

VIRGINIA ACTS OF ASSEMBLY -- 2002 RECONVENED SESSION

CHAPTER 844

An Act to amend and reenact §§ 63.1-250, 63.1-250.1, 63.1-250.2 and 63.1-252.1 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 63.1-250.3:1, relating to child support orders; health care coverage.

[S 470]

Approved April 17, 2002

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.1-250, 63.1-250.1, 63.1-250.2 and 63.1-252.1 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 63.1-250.3:1 as follows:

§ 63.1-250. Definitions.

Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

"Administrative order" means a noncourt-ordered legally enforceable support obligation having the force and effect of a support order established by the court.

"Assignment of rights" means the legal procedure whereby an individual assigns support rights to the Commonwealth on behalf of a dependent child or spouse and dependent child.

"Authorization to seek or enforce a support obligation" means a signed authorization to the Commonwealth to seek or enforce support on behalf of a dependent child or a spouse and dependent child or on behalf of a person deemed to have submitted an application by operation of law.

"Caretaker" means a parent, relative, guardian or other person whose needs are included in a public assistance payment under the aid to families with dependent children program.

"Child support services" includes any civil, criminal or administrative action taken by the Division of Child Support Enforcement to establish, modify, enforce, or collect child support, or child and spousal support.

"Commissioner" means the Commissioner of the State Department of Social Services, his designee or authorized representative.

"Court order" means any judgment or order of any court having jurisdiction to order payment of support or an order of a court of comparable jurisdiction of another state ordering payment of a set or determinable amount of support moneys.

"Debt" means the total unpaid support obligation established by court order, administrative process or by the payment of public assistance and owed by a responsible person to either the Commonwealth or to his dependent(s).

"Department" means the State Department of Social Services.

"Dependent child" means any person who meets the eligibility criteria set forth in § 63.1-105, whose support rights have been assigned or whose authorization to seek or enforce a support obligation has been given to the Commonwealth and whose support is required by Titles 16.1 and 20.

"Director" means the Commissioner of the State Department of Social Services, his designee or authorized representative.

"Disposable income" means that part of the income due and payable of any individual remaining after the deduction of any amount required by law to be withheld.

"Employee" means any individual receiving income.

"Employer" means the source of any income.

"Financial institution" means a depository institution, an institution-affiliated party, any federal credit union or state credit union including an institution-affiliated party of such a credit union, and any benefit association, insurance company, safe deposit company, money market mutual fund, or similar entity authorized to do business in this Commonwealth.

"Financial records" includes, but is not limited to, records held by employers showing income, profit sharing contributions and benefits paid or payable and records held by financial institutions, broker-dealers and other institutions and entities showing bank accounts, IRA and separate contributions, gross winnings, dividends, interest, distributive share, stocks, bonds, agricultural subsidies, royalties, prizes and awards held for or due and payable to a responsible person.

"Health care coverage" means any plan providing hospital, medical or surgical care coverage for dependent children provided such coverage is available and can be obtained by a responsible person, as that term is defined in this section, at a reasonable cost.

"Income" means any periodic form of payment due an individual from any source and shall include, but not be limited to, income from salaries, wages, commissions, royalties, bonuses, dividends, severance pay, payments pursuant to a pension or retirement program, interest, trust income, annuities, capital

gains, social security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, veterans' benefits, spousal support, net rental income, gifts, prizes or awards.

"Mistake of fact" means an error in the identity of the payor or the amount of current support or arrearage.

"Net income" means that income remaining after the following deductions have been taken from gross income: federal income tax, state income tax, federal income compensation act benefits, any union dues where collection thereof is required under federal law, and any other amounts required by law.

"Payee" means any person to whom spousal or child support is to be paid.

"Reasonable cost" pertaining to health care coverage means available through employers, unions or other groups without regard to service delivery mechanism; *or an insurance premium for dependent children that does not exceed a percentage of a parent's gross income as established by federal regulation unless the court deems otherwise in the best interests of the child.*

"Responsible person" means any obligor or person obligated under Virginia law for support of a dependent child or the child's caretaker.

§ 63.1-250.1. Authority to issue certain orders.

