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DOMESTIC RELATIONS

Child and Spousal Support: Comply With Federal Guidelines to Enforce Child Support Awards

CODE SECTIONS: O.C.G.A. §§ 19-6-15 (amended), 19-6-30 (amended), 19-6-31 to -33 (new), 19-11-12 (amended), 19-11-20 (amended), 19-11-23 (amended)

BILL NUMBER: HB 139

ACT NUMBER: 543

SUMMARY: The Act amends the Code section relating to the enforcement of child and spousal support payments to comply with the federal Child Support Enforcement Amendments of 1984 and the Family Support Act of 1988. The Act provides guidelines for courts to use in determining the amount of child support awards. Further, the Act grants the court authority to enforce obligations of spousal and child support by ordering immediate wage deductions. It also provides for periodic review and adjustment of child support orders.

EFFECTIVE DATE: July 1, 1989

History

The Child Support Enforcement Amendments of 1984¹ and the Family Support Act of 1988² require states to comply with federal guidelines to improve the enforcement of child support payments.³ States that do not implement the federal provisions risk losing federal funds for aid in the enforcement of child support orders and collection of payments.⁴ HB 139 was introduced to bring Georgia into compliance with the 1984 federal act and to meet a number of the requirements of the 1988 federal act.⁵

1. Pub. L. No. 98-378, § 1305, 98 Stat. 1305 (1984).

2. Pub. L. No. 100-485, § 1305, 102 Stat. 2343 (1988).

3. 42 U.S.C. § 666 (1982).

4. Telephone interview with Robert Swain, Deputy Director, Office of Child Support Recovery, State of Georgia (Mar. 21, 1989) [hereinafter Swain Interview]. Georgia would have risked losing approximately \$25,000,000 in federal funds if the state had not enacted revised child support legislation during the 1989 session. *Id.*

5. *Id.*

The Georgia Act provides detailed guidelines for judges to use in determining an award of child support.⁶ These guidelines were mandated by federal legislation which called for their implementation by October 1989.⁷ The federal guidelines allow the states to consider a number of models in determining the amount of child support; however, use of clear criteria for the determination is mandatory.⁸ Georgia's child support guidelines track the model followed in Wisconsin, which bases the amount of child support on a percentage of gross income of the noncustodial parent.⁹ Other states use an "income shares" approach which calls for determining each parent's share by considering the total income of the two parents, in addition to the child's needs.¹⁰

Previously, guidelines to ascertain child support amounts were advisory and were used only by some courts.¹¹ The Act's provisions make the guidelines presumptive; courts must follow the guidelines or explain in writing their reasons for not following them.¹²

The Act also allows for immediate wage withholding for child support determinations made by the Department of Human Resources Child Support Division.¹³ This provision must be expanded statewide to all child support determinations by 1994.¹⁴ Prior to the Act, wage withholding was allowed only after a one month delinquency in payment.¹⁵

HB 139

With the passage of HB 139, Georgia has for the first time a uniform procedure for determining child support awards.¹⁶ The Act amends O.C.G.A. § 19-6-15 to provide guidelines for ascertaining the proper amount of child support.¹⁷ The computation is made by

6. O.C.G.A. § 19-6-15 (Supp. 1989).

7. Telephone interview with Bruce Gaunt, Program Specialist, Family Support Administration, U.S. Dep't of Health and Human Services (Mar. 20, 1989) [hereinafter Gaunt Interview]. See Family Support Act of 1988, Pub. L. No. 100-485, § 1305, 102 Stat. 2343 (1988).

8. Gaunt Interview, *supra* note 7.

9. Swain Interview, *supra* note 4.

10. Gaunt Interview, *supra* note 7.

11. O.C.G.A. § 19-6-15 (1982); Swain Interview, *supra* note 4.

12. Gaunt Interview, *supra* note 7.

13. O.C.G.A. §§ 19-6-31 to -33 (Supp. 1989).

14. Family Support Act of 1988, Pub. L. No. 100-485, § 1305, 102 Stat. 2343 (1988).

15. 1985 Ga. Laws 785.

