be sworn; effect of answer.**

The defendant is not required to verify the answer by oath, and, whether sworn to or not, it is not evidence in the case, and can have no other effect than to put in issue the allegations of the complaint.

### **§ 30-2-8 Proceedings generally; right of remarriage.**

The proceeding must, in all respects, be conducted as other civil actions, except as herein otherwise directed. The cause for which the divorce is sought must be alleged in the complaint, to which the other party must be made a defendant. If service by publication shall be made, when necessary, in the manner provided in the Alabama Rules of Civil Procedure. In making his judgment, the judge shall, as the evidence and the nature of the case may warrant, direct whether the party against whom the judgment of divorce is made be permitted to marry again, and where in judgments no order is made disallowing the party the right to marry again, the party shall be deemed to have the right to remarry, subject to the restrictions set out in Section 30-2-10. In cases where the right is affirmatively disallowed to the divorced party to remarry, it shall be competent for the judge, upon motion and proper proof, to allow the moving party to marry again, as justice may seem to require.

#### **§ 30-2-8.1 Waiting period prior to issuance of final judgment of divorce; temporary orders prior to expiration of waiting period.**

(a) A court shall not enter a final judgment of divorce until after the expiration of 30 days from the date of the filing of the summons and complaint.

(b) This section shall not restrict the power of the court to enter any temporary orders necessary prior to the expiration of the waiting period. The temporary orders may include, but shall not be limited to, temporary orders on custody, spousal or child support, visitation, exclusive occupancy of the marital residence, or restraining the parties.

#### **§ 30-2-9 Validation of marriage of divorced persons where remarriage not specifically prohibited by divorce judgment.**

The marriages of all persons married subsequent to a divorce judgment granted in this state which did not prohibit the person from remarrying are hereby declared to be valid, notwithstanding that the judgment of divorce did not specifically confer on such person the right to remarry. This section shall not be deemed to abridge in any way the force and effect of Section 30-2-10.

#### **§ 30-2-10 Sixty-day restriction on remarriage of parties after grant of divorce or pending appeal of divorce.**

When a judgment has been entered granting a divorce in this state, the court shall order that neither party shall again marry, except to each other, until 60 days after the judgment is entered, and that if an appeal is taken within 60 days, neither party shall again marry, except to each other, during the pendency of said appeal.

#### **§ 30-2-11 Wife may be enjoined from use of given name or initials of divorced husband.**

After divorce from the bonds of matrimony and within the discretion of the circuit court of the county in which the divorced wife resides and upon application of any interested party, the divorced wife may be enjoined from the use of the given name or initials of the divorced husband.

#### **§ 30-2-12 Divorce for pregnancy of wife at time of marriage bastardizes issue.**

When a divorce is granted the husband for the pregnancy of the wife at the time of the marriage, the issue is thereby bastardized.

**§ 30-2-40 Legal separation.**

(a) The court shall enter a decree of legal separation if all of the following requirements are satisfied:

(1) The court determines that the jurisdictional requirements for the dissolution of a marriage have been met.

(2) The court determines the marriage is irretrievably broken or there exists a complete incompatibility of temperament or one or both of the parties desires to live separate and apart.

(3) To the extent that it has jurisdiction to do so, the court has considered, approved, or provided for child custody, and has entered an order for child support in compliance with Rule 32 of the Alabama Rules of Judicial Administration.

(b) A legal separation is a court determination of the rights and responsibilities of a husband and wife arising out of the marital relationship. A decree of legal separation does not terminate the marital status of the parties.

(c) If a party files a complaint for a decree of legal separation rather than a decree of dissolution of marriage, the court may grant the legal separation. The terms of a legal separation can be modified or dissolved only by written consent of both parties and ratification by the court or by court order upon proof of a material change of circumstances. A proceeding or judgment for legal separation shall not bar either party from later instituting an action for dissolution of the marriage.

(d) The court shall order that the terms of the legal separation relating to alimony or a property settlement be incorporated into a final divorce decree only if agreed to by the parties. Otherwise, the court may consider, but is not bound by, the provisions of the legal separation relating to alimony or a property settlement upon a final dissolution of the marriage.

(e) If either party to a legal separation later institutes an action for dissolution of the marriage, the best interest of the child standard shall apply to the determination of child custody.

(f) Upon written consent by both parties, after entry of a decree of legal separation, all of the following provisions shall apply:

(1) The earnings or accumulations, including the retirement benefits, of each party received after the entry of the decree of legal separation are the separate property of the party acquiring the earnings or accumulations, and shall not be considered by the court in a subsequent divorce action.

(2) A spouse may convey his or her real estate without the signature or consent of the other spouse.

(3) Each spouse may waive all rights to inheritance from the other spouse pursuant to Section 43-8-72.

(g) Court costs for a legal separation may be assessed as if a dissolution of the marriage was requested and may be taxed by the court accordingly.

**§ 30-2-50 Allowance for support during pendency of action.**

Pending an action for divorce, the court may make an allowance for the support of either spouse out of the estate of the other spouse, suitable to the spouse's estate and the condition in life of the parties, for a period of time not longer than necessary for the prosecution of the complaint for divorce.

**§ 30-2-51 Allowance upon grant of divorce; certain property not considered; retirement benefits.**

(a) If either spouse has no separate estate or if it is insufficient for the maintenance of a spouse, the judge, upon granting a divorce, at his or her discretion, may order to a spouse an allowance out of the estate of the other spouse, taking into consideration the value thereof and the condition of the spouse's family. Notwithstanding the foregoing, the judge may not take into consideration any property acquired prior to the marriage of the parties or by inheritance or gift unless the judge finds from the evidence that the property, or income produced by the property, has been used regularly for the common benefit of the parties during their marriage.

(b) The judge, at his or her discretion, may include in the estate of either spouse the present value of any future or current retirement benefits, that a spouse may have a vested interest in or may be receiving on the date the action for divorce is filed, provided that the following conditions are met:

(1) The parties have been married for a period of 10 years during which the retirement was being accumulated.

(2) The court shall not include in the estate the value of any retirement benefits acquired prior to the marriage including any interest or appreciation of the benefits.

(3) The total amount of the retirement benefits payable to the non-covered spouse shall not exceed 50 percent of the retirement benefits that may be considered by the court.

(c) If the court finds in its discretion that any of the covered spouse's retirement benefits should be distributed to the non-covered spouse, the amount is not payable to the non-covered spouse until the covered spouse begins to receive his or her retirement benefits or reaches the age of 65 years, unless both parties agree to a lump sum settlement of the non-covered spouse's benefits payable in one or more installments.

**§ 30-2-52 Allowance upon grant of divorce for misconduct; certain property not considered.**

If the divorce is in favor of either spouse for the misconduct of the other spouse, the judge trying the case shall have the right to make an allowance to either spouse out of the estate of either spouse, or not make an allowance as the circumstances of the case may justify, and if an allowance is made, the misconduct of either spouse may be considered in determining the amount; provided, however, that any property acquired prior to the marriage of the parties or by inheritance or gift may not be considered in determining the amount.

**§ 30-2-54 Award of attorneys' fees in action where contempt citation issued.**

In all actions for divorce or for the recovery of alimony, maintenance or support in which a judgment of divorce has been issued or is pending and a contempt of court citation has been made by the court against either party, the court may, of

its discretion, upon application therefor, award a reasonable sum as fees or compensation of the attorney or attorneys representing both parties.

**§ 30-2-55 Termination of alimony upon remarriage or cohabitation with member of opposite sex; reimbursement not required.** Any decree of divorce providing for periodic payments of alimony shall be modified by the court to provide for the termination of such alimony upon petition of a party to the decree and proof that the spouse receiving such alimony has remarried or that such spouse is living openly or cohabiting with a member of the opposite sex. This provision shall be applicable to any person granted a decree of divorce either prior to April 28, 1978, or thereafter; provided, however, that no payments of alimony already received shall have to be reimbursed.

**§ 30-3-1. Custody and education of children upon grant of divorce; custody of children where wife abandons husband.**

Upon granting a divorce, the court may give the custody and education of the children of the marriage to either father or mother, as may seem right and proper, having regard to the moral character and prudence of the parents and the age and sex of the children; and pending the action, may make such orders in respect to the custody of the children as their safety and well-being may require. But in cases of abandonment of the husband by the wife, he shall have the custody of the children after they are seven years of age, if he is a suitable person to have such charge.

**§ 30-3-2. Custody and education of children upon voluntary separation of husband and wife.**

(a) In all cases of voluntary separation of husband and wife, the circuit court has power, on the motion of either party, 20 days' notice thereof being given to the other, to permit either the father or mother to have the custody and control of the children and to superintend and direct their education, having regard to the prudence, ability and fitness of the parents, and the age and sex of the children.

(b) Upon the hearing of the motion, witnesses may be examined orally or testimony may be taken as in other civil actions. While the application is pending, the court may direct an injunction or make any order that the safety and well-being of the wife or children may require.

**§ 30-3-4.1. Grandparent visitation.**

(a) For the purposes of this section, the term "grandparent" means the parent of a parent of a minor child, the parent of a minor child's parent who has died, or the parent of a minor child's parent whose parental rights have been terminated when the child has been adopted pursuant to Section [26-10A-27](#), [26-10A-28](#), or [26-10A-30](#), dealing with stepparent and relative adoption.

(b) Except as otherwise provided in this section, any grandparent may file an original action for visitation rights to a minor child if it is in the best interest of the minor child and one of the following conditions exist:

- (1) When one or both parents of the child are deceased.
- (2) When the marriage of the parents of the child has been dissolved.
- (3) When a parent of the child has abandoned the minor.

(4) When the child was born out of wedlock.

