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1997 Regular Session
7lr0960

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By: Senator Hafer
Introduced and read first time: February 5, 1997
Assigned to: Rules

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A BILL ENTITLED

1 AN ACT concerning

2   **Child Support - Determination by Administrative Procedure**

3 FOR the purpose of authorizing the Child Support Enforcement Administration to
4   determine child support amounts; establishing procedures for administrative
5   support proceedings; altering certain definitions; making certain conforming
6   changes in certain provisions of law relating to child support; and generally relating
7   to the authority of the Child Support Enforcement Administration.

8 BY repealing and reenacting, with amendments,
9   Article - Family Law
10   Section 10-101, 10-102, 10-108, 12-101, 12-102, 12-104, 12-202, and 12-204
11   Annotated Code of Maryland
12   (1991 Replacement Volume and 1996 Supplement)

13 BY adding to
14   Article - Family Law
15   Section 10-108.2
16   Annotated Code of Maryland
17   (1991 Replacement Volume and 1996 Supplement)

18   SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
19 MARYLAND, That the Laws of Maryland read as follows:

20   **Article - Family Law**

21 10-101.

22   (a) In this subtitle the following words have the meanings indicated.

23   (b) "Administration" means the Child Support Enforcement Administration of
24 the Department of Human Resources.

25   (c) "Earnings" includes:

26   (1) any form of periodic payment to an individual, including:

27   (i) an annuity;

28   (ii) a pension;

2

1   (iii) Social Security payments;

2   (iv) workers' compensation payments; and

3   (v) unemployment insurance benefits; and

4   (2) any commissions or fees paid in connection with the obligor's
5 employment.

6   (d) (1) "Employer" means any person who is paying earnings to an obligor.

7   (2) "Employer" includes a governmental entity.

8   (e) "Local support enforcement office" means [1] ONE of the following that is
9 responsible for support enforcement:

10   (1) a county agency; or

11   (2) a component of the circuit court for a county.

12   (f) "Obligor" means an individual who is required to pay support under [a] AN
13 ADMINISTRATIVE OR court order.

14   (g) "Support" includes:

15   (1) child support;

16   (2) spousal support;

17   (3) support of destitute adult children; and

18   (4) support of destitute parents.

19   (h) "Support enforcement agency" means [1] ONE of the following that receives
20 support payments under [a] AN ADMINISTRATIVE OR court order:

21   (1) the Administration; or

22   (2) a local support enforcement office.

23 10-102.

24   A contempt proceeding for failure to make a payment of child or spousal support
25 under [a] AN ADMINISTRATIVE OR court order shall be brought within 3 years of the
26 date that the payment of support became due.

27 10-108.

28   (a) The Administration shall:

29   (1) coordinate a statewide program for support enforcement;

30   (2) DETERMINE AND ORDER PAYMENT OF CHILD SUPPORT
31 OBLIGATIONS IN ACCORDANCE WITH § 10-108.2 OF THIS SUBTITLE;

32   [(2)] (3) maintain a central registry of records on absent parents as required
33 under § 12-105 of this article;

1   [(3)] (4) locate absent parents;

2   [(4)] (5) determine the ability of an absent parent to pay child support;

3   [(5)] (6) accept assignment of right, title, or interest in child support made
4 under Article 88A, § 50(b)(2) of the Code;

5   [(6)] (7) in any case in which an assignment is made under Article 88A, §
6 50(b)(2) of the Code, prosecute and maintain any legal or equitable action available to
7 establish each absent parent's obligation to pay child support;

8   [(7)] (8) cooperate with other states in establishing and enforcing child
9 support obligations;

10   [(8)] (9) collect and disburse support payments; and

11   [(9)] (10) use established legal processes to enforce ADMINISTRATIVE OR
12 court orders to pay support.

13   (b) Except in a county that has a local support enforcement office, the
14 Administration is the agency that is responsible for support enforcement in all cases
15 where a court OR THE ADMINISTRATION orders an obligor to make support payments to
16 a public agency:

17   (1) as the payee; or

18   (2) as collection agent for the payee.

