2003 SESSION

ENROLLED

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VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 An Act to amend and reenact §§ 16.1-278.15 and 20-103, as they are currently effective and as they
3 shall become effective, of the Code of Virginia, relating to custody, visitation and support and educational seminars.

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Approved

[H 2128]

7 Be it enacted by the General Assembly of Virginia:

8 1. That §§ 16.1-278.15 and 20-103 of the Code of Virginia, as they are currently effective and as 9 they shall become effective, are amended and reenacted as follows:

10 § 16.1-278.15. (Effective until July 1, 2003) Custody or visitation, child or spousal support generally. 11 A. In cases involving the custody, visitation or support of a child pursuant to subdivision A 3 of § 16.1-241, the court may make any order of disposition to protect the welfare of the child and family 12 13 as may be made by the circuit court. When the parties are parents of The parties to any petition where a child whose custody or, visitation, or support is contested, the court shall order the parties, at the time 14 15 of the parties' initial court appearance, to attend at issue for an original decision shall show proof that 16 they have attended within the 12 months prior to their initial court appearance or that they shall attend 17 within 45 days thereafter an educational seminars seminar or other like programs program conducted by a qualified person or organization approved by the court, on. The seminar or program shall be a 18 19 minimum of four hours in length, and shall address the effects of separation or divorce on children, parenting responsibilities, options for conflict resolution, and financial responsibilities. Once a party has 20 21 completed one educational seminar or other like program, the required completion of additional 22 programs shall be at the court's discretion. Parties under this section shall include natural or adoptive 23 parents of the child, or a person with a legitimate interest as defined in § 20-124.1. The fee charged a 24 party for participation in such program shall be based on the party's ability to pay; however, no fee in 25 excess of fifty dollars \$50 may be charged. Whenever possible, before participating in mediation or 26 alternative dispute resolution to address custody, visitation or support, each party shall have attended 27 the educational seminar or other program. The court may grant an exemption from attendance of such 28 program for good cause shown or if there is no program reasonably available. Other than statements or 29 admissions by a party admitting criminal activity or child abuse or neglect, no statement or admission 30 by a party in such seminar or program shall be admissible into evidence in any subsequent proceeding.

If support is ordered for a child, the order shall also provide that support will continue to be paid for a child over the age of eighteen 18 who is (a) a full-time high school student, (b) not self-supporting, and (c) living in the home of the parent seeking or receiving child support, until the child reaches the age of nineteen 19 or graduates from high school, whichever occurs first. The court may also order the continuation of support for any child over the age of eighteen 18 who is (i) severely and permanently mentally or physically disabled, (ii) unable to live independently and support himself, and (iii) resides in the home of the parent seeking or receiving child support.

B. In any case involving the custody or visitation of a child, the court may award custody upon
petition to any party with a legitimate interest therein, including, but not limited to, grandparents,
stepparents, former stepparents, blood relatives and family members. The term "legitimate interest" shall
be broadly construed to accommodate the best interest of the child. The authority of the juvenile court
to consider a petition involving the custody of a child shall not be proscribed or limited where the
custody of the child has previously been awarded to a local board of social services.

C. In any determination of support obligation under this section, the support obligation as it becomes
due and unpaid creates a judgment by operation of law. Such judgment becomes a lien against real
estate only when docketed in the county or city where such real estate is located. Nothing herein shall
be construed to alter or amend the process of attachment of any lien on personal property.

48 D. In cases involving charges for desertion, abandonment or failure to provide support by any person in violation of law, disposition shall be made in accordance with Chapter 5 (§ 20-61 et seq.) of Title 20.

50 E. In cases involving a spouse who seeks spousal support after having separated from his spouse, the court may enter any appropriate order to protect the welfare of the spouse seeking support.

F. In any case or proceeding involving the custody or visitation of a child, the court shall consider
the best interest of the child, including the considerations for determining custody and visitation set forth
in Chapter 6.1 (§ 20-124.1 et seq.) of Title 20.

55 G. In any proceeding before the court for custody or visitation of a child, the court may order a custody or a psychological evaluation of any parent, guardian, legal custodian or person standing in loco

parentis to the child, if the court finds such evaluation would assist it in its determination. The court 57 58 may enter such orders as it deems appropriate for the payment of the costs of the evaluation by the 59 parties.

