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HOUSE BILL NO. 2405

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice)

on January 31, 2003)

(Patron Prior to Substitute—Delegate Oder)

A BILL to amend and reenact §§ 16.1-278.16, 34-28.1, 63.2-1902, 63.2-1927, and 63.2-1929 of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 63.2-1940.1, relating to child support; child support enforcement; lien for child support on personal injury and wrongful death awards; publication of delinquent parent list.

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-278.16, 34-28.1, 63.2-1902, 63.2-1927, and 63.2-1929 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 63.2-1940.1 as follows:

§ 16.1-278.16. Failure to comply with support obligation; payroll deduction; commitment.

In cases involving (i) the custody, visitation or support of a child arising under subdivision A 3 of § 16.1-241, (ii) spousal support arising under subsection L of § 16.1-241, (iii) support, maintenance, care, and custody of a child or support and maintenance of a spouse transferred to the juvenile and domestic relations district court pursuant to § 20-79, or (iv) motions to enforce administrative support orders entered pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2, when the court finds that the respondent (i) has failed to perform or comply with a court order concerning the custody and visitation of a child or a court or administrative order concerning the support and maintenance of a child or a court order concerning the support and maintenance of a spouse or (ii) under existing circumstances, is under a duty to render support or additional support to a child or pay the support and maintenance of a spouse, the court may order a payroll deduction as provided in § 20-79.1, or the giving of a recognizance as provided in § 20-114. If the court, *upon petition*, finds that the respondent has failed to perform or comply with such order, ~~the~~ *and personal or substitute service has been obtained, the court may issue a civil show cause summons or a capias pursuant to this section.* The court also may order the commitment of the person as provided in § 20-115 or the court may, in its discretion, impose a sentence of up to twelve months in jail, notwithstanding the provisions of §§ 16.1-69.24 and 18.2-458, relating to punishment for contempt. If the court finds that an employer, who is under a payroll deduction order pursuant to § 20-79.1, has failed to comply with such order after being given a reasonable opportunity to show cause why he failed to comply with such order, then the court may proceed to impose sanctions on the employer pursuant to subdivision A 9 of § 20-79.3.

§ 34-28.1. Personal injury and wrongful death actions exempt.

Except for liens created under Article 7.1 (§ 8.01-66.2 et seq.) of Title 8.01 ~~and~~, Article 5 (§ 54.1-3932 et seq.) of Title 54.1, *and Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2*, all causes of action for personal injury or wrongful death and the proceeds derived from court award or settlement shall be exempt from creditor process against the injured person or statutory beneficiary as defined in Article 5 (§ 8.01-50 et seq.) of Title 8.01. It shall not be required that a householder designate any property exempt under this section in a deed in order to secure such exemption. The provisions of this section shall not be construed to affect any voluntary assignment of the proceeds or anticipated proceeds of a personal injury or wrongful death award or settlement as permitted by § 8.01-26.

§ 63.2-1902. Central unit for information and administration; cooperation enjoined.

The Department is authorized and directed to establish a central unit within the Department to administer the Title IV, D State Plan according to 45 C.F.R. 302.12. The central unit shall have the statewide jurisdiction and authority to:

1. Establish a registry for the receipt of information;
2. Answer interstate inquiries concerning noncustodial parents;
3. Coordinate and supervise departmental activities in relation to noncustodial parents to ensure effective cooperation with law-enforcement agencies; and
4. Contract and enter into cooperative agreements with individuals and agencies including law-enforcement agencies, in order that they may assist the Department in its responsibilities.

The central unit within the Department shall supervise offices whose primary functions are:

- a. Location of absent noncustodial parents;
- b. Assessment of the ability of noncustodial parents to pay child or child and spousal support and to obtain health care coverage for dependent children;
- c. Establishment, modification and enforcement of support obligations including health care coverage for dependent children, through administrative action;
- d. Preparation of individual cases for court action existing under all laws of the Commonwealth;

HOUSE SUBSTITUTE

HB2405H1

60 e. Ensuring on a consistent basis that support continues in all cases in which support is assessed
61 administratively or ordered by the court; and

62 f. Provision of its services in establishing paternity and establishing and enforcing support obligations
63 equally to public-assisted and nonpublic-assisted families.

