

The Senate Committee on Judiciary offered the following substitute to HB 381:

A BILL TO BE ENTITLED  
AN ACT

1 To amend Code Section 19-6-15, relating to child support guidelines for determining amount  
2 of award, continuation of duty of support, and duration of support, so as to revise and correct  
3 defined terms and terminology, grammar, and punctuation; to remove alimony as a specific  
4 deviation in certain circumstances; to exclude certain adoption assistance benefits from gross  
5 income; to clarify provisions relating to willful or voluntary unemployment or  
6 underemployment; to provide for related matters; to repeal conflicting laws; and for other  
7 purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 style="text-align:center">**SECTION 1.**

10 Code Section 19-6-15, relating to child support guidelines for determining amount of award,  
11 continuation of duty of support, and duration of support, is amended by revising subsection  
12 (a) as follows:

13 "(a) **Definitions.** As used in this Code section, the term:

14 (1) Reserved.

15 (2) 'Adjusted income' means the determination of a parent's monthly income, calculated  
16 by deducting from that parent's monthly gross income one-half of the amount of any  
17 applicable self-employment taxes being paid by the parent, any preexisting order for  
18 current child support which is being paid by the parent, and any theoretical child support  
19 order for other qualified children, if allowed by the court. For further reference see  
20 paragraph (5) of subsection (f) of this Code section.

21 (3) 'Basic child support obligation' means the monthly amount of support displayed on  
22 the child support obligation table which corresponds to the combined adjusted income  
23 and the number of children for whom child support is being determined.

24 (4) 'Child' means child or children.

25 (5) Reserved.

- 26 (6) 'Child support obligation table' means the chart set forth in subsection (o) of this  
27 Code section.
- 28 (6.1) 'Child support services' means the entity within the Department of Human Services  
29 and its contractors that are authorized to enforce a duty of support.
- 30 (7) 'Combined adjusted income' means the amount of adjusted income of the custodial  
31 parent added to the amount of adjusted income of the noncustodial parent.
- 32 (8) 'Court' means a judge of any court of record or an administrative law judge of the  
33 Office of State Administrative Hearings.
- 34 (9) 'Custodial parent' means the parent with whom the child resides more than 50 percent  
35 of the time. ~~Where~~ When a custodial parent has not been designated or ~~where~~ when a  
36 child resides with both parents an equal amount of time, the court shall designate the  
37 custodial parent as the parent with the lesser support obligation and the other parent as  
38 the noncustodial parent. ~~Where~~ When the child resides equally with both parents and  
39 neither parent can be determined as owing a greater amount than the other, the court shall  
40 determine which parent to designate as the custodial parent for the purpose of this Code  
41 section.
- 42 (10) 'Deviation' means an increase or decrease from the presumptive amount of child  
43 support if the presumed order is rebutted by evidence and the required findings of fact are  
44 made by the court or the jury pursuant to subsection (i) of this Code section.
- 45 (11) 'Final child support amount' means the presumptive amount of child support  
46 adjusted by any deviations.
- 47 (12) 'Gross income' means all income to be included in the calculation of child support  
48 as set forth in subsection (f) of this Code section.
- 49 (13) 'Health insurance' means any general health or medical policy. For further reference  
50 see paragraph (2) of subsection (h) of this Code section.
- 51 (14) 'Noncustodial parent' means the parent with whom the child resides less than 50  
52 percent of the time or the parent who has the greater payment obligation for child support.  
53 ~~Where~~ When the child resides equally with both parents and neither parent can be  
54 determined as owing a lesser amount than the other, the court shall determine which  
55 parent to designate as the noncustodial parent for the purpose of this Code section.
- 56 (15) 'Nonparent custodian' means an individual who has been granted legal custody of  
57 a child, or an individual who has a legal right to seek, modify, or enforce a child support  
58 order.
- 59 (16) 'Parent' means a person who owes a child a duty of support pursuant to Code  
60 Section 19-7-2.

