

ORIGINAL

A-159

BILL AS INTRODUCED
2003

H.35
Page 1

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Introduced by Representatives Flory of Pittsford, Gervais of Enosburg and

3

Kainen of Hartford

4

Referred to Committee on

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Date:

6

Subject: Domestic relations; child support; child custody; visitation

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Statement of purpose: This bill proposes to prohibit the court from ordering a

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noncustodial parent to pay child support arrears if payment of the arrears

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would put the noncustodial parent's income below the self-support reserve,

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require child support orders to advise parents of their right to file for a

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modification of the order if they become unemployed or experience a

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substantial drop in income, permit a court to order shared legal and physical

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responsibility for a child over the objection of a parent if the court believes it is

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in the best interests of the child, and provide penalties for violation of a

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visitation order; and requires the court administrator to study issues relating to

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relief from abuse orders and child support orders and report back to the

17

legislature in 2004.

18

AN ACT RELATING TO CHILD SUPPORT, CUSTODY, AND
19 VISITATION

1 It is hereby enacted by the General Assembly of the State of Vermont:

2 *See P. 2a*
~~Sec. 1. 15 V.S.A. § 656 is amended to read:~~

3 § 656. COMPUTATION OF PARENTAL SUPPORT OBLIGATION

4 * * *

5 (c) If the noncustodial parent's available income is greater than the
6 self-support reserve but payment of a child support order based on application
7 of the guideline would reduce the noncustodial parent's income below the
8 self-support reserve, the noncustodial parent's share of the total support
9 obligation shall be presumed to be the difference between the self-support
10 reserve and his or her available income. If the noncustodial parent owes
11 arrears to the custodial parent, the court shall not order the payment of arrears
12 in an amount that, by itself or in combination with the noncustodial parent's
13 share of the total support obligation, would reduce the noncustodial parent's
14 income below the self-support reserve. Such arrears shall remain the
15 responsibility of the noncustodial parent and be subject to repayment at a time
16 when the noncustodial parent's income is above the self-support reserve.

17 Sec. 2. 15 V.S.A. § 663(e) is added to read:

18 § 663. SUPPORT ORDERS; REQUIRED CONTENTS

19 * * *

20 (e) A child support order shall include the following language: "A

21 PARENT OR ANY OTHER PERSON TO WHOM SUPPORT HAS BEEN

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See P. 26

~~Sec. 1. 15 V.S.A. § 656 is amended to read:~~

~~§ 656. COMPUTATION OF PARENTAL SUPPORT OBLIGATION~~

~~***~~

~~(c) If the noncustodial parent's available income is greater than the self-support reserve but payment of a child support order based on application of the guideline would reduce the noncustodial parent's income below the self-support reserve, the noncustodial parent's share of the total support obligation shall be presumed to be the difference between the self-support reserve and his or her available income. If the noncustodial parent owes arrears to the custodial parent, the court shall not order the payment of arrears in an amount that, by itself or in combination with the noncustodial parent's share of the total support obligation, would reduce the noncustodial parent's income below the self-support reserve, unless the custodial parent can show good cause why the payment of arrears should be ordered despite the fact that such an order would drop the noncustodial parent's income below the self-support reserve. Such arrears shall remain the responsibility of the noncustodial parent and be subject to repayment at a time when the noncustodial parent's income is above the self-support reserve.~~

~~Sec. 2. 15 V.S.A. § 663(e) is added to read:~~

~~§ 663. SUPPORT ORDERS; REQUIRED CONTENTS~~

~~***~~

~~(e) A child support order shall include the following language: "A PARENT OR ANY OTHER PERSON TO WHOM SUPPORT HAS BEEN GRANTED, OR ANY PERSON CHARGED WITH SUPPORT, MAY FILE A MOTION FOR A MODIFICATION OF A CHILD SUPPORT ORDER UNDER 15 V.S.A. § 660. A MODIFICATION MAY BE GRANTED UPON A REAL, SUBSTANTIAL, AND UNANTICIPATED CHANGE OF CIRCUMSTANCES, INCLUDING LOSS OF EMPLOYMENT OR A CONSIDERABLE REDUCTION OR INCREASE IN SALARY OR WAGES. AN OBLIGOR IS RESPONSIBLE FOR ANY REQUIRED PAYMENTS SET FORTH IN AN ORDER UNLESS THE ORDER IS VACATED OR MODIFIED BY A COURT. THUS, ANY SUBSEQUENT AGREEMENT~~

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Sec. 1. 15 V.S.A. § 656 is amended to read:

§ 656. *COMPUTATION OF PARENTAL SUPPORT OBLIGATION*

* * *

(c) If the noncustodial parent's available income is greater than the self-support reserve but payment of a child support order based on application of the guideline would reduce the noncustodial parent's income below the self-support reserve, the noncustodial parent's share of the total support obligation shall be presumed to be the difference between the self-support reserve and his or her available income. If the noncustodial parent owes arrears to the custodial parent, the court shall not order the payment of arrears in an amount that, by itself or in combination with the noncustodial parent's share of the total support obligation, would reduce the noncustodial parent's income below the self-support reserve, unless the custodial parent can show good cause why the payment of arrears should be ordered despite the fact that such an order would drop the noncustodial parent's income below the self-support reserve. Such arrears shall remain the responsibility of the noncustodial parent and be subject to repayment at a time when the noncustodial parent's income is above the self-support reserve.

