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HOUSE BILL NO. 2266

Offered January 12, 2011

Prefiled January 12, 2011

A *BILL to amend and reenact § 20-103 of the Code of Virginia, relating to pendente lite custody orders; appeals.*

Patron—Morgan

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 20-103 of the Code of Virginia is amended and reenacted as follows:

§ 20-103. Court may make orders pending suit for divorce, custody or visitation, etc.

A. In suits for divorce, annulment and separate maintenance, and in proceedings arising under subdivision A 3 or subsection L of § 16.1-241, the court having jurisdiction of the matter may, at any time pending a suit pursuant to this chapter, in the discretion of such court, make any order that may be 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 petitioning spouse, unless it is shown that such coverage cannot be obtained, (ii) to enable such spouse to carry on the suit, (iii) to prevent either spouse from imposing any restraint on the personal liberty of the other spouse, (iv) to provide for the custody and maintenance of the minor children of the parties, including an order that either party or both parties provide health care coverage or cash medical support, or both, 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 owed and to continue to support any child over the age of 18 who meets the requirements set forth in subsection C of § 20-124.2, (vi) for the exclusive use and possession of the family residence during the pendency of the suit, (vii) to preserve the estate of either spouse, so that it be forthcoming to meet any decree which may be made in the suit, or (viii) to compel either spouse to give security to abide such decree. The parties to any petition where a child whose custody, visitation, or support is contested 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 like program conducted by a qualified person or organization approved by the court except that the court may require the parties to attend such seminar or program in uncontested cases only if the court finds good cause. 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, options for conflict resolution and financial responsibilities. Once a party has completed one educational seminar or other like program, the required completion of additional programs shall be at the court's discretion. Parties under this section shall include natural or adoptive parents of the child, or any person with a legitimate interest as defined in § 20-124.1. The fee charged a party for participation in such program shall be based on the party's ability to pay; however, no fee in excess of \$50 may be charged. Whenever possible, before participating in mediation or alternative dispute resolution to address custody, visitation or support, each party shall have attended the educational seminar or other 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 admitting criminal activity or child abuse, no statement or admission by a party in such seminar or program shall be admissible into evidence in any subsequent proceeding.

B. In addition to the terms provided in subsection A, upon a showing by a party of reasonable apprehension of physical harm to that party by such party's family or household member as that term is defined in § 16.1-228, and consistent with rules of the Supreme Court of Virginia, the court may enter 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 hearing, the order shall not exclude a family or household member from the family dwelling for a period in excess of 15 days from the date the order is served, in person, upon the person so excluded. The order may provide for an extension of time beyond the 15 days, to become effective automatically. The person served may at any time file a written motion in the clerk's office requesting a hearing to dissolve or modify the order. Nothing in this section shall be construed to 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. If the party subject to the order fails to appear at this hearing, the court may extend the order for a period not to exceed six months.

C. In cases other than those for divorce in which a custody or visitation arrangement for a minor

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

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

71 *E. Orders entered pursuant to this section which provide for custody or visitation arrangements*
72 *pending the suit, despite not being a final determination of custody or visitation, are appealable to the*
73 *court with appellate jurisdiction over such orders.*

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