61 (17) 'Parenting time deviation' means a deviation allowed for the noncustodial parent  
 62 based upon the noncustodial parent's court ordered visitation with the child. For further  
 63 reference see subsections (g) and (i) of this Code section.

64 (18) 'Preexisting order' means:

65 (A) An order in another case that requires a parent to make child support payments for  
 66 another child, which child support the parent is actually paying, as evidenced by  
 67 documentation as provided in division (f)(5)(B)(iii) of this Code section; and

68 (B) That the date and time of filing with the clerk of court of the initial order for each  
 69 such other case is earlier than the date and time of filing with the clerk of court of the  
 70 initial order in the case immediately before the court, regardless of the age of any child  
 71 in any of the cases.

72 (19) 'Presumptive amount of child support' means the basic child support obligation  
 73 including health insurance and work related child care costs.

74 (20) 'Qualified child' or 'qualified children' means any child:

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

76 (B) Who ~~That~~ the parent is actually supporting;

77 (C) Who is not subject to a preexisting order; and

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

80 Qualified children shall not include stepchildren or other minors in the home ~~that~~ who the  
 81 parent has no legal obligation to support.

82 (21) 'Split parenting' can occur in a child support case only if there are two or more  
 83 children of the same parents, ~~where~~ when one parent is the custodial parent for at least  
 84 one child of the parents, and the other parent is the custodial parent for at least one other  
 85 child of the parents. In a split parenting case, each parent is the custodial parent of any  
 86 child spending more than 50 percent of the time with that parent and is the noncustodial  
 87 parent of any child spending more than 50 percent of the time with the other parent. A  
 88 split parenting situation shall have two custodial parents and two noncustodial parents,  
 89 but no child shall have more than one custodial parent or noncustodial parent.

90 (22) 'Theoretical child support order' means a hypothetical child support order for  
 91 qualified children as calculated ~~as set forth~~ in subparagraph (f)(5)(C) of this Code section  
 92 which allows the court to determine the amount of child support as if a child support  
 93 order existed.

94 (23) 'Uninsured health care expenses' means a child's uninsured medical expenses  
 95 including, but not limited to, health insurance copayments, deductibles, and such other  
 96 costs as are reasonably necessary for orthodontia, dental treatment, asthma treatments,  
 97 physical therapy, vision care, and any acute or chronic medical or health problem or

98 mental health illness, including counseling and other medical or mental health expenses,  
 99 that are not covered by insurance. For further reference see paragraph (3) of  
 100 subsection (h) of this Code section.

101 (24) 'Work related child care costs' means expenses for the care of the child for whom  
 102 support is being determined which are due to employment of either parent. In an  
 103 appropriate case, the court may consider the child care costs associated with a parent's job  
 104 search or the training or education of a parent necessary to obtain a job or enhance  
 105 earning potential, not to exceed a reasonable time as determined by the court, if the parent  
 106 proves by a preponderance of the evidence that the job search, job training, or education  
 107 will benefit the child being supported. The term shall be projected for the next  
 108 consecutive 12 months and averaged to obtain a monthly amount. For further reference  
 109 see paragraph (1) of subsection (h) of this Code section.

110 (25) 'Worksheet' or 'child support worksheet' means the document used to record  
 111 information necessary to determine and calculate monthly child support. For further  
 112 reference see subsection (m) of this Code section."

## 113 SECTION 2.

114 Said Code section is further amended by revising paragraph (4) of subsection (c) as follows:

115 "(4) In all cases, the parties shall submit to the court their worksheets and schedules and  
 116 the presence or absence of other factors to be considered by the court or the jury pursuant  
 117 to the provisions of this Code section."

