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DOMESTIC RELATIONS Persons Owing Child Support: Require Employers to Report Certain Information

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DOMESTIC RELATIONS

Persons Owing Child Support: Require Employers to Report Certain Information

CODE SECTION:	O.C.G.A. § 19-11-9.1 (new)
BILL NUMBER:	HB 625
ACT NUMBER:	734
SUMMARY:	The Act imposes a statutory duty on state and local agencies and private employers to provide, upon the request of the Department of Human Resources, certain information about persons owing or allegedly owing a duty of support to a dependent child.
EFFECTIVE DATE:	July 1, 1987

History

In 1973, the Georgia Legislature passed the Child Support Recovery Act.[1] One provision of the Act required the Department of Human Resources (DHR) to attempt to obtain support for dependent children not being supported by their parents. DHR was mandated to locate absent parents and was given statutory authority to carry out this mandate.[2]

In the initial version of the Child Support Recovery Act, DHR was given authority to "request from any governmental department, board, commission, bureau or agency information and assistance."[3] The Act imposed a duty upon "[a]ll state, county and city agencies, officers and employees [to] cooperate in the location of parents who have abandoned or deserted children receiving public assistance with all pertinent information relative to the location, income and property of such parents, notwithstanding any provision of law making such information confidential."[4]

The legislature, in 1976, amended the Child Support Recovery Act.[5] The section pertaining to the location of absent parents was rewritten to entitle the commissioner or his representative to "have access to all perti-

1. 1973 Ga. Laws 192. One impetus for passage of the Act was compliance with federal guidelines, which are found at 42 U.S.C.A. § 651-67 (West 1982 & Supp. 1987).
2. 1973 Ga. Laws 192, 195 (codified at O.C.G.A. § 19-11-9 (Supp. 1987)).
3. 1973 Ga. L. 192 (formerly found at O.C.G.A. § 19-11-9(c)).
4. *Id.*
5. 1976 Ga. Laws 1537.

nent information which is within the custody of any governmental department, board, commission, bureau or agency, including, but not limited to, the Georgia Department of Revenue, and which is relative to such parent's location, income or property, notwithstanding any other provision of law making such information confidential or privileged."[6] The section also imposed a duty upon governmental units to "promptly provide such information."[7]

Prior law, allowing DHR to "examine any books, papers, or memoranda bearing upon the determination of the ability [of the parent] to support and [to] compel the attendance of witnesses and the production of relevant documents,"[8] was expanded to give DHR subpoena power. DHR also was authorized to apply to the superior court of the appropriate county for a court order to compel compliance with its requests.[9]

A new section of the Child Support Recovery Act also was enacted during the 1976 session to empower DHR to institute garnishment proceedings or to issue an order to withhold and deliver if a parent fails to make support payments which were overdue. The new statutory provision included requirements for notifying the parent that such actions were to be undertaken and imposed definite obligations of cooperation and compliance on the employers of these parents.[10]

During the 1977 session, the section of the Child Support Recovery Act dealing with DHR's rights and duties in obtaining information about absent parents was amended to authorize DHR to secure information from state and federal income tax returns in the custody of the state.[11] The Act was amended in 1981 to require an administrative hearing "[p]rior to the institution of garnishment proceedings or the issuance of an order to withhold and deliver . . . ."[12]

HB 625

Prior to the enactment of the 1987 amendment to the Child Support Recovery Act, it was unclear what duty, if any, private employers had to comply with requests from DHR for information about employees owing or allegedly owing child support obligations even though the employers had a clear duty to comply, under O.C.G.A. § 19-11-19, with garnishment orders and orders to withhold and deliver issued by DHR. Many employers, therefore, refused to cooperate with DHR because they feared that legal actions would be brought by employees who objected to having such

6. 1976 Ga. Laws 1537, 1541 (codified at O.C.G.A. § 19-11-9(c) (Supp. 1987)).
7. *Id.*
8. 1973 Ga. Laws 192, 196 (codified at O.C.G.A. § 19-11-11 (Supp. 1982)).
9. 1976 Ga. Laws 1537, 1542 (codified at O.C.G.A. § 19-11-9(c) (Supp. 1987)).
10. *Id.*
11. 1977 Ga. Laws 1279, 1280 (codified at O.C.G.A. § 19-11-9(c) (Supp. 1987)).
12. 1981 Ga. Laws 796, 797 (formerly found at O.C.G.A. § 19-11-19(b)(1) (1982)).

information released.[13] DHR and its Child Support Recovery Unit could make the requests for information from private employers, but there was neither authority to compel the employers to release the requested information nor clear guidelines on the extent of employer obligations.[14]

The Act enables DHR to secure information it needs to locate persons working in Georgia who are not meeting their child support obligations.[15] According to one of the sponsors of the bill, the Act "closes some gaps that needed to be closed."[16] One of the significant gaps closed by the new statute is protection of the employer from any civil liability for disclosure of the data since the employers are now under a statutory duty to release the information.[17] The statute, however, only specifically addresses the release of information "regarding the name, address and social security number of a person owing or allegedly owing an obligation of support."[18] A more complete statement probably would have included reference to other information needed to enforce support obligations.[19]

An amendment to HB 625 became section 2 of the bill. The amendment, however, is not really pertinent to HB 625,[20] but was attached because HB 625 offered a "convenient vehicle" for making some technical corrections to HB 302,[21] approved on March 9, 1987.[22]

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13. Telephone interview with John Croslin, Legislative Assistant, Commission on Human Resources (May 6, 1987) [hereinafter Croslin Interview].

