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## DOMESTIC RELATIONS Alimony and Child Support: Change Provisions Relating to the Calculation of Child Support; Clarify the Appeal Process in Certain Domestic Relations Cases; Clarify the Calculation of the Amount of Interest on Arrearage of Child Support; Clarify Definitions; Provide Guidelines for Determining the Amount of Child Support to Be Paid; Change Provisions Relating to Guidelines for Calculating Child Support; Reorganize Code Section 19-6-15, Relating to Guidelines for Calculating Child Support to Provide More Clarity on the Application of Such Child Support; Allow a Jury to

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Determine Gross Income and Deviations; Provide Calculation of Parenting Time; Provide for Definitions; Provide for Headings to Better Structure the Code Section; Provide for the Child Support Obligation Table; Change Certain Provisions Relating to the Duties of the Georgia Child Support Commission; Correct Cross-References; Amend an Act Amending Titles 5, 7, and 19 of the Official Code of Georgia Annotated so as to State Legislative Findings, Change Provisions Relating to Child Support, and Make other Related Changes; State Legislative Intent; Provide for Related Matters; Provide an Effective Date; Repeal Conflicting Laws; and for Other Purposes

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## DOMESTIC RELATIONS

***Alimony and Child Support: Change Provisions Relating to the Calculation of Child Support; Clarify the Appeal Process in Certain Domestic Relations Cases; Clarify the Calculation of the Amount of Interest on Arrearage of Child Support; Clarify Definitions; Provide Guidelines for Determining the Amount of Child Support to Be Paid; Change Provisions Relating to Guidelines for Calculating Child Support; Reorganize Code Section 19-6-15, Relating to Guidelines for Calculating Child Support to Provide More Clarity on the Application of Such Child Support; Allow a Jury to Determine Gross Income and Deviations; Provide Calculation of Parenting Time; Provide for Definitions; Provide for Headings to Better Structure the Code Section; Provide for the Child Support Obligation Table; Change Certain Provisions Relating to the Duties of the Georgia Child Support Commission; Correct Cross-References; Amend an Act Amending Titles 5, 7, and 19 of the Official Code of Georgia Annotated so as to State Legislative Findings, Change Provisions Relating to Child Support, and Make other Related Changes; State Legislative Intent; Provide for Related Matters; Provide an Effective Date; Repeal Conflicting Laws; and for Other Purposes***

CODE SECTIONS: O.C.G.A. §§ 5-6-34 (amended), 7-4-12.1 (amended), 19-5-12 (amended), 19-6-15, -34, -53 (amended), 19-7-2 (amended)

BILL NUMBER: SB 382

ACT NUMBER: 650

GEORGIA LAWS: 2006 Ga. Laws 583

SUMMARY: The Act provides presumptive tables for child support based on the income-shares model, taking into consideration both parents' gross income in establishing the child support obligation of the non-custodial parent, and instructs the trier of fact how to calculate each parent's gross income. It

provides for deviations in the calculation of gross income, but only if the court finds the deviation will not harm the best interest of the child. The Act also limits when a parent may petition the court for a modification in child support.

EFFECTIVE DATE: April 28, 2006<sup>1</sup>

### *History*

In order to redesign Georgia's child support calculation guidelines and eliminate perceived inequities and unfairness in the calculation system, the Georgia General Assembly enacted Code section 19-6-15 in 2005.<sup>2</sup> The sponsors introduced the legislation to accomplish several goals: bring Georgia's child support provisions into alignment with the majority of states, increase the non-custodial parent's involvement with the child, and increase the collection rate of child support awards.<sup>3</sup> Opponents of the legislation, however, believed the actual motivation behind the bill was several individuals' belief that their child support obligations were unjust.<sup>4</sup> Despite arguments from opponents that the bill would lead to prolonged litigation and result in reductions in child support, Georgia's General Assembly passed the legislation, and Governor Sonny Perdue signed the bill into law on April 22, 2005.<sup>5</sup>

Code section 19-6-15 replaced Georgia's former child support system, which calculated child support awards based on a "flat percentage" program—looking solely at the non-custodial parent's

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1. See 2006 Ga. Laws 583, §§ 11, 13, at 630-31. The Act became effective upon its approval by the Governor.

2. See generally, O.C.G.A. § 19-6-15 (Supp. 2005); *Review of Selected 2005 Georgia Legislation*, 22 GA. ST. U. L. REV. 73 (2006) [hereinafter *Peach Sheet*].

