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HOUSE BILL NO. 2383

Offered January 23, 2015

A BILL to amend and reenact §§ 16.1-278.15, 20-60.3, and 20-124.2 of the Code of Virginia, relating to child support for a disabled child.

Patrons—Byron (By Request) and Surovell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-278.15, 20-60.3, and 20-124.2 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. The parties to any petition where a child whose custody, visitation, or support is contested shall show proof that they have attended within the 12 months prior to their court appearance or that they shall attend within 45 days thereafter an educational seminar or other like program conducted by a qualified person or organization approved by the court. The court may require the parties to attend such seminar or program in uncontested cases only if the court finds good cause. The seminar or other program shall be a minimum of four hours in length and shall address the effects of separation or divorce on children, parenting responsibilities, options for conflict resolution and financial responsibilities. Once a party has completed one educational seminar or other like program, the required completion of additional programs shall be at the court's discretion. Parties under this section shall include natural or adoptive parents of the child, or any person with a legitimate interest as defined in § 20-124.1. 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 \$50 may be charged. Whenever possible, before participating in mediation or alternative dispute resolution to address custody, visitation or support, each party shall have attended the educational seminar or other like program. The court may grant an exemption from attendance of such program for good cause shown or if there is no program reasonably available. Other than statements or admissions by a party admitting criminal activity or child abuse or neglect, 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 18 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 19 or graduates from high school, whichever occurs first. The court may also order the continuation of support for any child over the age of 18 who is (a) severely and permanently mentally or physically disabled, (b) unable to live independently and support himself, and (c) resides residing in the home of the parent seeking or receiving child support, provided that the parent from whom support is being sought or received is financially able to provide such 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. Orders entered prior to July 1, 2008, shall not be deemed void or voidable solely because the petition or motion that resulted in the order was completed, signed and filed by a nonattorney employee of the Department of Social Services.

E. 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.

F. 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.

G. In any case or proceeding involving the custody or visitation of a child, the court shall consider

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59 the best interest of the child, including the considerations for determining custody and visitation set forth
60 in Chapter 6.1 (§ 20-124.1 et seq.) of Title 20.

61 H. In any proceeding before the court for custody or visitation of a child, the court may order a
62 custody or a psychological evaluation of any parent, guardian, legal custodian or person standing in loco
63 parentis to the child, if the court finds such evaluation would assist it in its determination. The court
64 may enter such orders as it deems appropriate for the payment of the costs of the evaluation by the
65 parties.

66 I. When deemed appropriate by the court in any custody or visitation matter, the court may order
67 drug testing of any parent, guardian, legal custodian or person standing in loco parentis to the child. The
68 court may enter such orders as it deems appropriate for the payment of the costs of the testing by the
69 parties.

70 **§ 20-60.3. Contents of support orders.**

71 All orders directing the payment of spousal support where there are minor children whom the parties
72 have a mutual duty to support and all orders directing the payment of child support, including those
73 orders confirming separation agreements, entered on or after October 1, 1985, whether they are original
74 orders or modifications of existing orders, shall contain the following:

75 1. Notice that support payments may be withheld as they become due pursuant to § 20-79.1 or
76 § 20-79.2, from income as defined in § 63.2-1900, without further amendments of this order or having to
77 file an application for services with the Department of Social Services; however, absence of such notice
78 in an order entered prior to July 1, 1988, shall not bar withholding of support payments pursuant to
79 § 20-79.1;

80 2. Notice that support payments may be withheld pursuant to Chapter 19 (§ 63.2-1900 et seq.) of
81 Title 63.2 without further amendments to the order upon application for services with the Department of
82 Social Services; however, absence of such notice in an order entered prior to July 1, 1988, shall not bar
83 withholding of support payments pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2;

84 3. The name, date of birth, and last four digits of the social security number of each child to whom a
85 duty of support is then owed by the parent;

86 4. If known, the name, date of birth, and last four digits of the social security number of each parent
87 of the child and, unless otherwise ordered, each parent's residential and, if different, mailing address,
88 residential and employer telephone number, driver's license number, and the name and address of his or
89 her employer; however, when a protective order has been issued or the court otherwise finds reason to
90 believe that a party is at risk of physical or emotional harm from the other party, information other than
91 the name of the party at risk shall not be included in the order;

