



**Substitute Senate Bill No. 1194**

**Public Act No. 05-258**

**AN ACT CONCERNING ARBITRATION IN CERTAIN FAMILY RELATIONS MATTERS AND ADOPTING CERTAIN RECOMMENDATIONS OF THE GOVERNOR'S COMMISSION ON CUSTODY, DIVORCE AND CHILDREN.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 46b-66 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(a) In any case under this chapter where the parties have submitted to the court an agreement concerning the custody, care, education, visitation, maintenance or support of any of their children or concerning alimony or the disposition of property, the court shall inquire into the financial resources and actual needs of the spouses and their respective fitness to have physical custody of or rights of visitation with any minor child, in order to determine whether the agreement of the spouses is fair and equitable under all the circumstances. If the court finds the agreement fair and equitable, it shall become part of the court file, and if the agreement is in writing, it shall be incorporated by reference into the order or decree of the court. If the court finds the agreement is not fair and equitable, it shall make such orders as to finances and custody as the circumstances require. If the agreement is in writing and provides for the care, education,

**Substitute Senate Bill No. 1194**

maintenance or support of a child beyond the age of eighteen, it may also be incorporated or otherwise made a part of any such order and shall be enforceable to the same extent as any other provision of such order or decree, notwithstanding the provisions of section 1-1d.

(b) Agreements providing for the care, education, maintenance or support of a child beyond the age of eighteen entered into on or after July 1, 2001, shall be modifiable to the same extent as any other provision of any order or decree in accordance with section 46b-86.

(c) The provisions of chapter 909 shall be applicable to any agreement to arbitrate in an action for dissolution of marriage under this chapter, provided (1) an arbitration pursuant to such agreement may proceed only after the court has made a thorough inquiry and is satisfied that (A) each party entered into such agreement voluntarily and without coercion, and (B) such agreement is fair and equitable under the circumstances, and (2) such agreement and an arbitration pursuant to such agreement shall not include issues related to child support, visitation and custody. An arbitration award in such action shall be confirmed, modified or vacated in accordance with the provisions of said chapter.

Sec. 2. Section 52-408 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

An agreement in any written contract, or in a separate writing executed by the parties to any written contract, to settle by arbitration any controversy thereafter arising out of such contract, or out of the failure or refusal to perform the whole or any part thereof, or a written provision in the articles of association or bylaws of an association or corporation of which both parties are members to arbitrate any controversy which may arise between them in the future, or an agreement in writing between two or more persons to submit to arbitration any controversy existing between them at the time of the

**Substitute Senate Bill No. 1194**

agreement to submit, or an agreement in writing between the parties to a marriage to submit to arbitration any controversy between them with respect to the dissolution of their marriage, except issues related to child support, visitation and custody, shall be valid, irrevocable and enforceable, except when there exists sufficient cause at law or in equity for the avoidance of written contracts generally.

Sec. 3. Section 46b-56 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(a) In any controversy before the Superior Court as to the custody or care of minor children, and at any time after the return day of any complaint under section 46b-45, the court may [at any time] make or modify any proper order regarding the [education and support of the children and of care, custody and visitation] custody, care, education, visitation and support of the children if it has jurisdiction under the provisions of chapter 815p. Subject to the provisions of section 46b-56a, as amended by this act, the court may assign [the custody of any child to the parents jointly,] parental responsibility for raising the child to the parents jointly, or may award custody to either parent or to a third party, according to its best judgment upon the facts of the case and subject to such conditions and limitations as it deems equitable. The court may also make any order granting the right of visitation of any child to a third party to the action, including, but not limited to, grandparents.

