House Bill 221 (COMMITTEE SUBSTITUTE)

By: Representatives Burmeister of the 119th, Watson of the 91st, Mosby of the 90th, Morgan of the 39th, Ehrhart of the 36th, and others

A BILL TO BE ENTITLED

AN ACT

To provide for legislative findings; to amend Titles 5, 7, and 19 of the Official Code of Georgia Annotated, relating respectively to appeal and error, banking and finance, and domestic relations, so as to change provisions relating to the calculation of child support; to provide for direct appeal in certain domestic relations cases; to change the amount of interest on arrearage of child support; to provide guidelines for determining amount of child support to be paid; to provide for factors for apportioning child support obligations; to provide for definitions; to change the form of the final judgment in divorce actions to conform such changes in the determination and computation of child support; to change provisions relating to petitions to modify alimony and child support; to correct cross-references relating to petitions to modify child support orders; to create the Georgia Child Support Commission; to provide for legislative findings and intent; to provide for composition of the commission and the commission´s powers and duties; to provide for compensation of the members of the commission; to provide for officers of the commission; to provide for a quorum for the transaction of business; to provide for reporting; to provide effective dates; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

The General Assembly finds and declares that it is important to assess periodically child support guidelines and determine whether existing guidelines continue to be viable and effective or whether they have failed or ceased to accomplish their original policy objectives. The General Assembly further finds that supporting Georgia´s children is vitally important to the citizens of Georgia. Therefore, the General Assembly has determined that it is in the best interests of the state and its citizenry to undertake an evaluation of the child support guidelines on a continuing basis. The General Assembly declares that it is important that all of Georgia´s children are provided with adequate financial support whether the children´s parents are living together or not living together. The General Assembly finds that both

parents have a continuing obligation with respect to providing financial and emotional stability for their child or children. It is the hope of the members of the General Assembly that all parents work together to advance the best interest of their children.

**SECTION 2.**

Title 5 of the Official Code of Georgia Annotated, relating to appeal and error, is amended by striking subsection (a) of Code Section 5-6-34, relating to judgments and rulings deemed directly appealable, and inserting in its place the following:

"(a) Appeals may be taken to the Supreme Court and the Court of Appeals from the following judgments and rulings of the superior courts, the constitutional city courts, and such other courts or tribunals from which appeals are authorized by the Constitution and laws of this state:

(1) All final judgments, that is to say, where the case is no longer pending in the court below, except as provided in Code Section 5-6-35;

(2) All judgments involving applications for discharge in bail trover and contempt cases;

(3) All judgments or orders directing that an accounting be had;

(4) All judgments or orders granting or refusing applications for receivers or for interlocutory or final injunctions;

(5) All judgments or orders granting or refusing applications for attachment against fraudulent debtors;

(5.1) Any ruling on a motion which would be dispositive if granted with respect to a defense that the action is barred by Code Section 16-11-184;

(6) All judgments or orders granting or refusing to grant mandamus or any other extraordinary remedy, except with respect to temporary restraining orders;

(7) All judgments or orders refusing applications for dissolution of corporations created by the superior courts; ~~and~~

(8) All judgments or orders sustaining motions to dismiss a caveat to the probate of a will~~.~~; and

(9) All final judgments of child support."

**SECTION 3.**

Title 7 of the Official Code of Georgia Annotated, relating to banking and finance, is amended by striking in its entirety Code Section 7-4-12.1, relating to interest on arrearage of child support, and inserting in lieu thereof the following:

"7-4-12.1.

All awards of child support expressed in monetary amounts shall accrue interest at the rate of ~~12~~ 7 percent per annum commencing 30 days from the day such award or payment is

due. This Code section shall apply to all awards, court orders, decrees, and judgments rendered pursuant to Title 19. It shall not be necessary for the party to whom the child support is due to reduce any such award to judgment in order to recover such interest. The court shall have discretion in applying or waiving past due interest.

**SECTION 4.**

Title 19 of the Official Code of Georgia Annotated, relating to domestic relations, is amended by striking subsection (c) of Code Section 19-5-12, relating to form of judgment and decree in divorce actions, and inserting in lieu thereof a new subsection (c) to read as follows:

"(c) In any case which involves the determination of child support ~~and only in such cases~~, the form of the judgment shall also include provisions ~~substantially identical to the following:~~ indicating both parties´ incomes, the number of children for which support is being provided, the presumptive award calculation, and, if the presumptive award is rebutted, the award amount and the basis for the rebuttal award.

~~In determining child support, the court finds as follows:~~

~~The gross income of the father is _____ dollars monthly.~~

~~The gross income of the mother is _____ dollars monthly.~~

~~In this case child support is being determined for _____ children.~~

~~The applicable percentage of gross income to be considered is:~~

| ~~Number of Children~~ | ~~Percentage Range of Gross Income~~ |
|---|---|
| ~~1~~ | ~~17 percent to 23 percent~~ |
| ~~2~~ | ~~23 percent to 28 percent~~ |
| ~~3~~ | ~~25 percent to 32 percent~~ |
| ~~4~~ | ~~29 percent to 35 percent~~ |
| ~~5 or more~~ | ~~31 percent to 37 percent~~ |

~~Thus, ____ percent of _____ (gross income of obligor) equals _____ dollars per month.~~

~~The court has considered the existence of special circumstances and has found the following special circumstances marked with an 'X' to be present in this case:~~

~~_____ 1. Ages of the children.~~

~~_____ 2. A child´s extraordinary medical costs or needs in addition to accident and sickness insurance, provided that all such costs or needs shall be considered if no insurance is available.~~

~~_____ 3. Educational costs.~~

_____ ~~4. Day-care costs.~~

_____ ~~5. Shared physical custody arrangements, including extended visitation.~~

_____ ~~6. A party´s other support obligations to another household.~~

_____ ~~7. Income that should be imputed to a party because of suppression of income.~~

_____ ~~8. In-kind income for the self-employed, such as reimbursed meals or a company car.~~

_____ ~~9. Other support of party is providing or will be providing, such as payment of a mortgage.~~

_____ ~~10. A party´s own extraordinary needs, such as medical expenses.~~

_____ ~~11. Extreme economic circumstances including but not limited to:~~

_____ ~~(A) Unusually high debt structure; or~~

_____ ~~(B) Unusually high income of either party or both parties, which shall be construed as individual gross income of over $75,000.00 per annum.~~

_____ ~~12. Historical spending in the family for children which varies significantly from the percentage table.~~

_____ ~~13. Considerations of the economic cost-of-living factors of the community of each party, as determined by the trier of fact.~~

_____ ~~14. In-kind contribution of either parent.~~

_____ ~~15. The income of the custodial parent.~~

_____ ~~16. The cost of accident and sickness insurance coverage for dependent children included in the order.~~

_____ ~~17. Extraordinary travel expenses to exercise visitation or shared physical custody.~~

_____ ~~18. Any other factor which the trier of fact deems to be required by the ends of justice, as described below:~~

_____.

~~Having found that no special circumstances exist, or special circumstances numbered _____ exist (delete the phrase which does not apply), the final award of child support which _____ shall pay to _____ for support of the child or children is _____ dollars per week/month other period (delete those which do not apply and insert as necessary) per child, beginning on the _____ day of _____, _____, and payable thereafter on the _____ day of _____ until the child becomes 18 years of age, dies, marries, or otherwise becomes emancipated, except that if the child becomes 18 years of age while enrolled in and attending secondary school on a full-time basis, then such support shall continue until the child completes~~

~~secondary school, provided that such support shall not be required after the child attains 20 years of age. _____ is ordered to provide accident and sickness insurance for the child or children for so long as he or she is obligated by this order to provide support (insert name of party or delete this sentence if the order does not include provision for insurance).~~″

**SECTION 5.**

Said title is further amended by striking Code Section 19-6-15, relating to guidelines for calculating child support, and inserting in lieu thereof a new Code Section 19-6-15 to read as follows:

″19-6-15.

(a) As used in this Code section, the term:

(1) 'Adjusted gross income' means the net determination of a parent´s income, calculated by deducting from that parent´s gross income any applicable self-employment taxes being paid by the parent and any preexisting child support order for current child support which is being paid by the parent.

(2) 'Adjusted support obligation' means the basic child support obligation from the child support obligation table, adjusted for parenting time, health insurance, and work related child care expenses.

