2024 Regular Session

HOUSE BILL NO. 770

# ACT NO. 448

#### BY REPRESENTATIVES CARPENTER AND TAYLOR

1	AN ACT
1	ANACI
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	* * *
20	Section 2. R.S. 9:315.1(B) and (C), 315.11(A)(2) and (C)(1), 315.13, and 315.22(C)
21	and (D) are hereby amended and reenacted and R.S. 9:315.14 and 315.22.1 are hereby
22	enacted to read as follows:

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

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

11 (2) Notwithstanding the provisions of Paragraph (1), as a direct result of 12 either Hurricane Katrina or Rita, the court may deviate from the guidelines set forth 13 in this Part if the application of the guidelines would not be in the best interest of the 14 child or would be unjust, inequitable, or cause undue hardship to the parties. In 15 determining the amount of the child support, the court may also consider that the 16 parties may have been prevented from timely access to the courts for the exercise of 17 their legal rights. However, the amount of the deviation shall not exceed the 18 consideration the court would have given if the party were able to timely access the 19 court.

C. 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.

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

26 (2) That the combined adjusted gross income of the parties is not within the
 27 amounts shown on the schedule in R.S. 9:315.19. If the combined adjusted gross
 28 income of the parties exceeds the highest sum shown on the schedule, the court shall
 29 determine an amount of child support as provided in R.S. 9:315.13(B)(1) and may

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1	order the placement of a portion of the amount in a trust in accordance with R.S.
2	<del>9:315.13.</del>
3	(3) The legal obligation of a party to support dependents who are not the
4	subject of the action before the court and who are in that party's household.
5	(4) (2) That in a case involving one or more families, consisting of children
6	none of whom live in the household of the noncustodial or nondomiciliary parent but
7	who have existing child support orders (multiple families), the court may use its
8	discretion in setting the amount of the basic child support obligation.
9	(5) $(3)$ The extraordinary medical expenses of a party, or extraordinary
10	medical expenses for which a party may be responsible, not otherwise taken into
11	consideration under the guidelines.
12	(6) (4) An extraordinary community debt of the parties.
13	(7) (5) The need for immediate and temporary support for a child when a full
14	hearing on the issue of support is pending but cannot be timely held. In such cases,
15	the court at the full hearing shall use the provisions of this Part and may redetermine
16	support without the necessity of a change of circumstances being shown.
17	(8) (6) The permanent or temporary total disability of a spouse to the extent
18	such disability diminishes his present and future earning capacity, his need to save
19	adequately for uninsurable future medical costs, and other additional costs associated
20	with such disability, such as transportation and mobility costs, medical expenses, and
21	higher insurance premiums.
22	(9) (7) That support awarded for an adult child with a disability, as defined
23	in R.S. 9:315.22(E) 9:315.22, may be a long-term and financially burdensome
24	obligation that warrants the court's special consideration of the circumstances
25	surrounding the manifestation of the disability and the financial burden imposed on
26	the obligor.
27	(10) $(8)$ Any other consideration which would make application of the
28	guidelines not in the best interest of the child or children or inequitable to the parties.
29	* * *

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1	§315.11. Voluntarily unemployed or underemployed party
2	А.
3	* * *
4	(2) Absent Upon an express finding by the court that evidence of a party's
5	actual income or income earning potential is totally absent, there is a rebuttable
6	presumption that the party can earn a weekly gross amount equal to thirty-two hours
7	at a minimum wage, according to the laws of his state of domicile or federal law,
8	whichever is higher.
9	* * *
10	C. A party shall not be deemed voluntarily unemployed or underemployed
11	if either:
12	(1) He has been temporarily unable to find work or has been temporarily
13	forced to take a lower-paying job as a direct result of Hurricane Katrina or Rita is
14	responsible for the care of an unmarried child, of the party who is incapable of self-
15	support and requires substantial care and personal supervision by that party because
16	of an intellectual or physical disability that is manifested before the child attains the
17	age of majority. The court shall consider the particular circumstances of the child's
18	need for care, including the eligibility of the child for school or any public benefits
19	and services.
20	* * *
21	§315.13. Amounts not set forth in or exceeding schedule
22	A. If the combined adjusted gross income of the parties falls below the
23	lowest level specified in the schedule contained in R.S. 9:315.19, the court shall
24	determine an award of child support based on all of the following:
25	(1) Actual earnings or income.
26	(2) The factors listed in R.S. 9:315.11.
27	(3) Any other evidence of a parent's ability to pay.
28	A. B. If the combined adjusted gross income of the parties falls between two
29	amounts shown in the schedule contained in R.S. 9:315.19, the basic child support
30	obligation shall be based on an extrapolation between the two amounts.

