

(H. B. 2279)
(Conference)

(No. 30-2012)

(Approved January 18, 2012)

AN ACT

To amend Sections 2 and 19 of Act No. 5 of December 30, 1986, as amended, known as the “Special Child Support Act,” in order to clarify its respective content and conform it to the federal laws and regulations on the special child support matters by defining and adopting the term “cash medical support” to be included in support obligations; and for other purposes.

STATEMENT OF MOTIVES

The public policy of the Commonwealth of Puerto Rico relating to child and people with disabilities support is a matter of great public interest, since it is an integral part of the fundamental right to life and livelihood of a person, Article II, Sections 1 and 7 of the Constitution of the Commonwealth of Puerto Rico.

In its legal genesis, the right of minors and dependents to receive support was regulated by the Organic Act of the Department of Social Services, Act No. 171 of June 30, 1968, which was repeatedly amended to conform its provisions to the applicable federal legislation.

The federal regulations on support matters is dynamic, thus our laws have continuously evolved since 1975, when the Child Support Program was created, up to 1986 when the Legislative Assembly of Puerto Rico deemed it proper to pass a special legislation to address the complex situation of providing equal services to persons that received financial aid and to those that requested such services privately, including the adoption of measures to assure compliance and the establishment of guidelines to determine child support payments.

For such reason, Act No. 5 of December 30, 1986, known as the “Special Child Support Act,” was approved, which reasserted the public policy of promoting responsible paternity and maternity, while at the same time complying with the findings set forth in the federal audit that required the establishment of obligatory mechanisms for income withholding, the adoption of expedited procedures to establish and enforce support orders; the interception of state tax refunds, the attachment of real and personal properties, and the notification of arrears in compliance with support obligation to credit agencies.

In 1988, the Family Support Act stressed that child support programs were the most important elements in the fight against dependence on welfare of families with children. Bearing said forefront reform intention in mind, the Special Child Support Act, Act No. 86-1994, was approved and the Child Support Administration (ASUME, Spanish acronym) was created as a body empowered to carry out the expedited administrative procedure directed to establishing paternity, establishing or modifying support orders, and requiring the person required by law to meet child support obligations.

At present, the Federal Social Security Act, Public Law 93-647, as amended, and the applicable Federal Regulations require that the local legislation on child support be consistent with the changes recently promulgated. Specifically, Sections 2 and 19 of Act No. 5, *supra*, shall be modified to include and regulate the cash medical support benefit, which shall be considered in determining child support award to ensure the optimum health care of the obligees. Through this process, we also expect to prevent the loss of accreditation of our programs and of the federal funds that nourish the same, as well as to provide greater security to obligees with respect to health care by establishing the payment of health expenses which were usually not considered in the contracts with health plan providers or insurance companies and co-payments.

This Legislative Assembly, aware of the compelling public interest regarding the payment of the child support, recognizes that Act No 5, *supra*, must be amended to conform its provisions to those of the federal laws and regulations on the special matters of child support, in order to incorporate the term “cash medical support” within the definition of support.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Section 2 of Act No. 5 of December 30, 1986, as amended, known as the “Child Support Administration Organic Act,” is hereby amended to read as follows:

“Section 2.- Definitions.

For purposes of this Act, the following terms shall have the meanings stated hereinbelow:

1. Title IV-D Agency – The Child Support Enforcement Agency that enforces a state child support order pursuant to Title IV-D of the Federal Social Security Act. The Administration is the Title IV-D Agency designated to enforce child support orders in Puerto Rico.
2. Administration - The Child Support Administration created by this Act, hereinafter referred to as A.S.U.M.E., for its acronym.
3. Administrator - The Administrator of the Child Support Administration, appointed pursuant to the provisions of this Act.
4. Obligor - Any natural person who, by law, is required to provide child support, homestead, and health insurance coverage.
5. Obligee - Any natural person who, by law, is entitled to receive child support, homestead, or health insurance coverage. This includes any agency of the Commonwealth of Puerto Rico, any agency of a state or the federal government, or of another jurisdiction that has provided benefits to an obligee or to which an obligee has assigned his/her support rights and the former has provided the same.

In these last circumstances, the government, state, or federal entity may substitute the obligee and claim to the obligor the cost of the benefits provided, plus interest and legal expenses.

6. Indebted Obligor - Any natural person who is required by law to pay child support and is in arrears for one (1) month or more in the payment of the child support, said conduct shall constitute delinquency.

