

**IN THE  
MISSOURI SUPREME COURT**

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**No. SC88242**

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**SHERRIE L. HANSEN,**

**Relator,**

**v.**

**STATE OF MISSOURI,  
DEPARTMENT OF SOCIAL SERVICES,  
FAMILY SUPPORT DIVISION,  
JANEL LUCK, DIRECTOR,**

**Respondent.**

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**On Original Writ of Prohibition**

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**RESPONDENT'S BRIEF**

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## STANDARD OF REVIEW

A writ of prohibition is an “extraordinary remedy . . . to be used with great caution and forbearance and only in cases of extreme necessity.” *State ex rel. Douglas Toyota v. Keeter*, 804 S.W.2d 750, 752 (Mo. banc 1991), citing *Derfelt v. Yocom*, 692 S.W.2d 300, 301 (Mo. banc 1985). “Prohibition is not a writ of right; its issuance in a given case is addressed to the sound discretion of the Court. . . . It will be denied where an adequate remedy is provided by appeal.” *State ex rel. Baldwin v. Dandurand*, 785 S.W.2d 547, 549 (Mo. banc 1990) (citing *State ex rel. Hannah v. Seier*, 654 S.W.2d 894, 895, and *State ex rel. T.J.H. v. Bills*, 504 S.W.2d 76, 78-79 (Mo. banc 1974)). Relator has the burden to prove the facts and law entitling her to prohibition. *State ex rel. Ford Motor Co. v. Messina*, 71 S.W.3d 602, 607 (Mo. banc 2002). Prohibition is a powerful writ, and its use is limited to three rare categories:

1) to prevent the usurpation of judicial power when the trial court lacks jurisdiction; 2) to remedy a[n] excess of jurisdiction or an abuse of discretion where the lower court lacks the power to act as intended; or 3) where a party may suffer irreparable harm if relief is not made available in response to the trial court’s order. . . . ‘The essential function of prohibition is to correct or prevent inferior courts and agencies from action without or in excess of their jurisdiction.’ . . . It is also ‘not generally intended as a substitute for correction of alleged or anticipated judicial errors.’

*State ex rel. Womack v. Rolf*, 173 S.W.3d 634, 636 (Mo. banc 2005) (citations omitted).

See also *State ex rel. Riverside Joint Ventures v. Missouri Gaming Comm’n*, 969 S.W.2d

218, 221 (Mo. banc 1998).

Prohibition may also issue for the purposes of judicial economy. *State ex rel. Noranda Aluminum, Inc. v. Rains*, 706 S.W.2d 861, 862 (Mo. banc 1986). The Court may decide:

an important legal question that routinely escapes this Court's attention because of the litigation process and the lack of interest in some instances to prosecute an appeal at a client's expense. . . . Thus, where there is an issue which might otherwise escape this Court's attention for some time and which in the meantime is being decided by administrative bodies or trial courts whose opinions may be reason of inertia or other cause become precedent; and, the issue is being decided wrongly and is not a mere misapplication of law.

*Id.* (footnote omitted)

The Court may also consider the legal merits on a petition for writ of prohibition when it deems the case to be one of great urgency or great public interest. 2A MO. PRAC. § 30.4 (citing *Stemmler v. Einstein*, 297 S.W.2d 467 (Mo. banc 1956), and *Mansur v. Morris*, 196 S.W.2d 287 (Mo. banc 1946)).

This is such a case. It raises an issue of sufficient public interest or urgency to warrant the Court's determination of the legal merits and it will provide judicial economy by resolving the matter for all of Missouri's courts.

### **STATEMENT OF FACTS**

On June 7, 2006, the Missouri Department of Social Services, Family Support

Division (“Division”)<sup>1</sup> initiated the process of child support modification by sending to Hansen and her former husband notice that the Division believed there had been a change in the appropriate child support amount, pursuant to the child support guidelines of Rule 88.01, and that the Division intended to seek a modification of the child support previously ordered by the Court. Hansen’s App. at 2. This notice also stated that the parties had a right to request an administrative hearing if they did not agree with the modification the Division intended to seek. *Id.* Hansen requested a hearing and the Division set her hearing for January 24, 2007.

On July 24, 2006, Hansen requested a writ of prohibition from the Circuit Court of McDonald County. On November 20, 2006, that court denied her request. On December 4, 2006, Hansen sought a writ of prohibition from the Missouri Court of Appeals, Southern District. On December 18, 2006, that court, too, denied her request for writ.

To date, The Division has held no administrative hearing on Hansen’s case, nor determined whether to file a recommendation for modification in any circuit court that would affect the support award regarding her children.

## **ARGUMENT**

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<sup>1</sup> In 2003, Executive Order 03-02 transferred the statutory authority of the Division of Child Support Enforcement to the Family Support Division. *See State ex rel. Dept. of Social Services v. K.L.D.*, 118 S.W.3d 283 (Mo. App. W.D. 2003).

**I. In *Chastain v. Chastain*, this Court upheld the federally-mandated administrative child support order review process established by § 454.496 that Relator now seeks to eliminate.**

States must establish a detailed state plan for a child support enforcement program in order to qualify for Federal public assistance funds. *Baldwin v. Baldwin*, 174 S.W.3d 685, 687 (Mo. App. S.D. 2005). The state plan must include child support modification services. 42 U.S.C. § 654(4) (2006). The State must provide these modification services to both custodial and non-custodial parents. 45 C.F.R. §§ 303.8(a) and (b)(1) (2006). And the State must have in effect “expedited *administrative* and judicial procedures (including the procedures specified in subsection (c) of this section) for establishing paternity and for establishing, modifying, and enforcing support obligations.” 42 U.S.C. § 666(a)(2) (2006) (emphasis added). “Subsection (c) of this section” requires “Procedures which give the *State agency* the authority to take the following actions relating to establishment of paternity or to establishment, modification, or enforcement of support orders . . . .” 42 U.S.C. § 666(c)(1) (2006) (emphasis added).

In order to comply with these federal mandates, the General Assembly enacted a state program, which includes § 454.400.2(13), RSMo 2000, authorizing the State to provide child support modification services. The administrative agency proceeding portion of that statute is found in § 454.496, RSMo. That is the same statute that this Court addressed in *Chastain v. Chastain*, 932 S.W.2d 396, 399 (Mo. banc 1996).

In *Chastain*, this Court asked – and answered in the affirmative – the key question regarding the validity of the § 454.496 administrative process:

Do constitutional provisions demanding a separation of powers between the branches of government, authorizing this Court to establish rules of practice, procedure and pleading for all courts, and requiring that administrative decisions be reviewed “in such manner and by such court as the supreme court by rule shall direct” prohibit the General Assembly from authorizing the Division of Child Support Enforcement from initiating a process to modify judicial child support orders? We hold that the authority placed in the Division of Child Support Enforcement to initiate a process to modify judicial child support orders by section 454.496, RSMo 2000, does not offend the constitution.

*Id.* at 397 (footnotes omitted).

Relator is careful to avoid clearly adopting Chastain’s view that this Court rejected: “In the father’s mind, the authority of the Division to institute a process that leads to modification of a judicial order is tantamount to an exercise of judicial review.” 932 S.W.2d at 399. The most obvious reason for rejecting that argument was the one reflected in the Court’s formulation of the question before it, *i.e.*, that it was addressing an administrative process under which the Division merely “initiat[ed] a process to modify judicial child support orders.” The Court described the statutory scheme in two parts, the first being the administrative portion that first Chastain, and now Hansen wants to eliminate:

Under section 454.496.1, “any time after the entry of a court order for child support in” cases where support rights have been assigned to the state under

section 208.040 or a child support recipient requests support services under section 454.425, the parent paying support, the person to whom support is owed, or the Division may file a motion to modify the existing child support order. Section 454.400.2 requires the director of the Division to review the existing order to determine whether modification is appropriate under Rule 88.01 guidelines. If the director believes modification is appropriate, a motion setting forth the reasons for the modification must be served on all the parties. Once the motion is filed, opposing parties have thirty days either to resolve the matter by stipulation, file written objections, or request a hearing. If a hearing is requested, a hearing officer designated by the Department of Social Services conducts a hearing pursuant to Chapter 536, RSMo. Where neither objections nor a request for hearing is timely filed, the Division may enter an order granting modification.

*Id.* 397-98 (footnotes omitted).

Though denominated an “order” by the statute, § 454.496.2 (“the director, upon proof of service, shall enter an order”), § 454.496.6 (“an administrative order”), the ultimate result of the Division’s work is not an order in the sense of a document imposing obligations or changing obligations previously imposed on anyone. That is because under the statute, any “administrative order modifying a court order is not effective until the administrative order is filed with and approved by the court that entered the court order.” § 454.496.4. The parents’ child support obligations are not changed one cent

when the Division enters its administrative order.

The only action provided for by the “administrative order” that concludes the administrative proceeding is for Division to file a motion in the circuit court, asking that the court modify its order, as the Court explained in the course of upholding that portion of the statute against Chastain’s constitutional challenge:

First, section 454.496 does not permit the Division to review the trial court's order. Instead, the statute permits the Division to initiate the process that results in modification of the original child support order only if there is a material change in the factual circumstances that formed the basis for the trial court's order. The Division considers a claim that circumstances have changed and that these new facts remove the current level of child support from conformity with Rule 88.01. This is not judicial review. It is an initial assessment of the current compliance of the child support payment levels with Rule 88.01.

932 S.W.2d at 399.

The Court went on to reject the manner in which the General Assembly attempted to modify the proceedings in the circuit court, which begin after the Division files its motion and “administrative order.” *See id.* at 399-400. The effect of the Court’s holding was to make the Division’s filing nothing more than the opening pleading in a judicial modification proceeding – the same kind of opening that either parent could file without going first to the Division. *See* § 452.370, RSMo. Regardless of who files, in the wake of *Chastain* whether the support order is actually changed is always for the court to

decide – after hearing from the parties, including the presentation of evidence, if the court determines it appropriate. *See* § 454.496, RSMo.

**II. *Chastain* remains good law; the Division may still use the administrative procedure in § 454.496 to determine whether to file a motion to modify in the circuit court.**

Since this Court decided *Chastain* more than ten years ago, § 454.496 has been amended only once, in 1997. *See* S.B. 361, A.L. 1997 at 1181-82. The minor changes made in the administrative procedure portion of the statute have no impact on the *Chastain* holding. The Court’s conclusions remain true today: an administrative proceeding under § 454.496 does not include review of or result in modification of a judicial support order, but only consideration whether to ask for judicial review and modification; and because of that limitation, the administrative process set out in § 454.496 is constitutional.

Unable to point to any change in § 454.496 itself, Hansen argues that the statute was repealed by implication by a broadly worded statute enacted in 2003. In her view, that law took from the Division the role confirmed in *Chastain*. But she is wrong; the statute she cites follows this Court’s analysis in *Chastain*, confirming the Court’s holding as to the modification of judicial orders, but not touching the administrative process used by the Division to initiate such modifications.

The particular provision Relator Hansen cites is a recent addition to Chapter 511, “Judgments,” in § 511.350, which the Revisor of Statutes has labeled, “Liens on real estate established by judgment or decrees in courts of record, exception--associate circuit

court, procedure required--no administrative amendments.” The 2003 General Assembly adopted the provision that Relator cites, § 511.350.4, as part of H.B. 613, “A bill [t]o repeal sections . . . 511.350 . . . , RSMo, and to enact in lieu thereof thirty-two new sections relating to court procedures, with penalty provisions.” The title of H.B. 613 said nothing about child support enforcement, administrative law, or anything in chapter 454. But new subsection 511.350.4 of the lien law made a broad statement regarding the modification of judgments: “Notwithstanding any other provision of law, no judgments or decrees entered by any court of competent jurisdiction may be amended or modified by any administrative agency.”

