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DOMESTIC RELATIONS

Alimony and Child Support: Limit Issuance or Renewal of Licenses for Failure to Comply with Child Support Order

CODE SECTIONS: O.C.G.A. §§ 2-7-102, 7-1-1017 (amended), 12-6-49.1 (new), 19-5-12, 19-6-15 (amended), -28.1, 19-11-9.3 (new), 26-4-78, 33-23-21 to -22 (amended), 40-5-54.1 (new), -71, 43-1-19, 43-39A-14, 43-40-15 (amended)

BILL NUMBER: SB 227

ACT NUMBER: 747

GEORGIA LAWS: 1996 Ga. Laws 453

SUMMARY: The Act amends many provisions in the Code regarding licensing provisions for various professions, businesses, and drivers, as well as general child support and divorce provisions. Specifically, the Act allows for the suspension, revocation, and, in some cases, denial of licenses for failure to comply with an order for child support. The Act affects various pesticide licenses, drivers' licenses, licenses for mortgage lenders and brokers, professional foresters, pharmacists, real estate agents and brokers, and insurance agents, among others. The Act amends provisions relating to alimony and child support generally, as well as those regarding the computation and award of child support. The Act revises the form for final judgment and decree of divorce and provides for the issuance of certified state-wide lists of persons not in compliance with a court order for child support to certain licensing entities. It also provides various notice provisions to the delinquent obligor so that a person has the opportunity to comply prior to having his or her license revoked, denied, or suspended.

EFFECTIVE DATE: July 1, 1996¹

1. O.C.G.A. §§ 19-5-12 and 19-6-15 "shall apply with respect to cases pending . . . , as well as with respect to cases initiated on or after the effective date." 1996 Ga. Laws 453, § 16, at 468.

History

Failure to pay child support has become a significant problem in Georgia.² More than 200,000 parents in Georgia are failing to pay court-ordered child support;³ in 1995, only 41% of parents under a duty to pay child support paid what they owed.⁴ The Department of Human Resources and the Department of Family and Children Services (DFACS) encouraged the General Assembly to pass this type of legislation,⁵ and Governor Zell Miller, Senator Mary Margaret Oliver, and Lieutenant Governor Pierre Howard made a joint effort to pass such a bill.⁶ For the past three years, Georgia legislators had introduced similar legislation, but each year the legislation failed to pass the House Judiciary Committee.⁷ Thus, with the passage of SB 227, Georgia has finally joined thirty-one other states in adopting legislation to curb the problem of widespread failure to pay child support.⁸

While some believe the Act will keep licensed professionals and business people from making money to pay child support, thus aggravating the problem of unpaid child support, "[t]he idea, however, is not to punish parents, but to give states greater leverage in forcing them to pay."⁹ This Act is one of five bills that the General Assembly passed this year to protect the rights of women and children.¹⁰ It is also an effort to tie up loose ends that child support legislation in the past few years has not addressed.¹¹ The Act's effect may have an important impact on the psychological development of children who

2. Frederick D. Robinson, *Parental Responsibility; Time to Send a Strong Message to Deadbeats*, ATLANTA J. & CONST., Mar. 26, 1996, at A8.

3. *Id.*

4. *1996 Georgia General Assembly: Pay Child Support, or Walk*, ATLANTA J. & CONST., Feb. 16, 1996, at A10 [hereinafter *Pay Child Support, or Walk*].

5. Letter from Sen. Mark Taylor, Senate District No. 12, to author (June 8, 1996) [hereinafter *Taylor Letter*] (available in Georgia State University College of Law Library).

6. Telephone Interview with Rep. Thomas C. Bordeaux, Jr., House District No. 151 (June 19, 1996) [hereinafter *Bordeaux Interview*].

7. *Scare Parents into Paying Up*, ATLANTA J. & CONST., Mar. 16, 1996, at A12.

