

O.C.G.A. § 19-6-32

Current through 2024 Regular and Extraordinary Session of the General Assembly.

**Official Code of Georgia Annotated TITLE 19 Domestic Relations (Chs. 1
— 15) CHAPTER 6 Alimony and Child Support (Arts. 1 — 2) Article 1
General Provisions (§§ 19-6-1 — 19-6-36)**

19-6-32. Entering income withholding order or medical support notice for award of child support; when order or notice effective; hearing on order.

(a) As used in this Code section, the term:

(1) "Child support enforcement agency" means the entity within the Department of Human Services and its contractors that are authorized to enforce a duty of support.

(2) "Court" means judge of any court of record or an administrative law judge of the Office of State Administrative Hearings.

(3) "Earnings" means any form of payment due to an individual, regardless of source, including without limitation wages, salary, commission, bonus, workers' compensation, disability, payments pursuant to a pension or retirement program, and interest.

(4) "Income withholding" means an income withholding order, an income withholding notice, or any other process directed to an obligor's employer or other payor pursuant to this Code section and [Code Section 19-6-33](#) to withhold support from the income of the obligor.

(5) "Income withholding notice" means a form approved by the United States Secretary of Health and Human Services in accordance with 42 U.S.C. Section 666(b)(A)(I) and (ii) utilized for income withholding and properly issued pursuant to 45 C.F.R. Section 303.100(e)(1). Such form shall neither be signed by a judge nor filed with the court.

(6) "IV-D" means Title IV-D of the federal Social Security Act.

(7) "National Medical Support Notice" means a notice as prescribed under 42 U.S.C. Section 666(a)(19) or a substantially similar notice.

(8) "Obligee" means the individual to whom the payment of a support obligation is owed.

(9) "Obligor" means the individual owing a duty of support.

(10) "Payor" means the person that provides earnings to an obligor.

(b)

(1) Except as provided for in paragraph (1) of subsection (c) of this Code section, upon the entry of a judgment or order establishing, enforcing, or modifying a child support obligation or spousal support obligation through a court, a separate income withholding order, if one has not been previously entered, shall be entered. If the obligee is an applicant for child support services under IV-D, the obligee shall

furnish copies of the support order and the income withholding order to the child support enforcement agency.

(2) For all child support orders, and spousal support orders enforced pursuant to subsection (d) of [Code Section 19-11-6](#), the child support enforcement agency shall be authorized to issue an income withholding notice without need for any amendment to the order involved or any further action by a court that issued it, provided that an opportunity for a hearing before a court is afforded. The child support enforcement agency shall also be authorized to issue a National Medical Support Notice to enforce the medical support provisions of such orders, provided that an opportunity for a hearing pursuant to [Code Section 19-11-27](#) is afforded. Such notices may be issued electronically by the child support enforcement agency. The child support enforcement agency shall issue an income withholding notice and, when appropriate, a National Medical Support Notice within two business days after the information regarding a newly hired employee is entered into the centralized employee registry pursuant to [Code Section 19-11-9.2](#) and matched with an obligor in a case being enforced by the child support enforcement agency.

(c)

(1)

(A) All child support orders which are initially issued in this state on or after January 1, 1994, and are not at the time of issuance being enforced by the child support enforcement agency shall provide for the immediate withholding of such support from the earnings of the individual required by that order to furnish support unless:

(i) A court issuing the order finds there is good cause not to require such immediate withholding; or

(ii) A written agreement is reached between both parties which provides for an alternative arrangement.

(B) For purposes of this subsection, any finding that there is good cause not to require withholding from earnings shall be based on at least a written determination that implementing such withholding would not be in the best interest of the child and proof of timely payment of previously ordered support in cases involving modification of support orders.

(2) All child support orders which are not described in subsection (b) of this Code section or in paragraph (1) of this subsection shall, upon petition of either party to

revise such order under [Code Section 19-6-19](#) or to enforce such order under [Code Section 19-6-28](#), be revised to include provisions for withholding such support from the earnings of the individual required by the order to furnish such support if arrearages equal to one month's support accrue but without the necessity of filing application for services under [Code Section 19-11-6](#).

(3) Copies of income withholding orders issued under this subsection shall be provided by the obligee to the obligor, payor, and the family support registry established pursuant to [Code Section 19-6-33.1](#). An income withholding notice must be provided to the payor to initiate income withholding.