(b) In making or modifying any order [with respect to custody or visitation, the court shall (1) be guided by the best interests of the child, giving consideration to the wishes of the child if the child is of sufficient age and capable of forming an intelligent preference, provided in making the initial order the court may take into consideration the causes for dissolution of the marriage or legal separation if such causes are relevant in a determination of the best interests of the child, and (2) consider whether the party satisfactorily

**Substitute Senate Bill No. 1194**

completed participation in a parenting education program established pursuant to section 46b-69b] as provided in subsection (a) of this section, the rights and responsibilities of both parents shall be considered and the court shall enter orders accordingly that serve the best interests of the child and provide the child with the active and consistent involvement of both parents commensurate with their abilities and interests. Such orders may include, but shall not be limited to: (1) Approval of a parental responsibility plan agreed to by the parents pursuant to section 46b-56a, as amended by this act; (2) the award of joint parental responsibility of a minor child to both parents, which shall include (A) provisions for residential arrangements with each parent in accordance with the needs of the child and the parents, and (B) provisions for consultation between the parents and for the making of major decisions regarding the child's health, education and religious upbringing; (3) the award of sole custody to one parent with appropriate parenting time for the noncustodial parent where sole custody is in the best interests of the child; or (4) any other custody arrangements as the court may determine to be in the best interests of the child.

(c) In making or modifying any order as provided in subsections (a) and (b) of this section, the court shall consider the best interests of the child, and in doing so may consider, but shall not be limited to, one or more of the following factors: (1) The temperament and developmental needs of the child; (2) the capacity and the disposition of the parents to understand and meet the needs of the child; (3) any relevant and material information obtained from the child, including the informed preferences of the child; (4) the wishes of the child's parents as to custody; (5) the past and current interaction and relationship of the child with each parent, the child's siblings and any other person who may significantly affect the best interests of the child; (6) the willingness and ability of each parent to facilitate and encourage such continuing parent-child relationship between the child and the other

**Substitute Senate Bill No. 1194**

parent as is appropriate, including compliance with any court orders; (7) any manipulation by or coercive behavior of the parents in an effort to involve the child in the parents' dispute; (8) the ability of each parent to be actively involved in the life of the child; (9) the child's adjustment to his or her home, school and community environments; (10) the length of time that the child has lived in a stable and satisfactory environment and the desirability of maintaining continuity in such environment, provided the court may consider favorably a parent who voluntarily leaves the child's family home pendente lite in order to alleviate stress in the household; (11) the stability of the child's existing or proposed residences, or both; (12) the mental and physical health of all individuals involved, except that a disability of a proposed custodial parent or other party, in and of itself, shall not be determinative of custody unless the proposed custodial arrangement is not in the best interests of the child; (13) the child's cultural background; (14) the effect on the child of the actions of an abuser, if any domestic violence has occurred between the parents or between a parent and another individual or the child; (15) whether the child or a sibling of the child has been abused or neglected, as defined respectively in section 46b-120; and (16) whether the party satisfactorily completed participation in a parenting education program established pursuant to section 46b-69b. The court is not required to assign any weight to any of the factors that it considers.

(d) Upon the issuance of any order assigning custody of the child to the Commissioner of Children and Families, or not later than sixty days after the issuance of such order, the court shall make a determination whether the Department of Children and Families made reasonable efforts to keep the child with his or her parents prior to the issuance of such order and, if such efforts were not made, whether such reasonable efforts were not possible, taking into consideration the [child's] best interests of the child, including the child's health and safety.

**Substitute Senate Bill No. 1194**

[(c)] (e) In determining whether a child is in need of support and, if in need, the respective abilities of the parents to provide support, the court shall take into consideration all the factors enumerated in section 46b-84.

[(d)] (f) When the court is not sitting, any judge of the court may make any order in the cause which the court might make under [subsection (a) of] this section, including orders of injunction, prior to any action in the cause by the court.

[(e)] (g) A parent not granted custody of a minor child shall not be denied the right of access to the academic, medical, hospital or other health records of such minor child, unless otherwise ordered by the court for good cause shown.

[(f)] (h) Notwithstanding the provisions of [subsection] subsections (b) and (c) of this section, when a motion for modification of custody or visitation is pending before the court or has been decided by the court and the investigation ordered by the court pursuant to section 46b-6 recommends psychiatric or psychological therapy for a child, and such therapy would, in the court's opinion, be in the best interests of the child and aid the child's response to a modification, the court may order such therapy and reserve judgment on the motion for modification.

