



**Am. Sub. H.B. 149**  
125th General Assembly  
(As Passed by the General Assembly)

- Reps.** Fessler, Seitz, Williams, Gilb, Brinkman, Perry, Reidelbach, Walcher, Book, Harwood, Hollister, Mason, S. Smith, Widowfield, Willamowski, Barrett, Beatty, Blasdel, Brown, Buehrer, Carmichael, Cates, Chandler, Cirelli, Clancy, Collier, Daniels, DeBose, Distel, Domenick, C. Evans, D. Evans, Faber, Flowers, Gibbs, Grendell, Hagan, Hoops, Hughes, Jerse, Jolivette, Kearns, Kilbane, Latta, Martin, McGregor, Miller, Oelslager, Olman, Otterman, T. Patton, Price, Schaeffer, Schmidt, Schneider, Seaver, Setzer, Skindell, D. Stewart, J. Stewart, Sykes, Taylor, Trakas, Wagner, Webster, White, Wolpert, Yates, Young
- Sens.** Stivers, Armbruster, Blessing, Carey, Coughlin, Dann, Fedor, Randy Gardner, Hagan, Harris, Padgett, Schuring, Spada, Zurz, DiDonato, White, Fingerhut, Miller, Nein, Mumper, Austria, Amstutz, Prentiss, Mallory, Robert, Gardner, Jacobson, Jordan, Hottinger

Effective date: June 2, 2004

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**ACT SUMMARY**

- Permits a person required to pay child support (an obligor) who is called to active military service to request a review of the child support order for the purpose of modification of the amount of support.
- Requires that the obligor submit with the request for review any orders or other appropriate documentation specifying the commencement date of the obligor's active military service and the monthly monetary compensation for that service and also requires the obligor to submit documentation on all other outside income.
- Requires a child support enforcement agency (CSEA) that receives such a request to conduct an administrative review of the order.
- Provides that if, after the obligor provides written notice of the date of termination of the obligor's active military service, the obligor provides the CSEA with written documentation sufficient to establish that the

obligor's employer has violated the Uniformed Services Employment and Reemployment Rights Act with regards to the obligor, the CSEA must consider this change of circumstance substantial enough to require a review of the obligor's amount of support to be paid under the child support order.

- Permits an obligor to designate another person to act on the obligor's behalf for the purposes of participating in the administrative review and modification and requires that the CSEA or a court reviewing a modification give any notice required by law to that person.
- Provides that by designating another individual to act on behalf of the obligor, the obligor waives any right of an appearance and any right to request a stay of the action or proceeding.
- Provides that the individual acting on behalf of the obligor may not assert any right to a stay under the Servicemembers' Civil Relief Act.
- Generally provides that if a child support order is modified as a result of the review conducted under the act, the modification relates back to the date the CSEA sent notice of a review of the order to the obligor and obligee or the first day of the month in which the obligor's active military service begins, whichever is later.
- Requires that a provision be included in the modified order that the modification will terminate and the prior amount of support reinstated as of the first day of the month following the date the obligor's active military service ends.
- Requires the obligor to notify the CSEA of the termination of the obligor's active military service no later than the last day of the month in which the service ends.
- Requests the Ohio Supreme Court to adopt a rule for child support hearings to be expedited for members of the Ohio organized militia when the court receives notice of a request for a child support hearing.

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## CONTENT AND OPERATION

### Background

#### Frequency of administrative review of child support orders

The Revised Code requires the Ohio Department of Job and Family Services (ODJFS) to adopt rules establishing procedures for review of existing child support orders.<sup>1</sup> A child support enforcement agency (CSEA) is generally not required to review a support order for modification unless a review is requested by the person required to pay support (the obligor) or the person to whom the support is to be paid (the obligee) and at least three years have elapsed since the order was established or the most recent review. The CSEA must respond to a request for review of a child support order by notifying the obligor and obligee, within 15 days of receiving the request, that a review has been scheduled or that a review is not warranted and why.<sup>2</sup> Circumstances that warrant review before three years have passed include the following:<sup>3</sup>

- If the support order is for the minimum amount, the obligor's move from unemployment to employment or underemployment to more gainful employment;
- Either the obligor or obligee loses employment for at least six months and the unemployment is beyond that person's control and is reasonably expected to continue;
- Either the obligor or obligee becomes permanently disabled;
- Either the obligor or obligee cannot pay support for the duration of the child's minority due to institutionalization or incarceration without chance of parole and there are no other assets for the child's support;
- Either the obligor or obligee experiences a 30% change in gross income or income-producing assets for at least six months that is beyond the obligor or obligee's control and is reasonably expected to continue;

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<sup>1</sup> Revised Code § 3119.76 (not in the act).