3. See *Peach Sheet*, *supra* note 2 at 74; Craig Schneider, *Child Support Changes Stir Passions*, ATLANTA J.-CONST., Mar. 16, 2006, available at <http://www.ajc.com/metro/content/metro/atlanta/stories/0316legchild.html> (noting that more than thirty states utilize the "income shares" model for calculating child support and that this bill brings Georgia into alignment with these states).

4. See *Peach Sheet*, *supra* note 2 at 74.

5. See Georgia General Assembly, HB 221 Bill Tracking, available at [http://www.legis.state.ga.us/legis/2005\\_06/sum/hb221.htm](http://www.legis.state.ga.us/legis/2005_06/sum/hb221.htm).

income—with a new “income shares” program that examines the incomes of both the custodial and non-custodial parents to determine the non-custodial parent’s child support obligation.<sup>6</sup> The new program set up a presumptive child support award based on both parents’ incomes and defined a pro-rata child support obligation for the non-custodial parent.<sup>7</sup> The goal was to “capture the image [of a family] as if they were still together,” in an effort to determine the life the child would have lived had the parents not divorced.<sup>8</sup>

Georgia’s former flat percentage program calculated child support based on defined statutory tables allocating between 17% and 37% of the non-custodial parent’s income for the benefit of the child.<sup>9</sup> Legislators believed this method used outdated income data and failed to provide for child support obligation reductions for a non-custodial parent who spent significant time with the child.<sup>10</sup>

In addition to the reformed child support calculations, Code section 19-6-15 provided for the creation of the Georgia Child Support Commission (the “Commission”).<sup>11</sup> The Commission, composed of lawyers, legislators, economists, and professors, is charged with drafting the presumptive child support tables and creating statutory deviations from the presumptive child support award.<sup>12</sup> Further, the Commission is a permanent institution and is responsible for maintaining the child support obligation tables.<sup>13</sup> The Commission completed its study and held public hearings to discuss its findings.<sup>14</sup>

The Act incorporates the results of the Commission’s study into Georgia’s new income-shares program by providing the presumptive

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6. See Audio Recording of Child Support Commission Public Hearing, Dec. 10, 2005 (remarks by Jill Radwin, Staff Attorney), [mms://mediam1.gpb.org/Ga-Gov/GCSC/GCSC\\_TownHallMtg\\_558kbps.wmv](https://mediam1.gpb.org/Ga-Gov/GCSC/GCSC_TownHallMtg_558kbps.wmv) [hereinafter Commission Audio].

7. See *id.* (remarks by Rep. Earl Ehrhart and Jill Radwin).

8. See *id.* (remarks by Jill Radwin).

9. See Peach Sheet, *supra* note 2, at 74. The calculation was adjustable according to various factors. *Id.*

10. See *id.* at 74.

11. See *id.* at 77.

12. See O.C.G.A. §§ 19-6-53 (Supp. 2005); Commission Audio, *supra* note 6 (remarks by Rep. Ehrhart).

13. See O.C.G.A. § 19-6-53 (Supp. 2005).

14. See *generally*, Commission Audio, *supra* note 6 (remarks by Rep. Ehrhart). The Commission Audio is a recording of the Commission’s first public hearing. *Id.*

child support obligation tables and measured deviations from each parent's obligation.<sup>15</sup>

### *Bill Tracking of SB 382*

#### *Consideration and Passage by the Senate*

Senator Seth Harp of the 29th district sponsored SB 382.<sup>16</sup> On January 9, 2006, the Senate first read SB 382 and the Senate President, Eric Johnson, assigned the bill to the Senate Judiciary Committee.<sup>17</sup> The Committee favorably reported the bill to the Senate floor on January 23, 2006, without changes.<sup>18</sup>

There was great debate on the Senate floor surrounding the parenting time adjustment, priority for preexisting families, and the 15% monetary change in child support provisions of the bill.<sup>19</sup> Senator Harp, a member of the Commission, attempted to explain why each provision was included in the bill, but this did not prevent a number of amendments from being introduced to either erase completely or modify the three provisions.<sup>20</sup>

Senator Regina Thomas of the 2nd district offered floor Amendment 1 to increase the minimum percentage change between a parent's current child support order and the amount the new calculations will create from 15% to 25% before the parent may petition the courts for a modification.<sup>21</sup> She offered the amendment because she feared non-custodial parents with the financial resources to hire an attorney would bring custodial parents without the financial resources to hire an attorney back to court for a downward modification, resulting in the non-custodial parents receiving "exactly

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15. See 2006 Ga. Laws 76.

