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DOMESTIC RELATIONS Alimony and Child Support Generally: Provide a Right to a Hearing When an Income Deduction Is Ordered Because of a One-Month Delinquency in Child Support; Provide Removal of Certain Exceptions to Applicability in Income Deductions

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DOMESTIC RELATIONS

*Alimony and Child Support Generally: Provide a Right to a Hearing
When an Income Deduction Is Ordered Because of a One-Month
Delinquency in Child Support; Provide Removal of Certain
Exceptions to Applicability in Income Deductions*

CODE SECTIONS: O.C.G.A. §§ 19-6-30, -33 (amended)
BILL NUMBER: SB 555
ACT NUMBER: 1186
SUMMARY: This portion of the Act accomplishes a housekeeping task of cleaning up a portion of chapter 6 of title 19, relating to the inclusion of non-Title IV obligors in income deduction orders. Further, the Act eliminates the fifteen-day waiting period previously allotted a child support obligor after an order was entered as an opportunity to contest an income deduction which was issued upon a showing of a one-month delinquency. Under the Act, the obligor may request a hearing within fifteen days after receiving notice of delinquency. However, if the obligor does not exercise this right, the income deduction order takes effect without a hearing and without the additional fifteen days which were previously provided to contest the order.

EFFECTIVE DATE: April 14, 1994

History

In 1993, the Georgia General Assembly amended Code section 19-6-32 to remove the exemption expressly excluding all orders, other than Title IV-D¹ orders, from income deduction requirements.² However,

1. A support case is classified as a Title IV-D case when the custodial parent who is to receive the support is a welfare recipient. *See* 42 U.S.C. §§ 651-69 (1988 & Supp. IV 1992) (outlining state requirements for federal funding of state child support programs). Title IV-D orders apply to Aid to Families with Dependent Children recipients when the court orders automatic income deductions from the wages of noncustodial parents. Telephone Interview with Thomas Wade, Georgia Department of Human Resources (Sept. 28, 1994) [hereinafter Wade Interview].

2. *Compare* 1989 Ga. Laws 861, 865 (formerly found at O.C.G.A. § 19-6-32 (1991)) with O.C.G.A. § 19-6-32 (Supp. 1994). For an analysis of the 1993 legislation, see *Legislative Review*, 10 GA. ST. U. L. REV. 118 (1993). The term "income deduction" when used herein refers to an automatic deduction from the income of a noncustodial parent who is obligated to pay child support under court order. Wade Interview,

when the 1993 change was made, Code section 19-6-30(c) still read as follows:

All Title IV-D (child support recovery) cases involving orders of support of a child or spouse entered or modified prior to July 1, 1989, or thereafter shall be subject to income deduction as defined in Code Sections 19-6-31, 19-6-32, and 19-6-33. Except as provided in Code Section 19-6-29, relating to the inclusion of provision for accident or sickness insurance coverage in support orders, *all other orders are expressly excluded from the application of these provisions.*³

Thus, Code section 19-6-30(c) required an exclusion of non-Title IV-D orders, contradicting the provisions in Code section 19-6-32 which provide a means to bring all child support orders within the authority of the courts to issue income deductions.⁴

Furthermore, a routine audit of the administration of the state's welfare program by the federal government indicated that Georgia was not in compliance with the Family Support Act of 1988⁵ requiring an employer to immediately begin automatic income deductions upon an income deduction court order finding a one-month delinquency in child support.⁶ Under the previous law, the delinquent parent had fifteen days to appeal an income deduction order.⁷ However, the federal government interpreted "immediately" to require that income deductions begin the pay period after entry of order, thus requiring the elimination of a right of appeal after entry of an income deduction order.⁸

According to the bill's sponsor, Senator Stephen Farrow, federal matching funds for the child support program in Georgia would have been discontinued unless Georgia made this change.⁹ In 1993, Georgia child support programs received approximately thirty million dollars.¹⁰

supra note 1.

3. 1992 Ga. Laws 1265 (formerly found at O.C.G.A. § 19-6-30(c) (Supp. 1993)) (emphasis added).

4. Compare 1992 Ga. Laws 1264, 1265 (formerly found at O.C.G.A. § 19-6-30(c) (Supp. 1993)) with O.C.G.A. § 19-6-32(a.1)(1) (Supp. 1994).

5. Family Support Act of 1988, Pub. L. No. 100-485, 102 Stat. 2343 (codified in scattered sections of 42 U.S.C.).

6. Wade Interview, *supra* note 1.

7. 1989 Ga. Laws 862, 870 (formerly found at O.C.G.A. § 19-6-33(c)(1) (Supp. 1993)).

8. Wade Interview, *supra* note 1.

9. Telephone Interview with Sen. Stephen Farrow, Senate District No. 54 (Mar. 24, 1994) [hereinafter Farrow Interview].

10. *Legislative Review*, *supra* note 2, at 119.

