

2018 Regular Session

SENATE BILL NO. 330

BY SENATOR COLOMB

FAMILY LAW. Provides for the modification of support orders when the Department of Children and Family Services is providing support enforcement services. (gov sig)

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AN ACT

To amend and reenact R.S. 9:311, 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 is hereby amended and reenacted 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 (1) ~~There shall be a rebuttable presumption that a~~ material change in
2 circumstance circumstances exists when a strict application of the child support
3 guidelines, Part I-A of this Chapter, would result in at least a twenty-five percent
4 change in the existing child support award. A material change in ~~circumstance~~
5 circumstances does not exist under this Paragraph if the amount of the award was
6 the result of the court's deviating from the guidelines pursuant to R.S. 9:315.1 and
7 there has not been a material change in the circumstances which warranted the
8 deviation.

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

24 (3) If the best interest of the child so requires, it shall provide for a
25 judicial review upon request of either party or on its own initiative. If
26 appropriate, the court may adjust the amount of the existing child support
27 award every three years if the existing award differs from the amount which
28 would otherwise be awarded under the application of the child support
29 guidelines. A material change in circumstances shall not be required for the

1 **purpose of this Paragraph.**

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

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

11 * * *

12 Section 2. This Act shall become effective upon signature by the governor or, if not
13 signed by the governor, upon expiration of the time for bills to become law without signature
14 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
15 vetoed by the governor and subsequently approved by the legislature, this Act shall become
16 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 Xavier I. Alexander.

DIGEST

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Present law provides that a child support obligation shall not be modified unless there is a material change in circumstances.

Proposed law retains present law and further provides that a material change in circumstances must be substantial and continuing.

Present law provides that material change of circumstances exists where there is a 25% change in a child support award. Further provides that in the best interest of the child, either party or DCFS shall provide for judicial review and the court may adjust the amount of support every three years without a material change of circumstances.

Proposed law provides that a court has the discretion to modify child support obligation even when there is not a 25% variation between the current support obligation. Further provides that the court has the discretion to modify a child support award even when the 25% variation exists.

Proposed law provides that in the best interest of the child judicial review shall be called upon by either party or DCFS. Further provides that the court may adjust a child support award every three years if existing award differs from the previous award.

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

(Amends R.S. 9:311)