Sec. 2. 15 V.S.A. § 663(e) is added to read:

§ 663. *SUPPORT ORDERS; REQUIRED CONTENTS*

* * *

(e) A child support order shall include the following language: "A PARENT OR ANY OTHER PERSON TO WHOM SUPPORT HAS BEEN GRANTED, OR ANY PERSON CHARGED WITH SUPPORT, MAY FILE A MOTION FOR A MODIFICATION OF A CHILD SUPPORT ORDER UNDER 15 V.S.A. § 660. A MODIFICATION MAY BE GRANTED UPON A REAL, SUBSTANTIAL, AND UNANTICIPATED CHANGE OF CIRCUMSTANCES, INCLUDING LOSS OF EMPLOYMENT OR A CONSIDERABLE REDUCTION OR INCREASE IN SALARY OR WAGES. AN OBLIGOR IS RESPONSIBLE FOR ANY REQUIRED PAYMENTS SET FORTH IN AN ORDER UNLESS THE ORDER IS VACATED OR MODIFIED BY A COURT. THUS, ANY SUBSEQUENT AGREEMENT BETWEEN THE PARTIES THAT DIFFERS FROM THE ORDER IS NOT LEGALLY BINDING, AND THE OBLIGOR IS STILL LEGALLY REQUIRED TO PAY THE AMOUNT ORDERED BY THE COURT."

Sec. 3. 15 V.S.A. § 668a is amended to read:

§ 668a. *ENFORCEMENT OF VISITATION*

(a) When a noncustodial parent who is ordered to pay child support or alimony and who is awarded visitation rights fails to pay child support or alimony, the custodial parent shall not refuse to honor the noncustodial parent's visitation rights.

(b) When a custodial parent refuses to honor a noncustodial parent's visitation rights, the noncustodial parent shall not fail to pay any ordered child support or alimony.

(c) If a custodial parent refuses to honor a noncustodial parent's visitation rights ~~without proper cause~~, the court ~~may restore~~ shall enforce such rights unless it finds good cause for the failure or that a modification of the visitation rights is in the best interests of the child. Unless restoration of the visitation is not in the best interests of the child, enforcement of the visitation

rights shall include the restoration of the amount of visitation improperly denied. When a party files a motion for enforcement of parent-child contact under this subsection, the court shall conduct a hearing within 30 days of service of the motion.

(d) A person who violates this section may be punished by contempt of court or other remedies as the court deems appropriate, including awarding attorney's fees and costs to the prevailing party.

(e) If a custodial parent refuses to honor a noncustodial parent's visitation rights without good cause, the court may modify the parent-child contact order if found to be in the best interests of the child. Good cause shall include a pattern or incidence of domestic or sexual violence, a history of failure to honor the visitation schedule agreed to in the parent-child contact order, or reasonable fear for the child or the custodial parent's safety.

(f) All parent-child contact orders issued by the family court in connection with a divorce or parentage proceeding shall bear the following statement: "A PERSON WHO FAILS TO COMPLY WITH ALL TERMS OF THE CURRENT ORDER GOVERNING PARENT-CHILD CONTACT MAY BE SUBJECT TO CONTEMPT OF COURT CHARGES. THE COURT MAY IMPOSE ADDITIONAL REMEDIES, INCLUDING A MODIFICATION OF THE CURRENT PARENT-CHILD CONTACT ORDER IF FOUND TO BE IN THE BEST INTERESTS OF THE CHILD."

Sec. 4. 15 V.S.A. § 606(d) is added to read:

§ 606. ACTION TO RECOVER MAINTENANCE, CHILD SUPPORT, AND
SUIT MONEY; SANCTION FOR NONCOMPLIANCE

* * *

(d) In lieu of interest on unpaid child support which has accrued under a child support order, a child support surcharge shall be imposed on past-due child support. The surcharge shall be computed and assessed monthly at a rate of one percent or an annual rate of 12 percent and shall not be compounded. All surcharges shall be deemed principal and not interest. Payments received for child support obligations shall be allocated and distributed as follows:

- (1) first to current support obligations;
- (2) second to arrearages; and
- (3) third to surcharge arrears.

Sec. 5. 15 V.S.A. § 650 is amended to read:

§ 650. LEGISLATIVE FINDINGS AND PURPOSE

The legislature finds and declares as public policy that after parents have separated or dissolved their marriage it is in the best interests of their minor child to have the opportunity for maximum continuing physical and emotional contact with both parents, unless direct physical harm or significant emotional harm to the child or a parent is likely to result from such contact. The legislature further finds and declares as public policy that parents have the responsibility to provide child support and that child support orders should reflect the true costs of raising children and approximate insofar as possible the standard of living the child would have enjoyed had the marriage not been dissolved family remained intact.

Sec. 6. 15 V.S.A. § 658(b) is amended to read:

(b) A request for support may be made by either parent, by a guardian, ~~or by the departments~~ department of social and rehabilitation services or social-welfare prevention, assistance, transition, and health access, or by the office of child support, if a party in interest. A court may also raise the issue of support on its own motion.

Sec. 7. 15 V.S.A. § 660 is amended to read:

§ 660. MODIFICATION

* * *

~~(f) Notwithstanding the provisions of this section to the contrary, the court, in its discretion, may modify an order as to past support installments which accrued subsequent to the date of a non-custodial parent's incarceration within the confines of a correctional facility.~~

Sec. 8. 15 V.S.A. § 661 is amended to read:

§ 661. CHILD SUPPORT MAINTENANCE SUPPLEMENT

(a) A party may request a child support maintenance supplement to be paid while a child support obligation arising out of an action for divorce support exists. After considering the respective financial circumstances of the parties, including gross income, assets, liabilities, including tax liabilities, and the obligation to pay child support, the court shall order payment of a child support maintenance supplement to the custodial parent obligee to correct any disparity in the financial circumstances of the parties if the court finds that the disparity has resulted or will result in a lower standard of living for the child than the child would have if living with the noncustodial parent.

