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HOUSE BILL NO. 55

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 21, 1996)

(Patron Prior to Substitute—Delegate Armstrong)

A *BILL to amend and reenact §§ 20-103 and 20-124.2 of the Code of Virginia and §§ 16.1-278.15 and 63.1-252.1 of the Code of Virginia, as they are currently effective and as they may become effective, relating to child support.*

Be it enacted by the General Assembly of Virginia:

1. That § 20-103 and 20-124.2 of the Code of Virginia and §§ 16.1-278.15 and 63.1-252.1 of the Code of Virginia, as they are currently effective and as they may become effective, 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. If support is ordered for a child, the order shall provide that support will continue to be paid for a child *over the age of eighteen* 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 nineteen or graduates from high school, whichever occurs first.

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. 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.

E. 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.

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

§ 16.1-278.15. (Delayed effective date) 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. 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 eighteen* 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 nineteen or graduates from high school, whichever occurs first.

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 family 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. 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.

E. 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.

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

63 A. In suits for divorce, annulment and separate maintenance, and in proceedings arising under
64 subdivision A 3 or L of § 16.1-241, the court having jurisdiction of the matter may, at any time pending
65 a suit pursuant to this chapter, in the discretion of such court, make any order that may be proper (i) to
66 compel a spouse to pay any sums necessary for the maintenance and support of the petitioning spouse,
67 including an order that the other spouse provide health care coverage for the petitioning spouse, unless it
68 is shown that such coverage cannot be obtained, (ii) to enable such spouse to carry on the suit, (iii) to
69 prevent either spouse from imposing any restraint on the personal liberty of the other spouse, (iv) to
70 provide for the custody and maintenance of the minor children of the parties, including an order that
71 either party provide health care coverage for the children, (v) to provide support for any child of the
72 parties *to whom a duty of support is owed and to continue to support any child over the age of eighteen*
73 *but* under the age of nineteen who is a full-time high school student and who otherwise meets the
74 requirements set forth in § ~~20-107.2~~ 20-124.2, (vi) for the exclusive use and possession of the family
75 residence during the pendency of the suit, (vii) to preserve the estate of either spouse, so that it be
76 forthcoming to meet any decree which may be made in the suit or (viii) to compel either spouse to give
77 security to abide such decree. In addition to the authority hereinabove, the court may order parties with
78 a minor child or children to attend educational seminars and other like programs conducted by a
79 qualified person or organization approved by the court, on the effects of the separation or divorce on
80 minor children, provided that no fee in excess of fifty dollars may be charged for participation in any
81 such program. No statement or admission by a party in such seminar or program shall be admissible
82 into evidence in any subsequent proceeding.

83 B. Upon a showing by a party of reasonable apprehension of physical harm to that party by such
84 party's spouse, and consistent with rules of the Supreme Court of Virginia, the court may enter an order
85 excluding that party's spouse from the jointly owned or jointly rented family dwelling. In any case
86 where an order is entered under this paragraph, pursuant to an ex parte hearing, the order shall not
87 exclude a spouse from the family dwelling for a period in excess of fifteen days from the date the order
88 is served, in person, upon the spouse so excluded. The order may provide for an extension of time
89 beyond the fifteen days, to become effective automatically. The spouse served may at any time file a
90 written motion in the clerk's office requesting a hearing to dissolve or modify the order. Nothing in this
91 section shall be construed to prohibit the court from extending an order entered under this paragraph for
92 such longer period of time as is deemed appropriate, after a hearing on notice to the parties.

93 C. In cases other than those for divorce in which a custody or visitation arrangement for a minor
94 child is sought, the court may enter an order providing for custody, visitation or maintenance pending
95 the suit as provided in subsection A. The order shall be directed to either parent or any person with a
96 legitimate interest who is a party to the suit.

97 D. Orders entered pursuant to this section which provide for custody or visitation arrangements
98 pending the suit shall be made in accordance with the standards set out in Chapter 6.1 (§ 20-124.1 et
99 seq.) of Title 20.

100 E. An order entered pursuant to this section shall have no presumptive effect and shall not be
101 determinative when adjudicating the underlying cause.

102 § 20-124.2. Court-ordered custody and visitation arrangements.

103 A. In any case in which custody or visitation of minor children is at issue, whether in a circuit or
104 district court, the court shall provide prompt adjudication, upon due consideration of all the facts, of
105 custody and visitation arrangements, including support and maintenance for the children, prior to other
106 considerations arising in the matter. The court may enter an order pending the suit as provided in
107 § 20-103. The procedures for determining custody and visitation arrangements shall insofar as practical,
108 and consistent with the ends of justice, preserve the dignity and resources of family members. Mediation
109 shall be used as an alternative to litigation where appropriate.

