

(S. B. 41)

(No. 1)

(Approved January 3, 2002)

AN ACT

To amend Section 17 of Act No. 5 of December 30, 1986, as amended, known as the "Child Support Act" in order to establish that the payment of a provisional child support pension shall effective at the time the petition for support is filed.

STATEMENT OF MOTIVES

The public policy of the Commonwealth of Puerto Rico regarding the support of minors and disabled persons is of compelling interest. Said policy is directed to ascertaining that the parents or the legally-responsible persons shall contribute in the measure that their resources allow, to the support and welfare of their children or dependents. It is the goal of this laudable interest to ensure that the best interests of the minors or persons entitled to support are safeguarded.

Since the right to receive support is inherent to a person and based on the right to life, Act No. 5 of December 30, 1986, as amended, provides in its Section 19 that child support payments and the raises thereof shall be effective from the date in which the petition was filed or the order was issued by the Administrator, if the process were conducted by the Child Support Administration, (ASUME, Spanish acronym). This is because the obligation to support, which depends on the resources of the supporter, arises from the paternity and takes into account the need of the person to be supported. Therefore, the latter cannot be subjected to the time when the order is issued.

Section 19 of Act No. 5, supra, is consistent with the provisions of Article 147 of the Civil Code of Puerto Rico to the effects that the obligation to provide support shall be required from the time the person entitled to it needs it to subsist; but that it shall not be paid until the date when the claim is filed.

In the absence of a clear provision, the courts of the Island frequently issue inconsistent determinations by ordering that the provisional support payment be made retroactively. In some cases, it is made retroactive to the moment the claim is filed, and in others, it is only retroactive to the date the final order of support is issued by the court or the administrator.

This Legislature, being aware of the great public interest surrounding the obligation to pay support pensions, and recognizing that the needs of the person entitled to support cannot depend on the promptness with which an order is issued, adopts this Act so that it is clear that the provisional pension shall be retroactive to the moment in which it was requested.

BE IT ENACTED BY THE LEGISLATURE OF PUERTO RICO:

Section 1.- Section 17 of Act No. 5 of December 30, 1986, as amended, is hereby amended to read as follows:

"Section 17.- Order for provisional support pension.

In addition to the provisions of Sections 15, 16 and 18(2) of the Act, the Examiner shall recommend the fixing of a provisional support pension when, by petition of any of the parties, or for any other reason, the hearing is postponed, information or evidence is lacking, the case is referred to a judge or transferred to another part or section of the court, or when the needs of the person entitled to support are so urgent that it is thus required, except in the cases in which the paternity of the person entitled to support is in controversy. However, even in the cases in which the paternity of the person

entitled to support is in controversy, if there is clear, convincing and admissible evidence of the paternity, based on a genetic proof of paternity a provisional support order shall be issued. The provisional pension shall remain in effect until the judge issues a new ruling or a resolution. The provisional pension shall be retroactive to the time that it was judicially requested.

Section 2.- This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following Act No. 1 (S.B. 41) of the 2rd Session of the 14th Legislature of Puerto Rico:

AN ACT to amend Section 17 of Act No. 5 of December 30, 1986, as amended, known as the "Child Support Act" in order to establish that the payment of a provisional child support pension shall effective at the time the petition for support is filed,

has been translated from Spanish to English and that the English version is correct.

In San Juan, Puerto Rico, today 21th of November of 2003.

Elba Rosa Rodríguez-Fuentes
Director