16. See SB 382, as introduced, 2006 Ga. Gen. Assem.

17. See State of Georgia Final Composite Status Sheet, SB 382, Jan. 9, 2006 (Mar. 30, 2006).

18. See State of Georgia Final Composite Status Sheet, SB 382, Jan. 23, 2006 (Mar. 30, 2006).

19. See Audio Recording of Senate Proceedings, Jan. 25, 2006 (remarks by Sens. Steve Thompson, Steen Miles, and Renee Unterman), [http://www.georgia.gov/00/article/0,2086,4802\\_6107103\\_47120055,00.html](http://www.georgia.gov/00/article/0,2086,4802_6107103_47120055,00.html) [hereinafter Senate Audio].

20. See State of Georgia Final Composite Status Sheet, SB 382, Jan. 25, 2006 (Mar. 30, 2006); Senate Audio, *supra* note 19 (remarks by Sen. Seth Harp).

21. See Failed Senate Floor Amendment to SB 382, introduced by Sen. Regina Thomas, Jan. 25, 2006.

what they want” since they have an attorney.<sup>22</sup> Senator Thomas, along with many other Senators, also feared that “some parents may use the modification as yet another opportunity to air their grievances at the other party,” which is not in the best interest of Georgia’s children.<sup>23</sup> Despite some support, the amendment failed by a vote of 16 to 38.<sup>24</sup>

Senators Steen Miles, Gloria Butler, and Robert Brown of the 43rd, 55th, and 26th districts, respectively, offered floor Amendment 2, which would have returned the theoretical child support orders provision to “the standard that was set in HB 221.”<sup>25</sup> The Senators introduced the amendment to clarify that a non-custodial parent may not petition a court for a reduction in child support when the parent creates a second family, but the non-custodial parent could use a support obligation to a second family to defend against an increase in child support for the first family.<sup>26</sup> Senator Harp explained that, absent the amendment, the bill did not allow a non-custodial parent to seek a reduction in child support to the first family when the parent creates a second family, but Senator Miles continued to urge the Senate to adopt Amendment 2.<sup>27</sup> It narrowly failed by a vote of 25 to 30.<sup>28</sup>

Senator Steve Thompson of the 33rd district introduced Amendment 3.<sup>29</sup> The amendment would have eliminated the parenting time adjustment entirely.<sup>30</sup> Senator Thompson withdrew this amendment and introduced Amendment 8 in its place because, as written, Amendment 3 would not have eliminated the parenting time adjustment from Georgia law.<sup>31</sup> It simply removed the parenting time

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22. See Senate Audio, *supra* note 19 (remarks by Sen. Thomas).

23. See Senate Audio, *supra* note 19 (remarks by Sen. Thomas); see also Interview with Sen. David Adelman, Senate Dist. No. 42 (Mar. 22, 2006) [hereinafter Adelman Interview].

24. Georgia Senate Voting Record, SB 382 (Jan. 25, 2006).

25. See Failed Senate Floor Amendment to SB 382, introduced by Sens. Miles, Gloria Butler, and Robert Brown, Jan. 25, 2006; Senate Audio, *supra* note 19 (remarks by Sen. Miles).

26. See Senate Audio, *supra* note 19 (remarks by Sen. Miles).

27. See Senate Audio, *supra* note 19 (remarks by Sens. Harp and Miles).

28. Georgia Senate Voting Record, SB 382 (Jan. 25, 2006).

29. See Withdrawn Senate Floor Amendment to SB 382, introduced by Sen. Thompson, Jan. 25, 2006.

30. See *id.*

31. See Senate Audio, *supra* note 19 (remarks by Sens. Harp and Thompson).

provisions from SB 382, leaving in place the parenting time adjustment provisions created by Code section 19-6-15.<sup>32</sup>

Senator J.B. Powell of the 23rd district introduced, and later withdrew, Amendments 4 and 5.<sup>33</sup> The amendments called for a new section to be added to the bill that would have struck Code section 19-10-1, relating to the abandonment of a dependant child, and inserted in lieu thereof language requiring the publication of an individual's photograph when he or she is found guilty of abandonment and doubling the fines for abandonment.<sup>34</sup> Senator Powell withdrew the amendments after Senator Renee Unterman encouraged him to submit the amendments as independent legislation.<sup>35</sup>