(b) Any sum awarded under this section shall be taken into consideration in making an order under section 752 of this title.

(c) On motion of either parent ~~or any other~~, a person to whom a child support maintenance supplement has previously been granted ~~or any~~, a person previously charged with paying a child support maintenance supplement, and upon a showing of a real, substantial, and unanticipated change of circumstances, the court may annul, vary, or modify a supplement order, whether or not the order is based on a stipulation or agreement. A real, substantial, unanticipated change of circumstances shall be deemed to exist if the proportion of income of the parties varies more than 15 percent from the time the order was issued, or if either parent's gross income changes by more than 15 percent.

(d) This section shall not apply to orders or modifications made prior to April 1, 1987.

Sec. 9. 15 V.S.A. § 787 is amended to read:

§ 787. EMPLOYER'S RESPONSIBILITY; COMPENSATION

* * *

(c)(1) Any employer who fails to withhold wages pursuant to a wage withholding order within 10 working days of receiving actual notice or upon the next payment of wages to the obligor, whichever is later, shall be liable to the obligee in the amount of the wages required to be withheld.

(2) No employer who withholds wages from the obligor shall, without good cause, fail to forward payment to the registry for more than 30 days. An employer who violates this subdivision

shall be assessed a civil penalty of not more than \$100.00 for a first violation and not more than \$1,000.00 for a second or subsequent violation.

(3) A proceeding pursuant to this section shall be heard by the family court judge.

Sec. 10. 33 V.S.A. § 3902(f) is added to read:

(f) If a support order has been entered and the legal custodian and obligee relinquishes physical responsibility of the child to a caretaker without modifying the physical rights and responsibilities order, the office of child support may change the payee of support upon the caretaker's receipt of reach up family assistance (RUFA) from the department of prevention, assistance, transition, and health access. The obligor's obligation under the support order to pay child support and medical support continues but shall be payable to the office of child support upon the caretaker's receipt of RUFA and shall continue so long as the assignment is in effect. The office of child support shall notify the obligor and obligee under the support order, by first class mail at last known address, of the change of payee.

Sec. 11. 33 V.S.A. § 4103(a)(4) is amended to read:

§ 4103. REGISTRY

(a) The office of child support shall establish a registry for the following purposes:

* * *

(4) Notifying employers in cases involving wage withholding of the amounts to be withheld for support, the amount of income exempt from withholding, and the dates for beginning, reducing, increasing, and terminating withholding pursuant to the terms of the support order. The office shall accommodate employer withholdings based upon the employer's payroll period and shall provide return envelopes to the employer for sending the payment to the office.

Sec. 12. 1 V.S.A. § 317(c) is amended to read:

§ 317. DEFINITIONS; PUBLIC AGENCY; PUBLIC RECORDS AND DOCUMENTS

* * *

(c) The following public records are exempt from public inspection and copying:

* * *

(34) affidavits of income and assets as provided in 15 V.S.A. § 662 and Rule 4 of the Vermont Rules for Family Procedure.

Sec. 13. STUDY

(a) The house committee on judiciary shall convene while the general assembly is out of session for the purpose of examining the family court system and the laws relating to child support, child custody, parent-child contact, and any other issues the committee finds relevant to creating a comprehensive, fair, and functional family court system. The committee shall, at a minimum, review the following issues:

(1) existing programs in family court, including the use of parent-child coordinators, panels, and mediators, as well as the funding of such programs;

(2) existing certification requirements for resources used in family court;

(3) the current policy of ordering sole custody to one parent when one parent objects to shared custody and related matters concerning custody such as parenting plans;

- (4) existing training of judges, court staff, pro se litigants, and attorneys;
 - (5) the use of contempt charges for enforcement of payment of child support arrears and whether an updated criminal nonsupport statute is needed;
 - (6) whether an automatic cost of living adjustment should be added to child support obligations and matters relating to the child support guidelines;
 - (7) when a child support obligation should terminate in situations involving termination of parental rights, voluntary relinquishment, or adoption;
 - (8) the role of family evaluations and how they should operate;
 - (9) the role of guardians ad litem, attorneys appointed to represent the best interests of the child, and related issues;
 - (10) supervised visitation programs;
 - (11) domestic violence issues in family court, including whether a conviction for domestic violence should create a presumption against awarding custody;
 - (12) whether the office of child support should enter into reciprocal arrangements on behalf of the state with authorities from other jurisdictions to establish and enforce support obligations;
 - (13) employer responsibilities with respect to child support obligations;
 - (14) whether the court should have the discretion to order an obligor to attend employment-, educational-, or training-related activities if the court finds that participation in such activities would assist fulfilling a child support obligation, and whether the court should have the discretion to order an obligor to attend substance abuse or other counseling if the court finds that such counseling may assist the parent to achieve stable employment;
 - (15) the advisability of establishing an automatic cost of living adjustment to child support orders; and
 - (16) the match of child support arrears against insurance settlements and the subsequent attachment procedures.
- (b) Members of the committee shall serve only while in legislative office. A substitute shall be appointed for a legislator who no longer serves in such capacity. Vacancies shall be appointed in the same manner as original appointments.
- (c) The committee shall have the assistance and cooperation of the judiciary and the administration. The legislative council and the joint fiscal office shall provide professional and administrative support for the committee. The committee may hold public hearings.
- (d) Members of the committee shall be entitled to per diem compensation and reimbursement for expenses in accordance with 2 V.S.A. § 406. The committee is authorized to meet up to five times to accomplish its work under this section.
- (e) The committee findings and recommendations, including proposals for legislative action, shall be presented to the general assembly and the governor no later than December 15, 2005. The committee shall issue a brief interim report on the insurance matter provided in subdivision (a)(16) of this section no later than January 15, 2005.

