

961494837

HOUSE BILL NO. 74

Offered January 10, 1996

A BILL to amend and reenact §§ 17-8 and 17-9 of the Code of Virginia; to amend and reenact §§ 8.01-217, 16.1-107, 16.1-289, 16.1-298, and 20-107.3 of the Code of Virginia, as they may become effective; to amend the Code of Virginia by adding a section numbered 16.1-276.1; and to amend and reenact the third, sixth, seventh, and eighth enactments of Chapters 929 and 930, and the second enactment of Chapter 970, of the 1993 Acts of Assembly, all as amended by Chapter 564 of the 1994 Acts of Assembly, relating to family court; procedures.

Patron—Almand

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 17-8 and 17-9 of the Code of Virginia are amended and reenacted; that §§ 8.01-217, 16.1-107, 16.1-289, 16.1-298 and 20-107.3 of the Code of Virginia, as they may become effective, are amended and reenacted; and that the Code of Virginia is amended by adding a section numbered 16.1-276.1 as follows:

§ 8.01-217. (Delayed effective date) How name of person may be changed.

A. Except as provided in subsection B, any person desiring to change his own name, or that of his child or ward, may apply therefor to the circuit court of the county or city in which the person whose name is to be changed resides, or if no place of abode exists, such person may apply to any circuit court which shall consider such application if it finds that good cause exists therefor under the circumstances alleged. Applications of probationers and incarcerated persons may be accepted if the court finds that good cause exists for such application. An incarcerated person may apply to the circuit court of the county or city in which such person is incarcerated. In case of a minor who has no living parent or guardian, the application may be made by his next friend. In case of a minor who has both parents living, the parent who does not join in the application shall be served with reasonable notice of the application and, should such parent object to the change of name, a hearing shall be held to determine whether the change of name is in the best interest of the minor. If, after application is made on behalf of a minor and an ex parte hearing is held thereon, the court finds by clear and convincing evidence that such notice would present a serious threat to the health and safety of the applicant, the court may waive such notice.

Every application shall be under oath and shall include the place of residence of the applicant, the names of both parents, including the maiden name of his mother, the date and place of birth of the applicant, the applicant's felony conviction record, if any, whether the applicant is presently incarcerated or a probationer with any court, and if the applicant has previously changed his name, his former name or names. On any such application and hearing, if such be demanded, the court shall, unless the evidence shows that the change of name is sought for a fraudulent purpose or would otherwise infringe upon the rights of others or, in case of a minor, that the change of name is not in the best interest of the minor, order a change of name and the clerk of the court shall spread the order upon the current deed book in his office, index it in both the old and new names, and transmit a certified copy to the State Registrar of Vital Records and the Central Criminal Records Exchange. Transmittal of a copy to the State Registrar of Vital Records and the Central Criminal Records Exchange shall not be required of a person who changed his or her former name by reason of marriage and who makes application to resume a former name pursuant to § 20-121.4. If the applicant shall show cause to believe that in the event his change of name should become a public record, a serious threat to the health or safety of the applicant or his immediate family would exist, the chief judge of the circuit court may waive the requirement that the application be under oath or the court may order the record sealed and direct the circuit court clerk not to spread and index any orders entered in the cause, and shall not transmit a certified copy to the State Registrar of Vital Records or the Central Criminal Records Exchange. Upon receipt of such order by the State Registrar of Vital Records, for a person born in this Commonwealth, together with a proper request and payment of required fees, the Registrar shall issue certifications of the amended birth record which do not reveal the former name or names of the applicant unless so ordered by a court of competent jurisdiction. Such certifications shall not be marked "amended" and show the effective date as provided in § 32.1-272. Such order shall set forth the date and place of birth of the person whose name is changed, the full names of his parents, including the maiden name of the mother and, if such person has previously changed his name, his former name or names.

B. Proceedings for a change of name in the family court pursuant to § 16.1-241 shall be governed by

INTRODUCED

HB74

the provisions of this section. However, (i) *a certified copy of the order for change of name shall be transmitted by the family court clerk to the clerk of the circuit court for recording and indexing the order in the current deed book in his office and (ii) except when transmittals of such orders are not required by subsection A of this section, a certified copy of such order shall be transmitted by the family court clerk to the State Registrar of Vital Records and the Central Criminal Records Exchange.*

§ 16.1-107. (Delayed effective date) Requirements for appeal.