Senators Unterman, Butler, Miles, Thomas, Horacena Tate, David Schafer, and Valencia Seay of the 45th, 55th, 43rd, 2nd, 38th, 50th, and 34th districts, respectively, offered floor Amendment 6 to increase the minimum number of visitation days required before the non-custodial parent is eligible to receive a reduction under the parenting time adjustment.<sup>36</sup> Specifically, "[i]t increases the days from 90 to 120."<sup>37</sup> The seven female senators offered the amendment because they saw the increase to 120 days "as being a necessity" to make the rearing of children fair to mothers—whom the Senators assumed would be the custodial parents—because fathers get the children on the weekend for "fun time" and mothers have the children during the week when the child is too busy to have fun time.<sup>38</sup> Amendment 6 passed easily 49 to 6.<sup>39</sup>

Senator Seay of the 34th district introduced Amendment 7.<sup>40</sup> The amendment added a provision authorizing the courts to sanction a non-custodial parent receiving a parenting time adjustment for contempt of court if the parent fails to exercise the required

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32. See Senate Audio, *supra* note 19 (remarks by Sens. Harp and Thompson).

33. See Withdrawn Senate Floor Amendments to SB 382, introduced by Sen. J.B. Powell, Jan. 25, 2006.

34. See *id.*; Senate Audio, *supra* note 19 (remarks by Sen. Powell).

35. See Senate Audio, *supra* note 19 (remarks by Sen. Unterman).

36. See SB 382 (SFA), 2006 Ga. Gen. Assem.

37. Senate Audio, *supra* note 19 (remarks by Sen. Unterman).

38. Senate Audio, *supra* note 19 (remarks by Sen. Unterman).

39. Georgia Senate Voting Record, SB 382 (Jan. 25, 2006).

40. See SB 382 (SFA), 2006 Ga. Gen. Assem.

visitation.<sup>41</sup> Senator Seay felt this provision was needed because “[a] contempt [action] is a much easier way [for the custodial parent] to get back to court and address the non-custodial parent’s failure to exercise visitation.”<sup>42</sup> The amendment passed without opposition, 54 to 0.<sup>43</sup>

Senator Thompson offered floor Amendment 8 to replace floor Amendment 3.<sup>44</sup> It sought to achieve the Senator’s goal in Amendment 3, complete removal of the parenting time adjustment from Georgia law, but unlike Amendment 3, Amendment 8 was written correctly to accomplish this goal.<sup>45</sup> Senator Thompson was the most vocal advocate for the complete abolishment of the parenting time adjustment because, as he noted, “any provision that gives someone economic credit for being a daddy [is] stupid.”<sup>46</sup> Senator Harp responded by explaining the Commission included the parenting time adjustment because it “is something that is a part and parcel with the income shares model” and studies show that a parenting time adjustment “greatly increase[s] the child support being paid.”<sup>47</sup> The amendment was defeated by a vote of 21 to 34.<sup>48</sup>

The Senate passed SB 382, as amended, by a vote of 38 to 17 on January 25, 2006.<sup>49</sup>

### *Consideration and Passage by the House*

The House read the bill for the first time on January 26, 2006.<sup>50</sup> It was read a second time on January 31, 2006, and the Speaker of the House, Glenn Richardson, assigned it to the House Committee on Judiciary.<sup>51</sup> The Committee favorably reported the bill on March 23,

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41. *See id.*

42. Senate Audio, *supra* note 19 (remarks of Sen. Valencia Seay).

43. Georgia Senate Voting Record, SB 382 (Jan. 25, 2006).

44. *See* Failed Senate Floor Amendment to SB 382, introduced by Sen. Thompson, Jan. 25, 2006; Senate Audio, *supra* note 19 (remarks of Sen. Thompson).

45. *Compare* Withdrawn Senate Floor Amendment to SB 382, introduced by Sen. Thompson, Jan. 25, 2006, *with* Failed Senate Floor Amendment to SB 382, introduced by Sen. Thompson, Jan. 25, 2006 *and* Senate Audio, *supra* note 19 (remarks by Sen. Thompson).

46. Senate Audio, *supra* note 19 (remarks by Sen. Thompson).

47. Senate Audio, *supra* note 19 (remarks by Sen. Harp).

48. Georgia Senate Voting Record, SB 382 (Jan. 25, 2006).

49. *Id.*

50. *See* State of Georgia Final Composite Status Sheet, SB 382, Jan. 26, 2006 (Mar. 30, 2006).

51. *See* State of Georgia Final Composite Status Sheet, SB 382, Jan. 31, 2006 (Mar. 30, 2006).

