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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

RELATING TO DOMESTIC RELATIONS -- DIVORCE AND SEPARATION

Introduced By: Senators Bates, Hodgson, McCaffrey, and Moura

Date Introduced: January 27, 2011

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

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

3 **15-5-16.2. Child support.** -- (a) In a proceeding for divorce, divorce from bed and board,  
4 a miscellaneous petition without the filing of divorce proceedings, or child support, the court shall  
5 order either or both parents owing a duty of support to a child to pay an amount based upon a  
6 formula and guidelines adopted by an administrative order of the family court. If, after calculating  
7 support based upon court established formula and guidelines, the court, in its discretion, finds the  
8 order would be inequitable to the child or either parent, the court shall make findings of fact and  
9 shall order either or both parents owing a duty of support to pay an amount reasonable or  
10 necessary for the child's support after considering all relevant factors including, but not limited to:

11 (1) The financial resources of the child;

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

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

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

16 and

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

18 (b) The court may, if in its discretion it deems it necessary or advisable, order child  
19 support and education costs for children attending high school at the time of their eighteenth

1 (18th) birthday and for ninety (90) days after graduation, but in no case beyond their nineteenth  
2 (19th) birthday.

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

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

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

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

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

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

34 (v) The guardian ad litem shall meet with the child, conduct an investigation and upon

1 request of the court shall prepare an oral or written report that contains the procedural background  
2 of the case, identification of all persons interviewed and other sources of information, a statement  
3 of the child's emotional, medical, educational and social service needs, the child's wishes and  
4 other factors relevant to the court's determination regarding the best interests of the child;

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

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

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

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

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

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

30 (d) (1) In a proceeding to enforce a child support order, or a spousal support order for a  
31 custodial parent having custody of a minor child, the court or its magistrate may assign to the  
32 obligee such tangible personal property of the obligor that will be sufficient to satisfy the child or  
33 spousal support arrearage owed. The court or its magistrate, after a hearing, shall establish the  
34 amount of the child or spousal support arrearage, and the nature and value of the tangible

1 personal property. To effect the assignment, the court or its magistrate may order the obligor to  
2 execute and deliver the documents of title which may be necessary to complete the transfer of  
3 title to the property, and may order the obligor to deliver possession of the property to the  
4 obligee. Whenever the obligor fails to comply with the order assigning the property, the order of  
5 assignment shall be regarded as a judgment vesting title to the property in the obligor as fully and  
6 completely as if the obligor had executed and delivered the documents of title.

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

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

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

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

32 (f) In any proceeding to establish support, or in any case in which an obligor owes past  
33 due support, for a child or children receiving public assistance pursuant to chapter 5.1 of title 40,  
34 the court or its magistrate, upon a finding that an able bodied absent parent obligor is

1 unemployed, underemployed or lacks sufficient income or resources from which to make  
2 payment of support equal to the public assistance payment for the child or children, or is unable  
3 to pay the arrearages in accordance with a payment plan, may order that parent to perform unpaid  
4 community service for at least twenty (20) hours per week through community service  
5 placements arranged and supervised by the department of human services or to participate in any  
6 work activities that the court deems appropriate. The performance of community service shall not  
7 be a basis for retroactive suspension of arrears due and owing.

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

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

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

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

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

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

7           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

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1           This act would allow that if child support has been terminated, suspended or expired the  
2 court can re-establish child support if the child has severe mental impairment or a severe  
3 impairment if the situation fits the criteria and factors in this statute.

4           This act would take effect upon passage.

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