(3) 'Basic child support obligation' means the amount of support displayed on the child support obligation table which corresponds to the combined adjusted gross income of both parents and the number of children for whom support is being determined. This amount is rebuttably presumed to be the appropriate amount of basic child support to be provided by both parents in the case immediately under consideration, prior to consideration of any adjustments for parenting time or additional expenses.

(4) 'Caretaker' means the person or entity providing care and supervision of a child more than 50 percent of the time. The caretaker may be the child´s custodial parent. The caretaker may be a parent of the child or a nonparent relative of the child who voluntarily or otherwise, pursuant to court order or other legal arrangement, is providing care and supervision of the child. A caretaker may also be a private or public agency providing custodial care and supervision for the child through voluntary placement by the child´s parent, nonparent relative, or other designated caretaker or by court order or other legal arrangement.

(5) 'Child support obligation table' means the chart created by the Georgia Child Support Commission which displays the dollar amount of the basic child support obligation corresponding to various levels of combined adjusted gross income of the children´s parents and the number of children for whom a child support order is being established

or modified. The table shall be used to calculate the basic child support obligation according to the provisions of this Code section. Deviations from the table shall comply with the requirements of this Code section.

(6) 'Combined adjusted gross income' means the amount of adjusted gross income calculated by adding together the adjusted gross incomes of both parents. This amount is then used to determine the basic child support obligation for both parents for the number of children for whom support is being calculated in the case immediately under consideration.

(7) 'Credit worksheet' means the worksheet used for listing information regarding a parent´s preexisting child support order and self-employment tax.

(8) 'Custodial parent' means the parent with whom the child or children resides more than 50 percent of the time. The term also means a nonparent caretaker who has been given physical custody of the child or children. If each parent spends exactly 50 percent of the time with the child or children, then the court shall designate the parent with the lesser child support obligation as the custodial parent and the other parent as the noncustodial parent. If a custodial parent has not been designated, the caretaker with whom the child resides more than 50 percent of the time shall be the custodial parent.

(9) 'Day' or 'days' means that a child spends more than 12 hours of a calendar day with or under the control of a parent and that parent expends a reasonable amount of resources on the child during such time period, such as the cost of a meal or other costs directly related to the care and supervision of the child. Partial days of parenting time that are not consistent with this definition shall not be considered a 'day' under the child support guidelines. A 'day' under the control of a parent includes a day the child is not in the parent´s home, but is under the parent´s control, for example, with the parent´s permission at camp or with friends.

(10) 'Final child support order' means the presumptive child support order adjusted by any deviations ordered by the court.

(11) 'Health insurance' means accident, sickness, health, medical, or dental insurance.

(12) 'Noncustodial parent' means the parent with whom the child resides less than 50 percent of the time.

(13) 'Parenting time adjustment' means an adjustment to the noncustodial parent´s portion of the basic child support obligation upon the noncustodial parent´s parenting time with the child.

(14) 'Percentage of income' for each parent is obtained by dividing each parent´s adjusted gross income by the combined total of both parents´ adjusted gross income. The percentage of income is used to determine each parent´s pro rata share of the basic child support obligation and each parent´s share of the amount of additional expense for health

insurance and work related child care. The percentage of income is also used to designate the amount of uninsured medical expenses that each parent is financially responsible to pay, absent an order of a court setting a different amount.

(15) 'Preexisting orders' means:

(A) An order in another case that requires a parent to make child support payments for another child or children, which child support the parent is actually paying, as evidenced by documentation including, but not limited to, payment history from a court clerk, Title IV-D agency, as defined in Code Section 19-6-31, the Department of Human Resources computer system, the department´s Internet child support payment history, or canceled checks or other written proof of payments paid directly; and

(B) That the date of filing of the initial order for each such other case is earlier than the date of filing of the initial order in the case immediately before the court, regardless of the age of any child in any of the cases.

(16) 'Presumptive child support order' means the amount of support to be paid for the child or children derived from the parent´s proportional share of the basic child support obligation, adjusted for parenting time, plus the parent´s proportional share of any additional expenses. This amount is rebuttably presumed to be the appropriate child support order.

(17) 'Pro rata' means to the proportion of one parent´s adjusted gross income to both parents´ combined adjusted gross income, or to the proportion of one parent´s support obligation to the whole support obligation. A parent´s pro rata share of income is calculated by combining both parents´ adjusted gross income and dividing each parent´s separate adjusted gross income by the combined adjusted gross income. A parent´s pro rata share of the basic support obligation is calculated by multiplying the basic child support obligation obtained from the child support obligation table by each parent´s pro rata percentage of the combined adjusted gross income.

(18) 'Split parenting' can only occur in a child support case if there are two or more children of the same parents, where one parent is the custodial parent for at least one child of the parents, and the other parent is custodial parent for at least one other child of the parents. In a split parenting case, each parent is the custodial parent of any child spending more than 50 percent of the time with that parent and is the noncustodial parent of any child spending more than 50 percent of the time with the other parent. A split parenting situation will have two custodial parents and two noncustodial parents, but no child will have more than one custodial parent or noncustodial parent.

(19) 'Standard parenting' means a child support case in which all of the children supported under the order spend more than 50 percent of the time with the same custodial

parent. There is only one custodial parent and one noncustodial parent in a standard parenting case.

(20) 'Theoretical support order' means a hypothetical order which allows the court to determine the amount of a child support obligation if an order existed. A theoretical support order is used to determine the amount of credit allowed as a deduction from a parent´s gross income for a parent´s qualified other child or children who are not under a preexisting child support order.

(21) 'Uninsured health care expenses' means the child´s or children´s uninsured medical expenses including, but not limited to, health insurance copayments, deductibles, and such other costs as are reasonably necessary for orthodontia, dental treatment, asthma treatments, physical therapy, vision care, and any acute or chronic medical or health problem or mental health illness, including counseling and other medical or mental health expenses, that are not covered by insurance.

(22) 'Work related child care costs' means expenses for the care of the child or children for whom support is being determined which are due to employment of either parent. In an appropriate case, the court may consider the child care costs associated with a parent´s job search or the training or education of a parent necessary to obtain a job or enhance earning potential, not to exceed a reasonable time as determined by the court, if the parent proves by a preponderance of the evidence that the job search, job training, or education will benefit the child or children being supported. The term shall be projected for the next consecutive 12 months and averaged to obtain a monthly amount.

(23) 'Worksheet' or 'child support worksheet' means the worksheet used to record information necessary to determine and calculate gross income and child support.

(b)(1) The child support guidelines contained in this Code section are a minimum basis for determining child support obligations and shall apply as a rebuttable presumption in all legal proceedings involving the child support obligation of a parent, including, but not limited to, orders entered in criminal and juvenile proceedings, orders entered pursuant to Article 3 of Chapter 11 of this title, the 'Uniform Interstate Family Support Act,' and voluntary support agreements and consent orders approved by the court. The child support guidelines do not apply to orders for prior maintenance for reimbursement of child care costs incurred prior to the date an action for child support is filed or to child support orders entered against stepparents or other persons or agencies secondarily liable for child support. The child support guidelines shall be used when the court enters a temporary or permanent child support order in a contested or noncontested hearing. The rebuttable presumption award provided by these child support guidelines may be increased according to the best interest of the child for whom support is being considered, the circumstances of the parties, the grounds for deviation set forth in subsection (i) of

this Code section, and to achieve the state policy of affording to children of unmarried parents, to the extent possible, the same economic standard of living enjoyed by children living in intact families consisting of parents with similar financial means.

(2) The provisions of this Code section shall not apply with respect to any divorce case in which there are no minor children, ~~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~~ except to the limited extent authorized by subsection (d) of this Code section. In the final ~~verdict~~ judgment or decree in a divorce case in which there are minor children, or in other cases which are governed by the provisions of this Code section, the ~~trier of fact~~ court shall;

(A) Specify ~~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 determined by use of the worksheets;

(B) 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~~

(C) Include a written finding of the gross income of the father and the mother as determined by the factfinder;

(D) Determine whether health insurance for the child or children involved is reasonably available at a reasonable cost to either parent. If the insurance policy is reasonably available at a reasonable cost to the parent, then the court may order that the child or children be covered under such insurance; and

(E) Include written findings of fact as to whether one or more of the deviations allowed under this Code section are applicable, and if one or more such deviations are applicable, the written findings of fact shall further set forth:

(i) The reasons the court deviated from the presumptive amount of child support;

(ii) The amount of child support that would have been required under the child support guidelines if the presumptive amount had not been rebutted; and

(iii) A finding that states how application of the child support guidelines would be unjust or inappropriate in the case immediately under consideration considering the relative ability of each parent to provide support and how the best interests of the child or children who are subject to the support award determination are served by deviation from the presumptive guideline amount.