8. Laura Williamson, *'96 Georgia Legislature; Suspending Licenses of Deadbeat Parents; New Law: By Removing Earning Power, Does it Amount to a New-Style Debtor's Prison?*, ATLANTA J. & CONST., Mar. 24, 1996, at H5.

9. Robinson, *supra* note 2.

10. Laura Williamson, *Miller Signs New Speed Limits, 'Deadbeat Dad' Bill into Law*, ATLANTA J. & CONST., Apr. 3, 1996, at B3.

11. *Id.*; *Pay Child Support, or Walk*, *supra* note 4. "Gov. Zell Miller pledged he would strengthen a bill passed last year by the Senate that would suspend deadbeat parents' professional and business licenses. Miller said he wanted to add driver's licenses as well." *Pay Child Support, or Walk*, *supra* note 4.

benefit from child support, causing children to feel more cared for and protected by their parents.¹²

SB 227

The Act amends various licensing provisions and provisions relating to child support generally so as to restrict the issuance of licenses to persons who have not complied with an order for child support. The Act cross-references those child support provisions with practice acts for various professions, business regulations, and provisions relating to licenses in general.

Affected Practice Areas

The Act affects specific licensing provisions, including various pesticide licenses, professional forestry licenses, drivers' licenses, and licenses for pharmacists, insurance agents, and mortgage lenders and brokers.¹³ The original bill contained only a general blanket provision to limit the issuance or renewal of licenses to engage in "professions, businesses, and other occupations."¹⁴ It was necessary to make the Act more specific, however, because some practice areas are regulated by various departments, each with its own set of licensing provisions; for example, pest control licenses are regulated by the Department of Agriculture.¹⁵ Thus, to properly inform licensees and applicants under these various practice acts that their licenses could be revoked or suspended, it was necessary to specifically amend each affected practice act individually.¹⁶

The Act affects each of the various practice areas in substantially the same manner. For each affected practice area, the Act provides that the

12. Robinson, *supra* note 2.

13. See O.C.G.A. §§ 2-7-102, 7-1-1017, 26-4-78, 40-5-54.1, 43-39A-14, 43-40-15 (Supp. 1996); *id.* §§ 12-6-49.1, 33-23-21 to -22 (1996); Williamson, *supra* note 8.

The legislation covers all professions for which state boards issue licenses, including exterminators, plumbers, doctors, nurses and real estate brokers. Lawyers and teachers are exempt, because their licensing boards are not governed by state lawmakers. But the state Supreme Court, which licenses attorneys, and the Georgia Professional Standards Commission, which certifies teachers, may consider similar penalties.

Williamson, *supra* note 8.

14. SB 227, as introduced, 1996 Ga. Gen. Assem. The Act became more specific with regard to the affected practice acts and licensing provisions when it went to the House Judiciary Committee. See SB 227 (HCS), 1996 Ga. Gen. Assem.

15. Telephone Interview with Rep. Jim Martin, House District No. 47 (May 3, 1996) [hereinafter Martin Interview]; Bordeaux Interview, *supra* note 6.

16. Bordeaux Interview, *supra* note 6. Senator Taylor believed the specificity in the Act was necessary to protect the Act against anticipated legal challenges. Taylor Letter, *supra* note 5.

hearing and appeals procedure provided for in Code sections 19-6-28.1 and 19-11-9.3 shall be the only such procedures available under the various chapters.¹⁷ However, the individual licensing restrictions differ from one another in that in some sections the power to suspend, revoke, or deny a license is mandatory if the licensee or applicant has failed to comply with an order for child support, and in other sections the language is permissive.¹⁸ For example, the Act amends Code section 2-7-102 to provide that:

The Commissioner may suspend any pesticide contractor's license or certified commercial pesticide applicator's license, or refuse to grant or renew either license upon notice to the Commissioner by either a court of competent jurisdiction or the child support agency within the Department of Human Resources that: (1) The applicant for or holder of either such license is not in compliance with an order for child support as defined in Code Section 19-6-28.1 or 19-11-9.3.¹⁹