2006, making only minor changes.<sup>52</sup> Specifically, the Judiciary Committee's version of the bill provided for a direct appeal from child support orders, altered the procedures for calculating the parenting time adjustment, eliminated the provision providing for the imposition of sanctions against a non-custodial parent's not utilizing visitation opportunities, and clarified the bill's effective date.<sup>53</sup>

The bill was withdrawn from the House floor and recommitted to the Rules Committee on March 28, 2006.<sup>54</sup> The Rules Committee made minor modifications to the bill, and it was read for a third time on March 30, 2006.<sup>55</sup>

Representative Wendell Willard of the 49th district presented the bill to the House on March 30, 2006.<sup>56</sup> He explained that the bill created a "substantial change in the approach . . . tak[en] in the state of Georgia with regard[] to child support" by removing "one of the most the simplistic provisions of laws in the country dealing with child support . . . [and] implement[ing] probably what is one of the most comprehensive [systems for calculating child support]."<sup>57</sup> The central themes of the bill are to protect the best interests of Georgia's children at all times and to provide them with the same financial position they enjoyed before their parents divorced.<sup>58</sup>

Representative Willard, along with Representative Edward Lindsey of the 54th district, introduced Amendment 1, the first of three floor amendments to the Rules Committee's version of SB 382.<sup>59</sup> Amendment 1 eliminated the proposed provisions in the

52. See State of Georgia Final Composite Status Sheet, SB 382, Mar. 23, 2006 (Mar. 30, 2006).

53. Compare SB 382 (HCS), 2006 Ga. Gen. Assem., with SB 382, as introduced, 2006 Ga. Gen. Assem. The House Judiciary Committee decreased the minimum number of days necessary to achieve a reduction in child support from 120 to 90 and narrowed the broad sweeping parenting time adjustment categories contained in the Senate version of SB 382. *Id.* The Committee substitute also distinguished between existing child support orders and prospective child support orders with regard to the bill's effective date. *Id.*

54. See State of Georgia Final Composite Status Sheet, SB 382, Mar. 28, 2006 (Mar. 30, 2006).

55. See State of Georgia Final Composite Status Sheet, SB 382, Mar. 30, 2006 (Mar. 30, 2006). Compare SB 382 (HCS), 2006 Ga. Gen. Assem., with SB 382 (HCS), 2006 Ga. Gen. Assem. The Rules Committee's version of the bill clarified the definition of a day with regard to parenting time adjustments and provided trial courts with discretion to phase in modified child support obligations over time depending upon the percentage increase or decrease of the modification. *Id.*

56. See Audio Recording of House Proceedings, Mar. 30, 2006 (remarks by Rep. Wendell Willard), <http://mediar1.gpb.org/ramgen/leg/2006/hv033006-P2.rm?usehostname> [hereinafter House Audio].

57. *Id.*

58. See *id.*

59. See SB 382 (HCSFA), 2006 Ga. Gen. Assem.

Committee substitute providing for direct appeal from child support awards, but instructed the Commission to continue studying the issue and report back to the General Assembly if a right to direct appeal is needed.<sup>60</sup> Additionally, the amendment directed the Commission to study alternative programs for reducing litigation in child support and child custody cases and to study further whether Georgia needs a more defined parenting time deviation.<sup>61</sup>

Representative Lindsey joined with Representatives Donna Sheldon, Steve Tumlin, Mack Crawford, and Earl Ehrhart of the 105th, 38th, 127th, and 38th districts, respectively, in offering floor Amendment 2 to eliminate the rigid parenting time adjustment procedures of the Rules Committee substitute, because it created too many questions without adequate answers: Whether the minimum number of days a non-custodial parent must have visitation before the deviation begins should be 90 days, 100 days, 120 days, or 4 days, as in Arizona; whether the scale associated with the parenting time adjustment should be “gradual so as not to cause too much of a riff between one day [and] another” or rapid to encourage greater visitation; whether the parenting time adjustment will actually lead to more quality time spent with the child or lead to “greater divisiveness;” what should constitute a “day;” and whether the percentage reduction in the non-custodial parent’s child support order will accurately reflect the shift in the cost from the custodial parent to the non-custodial parent.<sup>62</sup>

Representative Lindsey, speaking on behalf of the amendment, said it was proposed to “delete the parenting time adjustment contained in SB 382 and replace it with [the] general deviation already contained [in] Georgia child support law,” which leaves the decision of whether to enact a parenting time adjustment to the

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60. See SB 382 (HCSFA), 2006 Ga. Gen. Assem. Child support order appeals are discretionary in Georgia and, historically, very few appeals have been accepted; see House Audio, *supra* note 56 (remarks by Rep. Willard). The House determined that appellate courts are accepting child support appeals at a higher frequency recently and thus it decided not to create a right of direct appeal at this time. *Id.*