19 10-108.2.

20   (A) (1) IN THE ABSENCE OF A COURT ORDER FOR SUPPORT OF A CHILD,
21 THE ADMINISTRATION MAY PROCEED AGAINST A PERSON WHO HAS A
22 RESPONSIBILITY FOR THE SUPPORT OF THE CHILD.

23   (2) THE ADMINISTRATION SHALL INITIATE PROCEEDINGS BY ISSUING A
24 NOTICE CONTAINING THE ADMINISTRATIVE SUPPORT ORDER, WHICH SHALL
25 BECOME EFFECTIVE UNLESS TIMELY CONTESTED.

26   (3) (I) THE NOTICE SHALL BE SERVED ON THE PERSON IN
27 ACCORDANCE WITH TITLE 2, CHAPTER 100 OF THE MARYLAND RULES.

28   (II) A COPY OF THE NOTICE SHALL BE SENT TO THE OBLIGEE BY
29 FIRST-CLASS MAIL.

30   (B) THE NOTICE SHALL INCLUDE THE FOLLOWING:

31   (1) A STATEMENT OF THE AMOUNT OF THE SUPPORT OBLIGATION AND
32 THE BASIS AND AUTHORITY UNDER WHICH THE ASSESSMENT OF THE OBLIGATION
33 WAS MADE;

34   (2) A STATEMENT OF THE NAME OF THE CHILD OR CHILDREN FOR
35 WHOM SUPPORT IS BEING SOUGHT;

36   (3) A DEMAND FOR IMMEDIATE PAYMENT OF THE SUPPORT
37 OBLIGATION OR, IN THE ALTERNATIVE, A DEMAND THAT THE PERSON FILE AN

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1 ANSWER WITH THE ADMINISTRATION WITHIN 10 DAYS OF THE DATE OF SERVICE OF
2 THE NOTICE STATING THE PERSON'S DEFENSES TO LIABILITY;

3   (4) A STATEMENT OF THE NAME AND ADDRESS OF THE PERSON WITH
4 WHOM THE ANSWER IS TO BE FILED;

5   (5) A STATEMENT THAT IF NO ANSWER IS FILED ON OR BEFORE 10 DAYS
6 FROM THE DATE OF SERVICE OF THE NOTICE, THE ADMINISTRATIVE SUPPORT
7 ORDER SHALL BE FINAL AND ENFORCEABLE, AND THE SUPPORT OBLIGATION
8 SHALL BE ASSESSED AND IS SUBJECT TO COLLECTION ACTION;

9   (6) A STATEMENT THAT THE OBLIGOR SHALL KEEP THE
10 ADMINISTRATION INFORMED REGARDING ACCESS TO HEALTH INSURANCE
11 COVERAGE AND HEALTH INSURANCE POLICY INFORMATION AND A STATEMENT
12 THAT HEALTH CARE COVERAGE MAY BE REQUIRED FOR THE OBLIGOR'S
13 DEPENDENT CHILDREN IF AVAILABLE AT REASONABLE COST;

14   (7) A STATEMENT OF EACH PARTY'S RIGHT TO APPEAL AND THE
15 PROCEDURES APPLICABLE TO APPEALS FROM THE DECISION OF THE
16 ADMINISTRATION;

17   (8) A STATEMENT THAT THE OBLIGOR'S INCOME SHALL BE
18 IMMEDIATELY WITHHELD TO COMPLY WITH THIS ORDER UNLESS THE PARTIES
19 AGREE TO AN ALTERNATIVE ARRANGEMENT;

20   (9) A STATEMENT THAT ANY DETERMINATION OF A SUPPORT
21 OBLIGATION UNDER THIS SECTION CREATES A JUDGMENT BY OPERATION OF LAW
22 AND IS ENTITLED TO FULL FAITH AND CREDIT IN ANY OTHER STATE OR
23 JURISDICTION;

24   (10) A STATEMENT THAT THE OBLIGOR SHALL GIVE THE
25 ADMINISTRATION WRITTEN NOTICE OF ANY CHANGE IN THE OBLIGOR'S ADDRESS
26 WITHIN 30 DAYS OF THE CHANGE OF ADDRESS; AND

27   (11) A STATEMENT THAT THE OBLIGOR SHALL KEEP THE
28 ADMINISTRATION INFORMED OF THE NAME AND ADDRESS OF THE OBLIGOR'S
29 CURRENT EMPLOYER.