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1	B. C. If the combined adjusted gross income of the parties exceeds the
2	highest level specified in the schedule contained in R.S. 9:315.19, the court:
3	(1) Shall use its discretion in setting the amount of the basic child support
4	obligation in accordance with the best interest of the child and the circumstances of
5	each parent as provided in Civil Code Article 141, but in no event shall it be less than
6	the highest amount set forth in the schedule; and
7	(2) May order that a portion of the amount awarded be placed in a
8	spendthrift trust for the educational or medical needs of the child. The trust shall be
9	administered, managed, and invested in accordance with the Louisiana Trust Code.
10	The trust instrument shall name the child as sole beneficiary of the trust, shall name
11	a trustee, shall impose maximum spendthrift restraints, and shall terminate when the
12	child attains twenty-four years of age, unless the parties agree to a later date. The
13	trustee shall furnish security unless the court, in written findings of fact, dispenses
14	with security.
15	D. Under no circumstances shall the court determine an award of child
16	support that is not in the best interest of the child or would be inequitable to the
17	parties.
18	§315.14. Disabled children, proof of disability, pleadings, orders, requirements
19	A.(1) A pleading to establish, modify or continue an award of child support
20	for a minor child who has a developmental disability as defined in R.S. 28:451.2
21	shall allege facts showing that the child has such a developmental disability and that
22	the obligor has an ongoing duty to provide support until the minor child attains the
23	age of twenty-two, as long as the child is a full-time student in a secondary school.
24	(2) Any order or judgment granting or continuing an award of support for a
25	child with a developmental disability shall state that the child in question has a
26	developmental disability, as defined in R.S. 28:451.2, and is eligible for support from
27	the obligor until he attains the age of twenty-two.
28	B.(1) A pleading to establish, modify, or continue an award of child support
29	in accordance with R.S. 9:315.22.1 shall allege facts showing all of the following:

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1	(a) The child in question is incapable of self-support and requires substantial
2	care and personal supervision because of an intellectual or physical disability.
3	(b) The disability currently exists and manifested during the child's minority.
4	(c) The obligor has an indefinite duty to provide support because of the
5	disability.
6	(2) Any order or judgment granting or continuing an award of support in
о 7	accordance with R.S. 9:315.22.1 shall state that the child requires continuous care
8	and personal supervision because of his disability, will not be capable of
9	self-support, and that the child support payments for the child shall continue after his
10	eighteenth birthday for an indefinite period.
11	<u>C.</u> Notwithstanding the identity of the plaintiff, the primary domiciliary
12	parent or legal guardian shall bear the burden of proving that a disability exists by
12	clear and convincing evidence. Such evidence shall include, at a minimum, certified
13	medical records.
14	* * *
16	§315.22. Termination of child support upon majority or emancipation; exceptions
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17	
18	C. An award of child support continues <u>automatically</u> with respect to any
18 19	C. An award of child support continues <u>automatically</u> with respect to any unmarried child who attains the age of majority, or to a child who is emancipated
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<ol> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> </ol>	C. An award of child support continues <u>automatically</u> with respect to any unmarried child who attains the age of majority, or to a child who is emancipated relieving the child of the disabilities attached to minority, as long as the child is a full-time student in good standing in a secondary school or its equivalent, has not attained the age of nineteen, and is dependent upon either parent. Either the primary domiciliary parent or the major or emancipated child is the proper party to enforce an award of child support pursuant to this Subsection.
<ol> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> </ol>	C. An award of child support continues <u>automatically</u> with respect to any unmarried child who attains the age of majority, or to a child who is emancipated relieving the child of the disabilities attached to minority, as long as the child is a full-time student in good standing in a secondary school or its equivalent, has not attained the age of nineteen, and is dependent upon either parent. Either the primary domiciliary parent or the major or emancipated child is the proper party to enforce an award of child support pursuant to this Subsection. <u>D.(1) Upon contradictory motion after notice and hearing, an award of child</u>
<ol> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> </ol>	C. An award of child support continues <u>automatically</u> with respect to any unmarried child who attains the age of majority, or to a child who is emancipated relieving the child of the disabilities attached to minority, as long as the child is a full-time student in good standing in a secondary school or its equivalent, has not attained the age of nineteen, and is dependent upon either parent. Either the primary domiciliary parent or the major or emancipated child is the proper party to enforce an award of child support pursuant to this Subsection. <u>D.(1) Upon contradictory motion after notice and hearing, an award of child</u> <u>support shall be continued by the court for a minor child under the following</u>
<ol> <li>18</li> <li>19</li> <li>20</li> <li>21</li> <li>22</li> <li>23</li> <li>24</li> <li>25</li> <li>26</li> <li>27</li> </ol>	C. An award of child support continues <u>automatically</u> with respect to any unmarried child who attains the age of majority, or to a child who is emancipated relieving the child of the disabilities attached to minority, as long as the child is a full-time student in good standing in a secondary school or its equivalent, has not attained the age of nineteen, and is dependent upon either parent. Either the primary domiciliary parent or the major or emancipated child is the proper party to enforce an award of child support pursuant to this Subsection. D.(1) Upon contradictory motion after notice and hearing, an award of child support shall be continued by the court for a minor child under the following circumstances:

