

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 80

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 10, 1996

The Assembly Judiciary Committee reports favorably and with committee amendments Assembly Bill No. 80.

This bill would modify the stringent provisions of current law, set out in N.J.S.A.2A:17-56.23a, which bar the retroactive modification of child support orders except for the period during which there is a pending court application for modification.

In Ohlhoff v. Ohlhoff, 246 N.J.Super. 1 (App. Div. 1991), the Appellate Division strictly construed the statute to hold that a non-custodial father's obligation to pay child support on behalf of his son could not be retroactively modified to reflect the fact that the child was no longer living with the custodial parent (his mother). Although the child had moved out of his mother's house at the age of 13 and had been living with his father for the past year and a half, the court refused to modify the father's child support arrearages that had accumulated during that time, holding that the statute prohibited such modification.

This bill would amend N.J.S.A.2A:17-56.23a to allow the court to retroactively modify child support orders, with respect to a period during which there is no pending application for modification, but only if the result of not doing so would be unjust, due to a substantial change of physical custody of the child or other factors. The committee amendments added change of the emancipation status of the child. The committee amendments would also define "other factors" so that term is not too broad. They would consist of extraordinary circumstances, including but not limited to, a medically documented mental or physical disability which prevented the obligor from making a timely application or other extraordinary circumstances of a non-medical nature.

The committee amendment adding section 2 to the bill is intended to clarify that this section was enacted in 1990 to comply with federal requirements on IV-D matters. The intent was not to compel review of all other orders for child support payments based merely on the passage of three years. Changed circumstances may compel review at any interval but this particular section of law is applicable only to IV-D orders for child support payments.

This bill embodies Recommendation 18 of the report of the Commission to Study the Law of Divorce, issued April 18, 1995.

This bill was prefiled for introduction in the 1996 session pending technical review. As reported, the bill includes the changes required by technical review which has been performed.