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DOMESTIC RELATIONS

Alimony and Child Support Generally: Provide for Payroll Deductions for Child Support and for Revisions of Judgment for Permanent Alimony or Child Support Generally When Authorized, Petition and Hearing; Cohabitation with Third Party as Grounds for Revision; Attorney Fees; Temporary Modification Pending Trial

CODE SECTIONS:	O.C.G.A. §§ 19-6-19, -32 (amended)
BILL NUMBERS:	HB 261, SB 277
ACT NUMBERS:	397, 524
SUMMARY:	These Acts relate to alimony and child support generally. HB 261 makes payroll deductions possible in a broad group of cases and does not restrict the use of payroll deductions in enforcement of support obligations to IV-D cases. SB 277 allows for revisions of judgments for alimony or child support when the recipient of support is cohabitating with any third party.
EFFECTIVE DATES:	July 1, 1993, O.C.G.A. § 19-6-19; April 9, 1993, O.C.G.A. § 16-6-32

History

HB 261 was introduced because of a federal law requiring provisions for payroll deduction orders.[1] The Family Support Act of 1988[2] not only required provisions for payroll deduction orders on non-custodial parents in IV-D cases,[3] but also required that states require the same provision for non-IV-D cases by January 1, 1994.[4] A support case is classified IV-D whenever the custodial parent who is to receive the support is also a welfare recipient.[5] Tom Wade of the Department of Human Resources stated, "If Georgia failed to comply, the State could

1. Telephone Interview with Rep. Tom Cauthorn, House District No. 35 (Apr. 8, 1993) [hereinafter Cauthorn Interview]. Rep. Cauthorn was the sponsor of HB 261. *Id.*

2. Pub. L. No. 100-485, 102 Stat. 2343 (1988).

3. IV-D cases or Title IV-D cases of the Family Support Act of 1988 include cases in which support services applications have been made voluntarily or by law to the Department of Human Resources Child Support Division. *Legislative Review*, 6 GA. ST. U.L. REV. 230 (1989).

4. Telephone Interview with Tom Wade, Assistant Commissioner for Policy and Government Services and Legislative Liaison, Georgia Department of Human Resources (Apr. 9, 1993) [hereinafter Wade Interview].

5. *Id.*

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lose a percentage of federal matching funds."[6] Currently, the child support program in Georgia receives approximately thirty million dollars.[7]

SB 277 was introduced because of the Georgia Supreme Court decision in *Van Dyck v. Van Dyck*,[8] in which the court would not revise judgment of permanent alimony on the basis of cohabitation in a lesbian relationship because the plain language in prior Georgia law applied to cohabitation with a person of the opposite sex.[9] The court in *Van Dyck* advised the General Assembly to correct the language to include cohabitation with third parties.[10]

HB 261

The Act amends Code section 19-6-32 relating to alimony and child support by allowing income deduction orders.[11] Prior subsection (a) allowed income deduction orders for IV-D cases.[12] The newly enacted subsection (a.1) contains language which broadens the use of income deduction orders in child support cases beyond IV-D cases to the general public.[13] The new language states:

> (a.1)(1) All child support orders which are initially issued in this state on or after January 1, 1994, and are not at the time of issuance being enforced under subsection (a) of this Code section shall provide for the immediate withholding of such support from the wages of the parent required by that order to furnish support unless:
>
> (A) The court issuing the order finds there is good cause not to require such immediate withholding; or
>
> (B) A written agreement is reached between both parties which provides for an alternative arrangement.
>
> For purposes of this paragraph, any finding that there is good cause not to require immediate withholding must be based on at least a written determination that implementing immediate wage withholding would not be in the best interest of the child and proof of the timely payment of

6. *Id.*
7. *Id.*
8. *Van Dyck v. Van Dyck*, 425 S.E.2d 853 (Ga. 1993).
9. Telephone Interview with Sen. Edward E. Boshears, Senate District No. 6 (Apr. 8, 1993) [hereinafter Boshears Interview]. Sen. Boshears was one of the sponsors of SB 277. *Id.; see also* O.C.G.A. § 19-6-19 (Supp. 1991).
10. Boshears Interview, *supra* note 9.
11. O.C.G.A. § 19-6-32 (Supp. 1993).
12. *Id.* § 19-6-32(a.1) (1992).
13. Cauthorn Interview, *supra* note 1; *see also* O.C.G.A. § 19-6-32(a.1) (Supp. 1993).

