

964862813

## HOUSE BILL NO. 1371

Offered January 22, 1996

A *BILL to amend and reenact §§ 20-108.1 and 20-108.2 of the Code of Virginia, relating to determination of child support; imputed income.*

Patrons—Sherwood, Albo, Katzen, Kilgore, Marshall, Parrish, Ruff, Weatherholtz and Wilkins; Senators: Norment and Potts

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 20-108.1 and 20-108.2 of the Code of Virginia are amended and reenacted as follows:**

§ 20-108.1. Determination of child or spousal support.

A. In any proceeding on the issue of determining spousal support, the court shall consider all evidence presented relevant to any issues joined in that proceeding. The court's decision shall be rendered based upon the evidence relevant to each individual case.

B. In any proceeding on the issue of determining child support under this title or Title 16.1 or 63.1, the court shall consider all evidence presented relevant to any issues joined in that proceeding. The court's decision in any such proceeding shall be rendered upon the evidence relevant to each individual case. However, there shall be a rebuttable presumption in any judicial or administrative proceeding for child support, including cases involving split custody or shared custody, that the amount of the award which would result from the application of the guidelines set out in § 20-108.2 is the correct amount of child support to be awarded. In order to rebut the presumption, the court shall make written findings in the order, which findings may be incorporated by reference, that the application of such guidelines would be unjust or inappropriate in a particular case. The finding that rebuts the guidelines shall state the amount of support that would have been required under the guidelines, shall give a justification of why the order varies from the guidelines, and shall be determined by relevant evidence pertaining to the following factors affecting the obligation, the ability of each party to provide child support, and the best interests of the child:

1. Actual monetary support for other children, other family members or former family members;
2. Arrangements regarding custody of the children;
3. ~~Imputed income to a party who is voluntarily unemployed or voluntarily under-employed; provided that income may not be imputed to the custodial parent when a child is not in school, child care services are not available and the cost of such child care services are not included in the computation;~~
4. Debts of either party arising during the marriage for the benefit of the child;
- ~~5~~ 4. Debts incurred for production of income;
- 6 5. Direct payments ordered by the court for health care coverage, maintaining life insurance coverage pursuant to subsection D, education expenses, or other court-ordered direct payments for the benefit of the child and costs related to the provision of health care coverage pursuant to subdivision 7 of § 20-60.3;
- 7 6. Extraordinary capital gains such as capital gains resulting from the sale of the marital abode;
- 8 7. Age, physical and mental condition of the child or children, including extraordinary medical or dental expenses, and child-care expenses;
- 9 8. Independent financial resources, if any, of the child or children;
- ~~10~~ 9. Standard of living for the family established during the marriage;
- ~~11~~ 10. Earning capacity, obligations and needs, and financial resources of each parent;
- ~~12~~ 11. Education and training of the parties and the ability and opportunity of the parties to secure such education and training;
- ~~13~~ 12. Contributions, monetary and nonmonetary, of each party to the well-being of the family;
- ~~14~~ 13. Provisions made with regard to the marital property under § 20-107.3;
- ~~15~~ 14. Tax consequences to the parties regarding claims for dependent children and child care expenses;
- ~~16~~ 15. A written agreement between the parties which includes the amount of child support;
- ~~17~~ 16. A pendente lite decree, which includes the amount of child support, agreed to by both parties or by counsel for the parties; and
- ~~18~~ 17. Such other factors, including tax consequences to each party, as are necessary to consider the equities for the parents and children.
- C. In any proceeding under this title or Title 16.1 or Title 63.1 on the issue of determining child

INTRODUCED

HB1371

60 support, the court shall have the authority to order a party to provide health care coverage, as defined in  
 61 § 63.1-250, for dependent children if reasonable under all the circumstances and health care coverage for  
 62 a spouse or former spouse.