*SB 555**Removal of Certain Exceptions to Applicability of Income Deductions*

This portion of the Act¹¹ amends Code section 19-6-30(c) by deleting the last sentence in the 1993 version of that subsection.¹² This deletion was necessary to correct a technical error in the statute resulting from a 1993 amendment expanding coverage of income deduction requirements to non-Title IV obligors.¹³ The deleted phrase was inconsistent with the statutory requirement that *all* child support orders be subject to an income deduction.¹⁴ This portion of the Act, removing exceptions to applicability of income deduction, was added by the Senate Judiciary Committee to the original bill as introduced.¹⁵ The version offered by the Senate Judiciary Committee remained unchanged and this version was adapted by both houses.¹⁶

Right to Hearing Upon Income Deduction Orders

This portion of the Act amends title 19 to eliminate the fifteen-day waiting period allowed in the previous law before the income deduction order could take effect.¹⁷ Previously, the obligor had fifteen days after service of notice of delinquency, in addition to fifteen days after the entry of an order, to apply for a hearing to contest the enforcement of an income deduction order.¹⁸ The Act still provides an obligor fifteen days from service of notice of delinquency in which to apply for a

11. SB 555 affects three separate titles of the Code: title 19, Domestic Relations; title 50, State Government; and title 17, Criminal Procedure. Furthermore, SB 555 affects three separate chapters in title 19. This *Peach Sheet* only addresses the changes made to title 19, chapter 6, Alimony and Child Support Generally. See *Legislative Review*, 11 GA. ST. U. L. REV. 180 (1994) for legislation affecting title 19, Domestic Relations, chapter 13, Family Violence and *Legislative Review*, 11 GA. ST. U. L. REV. 129 (1994) for legislation affecting title 17, Criminal Procedure, chapter 6, Bonds and Recognizances. No treatment is given to the rest of the Act, which affects the following code sections: O.C.G.A. §§ 19-7-27, -40 (requiring hospital assistance in establishing paternity and providing for administrative hearings to establish paternity); § 19-11-14 (giving full faith and credit to foreign states' administrative tribunal decisions establishing paternity); and § 50-13-13 (empowering administrative agencies with the same procedural enforcement as judicial courts).

12. Compare 1992 Ga. Laws 1265 (formerly found at O.C.G.A. § 19-6-30(c) (Supp. 1993)) with O.C.G.A. § 19-6-30(c) (Supp. 1994); see *supra* text accompanying note 3.

13. Wade Interview, *supra* note 1; see *supra* notes 1-2 and accompanying text.

14. Compare 1992 Ga. Laws 1264, 1265 (formerly found at O.C.G.A. § 19-6-30(c) (Supp. 1993)) with O.C.G.A. § 19-6-32 (Supp. 1994).

15. Farrow Interview, *supra* note 9; SB 555 (SCS), 1994 Ga. Gen. Assem.

16. Compare SB 555 (SCS), 1994 Ga. Gen. Assem. with O.C.G.A. § 19-6-30(c) (Supp. 1994).

17. Compare O.C.G.A. § 19-6-33(c)(1) (Supp. 1994) with 1989 Ga. Laws 861, § 3.

18. Compare 1989 Ga. Laws 861, § 3 (formerly found at O.C.G.A. § 19-6-33(c)(1) (Supp. 1993)) with O.C.G.A. § 19-6-33(c)(1) (Supp. 1994).

hearing to contest "the enforcement of the income deduction order on the ground of mistake of fact regarding the amount of support owed pursuant to a support order, the amount of arrearage of support, or the identity of the obligor."¹⁹ However, the Act provides that an order is automatically enforceable fifteen days after the obligor receives notice of delinquency.²⁰

Senator Farrow introduced SB 555 in the Senate at the request of Tom Wade of the Department of Human Resources.²¹ The Act's purpose is to bring Georgia in compliance with federal guidelines and auditing standards.²² The portions of the bill affecting chapter 6 of title 19 passed in the Senate as originally drafted.²³ However, House Representative Billy Randall attempted to amend the bill on the House floor by tacking to it a controversial provision which would change child support guidelines.²⁴ The controversial language Representative Randall added to the bill failed on the House floor.²⁵ Subsequently, the bill passed the House as originally drafted.²⁶

The defeat of the Child Support Guidelines as an amendment to SB 555 was attributed in part to the women's caucus in the House and in part to the House's reluctance to jeopardize federal funding of Georgia's income assistance program.²⁷

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19. O.C.G.A. § 19-6-33(c)(1) (Supp. 1994).

20. *Id.*

21. Farrow Interview, *supra* note 9.

22. *Id.*

23. *Id.*; see Final Composite Status Sheet, Mar. 16, 1994.

24. Farrow Interview, *supra* note 9. The House originally passed the bill changing child support guidelines as HB 642. The bill required the court to consider both the net and gross incomes of the mother and father when setting child support. The bill received a good deal of criticism from women's groups. *Id.*

25. Telephone Interview with Thomas Wade, Georgia Department of Human Resources (Oct. 6, 1994).

26. Farrow Interview, *supra* note 9.

27. *Id.*