## 118 SECTION 3.

119 Said Code section is further amended by revising subsection (d) as follows:

120 "(d) **Nature of guidelines; court's discretion.** In the event of a hearing or trial on the  
 121 issue of child support, the guidelines enumerated in this Code section are intended by the  
 122 General Assembly to be guidelines only and any court so applying ~~these~~ such guidelines  
 123 shall not abrogate its responsibility in making the final determination of child support based  
 124 on the evidence presented to it at the time of the hearing or trial. A court's final  
 125 determination of child support shall take into account the obligor's earnings, income, and  
 126 other evidence of the obligor's ability to pay. The court or the jury shall also consider the  
 127 basic subsistence needs of the parents and the child for whom support is to be provided."

## 128 SECTION 4.

129 Said Code section is further amended by revising subparagraph (f)(1)(E); paragraph (2) of  
 130 subsection (f); subparagraphs (f)(4)(A), (f)(4)(B), and (f)(4)(D); division (f)(5)(B)(i); and  
 131 subparagraph (f)(5)(C) as follows:

132 "(E) **Military compensation and allowances.** Income for a parent who is an active  
 133 duty member of the regular or reserve component of the United States armed forces, the  
 134 United States Coast Guard, the merchant marine of the United States, the commissioned  
 135 corps of the Public Health Service or the National Oceanic and Atmospheric  
 136 Administration, the National Guard, or the Air National Guard shall include:

- 137 (i) Base pay;
- 138 (ii) Drill pay;
- 139 (iii) Basic allowance for subsistence, whether paid directly to the parent or received  
 140 in-kind; and
- 141 (iv) Basic allowance for housing, whether paid directly to the parent or received  
 142 in-kind, determined at the parent's pay grade at the without dependent rate, but shall  
 143 include only so much of the allowance that is not attributable to area variable housing  
 144 costs.

145 Except as determined by the court or the jury, special pay or incentive pay, allowances  
 146 for clothing or family separation, and reimbursed expenses related to the parent's  
 147 assignment to a high cost of living location shall not be considered income for the  
 148 purpose of determining gross income.

149 (2) **Exclusions from gross income.** Excluded from gross income are the following:

- 150 (A) Child support payments received by either parent for the benefit of a child of  
 151 another relationship;
- 152 (B) Benefits received from means-tested public assistance programs such as, but not  
 153 limited to:
  - 154 (i) PeachCare for Kids Program, Temporary Assistance for Needy Families Program,  
 155 or similar programs in other states or territories under Title IV-A of the federal Social  
 156 Security Act;
  - 157 (ii) Food stamps or the value of food assistance provided by way of electronic  
 158 benefits transfer procedures by the Department of Human Services;
  - 159 (iii) Supplemental security income received under Title XVI of the federal Social  
 160 Security Act;
  - 161 (iv) Benefits received under Section 402(d) of the federal Social Security Act for  
 162 disabled adult children of deceased disabled workers; and
  - 163 (v) Low-income heating and energy assistance program payments;
- 164 (C) Foster care payments paid by the Department of Human Services or a licensed  
 165 ~~child-placing~~ child-placing agency for providing foster care to a foster child in the  
 166 custody of the Department of Human Services; ~~and~~
- 167 (D) A nonparent custodian's gross income; and

168 (E) Benefits received under Title IV-B or IV-E of the federal Social Security Act and  
169 state funding associated therewith for adoption assistance."

170 "(A) **Imputed income.** When establishing the amount of child support, if a parent fails  
171 to produce reliable evidence of income, such as tax returns for prior years, check stubs,  
172 or other information for determining current ability to pay child support or ability to  
173 pay child support in prior years, and the court or the jury has no other reliable evidence  
174 of the parent's income or income potential, gross income for the current year may be  
175 imputed. When imputing income, the court or the jury shall take into account the  
176 specific circumstances of the parent to the extent known, including such factors as the  
177 parent's assets, residence, employment and earnings history, job skills, educational  
178 attainment, literacy, age, health, criminal record and other employment barriers, and  
179 record of seeking work, as well as the local job market, the availability of employers  
180 willing to hire the parent, prevailing earnings level in the local community, and other  
181 relevant background factors in the case. If a parent is incarcerated, the court or the jury  
182 shall not assume an ability for earning capacity based upon pre-incarceration wages or  
183 other employment related income, but income may be imputed based upon the actual  
184 income and assets available to such incarcerated parent.