63 D. In any proceeding under this title, Title 16.1 or Title 63.1 on the issue of determining child  
 64 support, the court shall have the authority to order a party to (i) maintain any existing life insurance  
 65 policy on the life of either party provided the party so ordered has the right to designate a beneficiary  
 66 and (ii) designate a child or children of the parties as the beneficiary of all or a portion of such life  
 67 insurance for so long as the party so ordered has a statutory obligation to pay child support for the child  
 68 or children.

69 § 20-108.2. Guideline for determination of child support.

70 A. There shall be a rebuttable presumption in any judicial or administrative proceeding for child  
 71 support under this title or Title 16.1 or 63.1, including cases involving split custody or shared custody,  
 72 that the amount of the award which would result from the application of the guidelines set forth in this  
 73 section is the correct amount of child support to be awarded. In order to rebut the presumption, the  
 74 court shall make written findings in the order as set out in § 20-108.1, which findings may be  
 75 incorporated by reference, that the application of the guidelines would be unjust or inappropriate in a  
 76 particular case as determined by relevant evidence pertaining to the factors set out in §§ 20-107.2 and  
 77 20-108.1. The Department of Social Services shall set child support at the amount resulting from  
 78 computations using the guidelines set out in this section pursuant to the authority granted to it in  
 79 Chapter 13 (§ 63.1-249 et seq.) of Title 63.1 and subject to the provisions of § 63.1-264.2.

80 B. For purposes of application of the guideline, a basic child support obligation shall be computed  
 81 using the schedule set out below. For combined monthly gross income amounts falling between amounts  
 82 shown in the schedule, basic child support obligation amounts shall be extrapolated. "Number of  
 83 children" shall mean the number of children for whom the parents share joint legal responsibility and for  
 84 whom support is being sought.

85

86 SCHEDULE OF MONTHLY BASIC CHILD SUPPORT OBLIGATIONS

87

88 COMBINED  
 89 MONTHLY

90 GROSS	ONE	TWO	THREE	FOUR	FIVE	SIX
91 INCOME	CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
92						
93 0-599	65	65	65	65	65	65
94 600	110	111	113	114	115	116
95 650	138	140	142	143	145	146
96 700	153	169	170	172	174	176
97 750	160	197	199	202	204	206
98 800	168	226	228	231	233	236
99 850	175	254	257	260	263	266
100 900	182	281	286	289	292	295
101 950	189	292	315	318	322	325
102 1000	196	304	344	348	351	355
103 1050	203	315	373	377	381	385
104 1100	210	326	402	406	410	415
105 1150	217	337	422	435	440	445
106 1200	225	348	436	465	470	475
107 1250	232	360	451	497	502	507
108 1300	241	373	467	526	536	542
109 1350	249	386	483	545	570	576
110 1400	257	398	499	563	605	611
111 1450	265	411	515	581	633	645
112 1500	274	426	533	602	656	680
113 1550	282	436	547	617	672	714
114 1600	289	447	560	632	689	737
115 1650	295	458	573	647	705	754
116 1700	302	468	587	662	721	772
117 1750	309	479	600	676	738	789
118 1800	315	488	612	690	752	805