The provision relating to licenses for mortgage lenders and mortgage brokers is similarly changed with respect to a failure to comply with an order for child support.²⁰ The Act also adds new subsections to Code section 43-39A-14, relating to refusal of classification of real estate appraisers, and to Code section 43-40-15, relating to the grant, revocation, or suspension of real estate licenses.²¹ Those subsections provide that a failure to comply with a child support order is sufficient grounds for refusal, or suspension of a license.²²

The Act also creates Code section 12-6-49.1, relating to the practice of professional forestry, first providing definitions for the terms "agency,"²³ "compliance with an order for child support,"²⁴ and "proof

17. See, e.g., O.C.G.A. § 2-7-102 (Supp. 1996).

18. Compare *id.* § 2-7-102(c) (providing that "[t]he Commissioner *may* suspend" a noncomplying pesticide contractor's license) with *id.* § 12-6-49.1(b) (providing that "[t]he board *shall* suspend" a noncomplying forester's license) (emphasis added). None of the legislators interviewed remembered this difference as having major significance. One legislator suggested that it may have been the result of an editing oversight or a political compromise. Bordeaux Interview, *supra* note 6.

19. O.C.G.A. § 2-7-102(c)(1) (Supp. 1996).

20. *Id.* § 7-1-1017(a).

21. *Id.* §§ 43-39A-14(j), 43-40-15(k).

22. *Id.* §§ 43-39A-14(j), 43-40-15(k).

23. *Id.* § 12-6-49.1(a)(1) (1996). " 'Agency' means the agency within the Department of Human Resources which is responsible for enforcing orders for child support pursuant to Article 1 of Chapter 11 of Title 19, the 'Child Support Recovery Act.' " *Id.*

24. *Id.* § 12-6-49.1(a)(2). " 'Compliance with an order for child support' means, as set forth in a court order, administrative order, or contempt order for child support, the obligor is not more than 60 calendar days in arrears in making payments in full

of compliance.²⁵ It then provides that the board, in compliance with statutory hearings and appeals provisions, "shall" suspend or shall deny the application or renewal of a registered forester's license upon receipt of competent proof the licensee or applicant has not complied with an order for child support.²⁶

Code section 26-4-78 is amended to provide that, with respect to licenses for pharmacists, the board shall have the power, as provided in Code sections 19-6-28.1 or 19-11-9.3, to suspend any license issued or to deny the application for issuance or renewal of a license when the holder of or applicant for the license is not in compliance with an order for child support.²⁷ Code section 33-23-22, dealing with insurance agents and others, provides that the Commissioner "may" suspend or revoke any license, other than a probationary one, and shall give notice of this action to the licensee or applicant and to whomever that person represents or to whomever wants the licensee or applicant to be licensed.²⁸

General Child Support Provisions

The Act adds Code section 19-6-28.1 to the Code provisions relating to alimony and child support generally and the enforcement of court orders.²⁹ The Act defines the terms "license"³⁰ and "licensing entity,"³¹ cross-referencing all of the various practice acts that are

for current support, periodic payments on a support arrearage, or periodic payments on a reimbursement for public assistance." *Id.*

25. *Id.* § 12-6-49.1(a)(3). " 'Proof of compliance' means the notice of release issued by the agency or a court of competent jurisdiction stating that the delinquent obligor is in compliance with an order for child support." *Id.*

26. *Id.* § 12-6-49.1(b), (c).

27. *Id.* § 26-4-78(c) (Supp. 1996).

28. *Id.* § 33-23-22(a).

29. *Id.* § 19-6-28.1. This provision and the provisions relating to Code section 19-6-15 were the result of floor amendments offered by Tom Murphy, Speaker of the House. SB 227 (HCSFA), 1996 Ga. Gen. Assem.

30. O.C.G.A. § 19-6-28.1(a)(1) (Supp. 1996). " 'License' means a certificate, permit, registration, or any other authorization issued by the Department of Public Safety or any other licensing entity that allows a person to operate a motor vehicle or to engage in a profession, business, or occupation." *Id.*

31. *Id.* § 19-6-28.1(a)(2).

