

2018 Regular Session

SENATE BILL NO. 387

BY SENATOR CLAITOR

CHILDREN/FAMILY SERVICES DEPT. Provides relative to modification of support orders when the department is providing support enforcement services. (gov sig)

AN ACT

To amend and reenact R.S. 9:311(A)(1), (C)(1) and (2), (E), (F), to enact R.S. 9:311(C)(3), and to repeal R.S. 9:311(G), relative to support enforcement services; to provide relative to the modification of support orders when the Department of Children and Family Services is providing support enforcement services; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 9:311(A)(1), (C)(1) and (2), (E), (F) are hereby amended and reenacted and R.S. 9:311(C)(3) is hereby enacted to read as follows:

§311. Modification or suspension of support; material change in circumstances; periodic review by Department of Children and Family Services; medical support

A.(1) An award for support shall not be modified unless the party seeking the modification shows a material change in circumstances of one of the parties between the time of the previous award and the time of the rule for modification of the award.

The material change in circumstances must be substantial and continuing since the last award for support.

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C. For purposes of this Section, in cases where the Department of Children and Family Services is providing support enforcement services:

(1) ~~A~~ **There shall be a rebuttable presumption that a** material change in circumstance **circumstances** exists when a strict application of the child support guidelines, Part I-A of this Chapter, would result in at least a twenty-five percent change in the existing child support award. A material change in ~~circumstance~~ **circumstances** does not exist under this Paragraph if the amount of the award was the result of the court's deviating from the guidelines pursuant to R.S. 9:315.1 and there has not been a material change in the circumstances which warranted the deviation.

~~(2) Upon request of either party or on its own initiative and if the best interest of the child so requires, the department shall provide for judicial review and, if appropriate, the court may adjust the amount of the existing child support award every three years if the existing award differs from the amount which would otherwise be awarded under the application of the child support guidelines. The review provided hereby does not require a showing of a material change in circumstance nor preclude a party from seeking a reduction or increase under the other provisions of this Section.~~ **A court has discretion and authority to modify a child support obligation even when there is not a twenty-five percent variation between the current obligation and the guidelines when a party has proven a material change in circumstances that is substantial and continuing. Likewise, a trial court has discretion to deny a modification even when the twenty-five percent variation is present, based on a finding that the application of the guidelines in that case would not be in the best interest of the child or would be inequitable to the parties.**

(3) If the best interest of the child so requires, it shall provide for a judicial review upon request of either party or on its own initiative. If appropriate, the court may adjust the amount of the existing child support

award every three years if the existing award differs from the amount which would otherwise be awarded under the application of the child support guidelines. A material change in circumstances shall not be required for the purpose of this Paragraph.

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E.(1) If the court does not find good cause sufficient to justify an order to modify child support or the motion is dismissed prior to a hearing, it may order the mover to pay all court costs and reasonable attorney fees of the other party if the court determines the motion was frivolous.

F.(2) The provisions of this Subsection E ~~of this Section~~ shall not apply when the mover ~~recipient of the support payments~~ is a public entity ~~acting on behalf of another party to whom support is due~~ providing support enforcement services as defined by R.S. 46:236.1.1(14).

G.F. A modified order for support shall be retroactive to the filing date of the rule for modification.

Section 2. R.S. 9:311(G) is hereby repealed.

Section 3. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by James Benton.

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Present law provides that an award for support shall not be modified unless the party seeking the modification shows a material change in circumstances of one of the parties between the time of the previous award and the time of the rule for modification of the award.

Proposed law retains present law but provides that the material change in circumstances must be substantial and continuing since the last award for support.

Present law provides that in cases where the Department of Children and Family Services is providing support enforcement services:

- (1) A material change in circumstance exists when a strict application of the child support guidelines would result in at least a 25% change in the existing child support award. A material change in circumstance does not exist under present law if the amount of the award was the result of the court's deviating from the guidelines pursuant to present law and there has not been a material change in the circumstances which warranted the deviation.
- (2) Upon request of either party or on its own initiative and if the best interest of the child so requires, the department shall provide for judicial review and, if appropriate, the court may adjust the amount of the existing child support award every three years if the existing award differs from the amount which would otherwise be awarded under the application of the child support guidelines. The review provided hereby does not require a showing of a material change in circumstance nor preclude a party from seeking a reduction or increase under the other provisions of present law.

Proposed law retains present law but adds that there will be a rebuttable presumption that a material change exists when certain elements of present law are found.

Present law provides that upon request of either party or on its own initiative and if the best interest of the child so requires, the department will provide for judicial review and, if appropriate, the court may adjust the amount of the existing child support award every three years if the existing award differs from the amount which would otherwise be awarded under the application of the child support guidelines. The review provided hereby does not require a showing of a material change in circumstance nor preclude a party from seeking a reduction or increase under the other provisions of this present law.

Proposed law changes present law so that a court has discretion and authority to modify a child support obligation even when there is not a 25% variation between the current obligation and the guidelines when a party has proven a material change in circumstances that is substantial and continuing. Likewise, a trial court has discretion to deny a modification even when the 25% variation is present, based on a finding that the application of the guidelines in that case would not be in the best interest of the child or would be inequitable to the parties.

Proposed law further provides that if the best interest of the child so requires, it will provide for a judicial review upon request of either party or on its own initiative. If appropriate, the court may adjust the amount of the existing child support award every three years if the existing award differs from the amount which would otherwise be awarded under the application of the child support guidelines. A material change in circumstances will not be required for the purpose of proposed law.

Present law provides that the provisions of present law will not apply when the recipient of the support payments is a public entity acting on behalf of another party to whom support is due.

Proposed law retains present law but makes technical changes.

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

(Amends R.S. 9:311(A)(1), (C)(1) and (2), (E), (F); adds R.S. 9:311(C)(3); repeals R.S. 9:311(G))