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**HOUSE BILL NO. 926**

Offered January 24, 2000

*A BILL to amend the Code of Virginia by adding in Chapter 6.1 of Title 20 an article numbered 2, consisting of sections numbered 20-124.7 through 20-124.18, relating to visitation dispute resolution.*

Patrons—Watts, Moran and Van Landingham; Senator: Ticer

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That the Code of Virginia is amended by adding in Chapter 6.1 of Title 20 an article numbered 2, consisting of sections numbered 20-124.7 through 20-127.18 as follows:**

*Article 2.**Visitation Dispute Resolution.**§ 20-124.7. Purpose; definitions.*

*The purpose of a visitation expeditor is to resolve visitation disputes by enforcing, interpreting, clarifying, and addressing circumstances not specifically addressed by an existing visitation order and, if appropriate, to make a determination as to whether the existing visitation order has been violated. A visitation expeditor may be appointed to resolve a one-time visitation dispute or to provide ongoing visitation dispute resolution services.*

*For purposes of this article, "visitation dispute" means a disagreement among parties about visitation with a child, including a dispute about an anticipated denial of a future scheduled visit. "Visitation dispute" includes a claim by a custodial parent that a noncustodial parent is not visiting a child as well as a claim by a noncustodial parent that a custodial parent is denying or interfering with visitation.*

*A "visitation expeditor" is a neutral person authorized to use a mediation-arbitration process to resolve visitation disputes. A visitation expeditor shall attempt to resolve a visitation dispute by facilitating negotiations between the parties to promote settlement and, if it becomes apparent that the dispute cannot be resolved by an agreement of the parties, the visitation expeditor shall make a decision resolving the dispute.*

*§ 20-124.8. Visitation expeditor; exceptions.*

*A. Upon a request of either party, the parties' stipulation, or upon the court's own motion, the court may appoint a visitation expeditor to resolve visitation disputes that occur under a visitation order.*

*B. A party may not be required to refer a visitation dispute to a visitation expeditor under this section if: (i) one of the parties claims to be the victim of domestic abuse by the other party; (ii) the court determines there is probable cause that one of the parties or a child of the parties has been physically abused or threatened with physical abuse by the other party; or (iii) the party is unable to pay the costs of the expeditor.*

*Even if one or more of these exceptions apply, if the court is satisfied that the parties have been advised by counsel and have agreed to use the visitation expeditor process and the process does not involve a face-to-face meeting of the parties, the court may direct that the visitation expeditor process be used.*

*§ 20-124.9. Appointment.*

*A. The parties may stipulate to the appointment of a visitation expeditor or a team of two expeditors without appearing in court by submitting to the court a written agreement identifying the names of the individuals to be appointed by the court; the nature of the dispute; the responsibilities of the visitation expeditor, including whether the expeditor is appointed to resolve a specific issue or on an ongoing basis; the term of the appointment; and the apportionment of fees and costs. The court shall review the agreement of the parties.*

*B. If the parties cannot agree on the visitation expeditor, the court shall provide to the parties a copy of the Supreme Court's list of visitation expeditors and require the parties to exchange the names of three potential visitation expeditors by a specific date. If after exchanging names the parties are unable to agree upon a visitation expeditor, the court shall select the visitation expeditor and, in its discretion, may appoint one expeditor or a team of two visitation expeditors. In the selection process, the court shall give consideration to the financial circumstances of the parties and the fees of those being considered as visitation expeditors. Preference shall be given to persons who agree to volunteer their services or who will charge a variable fee for services based on the ability of the parties to pay for them.*

*C. An order appointing a visitation expeditor shall identify the name of the individual to be appointed, the nature of the dispute, the responsibilities of the visitation expeditor including whether the*

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expeditor is appointed to resolve a specific issue or on an ongoing basis, the term of the appointment, the apportionment of fees, and notice that if the parties are unable to reach an agreement with the assistance of the visitation expeditor, the visitation expeditor is authorized to make a decision resolving the dispute that is binding upon the parties unless modified or vacated by the court.

§ 20-124.10. Fees.

Prior to appointing the visitation expeditor, the court shall give the parties notice that the fees of the visitation expeditor will be apportioned among the parties. In its order appointing the visitation expeditor, the court shall apportion the fees of the visitation expeditor among the parties, with each party bearing the portion of fees that the court determines is just and equitable under the circumstances. If a party files a pro se motion regarding a visitation dispute and there is not a court order that provides for apportionment of the fees of an expeditor, the court may require the party requesting the appointment of an expeditor to pay the fees of the expeditor in advance. Neither party may be required to submit a dispute to a visitation expeditor if the party cannot afford to pay for the fees of an expeditor and an affordable expeditor is not available, unless the other party agrees to pay the fees. After fees are incurred, a party may by motion request that the fees be reapportioned on equitable grounds. The court may consider the resources of the parties, the nature of the dispute, and whether a party acted in bad faith. The court may consider information from the expeditor in determining bad faith.

§ 20-124.11. List of visitation expeditors.