(d) An income withholding order shall:

(1) Direct a payor to withhold from all earnings due and payable to an obligor the amount required by the support order to meet the obligor's support obligation;

(2) State the amount of arrearage accrued, if any, under the support order and direct a payor to withhold an additional amount until the arrearage is paid in full;

(3) Direct a payor not to withhold in excess of the amounts allowed under Section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. Section 1673(b);
and

(4) Direct the payor to send income withholding order payments, including administrative fees authorized by law, to the family support registry established pursuant to [Code Section 19-6-33.1](#).

(e) Income withholding orders shall be effective immediately unless a court upon good cause shown finds that the income withholding order shall be effective upon a delinquency in an amount equal to one month's support or a written agreement is reached between both parties which provides for an alternative arrangement.

(f) An income withholding order shall be effective so long as the order of support upon which it is based is effective or until further order of a court.

(g) When an income withholding order shall be effective immediately, the obligee or child support enforcement agency, as applicable, shall furnish to the obligor a statement of his or her rights, remedies, and duties in regard to the income withholding order. The statement shall state:

(1) All fees or interest which shall be imposed;

(2) The total amount of earnings to be withheld for each pay period until the arrearage, if any, is paid in full and the total amount of earnings to be withheld for each pay period thereafter. The amounts withheld shall not be in excess of that

allowed under Section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. Section 1673(b);

(3) When the withholding will commence;

(4) That the income withholding order shall apply to current and subsequent payors and periods of employment;

(5) That a copy of the income withholding order shall be provided to the payors;

(6) That the enforcement of the income withholding order may only be contested on the ground of mistake of fact regarding the amount of support owed pursuant to a support order, the arrearages, or the identity of the obligor;

(7) How to contest the withholding; and

(8) That the obligor is required to notify the obligee and, when the obligee is receiving IV-D services, the child support enforcement agency, within seven days of changes in the obligor's address and payors and the addresses of his or her payors.

(h) When an income withholding order is effective upon a delinquency in an amount equal to one month's support, or when an order for spousal or child support was in effect prior to July 1, 1989, the obligee or child support enforcement agency, as applicable, may enforce the income withholding order by providing a notice of

delinquency to the obligor. A notice of delinquency shall state:

- (1)** The terms of the support order;
- (2)** The period of delinquency and the total amount of the delinquency as of the date the notice is mailed;
- (3)** All fees or interest which may be imposed;
- (4)** The total amount of earnings to be withheld for each pay period until the arrearage and all applicable fees and interest are paid in full and the total amount of earnings to be withheld for each pay period thereafter. The amounts withheld shall not be in excess of that allowed under Section 303(b) of the federal Consumer Credit Protection Act, 15 U.S.C. Section 1673(b);
- (5)** That a copy of the notice of delinquency shall be provided to the payors, together with a copy of the income withholding order and income withholding notice. The obligor may apply to a court to contest enforcement of the order once the notice of delinquency has been received. The application shall not affect the enforcement of the income withholding order until a court enters an order granting relief to the obligor;
- (6)** That the enforcement of the income withholding order may only be contested on the ground of mistake of fact regarding the amount of support owed pursuant to

a support order, the arrearages, or the identity of the obligor; and

(7) That the obligor is required to notify the obligee of the obligor's current address and current payors and the address of current payors. All changes shall be reported by the obligor within seven days of the change occurring. If the child support enforcement agency is enforcing such order, the obligor shall make these notifications to the child support enforcement agency instead of to the obligee.

(i) The failure of the obligor to receive the notice of delinquency provided for in subsection (h) of this Code section shall not preclude the income withholding order and the income withholding notice from being subsequently provided to the payor. A notice of delinquency which fails to state an arrearage shall not mean that an arrearage is not owed.

(j) At any time, any party, including the child support enforcement agency, may apply to a court to:

(1) Modify, suspend, or terminate the income withholding order because of a modification, suspension, or termination of the underlying order for support; or

(2) Modify the amount of earnings being withheld when the arrearage has been paid.

History

Code 1981, § 19-6-32, enacted by Ga. L. 1989, p. 861, § 3; Ga. L. 1991, p. 94, § 19; Ga. L. 1991, p. 950, § 1; Ga. L. 1993, p. 585, § 1; Ga. L. 1997, p. 1613, § 11; Ga. L. 1999, p. 1237, § 1; Ga. L. 2002, p. 1247, § 2; Ga. L. 2017, p. 646, § 1-13/SB 137; Ga. L. 2024, p. 233, § 2/SB 520, effective July 1, 2024.

▼ Annotations

Notes

Amendments.

The 2017 amendment, effective July 1, 2017, rewrote this Code section.

