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SENATE BILL NO. 1317

Offered January 11, 2017

Prefiled January 10, 2017

A BILL to amend and reenact §§ 16.1-278.17:1, 20-103, and 20-107.1 of the Code of Virginia, relating to spousal support; military disability benefits not considered income.

Patron—Carrico

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-278.17:1, 20-103, and 20-107.1 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-278.17:1. Formula for determination of pendente lite spousal support.

A. There shall be a presumption in any judicial proceeding for pendente lite spousal support and maintenance under this title that the amount of the award that would result from the application of the formula set forth in this section is the correct amount of spousal support to be awarded. The court may deviate from the presumptive amount as provided in subsection D.

B. If the court is determining both an award of pendente lite spousal support and maintenance and an award of child support, the court shall first make a determination of the amount of the award of pendente lite spousal support, if any, owed by one party to the other under this section.

C. If the parties have minor children in common, the presumptive amount of an award of pendente lite spousal support and maintenance shall be the difference between 28% of the payor spouse's monthly gross income and 58% of the payee spouse's monthly gross income. If the parties have no minor children in common, the presumptive amount of the award shall be the difference between 30% of the payor spouse's monthly gross income and 50% of the payee spouse's monthly gross income. For the purposes of this section, monthly gross income shall have the same meaning as it does in section § 20-108.2, as amended, except that any combat-related military disability benefits received by a payee or a payor spouse shall not be considered monthly gross income.

D. The court may deviate from the presumptive amount for good cause shown, including any relevant evidence relating to the parties' current financial circumstances that indicates the presumptive amount is inappropriate.

E. The formula set forth in this section shall only apply to cases where the parties' combined monthly gross income does not exceed \$10,000.

§ 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 subsection 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 (a) an order that the other spouse provide health care coverage for the petitioning spouse, unless it is shown that such coverage cannot be obtained, or (b) an order that a party pay secured or unsecured debts incurred jointly or by either party, (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 or both parties provide health care coverage or cash medical support, or both, for the children, (v) to provide support, calculated in accordance with § 20-108.2, for any child of the parties to whom a duty of support is owed and to pay or continue to pay support for any child over the age of 18 who meets the requirements set forth in subsection C of § 20-124.2, (vi) for the exclusive use and possession of the family residence during the pendency of the suit, (vii) to preserve the estate of either spouse, so that it be forthcoming to meet any decree which may be made in the suit, (viii) to compel either spouse to give security to abide such decree, or (ix)(a) to compel a party to maintain any existing policy owned by that party insuring the life of either party or to require a party to name as a beneficiary of the policy the other party or an appropriate person for the exclusive use and benefit of the minor children of the parties and (b) to allocate the premium cost of such life insurance between the parties, provided that all premiums are billed to the policyholder. Nothing in clause (ix) shall be construed to create an independent cause of action on the part of any beneficiary against the insurer or to require an insurer to provide information relating to such policy to any person other than the policyholder without the written consent of the policyholder. 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

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59 months prior to their court appearance or that they shall attend within 45 days thereafter an educational
60 seminar or other like program conducted by a qualified person or organization approved by the court
61 except that the court may require the parties to attend such seminar or program in uncontested cases
62 only if the court finds good cause. The seminar or other program shall be a minimum of four hours in
63 length and shall address the effects of separation or divorce on children, parenting responsibilities,
64 options for conflict resolution and financial responsibilities. Once a party has completed one educational
65 seminar or other like program, the required completion of additional programs shall be at the court's
66 discretion. Parties under this section shall include natural or adoptive parents of the child, or any person
67 with a legitimate interest as defined in § 20-124.1. The fee charged a party for participation in such
68 program shall be based on the party's ability to pay; however, no fee in excess of \$50 may be charged.
69 Whenever possible, before participating in mediation or alternative dispute resolution to address custody,
70 visitation or support, each party shall have attended the educational seminar or other like program. The
71 court may grant an exemption from attendance of such program for good cause shown or if there is no
72 program reasonably available. Other than statements or admissions by a party admitting criminal activity
73 or child abuse, no statement or admission by a party in such seminar or program shall be admissible
74 into evidence in any subsequent proceeding.

75 A1. Any award or order made by the court pursuant to subsection A shall be paid from the
76 post-separation income of the obligor unless the court, for good cause shown, orders otherwise. Upon
77 the request of either party, the court may identify and state in such order or award the specific source
78 from which the financial obligation imposed is to be paid.

79 B. In addition to the terms provided in subsection A, upon a showing by a party of reasonable
80 apprehension of physical harm to that party by such party's family or household member as that term is
81 defined in § 16.1-228, and consistent with rules of the Supreme Court of Virginia, the court may enter
82 an order excluding that party's family or household member from the jointly owned or jointly rented
83 family dwelling. In any case where an order is entered under this paragraph, pursuant to an ex parte
84 hearing, the order shall not exclude a family or household member from the family dwelling for a
85 period in excess of 15 days from the date the order is served, in person, upon the person so excluded.
86 The order may provide for an extension of time beyond the 15 days, to become effective automatically.
87 The person served may at any time file a written motion in the clerk's office requesting a hearing to
88 dissolve or modify the order. Nothing in this section shall be construed to prohibit the court from
89 extending an order entered under this subsection for such longer period of time as is deemed
90 appropriate, after a hearing on notice to the parties. If the party subject to the order fails to appear at
91 this hearing, the court may extend the order for a period not to exceed six months.