7. Support - Defined as an integral part of the fundamental right to life and livelihood of a person, Article II, Sections 1 and 7 of the Constitution of the Commonwealth of Puerto Rico. This concept extends, but is not limited to, the means for basic subsistence, according to the needs of those who receive it, such as a representative value of support (food), clothing, dwelling, and health care. Support also comprises the education and instruction of the obligee. Likewise, that said term comprises those concepts that are established or adopted from time to time by federal or state laws that govern this matter.

8. Medical Insurance Coverage - May include a healthcare coverage that contains the payment of premium costs, co-payments, deductibles, and the payment of any ongoing healthcare expenses of the child that are not covered by a health insurance or health plan.

9. Reasonably Accessible Health Insurance Coverage - The amount in cash for medical assistance or private health insurance considered to be at a reasonable cost if it does not exceed five percent (5%) of the gross salary of the party responsible for providing healthcare coverage. The calculation of the five percent (5%) of gross income for the payment of a private health insurance shall be applied to the cost of adding the obligee or obligees to the existing health insurance or to the difference between an individual health coverage and a family health coverage.

10. Cash Medical Support – Means an amount ordered to be paid toward the cost of medical-hospital services provided to an obligee by a public entity not covered by insurance or by another party without legal obligation to provide the same, in another manner or for other related expenses not covered by the health insurance or health plan.

11. Public Assistance - Comprises temporary federal and state government financial assistance provided to families for child support to be collected from the obligor.

12. Account - Any type of account in a bank or financial institution, regulated by the Commissioner of Financial Institutions of Puerto Rico and by federal laws that govern such matters, including checks, deposits, savings, mutual funds, pensions, shares, bonds, certificates of deposit, credit reserves, lines of credit, credit or debit cards, and other similar instruments.

13. Co-payments - Refers to any item of medical-hospital expenses not covered by a health insurance policy and that complement the treatment or prevention services provided to a patient. This concept is an integral part of support obligations.

14. Department - The Department of the Family of the Commonwealth of Puerto Rico.

15. Arrearage - The total amount of child support payments, which have become due and payable and remain unpaid, including interest and expenses that result of the process, in addition to health care coverage payments for which awards are made.

16. Business Day - Day on which the Government offices of the Commonwealth of Puerto Rico are open to render regular services to citizens, pursuant to provision of law or Executive Order issued by the Governor.

17. Employee - Any person who has been classified as such, pursuant to the definition of this term in Chapter 24 of the Federal Internal Revenue Code of 1986, excluding federal, state, and Commonwealth employees that perform duties of counterintelligence, if the head of said agency has determined that furnishing information pursuant to the provisions of this Act pertaining to such employees may compromise the safety of the employee, or any ongoing intelligence investigation or mission.

18. Financial Institution - Any bank or savings association; federal or state savings and credit union; benefits, savings or pensions association; savings or pensions fund; insurance, mutual funds, stocks, or bonds company; or similar others.

19. Factual Error - Means, in the context of an appeal to the orders of the Administrator to the administrative judge, an error in the calculation of the current or past due (outstanding) monthly support obligation, or in the identity of the individual who has been legally identified as the obligor.

20. State - A state of the United States of America, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, or any territory or possession subject to the jurisdiction of the United States. The term also includes:

- (a) Any Indian tribe, and
- (b) any foreign jurisdiction or country that has enacted a law or established procedures for the issuance and enforcement of support orders that are substantially similar to the procedures under this Chapter.

21. Paternity - A rule of law that emphasizes the biological reality of procreation, and further creates rights and obligations between parents and their children. To such effects, the code of law emphasizes that legal and biological paternity are intended to coincide, taking into consideration that at times the filial relationship is not necessarily biological in origin. Furthermore, such civil status is

further extended to the situation that by express order of a competent court the filial act has been established by virtue of adoption or any other act that has a legally binding effect.

22. Income – Includes any earnings, benefits, profits, or revenues derived from salaries, day's wages, or compensation for personal services, including salary earned for services rendered as an official or employee of the Commonwealth of Puerto Rico, the Government of the United States, the District of Columbia, the United States Virgin Islands, or any territory or possession subject to the jurisdiction of the United States, as permitted by applicable federal laws and regulations of any state of the union of the United States of America, or any political subdivision thereof, or of any agency or instrumentality of any of the aforementioned entities, in whatever way the payment is made; or from professions, occupations, industries, businesses, trade or sales; or property ventures, whether real or personal, that arise from the possession or use of the interest in such property; as well as those derived from the interest, rents, dividends, partnerships, securities, or the operation of any business operated for gain or profit; and earnings, benefits, yields funds, emoluments or compensation derived from any source, including compensation as an independent contractor; unemployment compensation, disability compensation, retirement and pension benefits, or any other payment received by an obligor from any natural or juridical person.