Relator Hansen argues that the language of new subsection 4 is “plain and unambiguous.” Hansen Br. at 20. And certainly where the legislative intent is clear from the language used in a statute and there is no ambiguity, there is no room for statutory construction. *Cook v. Cook*, 97 S.W.3d 482, 485 (Mo. App. W.D. 2002). But the plain language of subsection 4 does not help her cause. It says nothing whatsoever about administrative proceedings that may precede judicial ones. It says nothing whatsoever about the ability of the Division to determine whether to file, nor about the Division’s ultimate authority to file motions to modify child support orders. It merely barred administrative agencies from modifying awards – which, as this Court recognized in *Chastain*, nothing in § 454.496 allows or could allow the Division to do.<sup>2</sup>

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<sup>2</sup> A portion of Hansen’s argument might be read as suggesting that the statute bars not just administrative modification of court orders, but an agency “attempting” to modify a

Relator Hansen’s arguments about legislative intent have no bearing on this case. That one sponsor “felt” that the Division had “overstepped its bounds” in a particular case (Hansen Br. at 22) does not change the language of H.B. 613 so as to amend a portion of Chapter 454. Nor does it tell us what the majority of the General Assembly had in mind when it voted for the bill. It is no more useful than the testimony discussed in *Pipe Fabricators, Inc. v. Director of Revenue*, 654 S.W.2d 74 (Mo. banc 1983). There, one of the litigants attempted to introduce evidence in the form of an affidavit from a former State Senator attesting that a certificate of convenience and necessity applied to a specific major airline. The Court upheld the trial court’s rejection of this affidavit, citing *Missourians for Honest Elections v. Missouri Elections Comm’n*, 536 S.W.2d 766, 774-775 (Mo. App. E.D. 1976) for the seemingly obvious proposition that, under Missouri law and precedent, courts are “bound by the express written law, not what may have been intended by the enactment.” *Pipe Fabricators*, 654 S.W.2d at 76. Put another way, the words of the statute speak for themselves. *Wolff Shoe v. Director of Revenue*, 762 S.W.2d 29, 31 (Mo. banc 1988). One legislator’s opinion cannot be the basis for a holding as to the meaning of a statute for which his was only one vote.

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court order. Hansen Br. at 20. But the statute does not say that. To suggest that the General Assembly has banned all agencies from considering whether to file and from filing requests to modify judicial orders would be ludicrous. Yet given that § 511.350.4 says nothing about limiting its application to the child support context, that is what reading “attempt” into the statute would mean.

That is particularly true when that opinion asserts that the legislature by implication repealed an entire section of a different chapter, thus revoking a procedure adopted to conform to federal requirements. Repeal by implication is disfavored, and if both statutes can be reconciled then both should be given effect. *St. Charles County v. Director of Revenue*, 961 S.W.2d 44, 47 (Mo. banc 1998). But here, there is no need to reconcile the statutes, for they pass without touching: § 511.350.4 bars agencies from modifying court judgments, and § 454.496 does not grant an agency authority to modify court judgments. Modification only results if and when a court makes it so.

Relator Hansen attempts to buttress her expansive reading of § 511.350 by suggesting that the Division is bound by a statement regarding the impact of that statute made in an affidavit by an employee of the Attorney General's Office in another case. She misreads that statement; it is entirely consistent with the position the Division takes here. But the statement would not be binding on the Division regardless: it was a statement of law, not of fact, not made by someone speaking for or authorized to speak for the Division.

The statement that Hansen cites was made by the Attorney General's Deputy Chief of Staff, based on his involvement in a transfer of some responsibilities and positions from the Department of Social Services to the Attorney General's Office that occurred as H.B. 613 became effective. In his view at that time, H.B. 613 "dramatically" affected "administratively modifying judicial orders, including child support orders." It meant that more of the work of modification would be done in circuit courts, thus "heighten[ing] the need in the [Attorney General's Office] for trial lawyers to handle a

high-volume of modification to support orders.” Exhibit 8. At the time of the transfer, the Division was abandoning the administrative pre-initiation process at issue here (where the agency issued motions to modify, held hearings, and issued orders), having concluded that such a process was barred – perhaps by § 511.350.4, RSMo, enacted as part of H.B. 613 in 2003. That the Division later concluded to the contrary – *i.e.*, concluded that it could legally use an administrative process so long as it was for the limited purpose allowed in *Chastain* – does not create a conflict with the legal position of the Attorney General in the federal lawsuit Hansen cites. The positions in the two cases are consistent in asserting that child support orders issued by courts cannot be administratively modified. Nelson said nothing more than what *Chastain*, particularly after the passage of § 511.350.4, made obvious: that regardless of what occurred in the proceedings before the Division, ultimately every child support order modification was going to require judicial action, and that because such action could not be limited to a record created in or a finding made by a hearing officer at the Division, Assistant Attorneys General would be actively litigating in the circuit courts. Nelson simply did not address whether in light of § 511.350.4 an administrative process could still precede the filing of a motion to modify – precisely what the language of § 454.496 upheld in *Chastain* allows – nor what the scope, result, or impact of such an administrative proceeding would be. He expressed only a view about what Assistant Attorneys General would be doing, again, actually litigating child support modifications in circuit courts.

But even if Nelson had said something contrary to the Division’s position regarding the continued validity of § 454.496, it would not help Hansen. What divides

the parties here is a legal question, not a factual one. It is axiomatic that parties cannot stipulate to the law. *Junior College Dist. of St. Louis v. City of St. Louis*, 149 S.W.3d 442, 446 n.1 (Mo. banc 2004). And judicial estoppel applies only to facts. “[A] person who states facts under oath, during the course of a trial, is estopped to deny such facts in a second suit. . . .” *Collins v. Missouri Bar Plan*, 157 S.W.3d 726, 733 (Mo. App. W.D. 2005) (quoting *Bellinger v. Boatmen’s Nat’l Bank of St. Louis*, 779 S.W.2d 647, 650 (Mo. App. E.D. 1989)). Hansen’s exhibits and the Division’s arguments here could not be fairly read to “state facts.”

Moreover, despite Hansen’s blithe reference to the “conclusion” reached by the “Attorney General which is counsel for the Respondent” (Hansen Br. at 23), Nelson was not speaking for the Division – not as its employee, nor as its agent, nor even as its lawyer. The Division is not a party to the case in which the affidavit was filed. Hansen cites no authority – indeed, so far as we can tell there is none – to support a necessary prerequisite to her reliance on Nelson’s statement: that the statement was made by someone authorized to speak for, and actually speaking for, the Division or the Department of which it is part. Hansen provides neither precedential, legal, or logical support for the very troubling proposition that a position taken on a factual question in one case on behalf of one agency by someone from the Attorney General’s Office could bind other agencies on questions of law. The Attorney General has not, to use the language quoted by Relator Hansen (Hansen Br. at 23), made any “judicial admissions . . . about his client.” *Steeve v. Kansas City Southern Ry. Co.*, 175 S.W. 177, 181 (Mo. 1915).

But ultimately, that dispute does not matter. This is not an instance in which the Court need look to rules of construction or extrinsic sources to determine whether the administrative process created by § 454.496 remains in place. The language of that statute remains unchanged since *Chastain*, and new § 511.350.4 by its plain language does not change the Division’s authority.

Thus, in the end Hansen is required to ask the Court to reverse *Chastain*. Her legal basis for that request is centered on this Court’s definition of “judicial power” – exercised solely by the judiciary, as held in *Chastain* – as having “two components – judicial review and the power of courts to decide issues and pronounce and enforce judgments.” 932 S.W.2d at 399, quoted in Hansen Br. at 19. She concedes that this Court already held in *Chastain* that “§ 454.496 does not permit the Division to ‘review the trial court’s order.’” Hansen Br. at 19, quoting *Chastain*, 932 S.W.2d at 399. She then finds the word “review” used in the Division’s regulation, 13 C.S.R. 30-5.020(2)(B), and insists that the regulation proves her point, *i.e.*, that despite what the Court held in *Chastain* regarding the statute, the Court should now read the statute differently because of what the Division is doing. But her argument ignores the difference between “review” of a judicial order and “judicial review.” “Judicial review” is defined as

1. A court’s power to review the actions of other branches or levels of government; esp. the courts’ power to invalidate legislative and executive actions as being unconstitutional; 2. The constitutional doctrine providing for this power; 3. A court’s review of a lower court’s or an administrative body’s factual or legal findings.

BLACK'S LAW DICTIONARY (7<sup>th</sup> ed. 1999) at 852. That definition simply does not – and cannot, in any logical sense – extend to all review of judicial orders, as Relator Hansen suggests.

A party who receives a court order reads and studies it, as does the party's lawyer. Their object is to see what it means and what to do in response. That is “review,” but it is not “judicial review.” Nor does it become “judicial review” when the party – for example, a parent subject to a child support order – later reviews the court order, again, asking whether to return to court in light of changed conditions.

*Chastain* remains good law. The Court should decline the invitation to overrule it and refuse to extend the sphere of judicial power into the realm of the executive deciding whether or when to ask courts to revisit existing orders.

**III. The Division is acting properly within the authority granted by § 454.496, as upheld in *Chastain*.**

The remainder of Hansen's brief urges the court to find that the Division has either moved too far, going outside of the area sanctioned by *Chastain*, or has retreated too far from the scope of authority confirmed there.

First, Hansen argues that the Division has moved too far beyond the line set in *Chastain* and thus into the judicial realm. She derives that argument not from anything that the Division has done, nor from any regulation or practice of the Division. She cites only the language of the Division's notice telling her that it was beginning the administrative process. Hers is a linguistic argument, claiming that the Division is going to do something beyond what *Chastain* allows because it used words such as “order” in

the form notice it sent to her (Hansen App. at A2 – A5). But that language is insufficient to justify relief for at least three reasons.

First, the language of the notice tracks § 454.496, which calls the final product of the agency deliberations an “administrative order,” while at the same time refusing to give it legal effect. Though some might read the statute’s use of “order” to suggest that the Division itself may modify a judicial order of child support, that misunderstanding would be the result of not appreciating the legislature’s use of the word “order” in the statute. The language of the notice simply does not shoot beyond the mark set by the statute and *Chastain*.

Second, even if Relator Hansen did read the notice language as an incorrect assertion by the Division that its proceeding, without judicial action, would modify the court’s order, she could not reasonably claim to have been prejudiced. A threat of immediate adverse action rather than merely a prerequisite to judicial proceedings would presumably make her more, not less, likely to respond.

And third, if she did have a legitimate complaint about the notice, the logical relief would be merely to require a corrected notice – not to bar the Division from fulfilling its statutory responsibility.

But all that is beside the point. The Division is attempting to do nothing more than what this Court said in *Chastain* it could do: initiate a process to modify judicial child support orders by § 454.496 – a process that may lead to circuit court.

Second, Hansen claims that the Division is not going far enough – *i.e.*, that that it has eliminated critical considerations from the scope of hearing officers’ deliberations.

In her view (never expressed in the proceeding before the Division, nor in seeking a writ from the circuit court or the court of appeals), the Missouri Constitution mandates that the scope of considerations in any formal administrative process the Division uses to determine whether to ask a circuit court to modify a child support order must fully match the scope of considerations that the court itself may use. But there is no authority for that proposition.

Hansen attempts to find support, first, in the Constitution's restrictions on "special laws." But her argument manifests a fundamental misunderstanding of what constitutes a "special law."

A special law is one that "includes less than all who are similarly situated . . . , but a law is not special if it applies to all of a given class alike and the classification is made on a reasonable basis." *Blaske v. Smith & Entzeroth, et al.*, 821 S.W.2d 822, 831 (Mo. banc 1992) (quoting *Ross v. Kansas City General Hosp. and Medical Center*, 608 S.W.2d 397, 400 (Mo. banc 1980)). Under that definition, neither the child support law generally nor § 454.496 specifically is a "special" law. Both apply to all parents subject to child support orders – and Relator, reasonably, makes no attempt to suggest that such parents are not a reasonably defined class for purposes of a child support law.