185 (B) **Modification.** When cases with established orders are reviewed for modification  
186 and a parent fails to produce reliable evidence of income, such as tax returns for prior  
187 years, check stubs, or other information for determining current ability to pay child  
188 support or ability to pay child support in prior years, and the court or the jury has no  
189 other reliable evidence of such parent's income or income potential, the court or the jury  
190 may impute income as set forth in subparagraph (A) of this paragraph, or may increase  
191 the child support of the parent failing or refusing to produce evidence of income by an  
192 increment of at least 10 percent per year of such parent's gross income for each year  
193 since the final order was entered or last modified and shall calculate the basic child  
194 support obligation using the increased amount as such parent's gross income."

195 "(D) **Willful or voluntary unemployment or underemployment.** In determining  
196 whether a parent is willfully or voluntarily unemployed or underemployed, the court  
197 or the jury shall ascertain the reasons for the parent's occupational choices and assess  
198 the reasonableness of these choices in light of the parent's responsibility to support his  
199 or her child and whether such choices benefit the child. A determination of willful or  
200 voluntary unemployment or underemployment shall not be limited to occupational  
201 choices motivated only by an intent to avoid or reduce the payment of child support but  
202 can be based on any intentional choice or act that affects a parent's income. A  
203 determination of willful or voluntary unemployment or underemployment shall not be  
204 made when an individual's incarceration prevents employment. In determining willful

205 or voluntary unemployment or underemployment, the court or the jury may examine  
206 whether there is a substantial likelihood that the parent could, with reasonable effort,  
207 apply his or her education, skills, or training to produce income. Specific factors for  
208 the court or the jury to consider when determining willful or voluntary unemployment  
209 or underemployment include, but are not limited to:

- 210 (i) The parent's past and present employment;
- 211 (ii) The parent's education and training;
- 212 (iii) Whether unemployment or underemployment for the purpose of pursuing  
213 additional training or education is reasonable in light of the parent's responsibility to  
214 support his or her child and, to this end, whether the training or education may  
215 ultimately benefit the child in the case immediately under consideration by increasing  
216 the parent's level of support for that child in the future;
- 217 (iv) A parent's ownership of valuable assets and resources, such as an expensive  
218 home or automobile, that appear inappropriate or unreasonable for the income  
219 claimed by the parent;
- 220 (v) The parent's own health and ability to work outside the home; and
- 221 (vi) The parent's role as caretaker of a child of that parent, a disabled or seriously ill  
222 child of that parent, or a disabled or seriously ill adult child of that parent, or any  
223 other disabled or seriously ill relative for whom that parent has assumed the role of  
224 caretaker, which eliminates or substantially reduces the parent's ability to work  
225 outside the home, and the need of that parent to continue in the role of caretaker in the  
226 future. When considering the income potential of a parent whose work experience is  
227 limited due to the caretaker role of that parent, the court or the jury shall consider the  
228 following factors:

- 229 (I) Whether the parent acted in the role of full-time caretaker immediately prior to  
230 separation by the married parties or prior to the divorce or annulment of the  
231 marriage or dissolution of another relationship in which the parent was a full-time  
232 caretaker;
- 233 (II) The length of time the parent staying at home has remained out of the work  
234 force for this purpose;
- 235 (III) The parent's education, training, and ability to work; and
- 236 (IV) Whether the parent is caring for a child who is four years of age or younger.  
237 If the court or the jury determines that a parent is willfully or voluntarily  
238 unemployed or underemployed, child support shall be calculated based on a  
239 determination of earning capacity, as evidenced by educational level or previous  
240 work experience. In the absence of any other reliable evidence, income may be  
241 imputed to the parent pursuant to a determination that gross income for the current