60 H. When deemed appropriate by the court in any custody or visitation matter, the court may order 61 drug testing of any parent, guardian, legal custodian or person standing in loco parentis to the child. The 62 court may enter such orders as it deems appropriate for the payment of the costs of the testing by the 63 parties.

§ 16.1-278.15. (Effective July 1, 2003) Custody or visitation, child or spousal support generally.

64 65 A. In cases involving the custody, visitation or support of a child pursuant to subdivision A 3 of 66 § 16.1-241, the court may make any order of disposition to protect the welfare of the child and family 67 as may be made by the circuit court. The parties to any petition where a child whose custody, visitation, 68 or support is at issue for an original decision, whether contested or by agreement, shall show proof that they have attended within the 12 months prior to their court appearance or that they shall attend within 69 70 45 days thereafter an educational seminar or other like program conducted by a qualified person or organization approved by the court. The seminar or other program shall be a minimum of four hours in length and shall address the effects of separation or divorce on children, parenting responsibilities, 71 72 73 options for conflict resolution and financial responsibilities. Once a party has completed one educational 74 seminar or other like program, the required completion of additional programs shall be at the court's 75 discretion. Parties under this section shall include natural or adoptive parents of the child, or any 76 person with a legitimate interest as defined in § 20-124.1. The fee charged a party for participation in 77 such program shall be based on the party's ability to pay; however, no fee in excess of \$50 may be 78 charged. Whenever possible, before participating in mediation or alternative dispute resolution to 79 address custody, visitation or support, each party shall have attended the educational seminar or other 80 like program. The court may grant an exemption from attendance of such program for good cause shown or if there is no program reasonably available. Other than statements or admissions by a party 81 82 admitting criminal activity or child abuse or neglect, no statement or admission by a party in such 83 seminar or program shall be admissible into evidence in any subsequent proceeding. If support is 84 ordered for a child, the order shall also provide that support will continue to be paid for a child over the 85 age of eighteen 18 who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in 86 the home of the parent seeking or receiving child support, until the child reaches the age of nineteen 19 or graduates from high school, whichever occurs first. The court may also order the continuation of 87 88 support for any child over the age of eighteen 18 who is (a) severely and permanently mentally or 89 physically disabled, (b) unable to live independently and support himself, and (c) resides in the home of 90 the parent seeking or receiving child support.

91 B. In any case involving the custody or visitation of a child, the court may award custody upon petition to any party with a legitimate interest therein, including, but not limited to, grandparents, stepparents, former stepparents, blood relatives and family members. The term "legitimate interest" shall 92 93 be broadly construed to accommodate the best interest of the child. The authority of the juvenile court 94 95 to consider a petition involving the custody of a child shall not be proscribed or limited where the 96 custody of the child has previously been awarded to a local board of social services.

C. In any determination of support obligation under this section, the support obligation as it becomes 97 98 due and unpaid creates a judgment by operation of law. Such judgment becomes a lien against real 99 estate only when docketed in the county or city where such real estate is located. Nothing herein shall 100 be construed to alter or amend the process of attachment of any lien on personal property.

D. In cases involving charges for desertion, abandonment or failure to provide support by any person 101 102 in violation of law, disposition shall be made in accordance with Chapter 5 (\S 20-61 et seq.) of Title 20. 103 E. In cases involving a spouse who seeks spousal support after having separated from his spouse, the 104 court may enter any appropriate order to protect the welfare of the spouse seeking support.

105 F. In any case or proceeding involving the custody or visitation of a child, the court shall consider 106 the best interest of the child, including the considerations for determining custody and visitation set forth 107 in Chapter 6.1 (§ 20-124.1 et seq.) of Title 20.

108 G. In any proceeding before the court for custody or visitation of a child, the court may order a 109 custody or a psychological evaluation of any parent, guardian, legal custodian or person standing in loco 110 parentis to the child, if the court finds such evaluation would assist it in its determination. The court 111 may enter such orders as it deems appropriate for the payment of the costs of the evaluation by the 112 parties.

113 H. When deemed appropriate by the court in any custody or visitation matter, the court may order 114 drug testing of any parent, guardian, legal custodian or person standing in loco parentis to the child. The 115 court may enter such orders as it deems appropriate for the payment of the costs of the testing by the 116 parties.

117 § 20-103. (Effective until July 1, 2003) Court may make orders pending suit for divorce, custody or

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118 visitation, etc.

