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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

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A N A C T

RELATING TO DOMESTIC RELATIONS -- DIVORCE AND SEPARATION

Introduced By: Senator Ryan W. Pearson

Date Introduced: May 22, 2014

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 15-5-16 and 15-5-16.2 of the General Laws in Chapter 15-5
2 entitled "Divorce and Separation" are hereby amended to read as follows:

3 **15-5-16. Alimony and counsel fees -- Custody of children.** -- (a) In granting any
4 petition for divorce, divorce from bed and board, or relief without the commencement of divorce
5 proceedings, the family court may order either of the parties to pay alimony or counsel fees, or
6 both, to the other.

7 (b) (1) In determining the amount of alimony or counsel fees, if any, to be paid, the
8 court, after hearing the witnesses, if any, of each party, shall consider:

9 (i) The length of the marriage;

10 (ii) The conduct of the parties during the marriage;

11 (iii) The health, age, station, occupation, amount and source of income, vocational skills,
12 and employability of the parties; and

13 (iv) The state and the liabilities and needs of each of the parties.

14 (2) In addition, the court shall consider:

15 (i) The extent to which either party is unable to support herself or himself adequately
16 because that party is the primary physical custodian of a child whose age, condition, or
17 circumstances make it appropriate that the parent not seek employment outside the home, or seek
18 only part-time or flexible-hour employment outside the home;

19 (ii) The extent to which either party is unable to support herself or himself adequately

1 with consideration given to:

2 (A) The extent to which a party was absent from employment while fulfilling
3 homemaking responsibilities, and the extent to which any education, skills, or experience of that
4 party have become outmoded and his or her earning capacity diminished;

5 (B) The time and expense required for the supported spouse to acquire the appropriate
6 education or training to develop marketable skills and find appropriate employment;

7 (C) The probability, given a party's age and skills, of completing education or training
8 and becoming self-supporting;

9 (D) The standard of living during the marriage;

10 (E) The opportunity of either party for future acquisition of capital assets and income;

11 (F) The ability to pay of the supporting spouse, taking into account the supporting
12 spouse's earning capacity, earned and unearned income, assets, debts, and standard of living;

13 (G) Any other factor which the court expressly finds to be just and proper.

14 (c)(1) For the purposes of this section, "alimony" is construed as payments for the
15 support or maintenance of either the husband or the wife.

16 (2) Alimony is designed to provide support for a spouse for a reasonable length of time
17 to enable the recipient to become financially independent and self-sufficient. However, the court
18 may award alimony for an indefinite period of time when it is appropriate in the discretion of the
19 court based upon the factors set forth in subdivision (b)(2)(ii)(B). After a decree for alimony has
20 been entered, the court may from time to time upon the petition of either party review and alter its
21 decree relative to the amount and payment of the alimony, and may make any decree relative to it
22 which it might have made in the original suit. The decree may be made retroactive in the court's
23 discretion to the date that the court finds that a substantial change in circumstances has occurred;
24 provided, the court shall set forth in its decision the specific findings of fact which show a
25 substantial change in circumstances and upon which findings of facts the court has decided to
26 make the decree retroactive. Nothing provided in this section shall affect the power of the court as
27 subsequently provided by law to alter, amend, or annul any order of alimony previously entered.
28 Upon the remarriage of the spouse who is receiving alimony, the obligation to pay alimony shall
29 automatically terminate at once.

30 (d)(1) In regulating the custody of the children, the court shall provide for the reasonable
31 right of visitation by the natural parent not having custody of the children, except upon the
32 showing of cause why the right should not be granted or as provided in subdivision 15-5-16(d)(4).
33 The court shall mandate compliance with its order by both the custodial parent and the children.
34 In the event of noncompliance, the noncustodial parent may file a motion for contempt in family

1 court. Upon a finding by the court that its order for visitation has not been complied with, the
2 court shall exercise its discretion in providing a remedy, and define the noncustodial parent's
3 visitation in detail. However, if a second finding of noncompliance by the court is made, the court
4 shall consider this to be grounds for a change of custody to the noncustodial parent.

5 (2) In regulating the custody and determining the best interests of children, the fact that a
6 parent is receiving public assistance shall not be a factor in awarding custody.