23. Net Income - The income available to the obligor after deductions for income tax, social security, and others required by law. In order to determine the net income, the deductions for retirement plans, associations, unions, and voluntary federations, as well as deductions or payments for life or accident insurance policy premiums, or for health plan payments shall also be taken into account when the obligee is the beneficiary. The final determination shall be made on the basis of all

available evidence, including estimates, studies and projections of income, expenses, lifestyle, and any other pertinent evidence.

24. Administrative Law Judge - An attorney appointed pursuant to this Act, to intervene in adjudicative procedures. Moreover, he shall be empowered, without it being construed as a limitation, to make findings of facts and conclusions of law, issue orders, resolutions, and decrees with respect to child support, health insurance coverage, collection or withholding of income, and controversies on filiation that arise within the expedited administrative procedure, and to ensure the payment of child support through any administrative measure. Hereinafter, any reference to said position in this Act shall be understood to be in the gender-neutral.

25. Administrative Law Judge Coordinator - Administrative law judge appointed pursuant to this Act, who has, among his duties, the coordination and direction of the administrative operations of the Office of Administrative law judges. Hereinafter, any reference to said position in this Act shall be understood to be in the gender-neutral.

26. Attachment Order - Any order, determination, resolution, or mandate by a court with jurisdiction, or issued through the administrative procedure established in this Act, requiring the attachment and remittance to the court or the Administration, as the case may be, of any real or personal property, including income or funds held in the name of a third party, in which the delinquent obligor has an interest.

27. Support Order - Any determination, resolution, order, mandate, or ruling to fix, modify, review, or execute the payment of the child support and health plan or insurance, issued pursuant to the regulations and the Mandatory Guidelines to Fix, Establish, and Modify Child Support Orders in Puerto Rico adopted under this Act and the applicable federal legislation by a court of the

Commonwealth of Puerto Rico, or through the administrative procedure established in this Act, or by a court or administrative body of any state or political subdivision of a territory or possession of the United States or the District of Columbia, duly empowered to issue same, or of a foreign country which has executed a reciprocity agreement.

28. Income Withholding Order – Any determination, resolution, order, or mandate issued by a court with jurisdiction, or by the Administrator, through an administrative procedure established in this Act, requiring an employer or disbursing officer to withhold the determined amount for child support or health plan expenses from the income of an obligor and remit payment to the Administration.

29. Labor Organization - Has the meaning defined for the term in Section 2(5) of the National Labor Relations Act, and includes any entity (also known as employment office) used by the organization and the employer to comply with the requirements set forth in Section 8(F)(3) of the foregoing law by agreement between the organization and the employer.

30. Custodial Party - A natural or juridical person, whether a father, mother, relative, or guardian, who is responsible for providing direct care and exercising parental authority over the minor obligee, by virtue of a resolution or judgment issued by a competent court.

31. Disbursing Officer - Any natural or juridical, public or private person from whom an obligor is entitled to receive income, as defined in this Section. For purposes of the State Register of New Employees, employer has the meaning set forth for said term in Section 3401 of the Federal Internal Revenue Code of 1986, and includes any government entity and any labor organization.

32. Expedited Administrative Process - The expedited process provided hereunder to establish, modify, review, and enforce child support orders, and to establish paternity, within the timeframe specified in the applicable federal legislation and regulation which protects the due process rights of the parties.

33. Expedited Legal Process - Expedited process provided hereunder to establish, modify, review, and execute child support orders in the Court of First Instance, within the timeframe specified in the applicable federal legislation and regulations. As used in this Section, an expedited process means a timely issuance, establishment, modification, and enforcement of support orders in such a manner that ninety percent (90%) of the cases are resolved within a maximum term of three (3) months; that ninety-eight percent (98%) of the cases are resolved within a term of six (6) months; or that one hundred percent (100%) of the cases are resolved within a term of twelve months (12). The terms set forth in this Section begin on the date of service of process, as established in subsection (4) of Section 15 of this Act, to the date of final disposition by the court.

34. Assistant Prosecuting Attorney - Attorney appointed in accordance with this Act to represent the rights and prerogatives of the Administration in the rendering of child support services pursuant to this Act. Hereinafter, any reference to said position in this Act shall be understood to be in the neutral genre.

35. Temporary Assistance Program - The Temporary Assistance for Needy Families (TANF) program as established under Title IV-A of the Federal Social Security Act.

36. Genetic or Histocompatibility Testing - Chemical analysis for paternity determination that duly sworn to be admitted into evidence enjoys a high degree of reliability in any process in which paternity is a pertinent fact. The accurateness of its result make it the most reliable evidence not only to determine paternity, but also to confirm non paternity. These tests are the most reliable and

feasible mechanisms to comply with a compelling state interest to determine with promptness the paternity status of its citizens.