242 ~~year is based on a 40 hour workweek at minimum wage as provided for in~~  
 243 ~~subparagraph (f)(4)(A) of this Code section.~~

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

248 "(i) In calculating the adjustment for preexisting orders, the court shall include only  
 249 those preexisting orders meeting the criteria set forth in subparagraph (a)(18)(B) of  
 250 this Code section;"

251 "(C) **Theoretical child support orders.** In addition to the adjustments to monthly  
 252 gross income for self-employment taxes provided in subparagraph (A) of this paragraph  
 253 and for preexisting orders provided in subparagraph (B) of this paragraph, credits for  
 254 either parent's other qualified child living in the parent's home for whom the parent  
 255 owes a legal duty of support may be considered by the court for the purpose of reducing  
 256 the parent's gross income. To consider a parent's other qualified children for  
 257 determining the theoretical child support order, a parent shall present documentary  
 258 evidence of the parent-child relationship to the court. Adjustments to income pursuant  
 259 to this subparagraph may be considered in such circumstances in which the failure to  
 260 consider a qualified child would cause substantial hardship to the parent; provided,  
 261 however, that such consideration of an adjustment shall be based upon the best interest  
 262 of the child for whom child support is being awarded. If the court, in its discretion,  
 263 decides to apply the qualified child adjustment, the basic child support obligation of the  
 264 parent for the number of other qualified children living with such parent shall be  
 265 determined based upon that parent's monthly gross income. Except for  
 266 self-employment taxes paid, no other amounts shall be subtracted from the parent's  
 267 monthly gross income when calculating a theoretical child support order under this  
 268 subparagraph. The basic child support obligation for such parent shall be multiplied by  
 269 75 percent and the resulting amount shall be subtracted from such parent's monthly  
 270 gross income and entered on the Child Support Schedule B – Adjusted Income."

271 **SECTION 5.**

272 Said Code section is further amended by revising subparagraphs (h)(1)(A) and (h)(1)(D) and  
 273 division (h)(1)(F)(ii) as follows:

274 "(A) Work related child care costs necessary for the parent's employment, education,  
 275 or vocational training that are determined by the court to be appropriate, and that are  
 276 appropriate to the parents' financial abilities and to the lifestyle of the child if the  
 277 parents and child were living together, shall be averaged for a monthly amount and



278 entered on the child support worksheet in the column of the parent initially paying the  
 279 expense. Work related child care costs of a nonparent custodian shall be considered  
 280 when determining the amount of this expense."

281 "(D) If child care is provided without charge to the parent, the value of these services  
 282 shall not be an adjustment to the basic child support obligation. If child care is or will  
 283 be provided by a person who is paid for his or her services, proof of actual cost or  
 284 payment shall be shown to the court before the court includes such payment in its  
 285 consideration."

286 "(ii) In situations in which work related child care costs may be variable, the court or  
 287 the jury may, in its discretion, remove work related child care costs from the  
 288 calculation of support, and divide the work related child care costs pro rata, to be paid  
 289 within a time specified in the final order. If a parent or nonparent custodian fails to  
 290 comply with the final order:

291 (I) The other parent or nonparent custodian may enforce payment of the work  
 292 related child care costs by any means permitted by law; or

293 (II) Child support services shall pursue enforcement when such unpaid costs have  
 294 been reduced to a judgment in a sum certain."

## 295 SECTION 6.

296 Said Code section is further amended by revising divisions (i)(2)(B)(i) and (i)(2)(B)(viii),  
 297 subparagraph (i)(2)(C), and subparagraphs (i)(2)(F) through (i)(2)(K) as follows:

298 "(i) If the noncustodial parent can provide evidence sufficient to demonstrate no  
 299 earning capacity or that his or her pro rata share of the presumptive amount of child  
 300 support would create an extreme economic hardship for such parent, the court or the  
 301 jury may consider a low-income deviation."