<sup>2</sup> Ohio Administrative Code 5101:1-30-403(A)(6) and (B)(2).

<sup>3</sup> Ohio Administrative Code 5101:1-30-403(C)(5).

- A child's death or emancipation;
- The availability of health insurance or improved health insurance coverage for the child;
- A change in circumstances that resulted in rebuttal of the guideline support amount in the original order.

**Procedures before administrative review**

A CSEA that plans to review a child support order must notify the obligor and obligee that a review will be conducted and of the date and purpose of the review. The CSEA must mail the notice at least 45 days before the review begins.<sup>4</sup> In the notice, the CSEA must ask the obligor and obligee to provide the CSEA, no later than the scheduled date of the review, with copies of all of the following:<sup>5</sup>

- (1) Their federal income tax returns from the previous year;
- (2) A copy of all pay stubs obtained in the preceding six months or verification of pay received;
- (3) Verification of all other salaries, wages, or compensation received in the preceding six months;
- (4) A list of the group health insurance and health care policies, contracts, and plans available to them, as well as information concerning the insurance plans in which they are currently enrolled;
- (5) Any other information necessary to proper review of the child support order.

**Administrative review**

In reviewing a child support order, the CSEA must calculate a revised amount to be paid under the child support order using the Basic Child Support

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<sup>4</sup> *If the CSEA wishes to review the order sooner than 45 days after mailing the notice and has available current information to proceed with the review, it must obtain a signed waiver agreement from the obligor and obligee allowing the review to be conducted on a date that is specified and agreed on by both the obligor and obligee. The obligor and obligee also may waive the administrative hearing and the right to a court hearing. (Ohio Administrative Code 5101:1-30-403(E)(2).)*

<sup>5</sup> R.C. 3119.60.

Schedule and the applicable worksheet set forth in the Revised Code.<sup>6</sup> It is not necessary for the obligor or obligee to be present at the review. The action taken by the CSEA as a result of the review differs depending on whether the child support order was issued by a court or the CSEA.

**Review of court child support orders.** If the child support order was issued by a court and the recalculated support amount is more than 10% greater or more than 10% less than the amount of that order, the CSEA must submit the revised amount to the court for inclusion in a revised child support order. Within five days after the review date, the CSEA must incorporate its findings and conclusions into an "administrative adjustment recommendation," date the recommendation, and mail it to the obligor and obligee. The recommendation also must contain notice of each party's right to request an administrative hearing, the deadlines and procedures for requesting the hearing, and that the revised amount, if any, will be submitted to the court for inclusion in a revised child support order unless the obligor or obligee requests a hearing within 14 days after receipt of the notice.<sup>7</sup> If neither requests a hearing, the CSEA must submit the recommendation to the court for inclusion in a revised support order.

If either the obligor or obligee timely requests an administrative hearing, the CSEA must schedule the hearing for a date no later than 15 calendar days after receiving the request for an administrative hearing. No later than ten calendar days before the hearing is conducted, the CSEA must notify the obligor and obligee by mail of the date, time, place, and purpose of the hearing.

If the obligor and obligee provided income information, the sole issue to be addressed at the hearing is whether the CSEA correctly evaluated their income information and made correct calculations based on that income information. If income information was not provided, the sole issue to be addressed at the hearing is whether the CSEA made reasonable assumptions regarding the income of the

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<sup>6</sup> *The Basic Child Support Schedule is generally referred to as the "child support guidelines" and is located in section 3119.021 of the Revised Code. The Revised Code contains two worksheets--one for sole custody or shared parenting situations and one for split custody arrangements (in which each parent has custody of at least one child). R.C. 3119.022 and 3119.023 (not in the act).*