~~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 accident and sickness insurance for the child or the children involved is reasonably available at reasonable costs through employment related or other group health insurance policies to~~

~~an obligor. For purposes of this Code section, accident and sickness coverage shall be deemed available if the obligor has access to any policy of insurance authorized under Title 33 through an employer or other group health insurance plan. If the accident and sickness insurance is deemed available at reasonable cost, the court shall order the obligor to obtain the coverage; provided, however, if the obligee has accident and sickness insurance for the child or children reasonably available at reasonable costs through employment related or other group health insurance policies, then the court may order that the child or children be covered under such insurance and the obligor contribute as part of the child support order such part of the cost of providing such insurance or such part of any medical expenses incurred on behalf of the child or children not covered by such insurance as the court may deem equitable or appropriate. If currently unavailable or unreasonable in cost, the court shall order the obligor to obtain coverage when it becomes available at a reasonable cost, unless such insurance is provided by the obligee as provided in this subsection~~.

(3) When support is awarded, the party who is required to pay the support shall not be liable to third persons for necessaries furnished to the child or children embraced in the ~~verdict~~ judgment or decree. In any contested case, the parties shall submit to the court their ~~proposed findings regarding the gross income of the father and the mother~~ worksheets and the presence or absence of ~~special circumstances~~ other factors to be considered by the court pursuant to the provisions of this Code section. In any case in which ~~child support is~~ the gross incomes of the father and the mother are determined by a jury, the court shall charge the provisions of this Code section applicable to the determination of gross income and the jury shall be required to return a special interrogatory ~~similar to the form of the order contained in Code Section 19-5-12 regarding the gross income of the father and the mother and the presence or absence of special circumstances~~. Based upon the jury´s verdict as to gross income, the court shall determine the child support obligation in accordance with the provisions of this Code section. ~~Furthermore, nothing~~

(4) Nothing contained within this Code section shall prevent the parties from entering into an enforceable agreement to the contrary which may be made the order of the court pursuant to the review by the court of the adequacy of the child support amounts negotiated by the parties, including the provision for medical expenses and health insurance; provided, however, that if the agreement negotiated by the parties does not comply with the provisions contained in this Code section~~; provided, however, any such agreement of the parties shall include a written statement regarding 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~~ and does not contain findings of fact

as required to support a deviation, the court shall reject such agreement. To assist in this determination by the court, the parties shall provide all child support worksheets utilized by the parties to determine the child support amounts proposed in the agreement.

~~(b) The child support award shall be computed as provided in this subsection:~~

~~(1) Computation of child support shall be based upon gross income;~~

~~(2) For the purpose of determining the obligor´s child support obligation, gross income shall include 100 percent of wage and salary income and other compensation for personal services, interest, dividends, net rental income, self-employment income, and all other income, except need-based public assistance;~~

~~(3) The earning capacity of an asset of a party available for child support may be used in determining gross income. The reasonable earning potential of an asset may be determined by multiplying its equity by a reasonable rate of interest. The amount generated by that calculation should be added to the obligor´s gross monthly income;~~

~~(4) Allowable expenses deducted to calculate self-employment income that personally benefit the obligor, or economic in-kind benefits received by an employed obligor, may be included in calculating the obligor´s gross monthly income; and~~

~~(5) The amount of the obligor´s child support obligation shall be determined by multiplying the obligor´s gross income per pay period by a percentage based on the number of children for whom child support is being determined. The applicable percentages of gross income to be considered by the trier of fact are:~~

| ~~Number of Children~~ | ~~Percentage Range of Gross Income~~ |
|---|---|
| ~~1~~ | ~~17 percent to 23 percent~~ |
| ~~2~~ | ~~23 percent to 28 percent~~ |
| ~~3~~ | ~~25 percent to 32 percent~~ |
| ~~4~~ | ~~29 percent to 35 percent~~ |
| ~~5 or more~~ | ~~31 percent to 37 percent~~ |

~~Application of these guidelines shall create a rebuttable presumption that the amount of the support awarded is the correct amount of support to be awarded. A written finding or specific finding on the record for the award of child support that the application of the guidelines would be unjust or inappropriate in a particular case shall be sufficient to rebut the presumption in that case. Findings that rebut said presumption must state the amount of support that would have been required under the guidelines and include justification of why the order varies from the guidelines.~~

(c) In the event of a hearing or trial on the issue of child support, the ~~These~~ guidelines enumerated in this Code section are intended by the General Assembly to be guidelines

only and any court so applying these guidelines shall not abrogate its responsibility in making the final determination of child support based on the evidence presented to it at the time of the hearing or trial.

~~(c) The trier of fact shall vary the final award of child support, up or down, from the range enumerated in paragraph (5) of subsection (b) of this Code section upon a written finding that the presence of one or more of the following special circumstances makes the presumptive amount of support either excessive or inadequate:~~

~~(1) Ages of the children;~~

~~(2) A child´s extraordinary medical costs or needs in addition to accident and sickness insurance, provided that all such costs or needs shall be considered if no insurance is available;~~

~~(3) Educational costs;~~

~~(4) Day-care costs;~~

~~(5) Shared physical custody arrangements, including extended visitation;~~

~~(6) A party´s other support obligations to another household;~~

~~(7) Income that should be imputed to a party because of suppression of income;~~

~~(8) In-kind income for the self-employed, such as reimbursed meals or a company car;~~

~~(9) Other support a party is providing or will be providing, such as payment of a mortgage;~~

~~(10) A party´s own extraordinary needs, such as medical expenses;~~

~~(11) Extreme economic circumstances including but not limited to:~~

~~(A) Unusually high debt structure; or~~

~~(B) Unusually high income of either party or both parties, which shall be construed as individual gross income of over $75,000.00 per annum;~~

~~(12) Historical spending in the family for children which varies significantly from the percentage table;~~

~~(13) Considerations of the economic cost-of-living factors of the community of each party, as determined by the trier of fact;~~

~~(14) In-kind contribution of either parent;~~

~~(15) The income of the custodial parent;~~

~~(16) The cost of accident and sickness insurance coverage for dependent children included in the order;~~

~~(17) Extraordinary travel expenses to exercise visitation or shared physical custody; and~~

~~(18) Any other factor which the trier of fact deems to be required by the ends of justice.~~

(d) ~~The guidelines shall be reviewed by a commission appointed by the Governor to ensure that their application results in the determination of appropriate child support award amounts. The commission will complete its review and submit its report within four years~~

~~following July 1, 1989, and shall continue such reviews every four years thereafter. Nothing contained in such report shall be considered to authorize or require a change in the guidelines without action by the General Assembly having the force and effect of law.~~

~~(e)~~ The duty to provide support for a minor child shall continue until the child reaches the age of majority, dies, marries, or becomes emancipated, whichever first occurs; provided, however, that, in any temporary or final order for child support with respect to any proceeding for divorce, separate maintenance, legitimacy, or paternity entered on or after July 1, 1992, the ~~trier of fact~~ court, in the exercise of sound discretion, may direct either or both parents to provide financial assistance to a child who has not previously married or become emancipated, who is enrolled in and attending a secondary school, and who has attained the age of majority before completing his or her secondary school education, provided that such financial assistance shall not be required after a child attains 20 years of age. The provisions for support provided in this subsection may be enforced by either parent or the child for whose benefit the support is ordered.

~~(f) The provisions of subsection (e) of this Code section shall be applicable only to a temporary order or final decree for divorce, separate maintenance, legitimation, or paternity entered on or after July 1, 1992, and the same shall be applicable to an action for modification of a decree entered in such an action entered on or after July 1, 1992, only upon a showing of a significant change of material circumstances~~

(e) *Gross income.*

(1)(A) Gross income of each parent shall be determined in the process of setting the presumptive child support order and shall include all income from any source, before deductions for taxes and other deductions such as preexisting child support orders and credits for other qualified children, whether earned or unearned, and includes, but is not limited to, the following:

(i) Salaries;

(ii) Commissions, fees, and tips;

(iii) Income from self-employment;

(iv) Bonuses;

(v) Overtime payments;

(vi) Severance pay;

(vii) Recurring income from pensions or retirement plans including, but not limited to, Veterans´ Administration, Railroad Retirement Board, Keoughs, and individual retirement accounts;

(viii) Interest income;

(ix) Dividend income;

(x) Trust income;

(xi) Income from annuities;

(xii) Capital gains;

(xiii) Disability or retirement benefits that are received from the Social Security Administration pursuant to Title XI of the federal Social Security Act;

(xiv) Workers´ compensation benefits, whether temporary or permanent;

(xv) Unemployment insurance benefits;

(xvi) Judgments recovered for personal injuries and awards from other civil actions;

(xvii) Gifts that consist of cash or other liquid instruments, or which can be converted to cash;

(xviii) Prizes;

(xix) Lottery winnings;

(xx) Alimony or maintenance received from persons other than parties to the proceeding before the court; and

(xxi) Assets which are used for the support of the family.