So instead of claiming that § 454.496 is a "special law," Relator Hansen applies that label to a regulation that defines the tasks of Division hearing officers, 13 C.S.R. 30-5.010. But nothing in the regulation divides groups of similarly situated persons. In fact, nothing in the regulation divides its subject group at all. Rather, it applies to all hearing officers, and to all proceedings before those hearing officers.

Of course, what Relator Hansen is really complaining about is not some kind of line among groups being drawn in the regulation, but about the Division's decision not to have hearing officers act as circuit judges – *i.e.*, to limit their discretion, leaving some questions, including equitable considerations, to be handled for the first time by Article V judges. To try to fit that round peg into the “special law” square hole, Hansen extracts from the list of 30 types of banned “special laws” language that she seems to suggest expands the “special law” ban to laws that do not meet the “special” definition. The particular language is in subpart (4) of Article III § 40, which bans “special laws”

(4) regulating the practice or jurisdiction of, or changing the rules of evidence in any judicial proceeding or inquiry before the courts, sheriffs, commissioners, arbitrators or other tribunals, or providing or changing methods for collection of debts or the enforcing of judgments, or prescribing the effect of judicial sales of real estate.

Mo. Const. art III, § 40(4). She claims that the Division's regulation regulates practice or changes the rules. But even if she had a reasonable argument that the regulation was a “special law,” and thus could arguably be subject to § 40, her claim would founder when she reaches subpart (4), for nothing in the regulation fits within its language.

That subpart does not ban generally applicable or prospective changes in procedure or rules of evidence, even if such changes limit a hearing officer's or judge's discretion. Indeed, such a ban on the work of judges would be inconsistent with the rulemaking authority addressed in Article V § 5. Rather, the subpart bars the General Assembly from changing the rules in a particular proceeding – “any judicial proceeding.”

Here, of course, the general assembly did nothing. And what the Division did was merely to regulate the discretion of its own hearing officers – not of the courts that will ultimately have to decide whether to modify their existing child support orders. And it regulated the work of hearing officers prospectively in all cases, not singling out Hansen or any other parent, nor any particular case, pending or future.

In addition to claiming that the regulation is an impermissible “special law,” Hansen points to authority that requires agencies to act within the scope of their statutorily assigned powers. Hansen Br. at 31 (citing *Bodenhausen v. Missouri Bd. of Registration for the Healing Arts*, 900 S.W.2d 621 (Mo. banc 1995)). She claims that the Division’s regulations are unconstitutional because they do not go to the limits of the agency’s statutory authority. In her view, because the Division *can* have its hearing officers consider all factors that § 452.340 lists as “relevant” for circuit judges to consider, it *must* permit its hearing officers to consider all those factors. But none of the cases she cites come remotely close to such a holding.

There are, of course, cases in which courts have held that agency regulations cannot be more restrictive than legislation requires, such as *Pharmflex, Inc v. Div. of Employment Security*, 964 S.W.2d 825 (Mo. App. W.D. 1997), which Relator Hansen cites. But in those cases, the agency is making a decision that is binding on private parties. Here, by contrast, the agency decision is not binding on Hansen – nor on the father of her children. Only a subsequent judicial decision could be binding on them, as this Court made clear in *Chastain*. *Pharmflex* simply does not stand for the novel proposition that an agency assigned to decide whether to initiate a proceeding in circuit

court is required to itself perform the same full analysis that the court will ultimately perform.

Moreover, even if there were some legal basis for Hansen's claim that the Division is not going far enough in its administrative review, that would not be an adequate basis for the relief Hansen seeks. At most, that would justify an order compelling the agency to expand its review. But again, such an order makes no sense where the person seeking the writ is already entitled to that very relief from the only source that can ultimately bless or benefit her: the circuit court.

### **CONCLUSION**

For the reasons discussed above, the Petition for Writ of Prohibition should be denied and the authority of the Division to proceed under § 454.496 upheld.

Respectfully submitted,

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**CERTIFICATE OF SERVICE AND OF  
COMPLIANCE WITH RULE 84.06(B)**

I hereby certify:

1. That the attached brief complies with the limitations contained in Supreme Court Rule 84.06(b) of this Court and contains 5,832 words, excluding the cover, this certification and the appendix, as determined by Microsoft Word 2003 software; and
2. That the disk simultaneously filed with this brief, containing a copy of this brief, has been scanned for viruses and is virus-free; and
3. That a true and correct copy of the attached brief, and a disk containing a copy of this brief, were mailed, postage prepaid, this 28<sup>th</sup> day of February, 2007, to:

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Department of Social Services  
615 Howerton Court  
Jefferson City, MO 65109  
Respondent

---

Assistant Attorney General

**IN THE  
MISSOURI SUPREME COURT**

---

**No. SC88242**

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**SHERRIE L. HANSEN,**

**Relator,**

**v.**

**STATE OF MISSOURI,  
DEPARTMENT OF SOCIAL SERVICES,  
FAMILY SUPPORT DIVISION,  
JANEL LUCK, DIRECTOR,**

**Respondent.**

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**On Original Writ of Prohibition**

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**APPENDIX**

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**APPENDIX**

42 U.S.C. § 654 .....A1 – A9  
42 U.S.C. § 666 .....A10 – A27  
45 C.F.R. § 303.8.....A28 – A29  
Section 454.400, RSMo 2000.....A30 – A32  
Certificate of Service ..... A34

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**C****Effective: October 01, 2006**

UNITED STATES CODE ANNOTATED  
TITLE 42. THE PUBLIC HEALTH AND WELFARE  
**CHAPTER 7--SOCIAL SECURITY**  
SUBCHAPTER IV--GRANTS TO STATES FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN AND FOR CHILD-WELFARE SERVICES  
PART D--CHILD SUPPORT AND ESTABLISHMENT OF PATERNITY  
→ § 654. State plan for child and spousal support

A State plan for child and spousal support must--

- (1) provide that it shall be in effect in all political subdivisions of the State;
- (2) provide for financial participation by the State;
- (3) provide for the establishment or designation of a single and separate organizational unit, which meets such staffing and organizational requirements as the Secretary may by regulation prescribe, within the State to administer the plan;
- (4) provide that the State will--
  - (A) provide services relating to the establishment of paternity or the establishment, modification, or enforcement of child support obligations, as appropriate, under the plan with respect to--
    - (i) each child for whom (I) assistance is provided under the State program funded under part A of this subchapter, (II) benefits or services for foster care maintenance are provided under the State program funded under part E of this subchapter, (III) medical assistance is provided under the State plan approved under subchapter XIX of this chapter, or (IV) cooperation is required pursuant to section 6(l)(1) of the Food Stamp Act of 1977 (7 U.S.C. 2015(l)(1)), unless, in accordance with paragraph (29), good cause or other exceptions exist;
    - (ii) any other child, if an individual applies for such services with respect to the child; and
  - (B) enforce any support obligation established with respect to--
    - (i) a child with respect to whom the State provides services under the plan; or
    - (ii) the custodial parent of such a child;
- (5) provide that (A) in any case in which support payments are collected for an individual with respect to whom an assignment pursuant to section 608(a)(3) of this title is effective, such payments shall be made to the State for distribution pursuant to section 657 of this title and shall not be paid directly to the family, and the individual will be notified on a monthly basis (or on a quarterly basis for so long as the Secretary determines with respect to a State that requiring such notice on a monthly basis would impose an unreasonable administrative burden) of the

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amount of the support payments collected, and (B) in any case in which support payments are collected for an individual pursuant to the assignment made under section 1396k of this title, such payments shall be made to the State for distribution pursuant to section 1396k of this title, except that this clause shall not apply to such payments for any month after the month in which the individual ceases to be eligible for medical assistance;

(6) provide that--

(A) services under the plan shall be made available to residents of other States on the same terms as to residents of the State submitting the plan,

(B)(i) an application fee for furnishing such services shall be imposed on an individual, other than an individual receiving assistance under a State program funded under part A or E of this subchapter, or under a State plan approved under subchapter XIX of this chapter, or who is required by the State to cooperate with the State agency administering the program under this part pursuant to subsection (l) or (m) of section 2015 of Title 7, and shall be paid by the individual applying for such services, or recovered from the absent parent, or paid by the State out of its own funds (the payment of which from State funds shall not be considered as an administrative cost of the State for the operation of the plan, and shall be considered income to the program), the amount of which

(I) will not exceed \$25 (or such higher or lower amount (which shall be uniform for all States) as the Secretary may determine to be appropriate for any fiscal year to reflect increases or decreases in administrative costs), and

(II) may vary among such individuals on the basis of ability to pay (as determined by the State),

(ii) in the case of an individual who has never received assistance under a State program funded under part A of this subchapter and for whom the State has collected at least \$500 of support, the State shall impose an annual fee of \$25 for each case in which services are furnished, which shall be retained by the State from support collected on behalf of the individual (but not from the first \$500 so collected), paid by the individual applying for the services, recovered from the absent parent, or paid by the State out of its own funds (the payment of which from State funds shall not be considered as an administrative cost of the State for the operation of the plan, and the fees shall be considered income to the program);

(C) a fee of not more than \$25 may be imposed in any case where the State requests the Secretary of the Treasury to withhold past-due support owed to or on behalf of such individual from a tax refund pursuant to section 664(a)(2) of this title,

(D) a fee (in accordance with regulations of the Secretary) for performing genetic tests may be imposed on any individual who is not a recipient of assistance under a State program funded under part A of this subchapter, and

(E) any costs in excess of the fees so imposed may be collected--

(i) from the parent who owes the child or spousal support obligation involved; or

(ii) at the option of the State, from the individual to whom such services are made available, but only if such State has in effect a procedure whereby all persons in such State having authority to order child or spousal support are informed that such costs are to be collected from the individual to whom such services were made available;

(7) provide for entering into cooperative arrangements with appropriate courts and law enforcement officials and

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Indian tribes or tribal organizations (as defined in subsections (e) and (l) of section 450b of Title 25) (A) to assist the agency administering the plan, including the entering into of financial arrangements with such courts and officials in order to assure optimum results under such program, and (B) with respect to any other matters of common concern to such courts or officials and the agency administering the plan;

(8) provide that, for the purpose of establishing parentage, establishing, setting the amount of, modifying, or enforcing child support obligations, or making or enforcing a child custody or visitation determination, as defined in section 663(d)(1) of this title, the agency administering the plan will establish a service to locate parents utilizing--

(A) all sources of information and available records; and

(B) the Federal Parent Locator Service established under section 653 of this title,

and shall, subject to the privacy safeguards required under paragraph (26), disclose only the information described in sections 653 and 663 of this title to the authorized persons specified in such sections for the purposes specified in such sections;

(9) provide that the State will, in accordance with standards prescribed by the Secretary, cooperate with any other State--

(A) in establishing paternity, if necessary;

(B) in locating a noncustodial parent residing in the State (whether or not permanently) against whom any action is being taken under a program established under a plan approved under this part in another State;

(C) in securing compliance by a noncustodial parent residing in such State (whether or not permanently) with an order issued by a court of competent jurisdiction against such parent for the support and maintenance of the child or children or the parent of such child or children with respect to whom aid is being provided under the plan of such other State;

(D) in carrying out other functions required under a plan approved under this part; [FN1] and

(E) not later than March 1, 1997, in using the forms promulgated pursuant to section 652(a)(11) of this title for income withholding, imposition of liens, and issuance of administrative subpoenas in interstate child support cases;

(10) provide that the State will maintain a full record of collections and disbursements made under the plan and have an adequate reporting system;

(11)(A) provide that amounts collected as support shall be distributed as provided in section 657 of this title; and

(B) provide that any payment required to be made under section 656 or 657 of this title to a family shall be made to the resident parent, legal guardian, or caretaker relative having custody of or responsibility for the child or children;

(12) provide for the establishment of procedures to require the State to provide individuals who are applying for or receiving services under the State plan, or who are parties to cases in which services are being provided under the State plan--

(A) with notice of all proceedings in which support obligations might be established or modified; and

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**(B)** with a copy of any order establishing or modifying a child support obligation, or (in the case of a petition for modification) a notice of determination that there should be no change in the amount of the child support award, within 14 days after issuance of such order or determination;

