

House Bill 142

By: Representative Smith of the 168<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 19 of the Official Code of Georgia Annotated, relating to domestic relations,  
2 so as to change certain provisions relating to voluntary separation, abandonment, or driving  
3 off of spouse; to create a duty to provide child support for a mentally or physically disabled  
4 child beyond the age of majority; to provide for postmajority child support in final verdict  
5 or divorce decree; to provide that a child's eligibility to receive public benefits shall not be  
6 impacted by an award of postmajority child support; to change certain provisions relating to  
7 inclusion of life insurance in order of support; to change certain provisions relating to  
8 parents' obligations to child; to provide for related matters; to repeal conflicting laws; and  
9 for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Title 19 of the Official Code of Georgia Annotated, relating to domestic relations, is  
13 amended by striking Code Section 19-6-9, relating to voluntary separation, abandonment, or  
14 driving off of spouse as it relates to equity compelling support, in its entirety and inserting  
15 in its place the following:

16 "19-6-9.

17 Absent the making of a voluntary contract or other agreement, as provided in Code Section  
18 19-6-8, and on the application of a party, the court, exercising its equitable powers, may  
19 compel the spouse of the party to make provision for the support of the party and such  
20 minor children and mentally or physically disabled children who have attained the age of  
21 majority but lack the ability to otherwise support himself or herself independently as may  
22 be in the custody of the party."

**SECTION 2.**

Said title is further amended by striking Code Section 19-6-10, relating to voluntary separation, abandonment, or driving off of spouse as it relates to petition for support, notice, and hearing, in its entirety and inserting in its place the following:

"19-6-10.

When spouses are living separately or in a bona fide state of separation and there is no action for divorce pending, either party, on the party's own behalf or on the behalf of the minor children and mentally or physically disabled children who have attained the age of majority but lack the ability to otherwise support himself or herself independently in the party's custody, if any, may institute a proceeding by petition, setting forth fully the party's case. Upon three days' notice to the other party, the judge may hear the same and may grant such order as he might grant were it based on a pending petition for divorce, to be enforced in the same manner, together with any other remedy applicable in equity, such as appointing a receiver and the like. Should the petition proceed to a hearing before a jury, the jury may render a verdict which shall provide the factual basis for equitable relief as in Code Section 19-6-9. However, such proceeding shall be held in abeyance when a petition for divorce is filed bona fide by either party and the judge presiding has made his order on the motion for alimony. When so made, the order shall be a substitute for the aforesaid decree in equity as long as the petition is pending and is not finally disposed of on the merits."

**SECTION 3.**

Said title is further amended in Code Section 19-6-15, relating to child support in final verdict or decree, computation of award, guidelines for determining amount of award, continuation of duty to provide support, and duration of support, by striking subsection (a) in its entirety and inserting in its place the following:

"(a) The provisions of this Code section shall not apply with respect to any divorce case in which there are no minor children, except to the limited extent expressly authorized in subsection (e) or (g) of this Code section; and in a divorce case in which there are no minor children the requirements of this Code section for findings of fact and inclusion of findings in the verdict or decree shall not apply. In the final verdict or decree, the trier of fact shall specify in what amount and from which party the minor children are entitled to permanent support. The final verdict or decree shall further specify as required by Code Section 19-5-12 in what manner, how often, to whom, and until when the support shall be paid. The final verdict or decree shall further include a written finding of the gross income of the father and the mother and the presence or absence of special circumstances in accordance with subsection (c) of this Code section. The trier of fact must also determine whether the

