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## DOMESTIC RELATIONS

### *Alimony and Child Support Generally: Provide for Accident and Sickness Insurance Coverage for Children*

CODE SECTIONS: O.C.G.A. §§ 19-6-15, 19-11-26 to -27 (amended),  
-28 to -31, 33-24-55 (new)

BILL NUMBER: HB 1515

ACT NUMBER: 1226

SUMMARY: The Act provides for a mechanism for the Department of Human Resources, the Department of Medical Assistance, or a custodial parent to require a support-paying parent's employer to obtain court-ordered accident and sickness insurance on behalf of the parent's child. The Act provides for criminal and civil penalties for any employer who does not abide by an enrollment order.

EFFECTIVE DATE: July 1, 1994

#### *History*

The 1994 Georgia General Assembly saw public debate over the issue of child support. The most publicized bill, HB 642, which would have changed the way the noncustodial parent's child support payments were calculated, died in the Senate Judiciary Committee.<sup>1</sup>

HB 1515 was introduced at the request of the Georgia Department of Human Resources (DHR).<sup>2</sup> In 1993, Congress passed the Omnibus Budget Reconciliation Act of 1993,<sup>3</sup> which required states to comply with federal guidelines pertaining to paternity cases and health insurance for dependent children.<sup>4</sup> DHR had received correspondence from the United States Department of Health and Human Services (HHS) indicating that Georgia was not in compliance with those guidelines.<sup>5</sup> If Georgia had not developed better procedures to regulate

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1. Shelley Emling, *Legislature '94: Many Key Bills Died on the Floor Some Legislators Cited Time Limitations*, ATLANTA CONST., Mar. 18, 1994, at C4; see also, *Under the Gold Dome Child Support: Keep Formulas Fair*, ATLANTA CONST., Mar. 9, 1994, at A14. However, HB 1515 established a Joint Study Committee on Child Support to address concerns regarding payments of child support. See *infra* notes 37-38 and accompanying text.

2. Telephone Interview with Rep. Cathy Cox, House District No. 160 (Mar. 25, 1994) [hereinafter Cox Interview].

3. Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, 107 Stat. 312.

4. *Id.*

5. *Id.*

health insurance for children in support cases, Georgia risked a \$3.1 million sanction from HHS.<sup>6</sup> Additionally, Georgia risked losing the entire \$40 million in federal funds received under Title IV-D.<sup>7</sup>

Prior to passage of the Act, if a support-paying parent had been ordered to provide health insurance for a dependent child and the support-paying parent failed or refused to do so, the only alternative was to take the support-paying parent back to court and hold that parent in contempt.<sup>8</sup> The Act provides for a mechanism whereby the health insurance can be obtained for the child without having to take the support-paying parent back to court.<sup>9</sup>

### *HB 1515*

The Act amends Code section 19-11-26 to allow DHR or a court to determine whether accident sickness coverage is available through the employer or the union of the person providing child support.<sup>10</sup> If this coverage is available, a court or administrative hearing officer may include in a child support order an order of medical support.<sup>11</sup> The Act also requires that the order notify the obligor that failure to provide coverage may result in direct enforcement of a support order issued by a court or DHR.<sup>12</sup>

Additionally, amended Code section 19-11-27 provides for the Department of Medical Assistance (DMA) to compel a child support obligor to obtain accident and sickness insurance.<sup>13</sup> If the child support obligor fails to provide accident and sickness coverage, DHR, DMA, or the custodial parent may send a notice of enrollment to the employer or union.<sup>14</sup> This notice shall include a certified copy of the court order requiring that health insurance be made available to the child.<sup>15</sup> Receipt of this notice requires the employer or union to provide accident and sickness insurance for the child<sup>16</sup> and to withhold from the obligor's paycheck an amount to pay for the premium.<sup>17</sup>

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6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. O.C.G.A. § 19-11-26(a) (Supp. 1994). The original bill was introduced by Rep. Cathy Cox. HB 1515, as introduced, 1994 Ga. Gen. Assem.

11. O.C.G.A. § 19-11-26(b) (Supp. 1994). Under former Code section 19-11-26(b), only a court had authority to enter a medical support order. *Id.* § 19-11-26(b) (1991). Moreover, a court had discretion to issue such an order if the coverage was reasonably available and reasonably priced. *Id.*

12. *Id.* § 19-11-26(c) (Supp. 1994).