(B) Excluded from gross income are the following:

(i) Child support payments received by either parent for the benefit of a child or children of another relationship; and

(ii) Benefits received from means-tested public assistance programs such as, but not limited to:

(I) PeachCare for Kids Program, Temporary Assistance for Needy Families, or similar programs in other states or territories under Title IV-A of the federal Social Security Act;

(II) Food stamps or the value of food assistance provided by way of electronic benefits transfer procedures by the Department of Human Resources;

(III) Supplemental security income received under Title XVI of the federal Social Security Act;

(IV) Benefits received under Section 402(d) of the federal Social Security Act for disabled adult children of deceased disabled workers; and

(V) Low Income Heating and Energy Assistance Program payments.

(2)(A) When establishing an initial order of child support, if a parent fails to produce reliable evidence of income, such as tax returns for prior years, check stubs, or other information for determining current ability to support or ability to support in prior years, and the court has no other reliable evidence of the parent´s income or income potential, gross income for the current year shall be determined by imputing gross income based on a 40 hour workweek at minimum wage.

(B) When cases with established orders are reviewed for modification and a parent fails to produce reliable evidence of income, such as tax returns for prior years, check

stubs, or other information for determining current ability to support or ability to support in prior years, and the court has no other reliable evidence of that parent´s income or income potential, the court may enter an order to increase the child support obligation of the parent failing or refusing to produce evidence of income by an increment of at least 10 percent per year of that parent´s pro rata share of the basic child support obligation for each year since the support order was entered or last modified.

(C) In either circumstance in subparagraph (A) or (B) of this paragraph, either parent may later provide within 90 days, upon motion to the court, the reliable evidence necessary to determine the appropriate amount of support based upon reliable evidence. The court may increase or reduce the amount of current support from the date of filing of either parent´s initial filing or motion to modify child support, but arrearages or retroactive amounts entered in an order based upon imputed income shall not be forgiven. When a parent, whose income has been imputed under subparagraph (A) or (B) of this paragraph, provides reliable evidence to support a modification of the amount of income imputed for that parent, the parent is not required to demonstrate the existence of a significant variance otherwise required for modification of an order pursuant to subsection (l) of this Code section.

(3)(A) Income from self-employment includes income from, but not limited to, business operations, work as an independent contractor or consultant, sales of goods or services, and rental properties, less ordinary and reasonable expenses necessary to produce such income. Income from self-employment, rent, royalties, proprietorship of a business, or joint ownership of a partnership, limited liability company, or closely held corporation is defined as gross receipts minus ordinary and necessary expenses required for self-employment or business operations. Ordinary and reasonable expenses of self-employment or business operations necessary to produce income do not include:

(i) Excessive promotional, travel, vehicle, or personal living expenses, depreciation on equipment, or costs of operation of home offices; or

(ii) Amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses, investment tax credits, or any other business expenses determined by the court to be inappropriate for determining gross income.

In general, income and expenses from self-employment or operation of a business should be carefully reviewed by the factfinder and the court to determine an appropriate level of gross income available to the parent to satisfy a child support obligation. Generally, this amount will differ from a determination of business income for tax purposes.

(B)(i) An additional deduction of 6.2 percent of FICA and 1.45 percent of medicare, or in any amount subsequently set by federal law as FICA and medicare tax, shall be

deducted from a parent´s gross income earned from self-employment, up to the amounts allowed under federal law.

(ii) Any self-employment tax paid shall be deducted from gross income as part of the calculation of a parent´s adjusted gross income.

(4)(A) Fringe benefits for inclusion as income or 'in kind' remuneration received by a parent in the course of employment, or operation of a trade or business, shall be counted as income if they significantly reduce personal living expenses.

(B) Such fringe benefits might include, but are not limited to, use of a company car, housing, or room and board.

(C) Basic allowance for housing, basic allowance for subsistence, and variable housing allowances for members of the armed services are considered income for the purposes of determining child support.

(D) Fringe benefits do not include employee benefits that are typically added to the salary, wage, or other compensation that a parent may receive as a standard added benefit, including but not limited to employer paid portions of health insurance premiums or employer contributions to a retirement or pension plan.

(5)(A) Benefits received under Title XI of the federal Social Security Act by a child on the obligor´s account shall be counted as child support payments and shall be applied against the child support obligation ordered to be paid by the obligor for the child.

(B) If after calculating the obligor´s gross income as defined in this subsection, including the countable Social Security benefits in division (1)(A)(xiii) of this subsection, and after calculating the amount of the child support obligation using the child support worksheet, the amount of the child support obligation is greater than the Social Security benefits paid on behalf of the child on the obligor´s account, the obligor shall be required to pay the amount exceeding the Social Security benefit as part of the child support obligation in the case.

(C)(i) If after calculating the obligor´s gross income as defined in this subsection, including the countable Social Security benefits in division (1)(A)(xiii) of this subsection, and after calculating the amount of the child support obligation using the child support worksheet, the amount of the child support obligation is equal to or less than the Social Security benefits paid to the caretaker on behalf of the child on the obligor´s account, the child support obligation of that parent is met and no further child support obligation shall be paid.

(ii) Any benefit amounts under Title XI of the federal Social Security Act as determined by the Social Security Administration sent to the caretaker by the Social Security Administration for the child´s benefit which are greater than the child

support obligation ordered by the court shall be retained by the caretaker for the child´s benefit and shall not be used as a reason for decreasing the child support order or reducing arrearages.

(D) The court shall make a written finding of fact in the child support order regarding the use of the Social Security benefits in the calculation of the child support obligation.

(6) Variable income such as commissions, bonuses, overtime pay, and dividends shall be averaged by the factfinder over a reasonable period of time consistent with the circumstances of the case and added to a parent´s fixed salary or wages to determine gross income. When income is received on an irregular, nonrecurring or one-time basis, the court may, but is not required to, average or prorate the income over a reasonable specified period of time or require the parent to pay as a one-time support amount a percentage of his or her nonrecurring income, taking into consideration the percentage of recurring income of that parent.

(7)(A) A determination of whether a parent is willfully or voluntarily unemployed or underemployed shall ascertain the reasons for the parent´s occupational choices and assess the reasonableness of these choices in light of the parent´s obligation to support his or her child or children and to determine whether such choices benefit the child or children. A determination of willful and voluntary unemployment or underemployment is not limited to occupational choices motivated only by an intent to avoid or reduce the payment of child support. A determination of willful and voluntary unemployment or underemployment can be based on any intentional choice or act that affects a parent´s income.

(B) Factors for the court to consider when determining willful and voluntary unemployment or underemployment include, but are not limited to:

(i) The parent´s past and present employment;

(ii) The parent´s education and training;

(iii) Whether unemployment or underemployment for the purpose of pursuing additional training or education is reasonable in light of the parent´s obligation to support his or her child or children and, to this end, whether the training or education may ultimately benefit the child or children in the case immediately under consideration by increasing the parent´s level of support for that child or those children in the future;

(iv) A parent´s ownership of valuable assets and resources, such as an expensive home or automobile, that appear inappropriate or unreasonable for the income claimed by the parent; and

(v) The parent´s role as caretaker of a handicapped or seriously ill child of that parent, or any other handicapped or seriously ill relative for whom that parent has

assumed the role of caretaker, which eliminates or substantially reduces the parent´s ability to work outside the home, and the need of that parent to continue in that role in the future.

(C) When considering the income potential of a parent whose work experience is limited due to the caretaker role of that parent, the court shall consider the following factors:

(i) Whether the parent acted in the role of full-time caretaker immediately prior to separation by the married parties or prior to the divorce or annulment of the marriage or dissolution of another relationship in which the parent was a full-time caretaker;

(ii) The length of time the parent staying at home has remained out of the workforce for this purpose;

(iii) The parent´s education, training, and ability to work; and

(iv) Whether the parent is caring for a child or children who are four years of age or younger.