**(13)** provide that the State will comply with such other requirements and standards as the Secretary determines to be necessary to the establishment of an effective program for locating noncustodial parents, establishing paternity, obtaining support orders, and collecting support payments and provide that information requests by parents who are residents of other States be treated with the same priority as requests by parents who are residents of the State submitting the plan;

**(14)(A)** comply with such bonding requirements, for employees who receive, disburse, handle, or have access to, cash, as the Secretary shall by regulations prescribe;

**(B)** maintain methods of administration which are designed to assure that persons responsible for handling cash receipts shall not participate in accounting or operating functions which would permit them to conceal in the accounting records the misuse of cash receipts (except that the Secretary shall by regulations provide for exceptions to this requirement in the case of sparsely populated areas where the hiring of unreasonable additional staff would otherwise be necessary);

**(15)** provide for--

**(A)** a process for annual reviews of and reports to the Secretary on the State program operated under the State plan approved under this part, including such information as may be necessary to measure State compliance with Federal requirements for expedited procedures, using such standards and procedures as are required by the Secretary, under which the State agency will determine the extent to which the program is operated in compliance with this part; and

**(B)** a process of extracting from the automated data processing system required by paragraph (16) and transmitting to the Secretary data and calculations concerning the levels of accomplishment (and rates of improvement) with respect to applicable performance indicators (including paternity establishment percentages) to the extent necessary for purposes of sections 652(g) and 658a of this title;

**(16)** provide, for the establishment and operation by the State agency in accordance with an (initial and annually updated) advance automated data processing planning document approved under section 652(d) of this title, of a statewide automated data processing and information retrieval system meeting the requirements of section 654a of this title designed effectively and efficiently to assist management in the administration of the State plan, so as to control, account for, and monitor all the factors in the support enforcement collection and paternity determination process under such plan;

**(17)** provide that the State will have in effect an agreement with the Secretary entered into pursuant to section 663 of this title for the use of the Parent Locator Service established under section 653 of this title, and provide that the State will accept and transmit to the Secretary requests for information authorized under the provisions of the agreement to be furnished by such Service to authorized persons, will impose and collect (in accordance with regulations of the Secretary) a fee sufficient to cover the costs to the State and to the Secretary incurred by reason of such requests, will transmit to the Secretary from time to time (in accordance with such regulations) so much of the fees collected as are attributable to such costs to the Secretary so incurred, and during the period that such agreement is in effect will otherwise comply with such agreement and regulations of the Secretary with respect thereto;

**(18)** provide that the State has in effect procedures necessary to obtain payment of past-due support from overpayments made to the Secretary of the Treasury as set forth in section 664 of this title, and take all steps

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necessary to implement and utilize such procedures;

**(19)** provide that the agency administering the plan--

**(A)** shall determine on a periodic basis, from information supplied pursuant to section 508 of the Unemployment Compensation Amendments of 1976, whether any individuals receiving compensation under the State's unemployment compensation law (including amounts payable pursuant to any agreement under any Federal unemployment compensation law) owe child support obligations which are being enforced by such agency; and

**(B)** shall enforce any such child support obligations which are owed by such an individual but are not being met--

**(i)** through an agreement with such individual to have specified amounts withheld from compensation otherwise payable to such individual and by submitting a copy of any such agreement to the State agency administering the unemployment compensation law; or

**(ii)** in the absence of such an agreement, by bringing legal process (as defined in section 659(i)(5) of this title) to require the withholding of amounts from such compensation; and

**(20)** provide, to the extent required by section 666 of this title, that the State **(A)** shall have in effect all of the laws to improve child support enforcement effectiveness which are referred to in that section, and **(B)** shall implement the procedures which are prescribed in or pursuant to such laws;

**(21)(A)** at the option of the State, impose a late payment fee on all overdue support (as defined in section 666(e) of this title) under any obligation being enforced under this part, in an amount equal to a uniform percentage determined by the State (not less than 3 percent nor more than 6 percent) of the overdue support, which shall be payable by the noncustodial parent owing the overdue support; and

**(B)** assure that the fee will be collected in addition to, and only after full payment of, the overdue support, and that the imposition of the late payment fee shall not directly or indirectly result in a decrease in the amount of the support which is paid to the child (or spouse) to whom, or on whose behalf, it is owed;

**(22)** in order for the State to be eligible to receive any incentive payments under section 658A of this title, provide that, if one or more political subdivisions of the State participate in the costs of carrying out activities under the State plan during any period, each such subdivision shall be entitled to receive an appropriate share (as determined by the State) of any such incentive payments made to the State for such period, taking into account the efficiency and effectiveness of the activities carried out under the State plan by such political subdivision;

**(23)** provide that the State will regularly and frequently publicize, through public service announcements, the availability of child support enforcement services under the plan and otherwise, including information as to any application fees for such services and a telephone number or postal address at which further information may be obtained and will publicize the availability and encourage the use of procedures for voluntary establishment of paternity and child support by means the State deems appropriate;

**(24)** provide that the State will have in effect an automated data processing and information retrieval system--

**(A)** by October 1, 1997, which meets all requirements of this part which were enacted on or before October 13, 1988; and

**(B)** by October 1, 2000, which meets all requirements of this part enacted on or before August 22, 1996,

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except that such deadline shall be extended by 1 day for each day (if any) by which the Secretary fails to meet the deadline imposed by section 344(a)(3) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996;

**(25)** provide that if a family with respect to which services are provided under the plan ceases to receive assistance under the State program funded under part A of this subchapter, the State shall provide appropriate notice to the family and continue to provide such services, subject to the same conditions and on the same basis as in the case of other individuals to whom services are furnished under the plan, except that an application or other request to continue services shall not be required of such a family and paragraph (6)(B) shall not apply to the family;

**(26)** have in effect safeguards, applicable to all confidential information handled by the State agency, that are designed to protect the privacy rights of the parties, including--

**(A)** safeguards against unauthorized use or disclosure of information relating to proceedings or actions to establish paternity, or to establish, modify, or enforce support, or to make or enforce a child custody determination;

**(B)** prohibitions against the release of information on the whereabouts of 1 party or the child to another party against whom a protective order with respect to the former party or the child has been entered;

**(C)** prohibitions against the release of information on the whereabouts of 1 party or the child to another person if the State has reason to believe that the release of the information to that person may result in physical or emotional harm to the party or the child. [FN2]

**(D)** in cases in which the prohibitions under subparagraphs (B) and (C) apply, the requirement to notify the Secretary, for purposes of section 653(b)(2) of this title, that the State has reasonable evidence of domestic violence or child abuse against a party or the child and that the disclosure of such information could be harmful to the party or the child; and

**(E)** procedures providing that when the Secretary discloses information about a parent or child to a State court or an agent of a State court described in section 653(c)(2) or 663(d)(2)(B) of this title, and advises that court or agent that the Secretary has been notified that there is reasonable evidence of domestic violence or child abuse pursuant to section 653(b)(2) of this title, the court shall determine whether disclosure to any other person of information received from the Secretary could be harmful to the parent or child and, if the court determines that disclosure to any other person could be harmful, the court and its agents shall not make any such disclosure;

**(27)** provide that, on and after October 1, 1998, the State agency will--

**(A)** operate a State disbursement unit in accordance with section 654b of this title; and

**(B)** have sufficient State staff (consisting of State employees) and (at State option) contractors reporting directly to the State agency to--

**(i)** monitor and enforce support collections through the unit in cases being enforced by the State pursuant to section 654(4) of this title (including carrying out the automated data processing responsibilities described in section 654A(g) of this title); and

**(ii)** take the actions described in section 666(c)(1) of this title in appropriate cases;

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(28) provide that, on and after October 1, 1997, the State will operate a State Directory of New Hires in accordance with section 653a of this title;

(29) provide that the State agency responsible for administering the State plan--

(A) shall make the determination (and redetermination at appropriate intervals) as to whether an individual who has applied for or is receiving assistance under the State program funded under part A of this subchapter, the State program under subchapter XIX of this chapter, or the food stamp program, as defined under section 3(h) of the Food Stamp Act of 1977 (7 U.S.C. 2012(h)), is cooperating in good faith with the State in establishing the paternity of, or in establishing, modifying, or enforcing a support order for, any child of the individual by providing the State agency with the name of, and such other information as the State agency may require with respect to, the noncustodial parent of the child, subject to good cause and other exceptions which--

(i) in the case of the State program funded under part A of this subchapter, the State program under part E of this subchapter, or the State program under subchapter XIX of this chapter shall, at the option of the State, be defined, taking into account the best interests of the child, and applied in each case, by the State agency administering such program; and

(ii) in the case of the food stamp program, as defined under section 3(h) of the Food Stamp Act of 1977 (7 U.S.C. 2012(h)), shall be defined and applied in each case under that program in accordance with section 6(l)(2) of the Food Stamp Act of 1977 (7 U.S.C. 2015(l)(2));

(B) shall require the individual to supply additional necessary information and appear at interviews, hearings, and legal proceedings;

(C) shall require the individual and the child to submit to genetic tests pursuant to judicial or administrative order;

(D) may request that the individual sign a voluntary acknowledgment of paternity, after notice of the rights and consequences of such an acknowledgment, but may not require the individual to sign an acknowledgment or otherwise relinquish the right to genetic tests as a condition of cooperation and eligibility for assistance under the State program funded under part A of this subchapter, the State program under part E of this subchapter, the State program under subchapter XIX of this chapter, or the food stamp program, as defined under section 3(h) of the Food Stamp Act of 1977 (7 U.S.C. 2012(h)); and

(E) shall promptly notify the individual and the State agency administering the State program funded under part A of this subchapter, the State agency administering the State program under part E of this subchapter, the State agency administering the State program under subchapter XIX of this chapter, or the State agency administering the food stamp program, as defined under section 3(h) of the Food Stamp Act of 1977 (7 U.S.C. 2012(h)), of each such determination, and if noncooperation is determined, the basis therefor;

(30) provide that the State shall use the definitions established under section 652(a)(5) of this title in collecting and reporting information as required under this part;

(31) provide that the State agency will have in effect a procedure for certifying to the Secretary, for purposes of the procedure under section 652(k) of this title, determinations that individuals owe arrearages of child support in an amount exceeding \$2,500, under which procedure--

(A) each individual concerned is afforded notice of such determination and the consequences thereof, and an opportunity to contest the determination; and

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(B) the certification by the State agency is furnished to the Secretary in such format, and accompanied by such supporting documentation, as the Secretary may require;

(32)(A) provide that any request for services under this part by a foreign reciprocating country or a foreign country with which the State has an arrangement described in section 659a(d) of this title shall be treated as a request by a State;

(B) provide, at State option, notwithstanding paragraph (4) or any other provision of this part, for services under the plan for enforcement of a spousal support order not described in paragraph (4)(B) entered by such a country (or subdivision); and

(C) provide that no applications will be required from, and no costs will be assessed for such services against, the foreign reciprocating country or foreign obligee (but costs may at State option be assessed against the obligor); and

(33) provide that a State that receives funding pursuant to section 628 of this title and that has within its borders Indian country (as defined in section 1151 of Title 18) may enter into cooperative agreements with an Indian tribe or tribal organization (as defined in subsections (e) and (l) of section 450b of Title 25), if the Indian tribe or tribal organization demonstrates that such tribe or organization has an established tribal court system or a Court of Indian Offenses with the authority to establish paternity, establish, modify, or enforce support orders, or to enter support orders in accordance with child support guidelines established or adopted by such tribe or organization, under which the State and tribe or organization shall provide for the cooperative delivery of child support enforcement services in Indian country and for the forwarding of all collections pursuant to the functions performed by the tribe or organization to the State agency, or conversely, by the State agency to the tribe or organization, which shall distribute such collections in accordance with such agreement.

