ENGROSSED

First Extraordinary Session, 2005

HOUSE BILL NO. 104

BY REPRESENTATIVES GREENE, ANSARDI, AND GALLOT AND SENATOR LENTINI

CHILDREN/SUPPORT: Provides emergency legislation relative to child support

| 1 | AN ACT |
|----|--|
| 2 | To amend and reenact R.S. 9:315(C)(3)(a) and 315.1(B) and to enact R.S. 9:315(C)(3)(d)(v), |
| 3 | 315.11(C), and 315.21(F), relative to child support; to provide for the definition of |
| 4 | gross income; to provide for a deviation from the guidelines; to provide for voluntary |
| 5 | unemployment or underemployment; to provide for retroactivity; to provide for a |
| 6 | contingent effective date for R.S. 9:315.21(F); and to provide for related matters. |
| 7 | Be it enacted by the Legislature of Louisiana: |
| 8 | Section 1. R.S. 9:315(C)(3)(a) and 315.1(B) are hereby amended and reenacted and |
| 9 | R.S. 9:315(C)(3)(d)(v), 315.11(C), and 315.21(F) are hereby enacted to read as follows: |
| 10 | §315. Economic data and principles; definitions |
| 11 | * * * |
| 12 | C. Definitions. As used in this Part: |
| 13 | * * * |
| 14 | (3) "Gross income" means: |
| 15 | (a) The income from any source, including but not limited to salaries, wages, |
| 16 | commissions, bonuses, dividends, severance pay, pensions, interest, trust income, |
| 17 | recurring monetary gifts, annuities, capital gains, social security benefits, workers' |
| 18 | compensation benefits, unemployment insurance benefits, disaster unemployment |
| 19 | assistance received from the United States Department of Labor, disability insurance |
| 20 | benefits, and spousal support received from a preexisting spousal support obligation; |
| 21 | * * * |

CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

| 1 | (d) As used herein, "gross income" does not include: |
|----|--|
| 2 | * * * |
| 3 | (v) Any disaster assistance benefits received from the Federal Emergency |
| 4 | Management Agency through its Individuals and Households Program or from any |
| 5 | other nonprofit organization qualified as a tax-exempt organization under Section |
| 6 | 501(c) of the Internal Revenue Code of 1954, as amended. |
| 7 | * * * |
| 8 | §315.1. Rebuttable presumption; deviation from guidelines by court; stipulations by |
| 9 | parties |
| 10 | * * * |
| 11 | B. (1) The court may deviate from the guidelines set forth in this Part if their |
| 12 | application would not be in the best interest of the child or would be inequitable to |
| 13 | the parties. The court shall give specific oral or written reasons for the deviation, |
| 14 | including a finding as to the amount of support that would have been required under |
| 15 | a mechanical application of the guidelines and the particular facts and circumstances |
| 16 | that warranted a deviation from the guidelines. The reasons shall be made part of the |
| 17 | record of the proceedings. |
| 18 | (2) Notwithstanding the provisions of Paragraph (1), as a direct result of |
| 19 | either Hurricane Katrina or Rita, the court may deviate from the guidelines set forth |
| 20 | in this Part if the application of the guidelines would not be in the best interest of the |
| 21 | child or would be unjust, inequitable, or cause undue hardship to the parties. In |
| 22 | determining the amount of the child support, the court may also consider that the |
| 23 | parties may have been prevented from timely access to the courts for the exercise of |
| 24 | their legal rights. However, the amount of the deviation shall not exceed the |
| 25 | consideration the court would have given if the party were able to timely access the |
| 26 | <u>court.</u> |
| 27 | * * * |
| 28 | §315.11. Voluntarily unemployed or underemployed party |
| 29 | * * * |

Page 2 of 5

CODING: Words in struck through type are deletions from existing law; words <u>underscored</u> are additions.

