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HOUSE BILL NO. 1685

Offered January 13, 1999

A BILL to amend and reenact §§ 16.1-278.15 and 20-103 of the Code of Virginia, relating to custody, visitation and support.

Patrons—Reid, Bryant, Cantor and Howell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-278.15 and 20-103 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. *When the parties are parents of a child whose custody or visitation is contested, the court shall order the parties, when appropriate, at the time of the parties' initial court appearance, to attend educational seminars or other like programs conducted by a qualified person or organization approved by the court, on the effects of separation or divorce on children, parenting responsibilities, options for conflict resolution and financial responsibilities. The fee charged a party for participation in such program shall be based on the party's ability to pay; however, no fee in excess of fifty dollars may be charged. The court may grant an exemption from attendance of such program for good cause shown. No statement or admission by a party in such seminar or program shall be admissible into evidence in any subsequent proceeding.*

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. The court may also order the continuation of support for any child over the age of eighteen who is (i) severely and permanently mentally or physically disabled, (ii) unable to live independently and support himself, and (iii) resides in the home of the parent seeking or receiving child support.

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.

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

A. In suits for divorce, annulment and separate maintenance, and in proceedings arising under subdivision A 3 or L of § 16.1-241, the court having jurisdiction of the matter may, at any time pending a suit pursuant to this chapter, in the discretion of such court, make any order that may be proper (i) to compel a spouse to pay any sums necessary for the maintenance and support of the petitioning spouse, including an order that the other spouse provide health care coverage for the petitioning spouse, unless it is shown that such coverage cannot be obtained, (ii) to enable such spouse to carry on the suit, (iii) to prevent either spouse from imposing any restraint on the personal liberty of the other spouse, (iv) to provide for the custody and maintenance of the minor children of the parties, including an order that either party provide health care coverage for the children, (v) to provide support for any child of the parties to whom a duty of support is owed and to continue to support any child over the age of eighteen who meets the requirements set forth in subsection C of § 20-124.2, (vi) for the exclusive use and

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60 possession of the family residence during the pendency of the suit, (vii) to preserve the estate of either
61 spouse, so that it be forthcoming to meet any decree which may be made in the suit, or (viii) to compel
62 either spouse to give security to abide such decree.

63 In addition to the authority hereinabove, the court ~~may~~ *shall* order, *when appropriate*, parties with a
64 minor child or children *whose custody or visitation is contested* to attend educational seminars ~~and~~ *or*
65 other like programs conducted by a qualified person or organization approved by the court, on the
66 effects of the separation or divorce on minor children, parenting responsibilities, options for conflict
67 resolution, and financial responsibilities; ~~provided that~~ . *The fee charged a party for participation in*
68 *such a program shall be based on the party's ability to pay; however, no fee in excess of fifty dollars*
69 *may be charged for participation in any such program. The court may grant an exemption from*
70 *attendance of such program for good cause shown.* No statement or admission by a party in such
71 seminar or program shall be admissible into evidence in any subsequent proceeding.

72 B. In addition to the terms provided in subsection A, upon a showing by a party of reasonable
73 apprehension of physical harm to that party by such party's family or household member as that term is
74 defined in § 16.1-228, and consistent with rules of the Supreme Court of Virginia, the court may enter
75 an order excluding that party's family or household member from the jointly owned or jointly rented
76 family dwelling. In any case where an order is entered under this paragraph, pursuant to an ex parte
77 hearing, the order shall not exclude a family or household member from the family dwelling for a
78 period in excess of fifteen days from the date the order is served, in person, upon the person so
79 excluded. The order may provide for an extension of time beyond the fifteen days, to become effective
80 automatically. The person served may at any time file a written motion in the clerk's office requesting a
81 hearing to dissolve or modify the order. Nothing in this section shall be construed to prohibit the court
82 from extending an order entered under this subsection for such longer period of time as is deemed
83 appropriate, after a hearing on notice to the parties.

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

88 D. Orders entered pursuant to this section which provide for custody or visitation arrangements
89 pending the suit shall be made in accordance with the standards set out in Chapter 6.1 (§ 20-124.1 et
90 seq.) of Title 20. Orders entered pursuant to subsection B shall be certified by the clerk and forwarded
91 as soon as possible to the local police department or sheriff's office which shall, on the date of receipt,
92 enter the name of the person subject to the order and other appropriate information required by the
93 Department of State Police into the Virginia crime information network system established and
94 maintained by the Department of State Police pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52. If the
95 order is later dissolved or modified, a copy of the dissolution or modification shall also be certified,
96 forwarded and entered in the system as described above.

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