7 (3) A judicial determination that the child has been physically or sexually abused by the
8 natural parent shall constitute sufficient cause to deny the right of visitation. However, when the
9 court enters an order denying visitation under this section, it shall review the case at least
10 annually to determine what, if any, action the parent has taken to rehabilitate himself or herself
11 and whether the denial of visitation continues to be in the child's best interests.

12 (4) No person shall be granted custody of or visitation with a child if that person has
13 been convicted under or pled nolo contendere to a violation of sections 11-37-2, 11-37-4, or 11-
14 37-8.1 or other comparable law of another jurisdiction, and the child was conceived as a result of
15 that violation; unless after hearing the family court finds that the natural mother or legal guardian
16 consents to visitation with the child, and the court determines that visitation is in the best interest
17 of the child, then the court may order supervised visitation and counseling.

18 (5) A parent convicted of murder in the first degree of the other parent of a child shall be
19 denied visitation unless the child is of a suitable age as determined by the court to assent to the
20 visitation. Prior to a court order allowing a visit, the child may not visit the offending parent
21 unless the acting parent, child's custodian, or legal guardian allows the visit.

22 ~~(5)~~(6) The court may order a natural parent who has been denied the right of visitation
23 due to physical or sexual abuse of his or her child to engage in counseling. The failure of the
24 parent to engage in counseling, ordered by the court pursuant to this section, shall constitute
25 sufficient cause to deny visitation.

26 (e) In all hearings regarding denial of visitation, the court shall make findings of fact.

27 (f) This chapter does not affect the right of the family court to award alimony or support
28 pendente lite.

29 (g)(1) Notwithstanding the provisions of this section and section 15-5-19, the court,
30 when making decisions regarding child custody and visitation, shall consider evidence of past or
31 present domestic violence. Where domestic violence is proven, any grant of visitation shall be
32 arranged so as to best protect the child and the abused parent from further harm.

33 (2) In addition to other factors that a court must consider in a proceeding in which the
34 court has made a finding of domestic or family violence, the court shall consider as primary the

1 safety and well-being of the child and of the parent who is the victim of domestic or family
2 violence. The court shall also consider the perpetrator's history of causing physical harm, bodily
3 injury or assault to another person.

4 (3) In a visitation or custody order, as a condition of the order, the court may:

5 (i) Order the perpetrator of domestic violence to attend and successfully complete, to the
6 satisfaction of the court, a certified batterer's intervention program;

7 (ii) Order the perpetrator to attend a substance abuse program whenever deemed
8 appropriate;

9 (iii) Require that a bond be filed with the court in order to ensure the return and safety of
10 the child;

11 (iv) Order that the address and telephone number of the child be kept confidential;

12 (v) Order an exchange of the child to occur in a protected setting, or supervised by
13 another person or agency; provided that, if the court allows a family or household member to
14 supervise visitation, the court shall establish conditions to be followed during visitation;

15 (vi) Order the perpetrator of domestic violence to abstain from possession or
16 consumption of alcohol or controlled substances during the visitation; and

17 (vii) Impose any other condition that is deemed necessary to provide for the safety of the
18 child, the victim of domestic violence, or other family or household member.

19 (4) "Domestic violence" means the occurrence of one or more of the following acts
20 between spouses or people who have a child in common:

21 (i) Attempting to cause or causing physical harm;

22 (ii) Placing another in fear of imminent serious physical harm;

23 (iii) Causing another to engage involuntarily in sexual relations by force, threat of force,
24 or duress.

25 (5) In every proceeding in which there is at issue the modification of an order for
26 custody or visitation of a child, the finding that domestic or family violence has occurred since
27 the last custody determination constitutes a prima facie finding of a change of circumstances.

28 (6) The fact that a parent is absent or relocates because of an act of domestic or family
29 violence by the other parent shall not weigh against the relocating or absent parent in determining
30 custody and visitation.

31 (7) A party's absence, relocation, or failure to comply with custody and visitation orders
32 shall not, by itself, be sufficient to justify a modification of a custody or visitation order if the
33 reason for the absence, relocation, or failure to comply is the party's activation to military service
34 or deployment out of state.

