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HOUSE BILL NO. 717**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee for Courts of Justice
on February 13, 1998)

(Patron Prior to Substitute—Delegate Rhodes)

*A BILL to amend and reenact § 20-108.1 of the Code of Virginia, relating to the determination of child or spousal support.***Be it enacted by the General Assembly of Virginia:****1. That § 20-108.1 of the Code of Virginia is 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. Liability for support shall be determined retroactively for the period measured from the date that the proceeding was commenced by the filing of an action with the court provided the complainant exercised due diligence in the service of the respondent.

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. Debts incurred for production of income;
 6. 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. Extraordinary capital gains such as capital gains resulting from the sale of the marital abode;
 8. Age, physical and mental condition of the child or children, including extraordinary medical or dental expenses, and child-care expenses;
 9. Independent financial resources, if any, of the child or children;
 10. Standard of living for the family established during the marriage;
 11. Earning capacity, obligations and needs, and financial resources of each parent;
 12. Education and training of the parties and the ability and opportunity of the parties to secure such education and training;
 13. Contributions, monetary and nonmonetary, of each party to the well-being of the family;
 14. Provisions made with regard to the marital property under § 20-107.3;
 15. Tax consequences to the parties regarding claims for dependent children and child care expenses;
 16. A written agreement between the parties which includes the amount of child support;
 17. A pendente lite decree, which includes the amount of child support, agreed to by both parties or by counsel for the parties; and
 18. 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 support, the court shall have the authority to order a party to provide health care coverage, as defined in

60 § 63.1-250, for dependent children if reasonable under all the circumstances and health care coverage for
61 a spouse or former spouse.

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

68 *E. Except when the parties have otherwise agreed, in any proceeding under this title, Title 16.1 or*
69 *Title 63.1 on the issue of determining child support, the court shall have the authority to and may, in its*
70 *discretion, order one party to execute all appropriate tax forms or waivers to grant to the other party*
71 *the right to take the income tax dependency exemption for any tax year or future years, for any child or*
72 *children of the parties for federal and state income tax purposes.*