119	1850	321	497	623	702	766	819
120	1900	326	506	634	714	779	834
121	1950	332	514	645	727	793	848
122	2000	338	523	655	739	806	862
123	2050	343	532	666	751	819	877
124	2100	349	540	677	763	833	891
125	2150	355	549	688	776	846	905
126	2200	360	558	699	788	860	920
127	2250	366	567	710	800	873	934
128	2300	371	575	721	812	886	948
129	2350	377	584	732	825	900	963
130	2400	383	593	743	837	913	977
131	2450	388	601	754	849	927	991
132	2500	394	610	765	862	940	1006
133	2550	399	619	776	874	954	1020
134	2600	405	627	787	886	967	1034
135	2650	410	635	797	897	979	1048
136	2700	415	643	806	908	991	1060
137	2750	420	651	816	919	1003	1073
138	2800	425	658	826	930	1015	1085
139	2850	430	667	836	941	1027	1098
140	2900	435	675	846	953	1039	1112
141	2950	440	683	856	964	1052	1125
142	3000	445	691	866	975	1064	1138
143	3050	450	699	876	987	1076	1152
144	3100	456	707	886	998	1089	1165
145	3150	461	715	896	1010	1101	1178
146	3200	466	723	906	1021	1114	1191
147	3250	471	732	917	1032	1126	1205
148	3300	476	740	927	1044	1139	1218
149	3350	481	748	937	1055	1151	1231
150	3400	486	756	947	1067	1164	1245
151	3450	492	764	957	1078	1176	1258
152	3500	497	772	967	1089	1189	1271
153	3550	502	780	977	1101	1201	1285
154	3600	507	788	987	1112	1213	1298
155	3650	512	797	997	1124	1226	1311
156	3700	518	806	1009	1137	1240	1326
157	3750	524	815	1020	1150	1254	1342
158	3800	530	824	1032	1163	1268	1357
159	3850	536	834	1043	1176	1283	1372
160	3900	542	843	1055	1189	1297	1387
161	3950	547	852	1066	1202	1311	1402
162	4000	553	861	1078	1214	1325	1417
163	4050	559	871	1089	1227	1339	1432
164	4100	565	880	1101	1240	1353	1448
165	4150	571	889	1112	1253	1367	1463
166	4200	577	898	1124	1266	1382	1478
167	4250	583	907	1135	1279	1396	1493
168	4300	589	917	1147	1292	1410	1508
169	4350	594	926	1158	1305	1424	1523
170	4400	600	935	1170	1318	1438	1538
171	4450	606	944	1181	1331	1452	1553
172	4500	612	954	1193	1344	1467	1569
173	4550	618	963	1204	1357	1481	1584
174	4600	624	972	1216	1370	1495	1599

175	4650	630	981	1227	1383	1509	1614
176	4700	635	989	1237	1395	1522	1627
177	4750	641	997	1247	1406	1534	1641
178	4800	646	1005	1257	1417	1546	1654
179	4850	651	1013	1267	1428	1558	1667
180	4900	656	1021	1277	1439	1570	1679
181	4950	661	1028	1286	1450	1582	1692
182	5000	666	1036	1295	1460	1593	1704
183	5050	671	1043	1305	1471	1605	1716
184	5100	675	1051	1314	1481	1616	1728
185	5150	680	1058	1323	1492	1628	1741
186	5200	685	1066	1333	1502	1640	1753
187	5250	690	1073	1342	1513	1651	1765
188	5300	695	1081	1351	1524	1663	1778
189	5350	700	1088	1361	1534	1674	1790
190	5400	705	1096	1370	1545	1686	1802
191	5450	710	1103	1379	1555	1697	1815
192	5500	714	1111	1389	1566	1709	1827
193	5550	719	1118	1398	1576	1720	1839
194	5600	724	1126	1407	1587	1732	1851
195	5650	729	1133	1417	1598	1743	1864
196	5700	734	1141	1426	1608	1755	1876
197	5750	739	1148	1435	1619	1766	1888
198	5800	744	1156	1445	1629	1778	1901
199	5850	749	1163	1454	1640	1790	1913
200	5900	753	1171	1463	1650	1801	1925
201	5950	758	1178	1473	1661	1813	1937
202	6000	763	1186	1482	1672	1824	1950
203	6050	768	1193	1491	1682	1836	1962
204	6100	773	1201	1501	1693	1847	1974
205	6150	778	1208	1510	1703	1859	1987
206	6200	783	1216	1519	1714	1870	1999
207	6250	788	1223	1529	1724	1882	2011
208	6300	792	1231	1538	1735	1893	2023
209	6350	797	1238	1547	1745	1905	2036
210	6400	802	1246	1557	1756	1916	2048
211	6450	807	1253	1566	1767	1928	2060
212	6500	812	1261	1575	1777	1940	2073
213	6550	816	1267	1583	1786	1949	2083
214	6600	820	1272	1590	1794	1957	2092
215	6650	823	1277	1597	1801	1965	2100
216	6700	827	1283	1604	1809	1974	2109
217	6750	830	1288	1610	1817	1982	2118
218	6800	834	1293	1617	1824	1990	2127
219	6850	837	1299	1624	1832	1999	2136
220	6900	841	1304	1631	1839	2007	2145
221	6950	845	1309	1637	1847	2016	2154
222	7000	848	1315	1644	1855	2024	2163
223	7050	852	1320	1651	1862	2032	2172
224	7100	855	1325	1658	1870	2041	2181
225	7150	859	1331	1665	1878	2049	2190
226	7200	862	1336	1671	1885	2057	2199
227	7250	866	1341	1678	1893	2066	2207
228	7300	870	1347	1685	1900	2074	2216
229	7350	873	1352	1692	1908	2082	2225
230	7400	877	1358	1698	1916	2091	2234
231	7450	880	1363	1705	1923	2099	2243