The State may allow the jurisdiction which makes the collection involved to retain any application fee under paragraph (6)(B) or any late payment fee under paragraph (21). Nothing in paragraph (33) shall void any provision of any cooperative agreement entered into before August 22, 1996, nor shall such paragraph deprive any State of jurisdiction over Indian country (as so defined) that is lawfully exercised under section 1322 of Title 25.

[FN1] So in original. The semicolon should probably be a comma.

[FN2] So in original. The period probably should be a semicolon.

## ENACTMENT OF PARAGRAPH (34)

<Pub.L. 109-171, Title VII, § 7301(b)(1)(C), (e), Feb. 8, 2006, 120 Stat. 143, 144, provided that, effective Oct. 1, 2009, unless the State elects provisions to apply between Oct. 1, 2008 and Sept. 30, 2009, the section is amended-->

<(i) by striking "and" at the end of paragraph (32);>

<(ii) by striking the period at the end of paragraph (33) and inserting "; and"; and>

<(iii) by inserting after paragraph (33) the following:>

<(34) include an election by the State to apply section 657(a)(2)(B) of this title or former section 657(a)(2)(B) of this title (as in effect for the State immediately before the date this paragraph first applies to the State) to the distribution of the amounts which are the subject of such sections and, for so long as the State elects to so apply such former section, the amendments made by subsection (b)(1) of section

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7301 of the Deficit Reduction Act of 2005 shall not apply with respect to the State, notwithstanding subsection (e) of such section 7301.>

Current through P.L. 109-482 (End) approved 01-15-07

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**C**

**Effective: [See Notes]**

UNITED STATES CODE ANNOTATED  
TITLE 42. THE PUBLIC HEALTH AND WELFARE  
**CHAPTER 7--SOCIAL SECURITY**  
SUBCHAPTER IV--GRANTS TO STATES FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN AND FOR CHILD-WELFARE SERVICES  
PART D--CHILD SUPPORT AND ESTABLISHMENT OF PATERNITY  
→§ 666. Requirement of statutorily prescribed procedures to improve effectiveness of child support enforcement

(a) Types of procedures required

In order to satisfy section 654(20)(A) of this title, each State must have in effect laws requiring the use of the following procedures, consistent with this section and with regulations of the Secretary, to increase the effectiveness of the program which the State administers under this part:

**(1)(A)** Procedures described in subsection (b) of this section for the withholding from income of amounts payable as support in cases subject to enforcement under the State plan.

**(B)** Procedures under which the income of a person with a support obligation imposed by a support order issued (or modified) in the State before January 1, 1994, if not otherwise subject to withholding under subsection (b) of this section, shall become subject to withholding as provided in subsection (b) of this section if arrearages occur, without the need for a judicial or administrative hearing.

**(2)** Expedited administrative and judicial procedures (including the procedures specified in subsection (c) of this section) for establishing paternity and for establishing, modifying, and enforcing support obligations. The Secretary may waive the provisions of this paragraph with respect to one or more political subdivisions within the State on the basis of the effectiveness and timeliness of support order issuance and enforcement or paternity establishment within the political subdivision (in accordance with the general rule for exemptions under subsection (d) of this section).

**(3)** Procedures under which the State child support enforcement agency shall request, and the State shall provide, that for the purpose of enforcing a support order under any State plan approved under this part--

**(A)** any refund of State income tax which would otherwise be payable to a noncustodial parent will be reduced, after notice has been sent to that noncustodial parent of the proposed reduction and the procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State), by the amount of any overdue support owed by such noncustodial parent;

**(B)** the amount by which such refund is reduced shall be distributed in accordance with section 657 of this title in the case of overdue support assigned to a State pursuant to section 608(a)(3) or 671(a)(17) of this title, or, in any other case, shall be distributed, after deduction of any fees imposed by the State to cover the costs of collection, to the child or parent to whom such support is owed; and

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(C) notice of the noncustodial parent's social security account number (or numbers, if he has more than one such number) and home address shall be furnished to the State agency requesting the refund offset, and to the State agency enforcing the order.

**(4) Liens**

Procedures under which--

(A) liens arise by operation of law against real and personal property for amounts of overdue support owed by a noncustodial parent who resides or owns property in the State; and

(B) the State accords full faith and credit to liens described in subparagraph (A) arising in another State, when the State agency, party, or other entity seeking to enforce such a lien complies with the procedural rules relating to recording or serving liens that arise within the State, except that such rules may not require judicial notice or hearing prior to the enforcement of such a lien.

**(5) Procedures concerning paternity establishment**

(A) Establishment process available from birth until age 18

(i) Procedures which permit the establishment of the paternity of a child at any time before the child attains 18 years of age.

(ii) As of August 16, 1984, clause (i) shall also apply to a child for whom paternity has not been established or for whom a paternity action was brought but dismissed because a statute of limitations of less than 18 years was then in effect in the State.

(B) Procedures concerning genetic testing

(i) Genetic testing required in certain contested cases

Procedures under which the State is required, in a contested paternity case (unless otherwise barred by State law) to require the child and all other parties (other than individuals found under section 654(29) of this title to have good cause and other exceptions for refusing to cooperate) to submit to genetic tests upon the request of any such party, if the request is supported by a sworn statement by the party--

(I) alleging paternity, and setting forth facts establishing a reasonable possibility of the requisite sexual contact between the parties; or

(II) denying paternity, and setting forth facts establishing a reasonable possibility of the nonexistence of sexual contact between the parties.

(ii) Other requirements

Procedures which require the State agency, in any case in which the agency orders genetic testing--

(I) to pay costs of such tests, subject to recoupment (if the State so elects) from the alleged father if paternity is established; and

(II) to obtain additional testing in any case if an original test result is contested, upon request and advance payment by the contestant.

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(C) Voluntary paternity acknowledgment

(i) Simple civil process

Procedures for a simple civil process for voluntarily acknowledging paternity under which the State must provide that, before a mother and a putative father can sign an acknowledgment of paternity, the mother and the putative father must be given notice, orally, or through the use of video or audio equipment, and in writing, of the alternatives to, the legal consequences of, and the rights (including, if 1 parent is a minor, any rights afforded due to minority status) and responsibilities that arise from, signing the acknowledgment.

(ii) Hospital-based program

Such procedures must include a hospital-based program for the voluntary acknowledgment of paternity focusing on the period immediately before or after the birth of a child.

(iii) Paternity establishment services

(I) State-offered services

Such procedures must require the State agency responsible for maintaining birth records to offer voluntary paternity establishment services.

(II) Regulations

(aa) Services offered by hospitals and birth record agencies

The Secretary shall prescribe regulations governing voluntary paternity establishment services offered by hospitals and birth record agencies.

(bb) Services offered by other entities

The Secretary shall prescribe regulations specifying the types of other entities that may offer voluntary paternity establishment services, and governing the provision of such services, which shall include a requirement that such an entity must use the same notice provisions used by, use the same materials used by, provide the personnel providing such services with the same training provided by, and evaluate the provision of such services in the same manner as the provision of such services is evaluated by, voluntary paternity establishment programs of hospitals and birth record agencies.

(iv) Use of paternity acknowledgment affidavit

Such procedures must require the State to develop and use an affidavit for the voluntary acknowledgment of paternity which includes the minimum requirements of the affidavit specified by the Secretary under section 652(a)(7) of this title for the voluntary acknowledgment of paternity, and to give full faith and credit to such an affidavit signed in any other State according to its procedures.

(D) Status of signed paternity acknowledgment

(i) Inclusion in birth records

Procedures under which the name of the father shall be included on the record of birth of the child of unmarried parents only if--

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- (I) the father and mother have signed a voluntary acknowledgment of paternity; or
- (II) a court or an administrative agency of competent jurisdiction has issued an adjudication of paternity.

Nothing in this clause shall preclude a State agency from obtaining an admission of paternity from the father for submission in a judicial or administrative proceeding, or prohibit the issuance of an order in a judicial or administrative proceeding which bases a legal finding of paternity on an admission of paternity by the father and any other additional showing required by State law.

(ii) Legal finding of paternity

Procedures under which a signed voluntary acknowledgment of paternity is considered a legal finding of paternity, subject to the right of any signatory to rescind the acknowledgment within the earlier of--

- (I) 60 days; or
- (II) the date of an administrative or judicial proceeding relating to the child (including a proceeding to establish a support order) in which the signatory is a party.

(iii) Contest

Procedures under which, after the 60-day period referred to in clause (ii), a signed voluntary acknowledgment of paternity may be challenged in court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenger, and under which the legal responsibilities (including child support obligations) of any signatory arising from the acknowledgment may not be suspended during the challenge, except for good cause shown.

(E) Bar on acknowledgment ratification proceedings

Procedures under which judicial or administrative proceedings are not required or permitted to ratify an unchallenged acknowledgment of paternity.

(F) Admissibility of genetic testing results

Procedures--

- (i) requiring the admission into evidence, for purposes of establishing paternity, of the results of any genetic test that is--
  - (I) of a type generally acknowledged as reliable by accreditation bodies designated by the Secretary; and
  - (II) performed by a laboratory approved by such an accreditation body;
- (ii) requiring an objection to genetic testing results to be made in writing not later than a specified number of days before any hearing at which the results may be introduced into evidence (or, at State option, not later than a specified number of days after receipt of the results); and
- (iii) making the test results admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy, unless objection is made.

(G) Presumption of paternity in certain cases

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Procedures which create a rebuttable or, at the option of the State, conclusive presumption of paternity upon genetic testing results indicating a threshold probability that the alleged father is the father of the child.

(H) Default orders

Procedures requiring a default order to be entered in a paternity case upon a showing of service of process on the defendant and any additional showing required by State law.

(I) No right to jury trial

Procedures providing that the parties to an action to establish paternity are not entitled to a trial by jury.

(J) Temporary support order based on probable paternity in contested cases

Procedures which require that a temporary order be issued, upon motion by a party, requiring the provision of child support pending an administrative or judicial determination of parentage, if there is clear and convincing evidence of paternity (on the basis of genetic tests or other evidence).

(K) Proof of certain support and paternity establishment costs

Procedures under which bills for pregnancy, childbirth, and genetic testing are admissible as evidence without requiring third-party foundation testimony, and shall constitute prima facie evidence of amounts incurred for such services or for testing on behalf of the child.

(L) Standing of putative fathers

Procedures ensuring that the putative father has a reasonable opportunity to initiate a paternity action.

(M) Filing of acknowledgments and adjudications in State registry of birth records

Procedures under which voluntary acknowledgments and adjudications of paternity by judicial or administrative processes are filed with the State registry of birth records for comparison with information in the State case registry.

(6) Procedures which require that a noncustodial parent give security, post a bond, or give some other guarantee to secure payment of overdue support, after notice has been sent to such noncustodial parent of the proposed action and of the procedures to be followed to contest it (and after full compliance with all procedural due process requirements of the State).

**(7) Reporting arrearages to credit bureaus**

(A) In general

Procedures (subject to safeguards pursuant to subparagraph (B)) requiring the State to report periodically to consumer reporting agencies (as defined in section 1681a(f) of Title 15) the name of any noncustodial parent who is delinquent in the payment of support, and the amount of overdue support owed by such parent.

(B) Safeguards

Procedures ensuring that, in carrying out subparagraph (A), information with respect to a noncustodial parent is reported--

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(i) only after such parent has been afforded all due process required under State law, including notice and a reasonable opportunity to contest the accuracy of such information; and

(ii) only to an entity that has furnished evidence satisfactory to the State that the entity is a consumer reporting agency (as so defined).

**(8)(A)** Procedures under which all child support orders not described in subparagraph (B) will include provision for withholding from income, in order to assure that withholding as a means of collecting child support is available if arrearages occur without the necessity of filing application for services under this part.

**(B)** Procedures under which all child support orders which are initially issued in the State on or after January 1, 1994, and are not being enforced under this part will include the following requirements:

(i) The income of a noncustodial parent shall be subject to withholding, regardless of whether support payments by such parent are in arrears, on the effective date of the order; except that such income shall not be subject to withholding under this clause in any case where (I) one of the parties demonstrates, and the court (or administrative process) finds, that there is good cause not to require immediate income withholding, or (II) a written agreement is reached between both parties which provides for an alternative arrangement.