No appeal to the circuit court shall be allowed unless and until the party applying for the same or someone for him shall give bond, in an amount and with sufficient surety approved by the judge or by his clerk if there is one, to abide by such judgment as may be rendered on appeal if such appeal is perfected, or if not so perfected, then to satisfy the judgment of the court in which it was rendered. However, no appeal bond shall be required of the Commonwealth or when an appeal is proper to protect the estate of a decedent, an infant, a convict, an insane person, or the interest of a county, city or town. Further, no bond shall be required of a party applying for an appeal from an order of a family court to the circuit court.

If such bond is furnished by or on behalf of any party against whom judgment has been rendered for money or property or both, the bond shall be conditioned for the performance and satisfaction of such judgment or order as may be entered against such party on appeal, and for the payment of all costs and damages which may be awarded against him in the appellate court. If the appeal is by a party against whom there is no recovery except for costs, the bond shall be conditioned for the payment of such costs and damages as may be awarded against him on the appeal.

In addition to the foregoing, the party applying for appeal to the circuit court shall, within thirty days from the date of the judgment, pay to the clerk of the court from which the appeal is taken the amount of the writ tax of the court to which the appeal is taken and costs as required by subdivision (17) of § 14.1-112.

The provisions of this section shall not apply to appeals to the circuit court from the family court.

§ 16.1-276.1. *Recording evidence and incidents of trial in certain cases; cost; preservation of original notes or records; certified transcript prima facie correct.*

In all cases appealable in accordance with § 16.1-296.2, the court or judge trying the case may by order entered of record provide for the recording verbatim of the evidence and incidents of trial either by a court reporter or by mechanical or electronic devices approved by the court. The failure to secure the services of a reporter or to have the case reported or recorded for any other reason shall not affect the proceeding or trial.

The expense of reporting and recording the trial shall be paid by the litigants in the manner and in the proportion as the court may in its discretion direct. A transcript of the record, when required by any party, shall be paid for by such party, but on appeal pursuant to § 16.1-296.2, the court may provide that the cost be reimbursed to the party prevailing on the appeal.

The reporter or other individual designated to report and record the trial shall preserve the original shorthand notes or other original records for not less than ten years, except that the suspension or tolling of the statute of limitations as provided for in § 8.01-229 shall also be applicable to this section. The transcript in any case certified by the reporter or other individual designated to report and record the trial shall be deemed prima facie a correct statement of the evidence and incidents of trial.

The administration of this section shall be under the direction of the Supreme Court of Virginia.

§ 16.1-289. (Delayed effective date) Review of court orders.

A. In cases ~~appealed~~ *appealable* in accordance with § 16.1-296, the family court or the circuit court, as the case may be, of its own motion may reopen any case and may modify or revoke its order. The family court or the circuit court shall before modifying or revoking such order grant a hearing after notice in writing to the complainant, if any, and to the person or agency having custody of the child; provided, however, that this section shall not apply in the case of a child committed to the Department after sixty days from the date of the order of commitment.

B. In cases ~~appealed~~ *appealable* in accordance with § 16.1-296.2, the family court may modify, vacate or suspend any final judgment, order or decree within twenty-one days after the date of entry and no longer. The date of entry of any final judgment, order or decree shall be the date the judgment, order or decree is signed by the judge.

Nothing contained in this subsection shall operate to alter the granting of a new trial by the court pursuant to § 8.01-428, or to alter the requirements for appeal from any judgment of any family court as otherwise provided by law.

Any final judgment, order or decree of a family court may be reviewed at any time based upon a change in circumstances. This provision for review of family court judgments, orders and decrees shall not affect their finality for purposes of appeal.

§ 16.1-298. (Delayed effective date) Effect of petition for or pendency of appeal pursuant to § 16.1-296; bail.

A. Except as provided herein, on appeal in a case specified in subsection A of § 16.1-296, the

pendency of an appeal in the circuit court or a subsequent petition for appeal or writ of error shall not suspend any judgment, order or decree of the family court nor operate to discharge any child concerned or involved in the case from the custody of the court or other person, institution or agency to which the child has been committed unless so ordered by the judge of the family court, the judge of a circuit court or directed in a writ of supersedeas by the Court of Appeals or the Supreme Court or a judge or justice thereof.

B. The judgment, order or decree of the family court shall be suspended during the pendency of an appeal in the circuit court or upon a subsequent petition for appeal or writ of error:

1. In cases of delinquency in which the final order of the family court is pursuant to subdivision 8, 9, 10, 12, 14, or 15 of § 16.1-278.8.