119 A. In suits for divorce, annulment and separate maintenance, and in proceedings arising under 120 subdivision A 3 or subsection L of § 16.1-241, the court having jurisdiction of the matter may, at any 121 time pending a suit pursuant to this chapter, in the discretion of such court, make any order that may be 122 proper (i) to compel a spouse to pay any sums necessary for the maintenance and support of the 123 petitioning spouse, including an order that the other spouse provide health care coverage for the 124 petitioning spouse, unless it is shown that such coverage cannot be obtained, (ii) to enable such spouse 125 to carry on the suit, (iii) to prevent either spouse from imposing any restraint on the personal liberty of 126 the other spouse, (iv) to provide for the custody and maintenance of the minor children of the parties, 127 including an order that either party provide health care coverage for the children, (v) to provide support, calculated in accordance with § 20-108.2, for any child of the parties to whom a duty of support is 128 129 owed and to continue to support any child over the age of eighteen 18 who meets the requirements set 130 forth in subsection C of § 20-124.2, (vi) for the exclusive use and possession of the family residence 131 during the pendency of the suit, (vii) to preserve the estate of either spouse, so that it be forthcoming to 132 meet any decree which may be made in the suit, or (viii) to compel either spouse to give security to 133 abide such decree.

134 In addition to the authority hereinabove, the court shall order The parties to any petition with a 135 minor child or children whose custody or, visitation or support is contested to attend at issue for an 136 original decision, shall show proof that they have attended within the 12 months prior to their initial 137 court appearance or that they shall attend within 45 days thereafter an educational seminars seminar or 138 other like programs program conducted by a qualified person or organization approved by the court, on. 139 This seminar shall be a minimum of four hours in length, and shall address the effects of the separation 140 or divorce on minor children, parenting responsibilities, options for conflict resolution, and financial responsibilities. Once a party has completed one educational seminar or other like program, the 141 142 required completion of additional programs shall be at the court's discretion. Parties under this section 143 shall include natural or adoptive parents of the child, or a person with a legitimate interest as defined 144 in § 20-124.1. The fee charged a party for participation in such a program shall be based on the party's 145 ability to pay; however, no fee in excess of fifty dollars \$50 may be charged. Whenever possible, before 146 participating in mediation or alternative dispute resolution to address custody, visitation or support, 147 each party shall have attended the educational seminar or other like program pursuant to this section. 148 The court may grant an exemption from attendance of such program for good cause shown or if there is 149 no program reasonably available. Other than statements or admissions by a party admitting criminal activity or child abuse or neglect, no statement or admission by a party in such seminar or program 150 151 shall be admissible into evidence in any subsequent proceeding.

152 B. In addition to the terms provided in subsection A, upon a showing by a party of reasonable 153 apprehension of physical harm to that party by such party's family or household member as that term is 154 defined in § 16.1-228, and consistent with rules of the Supreme Court of Virginia, the court may enter 155 an order excluding that party's family or household member from the jointly owned or jointly rented family dwelling. In any case where an order is entered under this paragraph, pursuant to an ex parte 156 157 hearing, the order shall not exclude a family or household member from the family dwelling for a period in excess of fifteen 15 days from the date the order is served, in person, upon the person so 158 159 excluded. The order may provide for an extension of time beyond the fifteen 15 days, to become 160 effective automatically. The person served may at any time file a written motion in the clerk's office 161 requesting a hearing to dissolve or modify the order. Nothing in this section shall be construed to 162 prohibit the court from extending an order entered under this subsection for such longer period of time as is deemed appropriate, after a hearing on notice to the parties. 163

164 C. In cases other than those for divorce in which a custody or visitation arrangement for a minor 165 child is sought, the court may enter an order providing for custody, visitation or maintenance pending 166 the suit as provided in subsection A. The order shall be directed to either parent or any person with a 167 legitimate interest who is a party to the suit.

168 D. Orders entered pursuant to this section which provide for custody or visitation arrangements 169 pending the suit shall be made in accordance with the standards set out in Chapter 6.1 (§ 20-124.1 et 170 seq.) of Title 20. Orders entered pursuant to subsection B shall be certified by the clerk and forwarded 171 as soon as possible to the local police department or sheriff's office which shall, on the date of receipt, 172 enter the name of the person subject to the order and other appropriate information required by the 173 Department of State Police into the Virginia crime information network system established and 174 maintained by the Department of State Police pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. If the 175 order is later dissolved or modified, a copy of the dissolution or modification shall also be certified, 176 forwarded and entered in the system as described above.

