

SENATE, No. 944

STATE OF NEW JERSEY

INTRODUCED MARCH 14, 1996

By Senator MATHEUSSEN

1 AN ACT concerning child support and amending P.L.1988, c.111.

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3 **BE IT ENACTED** by the Senate and General Assembly of the State  
4 of New Jersey:

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6 1. Section 1 of P.L.1988, c.111 (C.2A:17-56.23a) is amended to  
7 read as follows:

8 1. Any payment or installment of an order for child support, or  
9 those portions of an order which are allocated for child support,  
10 whether ordered in this State or in another state, shall be fully  
11 enforceable and entitled to full faith and credit and shall be a judgment  
12 by operation of law on and after the date it is due. No payment or  
13 installment of an order for child support, or those portions of an order  
14 which are allocated for child support established prior to or  
15 subsequent to the effective date of P.L.1993, c.45 (C.2A:17-56.23a),  
16 shall be retroactively modified by the court except as follows:

17 (a) An order for child support or portions of an order which are  
18 allocated for child support may be retroactively modified by the court  
19 with respect to the period during which there is a pending application  
20 for modification, but only from the date the notice of motion was  
21 mailed either directly or through the appropriate agent. The written  
22 notice will state that a change of circumstances has occurred and a  
23 motion for modification of the order will be filed within 45 days. In  
24 the event a motion is not filed within the 45-day period, modification  
25 shall be permitted only from the date the motion is filed with the court.

26 (b) With respect to a period during which there was no pending  
27 application for modification, an order for child support or portions of  
28 an order which are allocated for child support may be retroactively  
29 modified by the court only if the result of not doing so would be  
30 unjust, due to a substantial change of physical custody of the child or  
31 other factors.

**EXPLANATION** - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 The non-modification provision of this section is intended to be  
2 curative and shall apply to all orders entered before, on and after the  
3 effective date of this act.

4 (cf: P.L.1993, c.45)

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6 2. This act shall take effect immediately.

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9 STATEMENT

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

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

25 The sponsor believes that it was never the intent of the Legislature  
26 to prohibit retroactive modification of child support arrearages in  
27 cases like this one, where an obvious injustice would result. The  
28 Ohlhoff decision is also likely to lead to increased litigation, since  
29 non-custodial parents whose teen-age children decide to live with them  
30 are now forced to immediately file court motions in order to protect  
31 themselves from accumulating an irreducible amount of child support  
32 arrearages.

33 Consequently, this proposed legislation would amend  
34 N.J.S.A.2A:17-56.23a to allow the court to retroactively modify child  
35 support orders, with respect to a period during which there is no  
36 pending application for modification, but only if the result of not doing  
37 so would be unjust, due to a substantial change of physical custody of  
38 the child or other factors.

39 The courts have always had the authority, pursuant to Court Rule,  
40 to modify or void a judgment or order for equitable reasons, and to  
41 interpret new statutory mandates in accordance with pre-existing  
42 statutory principles. (See R.4:50, allowing relief of a final judgment  
43 or order for reasons of "mistake, inadvertence, excusable neglect . . .  
44 the judgment or order is void . . . the judgment or order has been  
45 satisfied." And see the recent Appellate Division decision in Mallamo  
46 v. Mallamo, A-134-93T2, decided Feb. 27, 1995, holding that, despite

1 the literal words of N.J.S.A.2A:17-56.23a, a child support order can  
2 be retroactively modified when the order is pendente lite (temporary),  
3 issued before the trial of the case.) The proposed legislation would  
4 reiterate this judicial authority statutorily.

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

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11 Permits retroactive modification of child support under certain  
12 circumstances.