(5) When the child is living with both biological parents, who are still married to each other, whether or not there is a broken relationship between either or both parents of the minor and the grandparent and either or both parents have used their parental authority to prohibit a relationship between the child and the grandparent.

(c) Any grandparent may intervene in and seek to obtain visitation rights in any action when any court in this state has before it any question concerning the custody of a minor child, a divorce proceeding of the parents or a parent of the minor child, or a termination of the parental rights proceeding of either parent of the minor child, provided the termination of parental rights is for the purpose of adoption pursuant to Sections 26-10A-27, 26-10A-28, or 26-10A-30, dealing with stepparent or relative adoption.

(d) Upon the filing of an original action or upon intervention in an existing proceeding pursuant to subsections (b) and (c), the court shall determine if visitation by the grandparent is in the best interests of the child. Visitation shall not be granted if the visitation would endanger the physical health of the child or impair the emotional development of the child. In determining the best interests of the child, the court shall consider the following:

(1) The willingness of the grandparent or grandparents to encourage a close relationship between the child and the parent or parents.

(2) The preference of the child, if the child is determined to be of sufficient maturity to express a preference.

(3) The mental and physical health of the child.

(4) The mental and physical health of the grandparent or grandparents.

(5) Evidence of domestic violence inflicted by one parent upon the other parent or the child. If the court determines that evidence of domestic violence exists, visitation provisions shall be made in a manner protecting the child or children, parents, or grandparents from further abuse.

(6) Other relevant factors in the particular circumstances, including the wishes of any parent who is living.

(e) The court shall make specific written findings of fact in support of its rulings. An original action requesting visitation rights shall not be filed by any grandparent more than once during any two-year period and shall not be filed during any year in which another custody action has been filed concerning the child. After visitation rights have been granted to any grandparent, the legal custodian, guardian, or parent of the child may petition the court for revocation or amendment of the visitation rights, for good cause shown, which the court, in its discretion, may grant or deny. Unless evidence of abuse is alleged or other exceptional circumstances, a petition shall not be filed more than once in any two-year period.

(f) If the court finds that the grandparent or grandparents can bear the cost without unreasonable financial hardship, the court, at the sole expense of the petitioning grandparent or grandparents, may appoint a guardian ad litem for the minor child.

(g) Notwithstanding the foregoing, a grandparent may not be granted visitation with a grandchild where the parent related to the grandparent has either given up legal custody voluntarily or by court order or has abandoned the child

financially unless the grandparent has an established relationship with the child and the court finds that visitation with the grandparent is in the best interests of the child.

**§ 30-3-5. Venue of all proceedings seeking modification of child custody, visitation rights or child support.**

Notwithstanding any law to the contrary, venue of all proceedings for petitions or other actions seeking modification, interpretation, or enforcement of a final decree awarding custody of a child or children to a parent and/or granting visitation rights, and/or awarding child support, and/or awarding other expenses incident to the support of a minor child or children, and/or granting post-minority benefits for a child or children is changed so that venue will lie in: (1) the original circuit court rendering the final decree; or (2) in the circuit court of the county where both the current custodial parent or, in the case of post-minority benefits, where the most recent custodial parent, that parent having custody at the time of the child's attaining majority, and the said child or children have resided for a period of at least three consecutive years immediately preceding the filing of the petition or other action. The current or most recent custodial parent shall be able to choose the particular venue as herein provided, regardless of which party files the petition or other action.

**§ 30-3-6. Bond, security, or other guarantee to secure payment of overdue support or compliance with visitation order.**

(a) As used in this section, the following terms shall have the following meanings:

(1) SUPPORT. Support of any child, with respect to whom a support order exists, and support of a spouse or former spouse with respect to whom a support order exists where incidental to an order of child support as required by Title IV-D of the Social Security Act.

(2) OVERDUE SUPPORT. A delinquency in an obligation of "support", as such term is defined in this section, said obligation having been previously determined under a court order or judgment.

(3) OBLIGOR. Any person required to make payments under the terms of a support order or comply with visitation orders.

(4) OBLIGEE. Any person or entity which is entitled to receive support pursuant to a support order and who is receiving support services from the department of human resources pursuant to Title IV-D of the Social Security Act.

(b) In addition to any other remedy provided by law where an action is initiated for the enforcement of support, a court of this state having jurisdiction over the enforcement action may in its discretion, where request therefor is included in the petition or other pleading, issue an order requiring the obligor to post a bond, give security, or give some other guarantee to secure the payment of overdue support or compliance with visitation orders. The amount of security, bond, or other payment guarantee to be required is at the discretion of the court. Provided, that the petition or other original pleading shall clearly notify the obligor that, in addition to the relief being sought through the underlying enforcement proceeding, the petitioner or complainant is seeking to have the court set a bond, security, or other guarantee of payment. The obligor shall have the opportunity to be heard on the matter of the bond, security, or other guarantee of payment at the time of the hearing on the enforcement action.

(c) If the required payments are not made as ordered and the security, bond, or other guarantee to secure payment is forfeited, the proceeds therefrom shall be applied to the support due.

**§ 30-3-6.1. Rebate of interest on delinquent child support payments.**

(a) Notwithstanding any other provision of law regarding post-judgment interest, the parent responsible for making child support payments who has been delinquent in making the payments may petition the court that entered the order for child support or the appropriate court pursuant to Sections 30-3A-101 to 30-3A-906, inclusive, for a rebate of interest when any of the following conditions have been met:

(1) The parent has paid the past due amount and has paid the current child support payments for 12 months before petitioning the court.

(2) The parent has entered into a repayment agreement, has made all payments on the agreement for at least 12 months, and has paid the current child support payments for 12 months before petitioning the court.

(b) Before a court may order a rebate of interest, each party to whom interest is owed must agree in writing to the rebate of interest and the amount of interest rebated. A court of competent jurisdiction may reinstate the interest rebated upon a subsequent finding of contempt of court for failure to pay child support.

(c) This section shall apply to all child support orders entered before and after August 1, 2004.

**§ 30-3-8. Publication of delinquent obligor lists.**

(a) The Department of Human Resources, Child Support Enforcement Division, may establish a program for the publication, in newspapers with general circulation throughout the state, of a listing of ten child support obligors in any county who are delinquent in their support payments. Each publication shall display photographs of and information about the ten obligors in any county who are liable for support arrearages and whose whereabouts are unknown to child support agencies. Each publication shall list a toll-free telephone number for the division that may be called to report information regarding the whereabouts of any of the obligors displayed in the publication. The department may include any other information in the publication that it considers appropriate.

(b) Prior to any publication or public listing, the Department of Human Resources shall send to each obligor whose name will be published pursuant to this section a notice by regular mail to the obligor's last known address. The notice shall state that the obligor may avoid being included in the publication pursuant to this section by doing all of the following within 90 days after receipt of notice:

(1) Making a child support payment to the Department of Human Resources, Child Support Enforcement Division, that is at least equal to the amount of support the obligor is required to pay each month under the support order or a percentage of child support arrears owed by the obligor, whichever amount is greater.

(2) Providing the division with the obligor's current address.

(3) Providing the division with verification from each of the obligor's current employers of the obligor's current wages, salary, and other compensation.

(4) Providing the division with verification that the obligor has arranged for withholding from the obligor's wages, salary, or other compensation to pay support and for payment of arrearages.

(c) The division shall determine whether any obligor whose name will be published has met all of the conditions of subsection (b). If the division determines that an obligor has done so, the division shall remove the obligor from the list of obligors before making the final selection of obligors for publication.

(d) The Department of Human Resources, Child Support Enforcement Division, shall distribute for publication and post on the DHR website at a minimum of twice a year or monthly as deemed appropriate by the division, the obligors who are to appear in publication.

(e) The Department of Human Resources, Child Support Enforcement Division, shall adopt rules and regulations pursuant to the Alabama Administrative Procedure Act for the operation of the program. The rules shall specify the following:

(1) Criteria for the division to use in reviewing the names of obligors for publication and for selecting the delinquent obligors to be included in the publication.

(2) Criteria for providing the notice specified in subsection (b).

(3) Notification that the obligor is responsible for all costs for the publication.

(4) The department must design a system of safeguards which protect innocent parties. Such safeguards and procedures must be approved by the Legislative Council within one year of passage.

(5) Any other Criteria necessary for the operation of the program.

(f) The Department of Human Resources and its employees and agents and any newspaper publishing any information pursuant to this section shall be immune from any civil or criminal liability that might otherwise be imposed or incurred in carrying out the provisions of this section.

### **§ 30-3-60. Definitions.**

As used in this article, the following terms shall have the following meanings:

(1) **INCOME.** Wages, salary, tips, commissions, bonuses, unemployment compensation, workers' compensation, disability payments, payments pursuant to a pension or retirement program and interest, and any and all money due or payable to a person, the entitlement to which is based upon remuneration for employment, past or present, after the deduction of those amounts required to be withheld by law. Income shall also include any other continuous or periodic income from whatever source whether earned or unearned except as expressly limited by law.

(2) **EMPLOYER.** Any person, business, corporation, partnership, company, firm or unit of municipal, county, state, or federal government.

(3) **COURT.** Any juvenile or family court division of the circuit or district court in the county where the mother of the child resides or is found, in the county where the father resides or is found, or in the county where the child resides or is found and, in the case of a petition seeking a divorce or legal separation, a petition seeking a modification of support previously ordered under a divorce decree or a petition seeking a contempt citation for failure to pay support previously ordered under a divorce decree, the circuit court or the domestic relations division of the circuit court. Provided, further, in cases

involving the enforcement of another state's order of support within this state, court may mean the courts hereinabove prescribed of the county where the employer is located or is found, and such term may also mean, when the context requires, the court or agency of another state or jurisdiction outside the State of Alabama whose functions include the issuance and enforcement of support orders.