232	7500	884	1368	1712	1931	2108	2252
233	7550	887	1374	1719	1938	2116	2261
234	7600	891	1379	1725	1946	2124	2270
235	7650	895	1384	1732	1954	2133	2279
236	7700	898	1390	1739	1961	2141	2288
237	7750	902	1395	1746	1969	2149	2297
238	7800	905	1400	1753	1977	2158	2305
239	7850	908	1405	1758	1983	2164	2313
240	7900	910	1409	1764	1989	2171	2320
241	7950	913	1414	1770	1995	2178	2328
242	8000	916	1418	1776	2001	2185	2335
243	8050	918	1423	1781	2007	2192	2343
244	8100	921	1428	1787	2014	2198	2350
245	8150	924	1432	1793	2020	2205	2357
246	8200	927	1437	1799	2026	2212	2365
247	8250	929	1441	1804	2032	2219	2372
248	8300	932	1446	1810	2038	2226	2380
249	8350	935	1450	1816	2045	2232	2387
250	8400	937	1455	1822	2051	2239	2395
251	8450	940	1459	1827	2057	2246	2402
252	8500	943	1464	1833	2063	2253	2410
253	8550	945	1468	1839	2069	2260	2417
254	8600	948	1473	1845	2076	2266	2425
255	8650	951	1478	1850	2082	2273	2432
256	8700	954	1482	1856	2088	2280	2440
257	8750	956	1487	1862	2094	2287	2447
258	8800	959	1491	1868	2100	2294	2455
259	8850	962	1496	1873	2107	2300	2462
260	8900	964	1500	1879	2113	2307	2470
261	8950	967	1505	1885	2119	2314	2477
262	9000	970	1509	1891	2125	2321	2484
263	9050	973	1514	1896	2131	2328	2492
264	9100	975	1517	1901	2137	2334	2498
265	9150	977	1521	1905	2141	2339	2503
266	9200	979	1524	1909	2146	2344	2509
267	9250	982	1527	1914	2151	2349	2514
268	9300	984	1531	1918	2156	2354	2520
269	9350	986	1534	1922	2160	2359	2525
270	9400	988	1537	1926	2165	2365	2531
271	9450	990	1541	1930	2170	2370	2536
272	9500	993	1544	1935	2175	2375	2541
273	9550	995	1547	1939	2179	2380	2547
274	9600	997	1551	1943	2184	2385	2552
275	9650	999	1554	1947	2189	2390	2558
276	9700	1001	1557	1951	2194	2396	2563
277	9750	1003	1561	1956	2198	2401	2569
278	9800	1006	1564	1960	2203	2406	2574
279	9850	1008	1567	1964	2208	2411	2580
280	9900	1010	1571	1968	2213	2416	2585
281	9950	1012	1574	1972	2218	2421	2590
282	10000	1014	1577	1977	2222	2427	2596