Sec. 14. EFFECTIVE DATE

Secs. 9 and 11 of this act shall take effect September 1, 2004.

Walter E. Freed

WALTER E. FREED
SPEAKER OF THE HOUSE OF REPRESENTATIVES

Brian E. Dubie

BRIAN E. DUBIE
PRESIDENT OF THE SENATE

James D. ...
GOVERNOR

6/9/04

Date

ATTESTED TO:

Donald G. Milne

Donald G. Milne
Clerk, House of Representatives

BETWEEN THE PARTIES THAT DIFFERS FROM THE ORDER IS NOT LEGALLY BINDING, AND THE OBLIGOR IS STILL LEGALLY REQUIRED TO PAY THE AMOUNT ORDERED BY THE COURT."

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(a) When a noncustodial parent who is ordered to pay child support or alimony and who is awarded visitation rights fails to pay child support or alimony, the custodial parent shall not refuse to honor the noncustodial parent's visitation rights.

(b) When a custodial parent refuses to honor a noncustodial parent's visitation rights, the noncustodial parent shall not fail to pay any ordered child support or alimony.

(c) If a custodial parent refuses to honor a noncustodial parent's visitation rights ~~without proper cause~~, the court ~~may restore~~ shall enforce such rights unless it finds good cause for the failure or that a modification of the visitation rights is in the best interests of the child. Enforcement of the visitation rights shall include the restoration of the amount of visitation improperly denied. When a party files a motion for enforcement of parent-child contact under this subsection, the court shall conduct a hearing within 30 days of service of the motion.

(d) A person who violates this section may be punished by contempt of court or other remedies as the court deems appropriate, including awarding attorney's fees and costs to the prevailing party.

(e) If a custodial parent refuses to honor a noncustodial parent's visitation rights without proper cause, the court may modify the parent-child contact order, if found to be in the best interests of the child.

(f) All parent-child contact orders issued by the family court in connection with a divorce or parentage proceeding shall bear the following statement: "A PERSON WHO FAILS TO COMPLY WITH ALL TERMS OF THE CURRENT ORDER GOVERNING PARENT-CHILD CONTACT MAY BE SUBJECT TO CONTEMPT OF COURT CHARGES. THE COURT MAY IMPOSE ADDITIONAL REMEDIES, INCLUDING A MODIFICATION OF THE CURRENT PARENT-CHILD CONTACT ORDER IF FOUND TO BE IN THE BEST INTERESTS OF THE CHILD."

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(d) In lieu of interest on unpaid child support which has accrued under a child support order, a child support surcharge shall be imposed on past-due child support. The surcharge shall be computed and assessed monthly at a rate of one percent or an annual rate of 12 percent and shall not be compounded. All surcharges shall be deemed principal and not interest. Payments received for child support obligations shall be allocated and distributed as follows:

(1) first to current support obligations;

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§ 650. LEGISLATIVE FINDINGS AND PURPOSE

The legislature finds and declares as public policy that after parents have separated or dissolved their marriage it is in the best interests of their minor child to have the opportunity for maximum continuing physical and emotional contact with both parents, unless direct physical harm or significant emotional harm to the child or a parent is likely to result from such contact. The legislature further finds and declares as public policy that parents have the responsibility to provide child support and that child support orders should reflect the true costs of raising children and approximate insofar as possible the standard of living the child would have enjoyed had the marriage not been dissolved family remained intact.

Sec. 6. 15 V.S.A. § 658(b) is amended to read:

(b) A request for support may be made by either parent, by a guardian, or by the department of social and rehabilitation services or social welfare prevention, assistance, transition,

~~and health access, or by the office of child support, if a party in interest. A court may also raise the issue of support on its own motion.~~

Sec. 7. 15 V.S.A. § 660 is amended to read:

§ 660. MODIFICATION

* * *

~~(f) Notwithstanding the provisions of this section to the contrary, the court, in its discretion, may modify an order as to past support installments which accrued subsequent to the date of a non-custodial parent's incarceration within the confines of a correctional facility.~~

Sec P. 5a

~~Sec. 8. 15 V.S.A. § 660a is added to read:~~

§ 660a. COST OF LIVING ADJUSTMENT

~~(a) All Vermont orders for child support established or modified on or after January 1, 2005 shall include notice of an automatic cost of living adjustment (COLA) that shall occur if the amount of current support remains unchanged for three consecutive years since the most recent court order that establishes or modifies a support obligation. The notice shall address the right to seek a modification hearing under subsection (d) of this section.~~

~~(b) The COLA shall be determined based on the Consumer Price Index for All Urban Consumers for the Northeastern United States and may fluctuate up or down. The COLA shall become effective every three years unless current support is modified by court order.~~

~~(c) The office of child support shall notify the parties and any employer of the COLA in cases paid through the registry. In cases not required to make payments through the registry, the obligee shall notify the obligor on a form prescribed by the office of child support. The form shall be sent by first class mail to the last reported address and shall indicate the adjusted support amount and notice of either parent's right to seek a modification of the support obligation.~~

~~(d) The court administrator's office shall prepare a uniform notice of the consequences of the failure to object and the consequences of objecting.~~

~~(e) Either party may object to the COLA by filing a written objection with the family court within 30 days of being notified of the change. Such objection shall result in a modification hearing.~~

Sec. 8. 15 V.S.A. § 660a is added to read:

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(b) The COLA shall be determined based on the Consumer Price Index for All Urban Consumers for the Northeastern United States and may fluctuate up or down. The COLA shall become effective every three years unless current support is modified by court order.