(4) CLERK OF THE COURT. Any circuit court clerk, district court clerk or juvenile court clerk, or their employees, with responsibility for docketing or otherwise carrying out the court's clerical duties in regard to domestic relations matters, support and nonsupport cases, including the receipt and disbursement of support payments.

(5) OBLIGOR. Any person ordered by the court to make periodic payments for the benefit and support of another person or minor child.

(6) OBLIGEE. Any person for whom support benefits are ordered by the court and shall specifically include the Department of Human Resources when any person has assigned their rights to support payments to the department under any provision of law or when the department is otherwise representing the obligee. Provided, when the context requires, obligee may also include an agency or department of this or another state or jurisdiction to which a person has assigned his or her rights to support.

(7) DEPARTMENT. The Department of Human Resources of the State of Alabama, including the county department of human resources.

(8) SUPPORT or SUPPORT ORDER. Support of a minor child and spousal support when such spousal support is collected by the Department of Human Resources or the department's designee pursuant to the requirements of Title IV-D of the Social Security Act. Support order shall mean any order, decree or judgment for the support of a child, (or in the case of an order being enforced pursuant to the requirements of Title IV-D of the Social Security Act, a spouse or former spouse) issued by a court of this state or, where the context requires, a court or agency of another state or jurisdiction, whether interlocutory or final.

(9) STATE or JURISDICTION. Such terms shall include any state or subdivision thereof, any possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any foreign jurisdiction in which a similar law is in effect.

**§ 30-3-61. Withholding order required in child support orders; employer to withhold support from income due and pay to designee; income withholding order issued by another state; when order served on employer; delinquency of support payments.**

(a) Any provision of Section **8-5-21**, to the contrary notwithstanding, any original decree, judgment, or order issued by a court of this state for the payment of support, any decree or judgment entered pursuant to a petition to modify an original decree or award of support, any decree or judgment of contempt of court for failure to pay support as previously ordered by a court of this state, or any decree or judgment for criminal or civil nonsupport shall include as a separate section a withholding order subject to subsection (c) of this section directing any employer of the obligor to withhold and pay over to the clerk of the court or the Department of Human Resources, or its designee, whichever is appropriate, out of income due or to become due the obligor at each pay period, an amount ordered to be paid for support. The withholding order shall not under any circumstances be waived by mutual agreement of the parties to the case.

(b) The withholding order shall recite the amount of the obligor's continuing support obligation and shall require the withholding of the support obligation from the income due or becoming due to the obligor at each pay period and payment to the clerk of the court out of which the order is issued or the department or its designee, whichever is appropriate within seven business days of the date the obligor is paid the paycheck from which the support is withheld. Provided, if the obligor's support obligation is ordered to be paid monthly and the obligor's pay periods are at more frequent intervals, the employer may withhold at each pay period an amount cumulatively sufficient to equal the total monthly support obligation and pay the amount withheld at each pay period over to the clerk of the court or the department or its designee, within seven business days of the date the obligor is paid the paycheck from which the amount is withheld. The employer shall withhold the obligation amount as directed in the income withholding order, except that when an employer receives an income withholding order issued by another state, the employer shall apply the income withholding law of the state of the obligor's principal place of employment in determining the following:

- (1) The employer's fee for processing an income withholding order.
- (2) The maximum amount permitted to be withheld from an obligor's income.
- (3) The time periods within which the employer is required to implement the income withholding order and forward the obligor's payment.
- (4) The priorities for withholding and allocating income withheld for multiple child support obligees.
- (5) Any withholding terms or conditions not specified in the order.

(c) The withholding order shall also recite the duty of the obligor and the employer to notify the collecting agency of any change in employment or termination of income of the obligor as provided in this article.

(d) A withholding order issued pursuant to this section shall be a continuing order and shall remain in effect and be binding upon any employer upon whom it is served until further order of the court. Where any order of support is entered or modified, the withholding order issued pursuant to this section shall be served immediately upon the obligor's employer and shall take effect immediately; except immediate withholding shall not be implemented in any case where one of the parties demonstrates, and the court finds, there is good cause not to require immediate income withholding, or a written agreement is reached between both parties which provides for an alternative arrangement. In such cases, income withholding shall be implemented if the absent parent fails to make payments in an amount equal to one month's support obligation, or the absent parent requests immediate withholding, or the payee or the department requests that withholding begin and the absent parent has failed to make a payment or payments on the date or dates due.

(e) In the event the obligor becomes delinquent in the support payments in a dollar amount equal to one or more month's support obligation, or a withholding order entered at the request of the department was not immediately served upon the employer, or at such time as the obligor wishes to have the income withholding order served upon his employer, the obligee or the obligor may file with the clerk of the court a sworn affidavit stating the appropriate basis upon which service of the income withholding order is now being sought. Upon the filing of the affidavit and the payment of a docket fee in the same amount as is prescribed by Section [12-19-75](#) for the filing of a garnishment proceeding, a copy of the withholding order issued pursuant to this section shall be served upon the employer pursuant to the Alabama Rules of Civil Procedure. A copy shall be served upon the obligor by first class mail. Provided, the cost of the filing shall not be prepaid if, upon the filing of an affidavit of substantial hardship, the obligee or obligor is found by the court to be

incapable of prepaying the cost or if the affidavit is filed by the department or a representative of the department, but in such cases the cost of the filing shall be taxed as costs against the obligor at the time service of the order is requested and shall be withheld from the obligor's first pay period subjected to the income withholding order. Additionally, when service upon the employer is requested by means of certified mail, the actual cost of the service shall be prepaid in all cases at the time the service is requested.

(f) In the event that the obligor with a support obligation imposed by a support order issued or modified in the state before October 1, 1996, becomes delinquent in support payments in a dollar amount equal to one or more month's support obligation, the income of the obligor, if not otherwise subject to withholding, shall become subject to withholding, without the need for a judicial or administrative hearing.

**§ 30-3-62. Who may petition for withholding order; withholding on existing support orders; filing with clerk; service; hearing; issuance of order; contents; when order takes effect; entry of support and withholding orders by different courts; termination of withholding.**

(a) Section **8-5-21** to the contrary notwithstanding, and in addition to and independent of any other remedy provided by law for the enforcement of support, the obligee, district attorney, or representative of the Department of Human Resources may file with a court of this state, as defined in this article, a petition seeking an order of income withholding. Additionally, for all existing support orders issued in the State of Alabama that do not provide for income withholding and upon the filing of an application for support services by the obligee with the department, the department shall petition the court for an income withholding order pursuant to this section. The obligee, district attorney, or representative of the department shall file with the clerk of the court the following documents:

(1) Three copies of a petition seeking the income withholding order, that include the name and address of both the obligor and obligee.

(2) One certified copy and two additional copies of the original support order with all modifications thereof.

(3) A sworn affidavit of the obligee, or a certified statement of the agency, of the arrearages, if any, and any assignment of support rights.

(4) Two copies of a notice of the proposed income withholding. The notice shall advise the obligor that an income withholding order shall be issued by the court in accordance with this section.

(b) The obligor shall be served by the methods authorized in the Alabama Rules of Civil Procedure with a copy of all the documents listed in subsection (a) of this section.

(c) An income withholding order shall be issued by the court unless the obligor requests a hearing within 10 days of the date of service of the petition and notice. If the obligor requests a hearing, the hearing shall be held and a decision rendered within 45 days of the date of service of the petition and notice upon the obligor unless the obligee, district attorney, or representative of the department requests a continuation of the case to a later date or the court, on its own motion and for good cause shown, continues the case to a later date. An obligor may contest the issuance of an income withholding order under this section only on the basis of mistakes of fact. The income withholding order issued pursuant to this section may be issued by any court competent to adjudicate these proceedings, as that term is defined in this article, and shall be issued without the need for an amendment to the existing support order.

(d) An order entered pursuant to this section shall recite the amount required to be withheld as continuing support for each month, the total amount of all accumulated arrearages, if any, and the amount required to be withheld for each month in order to satisfy the arrearage. The order shall require withholding from the income due or becoming due the obligor at each pay period and payment to the clerk of the court or the department or its designee, whichever is appropriate, of the amounts ordered pursuant to this section. If the obligor's support obligation is required to be paid on a monthly basis and his or her pay periods are at more frequent intervals, the employer may withhold, at each pay period, amounts cumulatively sufficient to equal the total monthly arrearage due, if any, and the total monthly continuing support obligation and pay over to the clerk of the court or the department, or its designee, the amount withheld in accordance with subsection (b) of Section **30-3-61**. When payments are ordered made directly to the clerk of the court, it shall be the responsibility of the clerk to disburse the payments in accordance with the court's order.

(e) Any order entered pursuant to this section shall be continuing and binding upon any employer upon whom it is served until further order of the court. A withholding order issued pursuant to this section shall not be served on the employer and shall not take effect unless the obligor is or becomes delinquent in a dollar amount equal to one month of support payments, the obligor requests that the withholding order take effect at an earlier date, or the court otherwise orders that the withholding order take effect at an earlier date.

(f) In the event the obligor becomes delinquent in the support payments in a dollar amount equal to one or more month's support obligation, or at the time as the obligor wishes to have the income withholding served upon his or her employer, the obligee or the obligor may file with the clerk of the court a sworn affidavit stating the appropriate basis upon which service of the income withholding order is now being sought. Upon the filing of the affidavit and the payment of a docket fee in the same amount as is prescribed by Section **12-19-75** for the filing of a garnishment proceeding, a copy of the withholding order issued pursuant to this section shall be served upon the employer pursuant to the Alabama Rules of Civil Procedure. A copy shall also be served upon the obligor by first class mail. The cost of such a filing shall not be prepaid if, upon the filing of an affidavit of substantial hardship, the obligee or obligor is found by the court to be incapable of prepaying the cost or if the affidavit is filed by the department or a representative of the department, but in those cases the cost of the filing shall be taxed as costs against the obligor at the time service of the order is requested and shall be withheld from the obligor's first pay period subjected to the income withholding order. Additionally, when service upon the employer is requested by means of certified mail, the actual cost of the service shall be prepaid in all cases at the time the service is requested.

