

Senate Bill 427

By: Senators Kennedy of the 18th, Stone of the 23rd, Tillery of the 19th, Cowser of the 46th, Jones II of the 22nd and others

AS PASSED SENATE

A BILL TO BE ENTITLED

AN ACT

1 To amend Code Section 19-6-15 of the Official Code of Georgia Annotated, relating to child
 2 support in final verdict or decree, guidelines for determining amount of award, continuation
 3 of duty to provide support, and duration of support, so as to change provisions relating to the
 4 court's discretion in making a final determination of support; to change provisions relating
 5 to reliable evidence of income, voluntary unemployment, and involuntary loss of income to
 6 account for a parent's incarceration; to change provisions relating to health insurance; to
 7 change provisions relating to specific and nonspecific deviations; to change provisions
 8 relating to work related child care costs; to amend Article 1 of Chapter 11 of Title 19 of the
 9 Official Code of Georgia Annotated, relating to the Child Support Recovery Act, so as to
 10 increase fees charged by the department; to provide for related matters; to provide for
 11 effective dates; to repeal conflicting laws; and for other purposes.

12 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

13 **PART I**
 14 **SECTION 1-1.**

15 Code Section 19-6-15 of the Official Code of Georgia Annotated, relating to child support
 16 in final verdict or decree, guidelines for determining amount of award, continuation of duty
 17 to provide support, and duration of support, is amended by revising subsection (d) as follows:
 18 **"(d) Nature of guidelines; court's discretion.** In the event of a hearing or trial on the
 19 issue of child support, the guidelines enumerated in this Code section are intended by the
 20 General Assembly to be guidelines only and any court so applying these guidelines shall
 21 not abrogate its responsibility in making the final determination of child support based on
 22 the evidence presented to it at the time of the hearing or trial. A court's final determination
 23 of child support shall take into account the obligor's earnings, income, and other evidence
 24 of the obligor's ability to pay. The court shall also consider the basic subsistence needs of
 25 the parents and the child for whom support is to be provided."

SECTION 1-2.

26
27 Said Code section is further amended by revising subparagraphs (f)(4)(A) and (f)(4)(B) and
28 the introductory language of subparagraph (f)(4)(D) as follows:

29 “(A) **Imputed income.** When establishing the amount of child support, if a parent fails
30 to produce reliable evidence of income, such as tax returns for prior years, check stubs,
31 or other information for determining current ability to pay child support or ability to
32 pay child support in prior years, and the court or the jury has no other reliable evidence
33 of the parent's income or income potential, gross income for the current year ~~shall be~~
34 ~~determined by imputing gross income based on a 40 hour workweek at minimum wage~~
35 may be imputed. When imputing income, the court shall take into account the specific
36 circumstances of the parent to the extent known, including such factors as the parent's
37 assets, residence, employment and earnings history, job skills, educational attainment,
38 literacy, age, health, criminal record and other employment barriers, and record of
39 seeking work, as well as the local job market, the availability of employers willing to
40 hire the parent, prevailing earnings level in the local community, and other relevant
41 background factors in the case. If a parent is incarcerated, income shall not be imputed
42 based upon pre-incarceration wages or other employment related income, but may be
43 imputed based on the actual income and assets available to such incarcerated parent.

44 “(B) **Modification.** When cases with established orders are reviewed for modification
45 and a parent fails to produce reliable evidence of income, such as tax returns for prior
46 years, check stubs, or other information for determining current ability to pay child
47 support or ability to pay child support in prior years, and the court or jury has no other
48 reliable evidence of such parent's income or income potential, the court or jury may
49 impute income as set forth in subparagraph (A) of this paragraph, or may increase the
50 child support of the parent failing or refusing to produce evidence of income by an
51 increment of at least 10 percent per year of such parent's gross income for each year
52 since the final ~~child support~~ order was entered or last modified and shall calculate the
53 basic child support obligation using the increased amount as such parent's gross
54 income.”

55 “(D) **Willful or voluntary unemployment or underemployment.** In determining
56 whether a parent is willfully or voluntarily unemployed or underemployed, the court
57 or the jury shall ascertain the reasons for the parent's occupational choices and assess
58 the reasonableness of these choices in light of the parent's responsibility to support his
59 or her child and whether such choices benefit the child. A determination of willful or
60 voluntary unemployment or underemployment shall not be limited to occupational
61 choices motivated only by an intent to avoid or reduce the payment of child support but
62 can be based on any intentional choice or act that affects a parent's income. A

