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SENATE BILL NO. 287

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on March 3, 1994)

(Patron Prior to Substitute—Senator Howell)

A BILL to amend and reenact §§ 8.01-576.9, 8.01-576.10 and 8.01-576.11 of the Code of Virginia, relating to dispute resolution; child support.

Be it enacted by the General Assembly of Virginia:**1. That §§ 8.01-576.9, 8.0-576.10 and 8.01-576.11 of the Code of Virginia are amended and reenacted as follows:**

§ 8.01-576.9. Standards and duties of neutrals; confidentiality; liability.

A neutral selected to conduct a dispute resolution proceeding under this chapter may encourage and assist the parties in reaching a resolution of their dispute, but may not compel or coerce the parties into entering into a settlement agreement. A neutral has an obligation to remain impartial and free from conflict of interests in each case, and to decline to participate further in a case should such partiality or conflict arise. Unless expressly authorized by the disclosing party, the neutral may not disclose to either party information relating to the subject matter of the dispute resolution proceeding provided to him in confidence by the other. In reporting on the outcome of the dispute resolution proceeding to the referring court, the neutral shall indicate only the terms of any agreement reached or the fact that no agreement was reached. The neutral shall not disclose information exchanged or observations regarding the conduct and demeanor of the parties and their counsel during the dispute resolution proceeding, unless the parties otherwise agree.

However, where the dispute involves the support of minor children of the parties, the parties shall disclose between themselves and to the neutral the information to be used in completing the child support guidelines worksheet required by § 20-108.2. The guidelines computations and any reasons for deviation shall be incorporated in any written agreement between the parties.

With respect to liability, the provisions of § 8.01-581.23 shall apply in claims arising out of services rendered by any neutral.

§ 8.01-576.10. Confidentiality of dispute resolution proceeding.

All memoranda, work products or other materials contained in the case files of a neutral or dispute resolution program are confidential. Any communication made in or in connection with the dispute resolution proceeding which relates to the controversy, whether made to the neutral or dispute resolution program or to a party, or to any other person if made at a dispute resolution proceeding, is confidential. However, a written settlement agreement shall not be confidential, unless the parties otherwise agree in writing.

Confidential materials and communications are not subject to disclosure in any judicial or administrative proceeding except (i) where all parties to the dispute resolution proceeding agree, in writing, to waive the confidentiality, (ii) in a subsequent action between the neutral or dispute resolution program and a party to the dispute resolution proceeding for damages arising out of the dispute resolution proceeding, or (iii) statements, memoranda, materials and other tangible evidence, otherwise subject to discovery, which were not prepared specifically for use in and actually used in the dispute resolution proceeding. The use of attorney work product in a dispute resolution proceeding shall not result in a waiver of the attorney work product privilege.

Notwithstanding the provisions of this section, in any case where the dispute involves support of the minor children of the parties, financial information, including information contained in the child support guidelines worksheet, and written reasons for any deviation from the guidelines shall be disclosed to each party and the court for the purpose of computing a basic child support amount pursuant to § 20-108.2.

§ 8.01-576.11. Effect of written settlement agreement.

If the parties reach a settlement and execute a written agreement disposing of the dispute, the agreement is enforceable in the same manner as any other written contract. Upon request of all parties and consistent with law and public policy, the court shall incorporate the written agreement into the terms of its final decree disposing of a case. *In cases in which the dispute involves support for the minor children of the parties, an order incorporating a written agreement shall also include the child support guidelines worksheet and, if applicable, the written reasons for any deviation from the guidelines. The child support guidelines worksheet shall be attached to the order.*