1 (h) If there is no existing order establishing the terms of parental rights and
2 responsibilities or parent-child contact and it appears that deployment or mobilization is
3 imminent, upon motion by either parent, the court shall expedite a hearing to establish temporary
4 parental rights and responsibilities and parent-child contact to ensure the deploying parent has
5 access to the child, to ensure disclosure of information, to grant other rights and duties set forth
6 herein, and to provide other appropriate relief. Any initial pleading filed to establish parental
7 rights and responsibilities for or parent-child contact with a child of a deploying parent shall be so
8 identified at the time of filing by stating in the text of the pleading the specific facts related to
9 deployment.

10 **15-5-16.2. Child support.** -- (a) In a proceeding for divorce, divorce from bed and board,
11 a miscellaneous petition without the filing of divorce proceedings, or child support, the court shall
12 order either or both parents owing a duty of support to a child to pay an amount based upon a
13 formula and guidelines adopted by an administrative order of the family court. There shall be a
14 rebuttable presumption that the amount of the guideline is appropriate. If, after calculating
15 support based upon court established formula and guidelines, the court, in its discretion, and
16 considering the best interests of the child, finds the order would be inequitable to the child or
17 either parent, the court shall make written findings of fact, the presumption shall be overcome and
18 the court shall order either or both parents owing a duty of support to pay an amount reasonable
19 or necessary for the child's support after considering all relevant factors including, but not limited
20 to:

21 (1) The financial resources of the child;

22 (2) The financial resources of the custodial parent;

23 (3) The standard of living the child would have enjoyed had the marriage not been
24 dissolved;

25 (4) The physical and emotional condition of the child and his or her educational needs;

26 and

27 (5) The financial resources and needs of the non-custodial parent.

28 (b) The court may, if in its discretion it deems it necessary or advisable, order child
29 support and education costs for children attending high school at the time of their eighteenth
30 (18th) birthday and for ninety (90) days after graduation, but in no case beyond their nineteenth
31 (19th) birthday, subject to the exceptions set forth in subsection (c) of this section.

32 (c)(1) The court may make appropriate orders of maintenance, support and education of
33 any child who has attained the age of eighteen (18) but who has not attained the age of twenty-
34 one (21) and whose legal address is in the home of a parent, and is principally dependent upon

1 said parent for maintenance.

2 (2) The court may make appropriate orders of maintenance, support and education for
3 any child who has attained the age of twenty-one (21), but who has not attained the age of
4 twenty-three (23), if such child's legal address is in the home of a parent, and such child is
5 principally dependent upon said parent for maintenance due to the enrollment of such child in an
6 educational program excluding educational costs beyond an undergraduate degree.

7 Notwithstanding the foregoing, the court, in its discretion, may order child support, in
8 the case of a child with a severe physical or mental impairment still living with or under the care
9 of a parent, beyond the child's emancipation as defined above. The court shall consider the
10 following factors when making its determination: (1) the nature and extent of the disability; (2)
11 the cost of the extraordinary medical expenses; (3) the ability of the child to earn income; (4) the
12 financial resources of the child; (5) the financial resources of the parents; (6) the inability of the
13 primary caregiver of the child to sustain gainful employment on a full-time basis due to the care
14 necessitated by the child. The onset of the disability must have occurred prior to the emancipation
15 event. If a child support order for a child with a severe physical or mental impairment has been
16 terminated, suspended or expired, the court shall consider the factors in this paragraph and has the
17 discretion to order child support for this child prospectively based upon established child support
18 guidelines. The court may periodically review the case to determine if circumstances warrant the
19 continuation of child support.

20 ~~(e)~~(d)(1) The court may, if in its discretion it deems it necessary or advisable, appoint an
21 attorney or a guardian ad litem to represent the interest of a minor or dependent child with respect
22 to his or her support, custody, and visitation.