13. *Id.* § 19-11-27(a) (Supp. 1994).

14. *Id.* § 19-11-27(b) (Supp. 1994).

15. *Id.*

16. *Id.* § 19-11-27(b) (Supp. 1994).

17. *Id.* § 19-11-27(c) (Supp. 1994).

Furthermore, the employer or union must notify the person or entity sending the notice that the child is enrolled in the accident and sickness coverage or notice that such coverage is not available.<sup>18</sup>

Additionally, the Act provides that the signature of the obligee or an agent of the department shall constitute authorization to any insurer to make payments under the policy to a healthcare provider.<sup>19</sup> Furthermore, an order of medical support “shall operate as an assignment to the support obligee of any rights to benefits” under an obligor’s policy.<sup>20</sup> The rights of the support obligee are subrogated to the rights of the support obligor.<sup>21</sup> The Act requires insurers to accept enrollment of a child without regard to whether the child “was born out of wedlock, is not claimed as a dependent on the parent’s federal income tax return, or does not reside with the parent or in the insurer’s service area.”<sup>22</sup>

Finally, the Act provides for civil penalties for failure to enroll a child in accident and sickness coverage following receipt of an order of medical support or a notice to enroll.<sup>23</sup> Additionally, civil penalties are provided for disenrollment of a child from accident and sickness coverage.<sup>24</sup>

HB 1515 was originally introduced in the House and referred to the House Committee on Judiciary.<sup>25</sup> The House Committee on Judiciary released the bill with a minor technical amendment.<sup>26</sup> This version passed the House and was forwarded to the Senate.<sup>27</sup>

The Senate Judiciary Committee replaced the bill with a substitute.<sup>28</sup> The substitute amended Code section 19-6-15 to provide that during a custody or child support hearing, the trier of fact shall determine if accident and sickness insurance is reasonably available through employment or other group coverage.<sup>29</sup> If this coverage is available, the trier of fact shall order the support-paying parent to

18. *Id.*

19. *Id.* § 19-11-28(b) (Supp. 1994).

20. *Id.* § 19-11-28(c) (Supp. 1994).

21. *Id.*

22. *Id.* § 19-11-29(b) (Supp. 1994).

23. *Id.* § 19-11-29(a) (Supp. 1994). The civil penalty shall not exceed \$1000 per occurrence. *Id.*

24. *Id.* § 19-11-29(c) (Supp. 1994). The civil penalty shall not exceed \$1000 per occurrence. *Id.*

25. Final Composite Status Sheet, Mar. 16, 1994.

26. HB 1515 (HCA), 1994 Ga. Gen. Assem. The amendment replaced “19-11-27” with “19-11-26.” Compare HB 1515, as introduced, 1994 Ga. Gen. Assem. with HB 1515, (HCA), 1994 Ga. Gen. Assem.

27. Final Composite Status Sheet, Mar. 16, 1994.

28. HB 1515 (SCS), 1994 Ga. Gen. Assem.

29. O.C.G.A. § 19-6-15(a) (Supp. 1994).

obtain the coverage.<sup>30</sup> If this coverage is not available, the trier of fact shall order the obligor to obtain this coverage when it becomes available.<sup>31</sup>

Additionally, the Senate committee version states that applying the child support guidelines, which are a percentage of the support-paying parent's gross income, would create a rebuttable presumption that the amount awarded is "the correct amount of support to be awarded."<sup>32</sup> The presumption shall be rebutted upon a written finding or specific finding that the award would be unfair.<sup>33</sup> If the court varies the amount of child support, one of the factors the court may consider is the cost of providing the accident and sickness coverage.<sup>34</sup>

Also, the Senate committee substitute bill provided that an order for medical support does not require any insurance plan to provide any type of coverage or benefit.<sup>35</sup> However, the Act provides regulations to implement the requirements of the Act by amending chapter 24 of title 33.<sup>36</sup>

The Senate introduced a floor substitute which provided for the creation of a Joint Study Committee on Child Support.<sup>37</sup> The purpose of the committee is to conduct a study of all issues relating to child support and to make a recommendation, if any, by December 1, 1994.<sup>38</sup>

30. *Id.*

31. *Id.*

32. HB 1515 (SCS), 1994 Ga. Gen. Assem. This provision was included in the final version of the bill. O.C.G.A. § 19-6-15(b)(5) (Supp. 1994).