A. In the absence of a court order, the Department of Social Services shall have the authority to issue orders directing the payment of child, and child and spousal support and, if available at reasonable cost as defined in § 63.1-250, to require a provision for health care coverage for dependent children of the obligor, which shall include the requirements specified for employers pursuant to subdivision A 5 of § 20-79.3. *If health care coverage is unavailable at a reasonable cost through employment, the Department shall refer the dependent children to the Family Access to Medical Insurance Security plan pursuant to § 32.1-351.* Liability for child support shall be determined retroactively for the period measured from the date the order directing payment is delivered to the sheriff or process server for service upon the obligor.

In ordering the payment of child support, the Department shall set such support at the amount resulting from computation pursuant to the guideline set out in § 20-108.2, subject to the provisions of § 63.1-264.2.

B. When a payee, as defined in § 63.1-250, no longer has physical custody of a child, the Department of Social Services shall have the authority to redirect child support payments to a caretaker, relative or individual who has physical custody of the child when an assignment of rights has been made to the Department or an application for services has been made by such caretaker, relative, or individual with the Division of Child Support Enforcement.

C. The Department of Social Services shall have the authority, upon notice from the Department of Medical Assistance Services, to use any existing enforcement mechanisms provided by this chapter to collect the wages, salary, or other employment income or to withhold amounts from state tax refunds of any obligor who has not used payments received from a third party to reimburse, as appropriate, either the other parent of such child or the provider of such services, to the extent necessary to reimburse the Department of Medical Assistance Services.

D. The Department may order the obligor and payee to notify each other or the Department upon request of current gross income as defined in § 20-108.2 and any other pertinent information which may affect child support amounts. For good cause shown, the Department may order that such information be provided to the Department and made available to the parties for inspection in lieu of the parties' providing such information directly to each other. The Department shall record the social security number of each party or control number issued to a party by the Department of Motor Vehicles pursuant to § 46.2-342 in the Department's file of the case.

E. The Department shall develop procedures governing the method and timing of periodic review and adjustment of child support orders established or enforced or both pursuant to Title IV-D of the Social Security Act. At the request of either parent subject to the order or of a state child support enforcement agency, the Department shall initiate a review of such order every three years without requiring proof or showing of a change in circumstances, and shall initiate appropriate action to adjust such order in accordance with the provisions of § 20-108.2 and subject to the provisions of § 63.1-264.2.

F. In order to provide essential information for whatever establishment or enforcement actions are necessary for the collection of child support, the Commissioner, the Director of the Division of Child Support Enforcement and district managers of Division of Child Support Enforcement offices shall have the right to (i) subpoena financial records of, or other information relating to, the responsible person and obligee from any person, firm, corporation, association, or political subdivision or department of the Commonwealth and (ii) summons the responsible parent and obligee to appear in the Division's offices. The Commissioner, Director and district managers may also subpoena copies of state and federal income tax returns. The district managers shall be trained in the correct use of the subpoena process prior to exercising subpoena authority. A civil penalty not to exceed \$1,000 may be assessed by the Commissioner for a failure to respond to a subpoena issued pursuant to this subsection.

G. In the absence of a court order, the Department may establish an administrative support order on an out-of-state obligor if the obligor and the obligee maintained a matrimonial domicile within the

Commonwealth. The Department may also take action to enforce an administrative or court order on an out-of-state obligor. Service of such actions shall be in accordance with the provisions of §§ 8.01-296, 8.01-327, or § 8.01-329, or by certified mail, return receipt requested, in accordance with § 63.1-250.2:1.

H. If a support order has been issued in another state but the obligor, the obligee, and the child now live in the Commonwealth, the Department may (i) enforce the order without registration, using all enforcement remedies available under Chapter 13 (§ 63.1-249 et seq.) of Title 63.1 and (ii) register the order in the appropriate tribunal of the Commonwealth for enforcement or modification.

§ 63.1-250.2. Administrative support remedies available for individuals not receiving public assistance; fees.

