

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 \* \* \*

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 court.

27 \* \* \*

28 §315.11. Voluntarily unemployed or underemployed party

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**DIGEST**

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

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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. 9:315.21) 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) 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 House Committee on Civil Law and Procedure to the original 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.