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previously ordered support in cases involving modification of support orders.[14]

Once the Act was introduced, the main change in the exiting bill was to redefine "good cause" under subsection (a.1)(1).[15] Representative Denmark Groover and Representative Tommy Chambless of the House Committee on the Judiciary proposed that a prima facie showing of "good cause" should include, but not be limited to, evidence that there is no arrearage in payments previously ordered.[16] Such language could be interpreted as giving the judge discretion to impose payroll deductions in a broad range of cases.[17]

However, between the time this language was inserted by the House and the time it reached the Senate Judiciary Committee, a letter was received from the Federal Health and Human Services Department informing the Georgia General Assembly that the proposed language was too broad and would not conform to federal guidelines.[18] The Family Support Act of 1988 explicitly states that not being in arrearage on payments is not grounds for good cause.[19] The Senate Committee, therefore, amended the language of subsection (C) so that Georgia would comply with the federal guidelines.[20]

New Code sections 19-6-32 (a.1)(2)-(3) state:

> (2) All child support orders which are not described in subsection (a) of this Code section or in paragraph (1) of this subsection shall, upon petition of either party to revise that order under Code Section 19-6-19 or to enforce that order under Code Section 19-6-28, be revised to include provisions for withholding of such support from the wages of the person required by the order to furnish that support if arrearages equal to one month's support occur but without the necessity of filing application for services under Code Section 19-11-6.
>
> (3) Copies of income deduction orders issued under this subsection shall be served on the obligee, obligor, and the child support IV-D agency when payment is to be made to the agency.[21]

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14. O.C.G.A. § 19-6-32 (Supp. 1993).
15. *Compare* HB 261, as introduced, 1993 Ga. Gen. Assem. *with* HB 261, as passed, 1993 Ga. Gen. Assem.
16. Cauthorn Interview, *supra* note 1.
17. *Id.*
18. *Id.*
19. Wade Interview, *supra* note 4; *see also* Family Support Act of 1988, Pub. L. No. 100-485, 102 Stat. 2343 (1988).
20. Cauthorn Interview, *supra* note 1; O.C.G.A. § 19-6-32(a.1) (Supp. 1993).
21. O.C.G.A. § 19-6-32 (Supp. 1993).

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The remainder of the bill addresses the manner in which the income deduction orders are handled with the payor. The Act as introduced only required that the obligee and obligor be served.[22] The final version included serving the child support IV-D agency when payment is to be made to the agency, since that category had been omitted from the language.[23]

HB 277

The Act amends Code section 19-6-19, relating to revision of judgment for permanent alimony or child support generally.[24] This amendment allows for a broader definition of cohabitation with third parties as a ground for revision, attorney fees and temporary modification pending final trial.[25]

The definition of "cohabitation" was previously defined as "dwelling together continuously and openly in a meretricious relationship with a person of the opposite sex."[26] The Act amends the definition of "cohabitation" to "dwelling together continuously and openly in a meretricious relationship with another person, regardless of the sex of the other person."[27]

The Act does not change the provision pertaining to attorney fees.[28] If the petitioner does not prevail in the petition for modification, the petitioner shall be liable for reasonable attorney fees incurred by the respondent.[29]

A House amendment was presented by Representative Denmark Groover to make the Act applicable to all judgments for permanent alimony entered before or after the effective date of the Act.[30] This amendment was incorporated into the final bill.[31]

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22. HB 261, as introduced, 1993 Ga. Gen. Assem.
23. HB 261, as passed, Ga. Gen. Assem.
24. O.C.G.A. § 19-6-32 (Supp. 1993).
25. Boshears Interview, *supra* note 9.
26. O.C.G.A. § 19-6-19(b) (Supp. 1991).
27. *Id.* § 19-6-19(1)(b) (Supp. 1993).
28. *Id.* § 19-6-19(d) (Supp. 1993).
29. *Id.*
30. HB 277 (HFA), 1993 Ga. Gen. Assem.
31. *Id.*

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