30   (C) IF NO ANSWER IS RECEIVED BY THE ADMINISTRATION WITHIN TEN DAYS
31 OF THE DATE OF SERVICE, THE ADMINISTRATIVE SUPPORT ORDER SHALL BE AS
32 PROVIDED IN THE NOTICE. THE ADMINISTRATION MAY INITIATE COLLECTION
33 PROCEDURES IN ACCORDANCE WITH THIS TITLE. IF THE PERSON, WITHIN TEN DAYS
34 AFTER THE DATE OF SERVICE OF THE NOTICE, FILES AN ANSWER, WITH THE
35 ADMINISTRATION ALLEGING DEFENSES TO THE LIABILITY IMPOSED UNDER THIS
36 SECTION, THE PERSON SHALL HAVE THE RIGHT TO AN ADMINISTRATIVE HEARING
37 AND JUDICIAL REVIEW IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE
38 GOVERNMENT ARTICLE.

39 12-101.

40   (a) (1) Unless the ADMINISTRATION OR court finds from the evidence that the
41 amount of the award will produce an inequitable result, for an initial pleading that

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1 requests child support pendente lite, the ADMINISTRATION OR court shall award child
2 support for a period from the filing of the pleading that requests child support.

3   (2) Notwithstanding paragraph (1) of this subsection, unless the
4 ADMINISTRATION OR court finds from the evidence that the amount of the award will
5 produce an inequitable result, for an initial pleading filed by a child support agency that
6 requests child support, the ADMINISTRATION OR court shall award child support for a
7 period from the filing of the pleading that requests child support.

8   (3) For any other pleading that requests child support, the
9 ADMINISTRATION OR court may award child support for a period from the filing of the
10 pleading that requests child support.

11   (b) The ADMINISTRATION OR court shall give credit for payments that the
12 ADMINISTRATION OR court finds have been made during the period beginning from the
13 filing of the pleading that requests child support.

14   (c) The ADMINISTRATION OR court may order either parent to pay all or part of:

15   (1) the mother's medical and hospital expenses for pregnancy, confinement,
16 and recovery; and

17   (2) medical support for the child, including neonatal expenses.

18 12-102.

19   (a) (1) In this section the following words have the meanings indicated.

20   (2) "Health insurance coverage" means any type of health care coverage
21 under which medical care services can be provided to the child through an insurer.

22   (3) "Insurer" means:

23   (i) a commercial insurer, a nonprofit health service organization, or a
24 health maintenance organization operating in this State under a certificate of authority
25 issued by the Maryland Insurance Commissioner;

26   (ii) a group health plan, as defined in § 607(1) of the Employee
27 Retirement Income Security Act of 1974; or

28   (iii) an entity offering a service benefit plan as defined by federal law.

29   (b) The ADMINISTRATION OR court may include in any support order a provision
30 requiring either parent to include the child in the parent's health insurance coverage if:

31   (1) the parent can obtain health insurance coverage through an employer or
32 any form of group health insurance coverage; and

33   (2) the child can be included at a reasonable cost to the parent in that
34 health insurance coverage.

35   (c) An order of [a] THE ADMINISTRATION OR court requiring the provision of
36 health insurance coverage for a child may be issued separate from or in conjunction with
37 an earnings withholding order.

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1   (d) (1) If [a] THE ADMINISTRATION OR court orders a parent to provide
2 health insurance coverage under this section, the parent under the order or the support
3 enforcement agency shall send a copy of the order to the employer by certified mail,
4 return receipt requested, separate from or in conjunction with an earnings withholding
5 order, as provided in § 10-122 of this article.

