

ACT No. 379

2015 Regular Session

HOUSE BILL NO. 204

BY REPRESENTATIVES FOIL AND NANCY LANDRY

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AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

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

* * *

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

* * *

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

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

* * *

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 (a) The provisions of Louisiana's Child Support Guidelines, R.S. 9:315, et
27 seq., govern support for adult children with disabilities. Provisions elucidating child
28 need, parental ability to pay, grounds for deviation, and venue and jurisdictional
29 provisions are intended to apply to cases involving support of an adult child with a
30 disability as they do in proceedings involving the support of minor children.

31 (b) Child support under Subsection (E) of this Section continues only as long
32 as support is required. In accordance with the Civil Code, a parent may seek a
33 modification of child support at any time "if the circumstances of the child or of

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

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

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

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

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

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

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

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

30 (j) Specialized family courts in Louisiana parishes may have subject matter
31 jurisdiction over child support proceedings involving adult children with disabilities
32 under the language of their conferring statutes. Those jurisdictional statutes
33 generally vest the specialized courts with jurisdiction over child support and child
34 custody proceedings without limitation to the period of the child's minority. See,
35 e.g., R.S. 13:1401 (conferring exclusive jurisdiction to the East Baton Rouge Parish
36 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.

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 * * *

1 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: _____