

2015 Regular Session

HOUSE BILL NO. 204

BY REPRESENTATIVE FOIL

(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 disabled adult children

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 burdensome obligation that warrants the
20 court's special consideration of the circumstances surrounding the manifestation of
21 the disability and the burden imposed on the obligor.

1 ~~(8)~~(9) Any other consideration which would make application of the
2 guidelines not in the best interest of the child or children or inequitable to the parties.

3 * * *

4 §315.22. Termination of child support upon majority or emancipation; exceptions

5 * * *

6 E.(1) An award of child support continues or shall be set with respect to any
7 unmarried child who, whether institutionalized or not, is incapable of self-support
8 and requires substantial care and personal supervision because of a mental or
9 physical disability that is manifested before the child attains the age of twenty-two
10 years. A disability under this Subsection shall not include substance abuse or
11 addiction.

12 (2) An action under this Subsection may be filed regardless of the age of the
13 child.

14 (3) Either the major child or his tutor or curator is the proper party to file an
15 action to establish, modify, or enforce an award of child support pursuant to this
16 Subsection. The state has no action under this Subsection to establish, modify, or
17 enforce an award of support for the purpose of recovering public benefits and
18 services provided on behalf of the child.

19 (4) Except as otherwise provided in this Subsection, the substantive and
20 procedural rights and remedies in an action relating to the establishment,
21 modification, or enforcement of child support orders for minor children apply to an
22 action filed, and to an award of, child support rendered under this Subsection.

23 (5) The court shall consider the eligibility of the child for public benefits and
24 services and may make orders necessary to promote the best interest of the child,
25 including ordering the creation of a trust and placing the award in trust.

26 Comments - 2015

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

1 (b) Child support under Subsection (E) of this Section continues only as long
2 as support is required. In accordance with the Civil Code, a parent may seek a
3 modification of child support at any time "if the circumstances of the child or of
4 either parent materially change," and child support "shall be terminated upon proof
5 that it has become unnecessary." C.C. Art. 142.

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

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

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

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

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

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

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

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

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

1 means-tested programs as income to the child that would reduce the parental support
2 obligation. R.S. 9:315.7(C) governs computation of the child support obligation.
3 This Subsection addresses the manner in which the child support obligation is to be
4 paid.

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

8 Art. 10. Jurisdiction over status

9 A. A court which is otherwise competent under the laws of this state has
10 jurisdiction of the following actions or proceedings only under the following
11 conditions:

12 * * *

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

15 * * *

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

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

20 * * *

21 Comment - 2015

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

25 * * *

26 Art. 2592. Use of summary proceedings

27 Summary proceedings may be used for trial or disposition of the following
28 matters only:

29 * * *

30 (8) The original granting of, subsequent change in, or termination of custody,
31 visitation, and support for a ~~minor~~ child; support for a spouse; injunctive relief;

1 support between ascendants and descendants; use and occupancy of the family home
2 or use of community movables or immovables; or use of personal property.

3 * * *

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 Original 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 a mental 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))