283

284 For gross monthly income between \$10,000 and \$20,000, add the amount

285 of child support for \$10,000 to the following percentages of gross

286 income above \$10,000:

287

288						
289	ONE	TWO	THREE	FOUR	FIVE	SIX
290	CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
291	3.1%	5.1%	6.8%	7.8%	8.8%	9.5%

292  
 293 For gross monthly income between \$20,000 and \$50,000, add the amount  
 294 of child support for \$20,000 to the following percentages of gross  
 295 income above \$20,000:

296						
297						
298	ONE	TWO	THREE	FOUR	FIVE	SIX
299	CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
300	2%	3.5%	5%	6%	6.9%	7.8%

301  
 302 For gross monthly income over \$50,000, add the amount of child support  
 303 for \$50,000 to the following percentages of gross income above \$50,000:

304						
305	ONE	TWO	THREE	FOUR	FIVE	SIX
306	CHILD	CHILDREN	CHILDREN	CHILDREN	CHILDREN	CHILDREN
307	1%	2%	3%	4%	5%	6%

308  
 309 C. For purposes of this section, "gross income" shall mean all income from all sources, and shall  
 310 include, but not be limited to, income from salaries, wages, commissions, royalties, bonuses, dividends,  
 311 severance pay, pensions, interest, trust income, annuities, capital gains, social security benefits except as  
 312 listed below, workers' compensation benefits, unemployment insurance benefits, disability insurance  
 313 benefits, veterans' benefits, spousal support, rental income, gifts, prizes ~~or~~, awards *and imputed income*  
 314 *determined as provided in this subsection.* Gross income shall be subject to deduction of reasonable  
 315 business expenses for persons with income from self-employment, a partnership, or a closely held  
 316 business. "Gross income" shall not include benefits from public assistance programs as defined in  
 317 § 63.1-87, federal supplemental security income benefits, or child support received. For purposes of this  
 318 subsection, spousal support included in gross income shall be limited to spousal support paid pursuant to  
 319 a pre-existing order or written agreement and spousal support shall be deducted from the gross income  
 320 of the payor when paid pursuant to a pre-existing order or written agreement between the parties to the  
 321 present proceeding.

322 *The court or Department may impute income to any party who is voluntarily unemployed or*  
 323 *voluntarily underemployed upon consideration of the need to maintain an adequate level of financial*  
 324 *support for the children and the need to promote the Commonwealth's public policy of assuring minor*  
 325 *children of frequent and continuing contact with both parents. Income may not be imputed to a*  
 326 *custodial parent when a child is not in school or when child care services are not available or are not*  
 327 *added to the basic child support obligation pursuant to subsection F.*

328 *If a person is voluntarily unemployed or voluntarily underemployed, without just cause, or fails to*  
 329 *provide verification of income upon request of the court or the Department, potential income shall be*  
 330 *determined by (i) an evaluation of employment potential, probable earnings level based upon prior work*  
 331 *history, occupational qualifications, and prevailing job opportunities and earnings levels within the*  
 332 *locality or state of residence of the party to whom income is being imputed or (ii) application of the*  
 333 *minimum wage if no work history is available and the party has no vocational or occupational training*  
 334 *and no higher education. Written findings shall be made in the order providing the method and*  
 335 *reasoning used to impute the income including evidence of the basis for imputed income if the basis is*  
 336 *other than the minimum wage.*

337 D. Any extraordinary medical and dental expenses for treatment of the child or children shall be  
 338 added to the basic child support obligation. For purposes of this section, extraordinary medical and  
 339 dental expenses are uninsured expenses in excess of \$100 for a single illness or condition and shall  
 340 include but not be limited to eyeglasses, prescription medication, prostheses, and mental health services  
 341 whether provided by a social worker, psychologist, psychiatrist, or counselor.

342 E. Any costs for health care coverage as defined in § 63.1-250, when actually being paid by a parent,  
 343 to the extent such costs are directly allocable to the child or children, and which are the extra costs of  
 344 covering the child or children beyond whatever coverage the parent providing the coverage would  
 345 otherwise have, shall be added to the basic child support obligation.