| 1 | C. A party shall not be deemed voluntarily unemployed or underemployed |
|----|---|
| 2 | if he or she has been temporarily unable to find work or has been temporarily forced |
| 3 | to take a lower paying job as a direct result of Hurricane Katrina or Rita. |
| 4 | * * * |
| 5 | §315.21. Retroactivity of child support judgment |
| 6 | * * * |
| 7 | F.(1) Notwithstanding any other provision of this Section, if a party has been |
| 8 | directly affected by Hurricane Katrina, a judgment modifying a final child support |
| 9 | judgment may be made retroactive to August 26, 2005, if judicial demand is made |
| 10 | prior to April 15, 2006. |
| 11 | (2) Notwithstanding any other provision of this Section, if a party has been |
| 12 | directly affected by Hurricane Rita, a judgment modifying a final child support |
| 13 | judgment may be made retroactive to September 20, 2005, if judicial demand is |
| 14 | made prior to April 15, 2006. |
| 15 | Section 2. The provisions of R.S. 9:315.21(F) as enacted in this Act shall not take |
| 16 | effect unless 42 USC 666(a)(9)(c), (the Bradley Amendment), which currently provides that |
| 17 | any payment or installment of support under any child support order is not subject to |
| 18 | retroactive modification, is amended and enacted into law to permit retroactive modification |
| 19 | of child support. |
| 20 | Section 3. The Louisiana State Law Institute is hereby directed to prepare comments |
| 21 | regarding the provisions of this Act. |
| 22 | Section 4. The provisions of this Act shall apply to all cases pending on its effective |
| 23 | date and to all cases filed after its effective date. |
| 24 | Section 5. This Act shall become effective upon signature by the governor or, if not |
| 25 | signed by the governor, upon expiration of the time for bills to become law without signature |
| 26 | by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If |
| 27 | vetoed by the governor and subsequently approved by the legislature, this Act shall become |
| 28 | effective on the day following such approval. |

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument.

Greene

HB No. 104

Abstract: Provides for the calculation and modification of child support for parties affected by Hurricanes Katrina and Rita.

Present law (R.S. 9:315(C)(3)) defines gross income as income from any source.

<u>Proposed law</u> clarifies that gross income includes disaster unemployment assistance received from the U.S. Department of Labor.

<u>Proposed law</u> also provides that gross income does not include disaster assistance received through FEMA or any other nonprofit tax-exempt organization.

<u>Present law</u> (R.S. 9:315.1(B)) provides that the court may deviate from the guidelines if they are not in the best interest of the child or it would be inequitable to the parties.

<u>Proposed law</u> additionally provides that the court may deviate if the application of the guidelines would be unjust or inequitable to a party who was denied access to the courts as a direct result of Hurricane Katrina or Rita.

<u>Present law</u> (R.S. 9:315.11) provides that if a party is voluntarily unemployed or underemployed, child support shall be calculated based on his income-earning potential.

<u>Proposed law</u> provides that a party shall not be deemed voluntarily unemployed or underemployed if he has been temporarily unable to find work or has been temporarily forced to take a lower paying job due to Hurricane Katrina or Rita.

<u>Present law</u> (R.S. 9:315.21) provides that an award of child support shall be retroactive to the date of judicial demand, except for good cause shown.

<u>Proposed law</u> provides that the court may make a child support modification retroactive to the date an emergency was declared for Hurricane Katrina or Rita, if judicial demand is filed before April 15, 2006. However <u>proposed law</u> provides that this provision shall not be effective unless 42 USC 666(a)(9)(c), (the Bradley Amendment), is amended to permit retroactive modification of support.

<u>Proposed law</u> directs the Louisiana State Law Institute to prepare comments regarding the provisions of this Act.

<u>Proposed law</u> provides that this Act shall apply to all pending and future cases.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 9:315(C)(3)(a) and 315.1(B); Adds R.S. 9:315(C)(3)(d)(v), 315.11(C), and 315.21(F))

Summary of Amendments Adopted by House

- Committee Amendments Proposed by <u>House Committee on Civil Law and Procedure</u> to the <u>original</u> bill.
- 1. Deletes authority of the court to deviate from the mandatory minimum if the party demonstrates that as a direct result of Hurricane Katrina or Rita extraordinary circumstances justify a deviation and judicial demand is made prior to August 26, 2006.