(D) If the court determines that a parent is willfully and voluntarily unemployed or underemployed, child support shall be calculated based on a determination of potential income, as evidenced by educational level or previous work experience. In the absence of any other reliable evidence, income may be imputed to the parent pursuant to a determination that gross income for the current year is based on a 40 hour workweek at minimum wage.

(E) A determination of willful and voluntary unemployment or underemployment shall not be made when an individual is activated from the National Guard or other armed forces unit or enlists or is drafted for full-time service in the armed forces of the United States.

(8)(A) An adjustment to the parent´s gross income shall be made on the child support worksheet for current preexisting orders actually being paid under an order of support for a period of not less than 12 consecutive months immediately prior to the date of the hearing before the court to set, modify, or enforce child support.

(B) In calculating the adjustment for preexisting orders, the court shall include only those preexisting orders where the date of entry of the initial support order precedes the date of entry of the initial order in the case immediately under consideration.

(C) The priority for preexisting orders is determined by the date of the initial order in each case. Subsequent modifications of the initial support order shall not affect the priority position established by the date of the initial order.

(D) Adjustments are allowed for current preexisting support only to the extent that the payments are actually being paid as evidenced by documentation including, but not limited to, payment history from a court clerk, a Title IV-D agency, as defined in Code

Section 19-6-31, the Department of Human Resources computer system, the department´s Internet child support payment history, or canceled checks or other written proof of payments paid directly. The maximum credit allowed for a preexisting order is an average of the amount of current support actually paid under the preexisting order over the past 12 months prior to the hearing date.

(E) All preexisting orders shall be entered on the credit worksheet for the purpose of calculating the total amount of the credit to be included on the child support worksheet, but the preexisting orders shall not be used on the credit worksheet as a deduction against gross income for the purpose of calculating a theoretical child support order.

(F) Payments being made by a parent on any arrearages shall not be considered payments on preexisting or subsequent orders and shall not be used as a basis for reducing gross income.

(9)(A) In addition to the adjustments to gross income for self-employment tax provided in subparagraph (B) of paragraph (3) of this subsection and for preexisting orders provided in paragraph (8) of this subsection, credits for either parent´s other child or children qualified under this paragraph may be considered by the court for the purpose of reducing the parent´s gross income or as a reason for deviation. Credits may be considered for a qualified child:

(i) For whom the parent is legally responsible and in whose home that child resides;

(ii) The parent is actually supporting;

(iii) Who is not subject to a preexisting order for child support; and

(iv) Who is not before the court to set, modify, or enforce support in the case immediately under consideration.

Stepchildren and other minors in the home that the parent has no legal obligation to support shall not be considered in the calculation of this credit. To consider a parent´s qualified other child or children for credit, a parent must present documentary evidence of the parent-child relationship to the court.

(B) Credits against income pursuant to this paragraph may be considered in such circumstances in which the failure to consider such child or children would cause substantial hardship to the parent. Use of this credit is appropriate when a child support order is entered. Credits may also be appropriate when a child support order is modified to rebut a claim for increased child support brought by the custodial parent. If the court, in its discretion, decides to apply this credit, a parent´s current financial responsibility for his or her natural or adopted child or children who currently reside with the parent, other than a child or children for whom child support is being determined in the pending action, can be no greater than an amount (i) equal to the basic child support obligation for that child or those children based on the parent´s income if the other

parent of such child or children does not live with the parent and child or children or (ii) one-half of the basic child support obligation for such child or children based on the combined incomes of both of the parents of such child or children if the other parent of such child or children lives with the parent and the child or children.

(C) Credits against income for another qualified child or other qualified children shall be calculated and recorded on the credit worksheet and then entered on the child support worksheet for the purpose of reducing the parent´s gross income on the child support worksheet. However, except for self-employment taxes paid, no other amounts shall be subtracted from the parent´s gross income on the credit worksheet when calculating a theoretical support order under this paragraph.

(10) Actual payments of alimony should not be considered as a deduction from gross income but may be considered as a factor to vary from the final presumptive child support order. If the court considers the actual payment of alimony, the court shall make a written finding of such consideration as a basis for deviation from the final presumptive child support order.

(11) In multiple family situations, the adjustments to a parent´s gross income shall be calculated in the following order:

(A) Preexisting orders according to the date of the initial order; and

(B) After applying the deductions on the child support worksheet for preexisting orders, if any, in subparagraph (E) of paragraph (8) of this subsection, any credit for a parent´s qualified other child or children may be considered using the procedure set forth in subparagraph (A) of this paragraph.

(f) The basic child support obligation is determined based upon the parent´s gross income and by using the corresponding child support obligation table as established and maintained by the Georgia Child Support Commission. If the combined monthly adjusted gross income falls between the amounts shown in the table, then the child support obligation shall be based on the income bracket mostly closely matched to the combined monthly adjusted gross income. The number of children column on the table corresponds to children for whom parents share joint legal responsibility and for whom support is being sought.

(g)(1) The child support obligation table does not include the cost of the child´s work related child care costs or the cost of health insurance premiums or uninsured health expenses. The additional expenses for the child´s health insurance premium and work related child care shall be included in the calculations to determine child support.

(2)(A) Work related child care expenses necessary for the parent´s employment, education, or vocational training that are determined by the court to be appropriate, and that are appropriate to the parents´ financial abilities and to the lifestyle of the child or children if the parents and child or children were living together, shall be averaged for

a monthly amount and entered on the child support worksheet in the column of the parent initially paying the expense. Work related child care expenses of a nonparent caretaker shall be considered when determining the amount of this expense.

(B) If a child care subsidy is being provided pursuant to a means-tested public assistance program, only the amount of the child care expense actually paid by either parent shall be included in the calculation.

(C) If either parent is the provider of child care services to the child or children for whom support is being determined, the value of those services shall not be added to the basic child support obligation when calculating the support award.

(D) If child care is provided by a family member, other unpaid person, or provided by a parent´s employer without charge to the parent, then the value of these services shall not be added to the basic child support obligation.

(3)(A) The amount that is, or will be, paid by a parent for health insurance for the child or children for whom support is being determined shall be added to the basic child support obligation and prorated between the parents based upon their respective incomes. Payments made by a parent´s employer for health insurance and not deducted from the parent´s wages are not included. When a child or children for whom support is being determined are covered by a family policy, only the health insurance premium actually attributable to that child or those children is added. If this amount is not available or cannot be verified, the total cost of the premium shall be divided by the total number of persons covered by the policy and then multiplied by the number of covered children for whom support is being determined.

(B) The amount of the cost for the child´s or children´s health insurance premium and work related child care expenses shall be determined and added to the basic child support obligation as 'additional expenses' whether paid directly by the parent or through a payroll deduction.

(C) The total amount of the cost for the child´s or children´s health insurance premium and work related child care shall be divided between the parents pro rata to determine the total presumptive child support order and shall be included in the worksheet and written order of the court together with the amount of the basic child support obligation.

(4)(A) If health insurance that provides for the health care needs of the child or children can be obtained by a parent at reasonable cost, then an amount to cover the cost of the premium shall be added to the basic child support obligation. A health insurance premium paid by a nonparent caretaker shall be included when determining the amount of this expense. In determining the amount to be added to the order for this cost, only the amount of the insurance cost attributable to the child or children who are the subject of the support order shall be included.

(B) If coverage is applicable to other persons and the amount of the health insurance premium attributable to the child or children who are the subject of the current action for support is not verifiable, the total cost to the parent paying the premium shall be prorated by the number of persons covered so that only the cost attributable to the child or children who are the subject of the order under consideration is included. This amount shall be determined by dividing the total amount of the insurance premium by the number of persons covered by the insurance policy and taking the resulting amount and multiplying it by the number of children covered by the insurance policy. This monthly cost shall be entered on the child support worksheet in the column of the parent paying the premium.

(C) Eligibility for or enrollment of the child or children in Medicaid shall not satisfy the requirement that the child support order provide for the child´s or children´s health care needs.

(h)(1) The court shall determine each parent´s pro rata share of the additional expenses by multiplying the percentage of income of each parent by the combined total additional expenses.

(2)(A) In standard parenting situations, the adjusted support obligation is the parent´s share of the basic child support obligation plus the parent´s share of any additional expenses for the child´s or children´s health insurance premium and work related child care.

(B) In split parenting situations, the adjusted support obligation is each parent´s basic child support obligation for the child or children in the other parent´s care plus each parent´s share of any additional expenses for the child or children´s health insurance premium and work related child care.

