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SENATE BILL NO. 389

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on March 2, 2022)

(Patron Prior to Substitute—Senator Ebbin)

A BILL to amend and reenact § 20-88 of the Code of Virginia, relating to support of parents by children not required; bankruptcy proceedings.

Be it enacted by the General Assembly of Virginia:

1. That § 20-88 of the Code of Virginia is amended and reenacted as follows:

§ 20-88. Support of parents by children not required; bankruptcy proceedings.

It shall *not* be the joint and several duty of all persons eighteen *any person* 18 years of age or over; of sufficient earning capacity or income; after reasonably providing for his or her own immediate family, to assist in providing for the support and maintenance of his or her mother or father; he or she being then and there in necessitous circumstances.

If there be more than one person bound to support the same parent or parents, the persons so bound to support shall jointly and severally share equitably in the discharge of such duty. Taking into consideration the needs of the parent or parents and the circumstances affecting the ability of each person to discharge the duty of support, the court having jurisdiction shall have the power to determine and order the payment, by such person or persons so bound to support, of that amount for support and maintenance which to the court may seem just. Where the court ascertains that any person has failed to render his or her proper share in such support and maintenance it may, upon the complaint of any party or on its own motion, compel contribution by that person to any person or authority which has theretofore contributed to the support or maintenance of the parent or parents. The court may from time to time revise the orders entered by it or by any other court having jurisdiction under the provisions of this section, in such manner as to it may seem just.

The juvenile and domestic relations district court shall have exclusive original jurisdiction in all cases arising under this section. Any person aggrieved shall have the same right of appeal as is provided by law in other cases.

All proceedings under this section shall conform as nearly as possible to the proceedings under the other provisions of this chapter, and the other provisions of this chapter shall apply to cases arising under this section in like manner as though they were incorporated in this section. Prosecutions under this section shall be in the jurisdiction where the parent or parents reside.

This section shall not apply if there is substantial evidence of desertion, neglect, abuse or willful failure to support any such child by the father or mother, as the case may be, prior to the child's emancipation or, except as provided hereafter in this section, if a parent is otherwise eligible for and is receiving public assistance or services under a federal or state program.

To the extent that the financial responsibility of children for any part of the costs incurred in providing medical assistance to their parents pursuant to the plan provided for in § 32.1-325 is not restricted by that plan and to the extent that the financial responsibility of children for any part of the costs incurred in providing to their parents services rendered, administered or funded by the Department of Behavioral Health and Developmental Services is not restricted by federal law, the provisions of this section shall apply. A proceeding may be instituted in accordance with this section in the name of the Commonwealth by the state agency administering the program of assistance or services in order to compel any child of a parent receiving such assistance or services to reimburse the Commonwealth for such portion of the costs incurred in providing the assistance or services as the court may determine to be reasonable. If costs are incurred for the institutionalization of a parent, the children shall in no case be responsible for such costs for more than sixty months of institutionalization.

Any person violating the provisions of an order entered pursuant to this section shall be guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding \$500 or imprisonment in jail for a period not exceeding twelve months or both *Notwithstanding the provisions of this section, in any bankruptcy proceeding, a debtor may exempt the reasonable expenses of such debtor used to provide support and maintenance to such debtor's mother or father.*

HOUSE SUBSTITUTE

SB389H1