

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), 315.1(B), and 315.14 and to enact R.S.
3 9:315(C)(3)(d)(v), 315.11(C), and 315.21(F), relative to child support; to provide for
4 the definition of gross income; to provide for a deviation from the guidelines; to
5 provide for voluntary unemployment or underemployment; to provide for an
6 exception to the mandatory minimum; to provide for retroactivity; to provide for a
7 contingent effective date for R.S. 9:315.21(F); and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 9:315(C)(3)(a), 315.1(B), and 315.14 are hereby amended and
10 reenacted and R.S. 9:315(C)(3)(d)(v), 315.11(C), and 315.21(F) are hereby enacted to read
11 as follows:

12 §315. Economic data and principles; definitions

13 * * *

14 C. Definitions. As used in this Part:

15 * * *

16 (3) "Gross income" means:

17 (a) The income from any source, including but not limited to salaries, wages,
18 commissions, bonuses, dividends, severance pay, pensions, interest, trust income,
19 recurring monetary gifts, annuities, capital gains, social security benefits, workers'

1 compensation benefits, unemployment insurance benefits, disaster unemployment
2 assistance received from the United States Department of Labor, disability insurance
3 benefits, and spousal support received from a preexisting spousal support obligation;

4 * * *

5 (d) As used herein, "gross income" does not include:

6 * * *

7 (v) Any disaster assistance benefits received from the Federal Emergency
8 Management Agency through its Individuals and Households Program or from any
9 other nonprofit organization qualified as a tax-exempt organization under Section
10 501(c) of the Internal Revenue Code of 1954, as amended.

11 * * *

12 §315.1. Rebuttable presumption; deviation from guidelines by court; stipulations by
13 parties

14 * * *

15 B.(1) The court may deviate from the guidelines set forth in this Part if their
16 application would not be in the best interest of the child or would be inequitable to
17 the parties. The court shall give specific oral or written reasons for the deviation,
18 including a finding as to the amount of support that would have been required under
19 a mechanical application of the guidelines and the particular facts and circumstances
20 that warranted a deviation from the guidelines. The reasons shall be made part of the
21 record of the proceedings.

22 (2) Notwithstanding the provisions of Paragraph (1), as a direct result of
23 either Hurricane Katrina or Rita, the court may deviate from the guidelines set forth
24 in this Part if the application of the guidelines would not be in the best interest of the
25 child or would be unjust, inequitable, or cause undue hardship to the parties. In
26 determining the amount of the child support, the court may also consider that the
27 parties may have been prevented from timely access to the courts for the exercise of
28 their legal rights. However, the amount of the deviation shall not exceed the

1 consideration the court would have given if the party were able to timely access the
2 court.

3 * * *

4 §315.11. Voluntarily unemployed or underemployed party

5 * * *

6 C. A party shall not be deemed voluntarily unemployed or underemployed
7 if he or she has been temporarily unable to find work or has been temporarily forced
8 to take a lower paying job as a direct result of Hurricane Katrina or Rita.

9 * * *

10 §315.14. Mandatory minimum child support award

11 In no event shall the court set an award of child support less than one hundred
12 dollars, except in cases involving shared or split custody as provided in R.S. 9:315.9
13 and 315.10. In cases when the obligor has a medically documented disability that
14 limits his ability to meet the mandatory minimum, the court may set an award of less
15 than one hundred dollars. The court may set an award of child support less than one
16 hundred dollars if the party can demonstrate that as a direct result of Hurricane
17 Katrina or Rita the extraordinary circumstances justify a deviation from the
18 mandatory minimum and judicial demand is made prior to August 29, 2006.

19 * * *

20 §315.21. Retroactivity of child support judgment

21 * * *

22 F.(1) Notwithstanding any other provision of this Section, if a party has been
23 directly affected by Hurricane Katrina, a judgment modifying a final child support
24 judgment may be made retroactive to August 26, 2005, if judicial demand is made
25 prior to April 15, 2006.

26 (2) Notwithstanding any other provision of this Section, if a party has been
27 directly affected by Hurricane Rita, a judgment modifying a final child support
28 judgment may be made retroactive to September 20, 2005, if judicial demand is
29 made prior to April 15, 2006.

1 Section 2. The provisions of R.S. 9:315.21(F) as enacted in this Act shall not take
2 effect unless 42 USC 666(a)(9)(c), (the Bradley Amendment), which currently provides that
3 any payment or installment of support under any child support order is not subject to
4 retroactive modification, is amended and enacted into law to permit retroactive modification
5 of child support.

6 Section 3. The Louisiana State Law Institute is hereby directed to prepare comments
7 regarding the provisions of this Act.

8 Section 4. The provisions of this Act shall apply to all cases pending on its effective
9 date and to all cases filed after its effective date.

10 Section 5. This Act shall become effective upon signature by the governor or, if not
11 signed by the governor, upon expiration of the time for bills to become law without signature
12 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
13 vetoed by the governor and subsequently approved by the legislature, this Act shall become
14 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.

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

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

Present law (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.

Proposed law 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.

Present law (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.

Proposed law 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.

Present law (R.S. 9:315.14) provides that the court may not set a child support award below \$100.

Proposed law provides that the court may 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.

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

Proposed law 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 proposed law 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.

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

Proposed law 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), 315.1(B), and 315.14; Adds R.S. 9:315(C)(3)(d)(v), 315.11(C), and 315.21(F))