UNITED STATES STATUTES AT LARGE

CONTAINING THE

LAWS AND CONCURRENT RESOLUTIONS
ENACTED DURING THE SECOND SESSION OF THE
NINETY-NINTH CONGRESS
OF THE UNITED STATES OF AMERICA

1986

AND

PROCLAMATIONS

VOLUME 100

IN FIVE PARTS

PART 3

PUBLIC LAWS 99-507 THROUGH 99-516

Bradley Amendment

P.L. 99-509
(October 21, 1986)

Subtitle B

Sec. 9103

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1989

42 USC 418.

(C) Section 218(d)(6) of such Act is amended—

(i) by striking out "subsection (f)" in subparagraph (A) and inserting in lieu thereof "subsection (e)"; and

(ii) by striking out "subsection (f)(1)" in subparagraph (F) and inserting in lieu thereof "subsection (e)(1)".

(D) Section 218(d)(8)(D) of such Act is amended by striking out "subsection (p)" and inserting in lieu thereof "subsection (l)".

(E) Section 218(e)(1) of such Act (as redesignated by paragraph (1) of this subsection) is amended by striking out "Except as provided in subsection (e)(2), any agreement" and inserting in lieu thereof "Any agreement".

42 USC 424a.

(F) Section 224(a)(2)(B) of such Act is amended by striking out "section 218(k)" and inserting in lieu thereof "section 218(g)".

Wages.
Taxes.
42 USC 418 note.

(d) EFFECTIVE DATE.—The amendments made by this section are effective with respect to payments due with respect to wages paid after December 31, 1986, including wages paid after such date by a State (or political subdivision thereof) that modified its agreement pursuant to the provisions of section 218(e)(2) of the Social Security Act prior to the date of the enactment of this Act; except that in cases where, in accordance with the currently applicable schedule, deposits of taxes due under an agreement entered into pursuant to section 218 of the Social Security Act would be required within 3 days after the close of an eighth-monthly period, such 3-day requirement shall be changed to a 7-day requirement for wages paid prior to October 1, 1987, and to a 5-day requirement for wages paid after September 30, 1987, and prior to October 1, 1988. For wages paid prior to October 1, 1988, the deposit schedule for taxes imposed under sections 3101 and 3111 shall be determined separately from the deposit schedule for taxes withheld under section 3402 if the taxes imposed under sections 3101 and 3111 are due with respect to service included under an agreement entered into pursuant to section 218 of the Social Security Act.

26 USC 3101, 3111.
26 USC 3402.

Subtitle B—Provisions Relating to Public Assistance

SEC. 9101. TARGETING UNDER INCOME AND ELIGIBILITY VERIFICATION SYSTEM.

State and local governments.
42 USC 1520b-7.

Section 1137(a)(4)(C) of the Social Security Act is amended by inserting after "payments" the following: ", and no State shall be required to use such information to verify the eligibility of all recipients".

SEC. 9102. ANNUAL CALCULATION OF FEDERAL PERCENTAGE FOR AFDC PURPOSES.

42 USC 1301 note.
Ante, p. 219.

Section 9528(c) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (as added by section 9421(a) of this Act) is amended (effective as provided in section 9421(b))—

State and local governments.
42 USC 603, 1396b.

(1) by striking out "payment to a State under section 1903" and inserting in lieu thereof "payments to States under sections 403 and 1903"; and

(2) by inserting "with respect to either such section" after "shall not apply to a State".

SEC. 9103. REQUIREMENT OF STATUTORILY PRESCRIBED PROCEDURES TO PROHIBIT RETROACTIVE MODIFICATION OF CHILD SUPPORT ARREARAGES.

(a) IN GENERAL.—Section 466(a) of the Social Security Act is amended by inserting immediately after paragraph (8) the following new paragraph: State and local governments. 42 USC 666.

"(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.".

(b) EFFECTIVE DATE.—(1) Except as provided in paragraph (2), the amendment made by subsection (a) shall become effective on the date of the enactment of this Act. 42 USC 666 note.

(2) In the case of a State with respect to which the Secretary of Health and Human Services has determined that State legislation is required in order to conform the State plan approved under part D of title IV of the Social Security Act to the requirements imposed by the amendment made by subsection (a), the State plan shall not be regarded as failing to comply with the requirements of such part solely by reason of its failure to meet the requirements imposed by such amendment prior to the beginning of the fourth month beginning after the end of the first session of the State legislature which ends on or after the date of the enactment of this Act. For purposes of the preceding sentence, the term "session" means a regular, special, budget, or other session of a State legislature. State and local governments. 42 USC 651.