The Department of Social Services shall make available to those individuals not receiving public assistance, upon receipt of an authorization to seek or enforce a support obligation the same support services provided to recipients of public assistance. These services may include, but are not limited to:

1. Locating absent parents to obtain child support;
2. Obtaining voluntary acknowledgments of paternity;
3. Establishing or modifying child support obligations, which ~~may~~ shall include a provision for health care coverage for dependent children of the obligor; and
4. Enforcing and collecting child support obligations; however, the only support in arrears which may be enforced by administrative action are: (i) arrearages accrued or accruing under a court order or decree; or (ii) arrearages on an administrative order accruing from the entry of such administrative order.

No individual shall be required to obtain support services from the Department prior to commencing a judicial proceeding to establish, modify, enforce or collect a child support obligation.

The State Board of Social Services shall charge a fee of one dollar upon application for services pursuant to this section. At the option of the Department, the fee may be paid by the Department on behalf of all applicants.

The Department is further designated as the public entity responsible for implementing immediate income withholding pursuant to § 466 of the Social Security Act.

§ 63.1-250.3:1. *Health care coverage; National Medical Support Notice.*

A. *All child support orders established and enforced pursuant to this title shall include a provision for health care coverage of dependent children. The Department shall use the National Medical Support Notice (NMSN) to enforce the provision of health care coverage through an employment-related group health plan pursuant to a child support order if available at a reasonable cost, as that term is defined in § 63.1-250, unless a court or administrative order stipulates alternative health care coverage to employer-based coverage.*

B. *The Department shall transfer the NMSN to employers within two business days following the date of entry into the State Directory of New Hires of an employee who is obligated to pay child support pursuant to this title. Employers shall transfer the NMSN to the appropriate group plan providing the health care coverage for each eligible child (excluding the severable Notice to Withhold for Health Care Coverage directing the employer to withhold any mandatory employee contributions to the plan) within twenty business days after the date of the NMSN. The Department, in consultation with the custodial parent, shall promptly select from available plan options when the plan administrator reports that there is more than one option available under the plan.*

C. *Employers shall withhold any obligation of the employee for employee contribution necessary for coverage of each eligible child and send any amount withheld directly to the plan. An employee obligated for contribution necessary for coverage may contest the withholding based on a mistake of fact. If the employee contests the withholding, the employer shall continue to withhold the obligation necessary for coverage until the employer receives notice that the contest is resolved in favor of the employee.*

D. *Employers shall notify the Department promptly whenever the noncustodial parent's employment is terminated in the same manner as required for income withholding pursuant to § 20-79.3. The Department shall promptly notify an employer when there is no longer a current order for health care coverage in effect for which the Department is responsible.*

§ 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 notice, the administrative support order shall be final and enforceable, and the support debt shall be assessed and determined subject to computation, and is subject to collection action;
7. A statement that the property of the debtor will be subject to lien and foreclosure, distraint, seizure and sale or an order to withhold and deliver or mandatory withholding of earnings;
8. A statement that the obligor shall keep the Department informed regarding access to health insurance coverage and health insurance policy information and a statement that health care coverage ~~may~~ shall be required for the debtor's dependent children if available at reasonable cost as defined in § 63.1-250, or pursuant to subsection A of § 63.1-250.1;
9. A statement of each party's right to appeal and the procedures applicable to appeals from the decision of the Commissioner;
10. A statement that the obligor's income shall be immediately withheld to comply with this order unless the obligee, or the Department of Social Services, if the obligee is receiving public assistance, and obligor agree to an alternative arrangement;
11. A statement that any determination of a support obligation under this section creates a judgment by operation of law and as such is entitled to full faith and credit in any other state or jurisdiction;
12. A statement that each party shall give the Department written notice of any change in his address within thirty days of the change of address and any change of telephone number within thirty days after the change; and
13. A statement that each party shall keep the Department informed of the name, telephone number and address of his current employer.

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

Any changes in the amount of the administrative order must be made pursuant to this section. In no event shall an administrative hearing alter or amend the amount or terms of any court order for support or decree of divorce ordering support. 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 the review has been served on the nonrequesting party. Notice of the review shall be served for each review (i) in accordance with the provisions of §§ 8.01-296, 8.01-327 or § 8.01-329, or (ii) by certified mail, with proof of actual receipt by the addressee, or (iii) by the nonrequesting party executing a waiver. The existence of an administrative order shall not preclude either an obligor or obligee from commencing appropriate proceedings in a juvenile and domestic relations district court or a circuit court.