92 5. Notice that, pursuant to § 20-124.2, support will continue to be paid for any child over the age of
93 18 who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the
94 party seeking or receiving child support until such child reaches the age of 19 or graduates from high
95 school, whichever occurs first, and that the court ~~may~~ *shall* also order the continuation of support for
96 any child over the age of 18 who is (a) severely and permanently mentally or physically disabled, (b)
97 unable to live independently and support himself, and (c) residing in the home of the parent seeking or
98 receiving child support, *provided that the parent from whom support is being sought or received is*
99 *financially able to provide such support;*

100 6. On and after July 1, 1994, notice that a petition may be filed for suspension of any license,
101 certificate, registration or other authorization to engage in a profession, trade, business, occupation, or
102 recreational activity issued by the Commonwealth to a parent as provided in § 63.2-1937 upon a
103 delinquency for a period of 90 days or more or in an amount of \$5,000 or more. The order shall
104 indicate whether either or both parents currently hold such an authorization and, if so, the type of
105 authorization held;

106 7. The monthly amount of support and the effective date of the order. In proceedings on initial
107 petitions, the effective date shall be the date of filing of the petition; in modification proceedings, the
108 effective date may be the date of notice to the responding party. The first monthly payment shall be due
109 on the first day of the month following the hearing date and on the first day of each month thereafter.
110 In addition, an amount shall be assessed for any full and partial months between the effective date of
111 the order and the date that the first monthly payment is due. The assessment for the initial partial month
112 shall be prorated from the effective date through the end of that month, based on the current monthly
113 obligation;

114 8. a. An order for health care coverage, including the health insurance policy information, for
115 dependent children pursuant to §§ 20-108.1 and 20-108.2 if available at reasonable cost as defined in
116 § 63.2-1900, or a written statement that health care coverage is not available at a reasonable cost as
117 defined in such section, and a statement as to whether there is an order for health care coverage for a
118 spouse or former spouse; and

119 b. A statement as to whether cash medical support, as defined in § 63.2-1900, is to be paid by or
120 reimbursed to a party pursuant to subsections D and G of § 20-108.2, and if such expenses are ordered,

then the provisions governing how such payment is to be made;

9. If support arrearages exist, (i) to whom an arrearage is owed and the amount of the arrearage, (ii) the period of time for which such arrearage is calculated, and (iii) a direction that all payments are to be credited to current support obligations first, with any payment in excess of the current obligation applied to arrearages;

10. If child support payments are ordered to be paid through the Department of Social Services or directly to the obligee, and unless the court for good cause shown orders otherwise, the parties shall give each other and the court and, when payments are to be made through the Department, the Department of Social Services at least 30 days' written notice, in advance, of any change of address and any change of telephone number within 30 days after the change;

11. If child support payments are ordered to be paid through the Department of Social Services, a provision requiring an obligor to keep the Department of Social Services informed of the name, address and telephone number of his current employer, or if payments are ordered to be paid directly to the obligee, a provision requiring an obligor to keep the court informed of the name, address and telephone number of his current employer;

12. If child support payments are ordered to be paid through the Department of Social Services, a provision requiring the party obligated to provide health care coverage to keep the Department of Social Services informed of any changes in the availability of the health care coverage for the minor child or children, or if payments are ordered to be paid directly to the obligee, a provision requiring the party obligated to provide health care coverage to keep the other party informed of any changes in the availability of the health care coverage for the minor child or children;

13. The separate amounts due to each person under the order, unless the court specifically orders a unitary award of child and spousal support due or the order affirms a separation agreement containing provision for such unitary award;

14. Notice that in determination of a support obligation, the support obligation as it becomes due and unpaid creates a judgment by operation of law. The order shall also provide, pursuant to § 20-78.2, for interest on the arrearage at the judgment rate as established by § 6.2-302 unless the obligee, in a writing submitted to the court, waives the collection of interest;

15. Notice that on and after July 1, 1994, the Department of Social Services may, pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2 and in accordance with §§ 20-108.2 and 63.2-1921, initiate a review of the amount of support ordered by any court;