E. An order entered pursuant to this section shall have no presumptive effect and shall not be determinative when adjudicating the underlying cause.

179 § 20-103. (Effective July 1, 2003) Court may make orders pending suit for divorce, custody or 180 visitation, etc.

181 A. In suits for divorce, annulment and separate maintenance, and in proceedings arising under 182 subdivision A 3 or subsection L of § 16.1-241, the court having jurisdiction of the matter may, at any 183 time pending a suit pursuant to this chapter, in the discretion of such court, make any order that may be 184 proper (i) to compel a spouse to pay any sums necessary for the maintenance and support of the petitioning spouse, including an order that the other spouse provide health care coverage for the 185 186 petitioning spouse, unless it is shown that such coverage cannot be obtained, (ii) to enable such spouse 187 to carry on the suit, (iii) to prevent either spouse from imposing any restraint on the personal liberty of 188 the other spouse, (iv) to provide for the custody and maintenance of the minor children of the parties, 189 including an order that either party provide health care coverage for the children, (v) to provide support, calculated in accordance with § 20-108.2, for any child of the parties to whom a duty of support is 190 191 owed and to continue to support any child over the age of eighteen 18 who meets the requirements set 192 forth in subsection C of § 20-124.2, (vi) for the exclusive use and possession of the family residence 193 during the pendency of the suit, (vii) to preserve the estate of either spouse, so that it be forthcoming to 194 meet any decree which may be made in the suit, or (viii) to compel either spouse to give security to 195 abide such decree. In addition to the authority hereinabove, the court may order parties with a minor 196 child or children to attend educational seminars and other like programs conducted by a qualified person 197 or organization approved by the court, on the effects of the separation or divorce on minor children, 198 parenting responsibilities, options for conflict resolution, and financial responsibilities, provided that no 199 fee in excess of fifty dollars may be charged for participation in any such program. The parties to any 200 petition where a child whose custody, visitation, or support is at issue for an original decision, whether 201 contested or by agreement, shall show proof that they have attended within the 12 months prior to their court appearance or that they shall attend within 45 days thereafter an educational seminar or other 202 203 like program conducted by a qualified person or organization approved by the court. The seminar or 204 other program shall be a minimum of four hours in length and shall address the effects of separation or 205 divorce on children, parenting responsibilities, options for conflict resolution and financial 206 responsibilities. Once a party has completed one educational seminar or other like program, the 207 required completion of additional programs shall be at the court's discretion. Parties under this section 208 shall include natural or adoptive parents of the child, or any person with a legitimate interest as defined 209 in § 20-124.1. The fee charged a party for participation in such program shall be based on the party's 210 ability to pay; however, no fee in excess of \$50 may be charged. Whenever possible, before 211 participating in mediation or alternative dispute resolution to address custody, visitation or support, 212 each party shall have attended the educational seminar or other like program. The court may grant an 213 exemption from attendance of such program for good cause shown or if there is no program reasonably available. Other than statements or admissions by a party admitting criminal activity or child abuse, no 214 215 statement or admission by a party in such seminar or program shall be admissible into evidence in any 216 subsequent proceeding.

217 B. In addition to the terms provided in subsection A, upon a showing by a party of reasonable 218 apprehension of physical harm to that party by such party's family or household member as that term is 219 defined in § 16.1-228, and consistent with rules of the Supreme Court of Virginia, the court may enter 220 an order excluding that party's family or household member from the jointly owned or jointly rented 221 family dwelling. In any case where an order is entered under this paragraph, pursuant to an ex parte 222 hearing, the order shall not exclude a family or household member from the family dwelling for a 223 period in excess of fifteen 15 days from the date the order is served, in person, upon the person so 224 excluded. The order may provide for an extension of time beyond the fifteen 15 days, to become 225 effective automatically. The person served may at any time file a written motion in the clerk's office 226 requesting a hearing to dissolve or modify the order. Nothing in this section shall be construed to 227 prohibit the court from extending an order entered under this subsection for such longer period of time 228 as is deemed appropriate, after a hearing on notice to the parties.

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child is sought, the court may enter an order providing for custody, visitation or maintenance pending
the suit as provided in subsection A. The order shall be directed to either parent or any person with a
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