302 "(viii) If a low-income deviation is granted pursuant to this subparagraph, such  
 303 deviation shall not prohibit the court or the jury from granting an increase or decrease  
 304 to the presumptive amount of child support by the use of any other specific or  
 305 nonspecific deviation.

306 (C) **Other health related insurance.** If the court or the jury finds that either parent  
 307 has vision or dental insurance available at a reasonable cost for the child, the court or  
 308 the jury may deviate from the presumptive amount of child support for the cost of such  
 309 insurance."

310 "(F) **Travel expenses.** If court ordered visitation related travel expenses are substantial  
 311 due to the distance between the parents, the court may order the allocation of such costs  
 312 or the jury may, by a finding in its special interrogatory, allocate such costs by  
 313 deviation from the presumptive amount of child support, taking into consideration the

314 circumstances of the respective parents as well as which parent moved and the reason  
315 for such move.

316 (G) **Alimony.** Actual payments of alimony shall not be considered as a deduction from  
317 gross income but may be considered as a deviation from the presumptive amount of  
318 child support. If the court or the jury considers the actual payment of alimony, the  
319 court shall make a written finding of such consideration or the jury, in its special  
320 interrogatory, shall make a written finding of such consideration as a basis for deviation  
321 from the presumptive amount of child support.

322 (H) **Mortgage.** If the noncustodial parent is providing shelter, such as paying the  
323 mortgage of the home, or has provided a home at no cost to the custodial parent in  
324 which the child resides, the court or the jury may allocate such costs or an amount  
325 equivalent to such costs by deviation from the presumptive amount of child support,  
326 taking into consideration the circumstances of the respective parents and the best  
327 interest of the child.

328 (I) **Permanency plan or foster care plan.** In cases ~~where~~ when the child is in the  
329 legal custody of the Department of Human Services, the child protection or foster care  
330 agency of another state or territory, or any other child-caring entity, public or private,  
331 the court or the jury may consider a deviation from the presumptive amount of child  
332 support if the deviation will assist in accomplishing a permanency plan or foster care  
333 plan for the child that has a goal of returning the child to the parent or parents and the  
334 parent's need to establish an adequate household or to otherwise adequately prepare  
335 herself or himself for the return of the child clearly justifies a deviation for this purpose.

336 (J) **Extraordinary expenses.** The child support obligation table includes average ~~child~~  
337 ~~rearing~~ child-rearing expenditures for families given the parents' combined adjusted  
338 income and number of children. Extraordinary expenses are in excess of average  
339 amounts estimated in the child support obligation table and are highly variable among  
340 families. Extraordinary expenses shall be considered on a case-by-case basis in the  
341 calculation of support and may form the basis for deviation from the presumptive  
342 amount of child support so that the actual amount of such expense is considered in the  
343 final order for only those families actually incurring the expense. Extraordinary  
344 expenses shall be prorated between the parents by assigning or deducting credit for  
345 actual payments for extraordinary expenses.

346 (i) **Extraordinary educational expenses.** Extraordinary educational expenses may  
347 be a basis for deviation from the presumptive amount of child support. Extraordinary  
348 educational expenses include, but are not limited to, tuition, room and board, lab fees,  
349 books, fees, and other reasonable and necessary expenses associated with special  
350 needs education or private elementary and secondary schooling that are appropriate

351 to the parent's financial abilities and to the lifestyle of the child if the parents and the  
352 child were living together.

353 (I) In determining the amount of deviation for extraordinary educational expenses,  
354 scholarships, grants, stipends, and other cost-reducing programs received by or on  
355 behalf of the child shall be considered; and

356 (II) If a deviation is allowed for extraordinary educational expenses, a monthly  
357 average of the extraordinary educational expenses shall be based on evidence of  
358 prior or anticipated expenses and entered on the Child Support Schedule E –  
359 Deviations.