"Licensing entity" means any state agency, department, or board of this state which issues or renews any license, certificate, permit, or registration to authorize a person to drive a motor vehicle, or to engage in a profession, business, or occupation including those under Article 3 of Chapter 7 of Title 2, the 'Georgia Pesticide Use and Application Act of 1976'; Article 13 of Chapter 1 of Title 7, relating to mortgage lenders and mortgage brokers; Part 2 of Chapter 6 of Title 12, relating to foresters; Part 3 of Chapter 4 of Title 26, relating to pharmacists; Chapter 23 of Title 33, relating to insurance agents, counselors, and

affected by this Act.³² The Act states that if the court in a proceeding for enforcement of child support finds that the respondent has accumulated arrears up to or greater than sixty days, and is licensed to conduct a profession or business, is licensed to drive, or has a vehicle registered in his or her name, the court may order the appropriate licensing entity to “suspend the license or registration or deny the application for such license and to inform the court of the actions it has taken pursuant to such proceedings.”³³ In making its determination, however, the court shall take into account the ability and willingness of the respondent to comply with the child support order.³⁴ The Act further provides that the court shall notify the respondent that evidence necessary to prove to the appropriate licensing agency that he or she is in compliance with a child support order “shall be written proof of payment by cash or a certified check, notice issued by the court, or notice from a child support receiver, if such receiver has been appointed.”³⁵

The Act amends Code section 19-5-12, relating to the preparation of a judgment for divorce.³⁶ Most of the changes in this Code section were minor. The Act adds explanatory language to the sample “Final Judgment and Decree” form provided by the Code.³⁷ The Act divides the applicable provisions used in preparing a judgment for divorce into four subsections.³⁸ The Act amends Code section 19-6-15, relating to the computation and award of child support, by adding a provision that limits the child support provisions to divorces involving minor children.³⁹

The Act amends the “Child Support Recovery Act” by adding a new Code section 19-11-9.3 that defines the following terms: “agency,”⁴⁰ “applicant,”⁴¹ “certified list,”⁴² “compliance with an order for child

other personnel; Chapter 1 of Title 43, relating to professions and businesses; Chapter 39A of Title 43, relating to real estate appraisers; or Chapter 40 of Title 43, relating to real estate brokers and salespersons.

Id.

32. *Id.*

33. *Id.* § 19-6-28.1(b).

34. *Id.* These provisions were added to satisfy due process requirements and to prevent those persons unable to pay from going to “debtor’s prison.” Martin Interview, *supra* note 15.

35. O.C.G.A. § 19-6-28.1(c) ((Supp. 1996).

36. *Id.* § 19-5-12.

37. *See id.*

38. *See id.* § 19-5-12(a) to (d).

39. *Id.* § 19-6-15(a).

40. *Id.* § 19-11-9.3(a)(1). “ ‘Agency’ means the agency within the Department of Human Resources which is responsible for enforcing orders for child support pursuant to this article.” *Id.*

41. *Id.* § 19-11-9.3(a)(2). “ ‘Applicant’ means any person applying for issuance or

support,⁴³ “delinquent obligor,”⁴⁴ “department,”⁴⁵ “license,”⁴⁶ “licensee,”⁴⁷ and “licensing entity.”⁴⁸ The Act provides that an agency within the Department of Human Resources (Agency) shall maintain a state-wide certified list, updated monthly, of all persons who have been reported as not having complied with a child support order, and shall submit the name of each person on the list to each licensing entity.⁴⁹ The Act further provides that when the licensing entity receives the list, it shall determine whether one of its licensees or applicants is on the list; if so, it shall notify the Agency, which shall notify the individual of its intent to request that the licensing entity suspend or withhold issuance or renewal of the individual’s license.⁵⁰