(c) Not less than 45 days prior to a COLA change taking effect, the office or the party seeking the COLA shall send a completed uniform COLA calculation form to all other parties. The calculation form shall be sent by first class mail to the party's address of record or by any other means provided by the Vermont Rules for Family Proceedings. Any party objecting to the COLA may seek a modification of the support order.

(d) The court administrator shall prepare a uniform COLA calculation form. The calculation form shall include an explanation of the consequences of failing to request a modification.

(e) Either party may object to the COLA by filing a written objection with the family court within 30 days of being notified of the change. Such objection shall result in a modification hearing, notwithstanding the requirements of subsections 660(b) and (c) of this title. Unless the parties agree otherwise, the court shall compute a new guideline support. Upon the filing of an objection, the parties shall exchange income and asset forms within 10 days.

(f) Failure to provide the court with complete financial information will permit the court to presume income, pursuant to subsection 662(b) of this title.

~~notwithstanding the requirements of subsections 660(b) and (c) of this title. Unless the parties agree otherwise, the court shall compute a new guideline support. Upon the filing of an objection, the parties shall exchange income and asset forms within 10 days.~~

~~(f) Failure to provide the court with complete financial information will permit the court to presume income, pursuant to subsection 662(b) of this title.~~

~~Sec. 9. 15 V.S.A. § 661 is amended to read:~~

~~§ 661. CHILD SUPPORT MAINTENANCE SUPPLEMENT~~

~~(a) A party may request a child support maintenance supplement to be paid while a child support obligation arising out of an action for divorce support exists. After considering the respective financial circumstances of the parties, including gross income, assets, liabilities, including tax liabilities, and the obligation to pay child support, the court shall order payment of a child support maintenance supplement to the eustodial parent obligee to correct any disparity in the financial circumstances of the parties if the court finds that the disparity has resulted or will result in a lower standard of living for the child than the child would have if living with the noncustodial parent.~~

~~(b) Any sum awarded under this section shall be taken into consideration in making an order under section 752 of this title.~~

~~(c) On motion of either parent ~~or any other~~, a person to whom a child support maintenance supplement has previously been granted ~~or any~~, a person previously charged with paying a child support maintenance supplement, and upon a showing of a real, substantial, and unanticipated change of circumstances, the court may annul, vary, or modify a supplement order, whether or not the order is based on a stipulation or agreement. A real, substantial, unanticipated change of circumstances shall be deemed to exist if the proportion of income of the parties varies more than 15 percent from the time the order was issued, or if either parent's gross income changes by more than 15 percent.~~

~~(d) This section shall not apply to orders or modifications made prior to April 1, 1987.~~

~~Sec. 10. 15 V.S.A. § 787 is amended to read:~~

~~§ 787. EMPLOYER'S RESPONSIBILITY; COMPENSATION~~

* * *

~~(c)(1) Any employer who fails to withhold wages pursuant to a wage withholding order within 10 working days of receiving actual notice or upon the next payment of wages to the obligor, whichever is later, shall be liable to the obligee in the amount of the wages required to be withheld.~~

~~(2) No employer who withholds wages from the obligor shall, without good cause, fail to forward payment to the registry for more than 30 days. An employer who violates this subdivision shall be assessed a civil penalty of not more than \$1,000.00.~~

~~(3) A proceeding pursuant to this section shall be heard by the family court judge.~~

Sec. 11. 33 V.S.A. § 115 is amended to read:

§ 115. ACCESS TO FINANCIAL RECORDS OF DEPOSIT ACCOUNTS

AND INSURANCE SETTLEMENTS OF INDIVIDUALS WHO

OWE OVERDUE CHILD SUPPORT

(a) As used in this section:

(1) "Claimant" means a Vermont resident who is entitled to receive a payment or settlement from an insurer in an amount not less than \$3,000.00.

(2) "Depositor" means an owner of an account in a financial institution and includes "share account holders" of credit unions.

~~(2)(3)~~ "Financial institution" means a trust company, savings bank, industrial bank, commercial bank, savings and loan association, or credit union organized under the laws of this state or authorized to do business in this state.

(4) "Insurer" means a company licensed to issue policies of insurance for personal injury liability or workers' compensation benefits.

~~(3)(5)~~ "Match" means an automated comparison by name, Social Security number, and, if available, date of birth of a list of obligors provided to a financial institution by the office and a list of depositors of a financial institution a comparison of delinquent child support obligors and a list of depositors in the case of financial institutions or a list of claimants in the case of an insurer. The automated comparison shall occur by name, Social Security number, and, if available, date of birth.