14. Telephone interview with Representative George M. Brown, House District No. 88 (April 27, 1987) [hereinafter Brown Interview]. Employers had a basis for concern as evidenced by an unofficial opinion of the Georgia Attorney General in 1984: "The office of Child Support Recovery must obtain an administrative subpoena or use the discovery provisions of the Civil Practice Act in order to examine documents in the possession of employers where the employer will not voluntarily release the information." 1984 Op. Att'y Gen. No. U84-33.

15. Brown Interview, *supra* note 14.

16. *Id.*

17. Croslin Interview, *supra* note 13.

18. O.C.G.A. § 19-11-9.1 (Supp. 1987).

19. Telephone interview with Robert Swain, Deputy Director of the Office of Child Support Recovery (May 27, 1987). Mr. Swain stated that up to one-third of the case load are considered "current" because the child support obligations have been satisfied. Although most employers have cooperated with the Office of Child Support Recovery without the new guidelines, and others could be reached through the slow process of administrative subpoena, Mr. Swain believes HB 625 affords the office more leverage in obtaining the information they need to enforce child support obligations.

20. *Id.*

21. For a discussion of HB 302, see *Selected 1987 Georgia Legislation, Alimony and Child Support: Provide for Enforcement and Collection*, 3 GA. ST. U.L. REV. 424 (1987).

22. Telephone interview with Richard H. Stancil, Executive Assistant to Governor Joe Frank Harris (May 6, 1987). Stancil explained that technical corrections generally are made by the General Assembly in the year following passage of the bill; however, legislators considered these technical corrections of the effective dates for HB 302 im-

portant enough to be made during the 1987 session in order to alleviate confusion.

Although HB 625 may have been a "convenient vehicle" for making needed technical corrections to HB 302, such utilization of HB 635 potentially violates the Georgia Constitution, art. III, § 5, ¶ 3 which mandates that "[n]o bill shall pass which refers to more than one subject matter or contains matter different from what is expressed in the title thereof." While both bills pertain to domestic relations and amend Title 19 of the Code (HB 302 amends chapters 6 and 11; HB 625 adds a new section to chapter 11), the subject matter and scope of the two bills are diverse enough to raise a question about whether the amendment adding section 2 to the original version of HB 625 is sufficiently germane to that bill.

The Georgia Supreme Court has held that the constitutional prohibition against bills containing more than one subject matter "is mandatory . . . not directory." McCaffrey v. State, 183 Ga. 827, 830, 189 S.E. 825, 826 (1937); Black v. Jones, 190 Ga. 95, 97, 8 S.E.2d 385, 386 (1940). But, as the court recently pointed out, "An examination of the cases of this court over the last century reveals that the principles now found in Art. III, § V, ¶ III of the 1983 Georgia Constitution have been interpreted and applied to give broad legislative discretion within the Constitutional limits." American Booksellers Ass'n v. Webb, 254 Ga. 399, 400, 329 S.E.2d 495, 497 (1985). The court has declared that, "[a]s used in the Constitution, [subject matter] is to be given a broad and extended meaning so as to allow the legislature authority to include in one Act all matters having a logical or natural connection," Crews v. Cook, 220 Ga. 479, 481, 139 S.E.2d 490, 492 (1964), and that "[t]o constitute plurality of subject-matter, an Act must embrace two or more dissimilar and discordant subjects that by no fair intendment can be considered as having any logical connection or relation to each other." *Id.*

The court has also determined that "[t]he 'subject' of an act . . . is regarded as the matter or thing forming the groundwork of the act," Capitol Distrib. Co. v. Redwine, 206 Ga. 477, 486, 57 S.E.2d 578, 584 (1950), and "[a]ll that our Constitution requires is that the Act embrace only one general subject; and by this is meant, merely, that all matters treated by the Act should be so connected with or related to each other, either logically or in popular understanding as to be parts of, or germane to, one subject." Crews v. Cook, 220 Ga. at 481, 139 S.E.2d at 492.

Finally, the court has stated "[t]he test of whether an Act . . . violates the multiple subject matter rule is whether all of the parts of the Act . . . [is] germane to the accomplishment of a single objective." Carter v. Burson, 230 Ga. 511, 519, 198 S.E.2d 151, 156 (1973).

Under this test and the previous holdings of the Georgia Supreme Court, it is unlikely that the amendment adding section 2 to HB 625 would be considered violative of the one-subject rule. HB 302 pertains to practice and procedures for the enforcement and collection of child support and alimony. HB 625 strengthens DHR's ability to secure information related to child support and alimony. Enforcement and recovery of child support obligations then might be regarded as the matter or thing forming at least part of the groundwork for both acts. *Capitol Distrib. Co.*, 206 Ga. at 486, 57 S.E.2d at 584. Both acts treat matters that can be considered "so connected with and related to each other, either logically or in popular understanding, as to be part of, or germane to, one subject." *Crews*, 220 Ga. at 481, 139 S.E.2d at 492. Under the *Carter* test, both acts are "germane to the accomplishment of a single objective" in that they are concerned, at least in part, with enforcing child support obligations. Utilizing HB 625 for making necessary changes in HB 302 therefore may have been not only a "convenient vehicle," but a constitutionally valid one as well.