16. A statement that if any arrearages for child support, including interest or fees, exist at the time the youngest child included in the order emancipates, payments shall continue in the total amount due (current support plus amount applied toward arrearages) at the time of emancipation until all arrearages are paid; and

17. Notice that, in cases enforced by the Department of Social Services, the Department of Motor Vehicles may suspend or refuse to renew the driver's license of any person upon receipt of notice from the Department of Social Services that the person (i) is delinquent in the payment of child support by 90 days or in an amount of \$5,000 or more or (ii) has failed to comply with a subpoena, summons, or warrant relating to paternity or child support proceedings.

The provisions of this section shall not apply to divorce decrees where there are no minor children whom the parties have a mutual duty to support.

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

A. In any case in which custody or visitation of minor children is at issue, whether in a circuit or district court, the court shall provide prompt adjudication, upon due consideration of all the facts, of custody and visitation arrangements, including support and maintenance for the children, prior to other considerations arising in the matter. The court may enter an order pending the suit as provided in § 20-103. The procedures for determining custody and visitation arrangements shall insofar as practical, and consistent with the ends of justice, preserve the dignity and resources of family members. Mediation shall be used as an alternative to litigation where appropriate. When mediation is used in custody and visitation matters, the goals may include development of a proposal addressing the child's residential schedule and care arrangements, and how disputes between the parents will be handled in the future.

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

C. The court may order that support be paid for any child of the parties. The court shall also order

182 that support will continue to be paid for any child over the age of 18 who is (i) a full-time high school
183 student, (ii) not self-supporting, and (iii) living in the home of the party seeking or receiving child
184 support until such child reaches the age of 19 or graduates from high school, whichever first occurs. The
185 court ~~may~~ *shall* also order the continuation of support for any child over the age of 18 who is ~~(i)~~ (a)
186 severely and permanently mentally or physically disabled, ~~(ii)~~ (b) unable to live independently and
187 support himself, and ~~(iii)~~ *resides* (c) *residing* in the home of the parent seeking or receiving child
188 support, *provided that the parent from whom support is being sought or received is financially able to*
189 *provide such support*. In addition, the court may confirm a stipulation or agreement of the parties which
190 extends a support obligation beyond when it would otherwise terminate as provided by law. The court
191 shall have no authority to decree support of children payable by the estate of a deceased party. The
192 court may make such further decree as it shall deem expedient concerning support of the minor children,
193 including an order that either party or both parties provide health care coverage or cash medical support,
194 or both.

195 D. In any case in which custody or visitation of minor children is at issue, whether in a circuit or
196 district court, the court may order an independent mental health or psychological evaluation to assist the
197 court in its determination of the best interests of the child. The court may enter such order as it deems
198 appropriate for the payment of the costs of the evaluation by the parties.

199 E. The court shall have the continuing authority and jurisdiction to make any additional orders
200 necessary to effectuate and enforce any order entered pursuant to this section or § 20-103 including the
201 authority to punish as contempt of court any willful failure of a party to comply with the provisions of
202 the order. A parent or other person having legal custody of a child may petition the court to enjoin and
203 the court may enter an order to enjoin a parent of the child from filing a petition relating to custody and
204 visitation of that child for any period of time up to 10 years if doing so is in the best interests of the
205 child and such parent has been convicted of an offense under the laws of the Commonwealth or a
206 substantially similar law of another state, the United States, or any foreign jurisdiction which constitutes
207 (i) murder or voluntary manslaughter, or a felony attempt, conspiracy or solicitation to commit any such
208 offense, if the victim of the offense was a child of the parent, a child with whom the parent resided at
209 the time the offense occurred, or the other parent of the child, or (ii) felony assault resulting in serious
210 bodily injury, felony bodily wounding resulting in serious bodily injury, or felony sexual assault, if the
211 victim of the offense was a child of the parent or a child with whom the parent resided at the time of
212 the offense. When such a petition to enjoin the filing of a petition for custody and visitation is filed, the
213 court shall appoint a guardian ad litem for the child pursuant to § 16.1-266.