~~(4)(6) "Obligor" means a person who owes child support.~~

~~(5)(7) "Office" means the office of child support.~~

~~(6)(8) "Overdue support" means a debt of one-quarter of the annual support obligation or more for maintenance and support of a child or children and the obligor had prior notice of the debt and a prior opportunity to contest the amount owed. "Overdue support" includes spousal support or alimony being collected in conjunction with child support.~~

~~(b) Upon written request from the director of the office of child support and provided the financial institution or insurer has the technological capacity to perform a match, a financial institution or insurer shall perform a match of obligors who owe overdue child support. The office shall make its computerized information necessary for a match available in a form that is compatible with the technology used by the financial institution or insurer that will perform the search. A financial institution shall not be required to perform a match under this section more often than once every quarter. An insurer shall perform a match under this section prior to issuing any personal injury liability or workers' compensation insurance payment or settlement to a claimant and shall, within one business day, notify the office of child support if a claimant is found to owe overdue child support. If the insurer determines from the automated comparison that the claimant does not owe overdue support, the insurer may make the payment to the claimant.~~

~~(c) After completing a match requested under subsection (b) of this section, a financial institution or insurer shall notify the office of child support if a depositor or claimant is found to owe overdue support. The notification shall contain the following information, if available to the financial institution or insurer through its matching procedure, for each account identified:~~

~~(1) The full name, date of birth, and address of the obligor.~~

~~(2) The Social Security number of the obligor.~~

~~(3) The obligor's account number or the claimant's claim number.~~

~~(4) The amount of deposits contained in the obligor's account or the amount of the pending insurance payment or settlement.~~

~~(d) A financial institution shall send a match list compiled under this section to the office at the address designated by the office. If a financial institution or insurer finds through a match that overdue child support is owed by a depositor or claimant, it shall forward the funds to the office.~~

(e) The financial institution shall not provide notice in any form to a depositor contained in a match list submitted to the office under subsection (d) of this section. Failure to provide notice to a depositor shall not constitute a violation of the financial institution's duty of good faith to its customers.

(f) A financial institution or insurer may charge the office a fee for services provided under this section; provided, that the fee shall not exceed the actual costs incurred by the financial institution or insurer.

(g) The information provided by the office to a financial institution or insurer under this section shall be confidential and shall be used only for the purpose of carrying out the requirements of this section.

(h) This section shall not apply to that portion of a claim resulting in payments on behalf of the claimant issued to a third party where there is documentation showing that the third party has provided or agreed to provide the claimant with a benefit or service related to the claim, including the services of an attorney or a medical doctor or to any portion of a claim based on damage to or loss of real property.

(i) Notwithstanding any statute or regulation to the contrary, no financial institution or insurer or the agents, employees, or directors shall be liable for disclosure under this section or for any other action taken in good faith in accordance with this section. Immunity shall also extend to any fees, interest, and penalties that would otherwise be imposed.

(j) Insurers shall have until July 1, 2005 to comply with this section.

Sec. 12. 33 V.S.A. § 3902(f) is added to read:

(f) If a support order has been entered and the legal custodian and obligee relinquishes physical responsibility of the child to a caretaker without modifying the physical rights and responsibilities order, the office of child support may change the payee of support upon the caretaker's receipt of reach up family assistance (RUFA) from the department of prevention, assistance, transition, and health access. The obligor's obligation under the support order to pay child support and medical support continues but shall be payable to the office of child support upon the caretaker's receipt of RUFA and shall continue so long as the assignment is in effect. The office of child support shall notify the obligor and obligee under the support order, by first class mail at last known address, of the change of payee.

Sec. 13. STUDY

(a) The house committee on judiciary shall convene ~~regularly~~ while the general assembly is out of session for the purpose of examining the family court system and the laws relating to child support, child custody, parent/child contact, and any other issues the committee finds relevant to creating a comprehensive, fair, and functional family court system. The committee shall, at a minimum, review the following issues:

(1) existing programs in family court, including the use of parent-child coordinators, panels, and mediators, as well as the funding of such programs;

(2) existing certification requirements for resources used in family court;

(3) the current policy of ordering sole custody to one parent when one parent objects to shared custody, and related matters concerning custody such as parenting plans;

(4) existing training of judges, court staff, pro se litigants, and attorneys;

(5) the use of contempt charges for enforcement of payment of child support arrears and whether an updated criminal nonsupport statute is needed;

(6) whether an automatic cost of living adjustment should be added to child support obligations and matters relating to the child support guidelines;

(7) when a child support obligation should terminate in situations involving termination of parental rights, voluntary relinquishment, or adoption;

(8) the role of family evaluations and how they should operate;

(9) the role of guardians ad litem, attorneys appointed to represent the best interests of the child, and related issues;

(10) supervised visitation programs;

(11) domestic violence issues in family court, including whether a conviction for domestic violence should create a presumption against awarding custody;

(12) whether the office of child support should enter into reciprocal arrangements on behalf of the state with authorities from other jurisdictions to establish and enforce support obligations;

(13) employer responsibilities with respect to child support obligations; and

(14) whether the court should have the discretion to order an obligor to attend employment, educational, or training related activities if the court finds that participation in such activities would assist fulfilling a child support obligation, and whether the court should have the discretion to order an obligor to attend substance abuse or other counseling if the court finds that such counseling may assist the parent to achieve stable employment.

(b) Members of the committee shall serve only while in legislative office. A substitute shall be appointed for a legislator who no longer serves in such capacity. Vacancies shall be appointed in the same manner as original appointments.

(c) The committee shall have the assistance and cooperation of the judiciary and the administration. The legislative council and the joint fiscal office shall provide professional and administrative support for the committee. The committee may hold public hearings.

(d) Members of the committee shall be entitled to per diem compensation and reimbursement for expenses in accordance with 2 V.S.A. § 406.

(e) The committee findings and recommendations, including proposals for legislative action, shall be presented to the general assembly and the governor no later than December 15, 2005.

The committee is authorized to meet up to five times to accomplish its work under this section.

