

VIRGINIA ACTS OF ASSEMBLY -- 2003 SESSION

CHAPTER 469

An Act to amend and reenact §§ 63.2-1923, 63.2-1924, 63.2-1925 and 63.2-1930 of the Code of Virginia, relating to child support income withholding; service of process.

[S 1157]

Approved March 16, 2003

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.2-1923, 63.2-1924, 63.2-1925 and 63.2-1930 of the Code of Virginia are amended and reenacted as follows:

§ 63.2-1923. Immediate withholding from income; exception; notices required.

A. Every administrative support order directing a noncustodial parent to pay child or child and spousal support shall provide for immediate income withholding from the noncustodial parent's income as defined in § 63.2-1900 of an amount for current support plus an amount to be applied toward liquidation of arrearages, if any, unless the obligor and the Department, on behalf of the obligee, agree to a written alternative payment arrangement, or good cause is shown. Good cause shall be based upon a written determination that, and explanation by the Department of why, implementing immediate withholding would not be in the best interests of the child. The total amount withheld shall not exceed the maximum amount permitted under § 34-29.

B. The order shall include, but not be limited to, notice (i) of the amount that will be withheld, (ii) that the withholding applies to any current or subsequent period of employment, (iii) of the right to contest whether a duty of support is owed and the information specified in the administrative order is correct, (iv) that a written request to appeal the withholding shall be made to the Department within ~~ten~~ 10 days of receipt of the notice, and (v) of the actions that will be taken by the Department if an appeal is noted, which shall include the opportunity to present his objections to the administrative hearing officer at a hearing held pursuant to § 63.2-1942. Upon service of the order on the employer by *first-class or* certified mail, or service in accordance with the provisions of §§ 8.01-296, 8.01-327 or § 8.01-329, the employer shall deliver the order to the noncustodial parent. A copy shall be sent by first-class mail to the obligee.

C. The noncustodial parent's employer shall be issued by *first-class or* certified mail or by electronic means, including facsimile transmission, an administrative order for withholding of income which shall conform to § 20-79.3. The rights and responsibilities of an employer with respect to such orders are set out in § 20-79.3.

D. If the Department or its designee receives payments deducted from income of an obligor pursuant to more than one administrative order or a combination of judicial and administrative orders, the Department shall ensure that such payments are allocated among the obligees under such orders with priority given to payment of the order for current support. Where the Department or its designee receives payments pursuant to two or more orders for current support, the payments received shall be prorated on the basis of the amounts due under each such order. Upon satisfaction of any amounts due for current support, the remainder of the payments received shall be prorated on the basis of amount due under each such order. Upon satisfaction of any amounts due for current support, the remainder of the payments received shall be prorated on the basis of amounts due under any orders for accrued arrearages.

E. Administrative orders for withholding from income shall be promptly terminated or modified by the Department when (i) the obligation to support has been satisfied and arrearages have been paid, (ii) the whereabouts of the child or child and custodial parent become unknown, or (iii) modification is appropriate because of a change in the amount of the obligation.

§ 63.2-1924. Withholding from income; default of administrative or judicial support order; notices required; priorities; orders from other states.

A. As part of every administrative support order directing a noncustodial parent to pay child or child and spousal support or by separate order at any time thereafter, provision shall be made for withholding from the income of the noncustodial parent the amount of the withholding order plus an amount to be applied toward liquidation of arrearages if the noncustodial parent fails to make payments in an amount equal to the support payable for one month. The total amount withheld shall not exceed the maximum amount permitted under § 34-29.

B. Upon default of an administrative or judicial support order, the Department shall serve notice on the noncustodial parent of the delinquency in accordance with the provisions of §§ 8.01-296, 8.01-327 or § 8.01-329 or by certified mail or electronic means, including facsimile transmission, for delivery to the noncustodial parent. The obligee shall also be sent a copy of such notice. The notice shall inform the noncustodial parent (i) of the amount that will be withheld, (ii) that the withholding applies to any

current or subsequent period of employment, (iii) of the right to contest but that the only basis for contesting the withholding is a mistake of fact, (iv) that a written request to contest the withholding must be made to the Department within ~~ten~~ 10 days of receipt of the notice, (v) of the actions that will be taken by the Department if a request to contest is noted, which shall include the opportunity to present his objections, which shall be limited to a mistake of fact, to the administrative hearing officer at a hearing held pursuant to § 63.2-1942, (vi) that a determination on the contest will be made no later than ~~forty-five~~ 45 days from the date of service of such notice, and (vii) that payment of overdue support upon receipt of the required notice shall not be a bar to the implementation of withholding. Upon service of the notice on the employer for delivery to the obligor, a copy shall be sent by first-class mail to the obligee.