2. In cases involving a child and any local ordinance.

3. In cases involving any person over the age of eighteen years.

Such suspension as is provided for in this subsection shall not apply to (i) an order for support entered pursuant to Chapter 5 (§ 20-61 et seq.) of Title 20 or (ii) an order disposing of a motion to reconsider relating to participation in continuing programs pursuant to § 16.1-289.1 unless so ordered by the judge of a circuit court or directed in a writ of supersedeas by the Court of Appeals or the Supreme Court.

C. In cases where the order of the family court is suspended pursuant to subsection B hereof or by order of the family court or the circuit court, bail may be required as provided for in § 16.1-135.

D. This section shall not apply to cases appealed to the Court of Appeals pursuant to § 16.1-296.2.

§ 17-8. Judges pro tempore.

Any cause pending in a circuit or ~~city~~ family court, when the judge of the court is disqualified or unable, for any reason, to try the same, may be tried by a judge pro tempore, who shall be a citizen of this Commonwealth and shall have qualified to practice law in the Supreme Court of this Commonwealth.

§ 17-9. Their appointment and powers.

When all the parties to any cause pending in a circuit court *or family court*, or their attorneys of record, ~~shall~~ enter into a written stipulation, appointing a judge pro tempore for the trial of the cause and approved by a judge of said court in his discretion, and the person appointed takes *and subscribes* an oath faithfully to try and determine the issues joined between the parties, the clerk of the court in which ~~such~~ *the* action or suit is pending shall ~~attach together such stipulation and oath and place them on file, and also record them at length upon the minutes of the court; whereupon the stipulation and oath. The person thereby~~ appointed shall be vested with the same power and authority and shall be charged with the same duties as to the cause in and as to which he is appointed as though he were the regularly elected and qualified judge of such court; ~~but. However,~~ the parties may, by the terms of their stipulation, limit the power of the judge pro tempore to the trial and determination of any specified issue or issues, either of law or fact and in such cases, the oath of the person appointed shall correspond to the terms of the stipulation.

The provisions of this and § 17-8 shall be in addition to the provisions of § 17-7.

§ 20-107.3. (Delayed effective date) Court may decree as to property of the parties.

A. Upon decreeing the dissolution of a marriage, and also upon decreeing a divorce from the bond of matrimony, or upon the filing with the court as provided in subsection J of a certified copy of a final divorce decree obtained without the Commonwealth, the court, upon request of either party, shall determine the legal title as between the parties, and the ownership and value of all property, real or personal, tangible or intangible, of the parties and shall consider which of such property is separate property, which is marital property, and which is part separate and part marital property in accordance with subdivision A 3. The court shall determine the value of any such property as of the date of the evidentiary hearing on the evaluation issue. Upon motion of either party made no less than twenty-one days before the evidentiary hearing the court may, for good cause shown, in order to attain the ends of justice, order that a different valuation date be used. The court, on the motion of either party, may retain jurisdiction in the final decree of divorce to adjudicate the remedy provided by this section when the court determines that such action is clearly necessary, and all decrees heretofore entered retaining such jurisdiction are validated.

1. Separate property is (i) all property, real and personal, acquired by either party before the marriage; (ii) all property acquired during the marriage by bequest, devise, descent, survivorship or gift from a source other than the other party; (iii) all property acquired during the marriage in exchange for or from the proceeds of sale of separate property, provided that such property acquired during the marriage is maintained as separate property; and (iv) that part of any property classified as separate pursuant to subdivision A 3. Income received from separate property during the marriage is separate property if not attributable to the personal effort of either party. The increase in value of separate property during the marriage is separate property, unless marital property or the personal efforts of either

183 party have contributed to such increases and then only to the extent of the increases in value attributable
184 to such contributions. The personal efforts of either party must be significant and result in substantial
185 appreciation of the separate property if any increase in value attributable thereto is to be considered
186 marital property.

187 2. Marital property is (i) all property titled in the names of both parties, whether as joint tenants,
188 tenants by the entirety or otherwise, except as provided by subdivision A 3, (ii) that part of any property
189 classified as marital pursuant to subdivision A 3, or (iii) all other property acquired by each party during
190 the marriage which is not separate property as defined above. All property including that portion of
191 pensions, profit-sharing or deferred compensation or retirement plans of whatever nature, acquired by
192 either spouse during the marriage, and before the last separation of the parties, if at such time or
193 thereafter at least one of the parties intends that the separation be permanent, is presumed to be marital
194 property in the absence of satisfactory evidence that it is separate property. For purposes of this section
195 marital property is presumed to be jointly owned unless there is a deed, title or other clear indicia that it
196 is not jointly owned.