(g) When an income withholding order is entered pursuant to this section by a court other than the court which originally entered the support order, a copy of the income withholding order shall be forwarded by the clerk of the court entering the order to the clerk of the court which entered the original support order. The clerk of the court which entered the original order of support shall also be notified whenever the income withholding order is served upon an employer and withholdings are to commence.

(h) A withholding order issued under this section or Section **30-3-61** shall be promptly terminated when the obligor requests termination and withholding has not been terminated previously and subsequently initiated and there is a written agreement signed by both the custodial and absent parent, and in IV-D cases in which there is an assignment of support rights to the state, by the department, providing for an alternative arrangement as provided in subsection (c) of Section **30-3-61**. In those cases, income withholding shall be reinstated if the absent parent fails to make payments in the amount of one month's support obligation or the absent parent requests immediate income withholding or the payee or the department requests that withholding be reinstated and the absent parent has failed to make a payment or payments on the date or dates due. A withholding order reinstated pursuant to this provision shall be permanent for the

duration of the obligation for support, or until such time as the withholding order is modified or terminated pursuant to Section [30-3-64](#) or Section [30-3-65](#).

(i) A withholding order issued under this section or Section [30-3-61](#) shall be terminated without the necessity of a hearing when the obligor files with the clerk of the court that issued the withholding order a sworn affidavit stating that all children subject to the order have reached the age of majority and that no arrearage is owed on the withholding order or a spousal support order or stating other conditions of termination as specified in subsection (h) of Section [30-3-62](#). Upon filing of the affidavit and the payment of the docket fee prescribed by Section [12-19-75](#) for the filing of a garnishment proceeding, a copy of the affidavit shall be served by first class mail upon the obligee and upon the department when the case is a IV-D case. An order terminating income withholding shall be issued by the court unless the obligee or the department requests a hearing within 20 days of service of the affidavit. If the obligee or the department requests a hearing, the hearing shall be held and a decision rendered within 45 days of the date of service of the affidavit upon the obligee and the department, as appropriate, unless the obligor requests a continuation of the case to a later date or the court, on its own motion and for good cause shown, continues the case to a later date. The termination of the income withholding issued pursuant to this section may be issued without the need for a hearing except as specified in this section. A copy of the termination of income withholding order issued pursuant to this section shall be served upon the employer pursuant to the Alabama Rules of Civil Procedure. A copy shall also be served upon the obligee and the department as appropriate by first class mail. Additionally, when service upon the employer is requested by means of certified mail, the actual cost of the service shall be prepaid in all cases at the time the service is requested.

#### **§ 30-3-63. Filing fees and costs.**

(a) When a petition seeking an order of income withholding as provided in subsection [30-3-62](#)(a) is initiated in any case which does not arise pursuant to Title IV-D of the Social Security Act, there shall be collected, by the clerk of the court, the filing fee prescribed for other civil cases, generally, as set forth in section [12-19-71](#) and other applicable statutes. The fee shall be collected by the clerk at the time the proceeding is initiated and shall be disbursed as provided in section [12-19-72](#) and other appropriate provisions of law. Provided, that when representing or otherwise acting on behalf of the obligee neither the state of Alabama nor any agency thereof, nor any person whom the court finds incapable of payment, upon execution of an affidavit of substantial hardship, as provided in section [12-19-70](#), shall be required to pay the fees prescribed by this subsection. The court may order all costs taxed against the obligor to be withheld from the first pay period covered by the support order and, in such instances, to be paid by the employer directly to the clerk of the court. Provided further, the amount of costs taxed against the obligor and withheld from the first pay period shall be over and above any moneys withheld for support, but shall be subject to the limitations of section [30-3-67](#).

(b) When an order for income withholding is entered by a court of this state as a part of an original order for the payment of support or as a part of an order in any of the proceedings listed in subsection [30-3-61](#)(a), there shall be no new or additional filing fee assessed in such cases.

#### **§ 30-3-64. Employer's answer; order binding on employer; modification by court.**

Within 14 days of the service of an income withholding order upon an employer, the employer shall file an answer with the court which issued the order. The answer shall state whether or not the obligor is employed by the employer and whether the employer has in his or its possession income, as such term is defined in this article, due or due to become due to the obligor. The answer shall also indicate the amount of the obligor's disposable income, as such term is defined in the Federal Consumer Credit Act, and whether the obligor's disposable income is currently subject to any writ of

garnishment, previous income withholding order or other legal process and the nature and extent of such previous judgment and process. If the employer answers that the obligor has income which is subject to the order for income withholding the order entered pursuant to any of the provisions of this article shall become binding upon any such employer, including successive employers, 14 days after service pursuant to the Alabama Rules of Civil Procedure, and shall remain effective until further order of the court. Provided, any order for income withholding may be modified or terminated by the court at any time upon a finding by the court of a material and substantial variance in the facts as originally established by the court or due to a change in circumstances which is substantial and continuing and which is otherwise sufficient grounds, under existing and future case law and statutory law, for such modification or termination.

**§ 30-3-65. Obligee to give notice of change of address; termination of order when unable to deliver payments due to no notice of address.**

(a) An obligee shall notify the clerk of the court, or the department of human resources or its designee, whichever office is collecting the support payments which have been ordered withheld, of any change in address of the obligee.

(b) If the clerk of the court, the department or its designee is unable to deliver payments under the order for a period of three consecutive months due to the obligee's failure to notify either of them of an address change, the clerk, the department or its designee shall not attempt further payment under the order and shall, upon the court's order, return the payments to the employer and the court shall terminate the income withholding order upon request.

**§ 30-3-66. Obligor and employer to give notice of change of employment or termination of income; service of order on new employer; cost of service.**

The obligor and any employer upon whom an income withholding order has actually been served, including successive employers, shall notify the court office collecting the support payments of any changes in employment and the name and address, if known, of any new employer or of any termination of periodic benefits which constitute income. The collecting office shall, in turn, notify the obligee of any such change and of the right to file a written request for service upon any new employer of the obligor. If the income withholding order has previously been served upon an employer, upon the filing of a written request by the obligee indicating the name and address of any new employer of the obligor and the payment of the actual cost of service as further provided in this section, the clerk of the court shall cause to be served, pursuant to Alabama Rules of Civil Procedure, a copy of the income withholding order upon any new employer. The cost of service shall be taxed against the obligor at the time the order is served. The new employer shall file an answer as provided in this article acknowledging receipt of the order within 14 days of actual receipt of the order. Actual cost of service for the purposes of this section shall mean the amount prescribed by law for the service of process upon an additional defendant in a civil proceeding or the actual cost of certified mail when that mode of service is requested.

**§ 30-3-67. Withholding orders to have priority over garnishments or any other legal process against the same income; maximum withholding allowable.**

Any order to withhold income issued and served upon any employer of the obligor pursuant to this article shall have priority over any writ of garnishment or any other state legal process against the same income of the obligor whether said writ of garnishment or other process was served prior or subsequent to the order of income withholding. Any order for income withholding issued pursuant to this article may exceed the statutory maximum amounts prescribed in section ~~6-10-7~~ for garnishment proceedings in Alabama, but such order, including amounts taxed against the obligor as court costs, may not exceed the maximum statutory amounts prescribed under federal law for garnishments issued to enforce

support obligations. Provided, if an obligor's income is subject to more than one withholding order or a current writ of garnishment for child support and a withholding order, the total amounts withheld may not exceed the statutory maximums herein prescribed and the current month's support payments shall be satisfied before any arrearages are satisfied.

**§ 30-3-68. Employers who comply not liable for wrongful withholding.**

No employer who complies with an order under this article according to its terms shall be liable to the obligor or to any other person claiming rights derived from the obligor for wrongful withholding.

**§ 30-3-69. Liability of employers who fail to answer or fail or refuse to withhold.**

An employer who willfully fails or refuses to withhold or pay the amounts as ordered may be held to be in contempt of court. Additionally, such employer may be personally liable to the obligee for failure to answer or withhold, and in such cases conditional and final judgment for the amounts ordered to be withheld may be entered by the court and against the employer as in the case of conditional and final judgment against a garnishee for failure to answer, as provided in section 6-6-457.

**§ 30-3-70. Employers not to discharge or refuse to hire person due to withholding order.**

No employer shall discharge an employee or refuse to hire a person because of the entry of an order of withholding or service of the same under this article. Any employer who violates this section may be held to be in contempt of court.

**§ 30-3-71. Employer authorized to deduct fee for expenses.**

The employer shall be authorized to deduct from the obligor's income a fee of up to \$2.00 per month for expenses incurred under this article.

**§ 30-3-110. Civil action for order of retroactive support.**

There is hereby created a civil action to establish an order of retroactive support which may be brought against a non-supporting parent who has a duty to support as the legal parent of a child or children but has failed to provide support. The action may be brought by the parent or guardian with physical or legal custody who is providing the actual care and support for the child or may be brought by the Department of Human Resources pursuant to the provisions of Section 38-10-1 et seq. An action under this section can be brought only if support has not previously been ordered pursuant to a divorce or other action in this or any other jurisdiction.

**§ 30-3-111. Commencement of action prior to child reaching age of majority.**

The action shall be commenced prior to the time the child or children reaches the age of majority.