37. Support Order Review - Reconsideration or review of the child support order that is carried out every three (3) years after the original establishment or modification thereof.

38. Secretary - The Secretary of the Department of the Family of the Commonwealth of Puerto Rico or any official designated by the former to discharge the duties and responsibilities established by this Act, and the regulations adopted thereunder. Hereinafter, any reference to said position in this Act shall be understood to be in the neutral genre.

39. Health Insurance Coverage that is Accessible to the Child - Means a health insurance coverage under the policy of the custodial party or the noncustodial party to be provided in Puerto Rico, or where the service provider is located within thirty miles of the residence of the child, if residing outside of Puerto Rico.

40. Child Support Service or Services - Assistance and administrative and judicial processes, which are authorized by this Act to implement public policy on child support. This includes, among other things, legal representation, the location of persons required to provide child support, payment of certain expenses incurred in proceedings, collection, and distribution of child support payments.

41. Court - Any of the parts of the Court of First Instance, except when otherwise specified.”

Section 2.- Section 19 of Act No. 5 of December 30, 1986, as amended, known as the “Child Support Administration Organic Act,” is hereby amended to read as follows:

“Section 19.- Child Support Order–Determination, Review and Modification; Mandatory Guidelines.

(a) Mandatory Guidelines. - The Administrator, in coordination and consultation with the Administrative Director of the Office of Court Administration, shall prepare and adopt guidelines to determine and modify child support orders for children. These guidelines shall be approved pursuant to the provisions of Act No. 170 of August 12, 1988, as amended, known as the “Uniform Administrative Procedures Act of the Commonwealth of Puerto Rico.” The guidelines shall be based on numeric and descriptive criteria that will enable the calculations of the child support obligation. They shall be reviewed every four (4) years from the date of their approval to ensure that the child support resulting from their application is fair and adequate. The Administrator shall assume and answer for the expenses incurred for the preparation, adoption and printing of the guidelines, and may sell them at a fair and reasonable price. The income from said sales shall be deposited in a Special Fund for Services and Representation in Cases of Child Support created by this Section.

(b) Determination - Whenever there is a request for a support order establishment or modification, or if a child support agreement or stipulation is entered, the Court or the Administrator, as the case may be, shall determine the amount of child support according to the guidelines adopted pursuant to the provisions of this Section.

If the Court or the Administrator, as the case may be, determines that the application of the guidelines may result in unfair or inadequate child support, it shall so be stated in the resolution or judgment issued, and the Court or Administrator shall determine the child support amount after considering among others, the following factors:

- (1) The financial resources of the parents and those of the child;
- (2) the physical and emotional health and needs of the child, and his educational or vocational aptitudes;
- (3) the standard of living the child would have enjoyed had the family remained intact;
- (4) where practical and relevant, the tax consequences to the parties; and
- (5) the non-monetary contributions that the parents will make toward the care and wellbeing of the child.

It shall also state the amount of the support which would have resulted if the Mandatory Guidelines to Fix and Modify Child Support in Puerto Rico, adopted pursuant to the provisions set forth in this Section, had been applied.

In order to determine the financial resources of the obligor, the capital (gains) and estate (patrimony) of the obligor shall be taken into account in addition to the net income. Equal criteria of the custodial party shall be taken into account for the proportional calculation to be adjudicated.

In every action to establish or modify a child support order, the Court, the Administrator, or the Administrative Law Judge shall require that the non-custodial party provide health insurance coverage for the child, if the same is available at a reasonable cost, as defined in this Act. For purposes of this Section, the cost of the health insurance coverage shall be considered reasonable if same may be obtained through employer-provided health insurance coverage or another group health insurance policy. If the obligor has health insurance coverage, he shall include the child; however, it may be stipulated that the obligor contribute to the cost of the current health insurance coverage of the obligee. If the obligor changes employment and the new employer provides health insurance coverage, the Court and the Administrator must be notified within the subsequent ten (10)

days, and the child must be included therein. The Court or the Administrator shall order and notify the employer and the parties that the child shall be enrolled in the health insurance coverage, providing a term of not less than ten (10) days to contest, and shall order the enrollment of the child in the health insurance coverage, unless an objection is filed within term and for just cause. Once the objection is filed, an informal hearing shall be held for the sole purpose of determining whether there is an error of fact or if the health insurance coverage is available at a reasonable cost and, if appropriate, an order to enroll the child in the health insurance plan shall be issued.