197 3. The court shall classify property as part marital property and part separate property as follows:

198 a. In the case of income received from separate property during the marriage, such income shall be
199 marital property only to the extent it is attributable to the personal efforts of either party. In the case of
200 the increase in value of separate property during the marriage, such increase in value shall be marital
201 property only to the extent that marital property or the personal efforts of either party have contributed
202 to such increases, provided that any such personal efforts must be significant and result in substantial
203 appreciation of the separate property.

204 For purposes of this subdivision, the nonowning spouse shall bear the burden of proving that (i)
205 contributions of marital property or personal effort were made and (ii) the separate property increased in
206 value. Once this burden of proof is met, the owning spouse shall bear the burden of proving that the
207 increase in value or some portion thereof was not caused by contributions of marital property or
208 personal effort.

209 "Personal effort" of a party shall be deemed to be labor, effort, inventiveness, physical or intellectual
210 skill, creativity, or managerial, promotional or marketing activity applied directly to the separate property
211 of either party.

212 b. In the case of any pension, profit-sharing, or deferred compensation plan or retirement benefit, the
213 marital share as defined in subsection G shall be marital property.

214 c. In the case of any personal injury or workers' compensation recovery of either party, the marital
215 share as defined in subsection H of this section shall be marital property.

216 d. When marital property and separate property are commingled by contributing one category of
217 property to another, resulting in the loss of identity of the contributed property, the classification of the
218 contributed property shall be transmuted to the category of property receiving the contribution. However,
219 to the extent the contributed property is retraceable by a preponderance of the evidence and was not a
220 gift, such contributed property shall retain its original classification.

221 e. When marital property and separate property are commingled into newly acquired property
222 resulting in the loss of identity of the contributing properties, the commingled property shall be deemed
223 transmuted to marital property. However, to the extent the contributed property is retraceable by a
224 preponderance of the evidence and was not a gift, the contributed property shall retain its original
225 classification.

226 f. When separate property is retitled in the joint names of the parties, the retitled property shall be
227 deemed transmuted to marital property. However, to the extent the property is retraceable by a
228 preponderance of the evidence and was not a gift, the retitled property shall retain its original
229 classification.

230 g. Subdivisions A 3 d, e and f of this section shall apply to jointly owned property. No presumption
231 of gift shall arise under this section where (i) separate property is commingled with jointly owned
232 property; (ii) newly acquired property is conveyed into joint ownership; or (iii) existing property is
233 conveyed or retitled into joint ownership. For purposes of this subdivision A 3, property is jointly
234 owned when it is titled in the name of both parties, whether as joint tenants, tenants by the entireties, or
235 otherwise.

236 B. For the purposes of this section only, both parties shall be deemed to have rights and interests in
237 the marital property. However, such interests and rights shall not attach to the legal title of such
238 property and are only to be used as a consideration in determining a monetary award, if any, as
239 provided in this section.

240 C. Except as provided in subsection G, the court shall have no authority to order the division or
241 transfer of separate property or marital property which is not jointly owned. The court may, based upon
242 the factors listed in subsection E, divide or transfer or order the division or transfer, or both, of jointly
243 owned marital property, or any part thereof. The court shall also have the authority to apportion and
244 order the payment of the debts of the parties, or either of them, that are incurred prior to the dissolution

of the marriage, based upon the factors listed in subsection E.

As a means of dividing or transferring the jointly owned marital property, the court may (i) transfer or order the transfer of real or personal property or any interest therein to one of the parties, (ii) permit either party to purchase the interest of the other and direct the allocation of the proceeds, provided the party purchasing the interest of the other agrees to assume any indebtedness secured by the property, or (iii) order its sale by private sale by the parties, through such agent as the court shall direct, or by public sale as the court shall direct without the necessity for partition. All decrees entered prior to July 1, 1991, which are final and not subject to further proceedings on appeal as of that date, which divide or transfer or order the division or transfer of property directly between the parties are hereby validated and deemed self-executing. All orders or decrees which divide or transfer or order division or transfer of real property between the parties shall be recorded and indexed in the names of the parties in the appropriate grantor and grantee indexes in the land records in the clerk's office of the circuit court of the county or city in which the property is located. ~~Such~~ *Copies of* final orders entered by the family court ~~and certified by the clerk of the family court~~ shall be transmitted promptly by the family court clerk to the circuit court of the city or county where the property is located where they shall be promptly recorded and indexed as required by this section.