33. O.C.G.A. § 19-6-15(b)(5) (Supp. 1994).

34. *Id.* § 19-6-15(c)(16) (Supp. 1994).

35. HB 1515 (SCS), 1994 Ga. Gen. Assem. This provision was included in the final version of the bill. O.C.G.A. § 19-11-26(e) (Supp. 1994).

36. O.C.G.A. § 33-24-55 (Supp. 1994) (relating to regulation of health insurance). An insurer can refuse coverage for any child based on usual underwriting reasons, such as a pre-existing condition. Cox Interview, *supra* note 2.

37. HB 1515 (SFS), 1994 Ga. Gen. Assem. This provision was included in the final version of the bill. O.C.G.A. § 19-11-31(a) (Supp. 1994). The 1993 legislative session saw much discussion concerning modifying the method used to determine the support-paying parent's obligation. Cox Interview, *supra* note 2. One method would have calculated child support payments based on the support-paying parent's net income, rather than gross income as determined under the current system. Another method would have used the Income Shares Model to calculate support payments. *Id.* Proponents of changing the method of determining child support payments tried to amend HB 1515 to include provisions to change the method of child support. *Id.* Rather than jeopardize HB 1515, which was designed to place Georgia in compliance with federal guidelines, and change the method of calculating child support payments based on a few hours of legislative debate, a compromise was reached so the Committee could study and evaluate the current system and develop some alternative options. *Id.*

38. O.C.G.A. § 19-11-31(a)-(b) (Supp. 1994).

Additionally, the Senate floor substitute added a Code section which would have required the agency within DHR responsible for enforcing child support order to compile a list of delinquent support-paying parents.<sup>39</sup> The Senate approved the bill and sent it to the House.<sup>40</sup> A House floor amendment eliminated the provision requiring DHR and the Child Support Recovery Office to notify licensing boards to withhold licenses from licensees or applicants who are in default of child support payments.<sup>41</sup> Additionally, the House floor amendment provided a mechanism for a court to order the support-paying parent to contribute to the cost of accident and sickness coverage provided under employment or group coverage of the nonsupport-paying parent.<sup>42</sup> The House approved the bill with the floor amendment.<sup>43</sup> The Senate approved the final House version of the bill.<sup>44</sup>

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39. Cox Interview, *supra* note 2; see HB 1515 (SFS), 1994 Ga. Gen. Assem.. The agency would then ensure that any state board that issues any type of business or professional license or registration would be informed of those applicants who are in default of child support payments. HB 1515 (SFS), 1994 Ga. Gen. Assem. The board would then refuse either to issue or re-issue the license. *Id.* The Senate floor substitute also provided a mechanism for appeals and hearings for persons affected by this provision. *Id.* This measure was advocated by Lieutenant Governor Pierre Howard. *The 1994 Legislature, Session in Brief: Legislation Goes After Deadbeat Parents*, ATLANTA CONST., Jan. 28, 1994, at F4.

40. Final Composite Status Sheet, Mar. 16, 1994.

41. Compare HB 1515 (HFA), 1994 Ga. Gen. Assem. with HB 1515 (SFS), 1994 Ga. Gen. Assem. Rep. Cox, as well as other members of the House, opposed this section. Many House members felt that if support-paying parents lost a professional license, they would not be able to make support payments and would never clear their balances. If this section had remained in the bill and as a result the bill had not passed the House, federal funding would have been in jeopardy of being terminated. Cox Interview, *supra* note 2. See 42 U.S.C. §§ 651-69 (1988 & Supp. 1992) (outlining state requirements for federal funding of state child support programs); 42 U.S.C. § 603(h) (1988) (establishing penalties for a state's failure to comply with federal requirements).

42. O.C.G.A. § 19-6-15(a) (Supp. 1994).

43. Final Composite Status Sheet, Mar. 16, 1994.

44. *Id.*