

2024 Regular Session

HOUSE BILL NO. 770

BY REPRESENTATIVES CARPENTER AND TAYLOR

CHILDREN/SUPPORT: Provides relative to child support guidelines

1 AN ACT

2 To amend and reenact R.S. 9:315.1(B) and (C), 315.11(A)(2) and (C)(1), 315.13, and
3 315.22(C) and (D) and Code of Civil Procedure Article 10(A)(9), to enact R.S.
4 9:315.14 and 315.22.1, and to repeal R.S. 9:315.21(F) and 315.22(E), relative to
5 child support guidelines; to provide relative to income used when calculating child
6 support; to provide for deviations from the child support guidelines; to provide for
7 support for adult disabled children; to provide for an effective date; and to provide
8 for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Code of Civil Procedure Article 10(A)(9) is hereby amended and
11 reenacted to read as follows:

12 Art. 10. Jurisdiction over status

13 A. A court which is otherwise competent under the laws of this state has
14 jurisdiction of the following actions or proceedings only under the following
15 conditions:

16 * * *

17 (9) A proceeding for support of an adult child with a disability, as provided
18 in R.S. ~~9:315.22(E)~~ 9:315.22.1, if he is domiciled in, or is in, this state.

19 * * *

1 Section 2. R.S. 9:315.1(B) and (C), 315.11(A)(2) and (C)(1), 315.13, and 315.22(C)
2 and (D) are hereby amended and reenacted and R.S. 9:315.14 and 315.22.1 are hereby
3 enacted to read as follows:

4 §315.1. Rebuttable presumption; deviation from guidelines by court; stipulations by
5 parties

6 * * *

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

14 ~~(2) Notwithstanding the provisions of Paragraph (1), as a direct result of~~
15 ~~either Hurricane Katrina or Rita, the court may deviate from the guidelines set forth~~
16 ~~in this Part if the application of the guidelines would not be in the best interest of the~~
17 ~~child or would be unjust, inequitable, or cause undue hardship to the parties. In~~
18 ~~determining the amount of the child support, the court may also consider that the~~
19 ~~parties may have been prevented from timely access to the courts for the exercise of~~
20 ~~their legal rights. However, the amount of the deviation shall not exceed the~~
21 ~~consideration the court would have given if the party were able to timely access the~~
22 ~~court.~~

23 C. In determining whether to deviate from the guidelines, the court's
24 considerations may include:

25 (1) ~~That the combined adjusted gross income of the parties is equal to or less~~
26 ~~than nine hundred fifty dollars.~~

27 ~~In such cases, the court shall determine an amount of child support based on~~
28 ~~earnings, income, and other evidence of ability to pay.~~

1 ~~(2)~~ That the combined adjusted gross income of the parties is not within the
2 amounts shown on the schedule in R.S. 9:315.19. If the combined adjusted gross
3 income of the parties exceeds the highest sum shown on the schedule, the court shall
4 determine an amount of child support as provided in R.S. 9:315.13(B)(1) and may
5 order the placement of a portion of the amount in a trust in accordance with R.S.
6 9:315.13.

7 ~~(3)~~ The legal obligation of a party to support dependents who are not the
8 subject of the action before the court and who are in that party's household.

9 ~~(4)~~ (2) That in a case involving one or more families, consisting of children
10 none of whom live in the household of the noncustodial or nondomiciliary parent but
11 who have existing child support orders (multiple families), the court may use its
12 discretion in setting the amount of the basic child support obligation.

13 ~~(5)~~ (3) The extraordinary medical expenses of a party, or extraordinary
14 medical expenses for which a party may be responsible, not otherwise taken into
15 consideration under the guidelines.

16 ~~(6)~~ (4) An extraordinary community debt of the parties.

17 ~~(7)~~ (5) The need for immediate and temporary support for a child when a full
18 hearing on the issue of support is pending but cannot be timely held. In such cases,
19 the court at the full hearing shall use the provisions of this Part and may redetermine
20 support without the necessity of a change of circumstances being shown.

21 ~~(8)~~ (6) The permanent or temporary total disability of a spouse to the extent
22 such disability diminishes his present and future earning capacity, his need to save
23 adequately for uninsurable future medical costs, and other additional costs associated
24 with such disability, such as transportation and mobility costs, medical expenses, and
25 higher insurance premiums.