6   (2) On receipt of the order, the employer shall:

7   (i) permit the parent, a child support enforcement agency, or the
8 Department of Health and Mental Hygiene to enroll the child in any health insurance
9 coverage available to the parent without regard to any enrollment season restrictions;

10   (ii) provide a statement to the support enforcement agency and to
11 both parents that the child:

12   1. has been enrolled in health insurance coverage;

13   2. will be enrolled in health insurance coverage and that the
14 expected date of enrollment will be provided; or

15   3. cannot be enrolled in health insurance coverage; and

16   (iii) provide information to both parents and to the support
17 enforcement agency concerning the available health insurance coverage, including:

18   1. the employee's Social Security number;

19   2. the name, address, and telephone number of the insurer;

20   3. the policy number;

21   4. the group number;

22   5. the effective date of coverage; and

23   6. any schedule of benefits.

24   (3) The employer shall deduct the premiums for the health insurance
25 coverage from the earnings of the employee and pay the premiums to the insurer to the
26 extent consistent with federal law.

27   (e) An employer or the child's parents may not disenroll or eliminate coverage for
28 the child in any manner unless:

29   (1) the employer is provided satisfactory written evidence that:

30   (i) the ADMINISTRATION OR court order is no longer in effect; or

31   (ii) the child has been or will be enrolled under other reasonable
32 health insurance coverage, with the coverage to take effect no later than the effective date
33 of disenrollment;

34   (2) the employer has eliminated family health coverage for all of its
35 employees; or

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1   (3) the employer no longer employs the parent under whose name the child
2 has been enrolled for coverage except to the extent that if the parent elects to exercise the
3 provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)
4 then coverage must be provided for the child consistent with the employer's plan relating
5 to postemployment medical coverage for dependents.

6   (f) (1) If the health insurance coverage for the child terminates, the employer
7 shall notify the other parent and, if a support enforcement agency is involved in the case,
8 the support enforcement agency within 15 days of termination of the insurance.

9   (2) If, after a lapse in health insurance coverage, health insurance coverage
10 becomes available to the employee for the child, the employer shall:

11   (i) enroll the child in health insurance coverage without regard to any
12 enrollment season restrictions; and

13   (ii) within 15 days after health insurance coverage becomes available,
14 provide notice to the support enforcement agency and the other parent of the enrollment.

15   (g) Subject to the provisions of this section, the parent or the support
16 enforcement agency may bring a civil action against an employer who willfully violates the
17 provisions of this section.

18   (h) This section does not limit the authority of a court to enter, modify, or enforce
19 an order requiring payment of uninsured health expenses, health care costs, or health
20 insurance premiums.

21   (i) An employer may not use the existence of an order requiring health insurance
22 coverage as a basis for:

23   (1) reprisal against an employee;

24   (2) dismissal of an employee from employment; or

25   (3) refusal to hire a person or to promote an employee.

26   (j) An order entered under this section is binding on a present and future
27 employer of the parent on whom a copy of this order is served.

28 12-104.

29   (a) The ADMINISTRATION OR court may modify a child support award
30 subsequent to the filing of a motion for modification and upon a showing of a material
31 change of circumstance.

32   (b) The ADMINISTRATION OR court may not retroactively modify a child support
33 award prior to the date of the filing of the motion for modification.

34 12-202.

35   (a) (1) Subject to the provisions of paragraph (2) of this subsection, in any
36 ADMINISTRATIVE OR JUDICIAL proceeding to establish or modify child support,
37 whether pendente lite or permanent, the ADMINISTRATION OR court shall use the child
38 support guidelines set forth in this subtitle.

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1   (2) (i) There is a rebuttable presumption that the amount of child
2 support which would result from the application of the child support guidelines set forth
3 in this subtitle is the correct amount of child support to be awarded.

4   (ii) The presumption may be rebutted by evidence that the application
5 of the guidelines would be unjust or inappropriate in a particular case.