If the health insurance or plan is not available, the custodial party, the non-custodial party, or both shall be ordered to contribute a cash medical support obligation in the proportionate share of supplementary expenses of child support, until the health insurance or plan is available. It may also be ordered that the custodial party or the non-custodial party provide a cash contribution, together with the provision on health insurance coverage, in accordance with this Act.

The medical support established by virtue of this Act shall be part of the child support and shall not be considered in an individual manner, unless a cash contribution is specifically appropriated to cover the cost of the health insurance provided by a public or government entity. The same shall be enforced by all means applicable to child support orders issued pursuant to this Act.

The cash medical support order shall terminate simultaneously with the child support, unless one of the parties in the case files a timely objection within the term provided in the Order to terminate child support.

Child support payments and petitions for an increase in child support shall take effect from the date the petition for support was filed with the Court and, in administrative cases, from the date the Request for Child Support Services was filed with the Administration. Under no circumstances shall the Court or the

Administrator decrease the amount of support unless the obligor has filed a request to such effect, after notifying the obligee or the creditor. The decrease in the amount of child support shall take effect from the date on which the Court or the Administrator rules on the petition for payment reduction, or when the Administrator modifies the child support established pursuant to the adopted periodic review regulations. Any past-due payment or installment required under a support order issued through the expedited administrative process, or through the judicial process set forth in this Act, is—after the date it is due—a judgment by operation of law with the full force, effect, and attributes of a judicial judgment, including the ability to be enforced, and entitled to full faith and credit in Puerto Rico or in any state. Furthermore, it shall not be subject to retroactive payment reduction by Puerto Rico or by any other state, except under extraordinary circumstances, when the Court or the Administrator may enforce the payment reduction as of the date of notification of the petition for payment reduction to the obligor or creditor, or of notification of the intention to modify, as the case may be. No retroactive support payment reduction shall be permitted on account of past-due or unpaid support payments.

The modification of agreements, judgments, resolutions, or support orders may only be requested by the obligee, the obligor, the Court or the Administrator. Under no circumstances shall support orders be modified within the procedure to object the withholding of the obligor's income at the source, as provided in Section 24.

(c) **Review and Modification** - It is further provided that all support orders may be reviewed and modified every three (3) years from the date in which the order was established or modified in the case of a petition for review and modification filed by the obligor, obligee, the Administration, or any other Title IV-D agency when there is an assignment of rights pursuant to Section 9 of this

Act. Every child support order issued by a Court or the Administration shall advise the parties of their right to petition for a review or modification of such order and for those cases under the jurisdiction of the Administration, said notice shall be continued to be issued at least every three (3) years. Notwithstanding any law or provision to the contrary, the requirement of significant change or unforeseen circumstances of any of the parties shall be met if the application of the Mandatory Guidelines to Fix and Modify Child Support adopted as provided in this Act, results in an amount different to the current support ordered. The need to provide for the health care of a child in an Order shall also be grounds for the modification of the child support.

In addition to a review of an order based on the Mandatory Guidelines to Fix and Modify Child Support every three (3) years, the same may be based on the application of a cost of living adjustment. In the case that the orders are modified on the grounds of a cost of living adjustment, each party shall have the right to challenge the result of the review within thirty (30) days from the date of notification of the adjustment. During such term, the order may be issued through the application of the Mandatory Guidelines to Fix and Modify Child Support.

The Administrator or the Court, at the request of a party or at its own discretion, may initiate the procedure to modify a child support order at any time and outside the three (3)-year review cycle when it is deemed that there is just cause to do so, such as variations or significant or unforeseen changes in the income, earning capacity, disbursements, expenses, or capital of the obligor or obligee, or in the expenses, needs, or circumstances of the child, or when there is any other proof of substantial changes in circumstances.

The Administrator shall prescribe by regulation the review procedures, determine whether modifications shall apply, and establish the notification provisions and applicable federal requirements.”

Section 3.- Effectiveness.

This Act shall take effect immediately after its approval.

CERTIFICATION

I hereby certify to the Secretary of State that the following **Act No. 30-2012 (H. B. 2279) (Conference)** of the **6th Regular Session** of the **16th Legislative Assembly of Puerto Rico**:

AN ACT to amend Sections 2 and 19 of Act No. 5 of December 30, 1986, as amended, known as the “Special Child Support Act,” in order to clarify its respective content and conform it to the federal laws and regulations on the special child support matters by defining and adopting the term “cash medical support” to be included in support obligations; and for other purposes.

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

In San Juan, Puerto Rico, on this 24th day of May, 2018.

Orlando Pagán-Ramírez
Director