The notice provisions in this Code section provide needed protection for the obligor.⁵¹ The Agency shall send the obligor notice by first class mail, and, although receipt may be presumed if the mailing is not returned to the department within thirty days from the mailing date, the obligor must continue to show up as delinquent on the next month’s certified list in order for the Agency to contact the licensing entities regarding suspension, denial, or revocation of the obligor’s license.⁵² This provision is designed as a safeguard for an obligor who never received the letter and whose letter was never returned to the state or for an obligor who received the letter, but never responded to it.⁵³

If the obligor is still listed as being delinquent the following month, there has been no response to the notice, and the Agency requests that one or more licensing entities deny or suspend the obligor’s license, then the “entity shall notify the delinquent obligor by certified mail of

renewal of a license.” *Id.*

42. *Id.* § 19-11-9.3(a)(3). “ ‘Certified list’ means a list provided by the agency of the names of support obligors found to be not in compliance with an order for child support in a case being enforced under this article.” *Id.*

43. *Id.* § 19-11-9.3(a)(4); *see supra* note 24 (defining “compliance with an order for child support”).

44. O.C.G.A. § 19-11-9.3(a)(5) (Supp. 1996). “ ‘Delinquent obligor’ means any obligor who is not in compliance with an order for child support and who appears on the agency’s certified list.” *Id.*

45. *Id.* § 19-11-9.3(a)(6). “ ‘Department’ means the Department of Human Resources.” *Id.*

46. *Id.* § 19-11-9.3(a)(7); *see supra* note 30 (defining “license”).

47. O.C.G.A. § 19-11-9.3(a)(8) (Supp. 1996). “ ‘Licensee’ means any person holding a license.” *Id.*

48. *Id.* § 19-11-9.3(a)(9); *see supra* note 31 (defining “licensing entity”).

49. O.C.G.A. § 19-11-9.3(b) (Supp. 1996); Williamson, *supra* note 8.

50. O.C.G.A. § 19-11-9.3(c) to (e) (Supp. 1996); Williamson, *supra* note 8.

51. Telephone Interview with Rep. Robert Reichert, House District No. 126 (Apr. 25, 1996) [hereinafter Reichert Interview].

52. O.C.G.A. § 19-11-9.3(f), (g) (Supp. 1996).

53. Reichert Interview, *supra* note 51.

the date that the license has been denied or suspended.⁵⁴ This provision is designed as a safeguard, not only for the obligor, but for the many innocent people who could be affected by this provision.⁵⁵ If a licensee is already in possession of his or her license and is not aware that action has been taken to suspend that license, the licensee will presume that he or she still has a valid license.⁵⁶ Thus, if a real estate broker, for example, is selling commercial real estate with a suspended license, the deal is bad.⁵⁷ Although the licensee will presumably know that the licensing entity was in the process of suspending his license if he received the first letter, he may not know when the suspension takes effect.⁵⁸

The only hearing and appeals process available provides that all delinquent obligors shall have the right to a hearing before an administrative law judge, but the obligor must request such hearing within twenty days of service of notice.⁵⁹ The issues at the hearing shall be limited to whether the obligor is covered by and in compliance with an existing child support order, whether the obligor shall pay past due child support, and whether the obligor has the willingness and ability to comply.⁶⁰ The necessity for such a provision is to protect the obligor's due process rights; sometimes an obligor just cannot pay.⁶¹

The obligor's inability to pay, however, is a valid excuse to avoid revocation of a license.⁶² The legislators recognized the inherent tension in wanting a parent to meet his or her obligation to pay child support and making sure that person continues to have a right to earn a living.⁶³ This provision is designed to alleviate that tension; a person should not lose his job because he cannot meet the court-ordered obligation.⁶⁴ The hearing decision shall be subject to administrative appeal.⁶⁵

The Act further provides procedures relating to release forms that the Agency shall send to both the licensing entity and obligor if the

54. O.C.G.A. § 19-11-9.3(g) (Supp. 1996).

55. Reichert Interview, *supra* note 51.

56. *Id.*

57. *Id.*

58. *Id.*

59. O.C.G.A. § 19-11-9.3(f), (h)(1) to (5) (Supp. 1996). The General Assembly implemented these safeguards in preparation for expected legal challenges to professional license suspensions or revocations for failure to pay court-ordered child support. Taylor Letter, *supra* note 5.