16. Swain Interview, *supra* note 4.

17. O.C.G.A. § 19-6-15 (Supp. 1989).

multiplying the noncustodial parent's gross income by a percentage based on the number of children to be supported.¹⁸

The percentage guidelines for determining child support were the most controversial part of HB 139.¹⁹ Legislators expressed concern that wealthy, noncustodial parents could be required to pay substantial sums in child support;²⁰ the first committee substitute therefore exempted persons with a gross income exceeding \$30,000 from the bill's provisions.²¹ Later versions of HB 139 dropped this measure, but addressed the concern by adding new factors that the court may consider in determining the amount of child support payments.²² In particular, one factor allows consideration of "extreme economic circumstances," which is defined as gross income exceeding \$75,000 per annum.²³ Another factor allows consideration of the custodial parent's income.²⁴ Other considerations include educational costs, costs for day care, shared custody arrangements, as well as alternate support such as providing for mortgage payments.²⁵

The rationale for a percentage of income support plan is that a child has a right to share in both parents' prosperity.²⁶ The statutory factors allow the judge flexibility in determining an award of child support relative to the individual circumstances of the case and do not negate the plan's rationale.²⁷ The parties may enter into a separate agreement regarding the amount of child support, however, which may be enforced pursuant to review by the court.²⁸

Another important aspect in implementing the Act is that a jury must be charged with the Code's provisions.²⁹ The uniformity of the guidelines should minimize litigation concerning jury-awarded child support.³⁰ For this reason, courts should welcome the guidelines and follow their provisions.³¹

18. O.C.G.A. § 19-6-15(b)(1), (5) (Supp. 1989). The guidelines furnish a percentage range to calculate child support for each child, beginning with the first child through fifth, or greater number. For example, 17% to 23% of gross income is recommended for the support of one child, while five or more children may require 31% to 37% of the noncustodial parent's gross income. *Id.*

19. Hill, *House Exempts 'Rich Folks' From Child-Support Guidelines*, Atlanta Const., Feb. 16, 1989, at C1, col. 1.

20. *Id.*

21. HB 139 (HCS), 1989 Ga. Gen. Assem.

22. HB 139 (SCS), 1989 Ga. Gen. Assem.

23. O.C.G.A. § 19-6-15(c)(11) (Supp. 1989).

24. O.C.G.A. § 19-6-15(c)(15) (Supp. 1989).

25. O.C.G.A. § 19-6-15(c)(3)-(5), (9) (Supp. 1989).

26. Swain Interview, *supra* note 4.

27. *Id.*

28. O.C.G.A. § 19-6-15(a) (Supp. 1989).

29. Telephone interview with Representative Mary Margaret Oliver, House District No. 53 (Mar. 23, 1989) [hereinafter Oliver Interview].

30. *Id.*

31. Swain Interview, *supra* note 4.

The Act also amends O.C.G.A. § 19-6-30 to allow immediate income deduction orders for all Title IV-D child support enforcement cases.³² Title IV-D cases are those for which applications for support services have been made voluntarily or by law to the Department of Human Resources Child Support Division.³³ Three new sections also delineate the provisions for automatic wage withholding to enforce an order for child support.³⁴

For Title IV-D cases, the Act requires income deduction to take effect immediately upon the determination of an award of child support unless the court finds "good cause," in which case income deduction results after one month's delinquency in payment.³⁵ "Good cause" is not defined, however, in either the federal statute or the Code.³⁶

Under the Act, employers must enforce an income deduction from the employee's wages³⁷ and may not fire an employee affected by the provision.³⁸ Employers are instructed to enforce the income deduction during the first pay period following the order.³⁹ Employers are allowed to collect a twenty-five dollar fee for administration of the first withholding, and three dollars for each successive deduction.⁴⁰ If the employer willfully fails to enforce the provision, the employer can be charged for the amount that should have been deducted.⁴¹

