

The State of South Carolina



Office of the Attorney General

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June 27, 1985

The Honorable James L. Solomon, Jr.
Commissioner, South Carolina
Department of Social Services
Post Office Box 1520
Columbia, South Carolina 29202-1520

Dear Commissioner Solomon:

You have asked the opinion of this Office as to the date when certain procedures mandated by House Bill No. 2561, R-295, the Wage Withholding Bill for Child Support, must be put into effect. Specifically, you wish to know whether those procedures should be implemented immediately, or whether the procedures are not required to be in place until October 1, 1985. Based on the language of the act, we would advise that the procedures should be implemented immediately.

Section 4 of the act provides, "This act shall take effect upon approval by the Governor." The act was signed by the Governor on June 24, 1985. Section 2-7-10, Code of Laws of South Carolina (1976), provides:

No act or joint resolution passed by the General Assembly shall take effect or become of force until the twentieth day after the day of its approval by the executive, unless some other day be specially named in the body of the act or joint resolution as the day upon which it shall take effect.

Because the act itself expressly provides that the act is to take effect upon approval by the Governor, the act is effective as of June 24, 1985. See Ops. Atty. Gen. dated July 8, 1983 and September 14, 1983; also State v. Mancke, 18 S.C. 81 (1882); Ex parte De Hay, 3 S.C. 564 (1872); 82 C.J.S. Statutes § 400; 73 Am.Jur.2d Statutes § 363; 2 Sutherland Statutory Construction § 33.02.

REQUEST LETTER

Continuation Sheet Number 2

To: The Honorable James L. Solomon, Jr.
June 27, 1985

We would also mention that Article III, Section 18 of the State Constitution, which specifies the formalities which must be followed prior to the effectiveness of an act, has been interpreted by this Office in Opinion No. 4013, dated April 7, 1975, to mean that the Great Seal of the State must be attached to a statute before it shall become effective. We are advised by the office of the Secretary of State that the act was received by that office and duly sealed on June 24, 1985. Following this constitutional provision and prior opinion, the act would be deemed effective as of June 24, 1985. However, in this instance, the act was signed by the Governor and sealed on the same date, June 24, 1985. Therefore, the act became effective on that date.

The interpretation that the act is to take effect immediately is consistent with several parts of the act. Within Section 1, the portions to be codified as Sections 20-7-1315(B)(3) and (F)(2) provide that the pertinent party may petition Family Court "at any time" to seek the relief provided by those sections. This language would be interpreted to mean "at any time" after the act takes effect. *Id.* The legislature did not specify that such petitions may be filed at any time after a specified date such as October 1, 1985; based on the rules of statutory construction cited above, it must be presumed that the legislature intended that relief provided by the act be immediately available. Section 20-7-1315(G)(6), imposing certain obligations on the Department of Social Services and Court Administration as to preparation of legal forms and informational materials, should most probably be implemented immediately.

Because the date of October 1, 1985, is mentioned in new Sections 20-7-1315(B)(1) and (B)(2), it could perhaps be argued that the provisions of the act would not take effect until October 1, 1985. The two provisions in question are as follows:

(B)(1) All orders for support entered or modified on or after October 1, 1985, must contain the obligor's social security number and a provision for income withholding procedures to take effect in the event a delinquency occurs. These orders must be construed to contain this withholding provision even if the provision has been omitted from the written order; provided, the court may order withholding to begin immediately for good cause shown. The court is required to make specified written findings to support immediate withholding.

Continuation Sheet Number 3
To: The Honorable James L. Solomon, Jr.
June 27, 1985

(2) In the case of each obligor against whom an order for support has been issued or modified prior to October 1, 1985, the order is presumed to contain a provision for income withholding procedures to take effect in the event a delinquency occurs without further amendment to the order or further action by the court.

There is no indication in these sections that implementation of the act is to be delayed until October 1, 1985. Indeed, these procedural requirements cover orders which may be entered into or modified prior to October 1, 1985, by part (B)(2). Thus, the mention of the date of October 1, 1985, in Section 20-7-1315(B)(1) could not be used to defeat the otherwise clear intent of the legislature that the act is to be effective upon signature of the Governor, or June 24, 1985.

In conclusion, it is the opinion of this Office that H.2561, R-295 and the provisions thereof became effective on June 24, 1985, the date on which the Governor signed the act into law.

Sincerely,

Patricia D. Petway

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Assistant Attorney General

PDP:djg

REVIEWED AND APPROVED BY:

Robert D. Cook

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