6   (iii) In determining whether the application of the guidelines would be
7 unjust or inappropriate in a particular case, the ADMINISTRATION OR court may
8 consider:

9   1. the terms of any existing separation or property settlement
10 agreement or court order, including any provisions for payment of mortgages or marital
11 debts, payment of college education expenses, the terms of any use and possession order
12 or right to occupy to the family home under an agreement, any direct payments made for
13 the benefit of the children required by agreement or order, or any other financial
14 considerations set out in an existing separation or property settlement agreement or court
15 order; and

16   2. the presence in the household of either parent of other
17 children to whom that parent owes a duty of support and the expenses for whom that
18 parent is directly contributing.

19   (iv) 1. If the ADMINISTRATION OR court determines that the
20 application of the guidelines would be unjust or inappropriate in a particular case, the
21 ADMINISTRATION OR court shall make a written finding or specific finding on the record
22 stating the reasons for departing from the guidelines.

23   2. The ADMINISTRATION'S OR court's finding shall state:

24   A. the amount of child support that would have been required
25 under the guidelines;

26   B. how the order varies from the guidelines;

27   C. how the finding serves the best interests of the child; and

28   D. in cases in which items of value are conveyed instead of a
29 portion of the support presumed under the guidelines, the estimated value of the items
30 conveyed.

31   (b) (1) Subject to the provisions of paragraph (2) of this subsection, the
32 adoption of the guidelines set forth in this subtitle may be grounds for requesting a
33 modification of a child support award based on a material change in circumstances.

34   (2) The adoption of the guidelines set forth in this subtitle may not be
35 grounds for requesting a modification of a child support award based on a material
36 change in circumstances unless the use of the guidelines would result in a change in the
37 award of 25% or more.

38   (c) On or before January 1, 1993, and at least every 4 years after that date, the
39 Child Support Enforcement Administration of the Department of Human Resources
40 shall:

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1   (1) review the guidelines set forth in this subtitle to ensure that the
2 application of the guidelines results in the determination of appropriate child support
3 award amounts; and

4   (2) report its findings and recommendations to the General Assembly,
5 subject to § 2-1312 of the State Government Article.

6 12-204.

7   (a) (1) The basic child support obligation shall be determined BY THE
8 ADMINISTRATION OR COURT in accordance with the schedule of basic child support
9 obligations in subsection (e) of this section. The basic child support obligation shall be
10 divided between the parents in proportion to their adjusted actual incomes.

11   (2) (i) If one or both parents have made a request for alimony or
12 maintenance in the proceeding in which a child support award is sought, the court shall
13 decide the issue and amount of alimony or maintenance before determining the child
14 support obligation under these guidelines.

15   (ii) If the court awards alimony or maintenance, the amount of
16 alimony or maintenance awarded shall be considered actual income for the recipient of
17 the alimony or maintenance and shall be subtracted from the income of the payor of the
18 alimony or maintenance under § 12-201(d)(2) of this subtitle before the
19 ADMINISTRATION OR court determines the amount of a child support award.

20   (b) (1) Except as provided in paragraph (2) of this subsection, if a parent is
21 voluntarily impoverished, child support may be calculated based on a determination of
22 potential income.

23   (2) A determination of potential income may not be made for a parent who:

24   (i) is unable to work because of a physical or mental disability; or

25   (ii) is caring for a child under the age of 2 years for whom the parents
26 are jointly and severally responsible.

27   (c) If a combined adjusted actual income amount falls between amounts shown in
28 the schedule, the basic child support amount shall be extrapolated to the next higher
29 amount.

30   (d) If the combined adjusted actual income exceeds the highest level specified in
31 the schedule in subsection (e) of this section, the ADMINISTRATION OR court may use its
32 discretion in setting the amount of child support.

33   (e) Schedule of basic child support obligations:
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65   (f) The adjusted basic child support obligation shall be determined by multiplying
66 the basic child support obligation by one and one-half.