360 (ii) **Special expenses incurred for ~~child-rearing~~ child-rearing.** Special expenses  
361 incurred for ~~child-rearing~~ child-rearing, including, but not limited to, quantifiable  
362 expense variations related to the food, clothing, and hygiene costs of children at  
363 different age levels, may be a basis for a deviation from the presumptive amount of  
364 child support. Such expenses include, but are not limited to, summer camp; music or  
365 art lessons; travel; school sponsored extracurricular activities, such as band, clubs, and  
366 athletics; and other activities intended to enhance the athletic, social, or cultural  
367 development of a child but not otherwise required to be used in calculating the  
368 presumptive amount of child support as are health insurance premiums and work  
369 related child care costs. A portion of the basic child support obligation is intended to  
370 cover average amounts of special expenses incurred in the rearing of a child. In order  
371 to determine if a deviation for special expenses is warranted, the court or the jury shall  
372 consider the full amount of the special expenses as described in this division; and  
373 when ~~these~~ such special expenses exceed 7 percent of the basic child support  
374 obligation, then the additional amount of special expenses shall be considered as a  
375 deviation to cover the full amount of the special expenses.

376 (iii) **Extraordinary medical expenses.** In instances of extreme economic hardship  
377 involving extraordinary medical expenses not covered by insurance, the court or the  
378 jury may consider a deviation from the presumptive amount of child support for  
379 extraordinary medical expenses. Such expenses may include, but are not limited to,  
380 extraordinary medical expenses of the child or a parent of the child; provided,  
381 however, that any such deviation:

382 (I) Shall not act to leave a child unsupported; and

383 (II) May be ordered for a specific period of time measured in months.

384 When extraordinary medical expenses are claimed, the court or the jury shall consider  
385 the resources available for meeting such needs, including sources available from  
386 agencies and other adults.

387 **(K) Parenting time.**

388 (i) The child support obligation table is based upon expenditures for a child in intact  
 389 households. The court may order or the jury may find by special interrogatory a  
 390 deviation from the presumptive amount of child support when special circumstances  
 391 make the presumptive amount of child support excessive or inadequate due to  
 392 extended parenting time as set forth in the order of visitation, the child residing with  
 393 both parents equally, or visitation rights not being utilized.

394 (ii) If the court or the jury determines that a parenting time deviation is applicable,  
 395 then such deviation shall be included with all other deviations.

396 (iii) In accordance with subsection (d) of Code Section 19-11-8, if any action or  
 397 claim for parenting time or a parenting time deviation is brought under this  
 398 subparagraph, it shall be an action or claim solely between the custodial parent and  
 399 the noncustodial parent, and not any third parties, including child support services."

400 **SECTION 7.**

401 Said Code section is further amended by revising paragraphs (2) and (5) of subsection (k) as  
 402 follows:

403 "(2) No petition to modify child support may be filed by either parent within a period of  
 404 two years from the date of the final order on a previous petition to modify by the same  
 405 parent except ~~where~~ when:

406 (A) A noncustodial parent has failed to exercise the court ordered visitation;

407 (B) A noncustodial parent has exercised a greater amount of visitation than was  
 408 provided in the court order; or

409 (C) The motion to modify is based upon an involuntary loss of income as set forth in  
 410 subsection (j) of this Code section."

411 "(5) In proceedings for the modification of a child support award pursuant to the  
 412 provisions of this Code section, the court may award attorney's fees, costs, and expenses  
 413 of litigation to the prevailing party as the interests of justice may require. ~~Where~~ When  
 414 a custodial parent prevails in an upward modification of child support based upon the  
 415 noncustodial parent's failure to be available and willing to exercise court ordered  
 416 visitation, reasonable and necessary attorney's fees and expenses of litigation shall be  
 417 awarded to the custodial parent."

418 **SECTION 8.**

419 Said Code section is further amended by revising subsection (n) as follows:

420 "(n) **Child support obligation table.** The child support obligation table shall be proposed  
421 by the Georgia Child Support Commission and shall be as codified in subsection (o) of this  
422 Code section."

423

**SECTION 9.**

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