26 ~~(9)~~ (7) That support awarded for an adult child with a disability, as defined
27 in R.S. ~~9:315.22(E)~~ 9:315.22, may be a long-term and financially burdensome
28 obligation that warrants the court's special consideration of the circumstances

1 surrounding the manifestation of the disability and the financial burden imposed on
2 the obligor.

3 ~~(10)~~ (8) Any other consideration which would make application of the
4 guidelines not in the best interest of the child or children or inequitable to the parties.

5 * * *

6 §315.11. Voluntarily unemployed or underemployed party

7 A.

8 * * *

9 (2) ~~Absent~~ Upon an express finding by the court that evidence of a party's
10 actual income or income earning potential is totally absent, there is a rebuttable
11 presumption that the party can earn a weekly gross amount equal to thirty-two hours
12 at a minimum wage, according to the laws of his state of domicile or federal law,
13 whichever is higher.

14 * * *

15 C. A party shall not be deemed voluntarily unemployed or underemployed
16 if either:

17 (1) ~~He has been temporarily unable to find work or has been temporarily~~
18 ~~forced to take a lower-paying job as a direct result of Hurricane Katrina or Rita~~ is
19 responsible for the care of an unmarried child, of the party who is incapable of self-
20 support and requires substantial care and personal supervision by that party because
21 of an intellectual or physical disability that is manifested before the child attains the
22 age of majority. The court shall consider the particular circumstances of the child's
23 need for care, including the eligibility of the child for school or any public benefits
24 and services.

25 * * *

26 §315.13. Amounts not set forth in or exceeding schedule

27 A. If the combined adjusted gross income of the parties falls below the
28 lowest level specified in the schedule contained in R.S. 9:315.19, the court shall
29 determine an award of child support based on all of the following:

1 (1) Actual earnings or income.

2 (2) The factors listed in R.S. 9:315.11.

3 (3) Any other evidence of a parent's ability to pay.

4 ~~A.~~ B. If the combined adjusted gross income of the parties falls between two
5 amounts shown in the schedule contained in R.S. 9:315.19, the basic child support
6 obligation shall be based on an extrapolation between the two amounts.

7 ~~B.~~ C. If the combined adjusted gross income of the parties exceeds the
8 highest level specified in the schedule contained in R.S. 9:315.19, the court:

9 * * *

10 D. Under no circumstances shall the court determine an award of child
11 support that is not in the best interest of the child or would be inequitable to the
12 parties.

13 §315.14. Disabled children, proof of disability, pleadings, orders, requirements

14 A.(1) A pleading to establish, modify or continue an award of child support
15 for a minor child who has a developmental disability as defined in R.S. 28:451.2
16 shall allege facts showing that the child has such a developmental disability and that
17 the obligor has an ongoing duty to provide support until the minor child attains the
18 age of twenty-two, as long as the child is a full-time student in a secondary school.

19 (2) Any order or judgment granting or continuing an award of support for a
20 child with a developmental disability shall state that the child in question has a
21 developmental disability, as defined in R.S. 28:451.2, and is eligible for support from
22 the obligor until he attains the age of twenty-two.

23 B.(1) A pleading to establish, modify, or continue an award of child support
24 in accordance with R.S. 9:315.22.1 shall allege facts showing all of the following:

25 (a) The child in question is incapable of self-support and requires substantial
26 care and personal supervision because of an intellectual or physical disability.

27 (b) The disability currently exists and manifested during the child's minority.

28 (c) The obligor has an indefinite duty to provide support because of the
29 disability.

1 (2) Any order or judgment granting or continuing an award of support in
 2 accordance with R.S. 9:315.22.1 shall state that the child requires continuous care
 3 and personal supervision because of his disability, will not be capable of
 4 self-support, and that the child support payments for the child shall continue after his
 5 eighteenth birthday for an indefinite period.

6 C. Notwithstanding the identity of the plaintiff, the primary domiciliary
 7 parent or legal guardian shall bear the burden of proving that a disability exists by
 8 clear and convincing evidence. Such evidence shall include, at a minimum, certified
 9 medical records.