1 ~~GRANTED, OR ANY PERSON CHARGED WITH SUPPORT, MAY FILE~~
2 ~~A MOTION FOR A MODIFICATION OF A CHILD SUPPORT ORDER~~
3 ~~UNDER 15 V.S.A. § 660. A MODIFICATION MAY BE GRANTED UPON~~
4 ~~A REAL, SUBSTANTIAL AND UNANTICIPATED CHANGE OF~~
5 ~~CIRCUMSTANCES, INCLUDING LOSS OF EMPLOYMENT OR A~~
6 ~~CONSIDERABLE REDUCTION OR INCREASE IN SALARY OR WAGES.~~
7 ~~AN OBLIGOR IS RESPONSIBLE FOR ANY REQUIRED PAYMENTS SET~~
8 ~~FORTH IN AN ORDER UNLESS THE ORDER IS VACATED OR~~
9 ~~MODIFIED BY A COURT.”~~

10 Sec. 3. 15 V.S.A. § 665(a) is amended to read:

11 § 665. RIGHTS AND RESPONSIBILITIES ORDER; BEST INTERESTS OF
12 THE CHILD

13 (a) In an action under this chapter, the court shall make an order concerning
14 parental rights and responsibilities of any minor child of the parties. ~~The court~~
15 ~~may order parental rights and responsibilities to be divided or shared between~~
16 ~~the parents on such terms and conditions as serve the best interests of the child.~~
17 ~~When the parents cannot agree to divide or share parental rights and~~
18 ~~responsibilities, the court shall award parental rights and responsibilities~~
19 ~~primarily or solely to one parent. The court may order legal responsibility to~~
20 ~~be divided or shared, or may order legal responsibility primarily or solely to~~
21 ~~one parent, on such terms and conditions as serve the best interests of the child.~~

1 The court may order physical responsibility to be divided or shared, or may
2 order physical responsibility primarily or solely to one parent, on such terms
3 and conditions as serve the best interests of the child.

4 Sec. 4. 15 V.S.A. § 668a is amended to read:

5 § 668a. ENFORCEMENT OF VISITATION

6 (a) When a noncustodial parent who is ordered to pay child support or
7 alimony and who is awarded visitation rights fails to pay child support or
8 alimony, the custodial parent shall not refuse to honor the noncustodial
9 parent's visitation rights.

10 (b) When a custodial parent refuses to honor a noncustodial parent's
11 visitation rights, the noncustodial parent shall not fail to pay any ordered child
12 support or alimony.

13 (c) If a custodial parent refuses to honor a noncustodial parent's visitation
14 rights without proper cause, the court may restore the amount of visitation
15 improperly denied. When a party files a motion for enforcement of
16 parent-child contact under this subsection, the court shall conduct a hearing
17 within 30 days of service of the motion.

18 (d) A person who violates this section may be punished by contempt of
19 court or other remedies as the court deems appropriate, including modification
20 of the parent-child contact order, if found to be in the best interests of the child,
21 and awarding attorney's fees and costs to the prevailing party.

(e) All parent-child contact orders issued by the family court in connection with a divorce or parentage proceeding shall bear the following statement:
"FAILURE TO COMPLY WITH ALL TERMS OF THE CURRENT ORDER GOVERNING PARENT-CHILD CONTACT MAY BE PUNISHED BY CONTEMPT OF COURT. THE COURT MAY ORDER OTHER REMEDIES FOR FAILURE TO COMPLY, INCLUDING A MODIFICATION OF THE CURRENT PARENT-CHILD CONTACT ORDER."

Sec. 5. STUDY BY THE COURT ADMINISTRATOR

The court administrator shall report to the general assembly on or before February 1, 2004 on the following:

(1) The number of final relief from abuse orders issued from July 1 through December 31, 2003, including the number of those in which a hearing was held and the number in which the parties stipulated to the final order.

(2) Of the final relief from abuse orders issued from July 1 through December 31, 2003, the number of cases where there was a hearing and no findings were issued.

(3) For every child support order issued from July 1 through December 31, 2003, the number of orders in which physical responsibility is shared, split, and sole.

ORIGINAL

H.35

AN ACT RELATING TO CHILD
SUPPORT, CUSTODY, AND
VISITATION.

PROOFREAD

House Passage

Final Passage

HOUSE OF REPRESENTATIVES

3/9, 2004
ENTERED ON THE CALENDAR
FOR NOTICE

William M. MacMillan
ASST. CLERK

HOUSE OF REPRESENTATIVES

3/10, 2004
RPT. FAV. W/REC. OF
AMEND. BY C. ON Judiciary
RPT. FAV. W/REC. OF
AMEND. BY C. ON
RD. 2ND T., REC. OF
AMEND. OF C. ON Judiciary
AGREED TO, REC. OF
C. ON AGREED TO

AND 3RD RDG. ORDERED
William M. MacMillan
ASST. CLERK

HOUSE OF REPRESENTATIVES

3/11, 2004
TAKEN UP AND PENDING 3RD
READING OF THE BILL,
REP. Kainen OF Hartford
MOVED THAT THE BILL BE
AMENDED WHICH WAS AGREED
TO ON YES, YES
THEREUPON THE BILL WAS
READ THE 3RD T. & PASSED.

William M. MacMillan
ASST. CLERK

HOUSE OF REPRESENTATIVES

January 16, 2003

Introduced by Representatives Flory of
Pittsford, Gervais of Enosburg and Kainen
of Hartford.