(ii) The requirements of subsection (b)(1) of this section (which shall apply in the case of each noncustodial parent against whom a support order is or has been issued or modified in the State, without regard to whether the order is being enforced under the State plan).

(iii) The requirements of paragraphs (2), (5), (6), (7), (8), (9), and (10) of subsection (b) of this section, where applicable.

(iv) Withholding from income of amounts payable as support must be carried out in full compliance with all procedural due process requirements of the State.

**(9)** Procedures which require that any payment or installment of support under any child support order, whether ordered through the State judicial system or through the expedited processes required by paragraph (2), is (on and after the date it is due)--

**(A)** a judgment by operation of law, with the full force, effect, and attributes of a judgment of the State, including the ability to be enforced,

**(B)** entitled as a judgment to full faith and credit in such State and in any other State, and

**(C)** not subject to retroactive modification by such State or by any other State;

except that such procedures may permit modification with respect to any period during which there is pending a petition for modification, but only from the date that notice of such petition has been given, either directly or through the appropriate agent, to the obligee or (where the obligee is the petitioner) to the obligor.

**(10) Review and adjustment of support orders upon request**

**(A)** 3-year cycle

(i) In general

Procedures under which every 3 years (or such shorter cycle as the State may determine), upon the request

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of either parent, or, if there is an assignment under part A of this subchapter, upon the request of the State agency under the State plan or of either parent, the State shall with respect to a support order being enforced under this part, taking into account the best interests of the child involved--

(I) review and, if appropriate, adjust the order in accordance with the guidelines established pursuant to section 667(a) of this title if the amount of the child support award under the order differs from the amount that would be awarded in accordance with the guidelines;

(II) apply a cost-of-living adjustment to the order in accordance with a formula developed by the State; or

(III) use automated methods (including automated comparisons with wage or State income tax data) to identify orders eligible for review, conduct the review, identify orders eligible for adjustment, and apply the appropriate adjustment to the orders eligible for adjustment under any threshold that may be established by the State.

(ii) Opportunity to request review of adjustment

If the State elects to conduct the review under subclause (II) or (III) of clause (i), procedures which permit either party to contest the adjustment, within 30 days after the date of the notice of the adjustment, by making a request for review and, if appropriate, adjustment of the order in accordance with the child support guidelines established pursuant to section 667(a) of this title.

(iii) No proof of change in circumstances necessary in 3-year cycle review

Procedures which provide that any adjustment under clause (i) shall be made without a requirement for proof or showing of a change in circumstances.

(B) Proof of substantial change in circumstances necessary in request for review outside 3-year cycle

Procedures under which, in the case of a request for a review, and if appropriate, an adjustment outside the 3-year cycle (or such shorter cycle as the State may determine) under clause (i), the State shall review and, if the requesting party demonstrates a substantial change in circumstances, adjust the order in accordance with the guidelines established pursuant to section 667(a) of this title.

(C) Notice of right to review

Procedures which require the State to provide notice not less than once every 3 years to the parents subject to the order informing the parents of their right to request the State to review and, if appropriate, adjust the order pursuant to this paragraph. The notice may be included in the order.

(11) Procedures under which a State must give full faith and credit to a determination of paternity made by any other State, whether established through voluntary acknowledgment or through administrative or judicial processes.

**(12) Locator information from interstate networks**

Procedures to ensure that all Federal and State agencies conducting activities under this part have access to any system used by the State to locate an individual for purposes relating to motor vehicles or law enforcement.

**(13) Recording of social security numbers in certain family matters**

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Procedures requiring that the social security number of--

- (A) any applicant for a professional license, driver's license, occupational license, recreational license, or marriage license be recorded on the application;
- (B) any individual who is subject to a divorce decree, support order, or paternity determination or acknowledgment be placed in the records relating to the matter; and
- (C) any individual who has died be placed in the records relating to the death and be recorded on the death certificate.

For purposes of subparagraph (A), if a State allows the use of a number other than the social security number to be used on the face of the document while the social security number is kept on file at the agency, the State shall so advise any applicants.

**(14) High-volume, automated administrative enforcement in interstate cases**

**(A) In general**

Procedures under which--

- (i) the State shall use high-volume automated administrative enforcement, to the same extent as used for intrastate cases, in response to a request made by another State to enforce support orders, and shall promptly report the results of such enforcement procedure to the requesting State;
- (ii) the State may, by electronic or other means, transmit to another State a request for assistance in enforcing support orders through high-volume, automated administrative enforcement, which request--
  - (I) shall include such information as will enable the State to which the request is transmitted to compare the information about the cases to the information in the data bases of the State; and
  - (II) shall constitute a certification by the requesting State--
    - (aa) of the amount of support under an order the payment of which is in arrears; and
    - (bb) that the requesting State has complied with all procedural due process requirements applicable to each case;
- (iii) if the State provides assistance to another State pursuant to this paragraph with respect to a case, neither State shall consider the case to be transferred to the caseload of such other State (but the assisting State may establish a corresponding case based on such other State's request for assistance); and
- (iv) the State shall maintain records of--
  - (I) the number of such requests for assistance received by the State;
  - (II) the number of cases for which the State collected support in response to such a request; and
  - (III) the amount of such collected support.

**(B) High-volume automated administrative enforcement**

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In this part, the term "high-volume automated administrative enforcement", in interstate cases, means, on request of another State, the identification by a State, through automated data matches with financial institutions and other entities where assets may be found, of assets owned by persons who owe child support in other States, and the seizure of such assets by the State, through levy or other appropriate processes.

**(15) Procedures to ensure that persons owing overdue support work or have a plan for payment of such support**

Procedures under which the State has the authority, in any case in which an individual owes overdue support with respect to a child receiving assistance under a State program funded under part A of this subchapter, to issue an order or to request that a court or an administrative process established pursuant to State law issue an order that requires the individual to--

(A) pay such support in accordance with a plan approved by the court, or, at the option of the State, a plan approved by the State agency administering the State program under this part; or

(B) if the individual is subject to such a plan and is not incapacitated, participate in such work activities (as defined in section 607(d) of this title) as the court, or, at the option of the State, the State agency administering the State program under this part, deems appropriate.

**(16) Authority to withhold or suspend licenses**

Procedures under which the State has (and uses in appropriate cases) authority to withhold or suspend, or to restrict the use of driver's licenses, professional and occupational licenses, and recreational and sporting licenses of individuals owing overdue support or failing, after receiving appropriate notice, to comply with subpoenas or warrants relating to paternity or child support proceedings.

**(17) Financial institution data matches**

**(A) In general**

Procedures under which the State agency shall enter into agreements with financial institutions doing business in the State--

(i) to develop and operate, in coordination with such financial institutions, and the Federal Parent Locator Service in the case of financial institutions doing business in two or more States, a data match system, using automated data exchanges to the maximum extent feasible, in which each such financial institution is required to provide for each calendar quarter the name, record address, social security number or other taxpayer identification number, and other identifying information for each noncustodial parent who maintains an account at such institution and who owes past-due support, as identified by the State by name and social security number or other taxpayer identification number; and

(ii) in response to a notice of lien or levy, encumber or surrender, as the case may be, assets held by such institution on behalf of any noncustodial parent who is subject to a child support lien pursuant to paragraph (4).

**(B) Reasonable fees**

The State agency may pay a reasonable fee to a financial institution for conducting the data match provided for in subparagraph (A)(i), not to exceed the actual costs incurred by such financial institution.

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(C) Liability

A financial institution shall not be liable under any Federal or State law to any person--

- (i) for any disclosure of information to the State agency under subparagraph (A)(i);
- (ii) for encumbering or surrendering any assets held by such financial institution in response to a notice of lien or levy issued by the State agency as provided for in subparagraph (A)(ii); or
- (iii) for any other action taken in good faith to comply with the requirements of subparagraph (A).

(D) Definitions

For purposes of this paragraph--

(i) Financial institution

The term "financial institution" has the meaning given to such term by section 669a(d)(1) of this title.

(ii) Account

The term "account" means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, or money-market mutual fund account.

**(18) Enforcement of orders against paternal or maternal grandparents**

Procedures under which, at the State's option, any child support order enforced under this part with respect to a child of minor parents, if the custodial parent of such child is receiving assistance under the State program under part A of this subchapter, shall be enforceable, jointly and severally, against the parents of the noncustodial parent of such child.

**(19) Health care coverage**

Procedures under which--

(A) effective as provided in section 401(c)(3) of the Child Support Performance and Incentive Act of 1998, all child support orders enforced pursuant to this part shall include a provision for medical support for the child to be provided by either or both parents, and shall be enforced, where appropriate, through the use of the National Medical Support Notice promulgated pursuant to section 401(b) of the Child Support Performance and Incentive Act of 1998 (and referred to in section 609(a)(5)(C) of the Employee Retirement Income Security Act of 1974 [29 U.S.C.A. § 1169(a)(5)(C)] in connection with group health plans covered under title I of such Act [29 U.S.C.A. § 1001 et seq.], in section 401(e) of the Child Support Performance and Incentive Act of 1998 in connection with State or local group health plans, and in section 401(f) of such Act in connection with church group health plans);

(B) unless alternative coverage is allowed for in any order of the court (or other entity issuing the child support order), in any case in which a parent is required under the child support order to provide such health care coverage and the employer of such parent is known to the State agency--

- (i) the State agency uses the National Medical Support Notice to transfer notice of the provision for the

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health care coverage of the child to the employer;

(ii) within 20 business days after the date of the National Medical Support Notice, the employer is required to transfer the Notice, excluding the severable employer withholding notice described in section 401(b)(2)(C) of the Child Support Performance and Incentive Act of 1998, to the appropriate plan providing any such health care coverage for which the child is eligible;

(iii) in any case in which the parent is a newly hired employee entered in the State Directory of New Hires pursuant to section 653a(e) of this title, the State agency provides, where appropriate, the National Medical Support Notice, together with an income withholding notice issued pursuant to subsection (b) of this section, within two days after the date of the entry of such employee in such Directory; and

(iv) in any case in which the employment of the parent with any employer who has received a National Medical Support Notice is terminated, such employer is required to notify the State agency of such termination; and

(C) any liability of the obligated parent to such plan for employee contributions which are required under such plan for enrollment of the child is effectively subject to appropriate enforcement, unless the obligated parent contests such enforcement based on a mistake of fact.

Notwithstanding section 654(20)(B) of this title, the procedures which are required under paragraphs (3), (4), (6), (7), and (15) need not be used or applied in cases where the State determines (using guidelines which are generally available within the State and which take into account the payment record of the noncustodial parent, the availability of other remedies, and other relevant considerations) that such use or application would not carry out the purposes of this part or would be otherwise inappropriate in the circumstances.

(b) Withholding from income of amounts payable as support

The procedures referred to in subsection (a)(1)(A) of this section (relating to the withholding from income of amounts payable as support) must provide for the following:

(1) In the case of each noncustodial parent against whom a support order is or has been issued or modified in the State, and is being enforced under the State plan, so much of such parent's income must be withheld, in accordance with the succeeding provisions of this subsection, as is necessary to comply with the order and provide for the payment of any fee to the employer which may be required under paragraph (6)(A), up to the maximum amount permitted under section 1673(b) of Title 15. If there are arrearages to be collected, amounts withheld to satisfy such arrearages, when added to the amounts withheld to pay current support and provide for the fee, may not exceed the limit permitted under such section 1673(b), but the State need not withhold up to the maximum amount permitted under such section in order to satisfy arrearages.

(2) Such withholding must be provided without the necessity of any application therefor in the case of a child (whether or not eligible for assistance under a State program funded under part A of this subchapter) with respect to whom services are already being provided under the State plan under this part, and must be provided in accordance with this subsection on the basis of an application for services under the State plan in the case of any other child in whose behalf a support order has been issued or modified in the State. In either case such withholding must occur without the need for any amendment to the support order involved or for any further action (other than those actions required under this part) by the court or other entity which issued such order.