Subtitle C—Older Americans Pension Benefits

SEC. 9201. PROHIBITION AGAINST DISCRIMINATION ON THE BASIS OF AGE IN EMPLOYEE PENSION BENEFIT PLANS.

Section 4 of the Age Discrimination in Employment Act of 1967 (29 U.S.C 623) is amended by adding at the end the following new subsection:

"(i)(1) Except as otherwise provided in this subsection, it shall be unlawful for an employer, an employment agency, a labor organization, or any combination thereof to establish or maintain an employee pension benefit plan which requires or permits—

"(A) in the case of a defined benefit plan, the cessation of an employee's benefit accrual, or the reduction of the rate of an employee's benefit accrual, because of age, or

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Essentials for Attorneys in Child Support Enforcement

Second Edition

Bradley Amendment

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(October 21, 1986)

Subtitle B

Sec. 9103

U.S. Department of Health and Human Services
Administration for Children and Families
Office of Child Support Enforcement

1992

sale, enforcement or discharge in the same manner as any other debt. *Brannock*, supra; *Lindsey v. Lindsey*, 716 P.2d 496 (Hawaii App. 1986). Nevertheless, in the *Brannock* case, the court did not inquire into the adequacy of the consideration for the agreement. *Brannock*, supra. All the agreement required the obligor to do is to consistently pay future support, which he was legally required to do in any event. Id. Moreover, it is unclear how the parties could waive the arrearages, especially when it is unlikely the court could have ordered them waived. The Bradley Amendment, discussed infra, should prevent such rulings in the future.

Courts also face many questions when support has been set in a private non-court-ordered agreement between the parties, but one party subsequently seeks a modification through the courts. In one jurisdiction, if the amount set in an agreement adequately met the needs of the child, the party seeking to establish a court order setting support must prove a change in circumstances that was unforeseen at the time of the execution of the agreement. *Cooper v. Cooper*, 472 A.2d 878 (D.C. Cir. 1984); *Murdock v. Huguley*, 15 F.L.R. 1189 (D.C.Super.Ct.Fam. Div. 1989). If, on the other hand, the party seeking the change proves that the initial agreement failed to adequately provide for the needs of the child, that party does not have to prove a change in circumstances. *Portlock v. Portlock*, 518 A.2d 116 (D.C.App. 1986). The Florida courts stand divided as to how to treat these private agreements. See *Essex v. Ayres*, 503 So. 2d 1365 (Fla.App. 1987), disapproving *Stein v. Stein*, 496 So. 2d 196 (Fla.App. 1986). Clearly, though, courts will not honor a private agreement between the parties which provides for child support payments to continue even after the obligor gains custody of the child. *McGee v. McGee*, 415 N.W.2d 812 (S.D. 1987).

Retroactive Modification

While it is universally agreed that courts can prospectively modify support awards, see *Sexton v. Sexton*, 291 N.E.2d 542 (1971); *Armstrong v. Armstrong*, 126 Cal. Rptr. 805 (Cal.App. 1976), some States permit retroactive modifications by statute or case law. See D.Dodson, and Green de la Garza, *Retroactive Modification of Child Support Arrears*, ABA National Legal Resource Center for Child Advocacy and Protection, June 1986. In practice, these retroactive modifications almost always decreased the amount of the award, and obligors successfully employed counterclaims for retroactive modifications as a foil to custodial parents' efforts to enforce their awards.

Aware of these practices, Congress passed the Bradley Amendment in 1987 (P.L. 99-509) which explicitly prohibits retroactive modification of accrued unpaid support, except that arrearages may be modified retroactively to the date of the filing of a petition for modification. See 42 U.S.C. 666. One State deemed that its version of Bradley was prospective and therefore consistent with the constitutional ban on retroactive laws. *Racine County Child Support Agency v. Thompkins*, 445 N.W.2d 58 (Wis.App. 1989). Moreover, that statute did not unconstitutionally deprive the complaining obligor of a protected property interest by eliminating his previously held "right" to petition for a retroactive modification. Id. His "right" was created by statute, and he had no vested property interest in it. Id. Accordingly, the State is free to eliminate the statute. Id.