23 (i) In determining whether an appointment should be made, the court shall consider the
24 extent to which a guardian ad litem may assist in providing information concerning the best
25 interest of the child; the age of the child; the wishes of the parents as well as their financial
26 resources; the nature of the proceeding including the level of contentiousness, allegations of child
27 abuse or domestic violence and the risk of harm to the child if a guardian is not appointed; or
28 conflicts of interest between the child and parents or siblings;

29 (ii) The guardian ad litem shall be appointed from a list of persons properly credentialed
30 pursuant to administrative orders of the chief judge of the family court;

31 (iii) The court shall enter an order of appointment stating the specific assignment the
32 optional and mandatory duties of the guardian ad litem, the guardian's access to the child and
33 confidential information regarding the child, and a provision for payment of the costs and fees of
34 the guardian ad litem;

1 (iv) Communications made to a guardian, including those made by a child, are not
2 privileged and may or may not be disclosed to the parties, the court or to professionals providing
3 services to the child or the family;

4 (v) The guardian ad litem shall meet with the child, conduct an investigation and upon
5 request of the court shall prepare an oral or written report that contains the procedural background
6 of the case, identification of all persons interviewed and other sources of information, a statement
7 of the child's emotional, medical, educational and social service needs, the child's wishes and
8 other factors relevant to the court's determination regarding the best interests of the child;

9 (vi) Any written report of the guardian ad litem shall be marked as a full exhibit in the
10 proceedings, subject to cross-examination;

11 (vii) If the guardian ad litem requests confidential health care information and consent is
12 withheld, he or she shall apply to the court for leave to obtain such information after compliance
13 with section 5-37.3-6.1;

14 (viii) The guardian ad litem shall be given notice of and should appear at all proceedings
15 in family court that affect the interests of the child;

16 (ix) A person serving as a guardian ad litem under this section acts as the court's agent
17 and is entitled to quasi-judicial immunity for acts performed within the scope of the duties of the
18 guardian ad litem;

19 (x) The chief judge of the family court shall issue, through administrative orders, rules
20 governing the appointment and performance of guardians ad litem in domestic proceedings.

21 (2) After a decree for support has been entered, the court may from time to time upon the
22 petition of either party review and alter its decree relative to the amount of support and the
23 payment of it, and may make any decree relative to it which it might have made in the original
24 suit. The decree may be made retroactive in the court's discretion only to the date that notice of a
25 petition to modify was given to the adverse party if the court finds that a substantial change in
26 circumstances has occurred; provided, that the court shall set forth in its decision the specific
27 findings of fact which show a substantial change in circumstances and upon which findings of
28 facts the court has decided to make the decree retroactive. The child support order shall continue
29 in full force and effect, by wage withholding, after the youngest child is emancipated, and shall
30 be applied towards any arrearage due and owing, as indicated on the child support computer
31 system. Upon satisfaction of the arrears due and owing the child support order shall be
32 automatically suspended and wage withholding terminated without the necessity of returning to
33 family court.

34 ~~(d)~~(e)(1) In a proceeding to enforce a child support order, or a spousal support order for a

1 custodial parent having custody of a minor child, the court or its magistrate may assign to the
2 obligee such tangible personal property of the obligor that will be sufficient to satisfy the child or
3 spousal support arrearage owed. The court or its magistrate, after a hearing, shall establish the
4 amount of the child or spousal support arrearage, and the nature and value of the tangible
5 personal property. To effect the assignment, the court or its magistrate may order the obligor to
6 execute and deliver the documents of title which may be necessary to complete the transfer of
7 title to the property, and may order the obligor to deliver possession of the property to the
8 obligee. Whenever the obligor fails to comply with the order assigning the property, the order of
9 assignment shall be regarded as a judgment vesting title to the property in the obligor as fully and
10 completely as if the obligor had executed and delivered the documents of title.

11 (2) Any order for child support issued by the family court shall contain a provision
12 requiring either or both parents owing a duty of support to a child to obtain health insurance
13 coverage for the child when coverage is available to the parent or parents through their
14 employment without cost or at a reasonable cost. "Reasonable cost" shall be defined in
15 accordance with guidelines adopted by administrative order of the family court in conjunction
16 with the child support guidelines.

17 (3) Any existing child support orders may be modified in accordance with this
18 subsection unless the court makes specific written findings of fact that take into consideration the
19 best interests of the child and conclude that a child support order or medical order would be
20 unjust or inappropriate in a particular case.

21 (4) In addition, the national medical support notice shall be issued with respect to all
22 orders issued, enforced, or modified on or after October 1, 2002, in accordance with chapter 29 of
23 title 15. The notice shall inform the employer of provisions in the child support order, for health
24 care coverage for the child, and contain instructions on how to implement this coverage. In lieu of
25 the court ordering the non-custodial parent to obtain or maintain health care coverage for the
26 child, the court may order the non-custodial parent to contribute a weekly cash amount towards
27 the medical premium for health care coverage paid by the state of Rhode Island and/or the
28 custodial parent. The method to determine a reasonable weekly amount shall be addressed in the
29 family court administrative order pertaining to the child support guidelines.