64 To effectuate the purposes of this section, the Commissioner may request and shall receive from
65 state, county and local agencies within and without the Commonwealth, including but not limited to
66 such agencies and entities responsible for vital records; tax and revenue; real and titled personal
67 property; authorizations to engage in a business, trade, profession or occupation; employment security;
68 motor vehicle licensing and registration; public assistance programs and corrections, all information and
69 assistance as authorized by this chapter. *The Commissioner may request from state and local criminal*
70 *justice agencies within the Commonwealth assistance in locating and serving individuals who owe child*
71 *support and have an outstanding civil show cause summons or capias pursuant to § 16.1-278.16. Solely*
72 *for the purposes of obtaining motor vehicle licensing and registration information from entities within*
73 *and without the Commonwealth, the Division of Child Support Enforcement shall be deemed to be a*
74 *criminal justice agency. With respect to individuals who owe child support or are alleged in a pending*
75 *paternity proceeding to be a putative father, the Commissioner may request and shall receive the names*
76 *and addresses of such individuals and the names and addresses of such individuals' employers as*
77 *appearing in the customer records of public utilities, cable television companies and financial*
78 *institutions. All state, county and city agencies, officers and employees shall cooperate in the location of*
79 *noncustodial parents who have abandoned or deserted, or are failing to support, children and their*
80 *custodial parents and shall on request supply the Department with all information on hand relative to the*
81 *location, income, benefits and property of such noncustodial parents, notwithstanding any provision of*
82 *law making such information confidential. A civil penalty not to exceed \$1,000 may be assessed by the*
83 *Commissioner for a failure to respond to a request for information made in accordance with this section.*

84 Any public or private person, partnership, firm, corporation or association, any financial institution
85 and any political subdivision, department or other entity of the Commonwealth who in good faith and in
86 the absence of gross negligence, willful misconduct or breach of an ethical duty, provide information
87 requested pursuant to this section shall be immune from liability, civil or criminal, that might otherwise
88 result from the release of such information to the Department.

89 § 63.2-1927. Assertion of lien; effect.

90 Ten days after service of the notice containing the proposed administrative support order as provided
91 in § 63.2-1916, or immediately upon receipt by the Department of a ~~support court order from a~~
92 ~~jurisdiction outside of Virginia or foreign support order~~, a lien may be asserted by the Commissioner
93 upon the real or personal property of the debtor. The claim of the Department for a support debt, not
94 paid when due, shall be a lien when docketed against all property of the debtor in the county or city
95 where docketed with priority of a secured creditor. *The Department's lien shall take priority over all*
96 *other debts and creditors under state law of such debtor including the proceeds or anticipated proceeds*
97 *of a personal injury or wrongful death award or settlement except that the Department's lien shall be*
98 *inferior to those liens created under §§ 8.01-66.2 or 8.01-66.9, any statutory right of subrogation*
99 *accruing to a health insurance provider, and the lien of the attorney representing the injured person in*
100 *the personal injury or wrongful death action. However, the lien of the Department shall be subordinate*
101 *to the lien of any prior mortgagee. The Department shall have the sole authority to negotiate settlement*
102 *of its liens. Settlement of the Department's support liens does not affect the remaining support*
103 *arrears.* This lien shall be separate and apart from, and in addition to, any other lien created by, or
104 provided for, in this title. Such order, when an abstract thereof is docketed with the circuit court, shall
105 have the same effect as a docketed abstract of judgment from another Virginia court.

106 Whenever a support lien has been filed and there is in the possession of any person, firm,
107 corporation, association, political subdivision or department of the Commonwealth having notice of such
108 lien, any property which may be subject to the support lien, such property shall not be paid over,
109 released, sold, transferred, encumbered or conveyed, except as provided for by the exemptions contained
110 in § 63.2-1933, unless a written release or waiver signed by the Commissioner has been delivered to
111 such person, firm, corporation, association, political subdivision or department of the Commonwealth or
112 unless a determination has been made in a hearing pursuant to § 63.2-1916 or by a court ordering
113 release of such support lien on the basis that no debt exists or that the debt has been satisfied.

114 § 63.2-1929. Orders to withhold and to deliver property of debtor; issuance and service; contents;
115 right to appeal; answer; effect; delivery of property; bond to release; fee; exemptions.