Read the first time and referred to
Committee on Judiciary

Clerk

Donald D. Dineen

SENATE CHAMBER

3/12, 2004
Read and referred to Committee
on Judiciary
Assistant Secretary

SENATE CHAMBER

4/9, 2004
Entered on the Calendar for Notice.
Assistant Secretary

SENATE CHAMBER

4/9, 2004
Bill, being on calendar for notice
and carrying an appropriation,
under the rule was referred to
Committee on Appropriations.
Assistant Secretary

SENATE CHAMBER

4/13, 2004
Entered on the Calendar for Notice.
Assistant Secretary

SENATE CHAMBER

4/15, 2004
Reported favorably with recommendations/
proposals of amendment. Read second time,
recommendations/proposals of amendment
agreed to and third reading ordered.

Assistant Secretary

SENATE CHAMBER

4/29, 2004
Pending third reading Sen. Blomer
moved that Senate propose to House that
bill be amended, which was agreed to.
Thereupon, bill was read third time and
passed in concurrence with proposal(s) of
amendment.
Assistant Secretary

SENATE CHAMBER

4/29, 2004
On motion of Sen. Leitch rules
were suspended and bill was ordered
messaged to House forthwith.
Assistant Secretary

HOUSE OF REPRESENTATIVES

4/30, 2004
ENTERED ON THE CALENDAR
FOR NOTICE.
William M. MacMillan
ASST. CLERK

HOUSE OF REPRESENTATIVES

5/19, 2004
SEN. PROP OF AMENDMENT
CONSIDERED & PDG QUESTION
WILL THE HOUSE CONCUR WITH
SEN. PROP. OF AMENDMENT?
REP. Flory OF Pittsford
MOVED THE H. REFUSE CONCUR
& ASK FOR C. OF CONF., WHICH
WAS AGREED TO. THEREUPON,
SPEAKER APPTD. AS MEMBERS OF
COMM. OF CONF. ON PART OF H.
REP. Flory OF Pittsford
REP. Kainen OF Hartford
REP. Carroll OF Moretown

William M. MacMillan
ASST. CLERK

VT LEG 158738.1

HOUSE OF REPRESENTATIVES
5/19, 2004
UPON MOTION OF
REP. Symington OF Tennessee
THE RULES WERE SUSPENDED
AND THE BILL WAS ORDERED
MESSAGED TO THE SENATE
FORTHWITH.
W. H. M. Marshall
ASST. CLERK

SENATE CHAMBER
5/5, 2004
Pursuant to request of
House, President
announced appointment
as Conference
Committee members on
part of Senate:
Senator Spers
Senator Mayo
Senator Lyons
W. H. M. Marshall
Assistant Secretary

SENATE CHAMBER
5/19, 2004
~~Spending~~ (pending entry) on the
Calendar for Notice, on motion of
Senator Welch, the rules
were suspended and the bill was taken
up for immediate consideration.
W. H. M. Marshall
Assistant Secretary

SENATE CHAMBER
5/19, 2004
Taken up; pending questions, Shall the
Senate accept and adopt report of
Conference Committee? ~~was decided~~
~~in affirmative~~
W. H. M. Marshall
Assistant Secretary

Sen Blumer moved that the
Senate refuse to adopt the rpt.
of the conf. committee & that a 2nd
Conference be appointed, which was
agreed to

SENATE CHAMBER
5/21, 2004
Pursuant to request of
House, President
announced appointment
as Conference
Committee members on
part of Senate:
Senator Cayhall
Senator Blumer
Senator Seery
W. H. M. Marshall
Assistant Secretary

SENATE CHAMBER
5/19, 2004
On motion of Sen. Welch rules
were suspended and bill was ordered
messaged to House forthwith
W. H. M. Marshall
Assistant Secretary

HOUSE OF REPRESENTATIVES
5/19, 2004
PURSUANT TO THE REQUEST OF
SENATE FOR A COMM. OF CONF.,
SPEAKER APPTD, AS MEMBERS OF
COMM. OF CONF. ON PART OF H.
REP Flory OF Pittsburg
REP Kainen OF Holbrook
REP Lippert OF Hesburg
W. H. M. Marshall
ASST. CLERK

SENATE CHAMBER
5/20, 2004
~~Spending~~ (pending entry) on the
Calendar for Notice, on motion of
Senator Welch, the rules
were suspended and the bill was taken
up for immediate consideration.
W. H. M. Marshall
Assistant Secretary

SENATE CHAMBER
5/20, 2004
Taken up; pending questions, Shall
Senate accept and adopt report of
Conference Committee? ~~was decided~~
~~in affirmative~~
W. H. M. Marshall
Assistant Secretary

SENATE CHAMBER
5/20, 2004
On motion of Sen. Welch rules
were suspended and bill was ordered
messaged to House forthwith
W. H. M. Marshall
Assistant Secretary

HOUSE OF REPRESENTATIVES
5/20, 2004
PENDING ENTRY OF THE BILL
ON THE CALENDAR FOR NOTICE,
THE RULES WERE SUSPENDED,
ON MOTION OF
REP Symington OF Tennessee
AND THE BILL WAS TAKEN UP
FOR IMMEDIATE CONSIDERATION.
W. H. M. Marshall
ASST. CLERK

HOUSE OF REPRESENTATIVES
5/20, 2004
REPORT OF C. OF CONF. CONSIDERED
& ADOPTED, ON PART OF HOUSE.
W. H. M. Marshall
ASST. CLERK

5/20, 2004
UPON MOTION OF
REP. Symington OF Tennessee
THE RULES WERE SUSP. & THE ACTION
OF HOUSE ON THE BILL WAS ORDERED
MESSAGED TO SEN. FORTHWITH & THE
BILL DELVD. TO GOV. FORTHWITH.
W. H. M. Marshall
ASST. CLERK