61. See SB 382 (HCSFA), 2006 Ga. Gen. Assem.; House Audio, *supra* note 56 (remarks of Rep. Willard).

62. See SB 382 (HCSFA), 2006 Ga. Gen. Assem.; House Audio, *supra* note 56 (remarks by Rep. Edward Lindsey).

discretion of the trier of fact.<sup>63</sup> This approach allows the legislature to “wait and watch before . . . act[ing] on the use of a strict parenting time adjustment formula.”<sup>64</sup>

Representatives Jan Jones, Joe Wilkinson, Clay Cox, Earl Ehrhart, and Lynn Smith of the 46th, 52nd, 102nd, 36th, and 70th districts, respectively, proposed Amendment 3, which changed the provisions relating to modifying child support orders.<sup>65</sup> The Rules Committee substitute provided that no petition to modify a child support award could be made within two years from the date of the final order unless there is a difference of 15% or more between the prior award and the new award.<sup>66</sup> The substitute would have allowed a parent to seek a modification any time there was a substantial change in child support.<sup>67</sup> Amendment 3 barred a modification petition completely unless there is a substantial change in either parent’s income and financial status or in the needs of the child.<sup>68</sup> Further, the amendment prohibited a modification hearing even if there is a substantial change when the current support order is less than two years old.<sup>69</sup> The only exceptions to this outright prohibition are if the non-custodial parent is not exercising his or her court ordered visitation, is exercising more visitation than the court order requires, or the petition is based on involuntary loss of income by the petitioning parent.<sup>70</sup> Finally, the amendment reiterated the central theme of the bill by requiring a showing that a modification is in the child’s best interest.<sup>71</sup>

Representative Mary Margaret Oliver of the 83rd district advocated for the adoption of the three amendments but against the passage of the bill because as many as one-third of the children currently receiving child support will have their award reduced under

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63. See House Audio, *supra* note 56 (remarks by Rep. Lindsey). Rather than “automatically reducing child support by a strict formula, [any parenting time] reductions [must] be based on the evidence . . . and the burden [is] on the non-custodial parent.” *Id.*

64. *Id.*

65. See SB 382 (HCSFA), 2006 Ga. Gen. Assem.

66. See SB 382 (HCS), 2006 Ga. Gen. Assem.

67. See *id.* The bill created a presumption of substantial change when an increase or decrease of 15% or more in a parent’s child support obligation. *Id.*

68. See SB 382 (HCSFA), 2006 Ga. Gen. Assem.

69. See *id.*

70. See *id.*

71. See *id.*

the new tables.<sup>72</sup> Although Representative Oliver supported an income-shares approach, she believed such an approach is not acceptable when it “truly [changes] the financial well-being of Georgia's children.”<sup>73</sup>

Representative Wendell Willard advocated for the adoption of the three amendments and the passage of the bill in his closing comments.<sup>74</sup> He was concerned with Georgia's former system of calculating child support, stating that there was no structured law or guidance under the old law—who the parties drew as a judge would determine the outcome.<sup>75</sup> He believed the adoption of the child support obligation tables would provide parties considering divorce with guidance, provide for more uniform child support awards, and limit a trial court's discretion in this area of law.<sup>76</sup>

The three proposed amendments were adopted without objection, and the House voted 158 to 14 to pass the Rules Committee substitute on March 30, 2006.<sup>77</sup> That same day, the Senate adopted the House bill by a voted 50 to 3.<sup>78</sup> The bill was sent to Governor Perdue on April 12, 2006.<sup>79</sup>

### *The Act*

The Act amends Code section 5-6-34, relating to judgments and rulings deemed directly appealable, by removing a provision providing for a direct appeal from child support orders.<sup>80</sup>

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72. See House Audio, *supra* note 56 (remarks by Rep. Mary Margaret Oliver). It is not until “child support gets over \$60,000 a year that it goes below the present child support numbers [under the old system].” Senate Audio, *supra* note 19 (remarks by Sen. Harp). The reason for the decrease is that “[t]he child support tables take into consideration the amount of money someone has to pay in income taxes.” *Id.* “[I]f the income of the parents is on the lower income spectrum . . . the dollar amount of somewhere in the neighborhood of \$30,000 to \$40,000 a year . . . the child support actually increases under [the] tables.” *Id.*

73. See House Audio, *supra* note 56 (remarks by Rep. Oliver).

74. See House Audio, *supra* note 56 (remarks by Sen. Willard).

75. See *id.*

76. See *id.*

77. Georgia House of Representatives Voting Record, SB 382 (Mar. 30, 2006); State of Georgia Final Composite Status Sheet, SB 382, Mar. 30, 2006 (Mar. 30, 2006).