D. In addition, based upon (i) the equities and the rights and interests of each party in the marital property, and (ii) the factors listed in subsection E, the court has the power to grant a monetary award, payable either in a lump sum or over a period of time in fixed amounts, to either party. The party against whom a monetary award is made may satisfy the award, in whole or in part, by conveyance of property, subject to the approval of the court. An award entered pursuant to this subsection shall constitute a judgment within the meaning of § 8.01-426 and shall not be docketed by the clerk on the judgment lien docket maintained by the circuit court unless the decree so directs. If the order or decree so directs, the clerk of the family court shall *certify a copy and* transmit it promptly ~~such order or~~ ~~decree~~ to the circuit court named in the order or decree for docketing on the judgment lien index. The provisions of § 8.01-382, relating to interest on judgments, shall apply unless the court orders otherwise.

Any marital property, which has been considered or ordered transferred in granting the monetary award under this section, shall not thereafter be the subject of a suit between the same parties to transfer title or possession of such property.

E. The amount of any division or transfer of jointly owned marital property, and the amount of any monetary award, the apportionment of marital debts, and the method of payment shall be determined by the court after consideration of the following factors:

1. The contributions, monetary and nonmonetary, of each party to the well-being of the family;
2. The contributions, monetary and nonmonetary, of each party in the acquisition and care and maintenance of such marital property of the parties;
3. The duration of the marriage;
4. The ages and physical and mental condition of the parties;
5. The circumstances and factors which contributed to the dissolution of the marriage, specifically including any ground for divorce under the provisions of § 20-91 (1), (3) or (6) or § 20-95;
6. How and when specific items of such marital property were acquired;
7. The debts and liabilities of each spouse, the basis for such debts and liabilities, and the property which may serve as security for such debts and liabilities;
8. The liquid or nonliquid character of all marital property;
9. The tax consequences to each party; and
10. Such other factors as the court deems necessary or appropriate to consider in order to arrive at a fair and equitable monetary award.

F. The court shall determine the amount of any such monetary award without regard to maintenance and support awarded for either party or support for the minor children of both parties and shall, after or at the time of such determination and upon motion of either party, consider whether an order for support and maintenance of a spouse or children shall be entered or, if previously entered, whether such order shall be modified or vacated.

G. In addition to the monetary award made pursuant to subsection D, and upon consideration of the factors set forth in subsection E:

1. The court may direct payment of a percentage of the marital share of any pension, profit-sharing or deferred compensation plan or retirement benefits, whether vested or nonvested, which constitutes marital property and whether payable in a lump sum or over a period of time. The court may order direct payment of such percentage of the marital share by direct assignment to a party from the employer trustee, plan administrator or other holder of the benefits. However, the court shall only direct that payment be made as such benefits are payable. No such payment shall exceed fifty percent of the marital share of the cash benefits actually received by the party against whom such award is made. "Marital share" means that portion of the total interest, the right to which was earned during the

marriage and before the last separation of the parties, if at such time or thereafter at least one of the parties intended that the separation be permanent.

2. To the extent permitted by federal or other applicable law, the court may order a party to designate a spouse or former spouse as irrevocable beneficiary during the lifetime of the beneficiary of all or a portion of any survivor benefit or annuity plan of whatsoever nature, but not to include a life insurance policy. The court, in its discretion, shall determine as between the parties, who shall bear the costs of maintaining such plan.

H. In addition to the monetary award made pursuant to subsection D, and upon consideration of the factors set forth in subsection E, the court may direct payment of a percentage of the marital share of any personal injury or workers' compensation recovery of either party, whether such recovery is payable in a lump sum or over a period of time. However, the court shall only direct that payment be made as such recovery is payable, whether by settlement, jury award, court award, or otherwise. "Marital share" means that part of the total personal injury or workers' compensation recovery attributable to lost wages or medical expenses to the extent not covered by health insurance accruing during the marriage and before the last separation of the parties, if at such time or thereafter at least one of the parties intended that the separation be permanent.

I. Nothing in this section shall be construed to prevent the affirmation, ratification and incorporation in a decree of an agreement between the parties pursuant to §§ 20-109 and 20-109.1. Agreements, otherwise valid as contracts, entered into between spouses prior to the marriage shall be recognized and enforceable.