[(g)] (i) As part of a decision concerning custody or visitation, the court may order either parent or both of the parents and any child of such parents to participate in counseling and drug or alcohol screening, provided such participation is in the best [interest] interests of the child.

Sec. 4. Section 46b-56a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(a) For the purposes of this section, "joint custody" means an order

**Substitute Senate Bill No. 1194**

awarding legal custody of the minor child to both parents, providing for joint decision-making by the parents and providing that physical custody shall be shared by the parents in such a way as to assure the child of continuing contact with both parents. The court may award joint legal custody without awarding joint physical custody where the parents have agreed to merely joint legal custody.

(b) There shall be a presumption, affecting the burden of proof, that joint custody is in the best interests of a minor child where the parents have agreed to an award of joint custody or so agree in open court at a hearing for the purpose of determining the custody of the minor child or children of the marriage. If the court declines to enter an order awarding joint custody pursuant to this subsection, the court shall state in its decision the reasons for denial of an award of joint custody.

(c) If only one parent seeks an order of joint custody upon a motion duly made, the court may order both parties to submit to conciliation at their own expense with the costs of such conciliation to be borne by the parties as the court directs according to each party's ability to pay.

(d) In any proceeding before the Superior Court involving a dispute between the parents of a minor child with respect to the custody, care, education and upbringing of such child, the parents shall file with the court, at such time and in such form as provided by rule of court, a proposed parental responsibility plan that shall include, at a minimum, the following: (1) A schedule of the physical residence of the child during the year; (2) provisions allocating decision-making authority to one or both parents regarding the child's health, education and religious upbringing; (3) provisions for the resolution of future disputes between the parents, including, where appropriate, the involvement of a mental health professional or other parties to assist the parents in reaching a developmentally appropriate resolution to such disputes; (4) provisions for dealing with the parents' failure to honor their responsibilities under the plan; (5) provisions for dealing

***Substitute Senate Bill No. 1194***

with the child's changing needs as the child grows and matures; and (6) provisions for minimizing the child's exposure to harmful parental conflict, encouraging the parents in appropriate circumstances to meet their responsibilities through agreements, and protecting the best interests of the child.

(e) The objectives of a parental responsibility plan under this section are to provide for the child's physical care and emotional stability, to provide for the child's changing needs as the child grows and to set forth the authority and responsibility of each parent with respect to the child.

(f) If both parents consent to a parental responsibility plan under this section, such plan shall be approved by the court as the custodial and access orders of the court pursuant to section 46b-56, as amended by this act, unless the court finds that such plan as submitted and agreed to is not in the best interests of the child.

(g) The court may modify any orders made under this section in accordance with section 46b-56, as amended by this act.

Sec. 5. Section 46b-83 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(a) At any time after the return day of a complaint under section 46b-45 or 46b-56, as amended by this act, or after filing an application under section 46b-61, and after hearing, alimony and support pendente lite may be awarded to either of the parties from the date of the filing of an application therefor with the Superior Court. Full credit shall be given for all sums paid to one party by the other from the date of the filing of such a motion to the date of rendition of such order. In making an order for alimony pendente lite, the court shall consider all factors enumerated in section 46b-82, except the grounds for the complaint or cross complaint, to be considered with respect to a



***Substitute Senate Bill No. 1194***

permanent award of alimony. In making an order for support pendente lite, the court shall consider all factors enumerated in section 46b-84. The court may also award exclusive use of the family home or any other dwelling unit which is available for use as a residence pendente lite to either of the parties as is just and equitable without regard to the respective interests of the parties in the property.

(b) In any proceeding brought under section 46b-45, 46b-56, as amended by this act, or 46b-61 involving a minor child, if one of the parents residing in the family home leaves such home voluntarily and not subject to court order, and if the court finds that the voluntary leaving of the family home by such parent served the best interests of the child, the court may consider such voluntary leaving as a factor when making or modifying any order pursuant to section 46b-56, as amended by this act.

Approved July 13, 2005