

2018 Regular Session

HOUSE BILL NO. 838

BY REPRESENTATIVE JAY MORRIS

CHILDREN/SUPPORT: Provides relative to the suspension of child support obligations for persons who are incarcerated

1 AN ACT

2 To enact R.S. 9:311(G), to repeal Children's Code Article 1353(G), R.S. 9:311.1 and 315.27,
3 R.S. 13:4611(1)(d)(iii), R.S. 46:236.6(B)(4) and 236.7(C)(4), to repeal R.S.
4 9:311(A)(2) and (D) and 315.11(A) and (C) as amended and reenacted by Act No.
5 264 of the 2017 Regular Session of the Legislature, and to repeal Sections 5, 6, and
6 7 of Act No. 264 of the 2017 Regular Session of the Legislature, relative to child
7 support; to provide relative to child support obligations; to repeal provisions relative
8 to incarceration of the obligor; to repeal procedures for the temporary modification
9 of suspension of child support orders; to repeal notice requirements; to repeal
10 provisions relative to the defense to contempt of court; and to provide for related
11 matters.

12 Be it enacted by the Legislature of Louisiana:

13 Section 1. R.S. 9:311(G) is hereby enacted to read as follows:

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

16 * * *

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

19 Section 2. Children's Code Article 1353(G) is hereby repealed in its entirety.

20 Section 3. R.S. 9:311.1 and 315.27 are hereby repealed in their entirety.

- 1 Section 4. R.S. 13:4611(1)(d)(iii) is hereby repealed in its entirety.
- 2 Section 5. R.S. 46:236.6(B)(4) and 236.7(C)(4) are hereby repealed in their entirety.
- 3 Section 6. R.S. 9:311(A)(2) and (D) and 315.11(A) and (C) as amended and
- 4 reenacted by Act No. 264 of the 2017 Regular Session of the Legislature are hereby repealed
- 5 in their entirety.
- 6 Section 7. Sections 5, 6, and 7 of Act No. 264 of the 2017 Regular Session of the
- 7 Legislature are hereby repealed in their entirety.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 838 Original

2018 Regular Session

Jay Morris

Abstract: Repeals provisions allowing for temporary modification or suspension of child support payments owed by an obligor while incarcerated.

Present law provides for the temporary modification or suspension of a child support order due to an obligor's incarceration of more than 180 days. Requires the Dept. of Children and Family Services (DCFS), once it is notified that an individual subject to support enforcement services is being incarcerated, to verify that none of the following exceptions exist:

- (1) The incarceration is pursuant to an intentional failure to pay a child support obligation.
- (2) The obligor has the means to pay support while incarcerated.
- (3) The obligor is incarcerated for an offense against the custodial party or the child subject to the support order.

Present law adds that a person shall not be considered voluntarily unemployed or underemployed if that person is incarcerated for more than 180 days.

Present law requires the Dept. of Public Safety and Corrections (DPSC) or the sheriff in certain circumstances to distribute information to every person in a prison facility regarding the suspension of child support, including information specific as to what may constitute a material change in circumstances. Further requires DPSC to notify DCFS of those persons who are in their custody and who may be subject to a child support order.

Present law requires DCFS to provide notice to the custodial party by certified mail that the child support obligation will be suspended (if none of the exceptions exist) unless the custodial party objects no later than 15 calendar days from receipt of notice.

Present law outlines the grounds for the custodial parent to object to modification or suspension of support, and provides for the process in which the custodial parent may object.

Present law requires DCFS to file an affidavit with the court having jurisdiction over the order of child support and provides for the mandatory contents of the affidavit.

Present law permits a court to continue an award of child support that would be otherwise terminated, if the award was suspended due to the obligor's incarceration. Provides for the appropriate moving party, depending upon the age of the child once the parent is released from incarceration. Present law prohibits such a continuation from exceeding a longer period of time than the award was suspended due to the obligor's incarceration.

Present law does not apply if a court does not have continuous exclusive jurisdiction to modify the order pursuant to the Uniform Interstate Family Support Act.

Present law is effective Jan. 1, 2019.

Proposed law repeals present law which would have become effective Jan. 1, 2019.

(Adds R.S. 9:311(G); Repeals Ch.C. Art. 1353(G), R.S. 9:311.1 and 315.27, R.S. 13:4611(1)(d)(iii), R.S. 46:236.6(B)(4) and 236.7(C)(4); Repeals R.S. 9:311(A)(2) and (D) and 315.11(A) and (C) as amended and enacted by Act No. 264 of the 2017 R.S.; Repeals Sections 5, 6, and 7 of Act No. 264 of the 2017 R.S.)