J. A court of proper jurisdiction under § 20-96 may exercise the powers conferred by this section after a court of a foreign jurisdiction has decreed a dissolution of a marriage or a divorce from the bond of matrimony, if (i) one of the parties was domiciled in this Commonwealth when the foreign proceedings were commenced, (ii) the foreign court did not have personal jurisdiction over the party domiciled in the Commonwealth, (iii) the proceeding is initiated within two years of receipt of notice of the foreign decree by the party domiciled in the Commonwealth, and (iv) the court obtains personal jurisdiction over the parties pursuant to § 8.01-328.1 A 9, or in any other manner permitted by law.

K. 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, including the authority to:

1. Order a date certain for transfer or division of any jointly owned property under subsection C or payment of any monetary award under subsection D;

2. Punish as contempt of court any willful failure of a party to comply with the provisions of any order made by the court under this section;

3. Appoint a special commissioner to transfer any property under subsection C where a party refuses to comply with the order of the court to transfer such property; and

4. Modify any order entered in a case filed on or after July 1, 1982, intended to affect or divide any pension, profit-sharing or deferred compensation plan or retirement benefits pursuant to the United States Internal Revenue Code or other applicable federal laws, only for the purpose of establishing or maintaining the order as a qualified domestic relations order or to revise or conform its terms so as to effectuate the expressed intent of the order.

2. That the third, sixth, seventh, and eighth enactments of Chapter 929 of the 1993 Acts of Assembly, as amended by Chapter 564 of the 1994 Acts of Assembly, are amended and reenacted as follows:

3. That the provisions of enactments 1, 2, 6, 7 and 8 of this act shall become effective ~~July 1, 1996~~ *January 1, 1997*, only if state funds are provided by the General Assembly sufficient to provide adequate resources for the court to carry out the purposes of this act and to fulfill its mission to serve children and families of the Commonwealth. ~~The Judicial Council of Virginia shall submit legislation to the 1996 Session which amends § 16.1-69.6:1 of the Code of Virginia to specify wherein the Commonwealth new judgeships will be necessary to adequately support the family courts.~~

6. That jurisdiction over cases initiated or filed in the circuit court prior to ~~July 1, 1996~~ *January 1, 1997*, over which the family court would otherwise have jurisdiction pursuant to this act, shall remain in the circuit court, unless transferred pursuant to § 20-79 (c) or removed to the family court pursuant to the provisions of this enactment. The circuit court shall have the same authority mutatis mutandis as the family court regarding all matters arising out of such cases, including but not limited to: (i) the enforcement and modification of decrees of divorce; (ii) the entry of an a vinculo decree of divorce where an a mensa et thoro decree of divorce was entered in the circuit court; and (iii) the adjudication of equitable distribution where the court previously reserved jurisdiction to do so. Such cases shall include divorce, annulment or affirmation of marriage, separate maintenance, equitable distribution based on a foreign decree, determination of parentage, adoption, judicial review pursuant to §§ 22.1-87, 22.1-214, 22.1-214.1 or § 63.1-248.5:1, and amendments of records of birth pursuant to Chapter 7 (§ 32.1-249 et seq.) of Title 32.1.

If a case is initiated or filed in the circuit court prior to ~~July 1, 1996~~ *January 1, 1997*, over which

the family court would otherwise have jurisdiction pursuant to this act, and a party having an interest in that case initiates or files the same case after ~~July 1, 1996~~ *January 1, 1997*, in the family court, the court where the case was first initiated or filed shall have jurisdiction. If a case is initiated or filed in the circuit court prior to ~~July 1, 1996~~ *January 1, 1997*, over which the family court would otherwise have jurisdiction pursuant to this act, and all parties to the case initiated or filed in the circuit court agree to the removal of that case to the family court, such case may be removed to the family court which shall have thereafter jurisdiction over all matters arising therefrom.

7. That jurisdiction over any petition, summons or other action in a juvenile and domestic relations district court which is initiated prior to ~~July 1, 1996~~ *January 1, 1997*, shall be mutatis mutandis in the family court serving the same jurisdictions formerly served by the juvenile and domestic relations district court in which such cases were initiated. Any order entered by a juvenile and domestic relations district court prior to ~~July 1, 1996~~ *January 1, 1997*, shall remain in full force and effect until modified or superseded by the order or action of a court as provided by law.