<sup>7</sup> *The obligor and obligee are deemed to have received notification of the administrative adjustment recommendation within three working days after the date the recommendation has been mailed. O.A.C. 5101:1-30-404(A). If the court child support order contains a deviation from the child support guidelines, or the obligor or obligee intend to request a deviation, the obligor and obligee have a right to request a court hearing on the revised amount of child support without first requesting an administrative hearing. R.C. 3119.63 (not in the act).*

person or persons who failed to provide the income information. The CSEA must give the obligor and obligee the opportunity to present evidence and testimony, and each may bring a legal or other authorized representative to the hearing. Within ten days of the hearing, the hearing examiner must issue the administrative adjustment hearing decision and include in that decision findings of fact based on the evidence presented, relevant citations to the child support guidelines and other applicable law, a conclusion regarding the correctness of the administrative adjustment recommendation, a recommendation regarding the amount of child support to be ordered, and all exhibits. The decision must be dated and mailed to the parties within 15 days of the hearing. It must also contain a notice that the CSEA will submit any revised amount of child support to the court for inclusion in a revised child support order unless the obligor or obligee files a written request with the CSEA for a court hearing within 15 days of the issuance of the hearing decision. If neither party requests a hearing, the CSEA must submit the revised amount to the court for inclusion in a revised child support order.

If a CSEA requests that the court issue a revised child support order and neither the obligor nor the obligee has requested a court hearing on the revised child support amount, the court must issue a revised child support order requiring the obligor to pay the revised amount calculated by the CSEA.<sup>8</sup> However, on receiving a timely request for a court hearing, the CSEA, within 15 days, must submit the request and the administrative adjustment hearing decision to the court and the court must schedule and conduct a hearing to determine whether the revised amount is appropriate and whether the amount being paid under the existing order should otherwise be revised.<sup>9</sup>

The court must give the obligor, obligee, and the CSEA at least 30 days notice of the date, time, and location of the hearing and order the obligor and obligee to provide the same information they were required to provide in the administrative review process.<sup>10</sup> If the court finds that the revised child support amount calculated by the CSEA is appropriate, it must issue a revised child support order requiring the obligor to pay that amount. If the court finds that the amount calculated by the CSEA is not appropriate, it must determine the appropriate amount of child support, and, if necessary, issue a revised order requiring the obligor to pay the amount of child support determined by the court.<sup>11</sup>

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<sup>8</sup> R.C. 3119.65 (not in the act).

<sup>9</sup> R.C. 3119.66 (not in the act).

<sup>10</sup> R.C. 3119.67 and 3119.68 (not in the act).

<sup>11</sup> R.C. 3119.70 (not in the act).

Regardless of whether the obligor or obligee requests a court hearing, if the court modifies the child support order, the modification relates back to the first day of the month following the date on which the review began.<sup>12</sup>

**Review of administrative child support orders.** In the case of a request for modification of an administrative support order, if the CSEA determines that a modification is necessary and in the best interest of the child, it must calculate a revised amount the obligor must pay using the child support guidelines and applicable worksheet.<sup>13</sup> Within five days of the review date, the CSEA must incorporate its findings into an "administrative support order modification record" which must be dated and sent to the obligor and obligee. The CSEA must include notice of each party's right to request an administrative hearing on the revised child support amount, of the procedures and deadlines for requesting the hearing, and that the CSEA will modify the order to include the revised support amount unless the obligor or obligee requests a hearing no later than 30 days after receipt of the notice. If neither the obligor nor the obligee timely requests an administrative hearing, the CSEA is required to modify the order.

If either the obligor or obligee timely requests an administrative hearing, the CSEA must follow the procedures for an administrative hearing described above with regard to court child support orders, except that at the conclusion of the hearing, the CSEA is required to modify the order to include the revised amount of child support and the obligor and obligee cannot object to the conclusions of the hearing officer by requesting a court hearing. However, the obligor or obligee may object to the modified administrative support order by initiating an action in the juvenile court, and they must be notified of this right when the order is modified. Under preexisting law, modification of an administrative support order by a CSEA relates back to the first day of the month following the date on which the review began.

### **The act**

#### **Procedures before administrative review**

The act requires the CSEA to request that the *obligee* include the tricare program offered by the United States Department of Defense in the obligee's list

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<sup>12</sup> R.C. 3119.71.

<sup>13</sup> R.C. 3119.61. *The CSEA may not deviate from the guidelines. If the agency cannot set the amount of support without deviating from the guidelines, it must bring an action in the juvenile court on behalf of the person who requested the review or, if no one requested the review, on behalf of the obligee, requesting that the court issue a support order.*

of group health insurance and health care policies contracts, and plans available to the obligee. The act also provides that if the *obligor* is a member of the uniformed services and is on active military duty, the CSEA must ask the obligor to provide the CSEA with a copy of the obligor's Internal Revenue Service form W-2, "Wage and Tax Statement," and a copy of a statement detailing the obligor's earnings and leave with the uniformed service. (R.C. 3119.60(C)(1)(f) and (C)(2)(d).)