78. Georgia Senate Voting Record, SB 382 (Mar. 30, 2006); State of Georgia Final Composite Status Sheet, SB 382, Mar. 30, 2006 (Mar. 30, 2006).

79. Georgia General Assembly, SB 382 Bill Tracking, *available at* [http://www.legis.state.ga.us/legis/2005\\_06/sum/sb382.htm](http://www.legis.state.ga.us/legis/2005_06/sum/sb382.htm).

80. O.C.G.A. § 5-6-34 (Supp. 2006).

The Act amends Code section 7-14-12.1, relating to interest on arrearage on child support, by replacing the previous 12% interest rate with a 7% interest rate.<sup>81</sup> Further, the Act provides the trial court with the discretion to apply or waive past due interest.<sup>82</sup>

The Act amends Code section 19-5-12, relating to domestic relations, by directing the court to complete judgment decrees in divorce actions in a manner consistent with the worksheets required by the Act.<sup>83</sup>

The Act amends Code section 19-6-15, relating to guidelines for calculating child support, by clarifying how a parent's gross income is to be calculated, creating presumptive child support tables, listing deviations from the presumptive child support obligation, and limiting when a parent may petition the court for a modification in child support.<sup>84</sup>

The Act amends Code section 19-6-34, relating to inclusion of life insurance in an order of child support, to allow a jury to consider the cost of life insurance premiums as deviation from the presumptive child support order.<sup>85</sup>

The Act amends Code section 19-6-53, relating to the duties of the Georgia Child Support Commission.<sup>86</sup> The Commission is charged with the following duties: (1) study and evaluate the effectiveness and efficiency of Georgia's child support guidelines; (2) create and update the child support obligation tables; (3) develop training materials to educate judges, attorneys, and litigants; (4) study appellate courts' acceptance of discretionary appeals; (5) study alternative programs to reduce child support litigation; and (6) study the impact of having a strict statutory parenting time adjustment.<sup>87</sup>

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81. O.C.G.A. § 7-4-12.1 (Supp. 2006).

82. *Id.*

83. O.C.G.A. § 19-5-12 (Supp. 2006).

84. O.C.G.A. § 19-6-15 (Supp. 2006).

85. O.C.G.A. § 19-6-34 (Supp. 2006).

86. O.C.G.A. § 19-6-53 (Supp. 2006).

87. *Id.*

*Analysis*

The Act creates presumptive tables for the amount of child support a non-custodial parent must pay that are “the highest in the southeastern United States, that far and away are greater than [Georgia’s] surrounding and neighboring states.”<sup>88</sup> Along with providing for generous support to Georgia’s children, the Act contains three provisions posing a risk to Georgia’s children.<sup>89</sup> First, by allowing a parent with preexisting child support obligations to deduct the amount of child support being paid from the parent’s gross income in subsequent child support determinations, the Act creates a hierarchy of children based on when their parents were ordered to pay child support: family one gets first priority, then family two, then family three, and so on down the line.<sup>90</sup> Critics argue this provision will hurt more children than it helps.<sup>91</sup> Children who are not fortunate enough to be born to the first family will receive less money, resulting in fewer resources to provide the children with food, shelter, and clothing.<sup>92</sup>

Despite being unfair to children who are born to second families, however, this deviation is needed from a practical standpoint.<sup>93</sup> If the law did not allow for the non-custodial parent to deduct preexisting child support obligations from the parent’s gross income, the parent would not maintain an adequate amount of financial resources to support himself or herself when the parent has three, four, five, or more children with different partners.<sup>94</sup> The Act provides that deviations are to be made only if they are in the best interest of the child.<sup>95</sup> This allows the trier of fact to decline applying the deduction if it would mean the second child would not receive adequate support

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88. Senate Audio, *supra* note 19 (remarks by Sen. Harp).

89. See Senate Audio, *supra* note 19 (remarks by Sens. Butler, Miles, Unterman, and Thompson).

90. See Senate Audio, *supra* note 19 (remarks by Sen. Harp).

91. See Senate Audio, *supra* note 19 (remarks by Sens. Miles and Unterman).

92. See Senate Audio, *supra* note 19 (remarks by Sens. Miles and Unterman).

93. See Senate Audio, *supra* note 19 (remarks by Sen. Harp). This provision does not change the law in Georgia because judges already take into consideration preexisting child support orders under the current law. *Id.*

94. See Senate Audio, *supra* note 19 (remarks by Sen. Harp).

95. O.C.G.A. § 19-6-15 (Supp. 2006).

for food, shelter, or clothing.<sup>96</sup> Therefore, this provision is fair to both parents and children.