63 determination of willful or voluntary unemployment or underemployment shall not be
 64 made when an individual's incarceration prevents employment. In determining willful
 65 or voluntary unemployment or underemployment, the court may examine whether there
 66 is a substantial likelihood that the parent could, with reasonable effort, apply his or her
 67 education, skills, or training to produce income. Specific factors for the court to
 68 consider when determining willful or voluntary unemployment or underemployment
 69 include, but are not limited to:"

70 **SECTION 1-3.**

71 Said Code section is further amended by revising division (h)(2)(B)(iii) as follows:

72 "(iii) Eligibility for or enrollment of the child in Medicaid, ~~or the PeachCare for Kids~~
 73 ~~Program, or other public health care program~~ shall ~~not~~ satisfy the requirement that the
 74 final ~~child support~~ order provide for the child's health care needs. Health coverage
 75 through Medicaid, the PeachCare for Kids Program and Medicaid, or other public
 76 health care program shall not prevent a court from also ordering either or both parents
 77 to obtain other health insurance for the child."

78 **SECTION 1-4.**

79 Said Code section is further amended by revising subparagraph (i)(1)(A), division
 80 (i)(2)(B)(iii), and paragraph (3) of subsection (i) as follows:

81 "(A) The amount of child support established by this Code section and the presumptive
 82 amount of child support are rebuttable and the court or the jury may deviate from the
 83 presumptive amount of child support in compliance with this subsection. In deviating
 84 from the presumptive amount of child support, ~~primary~~ consideration shall be given to
 85 the best interest of the child for whom support under this Code section is being
 86 determined. A nonparent custodian's expenses may be the basis for a deviation as well
 87 as a parent's ability or inability to pay the presumptive amount of child support."

88 "(iii) The court or the jury shall examine all attributable and excluded sources of
 89 income, assets, and benefits available to the noncustodial parent and may consider the
 90 noncustodial parent's basic subsistence needs and all of his or her reasonable expenses
 91 ~~of the noncustodial parent~~, ensuring that such expenses are actually paid by the
 92 noncustodial parent and are clearly justified expenses."

93 "(3) **Nonspecific deviations.** Deviations from the presumptive amount of child support
 94 may be appropriate for reasons in addition to those established under this subsection
 95 when the court or the jury finds it is in the best interest of the child. A nonspecific
 96 deviation may also be used when the court or the jury finds that the noncustodial parent
 97 has a limited ability to pay the presumptive amount of child support."

98 **SECTION 1-5.**

99 Said Code section is further amended by revising paragraph (1) of subsection (j) as follows:

100 "(1) In the event a parent suffers an involuntary termination of employment, has an
 101 extended involuntary loss of average weekly hours, is involved in an organized strike,
 102 incurs a loss of health, becomes incarcerated, or similar involuntary adversity resulting
 103 in a loss of income of 25 percent or more, then the portion of child support attributable
 104 to lost income shall not accrue from the date of the service of the petition for
 105 modification, provided that service is made on the other parent. It shall not be considered
 106 an involuntary termination of employment if the parent has left the employer without
 107 good cause in connection with the parent's most recent work."

108 **PART II**109 **SECTION 2-1.**

110 Article 1 of Chapter 11 of Title 19 of the Official Code of Georgia Annotated, relating to the
 111 Child Support Recovery Act, is amended by revising subsection (f) of Code Section 19-11-6,
 112 relating to enforcement of child support payments and alimony for public assistance
 113 recipients, as follows:

114 "(f) The department shall be authorized to charge the obligor a federal Deficit Reduction
 115 Act of 2005 fee of ~~\$25.00~~ \$35.00 for each case. Such fee shall only apply to an obligor
 116 when the obligee has never received public assistance payments pursuant to Title IV-A or
 117 Title IV-E of the federal Social Security Act. The department shall retain such fee and
 118 collect such fee through income withholding, as well as by any other enforcement remedy
 119 available to the entity within the department authorized to enforce a duty of support."

120 **SECTION 2-2.**

121 Said article is further amended by revising subsection (e) of Code Section 19-11-8, relating
 122 to the departments' duty to enforce support of abandoned minor public assistance recipient
 123 and scope of action, as follows:

124 "(e) The department shall be authorized to charge the obligor a federal Deficit Reduction
 125 Act of 2005 fee of ~~\$25.00~~ \$35.00 for each case. Such fee shall only apply to an obligor
 126 when the obligee has never received public assistance payments pursuant to Title IV-A or
 127 Title IV-E of the federal Social Security Act. The department shall retain such fee and
 128 collect such fee through income withholding, as well as by any other enforcement remedy
 129 available to the entity within the department authorized to enforce a duty of support."

130

PART III

131

SECTION 3-1.

132 This part and Part I of this Act shall become effective on July 1, 2018, and Part II of this Act
133 shall become effective on October 1, 2018.

134

SECTION 3-2.

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