346 F. Any child-care costs incurred on behalf of the child or children due to employment of the  
 347 custodial parent shall be added to the basic child support obligation. Child-care costs shall not exceed

the amount required to provide quality care from a licensed source. Where appropriate, the court shall consider the willingness and availability of the noncustodial parent to provide child care personally in determining whether child-care costs are necessary or excessive.

G. 1. Except in cases involving split custody or shared custody, a total monthly child support obligation shall be established by adding (i) the monthly basic child support obligation, as determined from the schedule contained in subsection B of this section, (ii) all extraordinary medical expenses, (iii) costs for health care coverage to the extent allowable by subsection E, and (iv) work-related child-care costs and taking into consideration all the factors set forth in subsection B of § 20-108.1. The total monthly child support obligation shall be divided between the parents in the same proportion as their monthly gross incomes bear to their monthly combined gross income. The monthly obligation of each parent shall be computed by multiplying each parent's percentage of the parents' monthly combined gross income by the total monthly child support obligation.

However, the monthly obligation of the noncustodial parent shall be reduced by the cost for health care coverage to the extent allowable by subsection E when paid directly by the noncustodial parent.

2. In cases involving split custody, the amount of child support to be paid shall be the difference between the amounts owed by each parent as a noncustodial parent, computed in accordance with subdivision 1 of this subsection, with the noncustodial parent owing the larger amount paying the difference to the other parent.

For the purpose of this section and § 20-108.1, split custody shall be limited to those situations where each parent has physical custody of a child or children born of the parents, born of either parent and adopted by the other parent or adopted by both parents. For the purposes of calculating a child support obligation where split custody exists, a separate family unit exists for each parent, and child support for that family unit shall be calculated upon the number of children in that family unit who are born of the parents, born of either parent and adopted by the other parent or adopted by both parents. Where split custody exists, a parent is a custodial parent to the children in that parent's family unit and is a noncustodial parent to the children in the other parent's family unit.

3. In cases involving shared custody, the amount of child support to be paid is the difference between the amounts owed by each parent to the other parent, with the parent owing the larger amount paying the difference to the other parent.

To compute the monthly amount to be paid by one parent to the other parent, the following calculations shall be made:

(a) The "basic child support obligation" of each parent shall be the "total shared support" multiplied by the other parent's "custody share." The "total shared support" of both parties equals statutory guideline amount determined pursuant to subsection B for the combined income of the parties and the number of shared children multiplied by 1.25. A parent's "custody share" equals the number of days that parent has physical custody of a shared child per year divided by the number of days in the year.

(b) To each parent's "basic child support obligation" shall be added the other parent's costs of health care coverage, to the extent allowable by subsection E, and the other parent's work-related child care costs to the extent allowable by subsection F.

(c) The obligation of each parent to the other shall be then computed by multiplying each parent's percentage of the parents' monthly combined gross income by the support obligation obtained in subdivision G 3 (b).

The shared custody rules set forth herein apply when each parent has physical custody of a child or children born of the parties, born of either parent and adopted by the other parent, or adopted by both parents, for more than 110 days of the year. Any calculation under this subdivision shall not create or reduce a support obligation to an amount which seriously impairs the custodial parent's ability to maintain minimal adequate housing and provide other basic necessities for the child.

H. The Secretary of Health and Human Resources shall ensure that the guideline set out in this section is reviewed by July 1, 1990, and every four years thereafter, by a panel which includes representatives of the courts, the executive branch, the General Assembly, the bar, custodial and noncustodial parents and child advocates. The panel shall determine the adequacy of the guideline for the determination of appropriate awards for the support of children by considering current research and data on the cost of and expenditures necessary for rearing children, and any other resources it deems relevant to such review. The panel shall report its findings to the General Assembly before it next convenes following such review.