**Review on request of obligor called to active military service**

The act permits an obligor who is called to active military service in the uniformed services to request that the CSEA administering the order conduct an administrative review of a child support order for the purpose of modification of the required amount of support.<sup>14</sup> An obligor who makes a request under these circumstances must indicate in the request that the reason for the modification is the obligor's active military service. The obligor must also provide with the request any orders or other appropriate documentation specifying the commencement date of the obligor's active military service and the monthly monetary compensation for that service. (R.C. 3119.77(B) and (C).) The obligor also must submit documentation on all other outside income. If a CSEA receives such a request, it is required to send to the obligor and obligee notice of the review and the date it will begin not later than three business days after receipt of the obligor's request. The CSEA must conduct an administrative review and consider the obligor's call to active military service as a change of circumstances substantial enough to require a review of the child support amount. The act requires that the administrative review be conducted in accordance with existing law governing the review and modification of administrative and court child support orders. (R.C. 3119.771(A).)

The act also provides that if, after the obligor provides written notice of the date of termination of the obligor's active military service, the obligor provides the CSEA with written documentation sufficient to establish that the obligor's employer has violated the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. 4301 to 4333, with regards to the obligor, the CSEA must consider this change of circumstance substantial enough to require a review of the obligor's amount of support to be paid under the child support order (R.C. 3119.771(C)).

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<sup>14</sup> "Active military service" means the performance of active military duty by a member of the uniformed services for a period of more than 30 days. "Uniformed services" means any reserve components of the Armed Forces of the United States or the Ohio organized militia when engaged in full-time National Guard duty for a period of more than 30 days. R.C. 3119.77(A)(1) and (2).

### **Effective date of modification and reinstatement of prior order**

If a CSEA modifies an administrative child support order or court modifies a court child support order based on an administrative review conducted under the act, the modification relates back to the date the CSEA sent notice of a review of the order to the obligor and obligee or the first day of the month in which the obligor's active military service begins, whichever is later. This is in contrast to prior law described earlier in which the modification relates back to the first day of the month following the date the review began. The act requires a child support order modified pursuant to it to include a provision in the modified order stating that, except as provided in R.C. 3119.771(C), the modification will terminate and the prior amount of support be reinstated as of the first day of the month following the date that the obligor's active military service ends. (R.C. 3119.772.) It also requires the obligor to notify the CSEA in writing that the obligor's active military service has ended no later than the last day of the month in which the service ends (R.C. 3119.773).

### **Designation of a representative to act on obligor's behalf**

The act permits the obligor to provide the CSEA with a military power of attorney executed pursuant to 10 U.S.C. 1044b designating another individual to act on the obligor's behalf for the purpose of participating in the administrative review and modification. By designating another individual to so act on behalf of the obligor, the obligor waives any right of an appearance and any right to request a stay of the action or proceeding. If the CSEA receives such a power of attorney, it must permit the individual to act on the obligor's behalf during its review and provide the individual with any notices required to be given by law, including notice of the review and the date it will begin. If, with respect to the review of a court child support order, a court hearing is requested, the act requires the court to provide the individual with any notices required to be given by law as part of the court hearing process. The act also provides that the individual acting on behalf of the obligor may not assert any right to a stay under the Servicemembers' Civil Relief Act, 117 Stat. 2835 (2003), 50 App. U.S.C. 501 et. seq., as amended. (R.C. 3119.77(D) and 3119.771(B).)

### **Uncodified provision**

The act provides in uncodified law that the General Assembly requests that the Ohio Supreme Court adopt a rule to provide that child support hearings for an obligor or obligee who is a member of the Ohio organized militia be expedited when the court receives notice that the obligor or obligee has requested a child support hearing (Section 3).

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	03-27-03	p. 304
Reported, H. Juvenile & Family Law	05-15-03	p. 485
Passed House (97-0)	05-21-03	pp. 506-507
Reported, S. Judiciary on Civil Justice	01-21-04	p. 1414
Passed Senate (33-0)	02-04-04	pp. 1502-1503
House concurred in Senate amendments (92-0)	02-04-04	pp. 1625-1626

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