The second provision posing a risk to Georgia's children allows a parent to file a petition for child support modification.<sup>97</sup> By allowing a parent to go back to court for modification, the Act increases the greatest harm children suffer when their parents divorce—watching their parents engage in heated litigation against one another.<sup>98</sup> Even if children are not forced to sit through subsequent litigation, they are subjected to the fear of future litigation between their parents by the Act's provisions allowing for modification.<sup>99</sup>

To the extent there is a risk to Georgia's children, it appears to be an unavoidable risk because a non-custodial parent's substantially underpaying child support cannot be said to be in the best interest of the child.<sup>100</sup> Providing the custodial parent with an opportunity to seek a significant upward increase in the dollar amount of child support received enables that parent to have the maximum amount of money possible to provide for the child's needs, which is certainly in the child's best interest.<sup>101</sup> Furthermore, by limiting a parent's right to file a petition for modification to situations where there is a substantial change in either a parent's financial status or the needs of the child, any risk of harm to a child from repeat litigation is minimized.<sup>102</sup> Additionally, by limiting appeals to every two years, except for specific exceptions for visitation or involuntary loss of income, the Act further minimizes the harm of repeat parental litigation.<sup>103</sup>

The final provision of the Act that is potentially problematic results from the compromise reached on the parenting time adjustment deviation.<sup>104</sup> After two years of debate on whether Georgia should

96. See House Audio, *supra* note 56 (remarks by Rep. Willard).

97. O.C.G.A. § 19-6-15 (Supp. 2006).

98. See Adelman Interview, *supra* note 23.

99. See Adelman Interview, *supra* note 23.

100. See Senate Audio, *supra* note 19 (remarks by Sen. Harp). Studies from other states show that the vast majority of parents do not file for a modification hearing; therefore, the risk of parents running back to the court house is not significant. *Id.*

101. See *id.*

102. See House Audio, *supra* note 56 (remarks by Rep. Jan Jones).

103. See House Audio, *supra* note 56 (remarks by Rep. Jones).

104. O.C.G.A. § 19-6-15 (Supp. 2006).

take the non-custodial parent's visitation into consideration when determining child support obligations, the Act puts the issue off for yet another year.<sup>105</sup> It allows the trier of fact to deviate from the presumptive amount of child support owed by the non-custodial parent for visitation, but it does not provide any guidance about when to make the deduction or how much to deduct, although both issues were in contention between the proponents and opponents of the parenting time adjustment this session.<sup>106</sup> Rather, the Act leaves Georgia law the same as it was before two years of debate and two Acts aimed at overhauling the old system, preferring to direct the Commission to continue studying the issue for the immediate future.<sup>107</sup>

It is good policy to have the Commission continue to study the issue, but by providing no guidance to the trier of fact in how to make the deduction, the Act fails to meet its two central goals.<sup>108</sup> The Act provides no guidance on when and how to apply the deviation, and this lack of guidelines creates a large incentive for parents to engage in heated litigation over the issue, which undermines the best interest of Georgia's children—a goal purporting to be at the heart of each of the Act's provisions.<sup>109</sup> Those who care about this issue are surely gearing up for round three of this debate when the Commission makes its recommendation on more definitive guidelines dealing with the parenting time adjustment.<sup>110</sup>

*Ryan Landers and Garrett Nail*

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105. *See id.*; *see also* House Audio, *supra* note 56 (remarks by Rep. Lindsay).

106. O.C.G.A. § 19-6-15 (Supp. 2006); *see also* Senate Audio, *supra* note 19 (remarks by Sen. Unterman) (arguing that the minimum number of visitation days before a deduction can be made should be 120 instead of 90); Senate Audio, *supra* note 19 (remarks by Sen. Harp) (arguing that 90 days is a quarter of the year and should be the base at which the deduction starts).

107. O.C.G.A. § 19-6-53 (Supp. 2006); *see also* House Audio, *supra* note 56 (remarks by Rep. Lindsey).

108. *See* Senate Audio, *supra* note 19 (remarks by Sen. Harp).

109. *See* Senate Audio, *supra* note 19 (remarks by Sen. Harp); House Audio, *supra* note 56 (remarks by Rep. Willard).

110. *See generally* O.C.G.A. § 19-6-53 (Supp. 2006).