(C) If a parenting time adjustment has been calculated in either a standard or split parenting situation and that parent´s share of the basic child support obligation is adjusted as specified in paragraph (5) of this subsection, then each parent´s adjusted support obligation is calculated pursuant to this paragraph.

(3)(A) If a parent pays directly or through payroll deduction the child´s or children´s health insurance premium, or pays through payroll deduction work related child care costs, the total amount of the expenses paid in this manner shall first be entered on the child support worksheet to be used in calculating total additional expenses and each parent´s adjusted support obligation.

(B) Once the adjusted support obligation has been calculated, the expenses paid by the parent as indicated in subparagraph (A) of this paragraph shall be deducted from the adjusted support obligation of that parent to credit the parent for the payment of these expenses. The amount of the deduction for the health insurance premium or payroll

deduction for the work related child care expense shall be included in the child support order to identify the amount and nature of the child support obligation. These expenses shall not be included in the noncustodial parent´s income deduction order. The order shall require that these expenses continue to be paid in the same manner as they were being paid prior to the instant action.

(C) To the extent that work related child care expenses are not included in subsection (g) of this Code section, the expense shall be accounted for in the noncustodial parent´s income deduction order as part of the child support order. The custodial parent shall pay this expense in full out of his or her income and the child support award.

(4)(A) The child´s or children´s uninsured health expenses, including, but not limited to, deductibles, copayments, and dental, orthodontic, counseling, psychiatric, vision, hearing, and other medical needs not covered by insurance, shall be the financial responsibility of both parents. The order of the court shall include provisions for payment of the uninsured medical expenses. The parents shall divide these expenses pro rata, unless otherwise specifically ordered by the court.

(B) If a parent fails to pay his or her pro rata share of the child´s or children´s, uninsured medical expenses, as specified in the child support order, within a reasonable time after receipt of evidence documenting the uninsured portion of the expense, the other parent, the nonparent caretaker, or the state or its Title IV-D agency, as defined in Code Section 19-6-31, may enforce payment of the expense by any means permitted by law.

(5) No adjustment to gross income shall be made in the calculation of a child support obligation which seriously impairs the ability of the custodial parent in the case immediately under consideration to maintain minimally adequate housing, food, and clothing for the child or children being supported by the order and to provide other basic necessities, as determined by the court.

(i)(1) The amount of child support established by this Code section and the child support obligation table are rebuttable and the court may deviate from the presumptive child support order in compliance with this subsection. In deviating from the child support guidelines, primary consideration shall be given to the best interest of the child or children for whom support under the child support guidelines are being determined.

(2) When ordering a deviation from the presumptive amount of child support established by the child support guidelines, the court´s order shall contain written findings of fact stating:

(A) The reasons for the change or deviation from the presumptive child support order;

(B) The amount of child support that would have been required under the child support guidelines if the presumptive child support order had not been rebutted; and

(C) How, in its determination,

(i) Application of the child support guidelines would be unjust or inappropriate in the case immediately under consideration; and

(ii) The best interests of the child for whom support is being determined will be served by deviation from the presumptive child support order.

No deviation in the amount of the child support obligation shall be made which seriously impairs the ability of the custodial parent in the case immediately under consideration to maintain minimally adequate housing, food, and clothing for the child or children being supported by the order and to provide other basic necessities, as determined by the court.

(3)(A) For purposes of this paragraph, parents are considered to be high-income parents if their combined adjusted gross income exceeds $20,000.00 per month.

(B) For high-income parents, the court shall set the child support obligation at the highest amount allowed by the child support obligation table but may consider upward deviation to attain an appropriate award of child support for high-income parents which is considered in the best interest of the child or children.

(4) Deviation from the child support guidelines may be appropriate for reasons in addition to those established under subsection (g) of this Code section when the court finds it is in the best interest of the child, in accordance with the requirements of subsection (e) of this Code section and the following procedures:

(A) In making its determination regarding a request for deviation pursuant to this subsection, the court shall consider all available income of the parents and shall make a written finding that an amount of child support other than the amount calculated under the child support guidelines is reasonably necessary to provide for the needs of the child or children for whom support is being determined in the case immediately under consideration. If the circumstances which supported the deviation cease to exist, the child support order may be modified to eliminate the deviation;

(B) In cases where the child or children are in the legal custody of the Department of Human Resources, the child protection or foster care agency of another state or territory, or any other child caring entity, public or private, the court may consider a deviation from the presumptive child support order if the deviation will assist in accomplishing a permanency plan or foster care plan for the child or children that has a goal of returning the child or children to the parent or parents and the parent´s need to establish an adequate household or to otherwise adequately prepare herself or himself for the return of the child or children clearly justifies a deviation for this purpose;

(C) If parenting time related travel expenses are substantial due to the distance between the parents, the court may order the allocation of such costs by deviation from the basic

child support obligation, taking into consideration the circumstances of the respective parties as well as which parent moved and the reason that the move was made; and

(D)(i) The child support obligation table includes average child rearing expenditures for families given the parents´ monthly combined income and number of children. Extraordinary expenses are in excess of these average amounts and are highly variable among families. For these reasons, extraordinary expenses, other than the health insurance premium and work related child care, shall be considered on a case by case basis in the calculation of support and added to the basic support award as a deviation so that the actual amount of the expense is considered in the calculation of the final child support order for only those families actually incurring the expense.

(ii)(I) Extraordinary educational expenses may be added to the basic child support as a deviation. Extraordinary educational expenses include, but are not limited to, tuition, room and board, lab fees, books, fees, and other reasonable and necessary expenses associated with special needs education or private elementary and secondary schooling that are appropriate to the parent´s financial abilities and to the lifestyle of the child or children if the parents and child or children were living together.

(II) In determining the amount of deviation for extraordinary educational expenses, scholarships, grants, stipends, and other cost reducing programs received by or on behalf of the child or children shall be considered.

(III) If a deviation is allowed for extraordinary educational expenses, a monthly average of these expenses shall be based on evidence of prior or anticipated expenses and entered on the child support worksheet in the deviation section.

(iii)(I) Special expenses incurred for child rearing, including but not limited to expense variations related to the food, clothing, and hygiene costs of children at different age levels, which can be quantified may be added to the child support obligation as a deviation from the presumptive child support order. Such expenses include, but are not limited to, summer camp, music or art lessons, travel, school sponsored extra curricular activities, such as band, clubs, and athletics, and other activities intended to enhance the athletic, social, or cultural development of a child but are not otherwise required to be used in calculating the child support order as are health insurance premiums and work related child care costs.

(II) A portion of the basic child support obligation is intended to cover average amounts of special expenses incurred in the rearing of a child. When special expenses exceed 7 percent of the monthly basic child support obligation, then the court shall consider additional amounts of support as a deviation to cover the full amount of these special expenses.

(iv) In instances of extreme economic hardship, such as in cases involving extraordinary medical needs not covered by insurance or other extraordinary special needs for the child or children of a parent´s current family, deviation from the child support guidelines may be considered. In such cases, the court shall consider the resources available for meeting such needs, including those available from agencies and other adults.

(5)(A) For purposes of this paragraph, a parent is considered to be a low-income person if his or her annual gross income is at or below the federal poverty level for a single person.

(B) The court may consider the low income of the custodial parent or the noncustodial parent as a basis for deviation from the guideline amounts.

(C) The court shall consider all nonexempt sources of income available to each party and all expenses actually paid by each party.

(D) The party seeking a low-income deviation shall present to the court documentation of all his or her income and expenses or provide sworn statements of all his or her income and expenses in support of the requested deviation.

(E) The court shall make a written finding in its order that the deviation from the child support guidelines based upon the low income and reasonable expenses of a party are clearly justified and shall make the necessary written findings pursuant to this paragraph.

(F) The court may deviate from the lowest amount of child support provided for in the basic child support guideline table and shall make the necessary written findings if it chooses to deviate.

(j)(1) The child support guidelines presume that when parents live separately, the child or children will typically reside primarily with the custodial parent and stay overnight with the noncustodial parent a minimum of every other weekend from Friday to Sunday, two weeks in the summer, and two weeks during holidays throughout the year, for a total of 80 days per year. The child support guidelines also recognize that some families may have different parenting situations and thus allow for an adjustment in the noncustodial parent´s child support obligation, as appropriate, in compliance with the criteria specified in this subsection. The calculations made for each parenting situation shall be based on specific factual information regarding the amount of time each parent has with the child.

