

First Extraordinary Session, 2005

HOUSE BILL NO. 104

BY REPRESENTATIVES GREENE, ANSARDI, AND GALLOT AND SENATORS
LENTINI AND MURRAY

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 * * *

1 §315.11. Voluntarily unemployed or underemployed party

2 * * *

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

6 * * *

7 §315.21. Retroactivity of child support judgment

8 * * *

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

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

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

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

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

26 Section 5. This Act shall become effective upon signature by the governor or, if not
27 signed by the governor, upon expiration of the time for bills to become law without signature
28 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If

1 vetoed by the governor and subsequently approved by the legislature, this Act shall become
2 effective on the day following such approval.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____