10 * * *

11 §315.22. Termination of child support upon majority or emancipation; exceptions

12 * * *

13 C. An award of child support continues automatically with respect to any
 14 unmarried child who attains the age of majority, or to a child who is emancipated
 15 relieving the child of the disabilities attached to minority, as long as the child is a
 16 full-time student in good standing in a secondary school or its equivalent, has not
 17 attained the age of nineteen, and is dependent upon either parent. Either the primary
 18 domiciliary parent or the major or emancipated child is the proper party to enforce
 19 an award of child support pursuant to this Subsection.

20 D.(1) Upon contradictory motion after notice and hearing, an award of child
 21 support shall be continued by the court for a minor child under the following
 22 circumstances:

23 ~~D.(a)~~ An award of child support continues shall be continued by the court
 24 with respect to any minor child who has a developmental disability, as defined in
 25 R.S. 28:451.2, until he attains the age of twenty-two, as long as the child is a
 26 full-time student in a secondary school. The primary domiciliary parent or legal
 27 guardian is the proper party to enforce an award of child support pursuant to this
 28 Subsection.

1 (b) An award of child support shall be continued by the court with respect
2 to any minor disabled child in accordance with R.S. 9:315.22.1(A).

3 (2)(a) A contradictory motion filed under Paragraph (1) of this Subsection
4 shall be filed before the minor child in question attains the age of majority or is
5 emancipated relieving him of the disabilities attached to minority.

6 (b) A copy of the judgment continuing the support order shall be furnished
7 to all counsel of record and to all unrepresented parties appearing in the suit record.

8 (3) Nothing in this Subsection shall limit a parent's ability to agree to provide
9 continued support or the court's power to determine whether an agreement to provide
10 additional support has been made.

11 ~~E.(1) An award of child support continues or shall be set with respect to any~~
12 ~~unmarried child who, whether institutionalized or not, is incapable of self-support~~
13 ~~and requires substantial care and personal supervision because of an intellectual or~~
14 ~~physical disability that is manifested before the child attains the age of majority. A~~
15 ~~disability under this Subsection shall not include substance abuse or addiction.~~

16 ~~(2) An action under this Subsection may be filed regardless of the age of the~~
17 ~~child.~~

18 ~~(3) Either the major child or his tutor or curator is the proper party to file an~~
19 ~~action to establish, modify, or enforce an award of child support pursuant to this~~
20 ~~Subsection.~~

21 ~~(4) Except as otherwise provided in this Subsection, the substantive and~~
22 ~~procedural rights and remedies in an action relating to the establishment,~~
23 ~~modification, or enforcement of child support orders for minor children apply to an~~
24 ~~action filed, and to an award of, child support rendered under this Subsection.~~

25 ~~(5) The court shall consider the eligibility of the child for public benefits and~~
26 ~~services and may make orders necessary to promote the best interest of the child,~~
27 ~~including ordering the creation of a trust and placing the award in trust.~~

28 ~~(6) When the Department of Children and Family Services is providing~~
29 ~~support enforcement services, those services will continue under this Subsection only~~

1 ~~if the major child or his tutor or curator obtains and submits to the Department,~~
2 ~~before the child attains the age of majority, a judgment ordering the continuation of~~
3 ~~support for the child.~~

4 §315.22.1. Support for disabled children

5 A. In accordance with the child support guidelines contained in this Part, an
6 award of child support continues or shall be set with respect to any unmarried child
7 who, whether institutionalized or not, is incapable of self-support and requires
8 substantial care and personal supervision because of an intellectual or physical
9 disability that is manifested before the child attains the age of majority. A disability
10 under this Section shall not include substance abuse or addiction.

11 B. An action under this Section to establish an initial award of child support
12 may be filed regardless of the age of the child.

13 C.(1) An action to establish, modify, continue, or enforce an award of child
14 support pursuant to this Section may be filed by the domiciliary parent or any other
15 proper party as determined by the court or law.

16 (2) Nothing in this Section or any other provision of law shall be construed
17 to require the Department of Children and Family Services to obtain an order of
18 continuing tutorship or judgment of interdiction.

19 D. Except as otherwise provided in this Part, the substantive and procedural
20 rights and remedies in an action relating to the establishment, modification, or
21 enforcement of child support orders for minor children apply to an action filed, and
22 to an award of, child support rendered under this Section.