(3)(A) The income of a noncustodial parent shall be subject to such withholding, regardless of whether support payments by such parent are in arrears, in the case of a support order being enforced under this part that is issued or modified on or after the first day of the 25th month beginning after October 13, 1988, on the effective date of

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the order; except that such income shall not be subject to such withholding under this subparagraph in any case where (i) one of the parties demonstrates, and the court (or administrative process) finds, that there is good cause not to require immediate income withholding, or (ii) a written agreement is reached between both parties which provides for an alternative arrangement.

**(B)** The income of a noncustodial parent shall become subject to such withholding, in the case of income not subject to withholding under subparagraph (A), on the date on which the payments which the noncustodial parent has failed to make under a support order are at least equal to the support payable for one month or, if earlier, and without regard to whether there is an arrearage, the earliest of--

- (i) the date as of which the noncustodial parent requests that such withholding begin,
- (ii) the date as of which the custodial parent requests that such withholding begin, if the State determines, in accordance with such procedures and standards as it may establish, that the request should be approved, or
- (iii) such earlier date as the State may select.

**(4)(A)** Such withholding must be carried out in full compliance with all procedural due process requirements of the State, and the State must send notice to each noncustodial parent to whom paragraph (1) applies--

- (i) that the withholding has commenced; and
- (ii) of the procedures to follow if the noncustodial parent desires to contest such withholding on the grounds that the withholding or the amount withheld is improper due to a mistake of fact.

**(B)** The notice under subparagraph (A) of this paragraph shall include the information provided to the employer under paragraph (6)(A).

**(5)** Such withholding must be administered by the State through the State disbursement unit established pursuant to section 654b of this title, in accordance with the requirements of section 654b of this title.

**(6)(A)(i)** The employer of any noncustodial parent to whom paragraph (1) applies, upon being given notice as described in clause (ii), must be required to withhold from such noncustodial parent's income the amount specified by such notice (which may include a fee, established by the State, to be paid to the employer unless waived by such employer) and pay such amount (after deducting and retaining any portion thereof which represents the fee so established) to the State disbursement unit within 7 business days after the date the amount would (but for this subsection) have been paid or credited to the employee, for distribution in accordance with this part. The employer shall withhold funds as directed in the notice, except that when an employer receives an income withholding order issued by another State, the employer shall apply the income withholding law of the State of the obligor's principal place of employment in determining--

- (I)** the employer's fee for processing an income withholding order;
- (II)** the maximum amount permitted to be withheld from the obligor's income;
- (III)** the time periods within which the employer must implement the income withholding order and forward the child support payment;
- (IV)** the priorities for withholding and allocating income withheld for multiple child support obligees; and
- (V)** any withholding terms or conditions not specified in the order.

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An employer who complies with an income withholding notice that is regular on its face shall not be subject to civil liability to any individual or agency for conduct in compliance with the notice.

(ii) The notice given to the employer shall be in a standard format prescribed by the Secretary, and contain only such information as may be necessary for the employer to comply with the withholding order.

(iii) As used in this subparagraph, the term "business day" means a day on which State offices are open for regular business.

(B) Methods must be established by the State to simplify the withholding process for employers to the greatest extent possible, including permitting any employer to combine all withheld amounts into a single payment to each appropriate agency or entity (with the portion thereof which is attributable to each individual employee being separately designated).

(C) The employer must be held liable to the State for any amount which such employer fails to withhold from income due an employee following receipt by such employer of proper notice under subparagraph (A), but such employer shall not be required to vary the normal pay and disbursement cycles in order to comply with this paragraph.

(D) Provision must be made for the imposition of a fine against any employer who--

(i) discharges from employment, refuses to employ, or takes disciplinary action against any noncustodial parent subject to income withholding required by this subsection because of the existence of such withholding and the obligations or additional obligations which it imposes upon the employer; or

(ii) fails to withhold support from income or to pay such amounts to the State disbursement unit in accordance with this subsection.

(7) Support collection under this subsection must be given priority over any other legal process under State law against the same income.

(8) For purposes of subsection (a) of this section and this subsection, the term "income" means any periodic form of payment due to an individual, regardless of source, including wages, salaries, commissions, bonuses, worker's compensation, disability, payments pursuant to a pension or retirement program, and interest.

(9) The State must extend its withholding system under this subsection so that such system will include withholding from income derived within such State in cases where the applicable support orders were issued in other States, in order to assure that child support owed by noncustodial parents in such State or any other State will be collected without regard to the residence of the child for whom the support is payable or of such child's custodial parent.

(10) Provision must be made for terminating withholding.

(11) Procedures under which the agency administering the State plan approved under this part may execute a withholding order without advance notice to the obligor, including issuing the withholding order through electronic means.

(c) Expedited procedures

The procedures specified in this subsection are the following:

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## (1) Administrative action by State agency

Procedures which give the State agency the authority to take the following actions relating to establishment of paternity or to establishment, modification, or enforcement of support orders, without the necessity of obtaining an order from any other judicial or administrative tribunal, and to recognize and enforce the authority of State agencies of other States to take the following actions:

## (A) Genetic testing

To order genetic testing for the purpose of paternity establishment as provided in subsection (a)(5) of this section.

## (B) Financial or other information

To subpoena any financial or other information needed to establish, modify, or enforce a support order, and to impose penalties for failure to respond to such a subpoena.

## (C) Response to State agency request

To require all entities in the State (including for-profit, nonprofit, and governmental employers) to provide promptly, in response to a request by the State agency of that or any other State administering a program under this part, information on the employment, compensation, and benefits of any individual employed by such entity as an employee or contractor, and to sanction failure to respond to any such request.

## (D) Access to information contained in certain records

To obtain access, subject to safeguards on privacy and information security, and subject to the nonliability of entities that afford such access under this subparagraph, to information contained in the following records (including automated access, in the case of records maintained in automated data bases):

## (i) Records of other State and local government agencies, including--

(I) vital statistics (including records of marriage, birth, and divorce);

(II) State and local tax and revenue records (including information on residence address, employer, income and assets);

(III) records concerning real and titled personal property;

(IV) records of occupational and professional licenses, and records concerning the ownership and control of corporations, partnerships, and other business entities;

(V) employment security records;

(VI) records of agencies administering public assistance programs;

(VII) records of the motor vehicle department; and

(VIII) corrections records.

## (ii) Certain records held by private entities with respect to individuals who owe or are owed support (or

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against or with respect to whom a support obligation is sought), consisting of--

(I) the names and addresses of such individuals and the names and addresses of the employers of such individuals, as appearing in customer records of public utilities and cable television companies, pursuant to an administrative subpoena authorized by subparagraph (B); and

(II) information (including information on assets and liabilities) on such individuals held by financial institutions.

(E) Change in payee

In cases in which support is subject to an assignment in order to comply with a requirement imposed pursuant to part A of this subchapter, part E of this subchapter, or section 1396k of this title, or to a requirement to pay through the State disbursement unit established pursuant to section 654b of this title, upon providing notice to obligor and obligee, to direct the obligor or other payor to change the payee to the appropriate government entity.

(F) Income withholding

To order income withholding in accordance with subsections (a)(1)(A) and (b).

(G) Securing assets

In cases in which there is a support arrearage, to secure assets to satisfy any current support obligation and the arrearage by--

(i) intercepting or seizing periodic or lump-sum payments from--

(I) a State or local agency, including unemployment compensation, workers' compensation, and other benefits; and

(II) judgments, settlements, and lotteries;

(ii) attaching and seizing assets of the obligor held in financial institutions;

(iii) attaching public and private retirement funds; and

(iv) imposing liens in accordance with subsection (a)(4) of this section and, in appropriate cases, to force sale of property and distribution of proceeds.

(H) Increase monthly payments

For the purpose of securing overdue support, to increase the amount of monthly support payments to include amounts for arrearages, subject to such conditions or limitations as the State may provide.

Such procedures shall be subject to due process safeguards, including (as appropriate) requirements for notice, opportunity to contest the action, and opportunity for an appeal on the record to an independent administrative or judicial tribunal.

(2) Substantive and procedural rules

## 42 U.S.C.A. § 666

The expedited procedures required under subsection (a)(2) of this section shall include the following rules and authority, applicable with respect to all proceedings to establish paternity or to establish, modify, or enforce support orders:

## (A) Locator information; presumptions concerning notice

## Procedures under which--

- (i) each party to any paternity or child support proceeding is required (subject to privacy safeguards) to file with the State case registry upon entry of an order, and to update as appropriate, information on location and identity of the party, including social security number, residential and mailing addresses, telephone number, driver's license number, and name, address, and telephone number of employer; and
- (ii) in any subsequent child support enforcement action between the parties, upon sufficient showing that diligent effort has been made to ascertain the location of such a party, the court or administrative agency of competent jurisdiction shall deem State due process requirements for notice and service of process to be met with respect to the party, upon delivery of written notice to the most recent residential or employer address filed with the State case registry pursuant to clause (i).

## (B) Statewide jurisdiction

## Procedures under which--

- (i) the State agency and any administrative or judicial tribunal with authority to hear child support and paternity cases exerts statewide jurisdiction over the parties; and
- (ii) in a State in which orders are issued by courts or administrative tribunals, a case may be transferred between local jurisdictions in the State without need for any additional filing by the petitioner, or service of process upon the respondent, to retain jurisdiction over the parties.

## (3) Coordination with ERISA

Notwithstanding subsection (d) of section 514 of the Employee Retirement Income Security Act of 1974 (relating to effect on other laws), [29 U.S.C.A. § 1144], nothing in this subsection shall be construed to alter, amend, modify, invalidate, impair, or supersede subsections (a), (b), and (c) of such section 514 [29 U.S.C.A. § 1144(a), (b), and (c)] as it applies with respect to any procedure referred to in paragraph (1) and any expedited procedure referred to in paragraph (2), except to the extent that such procedure would be consistent with the requirements of section 206(d)(3) of such Act (relating to qualified domestic relations orders) [29 U.S.C.A. § 1056(d)(3)] or the requirements of section 609(a) of such Act (relating to qualified medical child support orders) [29 U.S.C.A. § 1169(a)] if the reference in such section 206(d)(3) [29 U.S.C.A. § 1056(d)(3)] to a domestic relations order and the reference in such section 609(a) [29 U.S.C.A. § 1169(a)] to a medical child support order were a reference to a support order referred to in paragraphs (1) and (2) relating to the same matters, respectively.

## (d) Exemption of States

If a State demonstrates to the satisfaction of the Secretary, through the presentation to the Secretary of such data pertaining to caseloads, processing times, administrative costs, and average support collections, and such other data or estimates as the Secretary may specify, that the enactment of any law or the use of any procedure or procedures required by or pursuant to this section will not increase the effectiveness and efficiency of the State child support enforcement program, the Secretary may exempt the State, subject to the Secretary's continuing review and to

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termination of the exemption should circumstances change, from the requirement to enact the law or use the procedure or procedures involved.

(e) "Overdue support" defined

For purposes of this section, the term "overdue support" means the amount of a delinquency pursuant to an obligation determined under a court order, or an order of an administrative process established under State law, for support and maintenance of a minor child which is owed to or on behalf of such child, or for support and maintenance of the noncustodial parent's spouse (or former spouse) with whom the child is living if and to the extent that spousal support (with respect to such spouse or former spouse) would be included for purposes of section 654(4) of this title. At the option of the State, overdue support may include amounts which otherwise meet the definition in the first sentence of this subsection but which are owed to or on behalf of a child who is not a minor child. The option to include support owed to children who are not minors shall apply independently to each procedure specified under this section.

(f) Uniform Interstate Family Support Act

In order to satisfy section 654(20)(A) of this title, on and after January 1, 1998, each State must have in effect the Uniform Interstate Family Support Act, as approved by the American Bar Association on February 9, 1993, and as in effect on August 22, 1996, including any amendments officially adopted as of such date by the National Conference of Commissioners on Uniform State Laws.