The 2024 amendment, effective July 1, 2024, substituted “income withholding order” and “income withholding orders” for “income deduction order” and “income deduction orders”, respectively, throughout this Code section; added paragraphs (a)(4) and (a)(5); redesignated former paragraphs (a)(4) through (a)(8) as present paragraphs (a)(6) through (a)(10); in paragraph (b)(2), substituted “withholding notice” for “deduction order” in the first sentence, deleted “orders or” following “Such” near the beginning of the third sentence, and substituted “withholding notice and” for “deduction order or” in the fourth sentence; in paragraph (c)(3), added the second sentence; substituted “to withhold” for “to deduct” in paragraphs (d)(1) and (d)(3); substituted “withheld” for “deducted” three times each in paragraphs (g)(2) and (h)(4); inserted “and income withholding notice” at the end of the first sentence in paragraph (h)(5); and, inserted “and the income withholding notice from” near the middle of the first sentence in subsection (i).

JUDICIAL DECISIONS

Constitutionality. —

[O.C.G.A. § 19-6-32](#) does not violate the separation of powers doctrine. *Georgia Dep't of Human Resources v. Word*, 265 Ga. 461, 458 S.E.2d 110.

Construction. —

Language of [O.C.G.A. § 19-6-32](#) plainly mandates income-deduction orders. *Georgia Dep't of Human Resources v. Pernice*, 260 Ga. 732, 399 S.E.2d 65,

1991 Ga. LEXIS 11 (1991).

When the Department of Human Resources obtained a judgment after July 1, 1989, enforcing appellee's obligation to pay child support, the trial court should have entered a separate income deduction order pursuant to [O.C.G.A. § 19-6-32\(a\)\(1\)](#). Department of Human Resources v. Chappell, 211 Ga. App. 834, 440 S.E.2d 722, 1994 Ga. App. LEXIS 89 (1994).

Under [O.C.G.A. § 19-6-32\(a\)\(1\)](#), when any court order or judgment entered on or after July 1, 1989, establishes support obligations for the first time, or enforces existing obligations, or modifies such obligations, the court "shall" order income deduction pursuant to the procedure established in 1989 if the child support recovery agency seeks such. Department of Human Resources v. Offutt, 217 Ga. App. 823, 459 S.E.2d 597, 1995 Ga. App. LEXIS 603 (1995).

Since the original court order regarding support was entered prior to July 1, 1989, before the advent of statutorily mandated income deduction, under [O.C.G.A. § 19-6-32\(a\)\(2\)](#), the trial court was authorized to use the court's discretion in determining whether to order income deduction. Department of Human Resources v. Offutt, 217 Ga. App. 823, 459 S.E.2d 597, 1995 Ga. App. LEXIS 603 (1995).

When issuance of income deduction order required. —

When the Department of Human Resources petitioned to modify a divorce decree so that the former husband's child support payments would be made directly to the child support receiver, the issuance of an income deduction order was required based on the former wife's receipt of public assistance. Department of Human Resources v. Brandenburg, 211 Ga. App. 715, 440 S.E.2d 498, 1994 Ga. App. LEXIS 44 (1994), overruled, Department of Human Resources v. Offutt, 217 Ga. App. 823, 459 S.E.2d 597, 1995 Ga. App. LEXIS 603 (1995).

“Good cause” for delaying the effective date of an income deduction order is the exception and should be found cautiously and only under narrow circumstances. In no case is the fact that the obligated parent is current in the parent’s support obligation, in itself, good cause. Georgia Dep’t of Human Resources v. Word, 265 Ga. 461, 458 S.E.2d 110.

Research References & Practice Aids

U.S. Code.

Title IV-D of the federal Social Security Act, referred to in this Code section, is codified at 42 U.S.C. § 651 et seq.

Administrative rules and regulations.

Garnishment and orders to withhold and deliver, Official Compilation of the Rules and Regulations of the State of Georgia, Office of Child Support Recovery, Recovery and Administration of Child Support, § 290-7-1-.09.

Law reviews.

For note on 1989 enactment of this Code section, see 6 Ga. St. U.L. Rev. 227 (1989).

For note on 1993 amendment of this Code section, see 10 Ga. St. U.L. Rev. 118 (1993).

For article commenting on the 1997 amendment of this Code section, see 14 Ga. St. U.L. Rev. 121 (1997).

Hierarchy Notes:

O.C.G.A. Title 19

O.C.G.A. Title 19, Ch. 6

O.C.G.A. Title 19, Ch. 6, Art. 1

Official Code of Georgia Annotated

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