**§ 30-3-112. Filing of action in juvenile or family court division.**

An action for retroactive support shall be filed in the juvenile or family court division of the district or circuit court in the county in which the parent or guardian resides or in the county in which the child resides. There shall be no right to a jury trial.

**§ 30-3-113. Marital status of non-supporting parent irrelevant.**

An order of retroactive support may be awarded against the non-supporting parent irrespective of the marital status of the parties.

**§ 30-3-114. Amount.**

The order of retroactive support shall be a sum certain judgment and may cover all periods in which the non-supporting parent failed to provide support. For all time periods in which support is requested, the court shall consider the needs of the child or children and the ability of the parents to respond to these needs, and shall determine the amount of support due for each period by application of the child support guidelines found in Rule 32 of the Alabama Rules of Judicial Administration based upon the circumstances during the time period for which support is sought. If the judgment for retroactive support includes support due for a period of time in which aid was paid by the Department of Human Resources and an assignment of support rights thereby exists under Section 38-10-4 and Section 38-10-5, the department shall be entitled to recover any support due the department under Section 38-10-6.

**§ 30-3-115. Additional right.**

The action for retroactive support authorized by this article is in addition to any rights to retroactive support granted by any other provision of law including but not limited to Section 26-17-8 nor shall the provisions of the article limit or affect the state's right to recover assistance paid as provided in Section 38-10-6.

**§ 30-3-130. Definitions.**

For the purposes of this article "domestic or family abuse" means an incident resulting in the abuse, stalking, assault, harassment, or the attempt or threats thereof. Abuse means any offense under Article 4 (commencing with Section 13A-6-60) of Chapter 6 of Title 13A, and under Chapter 15 (commencing with Section 26-15-1) of Title 26. Stalking means the offenses prescribed in Sections 13A-6-90 to 13A-6-92, inclusive. Assault means the offense prescribed in Sections 13A-6-20 to 13A-6-25, inclusive. Harassment means the offenses prescribed in Section 13A-11-8.

**§ 30-3-131. Determination raises rebuttable presumption that custody with perpetrator detrimental to child.**

In every proceeding where there is at issue a dispute as to the custody of a child, a determination by the court that domestic or family violence has occurred raises a rebuttable presumption by the court that it is detrimental to the child and not in the best interest of the child to be placed in sole custody, joint legal custody, or joint physical custody with the perpetrator of domestic or family violence. Notwithstanding the provisions regarding rebuttable presumption, the judge must also take into account what, if any, impact the domestic violence had on the child.

**§ 30-3-132. Factors court must consider.**

(a) In addition to other factors that a court is required to consider in a proceeding in which the custody of a child or visitation by a parent is at issue and in which the court has made a finding of domestic or family violence the court shall consider each of the following:

- (1) The safety and well-being of the child and of the parent who is the victim of family or domestic violence.
- (2) The perpetrator's history of causing physical harm, bodily injury, assault, or causing reasonable fear of physical harm, bodily injury, or assault, to another person.

(b) If a parent is absent or relocates because of an act of domestic or family violence by the other parent, the absence or relocation may not be a factor that weighs against the parent in determining the custody or visitation.

**§ 30-3-133. Determination raises rebuttable presumption that child reside with parent not perpetrator.**

In every proceeding where there is at issue a dispute as to the custody of a child, a determination by the court that domestic or family violence has occurred raises a rebuttable presumption by the court that it is in the best interest of the child to reside with the parent who is not a perpetrator of domestic or family violence in the location of that parent's choice, within or outside the state.

**§ 30-3-134. Finding of domestic violence constitutes change in circumstances.**

In every proceeding in which there is at issue the modification of an order for custody or visitation of a child, a finding that domestic or family violence has occurred since the last custody determination constitutes a finding of change in circumstances.

**§ 30-3-135. Visitation by parent who committed violence.**

(a) A court may award visitation by a parent who committed domestic or family violence only if the court finds that adequate provision for the safety of the child and the parent who is a victim of domestic or family violence can be made.

(b) In a visitation order, a court may take any of the following actions:

- (1) Order an exchange of the child to occur in a protected setting.
- (2) Order visitation supervised in a manner to be determined by the court.
- (3) Order the perpetrator of domestic or family violence to attend and complete to the satisfaction of the court, a program of intervention for perpetrators or other designated counseling as a condition of visitation.
- (4) Order the perpetrator of domestic or family violence to abstain from possession or consumption of alcohol or controlled substances during the visitation and for 24 hours preceding the visitation.
- (5) Order the perpetrator of domestic or family violence to pay a fee to defray the cost of supervised visitation.
- (6) Prohibit overnight visitation.

(7) Require a bond from the perpetrator of domestic or family violence for the return and safety of the child.

(8) Impose any other condition that is deemed necessary to provide for the safety of the child, the victim of family or domestic violence, or other family or household member.

(c) Whether or not visitation is allowed, the court may order the address of the child or the victim of family or domestic violence to be kept confidential.

(d) The court may refer but shall not order an adult who is a victim of family or domestic violence to attend counseling relating to the victim's status or behavior as a victim, individually or with the perpetrator of domestic or family violence as a condition of receiving custody of a child or as a condition of visitation.

(e) If a court allows a family or household member to supervise visitation, the court shall establish conditions to be followed during visitation.

### **§ 30-3-136. Construction of provisions.**

The provisions of this article are supplemental and shall be construed in pari materia with other laws relating to civil and criminal procedure.

## **ARTICLE 7. JOINT CUSTODY**

### **§ 30-3-150. State policy.**

Joint Custody. - It is the policy of this state to assure that minor children have frequent and continuing contact with parents who have shown the ability to act in the best interest of their children and to encourage parents to share in the rights and responsibilities of rearing their children after the parents have separated or dissolved their marriage. Joint custody does not necessarily mean equal physical custody.

### **§ 30-3-151. Definitions.**

For the purposes of this article the following words shall have the following meanings:

(1) JOINT CUSTODY. Joint legal custody and joint physical custody.

(2) JOINT LEGAL CUSTODY. Both parents have equal rights and responsibilities for major decisions concerning the child, including, but not limited to, the education of the child, health care, and religious training. The court may designate one parent to have sole power to make certain decisions while both parents retain equal rights and responsibilities for other decisions.

(3) JOINT PHYSICAL CUSTODY. Physical custody is shared by the parents in a way that assures the child frequent and substantial contact with each parent. Joint physical custody does not necessarily mean physical custody of equal durations of time.

(4) SOLE LEGAL CUSTODY. One parent has sole rights and responsibilities to make major decisions concerning the child, including, but not limited to, the education of the child, health care, and religious training.

(5) SOLE PHYSICAL CUSTODY. One parent has sole physical custody and the other parent has rights of visitation except as otherwise provided by the court.

**§ 30-3-152. Factors considered; order without both parents' consent; presumption where both parents request joint custody.**

(a) The court shall in every case consider joint custody but may award any form of custody which is determined to be in the best interest of the child. In determining whether joint custody is in the best interest of the child, the court shall consider the same factors considered in awarding sole legal and physical custody and all of the following factors:

(1) The agreement or lack of agreement of the parents on joint custody.

(2) The past and present ability of the parents to cooperate with each other and make decisions jointly.

(3) The ability of the parents to encourage the sharing of love, affection, and contact between the child and the other parent.

(4) Any history of or potential for child abuse, spouse abuse, or kidnapping.

(5) The geographic proximity of the parents to each other as this relates to the practical considerations of joint physical custody.

(b) The court may order a form of joint custody without the consent of both parents, when it is in the best interest of the child.

(c) If both parents request joint custody, the presumption is that joint custody is in the best interest of the child. Joint custody shall be granted in the final order of the court unless the court makes specific findings as to why joint custody is not granted.

**§ 30-3-153. Implementation; required provisions; plan set by court.**

(a) In order to implement joint custody, the court shall require the parents to submit, as part of their agreement, provisions covering matters relevant to the care and custody of the child, including, but not limited to, all of the following:

(1) The care and education of the child.

(2) The medical and dental care of the child.

(3) Holidays and vacations.

(4) Child support.

(5) Other necessary factors that affect the physical or emotional health and well-being of the child.

(6) Designating the parent possessing primary authority and responsibility regarding involvement of the minor child in academic, religious, civic, cultural, athletic, and other activities, and in medical and dental care if the parents are unable to agree on these decisions. The exercise of this primary authority is not intended to negate the responsibility of the parties to notify and communicate with each other as provided in this article.

(b) If the parties are unable to reach an agreement as to the provisions in subsection (a), the court shall set the plan.

**§ 30-3-154. Availability of records to both parents.**

Unless otherwise prohibited by court order or statute, all records and information pertaining to the child, including, but not limited to, medical, physiological, dental, scholastic, athletic, extracurricular, and law enforcement, shall be equally available to both parents, in all types of custody arrangements.

**§ 30-3-155. Determination of child support.**

In making a determination of child support, the court shall apply Rule 32 of the Alabama Rules of Judicial Administration.

**§ 30-3-156. Interference with custody or violation of Chapter 3B.**

The fact that joint custody has been awarded to both parents shall not preclude a court from finding that one parent has committed the crime of interference with custody as provided in Section 13A-6-45, or has violated the Uniform Child Custody Jurisdiction and Enforcement Act as provided in Chapter 3B of this title.

**§ 30-3-157. Construction of article with respect to existing orders.**

This article shall not be construed as grounds for modification of an existing order. This article shall not be construed as affecting the standard applicable to a subsequent modification.

**ARTICLE 7A. ALABAMA PARENT-CHILD RELATIONSHIP PROTECTION ACT.**

**§ 30-3-160. Short title.**

This article shall be known and may be cited as the "Alabama Parent-Child Relationship Protection Act" and promotes the general philosophy in this state that children need both parents, even after a divorce, established in Section 30-3-150.