The enactment of this act effective ~~July 1, 1996~~ *January 1, 1997*, shall not affect any act or offense done or committed, or any penalty or forfeiture incurred, or any right established, accrued or accruing on or before such day, or any petitions, warrants, summonses or other action pending on that day. Every such pending prosecution, suit and action shall be proceeded in, tried and determined in the juvenile and domestic relations district court, or in the family court which succeeds to or has its jurisdiction, and any further action taken therein shall be valid and effective for all purposes, whether taken by the court in its present or former name or by the judge thereof under his present or former judicial title. All further proceedings therein shall conform, as far as practicable, to the provisions of this act; provided, however, that the provisions regarding appeals shall be governed by enactment 8 of this act.

Any notice given, recognizance taken, or process or writ issued before ~~July 1, 1996~~ *January 1, 1997*, shall be valid although given, taken or to be returned to a day after such date, or to a court established by this act or the clerk's office thereof, in like manner as if this act had been effective before the same was given, taken or issued.

8. That:

A. A final order which disposes of a proceeding in a case, when such proceeding was commenced in a juvenile and domestic relations district court prior to ~~July 1, 1996~~ *January 1, 1997*, shall continue to be appealed to the circuit court regardless of whether such proceeding was commenced by a petition, motion or other pleading. A final order which disposes of a subsequent proceeding in the same case, when such proceeding was commenced in the family court after ~~July 1, 1996~~ *January 1, 1997*, shall be appealed in accordance with the provisions of § 16.1-296 or § 16.1-296.2, as applicable, regardless of whether such proceeding was commenced by a petition, motion or other pleading.

B. When an appeal of a final order is taken in a case commenced in the juvenile and domestic relations district court prior to ~~July 1, 1996~~ *January 1, 1997*, whether such case was commenced by petition, motion or other pleading, and the court to which the appeal is taken rules that the appeal was taken to the wrong court, the appeal of such order shall be remanded to the family court with leave to the appellant to file an appeal to the appropriate court.

C. If an appeal of a final order of either a family court or a juvenile and domestic relations district court is (i) an appeal from an order enforcing or modifying a decree remanded to a juvenile and domestic relations district court pursuant to § 20-79 (c), (ii) a copy of the decree was received by the juvenile and domestic relations district court prior to ~~July 1, 1996~~ *January 1, 1997*, and (iii) the court to which the appeal is taken rules that the appeal was taken to the wrong court, the appeal of such order shall be remanded to the family court with leave to the appellant to file an appeal in the appropriate court.

D. The provisions of subsections B and C of enactment 8 shall apply to appeals noted no later than ~~June 30, 1997~~ *December 31, 1997*.

3. That the third, sixth, seventh and eighth enactments of Chapter 930 of the 1993 Acts of Assembly, as amended by Chapter 564 of the 1994 Acts of Assembly, are amended and reenacted as follows:

3. That the provisions of enactments 1, 2, 6, 7 and 8 of this act shall become effective ~~July 1, 1996~~ *January 1, 1997*, if state funds are provided to carry out the purposes of this bill by the General Assembly. ~~The Judicial Council of Virginia shall submit legislation to the 1996 Session which amends § 16.1-69.6:1 of the Code of Virginia to specify wherein the Commonwealth new judgeships will be necessary to adequately support the family courts.~~

6. That jurisdiction over cases initiated or filed in the circuit court prior to ~~July 1, 1996~~ *January 1, 1997*, over which the family court would otherwise have jurisdiction pursuant to this act, shall remain in the circuit court, unless transferred pursuant to § 20-79 (c) or removed to the family court pursuant to the provisions of this enactment. The circuit court shall have the same authority, mutatis mutandis, as the family court regarding all matters arising out of such cases, including but not limited to: (i) the

429 enforcement and modification of decrees of divorce; (ii) the entry of an a vinculo decree of divorce
430 where an a mensa et thoro decree of divorce was entered in the circuit court; and (iii) the adjudication
431 of equitable distribution where the court previously reserved jurisdiction to do so. Such cases shall
432 include divorce, annulment or affirmation of marriage, separate maintenance, equitable distribution based
433 on a foreign decree, determination of parentage, adoption, judicial review pursuant to §§ 22.1-87,
434 22.1-214, 22.1-214.1 or § 63.1-248.5:1, and amendments of records of birth pursuant to Chapter 7
435 (§ 32.1-249 et seq.) of Title 32.1.

436 If a case is initiated or filed in the circuit court prior to ~~July 1, 1996~~ *January 1, 1997*, over which
437 the family court would otherwise have jurisdiction pursuant to this act, and a party having an interest in
438 that case initiates or files the same case after ~~July 1, 1996~~ *January 1, 1997*, in the family court, the
439 court where the case was first initiated or filed shall have jurisdiction. If a case is initiated or filed in
440 the circuit court prior to ~~July 1, 1996~~ *January 1, 1997*, over which the family court would otherwise
441 have jurisdiction pursuant to this act, and all parties to the case initiated or filed in the circuit court
442 agree to the removal of that case to the family court, such case may be removed to the family court
443 which shall have thereafter jurisdiction over all matters arising therefrom.