The Supreme Court shall maintain and make available to the public and judicial officers a list of individuals available to serve as visitation expeditors, including each individual's name, address, telephone number, and fee charged, if any. If the use of a visitation expeditor is initiated by stipulation of the parties, the parties may agree upon a person to serve as a visitation expeditor even if that person has not completed the required training. The court may appoint a person to serve as a visitation expeditor even if the person is not on the Supreme Court list, but may not appoint a person who has not completed the required training unless so stipulated by the parties. To maintain one's listing on the Supreme Court's list of visitation expeditors, an individual shall annually submit proof of completion of continuing education requirements.

§ 20-124.12. Training and continuing education requirements.

To qualify for the Supreme Court's list of visitation expeditors, an individual shall be certified pursuant to guidelines promulgated by the Judicial Council of Virginia. To maintain one's listing on the Supreme Court's list of visitation expeditors, an individual shall annually complete continuing education as required by the guidelines promulgated by the Judicial Council.

§ 20-124.13. Agreement or decision.

A. Within five days of notice of the appointment, or within five days of notice of a subsequent visitation dispute between the same parties, the visitation expeditor shall meet with the parties together or separately and shall make a diligent effort to facilitate an agreement to resolve the visitation dispute. If a visitation dispute requires immediate resolution, the visitation expeditor may confer with the parties through a telephone conference or similar means. An expeditor may make a decision without conferring with a party if the expeditor made a good faith effort to confer with the party, but the party chose not to participate in resolution of the dispute.

B. If the parties do not reach an agreement, the expeditor shall make a decision resolving the dispute as soon as possible but not later than five days after receiving all information necessary to make a decision and after the final meeting or conference with the parties. The visitation expeditor is authorized to award compensatory visitation and may recommend to the court that the noncomplying party pay attorney's fees, court costs, and other costs, if the visitation order has been violated. The visitation expeditor shall not lose authority to make a decision if circumstances beyond the visitation expeditor's control make it impracticable to meet the five-day timelines.

C. Unless the parties mutually agree, the visitation expeditor shall not make a decision that is inconsistent with an existing visitation order, but may make decisions interpreting or clarifying a visitation order, including the development of a specific schedule when the existing court order grants "reasonable visitation."

D. The visitation expeditor shall put an agreement or decision in writing and provide a copy to the parties. The visitation expeditor may include or omit reasons for the agreement or decision. An agreement of the parties or a decision of the visitation expeditor is binding on the parties unless vacated or modified by the court. If a party does not comply with an agreement of the parties or a decision of the visitation expeditor, any party may file a motion with the court and shall attach a copy of the parties' written agreement or decision of the visitation expeditor. The court may enforce, modify, or vacate the agreement of the parties or the decision of the visitation expeditor.

§ 20-124.14. Other agreements.

This article does not preclude the parties from voluntarily agreeing to submit their visitation dispute to a neutral third party or from otherwise resolving visitation disputes on a voluntary basis.

§ 20-124.15. Confidentiality.

122 A. Statements made and documents produced as part of the visitation expeditor process, which are  
123 not otherwise discoverable are not subject discovery or other disclosure and are not admissible into  
124 evidence for any purpose at trial or in any other proceeding, including impeachment.

125 B. Sworn testimony may be used in subsequent proceedings for any purpose for which it is  
126 admissible under the rules of evidence. Visitation expeditors, and lawyers for the parties to the extent of  
127 their participation in the visitation expeditor process, shall not be subpoenaed or called as witnesses in  
128 court proceedings.

129 C. Notes, records, and recollections of visitation expeditors are confidential and shall not be  
130 disclosed to the parties, the public, or anyone other than the visitation expeditor unless: (i) all parties  
131 and the visitation expeditor agree in writing to the disclosure, or (ii) disclosure is required by law or  
132 other applicable professional codes. Notes and records of visitation expeditors shall not be disclosed to  
133 the court unless after a hearing the court determines that the notes or records shall not be reviewed in  
134 camera. Those notes or records shall not be released by the court unless it determines that they disclose  
135 information showing violation of the criminal laws of the Commonwealth.

136 § 20-124.16. Immunity.

137 A visitation expeditor is immune from civil liability for actions taken or not taken when acting under  
138 this article.

139 § 20-124.17. Removal.

140 If a visitation expeditor has been appointed on a long-term basis, a party or the visitation expeditor  
141 may file a motion seeking to have the expeditor removed for good cause shown.

142 § 20-124.18. Visitation dispute resolution pilot projects.

143 By July 1, 2001, the Supreme Court shall establish visitation dispute resolution services as described  
144 in this article in at least three courts in the Commonwealth. By November 1, 2000, the Supreme Court  
145 shall submit to the General Assembly a report outlining the plan for establishment of the visitation  
146 dispute resolution pilot projects. By July 1, 2003, the Supreme Court shall evaluate and report to the  
147 General Assembly on the impact, cost and effectiveness of the pilot visitation dispute resolution projects  
148 in resolving and preventing visitation disputes.