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

118 C. The court may order that support be paid for any child of the parties ~~and, if support is ordered,~~
119 ~~the .~~ The court shall *also* order that ~~it~~ support will continue to be paid for any child *over the age of*
120 *eighteen* who is (i) a full-time high school student, (ii) not self-supporting and (iii) living in the home
121 of the party seeking or receiving child support until such child reaches the age of nineteen or graduates

from high school, whichever first occurs. However, the court may confirm a stipulation or agreement of the parties which extends a support obligation beyond when it would otherwise terminate as provided by law. The court shall have no authority to decree support of children payable by the estate of a deceased party. The court may make such further decree as it shall deem expedient concerning support of the minor children, including an order that any party provide health care coverage.

The court shall have the continuing authority and jurisdiction to make any additional orders necessary to effectuate and enforce any order entered pursuant to this section or § 20-103 including the authority to punish as contempt of court any willful failure of a party to comply with the provisions of the order.

§ 63.1-252.1. Notice of administrative support order; contents; hearing; modification.

The Commissioner may proceed against a responsible person whose support debt has accrued or is accruing based upon subrogation to, assignment of, or authorization to enforce a support obligation. Such obligation may be created by a court order for support of a child or child and spouse or decree of divorce ordering support of a child or child and spouse. In the absence of such a court order or decree of divorce, the Commissioner may, pursuant to this chapter, proceed against a person whose support debt has accrued or is accruing based upon payment of public assistance or who has a responsibility for the support of any dependent child or children and their caretaker. The administrative support order shall also provide that support shall continue to be paid for any child *over the age of eighteen* 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 such child reaches the age of nineteen or graduates from high school, whichever comes first. The Commissioner shall initiate proceedings by issuing notice containing the administrative support order which shall become effective unless timely contested. The notice shall be served upon the debtor (i) in accordance with the provisions of §§ 8.01-296, 8.01-327 or § 8.01-329 or (ii) by certified mail, return receipt requested, or service may be waived. A copy of the notice shall be sent to the obligee by first-class mail upon service of the notice. The notice shall include the following:

1. A statement of the support debt or obligation accrued or accruing and the basis and authority under which the assessment of the debt or obligation was made;

2. A statement of the name of the child or children and caretaker for whom support is being sought;

3. A statement that support shall continue to be paid for any child *over the age of eighteen* 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 such child reaches the age of nineteen or graduates from high school, whichever comes first;

4. A demand for immediate payment of the support debt or obligation or, in the alternative, a demand that the debtor file an answer with the Commissioner within ten days of the date of service of the notice stating his defenses to liability;

5. A statement of the name and address of the person to whom the answer is to be filed;

6. A statement that if no answer is made on or before ten days from the date of service of the notice, the administrative support order shall be final and enforceable, and the support debt shall be assessed and determined subject to computation, and is subject to collection action;

7. A statement that the property of the debtor will be subject to lien and foreclosure, distraint, seizure and sale or an order to withhold and deliver or mandatory withholding of earnings;

8. A statement that the obligor shall keep the Department informed regarding access to health insurance coverage and health insurance policy information and a statement that health care coverage may be required for the debtor's dependent children if available at reasonable cost as defined in § 63.1-250;

9. A statement of each party's right to appeal and the procedures applicable to appeals from the decision of the Commissioner;

10. A statement that the obligor's income shall be immediately withheld to comply with this order unless the obligee, or the Department of Social Services, if the obligee is receiving public assistance, and obligor agree to an alternative arrangement;

11. A statement that any determination of a support obligation under this section creates a judgment by operation of law and as such is entitled to full faith and credit in any other state or jurisdiction;

12. A statement that the obligor shall give the Department written notice of any change in the obligor's address within thirty days of the change of address; and

13. A statement that the obligor shall keep the Department informed of the name and address of the obligor's current employer.

If no answer is received by the Commissioner within ten days of the date of service or acceptance, the administrative support order shall be as provided in the notice. The Commissioner may initiate collection procedures pursuant to this chapter, Chapter 11 (§ 16.1-226 et seq.) of Title 16.1 or Title 20. If the debtor, within ten days of the date of service of the notice, files an answer, with the Commissioner alleging defenses to the liability imposed pursuant to § 63.1-251, the debtor shall have the

183 right to an administrative hearing.