444 7. That jurisdiction over any petition, summons or other action in a juvenile and domestic relations
445 district court which is initiated prior to ~~July 1, 1996~~ *January 1, 1997*, shall be mutatis mutandis in the
446 family court serving the same jurisdictions formerly served by the juvenile and domestic relations
447 district court in which such cases were initiated. Any order entered by a juvenile and domestic relations
448 district court prior to ~~July 1, 1996~~ *January 1, 1997*, shall remain in full force and effect until modified
449 or superseded by the order or action of a court as provided by law.

450 The enactment of this act effective ~~July 1, 1996~~ *January 1, 1997*, shall not affect any act or offense
451 done or committed, or any penalty or forfeiture incurred, or any right established, accrued or accruing
452 on or before such day, or any petitions, warrants, summonses or other action pending on that day. Every
453 such pending prosecution, suit and action shall be proceeded in, tried and determined in the juvenile and
454 domestic relations district court, or in the family court which succeeds to or has its jurisdiction, and any
455 further action taken therein shall be valid and effective for all purposes, whether taken by the court in
456 its present or former name or by the judge thereof under his present or former judicial title. All further
457 proceedings therein shall conform, as far as practicable, to the provisions of this act; however, the
458 provisions regarding appeals shall be governed by enactment 8 of this act.

459 Any notice given, recognizance taken, or process or writ issued before ~~July 1, 1996~~ *January 1, 1997*,
460 shall be valid although given, taken or to be returned to a day after such date, or to a court established
461 by this act or the clerk's office thereof, in like manner as if this act had been effective before the same
462 was given, taken or issued.

463 8. That:

464 A. A final order which disposes of a proceeding in a case, when such proceeding was commenced in
465 a juvenile and domestic relations district court prior to *January 1, 1997*, shall continue to be appealed to
466 the circuit court regardless of whether such proceeding was commenced by a petition, motion or other
467 pleading. A final order which disposes of a subsequent proceeding in the same case, when such
468 proceeding was commenced in the family court after ~~July 1, 1996~~ *January 1, 1997*, shall be appealed in
469 accordance with the provisions of § 16.1-296 or § 16.1-296.2, as applicable, regardless of whether such
470 proceeding was commenced by a petition, motion or other pleading.

471 B. When an appeal of a final order is taken in a case commenced in the juvenile and domestic
472 relations district court prior to ~~July 1, 1996~~ *January 1, 1997*, whether such case was commenced by
473 petition, motion or other pleading, and the court to which the appeal is taken rules that the appeal was
474 taken to the wrong court, the appeal of such order shall be remanded to the family court with leave to
475 the appellant to file an appeal to the appropriate court.

476 C. If an appeal of a final order of either a family court or a juvenile and domestic relations district
477 court is (i) an appeal from an order enforcing or modifying a decree remanded to a juvenile and
478 domestic relations district court pursuant to § 20-79 (c), (ii) a copy of the decree was received by the
479 juvenile and domestic relations district court prior to ~~July 1, 1996~~ *January 1, 1997*, and (iii) the court to
480 which the appeal is taken rules that the appeal was taken to the wrong court, the appeal of such order
481 shall be remanded to the family court with leave to the appellant to file an appeal in the appropriate
482 court.

483 D. The provisions of subsections B and C of enactment 8 shall apply to appeals noted no later than
484 ~~June 30, 1997~~ *December 31, 1997*.

485 **4. That the second enactment of Chapter 970 of the 1993 Acts of Assembly, as amended by**
486 **Chapter 564 of the 1994 Acts of Assembly, is amended and reenacted as follows:**

487 2. That the provisions of this act shall expire on ~~June 30, 1996~~ *December 31, 1997*, provided,
488 however, that the provisions of this act shall apply on and after ~~July 1, 1996~~ *January 1, 1997*, only to
489 any final order which disposes of a proceeding in a support case, when such proceeding was
490 commenced in a juvenile and domestic relations district court prior to ~~July 1, 1996~~ *January 1, 1997*, and

491 when such case is appealed to the circuit court, regardless of whether such proceeding was commenced
492 by a petition, motion or other pleading.

INTRODUCED

HB74