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DOMESTIC RELATIONS

Child Custody Proceedings and Enforcement of Duty to Support: Provide for Temporary Custody Awards Pending Final Custody Judgment and Require Certain Employers to Report the Hiring and Rehiring of Certain Employees to the Department of Human Resources for Child Support Enforcement Purposes

CODE SECTIONS: O.C.G.A. §§ 19-9-3 (amended), 19-11-9.2 (new)
BILL NUMBER: SB 269
ACT NUMBER: 614
SUMMARY: The Act amends the general provisions regarding child custody proceedings. The Act provides that a court may, in its discretion, change the terms of custody on a temporary basis pending final judgment in a custody dispute. The Act also requires employers with seven or more employees to report the hiring or rehiring of certain employees to the Georgia State Child Support Recovery Unit within the Department of Human Resources.
EFFECTIVE DATE: July 1, 1993

History

In *Hightower v. Martin*,¹ the Georgia Court of Appeals held that in a post-decree custody modification action, the trial court is without authority to enter a temporary custody award. Thus, prior to the Act, courts were not authorized to modify the terms of current custody arrangements pending final judgment in an action for a change of child custody.²

Prior to the Act, the Georgia State Child Support Recovery Unit of the Department of Human Resources only received information as to new hires on a quarterly basis.³ This quarterly reporting limited the State's ability to enforce child support recovery court orders because many parents who had delinquent child support payments, well aware of quarterly reporting procedures, changed jobs every four months in order to avoid being located.⁴

1. 403 S.E.2d 862 (Ga. Ct. App. 1991).

2. *Id.*; see also 1991 Ga. Laws 1389 (formerly found at O.C.G.A. § 19-9-3(b) (1992)).

3. Telephone Interview with Rep. Nan Orrock, House District No. 56 (May 23, 1993) [hereinafter Orrock Interview]. Rep. Orrock proposed the floor amendment to SB 269 which incorporated HB 89 and was adopted by both houses. *Id.*

4. *Id.*

When Georgia families do not receive the child support payments due them, they often have to rely on the State's welfare system to make ends meet.⁵ Enhancing the State's ability to identify such parents and to collect the delinquent child support payments enables more families dependent on state child support to become independent of welfare, and thereby save taxpayer money.⁶

SB 269

The Act amends Code section 19-9-3 relating to child custody disputes by adding a provision allowing for the award of temporary custody pending final judgment in an action to modify a current child custody arrangement.⁷ This addition is an attempt to afford some protection to children who may be in the custody of an abusive parent while the rights of that custodial parent are being adjudicated.⁸

The Act provides that a court may, in its discretion, change the terms of custody on a temporary basis prior to entering final judgment on the issue.⁹ The Act further provides that any such temporary custody award shall not be interpreted to be a determination based on the merits of the case.¹⁰ The Act rectifies the *Hightower v. Martin*¹¹ decision in which the court held that in a post-decree custody modification action the trial court is without authority to enter a temporary custody award.¹² The Act also adds new Code section 19-11-9.2, which requires employers with seven or more employees to report the hiring or rehiring of certain employees to the Georgia State Support Registry within the Department of Human Resources.¹³ This addition is an attempt to accelerate the process of identifying "dead beat" parents, thereby increasing the rate of collection of delinquent court-ordered child support payments.¹⁴

This new Code section was originally introduced as HB 89 in the House and was assigned to the House Committee on Children and Youth.¹⁵ In its original form, the bill applied only to employers in industries with high rates of employee turnover, such as the construction and textile industries, regardless of the number of workers

5. *Id.*

6. *Id.*

7. O.C.G.A. § 19-9-3(e) (Supp. 1993).

8. Telephone Interview with Sen. Mary Margaret Oliver, Senate District No. 42 (June 12, 1993) [hereinafter Oliver Interview].

9. O.C.G.A. § 19-9-3(e) (Supp. 1993).

10. *Id.*

11. 403 S.E.2d 862 (Ga. Ct. App. 1991).

12. *Id.*; see also Oliver Interview, *supra* note 8.