(2)(A) If the noncustodial parent spends 100 or more days per calendar year with a child or children, an assumption is made that the noncustodial parent is making greater expenditures on the child or children due to the duplication of some child rearing expenditures between the two households, for example, housing or food, and a

reduction to the noncustodial parent´s child support obligation may be made to account for these expenses.

(B) The noncustodial parent´s child support obligation may be reduced for the days of additional parenting time based upon the following schedule:

| Number of Days | Percent Reduction in Support |
|---|---|
| 100 -136 days | 10 percent |
| 137 -151 days | 20 percent |
| 152 -166 days | 30 percent |
| 167 -181 days | 40 percent |
| 182 or more days | 50 percent |

(C) The presumption that more parenting time by the noncustodial parent shall result in a reduction to the noncustodial parent´s support obligation may be rebutted by evidence.

(D) If there is more than one child in the case with whom the noncustodial parent spends 100 days or more per year, and the noncustodial parent is spending different amounts of time with each child, then the time the noncustodial parent spends with each child shall be averaged to determine the parenting time adjustment.

(3)(A) If the noncustodial parent spends 60 or fewer days per calendar year with a child or children, an assumption is made that the custodial parent is making greater expenditures on the child or children for items such as food and baby-sitting associated with the increased parenting time by the custodial parent, and an increase in the noncustodial parent´s child support obligation may be made.

(B) The noncustodial parent´s child support obligation may be increased for the reduction in days of the noncustodial parent´s parenting time based upon the following schedule:

| Number of Days | Percent Increase in Support |
|---|---|
| 60-39 days | 10 percent |
| 38-24 days | 20 percent |
| 23-9 days | 30 percent |
| 8-0 days | 35 percent |

(C) The presumption that less parenting time by the noncustodial parent shall result in an increase to the noncustodial parent´s support obligation may be rebutted by evidence.

(D) If there is more than one child in the case with whom the noncustodial parent spends 60 or fewer days per year, and the noncustodial parent is spending different

amounts of time with each child, then the time the noncustodial parent spends with each child is averaged to determine the parenting time adjustment.

(4) If there are additional children for whom support is being calculated with whom the noncustodial parent spends more than 60 days but less than 100 days per calendar year, the days with these children are not included in the calculation for the parenting time adjustment.

(5) If a child support obligation is being calculated for multiple children, and the noncustodial parent spends 100 days or more per year with at least one child and 60 or fewer days with at least one child, then the percentage increase is offset against the percentage decrease and the resulting percentage is applied to the child support obligation.

(k) In the event a parent suffers an involuntary termination of employment, has an extended involuntary loss of average weekly hours, is involved in an organized strike, incurs a loss of health, or similar involuntary adversity resulting in a loss of income of 25 percent or more, then the portion of child support attributable to lost income shall not accrue from the date of the filing of the petition for modification, provided that service is made on the other parent.

(l)(1) The adoption of these child support guidelines constitutes a significant material change in the establishment and calculation of child support orders. In any proceeding to modify an existing order, an increase or decrease of 15 percent or more between the amount of the existing order and the amount of child support resulting from the application of these child support guidelines shall be presumed to constitute a substantial change of circumstances as may warrant a modification based upon the court´s considerations of the parent´s financial circumstances and the needs of the children. This differential shall be calculated by applying 15 percent to the existing award. If there is a material change in the father´s income, the mother´s income, the needs of the child or children, or the needs of either parent, either parent shall have the right to petition for modification of the child support award regardless of the length of time since the establishment or most recent modification of the child support award. If there is a difference of 30 percent or more between a new award and a prior award, the court may, at its discretion, phase in the new child support award over a period of up to one year with the phasing in being largely evenly distributed with at least an initial immediate adjustment of not less than 25 percent of the difference and at least one intermediate adjustment prior to the final adjustment at the end of the phase-in period.

(2) In proceedings for the modification of a child support award pursuant to the provisions of this Code section, the court may award attorneys´ fees, costs, and expenses of litigation to the prevailing party as the interests of justice may require.

(3) No petition to modify child support may be filed by either parent within a period of two years from the date of the final order on a previous petition by the same parent except where the child support obligation table created by the Georgia Child Support Commission creates a difference of 15 percent or more between a new award and a prior award.

(m) For split custody situations, a worksheet shall be prepared separately for the child or children for whom the father is custodial parent and for the child or children for whom the mother is the custodial parent; and that worksheet shall be entered into the record. For each of these two custodial situations, the court shall enter which parent is the obligor, the presumptive award, and the actual award, if different from the presumptive award; how and when the net cash support owed shall be paid; and any other child support responsibilities for each of the parents.

(n) The child support obligation table shall be proposed by the Georgia Child Support Commission and set as determined by joint resolution of the General Assembly.″

**SECTION 6.**

Said title is further amended by striking Code Section 19-6-19, relating to revision of judgment for permanent alimony or child support generally, and inserting in lieu thereof the following:

″19-6-19.

(a) The judgment of a court providing permanent alimony for the support of a spouse rendered on or after July 1, 1977, shall be subject to revision upon petition filed by either former spouse showing a change in the income and financial status of either former spouse. ~~The judgment of a court providing permanent alimony for the support of a child or children rendered on or after July 1, 1977, shall be subject to revision upon petition filed by either former spouse showing a change in the income and financial status of either former spouse or in the needs of the child or children. In either case a~~ A petition shall be filed and returnable under the same rules of procedure applicable to divorce proceedings. No petition may be filed by either former spouse under this subsection within a period of two years from the date of the final order on a previous petition by the same former spouse. After hearing both parties and the evidence, the jury, or the judge where a jury is not demanded by either party, may modify and revise the previous judgment, in accordance with the changed income and financial status of either former spouse in the case of permanent alimony for the support of a former spouse, or in accordance with the changed income and financial status of either former spouse ~~or in the needs of the child or children in the case of permanent alimony for the support of a child or children,~~ if such a change in the income and financial status is satisfactorily proved so as to warrant the modification and revision.

In the hearing upon a petition filed as provided in this subsection, testimony may be given and evidence introduced relative to the income and financial status of either former spouse.

(b) Subsequent to a final judgment of divorce awarding periodic payment of alimony for the support of a spouse, the voluntary cohabitation of such former spouse with a third party in a meretricious relationship shall also be grounds to modify provisions made for periodic payments of permanent alimony for the support of the former spouse. As used in this subsection, the word 'cohabitation' means dwelling together continuously and openly in a meretricious relationship with another person, regardless of the sex of the other person. In the event the petitioner does not prevail in the petition for modification on the ground set forth in this subsection, the petitioner shall be liable for reasonable attorney´s fees incurred by the respondent for the defense of the action.

(c) When an action for revision of a judgment for permanent alimony under this Code section is pending, the court in its discretion may allow, upon motion, the temporary modification of such a judgment, pending the final trial on the petition. In considering an application for temporary modification under this subsection, the court shall consider evidence of any changed circumstances of the parties and the reasonable probability of the petitioner obtaining revision upon final trial. The order granting temporary modification shall be subject to revision by the court at any time before final trial.

(d) In proceedings for the modification of alimony for the support of a spouse ~~or child~~ pursuant to the provisions of this Code section, the court may award attorneys´ fees, costs, and expenses of litigation to the prevailing party as the interests of justice may require.″

**SECTION 7.**

Said title is further amended by striking Code Section 19-6-20, relating to revision of judgment for permanent alimony or child support generally, merits not an issue, and inserting in lieu thereof the following:

″19-6-20.

In the trial on a petition authorized in subsection (a) of Code Section 19-6-19, the merits of whether a party~~, a child or children, or both, are~~ is entitled to alimony ~~and support~~ are not an issue. The only issue is whether there has been such a substantial change in the income and financial status of either former spouse ~~or in the needs of the child or children, in cases of permanent alimony for the support of a child or children, or in the income and financial status of either former spouse~~, in cases of permanent alimony for the support of a former spouse, as to warrant either a downward or upward revision or modification of the permanent alimony judgment.″

**SECTION 8.**

Said title is further amended by striking Code Section 19-6-21, relating to revision of judgment for permanent alimony or child support not available in case of lump sum award, and inserting in lieu thereof the following:

"19-6-21.

A petition authorized in subsection (a) of Code Section 19-6-19 can be filed only where a party has been ordered by the final judgment in an alimony or divorce and alimony action to pay permanent alimony in weekly, monthly, annual, or similar periodic payments and not where the former spouse of such party~~, the child or children, or both, have~~ has been given an award from the corpus of the party´s estate in lieu of such periodic payment."