The employer is also charged with notifying the obligee or the enforcement agency if the employee leaves his employment; he must then provide the obligee or agency with the employee's last known address, and name of his new employer, if known.⁴² A willful violation of this section can result in a civil penalty of up to \$250 for the first violation, and as much as \$500 for any subsequent violation.⁴³

The original version of HB 139 provided for immediate income deduction for all child support awards.⁴⁴ This provision was later modified to apply only to Title IV-D cases.⁴⁵ Federal guidelines

32. O.C.G.A. § 19-6-30(c) (Supp. 1989).

33. Swain Interview, *supra* note 4.

34. O.C.G.A. §§ 19-6-31 to -33 (Supp. 1989).

35. O.C.G.A. § 19-6-32(c) (Supp. 1989).

36. Child Support Enforcement Amendments of 1984, Pub. L. No. 98-378, § 1305, 98 Stat. 1305 (1984); Family Support Act of 1988, Pub. L. No. 100-485, § 1305, 102 Stat. 2343 (1988); O.C.G.A. § 19-6-32(c) (Supp. 1989).

37. O.C.G.A. § 19-6-33(e) (Supp. 1989).

38. O.C.G.A. § 19-6-33(e)(8) (Supp. 1989).

39. O.C.G.A. § 19-6-33(e)(2) (Supp. 1989).

40. O.C.G.A. § 19-6-33(e)(5) (Supp. 1989).

41. O.C.G.A. § 19-6-33(e)(4) (Supp. 1989).

42. O.C.G.A. § 19-6-33(e)(7) (Supp. 1989).

43. *Id.*

44. HB 139, as introduced, 1989 Ga. Gen. Assem.

45. HB 139 (HCS), 1989 Ga. Gen. Assem.

require, however, that income deduction be available for all child support awards by 1994.⁴⁶

The Act also provides for periodic review and adjustment of child support orders by the Department of Human Resources.⁴⁷ The purpose of O.C.G.A. § 19-11-12 is to guard against stale orders by requiring a review of child support awards within thirty-six months.⁴⁸

Under the Act, an administrative order may modify a court order regarding the amount of child support.⁴⁹ Although this novel provision is susceptible to challenge, it would likely survive constitutional scrutiny because the administrative order adjusting a child support award may be appealed to a superior court.⁵⁰ Thus, the provision arguably does not impinge on the parent's constitutional rights.⁵¹

The review provision may create an ethical problem for the Department of Human Resources Child Support Division.⁵² Traditionally, the Department has represented the child's interest regarding the issue of child support.⁵³ The Code now requires the Department to represent either parent who requests a review of the child support order.⁵⁴ It therefore appears possible for the Department to be faced with a situation of representing both parent and child, whose interests may be adverse to one another.⁵⁵

The periodic review and adjustment of child support orders also creates a heavy administrative burden for the Department of Human Resources.⁵⁶ It is estimated that the Department now administers 100,000 obligated cases, in which there are enforceable orders, and 200,000 nonobligated cases, in which the department is seeking to locate the noncustodial parent.⁵⁷

On the whole, the Act provides clear guidelines for determining and enforcing child support award orders and meets the federal requirements. Standardized guidelines should promote settlement of child support cases, deter needless litigation,⁵⁸ and facilitate the enforcement of child support orders through the withholding of wages.⁵⁹

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46. Family Support Act of 1988, Pub. L. No. 100-485, § 1305, 102 Stat. 2343 (1988).

47. O.C.G.A. § 19-11-12 (Supp. 1989).

48. Swain Interview, *supra* note 4.

49. O.C.G.A. § 19-11-12(d) (Supp. 1989).

50. O.C.G.A. § 19-11-12(c) (Supp. 1989).

51. Swain Interview, *supra* note 4.

52. *Id.*

53. *Id.*

54. O.C.G.A. § 19-11-12(c) (Supp. 1989).

55. Swain Interview, *supra* note 4.

56. *Id.*

57. *Id.*

58. Oliver Interview, *supra* note 29.

59. Swain Interview, *supra* note 4.