**§ 30-3-161. Definitions.**

As used in this article, the following words and phrases shall have the following meanings, unless the context requires a different definition:

(1) CHANGE OF PRINCIPAL RESIDENCE. A change of the residence of a child whose custody has been determined by a prior court order, whether or not accompanied by a change of the residence of a person entitled to custody of the child,

with the intent that such change shall be permanent in nature and not amounting to a temporary absence of the child from his or her principal residence.

(2) **CHILD.** A minor child as defined by subdivision (2) of Section [30-3B-102](#). As used in this article, the term may include the singular and the plural.

(3) **CHILD CUSTODY DETERMINATION.** A judgment, decree, or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order. The term does not include an order relating to child support or other monetary obligation of an individual.

(4) **COMMENCEMENT.** The filing of the first pleading in a proceeding.

(5) **COURT.** An entity authorized under the law of a state to establish, enforce, or modify a child custody determination.

(6) **MODIFICATION.** A child custody determination that changes, replaces, supersedes, or is otherwise made after a previous determination concerning the same child, whether or not it is made by the court that made the previous determination.

(7) **PERSON ACTING AS A PARENT.** A person, other than a parent, who has physical custody of the child or has had physical custody for a period of six consecutive months, including any temporary absence, within one year immediately before the commencement of a child custody proceeding and has been awarded legal custody by a court or claims a right to legal custody under the law of this state.

(8) **PERSON ENTITLED TO CUSTODY OR VISITATION.** A person so entitled to physical custody of a child as defined by Sections [30-3-1](#) through [30-3-4.1](#), inclusive, or visitation with respect to a child by virtue of a child custody determination as defined by subdivision (3) of Section [30-3B-102](#).

(9) **PHYSICAL CUSTODY.** The physical care and supervision of a child.

(10) **PRINCIPAL RESIDENCE OF A CHILD.** Any of the following:

- a. The residence designated by a court to be the primary residence of the child.
- b. In the absence of a determination by a court, the residence at which the parents of a child whose change of principal residence is at issue have expressly agreed that the child will primarily reside.
- c. In the absence of a determination by a court or an express agreement between the parents of a child whose change of principal residence is at issue, the residence, if any, at which the child lived with the child's parents, a parent, or a person acting as a parent, for at least six consecutive months or, in the case of a child less than six months of age, the residence at which the child lived from birth with the child's parents, a parent, or a person acting as a parent. Periods of temporary absence from such residence are counted as part of the period of residence.

(11) **RELOCATE or RELOCATION.** A change in the principal residence of a child for a period of 45 days or more. The term does not include a temporary absence from the primary residence, or an absence necessary to escape domestic violence.

**§ 30-3-162. Applicability.**

(a) Except as provided otherwise by this article, the provisions of this article apply to all orders determining custody of or visitation with a child whether such order was issued before or after September 1, 2003. To the extent that a provision of this article conflicts with an existing order determining custody of or visitation with a child or other enforceable agreement, this article does not apply to alter or amend the terms of such order or agreement which addresses the rights of the parties or the child with regard to a change in the primary residence of a child. Any person entitled to the legal or physical custody of or visitation with a child may commence an action for modification to incorporate the provisions of this article into an existing order determining the custody of or visitation with a child. Except as provided in subsection (c) of Section 30-3-165, this article shall not apply to a person who is on active military service in the Armed Forces of the United States of America and is being transferred or relocated pursuant to a nonvoluntary order from the government.

(b) Sections 30-3-169.1 to 30-3-169.7, inclusive, shall not apply to a change of principal residence of a child to a residence which is 60 miles or less from the residence of a non-relocating parent who is entitled to custody of or visitation with the child or if the change or proposed change results in the child residing nearer to the non-relocating parent than before the change or proposed change, unless such change in the principal residence of a child results in the child living in a different state.

**§ 30-3-163. Change of principal residence - Child.**

Except as provided by Section 30-3-167, a person who has the right to establish the principal residence of the child shall provide notice to every other person entitled to custody of or visitation with a child of a proposed change of the child's principal residence as required by subsection (b) of Section 30-3-165.

**§ 30-3-164. Change of principal residence - Custodial party, persons with visitation rights.**

Except as provided by Section 30-3-167, a person entitled to custody of or visitation with a child shall provide notice to every other person entitled to custody of or visitation with a child of an intended change in his or her principal residence as required by subsection (b) of Section 30-3-165.

**§ 30-3-165. Notice.**

(a) When a notice is required by either Section 30-3-163 or Section 30-3-164, except as provided by Section 30-3-167, the notice of a proposed change of principal residence of a child or the notice of an intended or proposed change of the principal residence of an adult as provided in this article must be given by certified mail to the last known address of the person or persons entitled to notification under this article not later than the 45th day before the date of the intended change of the principal residence of a child or the 10th day after the date such information required to be furnished by subsection (b) becomes known, if the person did not know and could not reasonably have known the information in sufficient time to comply with the 45-day notice, and it is not reasonably possible to extend the time for change of principal residence of the child.

(b) Except as provided by Section 30-3-167, all of the following information, if available, must be included with the notice of intended change of principal residence of a child:

- (1) The intended new residence, including the specific street address, if known.

- (2) The mailing address, if not the same as the street address.
- (3) The telephone number or numbers at such residence, if known.
- (4) If applicable, the name, address, and telephone number of the school to be attended by the child, if known.
- (5) The date of the intended change of principal residence of a child.
- (6) A statement of the specific reasons for the proposed change of principal residence of a child, if applicable.
- (7) A proposal for a revised schedule of custody of or visitation with a child, if any.
- (8) A warning to the non-relocating person that an objection to the relocation must be made within 30 days of receipt of the notice or the relocation will be permitted.

(c) A person entitled to custody of a child who is on active military service in the Armed Forces of the United States of America and is being transferred or relocated pursuant to a non-voluntary order of the government shall provide notice of change of principal residence of a child to the persons entitled to custody of or visitation with a child with the information set forth in subsection (b) except that such notice need not contain a warning to the non-relocating person as provided in subdivision (8) of subsection (b) that an objection to the relocation must be made within 30 days or the relocation will be permitted.

(d) A person required to give notice of a proposed change of principal residence of a child under this section has a continuing duty to provide the information required by this section as that information becomes known. Such information should be provided by certified mail to the last known address to the person or persons entitled to such notice within 10 days of the date such information becomes known.

**§ 30-3-166. Language required in child custody determination.**

After September 1, 2003, every child custody determination shall include the following language:

"Alabama law requires each party in this action who has either custody of or the right of visitation with a child to notify other parties who have custody of or the right of visitation with the child of any change in his or her address or telephone number, or both, and of any change or proposed change of principal residence and telephone number or numbers of a child. This is a continuing duty and remains in effect as to each child subject to the custody or visitation provisions of this decree until such child reaches the age of majority or becomes emancipated and for so long as you are entitled to custody of or visitation with a child covered by this order. If there is to be a change of principal residence by you or by a child subject to the custody or visitation provisions of this order, you must provide the following information to each other person who has custody or visitation rights under this decree as follows:

- "(1) The intended new residence, including the specific street address, if known.
- "(2) The mailing address, if not the same as the street address.
- "(3) The telephone number or numbers at such residence, if known.

"(4) If applicable, the name, address, and telephone number of the school to be attended by the child, if known.

"(5) The date of the intended change of principal residence of a child.

"(6) A statement of the specific reasons for the proposed change of principal residence of a child, if applicable.

"(7) A proposal for a revised schedule of custody of or visitation with a child, if any.

"(8) Unless you are a member of the Armed Forces of the United States of America and are being transferred or relocated pursuant to a non-voluntary order of the government, a warning to the non-relocating person that an objection to the relocation must be made within 30 days of receipt of the notice or the relocation will be permitted.

"You must give notice by certified mail of the proposed change of principal residence on or before the 45th day before a proposed change of principal residence. If you do not know and cannot reasonably become aware of such information in sufficient time to provide a 45-day notice, you must give such notice by certified mail not later than the 10th day after the date that you obtain such information.

"Your failure to notify other parties entitled to notice of your intent to change the principal residence of a child may be taken into account in a modification of the custody of or visitation with the child.

"If you, as the non-relocating party, do not commence an action seeking a temporary or permanent order to prevent the change of principal residence of a child within 30 days after receipt of notice of the intent to change the principal residence of the child, the change of principal residence is authorized."

### **§ 30-3-167. Disclosure exceptions.**

(a) In order to protect the identifying information of persons at risk from the effects of domestic violence or abuse, on a finding by the court that the health, safety, or liberty of a person or a child would be unreasonably put at risk by the disclosure of the identifying information required by Section [30-3-163](#) or Section [30-3-164](#) in conjunction with a proposed change of principal residence of a child or change of principal residence of a person having custody of or rights of visitation with a child, the court may order any or all of the following:

(1) The specific residence address and telephone number of a child or the person having custody of or rights of visitation with a child and other identifying information shall not be disclosed in the pleadings, other documents filed in the proceeding, or in any order issued by the court, except for in camera disclosures.

(2) The notice requirements provided by this article may be waived to the extent necessary to protect confidentiality and the health, safety, or liberty of a person or a child.

(3) Any other remedial action that the court considers necessary to facilitate the legitimate needs of the parties and the interests of the child.

(b) If appropriate, the court may conduct an ex parte hearing under subsection (a). Issuance of a final order of protection under Sections [30-5-1](#) to [30-5-11](#), inclusive; a conviction for domestic violence pursuant to Sections [13A-6-130](#) to [13A-6-135](#), inclusive; or an award of custody of the child pursuant to Sections [30-3-131](#) to [30-3-135](#),

inclusive, shall be considered prima facie evidence that the health, safety, or liberty of a person or a child would be unreasonably put at risk by the disclosure of identifying information or by compliance with the notice requirements of this article.