1 accident and sickness insurance for the child or the children involved is reasonably  
2 available at reasonable costs through employment related or other group health insurance  
3 policies to an obligor. For purposes of this Code section, accident and sickness coverage  
4 shall be deemed available if the obligor has access to any policy of insurance authorized  
5 under Title 33 through an employer or other group health insurance plan. If the accident  
6 and sickness insurance is deemed available at reasonable cost, the court shall order the  
7 obligor to obtain the coverage; provided, however, if the obligee has accident and sickness  
8 insurance for the child or children reasonably available at reasonable costs through  
9 employment related or other group health insurance policies, then the court may order that  
10 the child or children be covered under such insurance and the obligor contribute as part of  
11 the child support order such part of the cost of providing such insurance or such part of any  
12 medical expenses incurred on behalf of the child or children not covered by such insurance  
13 as the court may deem equitable or appropriate. If currently unavailable or unreasonable  
14 in cost, the court shall order the obligor to obtain coverage when it becomes available at  
15 a reasonable cost, unless such insurance is provided by the obligee as provided in this  
16 subsection. When support is awarded, the party who is required to pay the support shall not  
17 be liable to third persons for necessaries furnished to the children embraced in the verdict  
18 or decree. In any contested case, the parties shall submit to the court their proposed  
19 findings regarding the gross income of the father and the mother and the presence or  
20 absence of special circumstances. In any case in which child support is determined by a  
21 jury, the court shall charge the provisions of this Code section and the jury shall be required  
22 to return a special interrogatory similar to the form of the order contained in Code Section  
23 19-5-12 regarding the gross income of the father and the mother and the presence or  
24 absence of special circumstances. Furthermore, nothing contained within this Code section  
25 shall prevent the parties from entering into an enforceable agreement to the contrary which  
26 may be made the order of the court pursuant to the review by the court of child support  
27 amounts contained in this Code section; provided, however, any such agreement of the  
28 parties shall include a written statement regarding the gross income of the father and the  
29 mother and the presence or absence of special circumstances in accordance with subsection  
30 (c) of this Code section."

31 **SECTION 4.**

32 Said title is further amended by adding a new subsection (g) to Code Section 19-6-15,  
33 relating to child support in final verdict or decree, computation of award, guidelines for  
34 determining amount of award, continuation of duty to provide support, and duration of  
35 support, to read as follows:

1     "(g) Notwithstanding the provisions of subsection (e) of this Code section, the trier of fact  
 2     at its discretion may find that a duty exists to provide child support for a mentally or  
 3     physically disabled child who has attained the age of majority but lacks the ability to  
 4     otherwise support himself or herself independently, based upon the financial ability of the  
 5     parties to provide support and based upon the financial resources and public benefits and  
 6     assistance available to the child; provided, however, that the obligation for postmajority  
 7     child support shall be modified for either party if the trier of fact determines, in the exercise  
 8     of its sound discretion, that (1) there has been a substantial change in the income, financial  
 9     condition, or income and financial condition of either parent, the child, or both or (2) there  
 10    has been a substantial change in the child's ability to provide support for himself or herself.  
 11    The child support provided pursuant to this subsection shall be in addition to and not in lieu  
 12    of the benefits or assistance a child may receive from a source other than his or her parents.  
 13    No duty created pursuant to this subsection nor any other provisions of this subsection shall  
 14    impact the eligibility of a child awarded postmajority child support to receive the maximum  
 15    benefits provided by any federal, state, local, and other governmental and public agencies.  
 16    The provisions of this subsection shall be applicable only to a final decree of divorce  
 17    entered on or after July 1, 2005."

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#### SECTION 5.

19    Said title is further amended in Code Section 19-6-34, relating to inclusion of life insurance  
 20    in order of support, by striking subsection (d) in its entirety and inserting in its place the  
 21    following:

22     "(d)(1) The trier of fact, in the exercise of sound discretion, may direct either or both  
 23     parents to maintain life insurance for the benefit of a child who has not previously  
 24     married or become emancipated, who is enrolled in and attending a secondary school, and  
 25     who has attained the age of majority before completing his or her secondary school  
 26     education, provided that maintenance of such life insurance for the benefit of the child  
 27     shall not be required after a child attains 20 years of age.

28     (2) The trier of fact, in the exercise of sound discretion, may direct either or both parents  
 29     to maintain life insurance for the benefit of a mentally or physically disabled child who  
 30     has attained the age of majority but lacks the ability to otherwise support himself or  
 31     herself independently."

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#### SECTION 6.

33    Said title is further amended by striking Code Section 19-7-2, relating to parents' obligation  
 34    to child, and inserting in its place the following:

1 "19-7-2.

2 It is the joint and several duty of each parent to provide for the maintenance, protection,  
3 and education of his or her child until the child reaches the age of majority, dies, marries,  
4 or becomes emancipated, whichever first occurs, except as otherwise authorized and  
5 ordered pursuant to subsection (e) or (g) of Code Section 19-6-15 and except to the extent  
6 that the duty of the parents is otherwise or further defined by court order."

7 **SECTION 7.**

8 All laws and parts of laws in conflict with this Act are repealed.