C. The noncustodial parent's employer shall be issued by *first-class or* certified mail or by electronic means, including facsimile transmission, an administrative order for withholding of income that shall conform to § 20-79.3. The rights and responsibilities of an employer with respect to such orders are set out in § 20-79.3.

D. The Department shall have the authority in the issuance of an administrative order under § 20-79.3, based on an existing court order, to convert the terms of payment to conform with the obligor's pay period interval. The Department shall utilize the conversion formula established by the Committee on District Courts.

E. If the Department or its designee receives payments deducted from income of an obligor pursuant to more than one administrative order or a combination of judicial and administrative orders, the Department shall ensure that such payments are allocated among the obligees under such orders with priority given to payment of the order for current support. Where the Department or its designee receives payments pursuant to two or more orders for current support, the payments received shall be prorated on the basis of the amounts due under each such order. Upon satisfaction of any amounts due for current support, the remainder of the payments received shall be prorated on the basis of amounts due under each such order. Upon satisfaction of any amounts due for current support, the remainder of the payments received shall be prorated on the basis of amounts due under any orders for accrued arrearages.

F. Administrative orders for withholding from income shall be promptly terminated or modified by the Department when (i) the obligation to support has been satisfied and arrearages have been paid, (ii) the whereabouts of the child or child and custodial parent become unknown, or (iii) modification is appropriate because of a change in the amount of the obligation.

G. If a court of competent jurisdiction or the agency operating pursuant to an approved state plan under Sections 452 and 454 of the Social Security Act, as amended, in any state, territory of the United States or the District of Columbia has ordered a person to pay child or child and spousal support, upon notice and hearing as provided in this section, the Department shall issue an order, conforming to § 20-79.3, to the noncustodial parent's employer in this Commonwealth to withhold from the income of the noncustodial parent pursuant to a foreign support order in the same manner as provided in this section for administrative orders originating in this Commonwealth. Similar orders of the Department may be enforced in a similar manner in such other state, territory or district.

§ 63.2-1925. Certain amount of income that may be withheld by lien or order.

Whenever a support lien, order to withhold and deliver property or order for withholding of income is served upon any person, firm, corporation, association, political subdivision or department of this Commonwealth asserting a support debt against income and there is any such income in the possession of such person, then that person shall withhold from the disposable income as defined in § 63.2-100 (i) the amount stated in the lien, the order to withhold and deliver property, or the order for withholding of income; or (ii) the maximum amount permitted under § 34-29, whichever is less. The order shall show the maximum percentage of disposable income which may be withheld pursuant to § 34-29. The lien or order to withhold and deliver shall continue to operate and require such person, firm, corporation, association, political subdivision, or department of this Commonwealth to withhold the nonexempt portion of income at each succeeding income disbursement interval until the entire amount of the support debt stated in the lien has been withheld. The order for withholding of income continues until further notice by *first-class or* certified mail, return receipt requested, from the Department is received by the employer.

§ 63.2-1930. Civil liability upon failure to comply with lien, order, etc.

Should any person, firm, corporation, association, political subdivision or department of this Commonwealth fail to answer an order to withhold and deliver within the time prescribed herein, or fail or refuse to deliver property pursuant to said order, or after actual notice of filing of a support lien, pay over, release, sell, transfer, or convey real or personal property subject to a support lien to or for the benefit of the debtor or any other person, or fail or refuse to surrender upon demand property distrained under § 63.2-1933 or fail or refuse to honor a voluntary assignment of wages under § 63.2-1945 presented by the Commissioner, such person, firm, corporation, association, political subdivision or department of this Commonwealth shall be liable to the Department in an amount equal to 100 percent of the value of the debt which is the basis of the lien, order to withhold and deliver, distraint, or an

income withholding order or voluntary assignment of wages. *A noncustodial parent's employer issued an income withholding order by first-class mail pursuant to § 63.2-1923 or § 63.2-1924 shall not be liable to the Department unless the Department shows that such employer had actual notice of the withholding order.*