## 2015 Regular Session

### HOUSE BILL NO. 204

### BY REPRESENTATIVES FOIL AND NANCY LANDRY

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.
22	(8)(9) Any other consideration which would make application of the
23	guidelines not in the best interest of the child or children or inequitable to the parties.
24	* * *

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1	§315.22. Termination of child support upon majority or emancipation; exceptions
2	* * *
3	E.(1) An award of child support continues or shall be set with respect to any
4	unmarried child who, whether institutionalized or not, is incapable of self-support
5	and requires substantial care and personal supervision because of an intellectual or
6	physical disability that is manifested before the child attains the age of majority. A
7	disability under this Subsection shall not include substance abuse or addiction.
8	(2) An action under this Subsection may be filed regardless of the age of the
9	child.
10	(3) Either the major child or his tutor or curator is the proper party to file an
11	action to establish, modify, or enforce an award of child support pursuant to this
12	Subsection.
13	(4) Except as otherwise provided in this Subsection, the substantive and
14	procedural rights and remedies in an action relating to the establishment,
15	modification, or enforcement of child support orders for minor children apply to an
16	action filed, and to an award of, child support rendered under this Subsection.
17	(5) The court shall consider the eligibility of the child for public benefits and
18	services and may make orders necessary to promote the best interest of the child,
19	including ordering the creation of a trust and placing the award in trust.
20	(6) When the Department of Children and Family Services is providing
21	support enforcement services, those services will continue under this Subsection only
22	if the major child or his tutor or curator obtains and submits to the Department,
23	before the child attains the age of majority, a judgment ordering the continuation of
24	support for the child.
25	Comments - 2015
26 27 28 29 30	(a) The provisions of Louisiana's Child Support Guidelines, R.S. 9:315, et seq., govern support for adult children with disabilities. Provisions elucidating child need, parental ability to pay, grounds for deviation, and venue and jurisdictional provisions are intended to apply to cases involving support of an adult child with a disability as they do in proceedings involving the support of minor children.
31 32 33	(b) Child support under Subsection (E) of this Section continues only as long as support is required. In accordance with the Civil Code, a parent may seek a modification of child support at any time "if the circumstances of the child or of

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either parent materially change," and child support "shall be terminated upon proof that it has become unnecessary." C.C. Art. 142.

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

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

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

- (f) Adult children with disabilities not covered by Subsection (E) may nevertheless be entitled to limited support from parents and others under Civil Code Article 229. The alimentary obligation imposed by that Article is distinct from the one regulated here.
- (g) An adult child with a disability may fall within both Subsections (D) and (E) of this Section. The provisions are not mutually exclusive. In such cases, the right of an adult child with a disability to support under Subsection (E) of this Section merely begins when support under Subsection (D) of this Section terminates.
- (h) Subsection (E) of this Section is not an exclusive remedy for an adult child with a disability. Its applicability does not, for instance, affect a parent's cause of action for the support of the child under any other law.
- (i) Paragraph (E)(4) of this Section envisions that if there is a court of
  continuing exclusive jurisdiction over a child support order for the child, an action
  under this Subsection may be filed as a suit for modification. If no court has
  continuing, exclusive jurisdiction, an action under this Subsection may be filed as
  an original suit in the court that has jurisdiction over child support proceedings.
- (j) Specialized family courts in Louisiana parishes may have subject matter
  jurisdiction over child support proceedings involving adult children with disabilities
  under the language of their conferring statutes. Those jurisdictional statutes
  generally vest the specialized courts with jurisdiction over child support and child
  custody proceedings without limitation to the period of the child's minority. See,
  e.g., R.S. 13:1401 (conferring exclusive jurisdiction to the East Baton Rouge Parish
  family court over "child support" and "custody and visitation of children").
- 37 (k) Paragraph (E)(5) of this Section gives the court authority to issue an 38 order requiring the establishment of a trust where appropriate. See also R.S. 39 9:315.13 (authorizing a court to order that a portion of child support be placed into 40 a spendthrift trust). Because orders of child support may have an impact on 41 governmental benefits, including, for instance, Medicaid and SSI eligibility, it may 42 be advisable for child support payments under this Subsection to be made in trust to 43 protect the child's entitlement to these and other benefits. Paragraph (E)(5) makes 44 explicit the court's ability to order the creation of a trust and to order that the child 45 support award be placed in trust. This provision is distinct from R.S. 9:315.7(C), 46 which prohibits the court from considering governmental assistance from 47 means-tested programs as income to the child that would reduce the parental support 48 obligation. R.S. 9:315.7(C) governs computation of the child support obligation. 49 This Subsection addresses the manner in which the child support obligation is to be 50 paid.

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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 19 20	The 2015 revision to Paragraph (A) of this Article broadens the scope of this venue provision to include not only child support actions involving minor children 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	* * *

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Section 3. The provisions of this Act shall become effective August 1, 2016.

## SPEAKER OF THE HOUSE OF REPRESENTATIVES

## PRESIDENT OF THE SENATE

## GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_