30 ~~(e)~~(f) In a proceeding to establish support, the court in its discretion may, after
31 opportunity for a hearing, issue a temporary order for child support payable into the registry of
32 the court and to be held pending entry of judgment. In the event of a final adjudication requiring
33 no payment or payments in an amount less than those payments which have been made pursuant
34 to a temporary order under this section, the defendant shall be entitled to a refund of all or a

1 portion of the amounts paid.

2 ~~(g)~~(g) In any proceeding to establish support, or in any case in which an obligor owes
3 past due support, for a child or children receiving public assistance pursuant to chapter 5.1 of title
4 40, the court or its magistrate, upon a finding that an able bodied absent parent obligor is
5 unemployed, underemployed or lacks sufficient income or resources from which to make
6 payment of support equal to the public assistance payment for the child or children, or is unable
7 to pay the arrearages in accordance with a payment plan, may order that parent to perform unpaid
8 community service for at least twenty (20) hours per week through community service
9 placements arranged and supervised by the department of human services or to participate in any
10 work activities that the court deems appropriate. The performance of community service shall not
11 be a basis for retroactive suspension of arrears due and owing.

12 ~~(g)~~(h)(1) In any proceeding to establish support for a minor child whose adjudicated
13 parent is a minor (minor-parent), the court or its magistrate may order a grandparent of the minor
14 child to reimburse the department of human services in an amount not to exceed the total amount
15 of cash assistance benefits paid to or for the minor child pursuant to chapter 5.1 of title 40 until
16 the minor-parent reaches the age of eighteen (18), less any payment made to the department by
17 the minor parent.

18 (2) The obligation of reimbursement for the minor child shall be the joint and several
19 responsibility of the minor parent and the grandparent(s) until the minor parent reaches the age of
20 eighteen (18); provided, that each joint obligor shall have a right of contribution against each joint
21 obligor, which right shall be enforceable by an action in the family court.

22 ~~(h)~~(i)(1) All support orders established or modified in the state on or after October 1,
23 1998, shall be recorded with the Rhode Island family court department of human services child
24 support computer enforcement system, which maintains the official registry of support orders
25 entered in accordance with applicable administrative orders issued by the Rhode Island family
26 court. The support order shall be recorded whether or not services are being provided under the
27 IV-D state plan.

28 (2) The obligee to a paternity or child support proceeding shall be required to file with
29 the family court, upon the entry of the order, the appropriate form as provided by family court
30 which includes the full name of the parties, residential and mailing address, telephone number,
31 drivers license number, social security number and the name, address and telephone number of
32 the employer. The form shall also include the full order amount and date and amount of
33 arrearages if any, the name of the child(ren), their date of birth, address and social security
34 number and any other information as required by administrative order.

1 (3) After this, each party is required to file an amended form whenever any of the
2 information contained on the original form has been changed in any way, within ten (10) days of
3 the change. The information shall be entered in the child support enforcement computer system
4 within five (5) business days of receipt of the amended form.

5 Ⓢ(j) In any subsequent child support enforcement action between the parties, upon
6 sufficient showing that diligent effort has been made to ascertain the location of such a party, the
7 court may deem state due process requirements for notice and service of process to be met with
8 respect to the party, upon service by first class mail or, where appropriate, by service as specified
9 in the Rhode Island rules of procedure for domestic relations for the Family Court of Rhode
10 Island, of written notice to the most recent residential or employer address of record.

11 [See section 12-1-15 of the General Laws.]

12 SECTION 2. This act shall take effect upon passage.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO DOMESTIC RELATIONS -- DIVORCE AND SEPARATION

1 This act would provide that if a child is over the age of eighteen (18), but less than
2 twenty-three (23) and whose legal address is in the home of a parent and dependent upon that
3 parent for maintenance because he or she is in an undergraduate educational course, child support
4 may be paid and reasonable medical insurance for the child may be provided.

5 This act would take effect upon passage.

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