67   (g) (1) Subject to paragraphs (2) and (3) of this subsection, actual child care
68 expenses incurred on behalf of a child due to employment or job search of either parent
69 shall be added to the basic obligation and shall be divided between the parents in
70 proportion to their adjusted actual incomes.

71   (2) Child care expenses shall be:

72   (i) determined by actual family experience, unless the
73 ADMINISTRATION OR court determines that the actual family experience is not in the
74 best interest of the child; or

75   (ii) if there is no actual family experience or if the ADMINISTRATION
76 OR court determines that actual family experience is not in the best interest of the child:

77   1. the level required to provide quality care from a licensed
78 source; or

79   2. if the custodial parent chooses quality child care with an
80 actual cost of an amount less than the level required to provide quality care from a
81 licensed source, the actual cost of the child care expense.

82   (3) Additional child care expenses may be considered if a child has special
83 needs.

84   (h) Any extraordinary medical expenses incurred on behalf of a child shall be
85 added to the basic child support obligation and shall be divided between the parents in
86 proportion to their adjusted actual incomes.

87   (i) By agreement of the parties or by order of THE ADMINISTRATION OR court,
88 the following expenses incurred on behalf of a child may be divided between the parents
89 in proportion to their adjusted actual incomes:

90   (1) any expenses for attending a special or private elementary or secondary
91 school to meet the particular educational needs of the child; or

92   (2) any expenses for transportation of the child between the homes of the
93 parents.

1   (j) (1) Upon the expiration of a use and possession order or the expiration of
2 the right to occupy the family home under a separation or property settlement agreement
3 and upon motion of either party, the ADMINISTRATION OR court shall review the child
4 support award.

5   (2) If the allocation of financial responsibility for the family home was a
6 factor in departing from the guidelines under subsection (a) of this section, the
7 ADMINISTRATION OR court may modify the child support, if appropriate in all the
8 circumstances, upon the expiration of the use and possession order or the expiration of
9 the right to occupy the family home under a separation or property settlement agreement.

10   (k) (1) Except in cases of shared physical custody, each parent's child support
11 obligation shall be determined by adding each parent's respective share of the basic child
12 support obligation, work-related child care expenses, extraordinary medical expenses,
13 and additional expenses under subsection (i) of this section.

14   (2) The custodial parent shall be presumed to spend that parent's total child
15 support obligation directly on the child or children.

16   (3) The noncustodial parent shall owe that parent's total child support
17 obligation as child support to the custodial parent minus any ordered payments included
18 in the calculations made directly by the noncustodial parent on behalf of the child or
19 children for work-related child care expenses, extraordinary medical expenses, or
20 additional expenses under subsection (i) of this section.

21   (l) (1) In cases of shared physical custody, the adjusted basic child support
22 obligation shall first be divided between the parents in proportion to their respective
23 adjusted actual incomes.

24   (2) Each parent's share of the adjusted basic child support obligation shall
25 then be multiplied by the percentage of time the child or children spend with the other
26 parent to determine the theoretical basic child support obligation owed to the other
27 parent.

28   (3) Subject to the provisions of paragraphs (4) and (5) of this subsection, the
29 parent owing the greater amount under paragraph (2) of this subsection shall owe the
30 difference in the 2 amounts as child support.

31   (4) In addition to the amount of the child support owed under paragraph (3)
32 of this subsection, if either parent incurs child care expenses under subsection (g) of this
33 section, extraordinary medical expenses under subsection (h) of this section, or additional
34 expenses under subsection (i) of this section, the expense shall be divided between the
35 parents in proportion to their respective adjusted actual incomes. The parent not
36 incurring the expense shall pay that parent's proportionate share to:

37   (i) the parent making direct payments to the provider of the service;
38 or

39   (ii) the provider directly, if a court order requires direct payments to
40 the provider.

17

1   (5) The amount owed under paragraph (3) of this subsection may not
2 exceed the amount that would be owed under subsection (k) of this section if the obligor
3 parent were a noncustodial parent.

4   SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
5 October 1, 1997.