On at least one occasion, an appellate court deliberately discarded a State version of the Bradley Amendment in light of the severe inequity it would cause under the facts. *Washington ex rel Blakeslee v. Horton*, 722 P.2d 1148 (Mont. 1986). Another court ruled that a State version of the law would not protect arrearages accruing after the parties voluntarily transferred custody of the child to the obligor, as least if the transfer would have been approved had it come before the court. *Prikril v. Prikril*, 563 A.2d 1164 (N.J. 1989). Moreover, a "Bradley" type statute has no application to awards which commingle child support with spousal support. *Farmilette v. Farmilette*, 15 F.L.R. 1533 (N.J.Super.Ct.Chanc.Div. 1989).

Some jurisdictions foresaw the need for these statutes and implemented them without Congressional prompting. See e.g., *Towne v. Towne*, 552 A.2d 404 (Vt. 1988). Courts have construed them to bar retroactive modification of arrearages accruing prior to their enactment. *Vellinga v. Vellinga*, 442 N.W.2d 472 (S.D. 1989).

Bradley Amendment example

March 1999

Summary of child support case handled by John Stoutimore, Esq., attorney in Fort Worth, Texas.

See the attached documents for a full explanation:

Letter from attorney John Stoutimore
Letter from Child Protective Services
Letter from Attorney General (Title IV-D agency)
Notice of tax refund intercept from IRS

- Children (3) lived with the mother.
- Mother was abusive.
- Child Protective Services gave all 3 children to father.
- Father contacted the Attorney General (AG, the Title IV-D agency) for assistance with his child support order. (His wages were still being garnished and the money sent to the mother. The mother was not paying child support to him.)
- AG sent a letter to his employer stopping the garnishment.
- AG took his income tax return this year as partial payment on the child support that is accruing as a result of the termination of the garnishment.
- AG has not sought a modification and still shows the father as the obligor.
- Child support order is still running and the arrearage is accruing.
- Because of the Bradley Amendment, the father will still owe the child support that is presently accruing even if the AG eventually establishes a child support order against the mother.
- Father has sought the services of John Stoutimore to attempt to end his child support obligation and to collect child support from the mother.

John R. Stoutimore
— Attorney at Law —
222 W. Exchange Ave., Ste. 205
Fort Worth, Texas 76106
Phone (817) 626-7266
Fax (817) 626-8966

March 30, 1999

Men's Health Network
Attn: Ms. Tracie Snitker
P.O. Box 75972
Washington, DC 20013

Re: John Rabon
SSN 457-29-9805
Office of the Attorney General (OAG) No. 0504792461

Dear Ms. Snitker:

In my family-law practice, I have met several child support obligors who have complained of (1) the OAG's wrongful seizure of income tax refunds to pay non-existent child-support arrearages; and (2) the OAG's refusal to seek modification of child support orders when the subject children have begun to reside with the obligor.

John Rabon's case is a prime example. At the time of the Rabons' divorce, Mrs. Rabon was given custody of the three Rabon children and Mr. Rabon was ordered to pay support via wage-withholding.

In February 1998, a Child Protective Services (CPS) caseworker determined that the children had been abused and neglected in their mother's care, and the children were sent to live with Mr. Rabon without court action. Shortly thereafter, Mr. Rabon requested the OAG's assistance in terminating his child support payments and obtaining support from Mrs. Rabon. The OAG asked Mr. Rabon to confirm his actual CPS-authorized custody of the children, so Mr. Rabon obtained a confirmation letter from the CPS caseworker. This 5/12/98 letter is attached as EXHIBIT A.

Based upon the CPS letter and other information provided to the OAG, the OAG wrote Mr. Rabon's employer on 6/1/98 and instructed the employer to cease withholding. This letter is attached as EXHIBIT B.

Now, by letter dated 3/5/99, the Department of the Treasury has notified Mr. Rabon that $1,071.00 of his income tax refund for 1998 has been withheld because of a

child support arrearage asserted by the OAG. This letter is attached as EXHIBIT C.

Mr. Rabon insists he had no notice whatever of any claimed arrearage and is now attempting to obtain a full return of the monies withheld. Too, he is considering filing a pro-se suit to terminate any technical arrearages as of the date the children began living with him, and to obtain support for the children from Mrs. Rabon. It appears to me that the OAG *should* file the case for him. Two issues present themselves:

1. First, when the OAG learned that the children were living with Mr. Rabon, why didn't it file a motion to terminate Mr. Rabon's child-support obligation and obtain support payments from Mrs. Rabon? The OAG knew that merely terminating the employer's withholding would not terminate Mr. Rabon's support liability, and it also knew that such letter would not obtain any support whatever from Mrs. Rabon.