**SECTION 9.**

Said title is further amended by striking Code Section 19-6-22, relating to revision of judgment for permanent alimony or child support, expenses for defense of litigation, and inserting in lieu thereof the following:

"19-6-22.

Where a petition authorized by subsection (a) of Code Section 19-6-19 is filed by a party obligated to pay alimony, the court may require the party to pay the reasonable expenses of litigation as may be incurred by the party´s former spouse~~, either~~ on behalf of the former spouse~~, or the child or children, or both,~~ in defense thereof."

**SECTION 10.**

Said title is further amended by striking Code Section 19-6-24, relating to applicability of Code Section 19-6-18 or Code Sections 19-6-19 through 19-6-22 to judgments prior to March 9, 1955, and inserting in lieu thereof the following:

"19-6-24.

Code Section 19-6-18 or Code Sections 19-6-19 through 19-6-22, as applicable, shall apply to all judgments for permanent alimony for the support of a wife~~, a child or children, or both,~~ rendered prior to March 9, 1955, where all the following conditions are met:

(1) Both parties to the case in which the judgment for permanent alimony was rendered consent in writing to the revision, amendment, alteration, settlement, satisfaction, or release thereof;

(2) There are no minor children involved or, if there were minor children at the time the original judgment was rendered, the children are all of age at the time the application is filed;

(3) The judge of the court wherein the original judgment for permanent alimony was rendered approves the revision, amendment, alteration, settlement, satisfaction, or release; and

(4) The consent of the parties, together with the court´s approval, is filed with the clerk of the court wherein the original judgment for permanent alimony was rendered.″

**SECTION 11.**

Said chapter is further amended by designating the existing matter as Article 1 and adding a new Article 2 to the end of the chapter to read as follows:

″ARTICLE 2

19-6-50.

There is created the Georgia Child Support Commission for the purpose of studying and collecting information and data relating to awards of child support and to create and revise the child support obligation table. The commission shall be responsible for conducting a comprehensive review of the child support guidelines, economic conditions, and all matters relevant to maintaining effective and efficient child support guidelines and modifying child support orders that will serve the best interest of Georgia´s children and take into account the changing dynamics of family life. Further, the commission shall determine whether adjustments are needed to the child support obligation table taking into consideration the guidelines set forth in Code Section 19-6-53. Nothing contained in the commission´s report shall be considered to authorize or require a change in the child support obligation table without action by the General Assembly.

19-6-51.

(a) The Georgia Child Support Commission shall be composed of 15 members. The Governor shall appoint all of the members as follows:

(1) Three members who shall be judges in a superior court;

(2) One member who shall be a Justice of the Supreme Court of Georgia or a Judge of the Georgia Court of Appeals or the justice´s or judge´s designee;

(3) Two members of the House of Representatives and two members of the Senate; and

(4) Seven other members.

Each member of the commission shall be appointed to serve for a term of four years or until his or her successor is duly appointed except the members of the General Assembly, who shall serve until completion of their current terms of office. The initial members of the commission appointed pursuant to paragraph (1) of this subsection shall serve for terms of

three years. The initial member of the commission appointed pursuant to paragraph (2) of this subsection shall serve for a term of four years. The initial members of the commission appointed pursuant to paragraph (4) of this subsection shall serve for terms of two years. The initial members of the commission shall be appointed within 30 days of the effective date of this Act, and shall serve until their terms expire. The succeeding members of the commission shall begin their terms of office on July 1 of the year in which appointed. A member may be appointed to succeed himself or herself on the commission. If a member of the commission is an elected official, he or she shall be removed from the commission if he or she no longer serves as an elected official.

(b) The Governor shall designate the chairperson of the commission. The commission may elect other officers as deemed necessary. The chairperson of the commission may designate and appoint committees from among the membership of the commission as well as appoint other persons to perform such functions as he or she may determine to be necessary as relevant to and consistent with this article. The chairperson shall only vote to break a tie.

(c) The commission shall be attached for administrative purposes only to the Department of Human Resources. The Department of Human Resources shall provide staff support for the commission. The Department of Human Resources shall use any funds specifically appropriated to it to support the work of the commission.

19-6-52.

(a) The commission shall hold meetings at the call of the chairperson or as called by the Governor. Meetings shall be open to the public.

(b) A quorum for transacting business shall be a majority of the members of the commission.

(c) Any legislative members of the commission shall receive the allowances provided for in Code Section 28-1-8. Citizen members shall receive a daily expense allowance in the amount specified in subsection (b) of Code Section 45-7-21 as well as the mileage or transportation allowance authorized for state employees. Members of the commission who are state officials, other than legislative members, or state employees shall receive no compensation for their services on the commission, but they shall be reimbursed for expenses incurred by them in the performance of their duties as members of the commission in the same manner as they are reimbursed for expenses in their capacities as state officials or state employees. The funds necessary for the reimbursement of the expenses of state officials, other than legislative members, and state employees shall come from funds appropriated to or otherwise available to their respective departments. All other funds necessary to carry out the provisions of this article shall come from funds appropriated to the House of Representatives and the Senate.

19-6-53.

(a) The commission shall have the following duties:

(1) To study and evaluate the effectiveness and efficiency of Georgia´s child support guidelines;

(2) To evaluate and consider the experiences and results in other states which utilize child support guidelines;

(3)(A) To create and recommend to the General Assembly a child support obligation table consistent with Code Section 19-6-15. Prior to January 1, 2006, the commission shall produce the child support obligation table and provide an explanation of the underlying data and assumptions to the General Assembly by delivering copies to the President Pro Tempore of the Senate and the Speaker of the House of Representatives.

(B)(i) The child support obligation table shall include deductions from a parent´s gross income for the employee´s share of the contributions for the first 6.2 percent in Federal Insurance Contributions Act (FICA) and 1.45 percent in medicare taxes.

(ii) FICA tax withholding for high-income persons may vary during the year. Six and two-tenths percent is withheld on the first $90,000.00 of gross earnings. After the maximum $5,580.00 is withheld, no additional FICA taxes shall be withheld.

(iii) Self-employed persons are required by law to pay the full FICA tax of 12.4 percent up to the $90,000.00 gross earnings limit and the full medicare tax rate of 2.9 percent on all earned income.

(iv) The percentages and dollar amounts established or referenced in this subparagraph with respect to the payment of self-employment taxes shall be adjusted by the commission, as necessary, as relevant changes occur in the federal tax laws.

(C) After reviewing the commission´s report, the General Assembly shall consider and approve by joint resolution the initial child support obligation table before the table shall become effective and shall authorize by joint resolution all subsequent child support obligation tables;

(4) To determine periodically, and at least every two years, if the child support obligation table results in appropriate presumptive awards;

(5) To identify and recommend whether and when the child support obligation table or child support guidelines should be modified;

(6) To develop and publish the child support obligation table and worksheets associated with the use of such table;

(7) To develop or cause to be developed software and a calculator associated with the use of the child support obligation table and child support guidelines;

(8) To develop training manuals and information to educate judges, attorneys, and litigants on the use of the child support obligation table and child support guidelines;

(9) To collaborate with the Institute for Continuing Judicial Education, the Institute of Continuing Legal Education, and other agencies for the purpose of training persons who will be utilizing the child support table and child support guidelines; and

(10) To make recommendations for proposed legislation.

(b) The commission shall have the following powers:

(1) To evaluate the child support guidelines in Georgia and any other program or matter relative to child support in Georgia;

(2) To request and receive data from and review the records of appropriate agencies to the greatest extent allowed by state and federal law;

(3) To accept public or private grants, devises, and bequests;

(4) To enter into all contracts or agreements necessary or incidental to the performance of its duties;

(5) To establish rules and procedures for conducting the business of the commission; and

(6) To conduct studies, hold public meetings, collect data, or take any other action the commission deems necessary to fulfill its responsibilities.

(c) The commission shall be authorized to retain the services of auditors, attorneys, financial consultants, child care experts, economists, and other individuals or firms as determined appropriate by the commission.″

**SECTION 12.**

Said title is further amended by striking in its entirety Code Section 19-7-2, relating to parents´ obligations to child, and inserting in lieu thereof the following:

″19-7-2.

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

**SECTION 13.**

Section 11 of this Act shall become effective upon its approval by the Governor or upon its becoming law without such approval, and the remaining sections of this Act shall become effective on March 1, 2006.

**SECTION 14.**

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