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## HOUSE BILL NO. 765

Offered January 21, 2000

*A BILL to amend and reenact § 20-79.3 of the Code of Virginia, relating to withholding earnings for child support; penalty.*

Patrons—Day, Armstrong, Dudley and Kilgore

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:****1. That § 20-79.3 of the Code of Virginia is amended and reenacted as follows:**

§ 20-79.3. Information required in income deduction order; penalty.

A. Orders for withholding from the income of an employee shall state and include the following:

1. The name and correct social security number of the obligor and the name and correct address of the payee;

2. That the employer shall withhold and pay out of the disposable income as defined in § 63.1-250, a single monetary amount or the maximum amount permitted under § 34-29, whichever is less, for each regular pay period of the obligor and payment may be by check. The terms "employer" and "income" shall have the meanings prescribed in § 63.1-250;

3. That the income deduction shall begin with the next regular pay period of the obligor following service of the order on the employer, and payment shall be made at regular intervals consistent with the pay periods of the obligor;

4. A statement of the maximum percentage under § 34-29 which may be withheld from the obligor's disposable income;

5. That, to the extent required by the provisions for health care coverage contained in the order, the employer shall (i) enroll the employee, the employee's spouse or former spouse and the employee's dependent children listed in the order as covered persons in a group health insurance plan or other similar plan providing health care services or coverage offered by the employer, without regard to enrollment season restrictions, if the subject spouse, former spouse or children are eligible for such coverage under the employer's enrollment provisions, and (ii) deduct any required premiums from the employee's income to pay for the insurance. If more than one plan is offered by the employer, the spouse, former spouse or children shall be enrolled prospectively in the insurance plan in which the employee is enrolled or, if the employee is not enrolled, in the least costly plan otherwise available. The employer shall also enroll the children of an employee in the appropriate health coverage plan upon application by the children's other parent or legal guardian or upon application by the Department of Medical Assistance Services. In each case which is being enforced by the Department of Social Services, the employer shall respond to such orders by advising the Department in which plan the children are enrolled or if the children are ineligible for any plan through the employer. The order to the employer shall specify either support withholdings or insurance premium deductions as having priority for the duration of the order in the event the maximum total deduction permitted at any time by § 34-29 is insufficient to fully cover both; the employer shall consider and direct insurance premium deductions and support withholdings the same for purposes of § 34-29. The employer shall not be held liable for any medical expenses incurred on behalf of the spouse, former spouse or dependent children because of the employer's failure to enroll the spouse, former spouse or dependent children in a health care plan after being directed to do so by a court or the Department. The employer shall not be obligated to subsequently make or change such enrollment if the group health insurance plan or other factors change after the spouse's, former spouse's or child's eligibility or ineligibility for coverage is initially determined in response to the order for withholding. However, the employer shall not disenroll such children unless the employer (i) is provided satisfactory written evidence that such court or administrative order is no longer in effect, (ii) is provided satisfactory written evidence that the children are or will be enrolled in a comparable health coverage plan which will take effect not later than the effective date of such disenrollment, or (iii) has eliminated family health coverage for all of its employees. A one-time fee of no more than five dollars may be charged by the employer to the employee for the administration of this requirement;

6. That a fee of five dollars for each reply or remittance on account of the obligor may be charged by the employer and withheld from the obligor's income in addition to the support amount to be withheld;

7. That the order is binding upon the employer and obligor and withholding is to continue until further notice by order of the court or the Department is served, or the obligor is no longer employed,

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HB765

60 whichever occurs first;

61 8. That the order shall have priority over any other types of liens created by state law against such  
62 income, except that if there is more than one court or administrative order for withholding for support  
63 against an obligor, the employer shall honor the terms of the earliest received order, and subsequent  
64 orders shall be honored in the order of receipt to the extent that the amounts withheld, when combined,  
65 do not exceed the maximum limits imposed under § 34-29 as specified in the order being honored;

66 9. That the obligor's rights are protected pursuant to § 63.1-271 and that no employer shall discharge  
67 any employee, take disciplinary action against an employee, or refuse to employ a person by reason of  
68 the fact that his income has been made subject to a deduction pursuant to Chapter 13 (§ 63.1-249 et  
69 seq.) of Title 63.1 or § 20-79.1 or § 20-79.2 and an employer who discharges or takes disciplinary action  
70 against an employee, or refuses to employ any person because of an order for withholding under these  
71 sections shall be liable for a civil fine of not more than \$1,000;

72 10. The address to which the withholding is to be sent at the Department of Social Services and the  
73 case number, if available;

74 11. That the employer shall be liable for payments which he fails to withhold or mail as specified in  
75 the order, *and any employer who fails or refuses to withhold or mail the amount as specified in the*  
76 *order, either by himself or through his agents or employees, shall be guilty of a Class 1 misdemeanor;*

77 12. That employers shall remit payments on each regular pay date of the obligor or, if electronic  
78 funds transfer is used, within four days of the pay date, directly to the Division of Child Support  
79 Enforcement for disbursement;

80 13. That the employer shall be deemed to have complied with the order by (i) mailing on each  
81 regular pay date of the obligor to the Department, by first-class mail, any amount required to be  
82 deducted or (ii) by submitting such amounts by electronic funds transfer transmitted within four days of  
83 the obligor's regular pay date;

84 14. That the employer and obligor shall notify the Department promptly when the obligor terminates  
85 employment and shall provide the last known address of the obligor and name and address of the new  
86 employer, if known;

87 15. That amounts withheld from multiple employees identified as such by (i) amount, (ii) name, (iii)  
88 social security number, (iv) case number if provided in the order, and (v) date payment was withheld  
89 from obligor's income, may be combined into a single payment when payable to the same payee;

90 16. No order or directive shall require employers of 10,000 or more employees to make payments  
91 other than by combined single payment to the Department's central office in Richmond, without the  
92 employer's express written consent, unless the order is from a support enforcement agency outside the  
93 Commonwealth;

94 17. Payment pursuant to an order issued under this section shall serve as full acquittance of the  
95 employer under any contract of employment;

96 18. Notice that any employer who fails to timely withhold payments pursuant to this section shall be  
97 liable for any amount not timely withheld;

98 19. That the employer shall provide to the employee a copy of the withholding order and the notice  
99 to the employee sent by the court.

100 B. If the employer receives an order that (i) does not contain the obligor's correct social security  
101 number, (ii) does not specify a single monetary amount to be withheld per regular pay period interval of  
102 the obligor, (iii) does not state the maximum percentage which may be withheld pursuant to § 34-29,  
103 (iv) contains information which is in conflict with the employer's current payroll records, or (v) orders  
104 payment to an entity other than to the Department of Social Services or the Department's designee, the  
105 employer may deposit in the mail or otherwise file a reply to that effect within five business days from  
106 service of such order. The order shall be void from transmission or filing of such reply unless the court  
107 or the Department, as applicable, finds that the reply is materially false. In addition, an employer of  
108 10,000 or more persons may also file a reply, with like effect, if payment is ordered other than by  
109 combined single payment in the case of withholdings from multiple employees to the Department's  
110 central office in Richmond, without the employer's express written consent, unless the order is from a  
111 support enforcement agency outside the Commonwealth.