184 Any changes in the amount of the administrative order must be made pursuant to this section. In no
185 event shall an administrative hearing alter or amend the amount or terms of any court order for support
186 or decree of divorce ordering support. No support order may be retroactively modified, but may be
187 modified with respect to any period during which there is a pending petition for modification, but only
188 from the date that notice of such petition has been given to the responding party. The existence of an
189 administrative order shall not preclude either an obligor or obligee from commencing appropriate
190 proceedings in a juvenile and domestic relations district court or a circuit court.

191 § 63.1-252.1. (Delayed effective date) Notice of administrative support order; contents; hearing;
192 modification.

193 The Commissioner may proceed against a responsible person whose support debt has accrued or is
194 accruing based upon subrogation to, assignment of, or authorization to enforce a support obligation.
195 Such obligation may be created by a court order for support of a child or child and spouse or decree of
196 divorce ordering support of a child or child and spouse. In the absence of such a court order or decree
197 of divorce, the Commissioner may, pursuant to this chapter, proceed against a person whose support
198 debt has accrued or is accruing based upon payment of public assistance or who has a responsibility for
199 the support of any dependent child or children and their caretaker. The administrative support order shall
200 provide that support shall continue to be paid for any child *over the age of eighteen* who is (i) a
201 full-time high school student, (ii) not self-supporting, and (iii) living in the home of the parent seeking
202 or receiving child support, until such child reaches the age of nineteen or graduates from high school,
203 whichever comes first. The Commissioner shall initiate proceedings by issuing notice containing the
204 administrative support order which shall become effective unless timely contested. The notice shall be
205 served upon the debtor (i) in accordance with the provisions of §§ 8.01-296, 8.01-327 or § 8.01-329 or
206 (ii) by certified mail, return receipt requested, or service may be waived. A copy of the notice shall be
207 sent to the obligee by first-class mail upon service of the notice. The notice shall include the following:

208 1. A statement of the support debt or obligation accrued or accruing and the basis and authority
209 under which the assessment of the debt or obligation was made;

210 2. A statement of the name of the child or children and caretaker for whom support is being sought;

211 3. A statement that support shall continue to be paid for any child *over the age of eighteen* who is
212 (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the parent
213 seeking or receiving child support, until such child reaches the age of nineteen or graduates from high
214 school, whichever comes first;

215 4. A demand for immediate payment of the support debt or obligation or in the alternative, a demand
216 that the debtor file an answer with the Commissioner within ten days of the date of service of the notice
217 stating his defenses to liability;

218 5. A statement of the name and address of the person to whom the answer is to be filed;

219 6. A statement that if no answer is made on or before ten days from the date of service of the
220 notice, the administrative support order shall be final and enforceable, and the support debt shall be
221 assessed and determined subject to computation, and is subject to collection action;

222 7. A statement that the property of the debtor will be subject to lien and foreclosure, distraint, seizure
223 and sale or an order to withhold and deliver or mandatory withholding of earnings;

224 8. A statement that the obligor shall keep the Department informed regarding access to health
225 insurance coverage and health insurance policy information and a statement that health care coverage
226 may be required for the debtor's dependent children if available at reasonable cost as defined in
227 § 63.1-250;

228 9. A statement of each party's right to appeal and the procedures applicable to appeals from the
229 decision of the Commissioner;

230 10. A statement that the obligor's income shall be immediately withheld to comply with this order
231 unless the obligee, or the Department of Social Services, if the obligee is receiving public assistance,
232 and obligor agree to an alternative arrangement;

233 11. A statement that any determination of a support obligation under this section creates a judgment
234 by operation of law and as such is entitled to full faith and credit in any other state or jurisdiction;

235 12. A statement that the obligor shall give the Department written notice of any change in the
236 obligor's address within thirty days of the change of address; and

237 13. A statement that the obligor shall keep the Department informed of the name and address of the
238 obligor's current employer.

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240 the administrative support order shall be as provided in the notice. The Commissioner may initiate
241 collection procedures pursuant to this chapter, Chapter 11 (§ 16.1-226 et seq.) of Title 16.1 or Title 20.
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243 Commissioner alleging defenses to the liability imposed pursuant to § 63.1-251, the debtor shall have the
244 right to an administrative hearing.

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246 event shall an administrative hearing alter or amend the amount or terms of any court order for support
247 or decree of divorce ordering support. No support order may be retroactively modified, but may be
248 modified with respect to any period during which there is a pending petition for modification, but only
249 from the date that notice of such petition has been given to the responding party. The existence of an
250 administrative order shall not preclude either an obligor or obligee from commencing appropriate
251 proceedings in a family court.