

2015 Regular Session

HOUSE BILL NO. 204

BY REPRESENTATIVES FOIL AND NANCY LANDRY

(On Recommendation of the Louisiana State Law Institute)

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CHILDREN/CARE: Provides relative to adult children with disabilities

1 AN ACT

2 To amend and reenact R.S. 9:315.1(C)(8) and Code of Civil Procedure Articles 74.2(A) and
3 2592(8) and to enact R.S. 9:315.1(C)(9) and 315.22(E) and Code of Civil Procedure
4 Article 10(A)(9), relative to child support for adult child with disabilities; to provide
5 for deviations from the child support guidelines; to provide for the awarding of
6 support; to provide for the application of the child support guidelines; to provide for
7 subject matter jurisdiction; to provide for venue; to provide for the use of summary
8 proceedings; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. R.S. 9:315.1(C)(8) is hereby amended and reenacted and R.S.
11 9:315.1(C)(9) and 315.22(E) are hereby enacted to read as follows:

12 §315.1. Rebuttable presumption; deviation from guidelines by court; stipulations by
13 parties

14 * * *

15 C. In determining whether to deviate from the guidelines, the court's
16 considerations may include:

17 * * *

18 (8) That support awarded for an adult child with a disability, as defined in
19 R.S. 9:315.22(E), may be a long-term and financially burdensome obligation that
20 warrants the court's special consideration of the circumstances surrounding the
21 manifestation of the disability and the financial burden imposed on the obligor.

1 (c) Support may not be awarded for a married child under Subsection (E).
2 A marriage that has terminated, however, does not preclude a child's eligibility for
3 support if the child is "unmarried" when support under Subsection (E) is sought.

4 (d) What rises to the level of "substantial care and personal supervision" is
5 a question of fact to be determined by the trier of fact. It does not, however, require
6 that the adult child with a disability require around-the-clock care. A less substantial
7 level of supervision may nonetheless meet the legal standard articulated here.

8 (e) Subsection (E) of this Section is not intended to cover a child's alcohol
9 or substance abuse or addiction. A number of states expressly exclude such
10 disabilities from those which qualify an adult child with a disability to receive
11 support. See, e.g., N.J.S.A. §2A:34-23.

12 (f) Adult children with disabilities not covered by Subsection (E) may
13 nevertheless be entitled to limited support from parents and others under Civil Code
14 Article 229. The alimentary obligation imposed by that Article is distinct from the
15 one regulated here.

16 (g) An adult child with a disability may fall within both Subsections (D) and
17 (E) of this Section. The provisions are not mutually exclusive. In such cases, the
18 right of an adult child with a disability to support under Subsection (E) of this
19 Section merely begins when support under Subsection (D) of this Section terminates.

20 (h) Subsection (E) of this Section is not an exclusive remedy for an adult
21 child with a disability. Its applicability does not, for instance, affect a parent's cause
22 of action for the support of the child under any other law.

23 (i) Paragraph (E)(4) of this Section envisions that if there is a court of
24 continuing exclusive jurisdiction over a child support order for the child, an action
25 under this Subsection may be filed as a suit for modification. If no court has
26 continuing, exclusive jurisdiction, an action under this Subsection may be filed as
27 an original suit in the court that has jurisdiction over child support proceedings.

28 (j) Specialized family courts in Louisiana parishes may have subject matter
29 jurisdiction over child support proceedings involving adult children with disabilities
30 under the language of their conferring statutes. Those jurisdictional statutes
31 generally vest the specialized courts with jurisdiction over child support and child
32 custody proceedings without limitation to the period of the child's minority. See,
33 e.g., R.S. 13:1401 (conferring exclusive jurisdiction to the East Baton Rouge Parish
34 family court over "child support" and "custody and visitation of children").

35 (k) Paragraph (E)(5) of this Section gives the court authority to issue an
36 order requiring the establishment of a trust where appropriate. See also R.S.
37 9:315.13 (authorizing a court to order that a portion of child support be placed into
38 a spendthrift trust). Because orders of child support may have an impact on
39 governmental benefits, including, for instance, Medicaid and SSI eligibility, it may
40 be advisable for child support payments under this Subsection to be made in trust to
41 protect the child's entitlement to these and other benefits. Paragraph (E)(5) makes
42 explicit the court's ability to order the creation of a trust and to order that the child
43 support award be placed in trust. This provision is distinct from R.S. 9:315.7(C),
44 which prohibits the court from considering governmental assistance from
45 means-tested programs as income to the child that would reduce the parental support
46 obligation. R.S. 9:315.7(C) governs computation of the child support obligation.
47 This Subsection addresses the manner in which the child support obligation is to be
48 paid.

1 Section 2. Code of Civil Procedure Articles 74.2(A) and 2592(8) are hereby
2 amended and reenacted and Code of Civil Procedure Article 10(A)(9) is hereby enacted to
3 read as follows:

4 Art. 10. Jurisdiction over status

5 A. A court which is otherwise competent under the laws of this state has
6 jurisdiction of the following actions or proceedings only under the following
7 conditions:

8 * * *

9 (9) A proceeding for support of an adult child with a disability, as provided
10 in R.S. 9:315.22(E), if he is domiciled in, or is in, this state.

11 * * *

12 Art. 74.2. Custody proceedings; support; forum non conveniens

13 A. A proceeding to obtain the legal custody of a ~~minor~~ child or to establish
14 an obligation of support may be brought in the parish where a party is domiciled or
15 in the parish of the last matrimonial domicile.

16 * * *

17 Comment - 2015

18 The 2015 revision to Paragraph (A) of this Article broadens the scope of this
19 venue provision to include not only child support actions involving minor children
20 but also those involving adult children with disabilities under R.S. 9:315.22(E).

21 * * *

22 Art. 2592. Use of summary proceedings

23 Summary proceedings may be used for trial or disposition of the following
24 matters only:

25 * * *

26 (8) The original granting of, subsequent change in, or termination of custody,
27 visitation, and support for a ~~minor~~ child; support for a spouse; injunctive relief;
28 support between ascendants and descendants; use and occupancy of the family home
29 or use of community movables or immovables; or use of personal property.

30 * * *

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 204 Engrossed

2015 Regular Session

Foil

Abstract: Extends child support to adult children with disabilities.

Present law provides for guidelines to be used in the determination of child support and provides for the deviation from the child support guidelines in certain circumstances.

Proposed law retains present law and provides an additional deviation for child support awarded to adult children with disabilities.

Present law provides for the continuation of child support to children with developmental disabilities until the age of 22.

Proposed law retains present law and provides for the extension of child support to unmarried children who are incapable of self-support and who require substantial care and personal supervision because of an intellectual or physical disability. Provides that disability does not include substance abuse or addiction.

Proposed law provides that the court may place the award in trust or order the creation of a trust.

Present law provides for subject matter jurisdiction.

Proposed law retains present law and adds subject matter jurisdiction for proceedings for support of an adult child with a disability.

Present law provides for venue and for the use of summary proceedings to obtain the legal custody of a minor child or to establish a support obligation.

Proposed law changes present law so that it will also apply to an adult child with a disability.

(Amends R.S. 9:315.1(C)(8) and C.C.P. Arts. 74.2(A) and 2592(8); Adds R.S. 9:315.1(C)(9), 315.22(E), and C.C.P. Art. 10(A)(9))

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill:

1. Specify that disability may be a financial burden on an obligor.
2. Change the age at which the disability must manifest from twenty-two years to the age of majority.
3. Eliminate the proposed provision that the state has no action to establish, modify, or enforce an award of support for the purpose of recovering public benefits and services provided on behalf of the child.
4. Make stylistic changes.