**§ 30-3-168. Failure to give notice.**

(a) Except as provided in Section 30-3-167, if a person required to give notice as required by Section 30-3-163 or Section 30-3-164 shall fail to provide the notice or the information required by subsection (b) of Section 30-3-165, the court shall consider the failure to provide such notice or information as a factor in making its determination regarding the change of principal residence of a child; a factor in determining whether custody or visitation should be modified; a factor for ordering the return of the child to the former residence of the child if the change of principal residence of a child has taken place without notice; a factor meriting a deviation from the child support guidelines; a factor in awarding increased transportation and communication expenses with the child; and a factor in considering whether the person seeking to change the principal residence of a child may be ordered to pay reasonable costs and attorney's fees incurred by the person objecting to the change.

(b) Additionally, the court may make a finding of contempt of court if a party willfully and intentionally violates the notice requirement of an order issued by any court pursuant to Section 30-3-166 and may impose the sanctions authorized by law or rule of court for disobedience of a court order.

**§ 30-3-169. Objection to change of principal residence.**

The person entitled to determine the principal residence of a child may change the principal residence of a child after providing notice as provided herein unless a person entitled to notice files a proceeding seeking a temporary or permanent order to prevent the change of principal residence of a child within 30 days after receipt of such notice.

**§ 30-3-169.1. Proceedings.**

(a) A person entitled to custody of or visitation with a child may commence a proceeding objecting to a proposed change of the principal residence of a child and seek a temporary or permanent order to prevent the relocation.

(b) A non-parent entitled to visitation with a child may commence a proceeding to obtain a revised schedule of visitation, but may not object to the proposed change of principal residence of a child or seek a temporary or permanent order to prevent the change.

(c) A proceeding filed under this section must be filed within 30 days of receipt of notice of a proposed change of principal residence of a child, except that the court may extend or waive the time for commencing such action upon a showing of good cause, excusable neglect, or that the notice required by subsection (b) of Section 30-3-165 is defective or insufficient upon which to base an action under this article.

(d) Except as otherwise specifically provided in this article, the Alabama Rules of Civil Procedure shall apply to all proceedings under this article.

**§ 30-3-169.2. Court order.**

(a) Where the ends of justice dictate, the court may grant a temporary order restraining the change of principal residence of a child or ordering return of a child to the former residence of the child if a change of principal residence has previously taken place without compliance with this article, and may consider, among other factors, any of the following:

- (1) The notice required by this article was not provided in a timely manner.
- (2) The notice required by this article was not accurate or did not contain sufficient information upon which a person receiving the notice could base an objection.
- (3) The child already has been relocated without notice, agreement of the parties, or prior court approval.
- (4) The likelihood that on final hearing the court will not approve the change of the principal residence of the child.

(b) The court may grant a temporary order permitting the change of principal residence of a child and providing for a revised schedule for temporary visitation with a child pending a final hearing if the court finds that the required notice of a proposed change of principal residence of a child as provided in this article was provided in a timely manner, contained sufficient and accurate information, and if the court finds from an examination of the evidence presented at a hearing for temporary relief that there is a likelihood that on final hearing the court will approve the change of the principal residence of the child.

(c) If the court has issued a temporary order authorizing a party to change the principal residence of a child before final judgment is issued, the court may not give weight to the temporary change of principal residence as a factor in reaching its final decision.

### **§ 30-3-169.3. Change of custody.**

(a) Upon the entry of a temporary order or upon final judgment permitting the change of principal residence of a child, a court may consider a proposed change of principal residence of a child as a factor to support a change of custody of the child. In determining whether a proposed or actual change of principal residence of a minor child should cause a change in custody of that child, a court shall take into account all factors affecting the child, including, but not limited to, the following:

- (1) The nature, quality, extent of involvement, and duration of the child's relationship with the person proposing to relocate with the child and with the non-relocating person, siblings, and other significant persons or institutions in the child's life.
- (2) The age, developmental stage, needs of the child, and the likely impact the change of principal residence of a child will have on the child's physical, educational, and emotional development, taking into consideration any special needs of the child.
- (3) The increase in travel time for the child created by the change in principal residence of the child or a person entitled to custody of or visitation with the child.
- (4) The availability and cost of alternate means of communication between the child and the non-relocating party.

- (5) The feasibility of preserving the relationship between the non-relocating person and the child through suitable visitation arrangements, considering the logistics and financial circumstances of the parties.
- (6) The preference of the child, taking into consideration the age and maturity of the child.
- (7) The degree to which a change or proposed change of the principal residence of the child will result in uprooting the child as compared to the degree to which a modification of the custody of the child will result in uprooting the child.
- (8) The extent to which custody and visitation rights have been allowed and exercised.
- (9) Whether there is an established pattern of conduct of the person seeking to change the principal residence of a child, either to promote or thwart the relationship of the child and the non-relocating person.
- (10) Whether the person seeking to change the principal residence of a child, once out of the jurisdiction, is likely to comply with any new visitation arrangement and the disposition of that person to foster a joint parenting arrangement with the non-relocating party.
- (11) Whether the relocation of the child will enhance the general quality of life for both the custodial party seeking the change of principal residence of the child and the child, including, but not limited to, financial or emotional benefit or educational opportunities.
- (12) Whether or not a support system is available in the area of the proposed new residence of the child, especially in the event of an emergency or disability to the person having custody of the child.
- (13) Whether or not the proposed new residence of a child is to a foreign country whose public policy does not normally enforce the visitation rights of non-custodial parents, which does not have an adequately functioning legal system, or which otherwise presents a substantial risk of specific and serious harm to the child.
- (14) The stability of the family unit of the persons entitled to custody of and visitation with a child.
- (15) The reasons of each person for seeking or opposing a change of principal residence of a child.
- (16) Evidence relating to a history of domestic violence or child abuse.
- (17) Any other factor that in the opinion of the court is material to the general issue or otherwise provided by law.
- (b) The court making a determination of such issue shall enter an order granting the objection to the change or proposed change of principal residence of a child, denying the objection to the change or proposed change of principal residence of a child, or any other appropriate relief based upon the facts of the case.
- (c) The court, in approving a change of principal residence of a child, shall order contact between the child and the non-relocating party and telephone access sufficient to assure that the child has frequent, continuing, and meaningful contact with the non-relocating party and shall equitably apportion transportation costs of the child for visitation based upon the facts of the case.

(d) The court, in approving a change of principal residence of a child, may consider the costs of transporting the child for visitation and determine whether a deviation from the child support guidelines should be considered in light of all factors including, but not limited to, additional costs incurred for transporting the child for visitation.

(e) The court, in approving a change of principal residence of a child, may retain jurisdiction of the parties and of the child in order to supervise the transition caused by the change of principal residence of the child; to insure compliance with the orders of the court regarding continued access to the child by the non-relocating party; to insure the cooperation of the relocating party in fostering the parent-child relationship between the child and the non-relocating party; and to protect the relocating party and the child from risk of harm in those cases described in Section **30-3-167**.

### **§ 30-3-169.5. Obstructions to custody or visitation.**

If on final hearing the change of principal residence of a child is permitted, the court may require the person seeking to change the principal residence of a child to provide reasonable security guaranteeing that the custody of and visitation with the child will not be interrupted or obstructed by the relocating party.

### **§ 30-3-169.6. Sanctions.**

(a) Where a party commences an action without good cause or for the purpose of harassing or causing unnecessary financial or emotional hardships to the other party, after notice and a reasonable opportunity to respond, the court may impose sanctions on a person proposing a change of principal residence of the child or objecting to a proposed change of principal residence of a child if it determines that the proposal was made or the objection was filed based upon any of the following:

- (1) To harass a person or to cause unnecessary delay or needless increase in the cost of litigation.
- (2) Without being warranted by existing law or based on frivolous argument.
- (3) Based on allegations and other factual contentions, which had no evidentiary support nor, if specifically so identified, could not have been reasonably believed to be likely to have evidentiary support after further investigation.
- (4) Designed to elicit or discover or lead to the discovery of information protected by Section **30-3-167**.

(b) Sanctions imposed under this section shall be limited to those that are sufficient to deter repetition of such conduct or comparable conduct by others similarly situated. The sanction may include directives of a non-monetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the other party of some or all of the reasonable costs, attorney's fees, and expenses incurred as a direct result of the violation.

### **§ 30-3-169.7. Change of principal residence raised in conjunction with other petition.**

If the issue of change of principal residence of a child is presented in a petition for divorce or dissolution of a marriage or other petition to determine custody of or visitation with a child, the court shall consider, among other evidence, the factors set forth in Sections **30-3-169.2** and **30-3-169.3** in making its initial determination.

**§ 30-3-169.8. Award of expenses.**

The court may award any party necessary and reasonable expenses incurred by or on behalf of the party, including costs, communication expenses, attorney's fees, investigative fees, expenses for witnesses, travel expenses, and child care during the course of the proceedings.

**§ 30-3-169.9. Change of principal residence outside state.**

(a) In those instances where the change of principal residence of a child results in the relocation of a child to a residence outside this state, the provisions of Sections 30-3B-101 to 30-3B-314, inclusive, shall apply to actions commenced under this article.

(b) Where the parties have been awarded joint custody, joint legal custody, or joint physical custody of a child as defined in Section 30-3-151, and at least one parent having joint custody, joint legal custody, or joint physical custody of a child continues to maintain a principal residence in this state, the child shall have a significant connection with this state and a court in fashioning its judgments, orders, or decrees may retain continuing jurisdiction under Sections 30-3B-202 to 30-3B-204, inclusive, even though the child's principal residence after the relocation is outside this state.