(g) Laws voiding fraudulent transfers

In order to satisfy section 454(20)(A), each State must have in effect--

**(1)(A)** the Uniform Fraudulent Conveyance Act of 1981;

**(B)** the Uniform Fraudulent Transfer Act of 1984; or

**(C)** another law, specifying indicia of fraud which create a prima facie case that a debtor transferred income or property to avoid payment to a child support creditor, which the Secretary finds affords comparable rights to child support creditors; and

**(2)** procedures under which, in any case in which the State knows of a transfer by a child support debtor with respect to which such a prima facie case is established, the State must--

**(A)** seek to void such transfer; or

**(B)** obtain a settlement in the best interests of the child support creditor.

AMENDMENT OF SUBSECTION (A)(10)(A)(I)

<Pub.L. 109-171, Title VII, § 7302(a), Feb. 8, 2006, 120 Stat. 145, provided that, effective Oct. 1, 2007, subsec. (a)(10)(A)(i) is amended-->

<**(1)** by striking "parent, or," and inserting "parent or"; and>

<**(2)** by striking "upon the request of the State agency under the State plan or of either parent,".>

Current through P.L. 109-482 (End) approved 01-15-07

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45 C.F.R. § 303.8

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**Effective: [See Text Amendments]**

Code of Federal Regulations Currentness

Title 45. Public Welfare

Subtitle B. Regulations Relating to Public Welfare

■ Chapter III. Office of Child Support Enforcement (Child Support Enforcement Program), Administration for Children and Families, Department of Health and Human Services (Refs & Annos)

■ Part 303. Standards for Program Operations (Refs & Annos)

**→ § 303.8 Review and adjustment of child support orders.**

(a) Definition. For purposes of this section, Parent includes any custodial parent or noncustodial parent (or for purposes of requesting a review, any other person or entity who may have standing to request an adjustment to the child support order).

(b) Required procedures. Pursuant to section 466(a)(10) of the Act, when providing services under this chapter:

(1) The State must have procedures under which, every 3 years (or such shorter cycle as the State may determine), upon the request of either parent, or, if there is an assignment under part A, upon the request of the State agency under the State plan or of either parent, the State shall with respect to a support order being enforced under this part, taking into account the best interests of the child involved:

(i) Review and, if appropriate, adjust the order in accordance with the guidelines established pursuant to section 467(a) of the Act if the amount of the child support award under the order differs from the amount that would be awarded in accordance with the guidelines;

(ii) Apply a cost-of-living adjustment to the

order in accordance with a formula developed by the State; or

(iii) Use automated methods (including automated comparisons with wage or State income tax data) to identify orders eligible for review, conduct the review, identify orders eligible for adjustment, and apply the appropriate adjustment to the orders eligible for adjustment under any threshold that may be established by the State.

(2) If the State elects to conduct the review under paragraph (b)(1)(ii) or (iii) of this section, the State must have procedures which permit either party to contest the adjustment, within 30 days after the date of the notice of the adjustment, by making a request for review and, if appropriate, adjustment of the order in accordance with the child support guidelines established pursuant to section 467(a) of the Act.

(3) If the State conducts a guideline review under paragraph (b)(1)(i) of this section:

(i) Review means an objective evaluation, conducted through a proceeding before a court, quasi-judicial process, or administrative body or agency, of information necessary for application of the State's guidelines for support to determine:

(A) The appropriate support award amount; and

(B) The need to provide for the child's health care needs in the order through health insurance coverage or other means.

(ii) Adjustment applies only to the child support provisions of the order, and means:

(A) An upward or downward change in the amount of child support based upon an application of State guidelines for setting

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and adjusting child support awards; and/or

(B) Provision for the child's health care needs, through health insurance coverage or other means.

(4) The State must have procedures which provide that any adjustment under paragraph (b)(1)(i) of this section shall be made without a requirement for proof or showing of a change in circumstances.

(5) The State must have procedures under which, in the case of a request for a review, and if appropriate, an adjustment outside the 3-year cycle (or such shorter cycle as the State may determine) under paragraph (b)(1) of this section, the State shall review and, if the requesting party demonstrates a substantial change in circumstances, adjust the order in accordance with the guidelines established pursuant to section 467(a) of the Act.

(6) The State must provide notice not less than once every 3 years to the parents subject to the order informing the parents of their right to request the State to review and, if appropriate, adjust the order consistent with this section. The notice must specify the place and manner in which the request should be made. The initial notice may be included in the order.

(c) Standard for adequate grounds. The State may establish a reasonable quantitative standard based upon either a fixed dollar amount or percentage, or both, as a basis for determining whether an inconsistency between the existent child support award amount and the amount of support determined as a result of a review is adequate grounds for petitioning for adjustment of the order.

(d) Health care needs must be adequate basis. The need to provide for the child's health care needs in the order, through health insurance or other means, must be an adequate basis under State law to initiate an adjustment of an order, regardless of whether an adjustment in the amount of child support is necessary. In no event shall the eligibility for or receipt of Medicaid be considered to meet the need to provide for the child's health care needs in the order.

(e) Timeframes for review and adjustment. Within 180 calendar days of receiving a request for a review or locating the non-requesting parent, whichever occurs later, a State must: Conduct a review of the order and adjust the order or determine that the order should not be adjusted, in accordance with this section.

(f) Interstate review and adjustment.

(1) In interstate cases, the State with legal authority to adjust the order must conduct the review and adjust the order pursuant to this section.

(2) The applicable laws and procedures for review and adjustment of child support orders, including the State guidelines for setting child support awards, established in accordance with § 302.56 of this chapter, are those of the State in which the review and adjustment, or determination that there be no adjustment, takes place.

[57 FR 30681, July 10, 1992; 57 FR 61581, Dec. 28, 1992; 58 FR 7040, Feb. 3, 1993; 64 FR 6250, Feb. 9, 1999; 68 FR 25303, May 12, 2003; 69 FR 77661, Dec. 28, 2004; 71 FR 29592, May 23, 2006]

45 C. F. R. § 303.8, 45 CFR § 303.8

Current through February 22, 2007; 72 FR 7933

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V.A.M.S. 454.400

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VERNON'S ANNOTATED MISSOURI STATUTES  
TITLE XXX. DOMESTIC RELATIONS  
CHAPTER 454. ENFORCEMENT OF SUPPORT LAW  
CHILD SUPPORT, ENFORCEMENT BY STATE

→454.400. Division of child support enforcement--establishment--duties-- rulemaking

1. There is established within the department of social services the "Division of Child Support Enforcement" to administer the state plan for child support enforcement. The duty pursuant to the state plan to litigate or prosecute support actions shall be performed by the appropriate prosecuting attorney, or other attorney pursuant to a cooperative agreement with the department. The department shall fully utilize existing IV-A staff of the division of family services to perform child support enforcement duties approved by the United States Department of Health and Human Services and consistent with federal requirements as specified in P.L. 93-647 and 45 CFR, section 303.20.

2. In addition to the powers, duties and functions vested in the division of child support enforcement by other provisions of this chapter or by other laws of this state, the division of child support enforcement shall have the power:

- (1) To sue and be sued;
- (2) To make contracts and carry out the duties imposed upon it by this or any other law;
- (3) To administer, disburse, dispose of and account for funds, commodities, equipment, supplies or services, and any kind of property given, granted, loaned, advanced to or appropriated by the state of Missouri for any of the purposes herein;
- (4) To administer oaths, issue subpoenas for witnesses, examine such witnesses under oath, and make and keep a record of the same;
- (5) To adopt, amend and repeal rules and regulations necessary or desirable to carry out the provisions of this chapter and which are not inconsistent with the constitution or laws of this state;
- (6) To cooperate with the United States government in matters of mutual concern pertaining to any duties wherein the division of child support enforcement is acting as a state agency, including the adoption of such methods of administration as are found by the United States government to be necessary for the efficient operation of the state plan hereunder;
- (7) To make such reports in such form and containing such information as the United States government may, from time to time, require, and comply with such provisions as the United States government may, from time to time, find necessary to assure the correctness and verification of such reports;
- (8) To appoint, when and if it may deem necessary, advisory committees to provide professional or technical consultation in respect to child support enforcement problems and program administration. The members of such advisory committees shall receive no compensation for their services other than expenses actually incurred in the performance of their official duties. The number of members of each such advisory committee shall be determined

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by the division of child support enforcement, and such advisory committees shall consult with the division of child support enforcement in respect to problems and policies incident to the administration of the particular function germane to their respective field of competence;

- (9) To initiate or cooperate with other agencies in developing measures for the enforcement of support obligations;
- (10) To collect statistics, make special fact-finding studies and publish reports in reference to child support enforcement;
- (11) To establish or cooperate in research or demonstration projects relative to child support enforcement and the welfare program which will help improve the administration and effectiveness of programs carried on or assisted pursuant to the federal Social Security Act and the programs related thereto;
- (12) To accept gifts and grants of any property, real or personal, and to sell such property and expend such gifts or grants not inconsistent with the administration of the state plan for child support enforcement and within the limitations of the donor thereof;
- (13) To review every three years or such shorter cycle as the division may establish, upon the request of the obligee, the obligor or if there is an assignment under Part A of the federal Social Security Act, upon the request of the division, obligee or obligor taking into account the best interest of the child, the adequacy of child support orders in IV-D cases to determine whether modification is appropriate pursuant to the guidelines established by supreme court rule 88.01, to establish rules pursuant to chapter 536, RSMo, to define the procedure and frequency of such reviews, and to initiate proceedings for modification where such reviews determine that a modification is appropriate. This subdivision shall not be construed to require the division or its designees to represent the interests of an absent parent against the interests of a custodial parent or the state;
- (14) To provide services relating to the establishment of paternity and the establishment, modification and enforcement of child support obligations. The division shall provide such services:
  - (a) Unless, as provided in this chapter, good cause or other exception exists, to each child for whom:
    - a. Assistance is provided under the state program funded under Part IV-A of the Social Security Act;
    - b. Benefits or services for foster care maintenance are provided under the state program funded under Part IV-E of the Social Security Act; or
    - c. Medical assistance is provided under the state plan approved under Title XIX of the Social Security Act; and
  - (b) To any other child, if an individual applies for such services with respect to such child;
- (15) To enforce support obligations established with respect to:
  - (a) A child for whom the state provides services under the state plan for child support; or
  - (b) The custodial parent of a child;
- (16) To enforce support orders against the parents of the noncustodial parent, jointly and severally, in cases where such parents have a minor child who is the parent and the custodial parent is receiving assistance under the state program funded under Part A of Title IV of the Social Security Act; and
- (17) To prevent a child support debtor from fraudulently transferring property to avoid payment of child support.

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If the division has knowledge of such transfer, the division shall:

- (a) Seek to void such transfer; or
- (b) Obtain a settlement in the best interest of the child support creditor.

3. No rule or portion of a rule promulgated pursuant to the authority of this chapter shall become effective unless it has been promulgated pursuant to the provisions of section 536.024, RSMo.

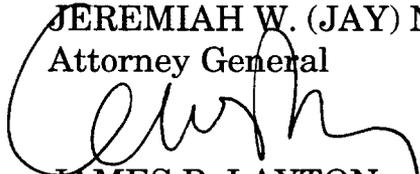
Constitution is current through the November 7, 2006 General Election.  
Statutes are current through the 2006 Second Regular Session of the  
93rd General Assembly.

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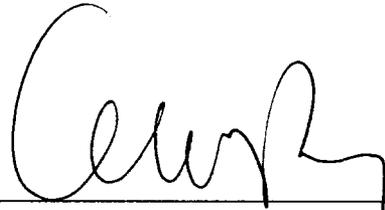
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Department of Social Services  
Family Support Division

**CERTIFICATE OF SERVICE**

I hereby certify that on the 28<sup>th</sup> day of February, 2007, one true and correct copy of the foregoing appendix, and one disk containing the foregoing appendix, were mailed, postage prepaid, to:

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