23 E. The court shall consider the eligibility of the child for public benefits and
24 services and may make orders necessary to promote the best interest of the child,
25 including ordering the creation of a trust and placing the award in trust.

26 F. Nothing in this Section shall require the Department of Children and
27 Family Services to provide support enforcement services to a family not otherwise
28 qualified to receive them under Title IV-D of the Social Security Act and related
29 portions of Title IV-A of such Act.

1 Section 3. R.S. 9:315.21(F) is hereby repealed in its entirety.

2 Section 4. This Act shall become effective January 1, 2025.

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 770 Reengrossed

2024 Regular Session

Carpenter

Abstract: Provides for child support guidelines.

Present law (C.C.P. Art. 10) provides that a court has jurisdiction over a proceeding for support of an adult child with a disability as provided in R.S. 9:315.22(E).

Proposed law retains present law but provides that the proceedings are in accordance with R.S. 9:315.22.1.

Present law (R.S. 9:315.1(B)(2)) provides that as a direct result of Hurricane Katrina or Rita, the courts may deviate from the child support guidelines if the guidelines would not be in the best interest of the child.

Proposed law removes present law.

Present law (R.S. 9:315.1(C)) provides that in determining whether to deviate from the guidelines, the court's considerations may include:

- (1) That the combined adjusted gross income of the parties is equal to or less than nine hundred fifty dollars.
- (2) That the combined adjusted gross income of the parties is not within the amounts shown on the schedule in R.S. 9:315.19.

Proposed law repeals present law.

Present law (R.S. 9:315.11(A)(2)) provides that absent evidence of a party's actual income or income earning potential, there is a rebuttable presumption that the party can earn a weekly gross amount equal to thirty-two hours at a minimum wage, according to the laws of his state of domicile or federal law, whichever is higher.

Proposed law changes present law to provide that upon an express finding by the court that evidence of a party's actual income or income earning potential is totally absent, there is a rebuttable presumption.

Present law (R.S. 315.11(C)(1)) 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 as a direct result of Hurricane Katrina or Rita.

Proposed law provides that a party shall not be deemed voluntarily unemployed or underemployed if they are responsible for the care of a disabled child.

Proposed law (R.S. 9:315.13(A)) provides that if the combined adjusted gross income of the parties falls below the lowest level, the court shall determine an award for support based on the following:

- (1) Actual earnings or income.
- (2) The factors listed in R.S. 9:315.1(A)(1).
- (3) Any other evidence of a parent's ability to pay.

Proposed law (R.S. 9:315(D)) provides that under no circumstances shall the court determine an award of child support that is not in the best interest of the child or would be inequitable to the parties.

Proposed law (R.S. 9:315.14) provides the procedure and requirements for continuation of child support for a minor child who has a developmental disability.

Proposed law (R.S. 9:315.22(D)) provides that an award of child support shall be continued by the court with respect to any minor child with a developmental disability. A contradictory motion shall be filed before the minor child attains the age of majority or is emancipated, relieving him of the disabilities attached to minority.

Present law (R.S. 9:315.22(E)) provides that an award for child support continues to a child with an intellectual or physical disability and the action may be filed regardless of the age of the child. Either the major child or his tutor or curator is the proper party to file the action.

Proposed law repeals present law.

Proposed law (R.S. 9:315.22.1(A)) provides that an award for child support continues to any unmarried child who requires substantial care because of an intellectual or physical disability that is manifested before the child attains the age of majority. A disability shall not include substance abuse or addiction.

Proposed law (R.S. 9:315.22.1) provides that an action to establish an initial award for custody may be filed regardless of the age of the child. The domiciliary parent or any other proper party as determined by law may file actions related to the support.

Effective Jan. 1, 2025.

(Amends R.S. 9:315.1(B) and (C), 315.11(A)(2) and (C)(1), 315.13 and 315.22(C) and (D) and C.C.P. Art. 10(A)(9); Adds R.S. 9:315.14 and 315.22.1; Repeals R.S. 9:315.21(F) and 315.22(E))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Make a technical change.
2. Provide that when the amount for child support is not set in the schedule, under no circumstances shall the court determine an award of child support that is not in the best interest of the child or would be inequitable to the parties.

The House Floor Amendments to the engrossed bill:

1. Make technical changes.