60. O.C.G.A. § 19-11-9.3(h) (Supp. 1996).

61. Martin Interview, *supra* note 15.

62. Bordeaux Interview, *supra* note 6.

63. *Id.*

64. *Id.*

65. O.C.G.A. § 19-11-9.3(i) (Supp. 1996).

obligor is found unable to comply.⁶⁶ It provides administrative procedures for the Department of Human Resources to follow regarding payment to the child support recipient and a report to be made to the Governor and General Assembly on or before January 1, 1998 regarding the progress of this procedure.⁶⁷

*General Licensing Provisions*⁶⁸

The Act adds Code section 40-5-54.1 to the Code provision relating to cancellation, suspension, and revocation of licenses.⁶⁹ First, that Code section provides definitions for the terms “agency,”⁷⁰ “compliance with an order for child support,”⁷¹ and “proof of compliance.”⁷² It then provides that the department shall suspend the driver’s license of anyone not in compliance with an order for child support,⁷³ which suspension shall be for an indefinite period until the obligor provides proof of compliance.⁷⁴ As with the provisions for professional practice areas, the hearing and appeals procedure pursuant to Code sections 19-6-28.1 or 19-11-9.3 shall be the only adjudication available under this Code section.⁷⁵

Pursuant to section 40-5-54.1, a driver whose license has been suspended may apply for a restricted driving permit as provided in Code section 40-5-71.⁷⁶ Allowing drivers to apply for a restricted permit, but not allowing obligors in the various professional practices to apply for restricted practice permits appears inequitable, but the drivers’ license provisions affect a broader segment of the community.⁷⁷ People need to have a driver’s license in order to get to and from work so that they can earn the money to pay the child support.⁷⁸ Some legislators argued that if professional licenses are revoked, delinquent obligors would no longer be able to work to earn

66. *Id.* § 19-11-9.3(j).

67. *Id.* § 19-11-9.3(k) to (m).

68. Representative Woods offered an amendment to the bill that was not included in the Act as passed. See SB 227 (HFA), 1996 Ga. Gen. Assem. He wanted to amend Code section 40-2-135 to require the Commissioner to revoke license plates or renewal decals for failure to comply with an order for child support. *Id.*

69. O.C.G.A. § 40-5-54.1 (Supp. 1996).

70. *Id.* § 40-5-54.1(a)(1); see *supra* note 40 (defining “agency”).

71. O.C.G.A. § 40-5-54.1(a)(2) (Supp. 1996); see *supra* note 24 (defining “compliance with an order for child support”).

72. O.C.G.A. § 40-5-54.1(a)(3) (Supp. 1996); see *supra* note 25 (defining “proof of compliance”).

73. O.C.G.A. § 40-5-54.1(b) (Supp. 1996).

74. *Id.* § 40-5-54.1(c).

75. *Id.* § 40-5-54.1(d).

76. *Id.* §§ 40-5-54.1(e), -71(d).

77. Martin Interview, *supra* note 15.

78. *Id.*

the money to pay child support.⁷⁹ However, there are enough safeguards built into the Act that only the worst, intentional offenders will lose their licenses.⁸⁰

A new subsection was added to Code section 43-1-19, relating to grounds for revoking or refusing to grant licenses in general, to include the failure to comply with an order for child support.⁸¹ It also puts the onus on the licensee or applicant to supply a notice of release to the board should that person come into compliance with the order so that a license may be issued or granted.⁸²

Joanna B. Bossin

79. Bordeaux Interview, *supra* note 6.

80. *Id.*

81. O.C.G.A. § 43-1-19(a)(11) (Supp. 1996).

82. *Id.*