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

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

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

107 F. *The court shall not consider as income any combat-related military disability benefits received by*
108 *either spouse when making any order for the maintenance and support of the petitioning spouse.*

109 **§ 20-107.1. Court may decree as to maintenance and support of spouses.**

110 A. Pursuant to any proceeding arising under subsection L of § 16.1-241 or upon the entry of a
111 decree providing (i) for the dissolution of a marriage, (ii) for a divorce, whether from the bond of
112 matrimony or from bed and board, (iii) that neither party is entitled to a divorce, or (iv) for separate
113 maintenance, the court may make such further decree as it shall deem expedient concerning the
114 maintenance and support of the spouses, notwithstanding a party's failure to prove his grounds for
115 divorce, provided that a claim for support has been properly pled by the party seeking support.
116 However, the court shall have no authority to decree maintenance and support payable by the estate of a
117 deceased spouse.

118 B. Any maintenance and support shall be subject to the provisions of § 20-109, and no permanent
119 maintenance and support shall be awarded from a spouse if there exists in such spouse's favor a ground
120 of divorce under the provisions of subdivision A (1) of § 20-91. However, the court may make such an

121 award notwithstanding the existence of such ground if the court determines from clear and convincing
122 evidence, that a denial of support and maintenance would constitute a manifest injustice, based upon the
123 respective degrees of fault during the marriage and the relative economic circumstances of the parties.

124 C. The court, in its discretion, may decree that maintenance and support of a spouse be made in
125 periodic payments for a defined duration, or in periodic payments for an undefined duration, or in a
126 lump sum award, or in any combination thereof.

127 D. In addition to or in lieu of an award pursuant to subsection C, the court may reserve the right of
128 a party to receive support in the future. In any case in which the right to support is so reserved, there
129 shall be a rebuttable presumption that the reservation will continue for a period equal to 50 percent of
130 the length of time between the date of the marriage and the date of separation. Once granted, the
131 duration of such a reservation shall not be subject to modification.

132 E. The court, in determining whether to award support and maintenance for a spouse, shall consider
133 the circumstances and factors which contributed to the dissolution of the marriage, specifically including
134 adultery and any other ground for divorce under the provisions of subdivision A (3) or (6) of § 20-91 or
135 § 20-95. In determining the nature, amount and duration of an award pursuant to this section, the court
136 shall consider the following:

137 1. The obligations, needs and financial resources of the parties, including but not limited to income
138 from all pension, profit sharing or retirement plans, of whatever nature, *except that any combat-related*
139 *military disability benefits received by either spouse shall not be considered income of either spouse;*

140 2. The standard of living established during the marriage;

141 3. The duration of the marriage;

142 4. The age and physical and mental condition of the parties and any special circumstances of the
143 family;

144 5. The extent to which the age, physical or mental condition or special circumstances of any child of
145 the parties would make it appropriate that a party not seek employment outside of the home;

146 6. The contributions, monetary and nonmonetary, of each party to the well-being of the family;

147 7. The property interests of the parties, both real and personal, tangible and intangible;

148 8. The provisions made with regard to the marital property under § 20-107.3;

149 9. The earning capacity, including the skills, education and training of the parties and the present
150 employment opportunities for persons possessing such earning capacity;

151 10. The opportunity for, ability of, and the time and costs involved for a party to acquire the
152 appropriate education, training and employment to obtain the skills needed to enhance his or her earning
153 ability;

154 11. The decisions regarding employment, career, economics, education and parenting arrangements
155 made by the parties during the marriage and their effect on present and future earning potential,
156 including the length of time one or both of the parties have been absent from the job market;

157 12. The extent to which either party has contributed to the attainment of education, training, career
158 position or profession of the other party; and

159 13. Such other factors, including the tax consequences to each party and the circumstances and
160 factors that contributed to the dissolution, specifically including any ground for divorce, as are necessary
161 to consider the equities between the parties.

162 F. In contested cases in the circuit courts, any order granting, reserving or denying a request for
163 spousal support shall be accompanied by written findings and conclusions of the court identifying the
164 factors in subsection E which support the court's order. If the court awards periodic support for a
165 defined duration, such findings shall identify the basis for the nature, amount and duration of the award
166 and, if appropriate, a specification of the events and circumstances reasonably contemplated by the court
167 which support the award.

168 G. For purposes of this section and § 20-109, "date of separation" means the earliest date at which
169 the parties are physically separated and at least one party intends such separation to be permanent
170 provided the separation is continuous thereafter and "defined duration" means a period of time (i) with a
171 specific beginning and ending date or (ii) specified in relation to the occurrence or cessation of an event
172 or condition other than death or termination pursuant to § 20-110.

173 H. Where there are no minor children whom the parties have a mutual duty to support, an order
174 directing the payment of spousal support, including those orders confirming separation agreements,
175 entered on or after October 1, 1985, whether they are original orders or modifications of existing orders,
176 shall contain the following:

177 1. If known, the name, date of birth and social security number of each party and, unless otherwise
178 ordered, each party's residential and, if different, mailing address, residential and employer telephone
179 number, driver's license number, and the name and address of his employer; however, when a protective
180 order has been issued or the court otherwise finds reason to believe that a party is at risk of physical or
181 emotional harm from the other party, information other than the name of the party at risk shall not be

182 included in the order;

183 2. The amount of periodic spousal support expressed in fixed sums, together with the payment
184 interval, the date payments are due, and the date the first payment is due;

185 3. A statement as to whether there is an order for health care coverage for a party;

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

190 5. If spousal support payments are ordered to be paid directly to the obligee, and unless the court for
191 good cause shown orders otherwise, the parties shall give each other and the court at least 30 days'
192 written notice, in advance, of any change of address and any change of telephone number within 30
193 days after the change; and

194 6. Notice that in determination of a spousal support obligation, the support obligation as it becomes
195 due and unpaid creates a judgment by operation of law.