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HOUSE BILL NO. 66

Offered January 13, 2010

Prefiled December 28, 2009

A BILL to amend and reenact § 20-108.1 of the Code of Virginia, relating to child and spousal support; vocational experts.

Patron—Toscano

Referred to Committee for Courts of Justice

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 Title 63.2, 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 any court provided the complainant exercised due diligence in the service of the respondent or, if earlier, the date an order of the Department of Social Services entered pursuant to Title 63.2 and directing payment of support was delivered to the sheriff or process server for service on the obligor.

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 family members or former family members;
2. Arrangements regarding custody of the children, including the cost of visitation travel;
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 and provided further, that any consideration of imputed income based on a change in a party's employment shall be evaluated with consideration of the good faith and reasonableness of employment decisions made by the party;
4. Debts of either party arising during the marriage for the benefit of the child;
5. Direct payments ordered by the court for maintaining life insurance coverage pursuant to subsection D, education expenses, or other court-ordered direct payments for the benefit of the child;
6. Extraordinary capital gains such as capital gains resulting from the sale of the marital abode;
7. Any special needs of a child resulting from any physical, emotional, or medical condition;
8. Independent financial resources of the child or children;
9. Standard of living for the child or children established during the marriage;
10. Earning capacity, obligations, financial resources, and special needs of each parent;
11. Provisions made with regard to the marital property under § 20-107.3, where said property earns income or has an income-earning potential;
12. Tax consequences to the parties including claims for exemptions, child tax credit, and child care credit for dependent children;
13. A written agreement, stipulation, consent order, or decree between the parties which includes the amount of child support; and
14. Such other factors 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 63.2 on the issue of determining child support, the court shall have the authority to order either party or both parties to provide health care

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HB66

59 coverage or cash medical support, as defined in § 63.2-1900, or both, for dependent children if  
60 reasonable under all the circumstances and health care coverage for a spouse or former spouse.

61 D. In any proceeding under this title, Title 16.1 or Title 63.2 on the issue of determining child  
62 support, the court shall have the authority to order a party to (i) maintain any existing life insurance  
63 policy on the life of either party provided the party so ordered has the right to designate a beneficiary  
64 and (ii) designate a child or children of the parties as the beneficiary of all or a portion of such life  
65 insurance for so long as the party so ordered has a statutory obligation to pay child support for the child  
66 or children.

67 E. Except when the parties have otherwise agreed, in any proceeding under this title, Title 16.1 or  
68 Title 63.2 on the issue of determining child support, the court shall have the authority to and may, in its  
69 discretion, order one party to execute all appropriate tax forms or waivers to grant to the other party the  
70 right to take the income tax dependency exemption for any tax year or future years, for any child or  
71 children of the parties for federal and state income tax purposes.

72 F. Notwithstanding any other provision of law, any amendments to this section shall not be  
73 retroactive to a date before the effective date of the amendment, and shall not be the basis for a material  
74 change in circumstances upon which a modification of child support may be based.

75 G. Child support payments, whether current or arrears, received by a parent for the benefit of and  
76 owed to a child in the parent's custody, whether the payments were ordered under this title, Title 16.1,  
77 or Title 63.2, shall not be subject to garnishment. A depository wherein child support payments have  
78 been deposited on behalf of and traceable to an individual shall not be required to determine the portion  
79 of deposits which are subject to garnishment.

80 *H. In any proceeding on the issue of determining child or spousal support or an action for separate*  
81 *maintenance under this title, Title 16.1, or Title 63.2, when the earning capacity, voluntary*  
82 *unemployment, or voluntary under-employment of a party is in controversy, the court in which the*  
83 *action is pending, upon the motion of any party and for good cause shown, may order a party to submit*  
84 *to a vocational evaluation by a vocational expert employed by the moving party, including any*  
85 *interviews and testing as requested by the expert. The order may permit the attendance of the vocational*  
86 *expert at the deposition of the person to be evaluated. The order shall specify the name and address of*  
87 *the expert, the scope of the evaluation, and shall fix the time for filing the report with the court and*  
88 *furnishing copies to the parties. The court may award costs or fees for the evaluation and the services*  
89 *of the expert. The provisions of this section shall not preclude the applicability of any other rule or law.*