13. O.C.G.A. § 19-11-9.2 (Supp. 1993).

14. Orrock Interview, *supra* note 3.

15. *Id.*

employed.¹⁶ The textile lobby put a great deal of pressure on the Committee to either defeat the bill in its entirety or, in the absence of defeat, to expand its application to all Georgia businesses and not single out particular industries.¹⁷ The original version of HB 89 was finally defeated in the Rules Committee over a concern that it would put too much of a burden on small businesses in Georgia.¹⁸

After the defeat of the original bill, a new version of HB 89 was offered as part of a House floor substitute to SB 269.¹⁹ The new version of HB 89, which was eventually adopted as part of SB 269 by both houses, applies to all Georgia businesses with seven or more workers regardless of the rate of employee turnover.²⁰

An additional amendment proposed on the House floor which would have changed all instances in the bill of the language "employers . . . shall report" to "employers . . . may report" was defeated.²¹ Such an amendment would have left the decision to report new hires to the discretion of the employer, and would have, therefore, reduced the effectiveness of the identification process and, thus, undermined the purpose of the Act.²²

Another amendment proposed changing the number of employees an employer had to have before becoming subject to the Act's requirements from seven to one hundred. This amendment was also defeated.²³

Under the Act, employers with seven or more employees are required to report the hiring of any new workers, as well as the hiring or return to work of any former employees, to the Georgia State Support Registry within the Department of Human Resources.²⁴ Employers must submit these reports, which may consist of the employee's W-4 form, within five days of the new hire.²⁵ The report must include the employee's name, address, social security number, and date of birth, as well as the employer's name, address, and employment security number or unified business identifier number.²⁶

Employers need not report employees who work less than 350 hours in a continuous four-month period or those with gross earnings of less

16. HB 89, as introduced, 1993 Ga. Gen. Assem.

17. Orrock Interview, *supra* note 3.

18. *Id.* The motion to place it on the House Rules calendar failed. *Id.*

19. *Id.*

20. O.C.G.A. § 19-11-9.2 (Supp. 1993).

21. Orrock Interview, *supra* note 3; *see also* SB 269 (HFACS), proposed by Rep. Bobby Eugene Parham, House District No. 122, 1993 Ga. Gen. Assem.

22. Orrock Interview, *supra* note 3.

23. *Id.*; *see also* SB 269 (HFACS), proposed by Rep. R. M. Channell, House District No. 111, 1993 Ga. Gen. Assem.

24. O.C.G.A. § 19-11-9.2(a) (Supp. 1993).

25. *Id.* § 19-11-9.2(c) (Supp. 1993).

26. *Id.* § 19-11-9.2(c)(1)-(2) (Supp. 1993).

than \$300 per month.²⁷ If an employer fails to report a new hire in a timely manner, it will receive a written warning.²⁸ The Act does not provide for any further consequences for failure to comply with its terms,²⁹ however, even though the receipt of a written warning implies that some sort of further consequence will ensue following continued refusal to observe the letter of the Act.³⁰

The Act also provides that the Georgia State Support Registry may not use the information received to create records about employees unless those employees are found to owe child support payments.³¹ Furthermore, the Department of Human Resources may adopt rules and establish exceptions from the Code section as needed to reduce the burden of reporting on employers.³²

The Act further provides that the Department of Human Resources must report to the Governor and the General Assembly as to the Act's effectiveness by November 1, 1994.³³ Moreover, Code section 19-11-9.2 is subject to a sunset provision effective May 1, 1995.³⁴

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27. *Id.* § 19-11-9.2(b)(1)-(2) (Supp. 1993).

28. O.C.G.A. § 19-11-9.2(c) (Supp. 1993). Reports are to be submitted within five days of hiring, rehiring, or return to work of the employee. *Id.*

29. *Id.*

30. *Id.*; see also Orrock Interview, *supra* note 3.

31. O.C.G.A. § 19-11-9.2(d) (Supp. 1993).

32. *Id.* § 19-11-9.2(e) (Supp. 1993).

33. *Id.*

34. *Id.* § 19-11-9.2(f) (Supp. 1993).