

(H. B. 1664)

(No. 232-2010)

(Approved December 30, 2010)

AN ACT

To amend Article 19 of Section VI of Act No. 5 of December 30, 1986, as amended, known as the “Child Support Administration Organic Act,” in order to provide that child support review shall be retroactive, and empower the court to set payment plans for any debt accrued during a child support determination process.

STATEMENT OF MOTIVES

Act No. 5 of December 30, 1986, as amended, known as the “Child Support Administration Organic Act,” governs all that pertains to the determination and modification of child support. Said Act provides that, when determining child support, the same shall be effective from the date the petition for support was filed with the court. This provision seeks to do justice to the minor who benefits from such child support, rather than to penalize him/her for any delay in the process.

In some cases, debt which can sometimes be in a substantial amount is accrued during the time that elapses from the filing date of the petition to the date on which child support is determined. We believe that courts should be empowered by law to set payment plans, at their discretion, to settle any debt accrued during the child support determination process. Such payment plans shall be set bearing the minor’s best interests in mind, and in such a way that enables the obligor to make the required payments.

We must remember that the parties have no control of the court schedules. Moreover, the resolution of a case of child support determination generally takes at least six months. We believe that the retroactivity rule is fair and seeks to protect the minor who benefits from the determined child support.

Furthermore, we believe that, in order to standardize the law, the same retroactivity principle should be applied to any petition for reduction of support. It is unfair for a person, who has filed a meritorious petition for reduction of child support, to wait six months or more for the resolution of the case, due to reasons beyond his/her control. There have been cases where a person has lost his/her job and filed a petition for reduction; but, when the reduction is finally granted, it becomes effective on the date the court issues the order. Most of the time, the petitioner of the Motion to Reduce Support, as of such date, owes thousands of dollars accrued from the filing date of the petition for reduction to the date on which the remedy sought was ultimately granted by the court. This situation is beyond the control of the petitioner, who could be found in civil contempt and, therefore, be subject to imprisonment.

Allowing a reduction of support to be effective on the date on which it is granted fosters inequality. Moreover, it may cause the obligor to accrue an excessive amount of debt due to the time that the judicial proceeding takes, and therefore be imprisoned. The amendment herein proposed allows for the reduction of support to be retroactive to the filing date of the petition. However, it is hereby provided that, in the event of special circumstances, the court or the administrator may determine that the reduction shall not be retroactive.

The financial situation that the Island is currently undergoing calls for adjustments in the human resources of both private companies and the government. These adjustments may affect many obligors who will be forced to resort to the court for a child support review. It would be unfair that, due to the time that

court proceedings take, these citizens continue to accrue debt when they lack the resources to pay the same and, therefore, be imprisoned. The approval of this measure shall do justice to many obligors while procuring that the court safeguards the best interests of the minor who benefits from support at all times.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF PUERTO RICO:

Section 1.- Article 19 of Section VI of Act No. 5 of December 30, 1986, as amended, is hereby amended to read as follows:

“Section VI.-

Article 19.- Child Support Order.-

(a) Mandatory Guidelines.-

(b)

Payments for support and increases thereof shall be effective from the date the petition for support was filed in the court and, in administrative cases, from the date of notification of the child support petition to the obligor. The Court of First Instance and the Administrator shall be empowered to set payment plans for the settlement of child support debts in arrears incurred during the process to determine such support. Under no circumstances shall the court or the Administrator reduce support unless the obligor has filed a petition to such effect, after due notice to the obligee or creditor. Likewise, the child support review shall take effect from the date on which the petition for reduction was filed with the court or the Administrator, provided that such petition is deemed meritorious at that moment. However, the Court or the Administrator may provide that the child support review shall not be retroactive should there be special circumstances therefor.

However, if it is provided that a child support reduction shall be retroactive to the date of petition and the obligor continued to pay the support for the period during which the Court evaluated the same, the obligee shall not be required to refund the difference in the amount received, if any. Nevertheless, a credit on account of the difference in the payments already made may be granted to the obligor if he/she so requests in a timely manner. Provided, that such credit shall be prorated on a monthly basis so as not to result in a reduction of more than ten percent of the monthly revised payment. In the event that the child support review results in the increase thereof, the balance due shall be likewise prorated as of the filing date. The monthly installments to be made in order to pay off the balance due shall not exceed 10% of the reviewed monthly payment. Any payment or installment due under a support order issued through the expedited administrative procedure, or through the judicial proceeding set forth in this Act, becomes a judgment from its due date for all legal purpose, and thus shall have all the force, effect, and attributes of a judicial judgment, including the capability of being enforced, and deserving that full faith and credit be granted to it in Puerto Rico or in any state. The retroactive reduction of the amount of the support payments due and unpaid shall not be permitted.

.....”

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. 232-2010 (H. B. 1664)** of the **4th Session of the 16th Legislature** of Puerto Rico:

AN ACT to amend Article 19 of Section VI of Act No. 5 of December 30, 1986, as amended, known as the "Child Support Administration Organic Act," in order to provide that child support review shall be retroactive, and empower the court to set payment plans for any debt accrued during a child support determination process.

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

In San Juan, Puerto Rico, on this 2nd day of July, 2013.

Juan Luis Martínez Martínez
Acting Director