## **ENROLLED**

1	full-time student in a secondary school. The primary domiciliary parent or legal
2	guardian is the proper party to enforce an award of child support pursuant to this
3	Subsection.
4	(b) An award of child support shall be continued by the court with respect
5	to any minor disabled child in accordance with R.S. 9:315.22.1(A).
6	(2)(a) A contradictory motion filed under Paragraph (1) of this Subsection
7	shall be filed before the minor child in question attains the age of majority or is
8	emancipated relieving him of the disabilities attached to minority.
9	(b) A copy of the judgment continuing the support order shall be furnished
10	to all counsel of record and to all unrepresented parties appearing in the suit record.
11	(3) Nothing in this Subsection shall limit a parent's ability to agree to provide
12	continued support or the court's power to determine whether an agreement to provide
13	additional support has been made.
14	E.(1) An award of child support continues or shall be set with respect to any
15	unmarried child who, whether institutionalized or not, is incapable of self-support
16	and requires substantial care and personal supervision because of an intellectual or
17	physical disability that is manifested before the child attains the age of majority. A
18	disability under this Subsection shall not include substance abuse or addiction.
19	(2) An action under this Subsection may be filed regardless of the age of the
20	<del>child.</del>
21	(3) Either the major child or his tutor or curator is the proper party to file an
22	action to establish, modify, or enforce an award of child support pursuant to this
23	Subsection.
24	(4) Except as otherwise provided in this Subsection, the substantive and
25	procedural rights and remedies in an action relating to the establishment,
26	modification, or enforcement of child support orders for minor children apply to an
27	action filed, and to an award of, child support rendered under this Subsection.
28	(5) The court shall consider the eligibility of the child for public benefits and
29	services and may make orders necessary to promote the best interest of the child,
30	including ordering the creation of a trust and placing the award in trust.

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## **ENROLLED**

1	(6) When the Department of Children and Family Services is providing
2	support enforcement services, those services will continue under this Subsection only
3	if the major child or his tutor or curator obtains and submits to the Department,
4	before the child attains the age of majority, a judgment ordering the continuation of
5	support for the child.
6	§315.22.1. Support for disabled children
7	A. In accordance with the child support guidelines contained in this Part, an
8	award of child support continues or shall be set with respect to any unmarried child
9	who, whether institutionalized or not, is incapable of self-support and requires
10	substantial care and personal supervision because of an intellectual or physical
11	disability that is manifested before the child attains the age of majority. A disability
12	under this Section shall not include substance abuse or addiction.
13	B. An action under this Section to establish an initial award of child support
14	may be filed regardless of the age of the child.
15	C.(1) An action to establish, modify, continue, or enforce an award of child
16	support pursuant to this Section may be filed by the domiciliary parent or any other
17	proper party as determined by the court or law.
18	(2) Nothing in this Section or any other provision of law shall be construed
19	to require the Department of Children and Family Services to obtain an order of
20	continuing tutorship or judgment of interdiction.
21	D. Except as otherwise provided in this Part, the substantive and procedural
22	rights and remedies in an action relating to the establishment, modification, or
23	enforcement of child support orders for minor children apply to an action filed, and
24	to an award of, child support rendered under this Section.
25	E. 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	F. Nothing in this Section shall require the Department of Children and
29	Family Services to provide support enforcement services to a family not otherwise

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1	qualified to receive them under Title IV-D of the Social Security Act and related
2	portions of Title IV-A of such Act.
3	Section 3. R.S. 9:315.21(F) is hereby repealed in its entirety.
4	Section 4. This Act shall become effective January 1, 2025.

## SPEAKER OF THE HOUSE OF REPRESENTATIVES

## PRESIDENT OF THE SENATE

## GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_