2. Secondly, although the OAG letter obtained temporary relief for Mr. Rabon, such relief was short-lived given that the OAG subsequently seized his tax refund. The OAG *could* assert that Mr. Rabon was already in arrears when the OAG instructed the employer to stop withholding--but if that were the case, the OAG should not have stopped the withholding. Hence, we must conclude that the OAG seized Mr. Rabon's income-tax refund over a paper-arrearage that arose *after* the employer stopped withholding. In other words, the OAG letter *caused* the arrearage.

Having experienced the OAG's reluctance to perform its duties in cases such as this, I believe any effort to correct these errors through local OAG personnel will be met with hostility or, at best, inaction. Can you provide me with a contact person responsible for investigating the OAG's actions in this case and obtaining relief for Mr. Rabon and the Rabon children?

Please feel free to call or fax me at the above address. My e-mail address is STOUTIMORE@aol.com.

Very truly yours,

John R. Stoutimore

encl. Exhibits A, B and C

cc: John Rabon
2614 Pasteur #F201
Dallas, TX 75228

TEXAS DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES

May 12,1998

To Whom It May Concern:

This letter is to verify that Mr. John Rabon has been the caretaker for his minor children Jeffery DeWayne, Dorthy Gail, and David James Rabon. He has been responsible for the basic necessity and care of these children since February 23, 1998.

S. A.
Sylvanus Akpan
CPS Caseworker

EXHIBIT
A

Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

Dallas Northeast Child Support Division
10260 N. Central Expressway, Suite 210
Dallas, Texas 75231
Phone (214) 696-6044
(800) 687-8238
Fax (214) 696-5399

June 1, 1998

ATTENTION PAYROLL DEPT.
DALLAS COUNTY COMMUNITY COLLEGE
701 ELM ST, STE. 600
DALLAS, TEXAS 75202

RE: JOHN RABON
SSN: 457.29.9805
OAG CASE #: 0504792461

COPY

Dear Employer:

Effective the date of this letter please CEASE TO WITHHOLD CHILD SUPPORT FROM THE ABOVE-MENTIONED EMPLOYEE & ATTORNEY GENERAL CASE NUMBER.

Thank you for your prompt attention to this matter.

Sincerely,

Isabel Lugo

Isabel Lugo
Financial Specialist

cc: JOHN RABON
file

EXHIBIT
B

DEPARTMENT OF THE TREASURY
FINANCIAL MANAGEMENT SERVICE
P.O. BOX 1686
BIRMINGHAM, AL 35201-1686

ATTENTION: YOUR FEDERAL PAYMENT HAS BEEN REDUCED

03/05/99

RABON, JOHN P
7073 ST REGIS
DALLAS TX 75217-1369

Dear RABON, JOHN P:

Your payment due from the paying agency referenced below has been reduced by the amount shown below as "Amount of this Offset" to satisfy in whole or part your delinquent debt owed to the United States.

Your delinquent debt was referred to the U.S. Department of the Treasury's Financial Management Service by the Creditor Agency referenced below for this process. known as administrative offset. Administrative offset is authorized by the Debt Collection Act of 1982 and the Debt Collection Improvement Act of 1996.

The Creditor agency has previously notified you of the amount and nature of your debt and has made demand upon you for payment. You were notified of the creditor agency's intent to collect your debt by administrative offset if you failed to pay your debt, and the rights available to you. Your failure to resolve this debt has resulted in this offset. If you have any questions regarding this offset, or wish to avoid future offsets against your Federal payments by repaying any remaining debt, please contact:

OFFICE OF ATTORNEY GENERAL OF TEXAS At: (214) 696-6044 TIN NO: 457-29-9805
In the State of: Texas Call: Toll Free (800) 252-8014
Nationwide Call: Toll Free Debt Trace No: A00920777
OFFICE OF ATTORNEY GENERAL OF TEXAS 04-07E CHILD SUPPORT DIVISION
CHILD SUPPORT UNIT 0407E 10260 N CNTRL EXP STE 210
DALLAS, TX 75231 Acct Num: 457299805
Offset Amount this Creditor: $1071.00 Creditor: 02 Site: TX

Sincerely,

Debt Management Services
Financial Management Service, U.S. Department of the Treasury (800) 304-3107

PAYEE NAME: RABON, JOHN P TYPE OF PAYMENT: EFT
PAYING FEDERAL AGENCY: Internal Revenue Service
PAYMENT AMOUNT BEFORE OFFSET: $2955.00 PAYMENT DATE: 03/05/99
AMOUNT OF THIS OFFSET: $1071.00 applied to delinquent debt
FOR OFFICIAL USE ONLY: 0000003783A009207774572998050061 1189038A

EXHIBIT
C