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SENATE BILL NO. 740

Offered January 24, 2000

A BILL to amend and reenact §§ 20-108 and 63.1-252.1 of the Code of Virginia, relating to child support orders; modification.

Patrons—Maxwell, Lambert and Miller, Y.B.; Delegates: Barlow, Christian, Crittenden, Hamilton, Melvin and Robinson

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 20-108 and 63.1-252.1 of the Code of Virginia are amended and reenacted as follows:

§ 20-108. Revision and alteration of such decrees.

The court may, from time to time after decreeing as provided in § 20-107.2, on petition of either of the parents, or on its own motion or upon petition of any probation officer or ~~superintendent of public welfare~~ *director of a local department of social services*, which petition shall set forth the reasons for the relief sought, revise and alter such decree concerning the care, custody, and maintenance of the children and make a new decree concerning the same, as the circumstances of the parents and the benefit of the children may require. The intentional withholding of visitation of a child from the other parent without just cause may constitute a material change of circumstances justifying a change of custody in the discretion of the court.

No support order may be retroactively modified, but may be modified with respect to any period during which there is a pending petition for modification, but only from the date that notice of such petition has been given to the responding party. *The court may allow child support arrearages that accumulated due to extenuating circumstances to be paid in regular monthly installments after the child has reached the age when the child support obligation ceases.*

§ 63.1-252.1. Notice of administrative support order; contents; hearing; modification.

The Commissioner may proceed against a responsible person whose support debt has accrued or is accruing based upon subrogation to, assignment of, or authorization to enforce a support obligation. Such obligation may be created by a court order for support of a child or child and spouse or decree of divorce ordering support of a child or child and spouse. In the absence of such a court order or decree of divorce, the Commissioner may, pursuant to this chapter, proceed against a person whose support debt has accrued or is accruing based upon payment of public assistance or who has a responsibility for the support of any dependent child or children and their caretaker. The administrative support order shall also provide that support shall continue to be paid for any child over the age of eighteen who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the parent seeking or receiving child support, until such child reaches the age of nineteen or graduates from high school, whichever comes first. The Commissioner shall initiate proceedings by issuing notice containing the administrative support order which shall become effective unless timely contested. The notice shall be served upon the debtor (i) in accordance with the provisions of §§ 8.01-296, 8.01-327 or § 8.01-329 or (ii) by certified mail, return receipt requested, or the debtor may accept service by signing a formal waiver. A copy of the notice shall be sent to the obligee by first-class mail. The notice shall include the following:

1. A statement of the support debt or obligation accrued or accruing and the basis and authority under which the assessment of the debt or obligation was made;

2. A statement of the name of the child or children and caretaker for whom support is being sought;

3. A statement that support shall continue to be paid for any child over the age of eighteen who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the parent seeking or receiving child support, until such child reaches the age of nineteen or graduates from high school, whichever comes first;

4. A demand for immediate payment of the support debt or obligation or, in the alternative, a demand that the debtor file an answer with the Commissioner within ten days of the date of service of the notice stating his defenses to liability;

5. A statement of each party's name, residential and, if different, mailing address, telephone number, driver's license number, and the name, address and telephone number of his employer; however, when a protective order has been issued or the Department otherwise finds reason to believe that a party is at risk of physical or emotional harm from the other party, information other than the name of the party at risk shall not be included in the notice;

6. A statement that if no answer is made on or before ten days from the date of service of the

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60 notice, the administrative support order shall be final and enforceable, and the support debt shall be
61 assessed and determined subject to computation, and is subject to collection action;

62 7. A statement that the property of the debtor will be subject to lien and foreclosure, distraint, seizure
63 and sale or an order to withhold and deliver or mandatory withholding of earnings;

64 8. A statement that the obligor shall keep the Department informed regarding access to health
65 insurance coverage and health insurance policy information and a statement that health care coverage
66 may be required for the debtor's dependent children if available at reasonable cost as defined in
67 § 63.1-250;

68 9. A statement of each party's right to appeal and the procedures applicable to appeals from the
69 decision of the Commissioner;

70 10. A statement that the obligor's income shall be immediately withheld to comply with this order
71 unless the obligee, or the Department of Social Services, if the obligee is receiving public assistance,
72 and obligor agree to an alternative arrangement;

73 11. A statement that any determination of a support obligation under this section creates a judgment
74 by operation of law and as such is entitled to full faith and credit in any other state or jurisdiction;

75 12. A statement that each party shall give the Department written notice of any change in his address
76 within thirty days of the change of address and any change of telephone number within thirty days after
77 the change; and

78 13. A statement that each party shall keep the Department informed of the name, telephone number
79 and address of his current employer.

80 If no answer is received by the Commissioner within ten days of the date of service or acceptance,
81 the administrative support order shall be effective as provided in the notice. The Commissioner may
82 initiate collection procedures pursuant to this chapter, Chapter 11 (§ 16.1-226 et seq.) of Title 16.1 or
83 Title 20. The debtor and the obligee have ten days from the date of receipt of the notice to file an
84 answer with the Commissioner to exercise the right to an administrative hearing.

85 Any changes in the amount of the administrative order must be made pursuant to this section. In no
86 event shall an administrative hearing alter or amend the amount or terms of any court order for support
87 or decree of divorce ordering support. No support order may be retroactively modified, but may be
88 modified with respect to any period during which there is a pending petition for modification, but only
89 from the date that notice of the review has been served on the nonrequesting party. Notice of the review
90 shall be served for each review (i) in accordance with the provisions of §§ 8.01-296, 8.01-327 or
91 § 8.01-329, or (ii) by certified mail, with proof of actual receipt by the addressee, or (iii) by the
92 nonrequesting party executing a waiver. The existence of an administrative order shall not preclude
93 either an obligor or obligee from commencing appropriate proceedings in a juvenile and domestic
94 relations district court or a circuit court. *The administrative order may be modified to allow child*
95 *support arrearages that accumulated due to extenuating circumstances to be paid in regular monthly*
96 *installments after the child has reached the age when the child support obligation ceases.*