116 A. After notice containing an administrative support order has been served or service has been
117 waived or accepted, an opportunity for a hearing has been exhausted and a copy of the order furnished
118 as provided for in § 63.2-1916, or whenever a court order for child or child and spousal support has
119 been entered, the Commissioner is authorized to issue to any person, firm, corporation, association,
120 political subdivision or department of the Commonwealth, orders to withhold and to deliver property of
121 any kind including, but not restricted to, income of the debtor, when the Commissioner has reason to

believe that there is in the possession of such person, firm, corporation, association, political subdivision or department of the Commonwealth, property that is due, owing, or belonging to such debtor. The orders to withhold and to deliver shall take priority over all other debts and creditors under state law of such debtor ~~except~~ *including the proceeds or anticipated proceeds of a personal injury or wrongful death award or settlement except that the Department's lien shall be inferior to those liens created under §§ 8.01-66.2 or 8.01-66.9, any statutory right of subrogation accruing to a health insurance provider, and the lien of the attorney representing the injured person in the personal injury or wrongful death action. However, orders to withhold and to deliver shall not take priority with respect to a prior payroll deduction or income withholding order pursuant to §§ 20-79.1, 20-79.2, 63.2-1923 or § 63.2-1924. The Department shall have the sole authority to negotiate settlement of its liens. Settlement of the Department's support liens does not affect the remaining support arrearages.*

B. The order to withhold shall also be served upon the debtor within a reasonable time thereafter, and shall state the amount of the support debt accrued. The order shall state in summary the terms of §§ 63.2-1925 and 63.2-1930 and shall be served in the manner prescribed for the service of a warrant in a civil action or by certified mail, return receipt requested. The order to withhold shall advise the debtor that this order has been issued to cause the property of the debtor to be taken to satisfy the debt and advise of property that may be exempted from this order. The order shall also advise the debtor of a right to appeal such order based upon a mistake of fact and that if no appeal is made within ten days of being served, his property is subject to be taken.

C. If the debtor believes such property is exempt from this debt, within ten days of the date of service of the order to withhold, the debtor may file an appeal to the Commissioner stating any exemptions that may be applicable. If the Commissioner receives a timely appeal, a hearing shall be promptly scheduled before a hearing officer upon reasonable notice to the obligee. The Commissioner may delegate authority to conduct the hearing to a duly qualified hearing officer who shall consider the debtor's appeal. Action by the Commissioner under the provisions of this chapter to collect such support debt shall be valid and enforceable during the pendency of any appeal.

The decision of the hearing officer shall be in writing and shall set forth the debtor's rights to appeal an adverse decision of the hearing officer pursuant to § 63.2-1943. The decision shall be served upon the debtor in accordance with the provisions of §§ 8.01-296, 8.01-327 or § 8.01-329 or mailed to the debtor at his last known address by certified mail, return receipt requested, or service may be waived. A copy of such decision shall also be mailed to the obligee. Such decision shall establish whether the debtor's property is exempt under state or federal laws and regulations.

D. Any person, firm, corporation, association, political subdivision or department of the Commonwealth upon whom service has been made is hereby required to answer such order to withhold within ten days, exclusive of the day of service, under oath and in writing, and shall file true answers to the matters inquired of therein. In the event there is in the possession of any such person, firm, corporation, association, political subdivision or department of the Commonwealth, any property that may be subject to the claim of the Department, such property shall be withheld immediately upon receipt of the order to withhold, together with any additional property received by such person, firm, corporation, association, political subdivision, or department of the Commonwealth valued up to the amount of the order until receipt of an order to deliver or release. The property shall be delivered to the Commissioner upon receipt of an order to deliver; however, distribution of the property shall not be made during pendency of all appeals. Where money is due and owing under any contract of employment, express or implied, or is held by any person, firm, corporation, or association, political subdivision or department of the Commonwealth subject to withdrawal by the debtor, such money shall be delivered by remittance payable to the order of the Treasurer of Virginia. The person, firm, corporation, political subdivision or department of the Commonwealth herein specified shall be entitled to receive from such debtor a fee of five dollars for each answer or remittance on account of such debtor. The foregoing is subject to the exemptions contained in §§ 63.2-1925 and 63.2-1933.

E. Delivery to the Commissioner shall serve as full acquittance and the Commonwealth warrants and represents that it shall defend and hold harmless for such actions persons delivering money or property to the Commissioner pursuant to this chapter.

F. An order issued to an employer for withholding from the earnings of an employee pursuant to this section shall conform to § 20-79.3. The rights and obligations of an employer with respect to the order are set out in § 20-79.3.

§ 63.2-1940.1. *Publishing a most wanted delinquent parent list.*

The Division of Child Support Enforcement shall (i) publish at regular intervals a list of the most wanted delinquent parents as determined by the Commissioner together with arrearage information and other identifying information, including but not limited to, a photograph, occupation and last known address for the purpose of locating such delinquent parents and (ii) periodically conduct coordinated arrests of delinquent parents in conjunction with state and local criminal justice agencies pursuant to

183 § 16.1-278.16. #