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HOUSE BILL NO. 1492

Offered January 11, 2017

Prefiled December 15, 2016

A BILL to amend and reenact §§ 16.1-278.15 and 20-124.2 of the Code of Virginia, relating to child support orders; special needs trust; ABLÉ savings trust account.

Patrons—Hope and Filler-Corn

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-278.15 and 20-124.2 of the Code of Virginia are amended and reenacted as follows: § 16.1-278.15. Custody or visitation, child or spousal support generally.

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 as may be made by the circuit court. 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. 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 or neglect, no statement or admission 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 18 who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the parent seeking or receiving child support, until the child reaches the age of 19 or graduates from high school, whichever occurs first. The court may also order that support be paid or continue to be paid for any child over the age of 18 who is (a) severely and permanently mentally or physically disabled, and such disability existed prior to the child reaching the age of 18 or the age of 19 if the child met the requirements of clauses (i), (ii), and (iii); (b) unable to live independently and support himself; and (c) residing in the home of the parent seeking or receiving child support. *Upon request of either party, the court may also order that support payments be made to a special needs trust or an ABLÉ savings trust account as defined in § 23.1-700.*

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.

D. Orders entered prior to July 1, 2008, shall not be deemed void or voidable solely because the petition or motion that resulted in the order was completed, signed and filed by a nonattorney employee of the Department of Social Services.

E. 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.

F. 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.

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

62 H. In any proceeding before the court for custody or visitation of a child, the court may order a
63 custody or a psychological evaluation of any parent, guardian, legal custodian or person standing in loco
64 parentis to the child, if the court finds such evaluation would assist it in its determination. The court
65 may enter such orders as it deems appropriate for the payment of the costs of the evaluation by the
66 parties.

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

71 **§ 20-124.2. Court-ordered custody and visitation arrangements.**

72 A. In any case in which custody or visitation of minor children is at issue, whether in a circuit or
73 district court, the court shall provide prompt adjudication, upon due consideration of all the facts, of
74 custody and visitation arrangements, including support and maintenance for the children, prior to other
75 considerations arising in the matter. The court may enter an order pending the suit as provided in
76 § 20-103. The procedures for determining custody and visitation arrangements shall insofar as practical,
77 and consistent with the ends of justice, preserve the dignity and resources of family members. Mediation
78 shall be used as an alternative to litigation where appropriate. When mediation is used in custody and
79 visitation matters, the goals may include development of a proposal addressing the child's residential
80 schedule and care arrangements, and how disputes between the parents will be handled in the future.

81 B. In determining custody, the court shall give primary consideration to the best interests of the
82 child. The court shall assure minor children of frequent and continuing contact with both parents, when
83 appropriate, and encourage parents to share in the responsibilities of rearing their children. As between
84 the parents, there shall be no presumption or inference of law in favor of either. The court shall give
85 due regard to the primacy of the parent-child relationship but may upon a showing by clear and
86 convincing evidence that the best interest of the child would be served thereby award custody or
87 visitation to any other person with a legitimate interest. The court may award joint custody or sole
88 custody.

89 C. The court may order that support be paid for any child of the parties. *Upon request of either*
90 *party, the court may order that such support payments be made to a special needs trust or an ABLE*
91 *savings trust account as defined in § 23.1-700.* The court shall also order that support will continue to
92 be paid for any child over the age of 18 who is (i) a full-time high school student, (ii) not
93 self-supporting, and (iii) living in the home of the party seeking or receiving child support until such
94 child reaches the age of 19 or graduates from high school, whichever first occurs. The court may also
95 order that support be paid or continue to be paid for any child over the age of 18 who is (a) severely
96 and permanently mentally or physically disabled, and such disability existed prior to the child reaching
97 the age of 18 or the age of 19 if the child met the requirements of clauses (i), (ii), and (iii); (b) unable
98 to live independently and support himself; and (c) residing in the home of the parent seeking or
99 receiving child support. In addition, the court may confirm a stipulation or agreement of the parties
100 which extends a support obligation beyond when it would otherwise terminate as provided by law. The
101 court shall have no authority to decree support of children payable by the estate of a deceased party.
102 The court may make such further decree as it shall deem expedient concerning support of the minor
103 children, including an order that either party or both parties provide health care coverage or cash
104 medical support, or both.

105 D. In any case in which custody or visitation of minor children is at issue, whether in a circuit or
106 district court, the court may order an independent mental health or psychological evaluation to assist the
107 court in its determination of the best interests of the child. The court may enter such order as it deems
108 appropriate for the payment of the costs of the evaluation by the parties.

109 E. The court shall have the continuing authority and jurisdiction to make any additional orders
110 necessary to effectuate and enforce any order entered pursuant to this section or § 20-103 including the
111 authority to punish as contempt of court any willful failure of a party to comply with the provisions of
112 the order. A parent or other person having legal custody of a child may petition the court to enjoin and
113 the court may enter an order to enjoin a parent of the child from filing a petition relating to custody and
114 visitation of that child for any period of time up to 10 years if doing so is in the best interests of the
115 child and such parent has been convicted of an offense under the laws of the Commonwealth or a
116 substantially similar law of another state, the United States, or any foreign jurisdiction which constitutes
117 (i) murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit any such
118 offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at
119 the time the offense occurred, or the other parent of the child, or (ii) felony assault resulting in serious
120 bodily injury, felony bodily wounding resulting in serious bodily injury, or felony sexual assault, if the

121 victim of the offense was a child of the parent or a child with whom the parent resided at the time of
122 the offense. When such a petition to enjoin the filing of a petition for custody and visitation is filed, the
123 court shall appoint a guardian ad litem for the child pursuant to § 16.1-266.

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