(c) In a proceeding commenced to modify, interpret, or enforce a final decree under this article, where jurisdiction exists under this section or otherwise as provided by law and where only one person having joint custody, joint legal custody, or joint physical custody of a child continues to maintain a principal residence in this state, notwithstanding any law to the contrary, venue of all proceedings under this article is changed so that venue will lie either in the original circuit court rendering the final decree or in the circuit court of the county where that person having joint custody, joint legal custody, or joint physical custody has resided for a period of at least three consecutive years immediately preceding the commencement of an action under this article. The person having joint custody, joint legal custody, or joint physical custody who continues to maintain a principal residence in this state shall be able to choose the particular venue as herein provided, regardless of which party files the petition or other action.

**§ 30-3-169.10. Appeal.**

An appeal may be taken from a final order in a proceeding under this article in accordance with Alabama law. Unless the court enters a temporary order under Section 30-3-169.2, the court may not stay an order enjoining a change in principal residence of a child pending appeal.

**ARTICLE 8. DRIVER'S LICENSE SUSPENSION OR REVOCATION FOR FAILURE TO PAY SUPPORT PAYMENTS.**

**§ 30-3-170. Definitions.**

When used in this article, the following words shall have the following meanings:

(1) COURT. A court of competent jurisdiction or administrative agency having the authority to issue and enforce support orders.

(2) DELINQUENT or DELINQUENCY. A support debt or support obligation due and unpaid in an amount equal to or greater than six months support payments as of the date of service of a notice of intent to suspend or revoke a license.

(3) DEPARTMENT. The Alabama Department of Human Resources, including the county departments of human resources.

(4) LICENSE. Any license, certificate, registration, or authorization issued by a licensing authority which grants a person a right or privilege to engage in an occupational, professional, sporting, or recreational activity, or to operate a motor vehicle.

(5) LICENSEE. The holder of a license.

(6) LICENSING AUTHORITY. Any department, division, board, agency, or instrumentality of the State of Alabama or its political subdivisions that issues a license.

(7) OBLIGEE. Either of the following:

a. A person to whom support benefits are ordered by the court.

b. A public agency of this or another state that has the right to receive support payments or otherwise is providing support enforcement services under Title IV-D of the Social Security Act. The term shall include the department.

(8) OBLIGOR. A person ordered by a court to make periodic payments for the benefit and support of another person or child.

(9) SUPPORT or SUPPORT ORDER. Support of a minor child and spousal support when the spousal support is collected pursuant to the requirements of Title IV-D of the Social Security Act. Support order shall mean any order, decree, or judgment for the support of a child, or in the case of an order being enforced pursuant to the requirements of Title IV-D of the Social Security Act, a spouse, or former spouse, issued by a court or other entity authorized to issue the orders.

**§ 30-3-171. Issuance of notice to withhold, etc., license.**

Upon application to the department for support services by an obligee alleging the existence of a delinquency or failure to comply with subpoenas or warrants relating to paternity or child support proceedings, the department may, upon an administrative determination that there is a delinquency or a failure to comply, issue a notice of intent to withhold, restrict use of, or suspend a license. The notice shall be served upon the obligor personally or by certified mail or as otherwise provided in the Alabama Rules of Civil Procedure. The notice shall state that licenses granted by licensing authorities of the State of Alabama and held by the obligor may be suspended 60 days after service unless, within that time, the obligor does one of the following as appropriate based on reason for suspension:

(1) Pays the entire support debt stated in the notice.

(2) Enters into a payment plan approved by the department or its agent.

(3) Complies with subpoenas or warrants relating to paternity or child support proceedings.

(4) Requests an administrative hearing within 15 days of receipt of the notice in order to appear and show cause why withholding, restricted use, or suspension of the license is not appropriate.

**§ 30-3-172. Request for hearing; purpose of hearing; notification of decision; appeal; suspension of license.**

(a) Upon receipt of a request for a hearing, the department shall schedule a hearing for the purpose of determining if withholding, restricted use, or suspension of the obligor's license is appropriate. The department shall stay withholding, restricted use, or suspension of the license pending the outcome of the hearing. The hearing shall be for the purpose of contesting the determination of the department of all of the following: (1) That the obligor is at least six months delinquent in child support payments. (2) That the obligor has not entered into a payment plan approved by the department. (3) If appropriate, that the obligor has failed to comply with a warrant or subpoena relating to a paternity or child support case. (4) That the withholding, restricted use, or suspension of the license is appropriate. No evidence with respect to the appropriateness of the support order or the ability of the obligor to comply with the support order shall be received or considered at the hearing.

(b) If the obligor fails to respond to the notice of intent to withhold, restrict the use of, or suspend a license, fails to timely request a hearing, or fails to appear at a scheduled hearing, the obligor's defenses, objections, or request for a payment plan shall be considered to be without merit and the department or its agent shall enter a final decision accordingly.

(c) If the department or its agent determines that the obligor is delinquent in making support payments and that the obligor has not entered into a payment plan, or that the obligor has failed to comply with subpoenas or warrants relating to paternity or child support proceedings, the department or its agent shall notify the obligor of the department's decision and the obligor's right to seek judicial review of the decision pursuant to the Alabama Administrative Procedure Act by filing a notice of appeal and a cost bond with the department within 30 days of receipt of the agency's decision. A petition for review shall be filed in the Circuit Court of Montgomery County or the circuit court of the county where a party resides. The filing of a notice of appeal will result in an automatic stay of withholding, restricted use, or suspension of the obligor's license pending the outcome of the appeal.

(d) If the requirements for seeking judicial review are not met within 30 days, the department shall send a notice to the licensing authority instructing it to suspend the obligor's license. A determination of the department is independent of any proceeding of the licensing authority to withhold, restrict use of, suspend, revoke, deny, terminate, renew, or issue a license.

**§ 30-3-173. Multiple delinquencies; revocation of license.**

If the obligor has received two suspensions of a license pursuant to this article within the previous 12 months, upon a third finding of delinquency pursuant to this article, the department shall send to the obligor a notice of intent to revoke a license. In that case, the notice sent by the department to the licensing authority shall instruct the licensing authority to revoke the license. The notice and hearing provisions of Sections 30-3-171 and 30-3-172 shall apply to the revocation of a license.

**§ 30-3-174. Implementation by licensing authority of withholding, etc.; additional review precluded; continuation of withholding, etc.; exemption of licensing authority from liability.**

(a) Upon receipt of a notice from the department or its agent to withhold, restrict use of, suspend, or revoke a license, a licensing authority shall implement the withholding, restricted use, suspension, or revocation of the license by doing all of the following:

- (1) Determining that it has issued a license to the obligor whose name appears on the notice.
- (2) Entering the suspension or revocation on the appropriate records.
- (3) If required by law, demanding surrender of the suspended or revoked license.

(b) A notice issued by the department or its agent to withhold, restrict use of, suspend, or revoke a license shall be processed by the licensing authority without any additional review or hearing by the licensing authority. The licensing authority shall have no jurisdiction to modify, reword, reverse, vacate, or stay the decision of the department or its agent.

(c) Any decision issued by the department or its agent to withhold, restrict use of, suspend, or revoke a license continues until the department or its agent advises the licensing authority that the decision to withhold, restrict use of, suspend, or revoke has been stayed or is no longer in effect. While the department's decision is in effect, the licensing authority may not issue, reissue, or renew the obligor's license.

(d) The licensing authority is exempt from any liability to the licensee for activities conducted in compliance with this article.

### **§ 30-3-175. Reinstatement of withheld, etc., license; obtaining new license after revocation.**

(a) When, following the withholding, restricted use, or suspension of a license, the department or its agent determines that the support debt or support obligation has been paid in full or a satisfactory payment plan has been negotiated, or the obligor has complied with subpoenas or warrants relating to paternity or child support proceedings, the department or its agent, at the request of the obligor, shall send notice requesting reinstatement of the license to the licensing authority and the obligor. Notice to the licensing authority to reinstate the license shall not limit the ability of the department or its agent to issue a new decision and notice in the event of another delinquency.

(b) When a license has been revoked pursuant to Section 30-3-173, the obligor may obtain a new license only if the department, upon request of the obligor, makes a determination and notifies the licensing authority that the obligation has been paid in full or a satisfactory payment plan is in place and the obligor is complying with the plan or the obligor has complied with subpoenas or warrants relating to paternity or child support proceedings. Upon receipt of the notification, the licensing authority may issue a new license pursuant to the statutes or regulations governing the reissuance of a license by the licensing authority.

### **§ 30-3-176. Fees and costs.**

Notwithstanding any other provisions of law, the licensing authority may charge the obligor a fee to cover administrative costs incurred by the licensing authority in carrying out this article, which fee is to be used exclusively by the licensing authority for the purpose of administering this article. In the event that a license is withheld, suspended, or revoked, or its use restricted, any monies paid by the obligor to the licensing authority for costs related to its issuance, reissuance, renewal, or maintenance shall not be refunded to the obligor.

**§ 30-3-177. Contempt petition; applicability of article to obligors who failed to follow previous orders.**

In addition to the foregoing provisions of this article, if the obligor is brought before a circuit, district, or juvenile court having jurisdiction on a contempt petition, and it is shown by the department or its agent or by an obligee or counsel for an obligee who is not a recipient of services of the department, that the obligor has failed to follow previous orders of the court, then the court may, in addition to any other remedies, order the withholding, restricted use, suspension, revocation, forfeiture, or termination of the obligor's license or licenses as defined by this article. When a suspension, revocation, forfeiture, termination, withholding, or restricted use of any license occurs pursuant to this section, the foregoing provisions of this article pertaining to the duties and authority of the licensing agency shall apply.

**Note:** Laws may have changed since our last update. For the latest information on these divorce laws, speak to a local divorce lawyer in the state.