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SENATE BILL NO. 497

Offered January 14, 2004

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A BILL to amend and reenact §§ 16.1-278.18, 20-74, 20-108, 20-108.1, 20-112 and 63.2-1916 of the Code of Virginia, relating to child support petitions.

Patrons—Mims; Delegates: Albo, Black and Petersen

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-278.18, 20-74, 20-108, 20-108.1, 20-112 and 63.2-1916 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-278.18. Money judgments.

A. Each juvenile and domestic relations district court may enter judgment for money in any amount for arrears of support and maintenance of any person in cases in which (i) the court has previously acquired personal jurisdiction over all necessary parties or a proceeding in which such jurisdiction has been obtained has been referred or transferred to the court by a circuit court or another juvenile and domestic relations district court and (ii) payment of such money has been previously ordered by the court, a circuit court, or another juvenile and domestic relations district court. However, no judgment shall be entered unless the motion of a party, a probation officer, a local director of social services, or the court's own motion is duly served on the person against whom judgment is sought, in accordance with the applicable provisions of law relating to notice when proceedings are reopened. The motion shall contain a caption stating the name of the court, the title of the action, the names of all parties and the address of the party against whom judgment is sought, the amount of arrearage for which judgment is sought, and the date and time when such judgment will be sought. No support order may be retroactively modified. It may, however, be modified with respect to any period during which there is a pending petition for modification *in any court*, but only from the date that notice of such petition has been given to the responding party.

B. The judge or clerk of the court shall, upon written request of the obligee under a judgment entered pursuant to this section, certify and deliver an abstract of that judgment to the obligee or Department of Social Services, who may deliver the abstract to the clerk of the circuit court having jurisdiction over appeals from juvenile and domestic relations district court. The clerk shall issue executions of the judgment.

C. If the judgment amount does not exceed the jurisdictional limits of subdivision (1) of § 16.1-77, exclusive of interest and any attorneys' fees, an abstract of any such judgment entered pursuant to this section may be delivered to the clerk of the general district court of the same judicial district. The clerk shall issue executions upon the judgment.

D. Arrearages accumulated prior to July 1, 1976, shall also be subject to the provisions of this section.

§ 20-74. Support orders to remain in effect until annulled; modification.

Any order of support or amendment thereof entered under the provisions of this chapter shall remain in full force and effect until annulled by the court of original jurisdiction, or the court to which an appeal may be taken; however, such order of support or terms of probation shall be subject to change or modification by the court from time to time, as circumstances may require, but no such change or modification shall affect or relieve the surety of his or her obligation under such recognizance, provided notice thereof be forthwith given to such surety. 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 *in any court*, but only from the date that notice of such petition has been given to the responding party.

§ 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 the 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 *in any court*, but only from the date that notice

59 of such petition has been given to the responding party.

60 § 20-108.1. Determination of child or spousal support.

61 A. In any proceeding on the issue of determining spousal support, the court shall consider all
62 evidence presented relevant to any issues joined in that proceeding. The court's decision shall be
63 rendered based upon the evidence relevant to each individual case.

64 B. In any proceeding on the issue of determining child support under this title or Title 16.1 or Title
65 63.2, the court shall consider all evidence presented relevant to any issues joined in that proceeding. The
66 court's decision in any such proceeding shall be rendered upon the evidence relevant to each individual
67 case. However, there shall be a rebuttable presumption in any judicial or administrative proceeding for
68 child support, including cases involving split custody or shared custody, that the amount of the award
69 which would result from the application of the guidelines set out in § 20-108.2 is the correct amount of
70 child support to be awarded. Liability for support shall be determined retroactively for the period
71 measured from the date that the proceeding was commenced by the filing of an action with ~~the~~ any
72 court provided the complainant exercised due diligence in the service of the respondent or, if earlier, the
73 date an order of the Department of Social Services entered pursuant to Title 63.2 and directing payment
74 of support was delivered to the sheriff or process server for service on the obligor.

75 In order to rebut the presumption, the court shall make written findings in the order, which findings
76 may be incorporated by reference, that the application of such guidelines would be unjust or
77 inappropriate in a particular case. The finding that rebuts the guidelines shall state the amount of support
78 that would have been required under the guidelines, shall give a justification of why the order varies
79 from the guidelines, and shall be determined by relevant evidence pertaining to the following factors
80 affecting the obligation, the ability of each party to provide child support, and the best interests of the
81 child:

82 1. Actual monetary support for other family members or former family members;

83 2. Arrangements regarding custody of the children;

84 3. Imputed income to a party who is voluntarily unemployed or voluntarily under-employed;
85 provided that income may not be imputed to the custodial parent when a child is not in school, child
86 care services are not available and the cost of such child care services are not included in the
87 computation;

88 4. Debts of either party arising during the marriage for the benefit of the child;

89 5. Debts incurred for production of income;

90 6. Direct payments ordered by the court for health care coverage, maintaining life insurance coverage
91 pursuant to subsection D, education expenses, or other court-ordered direct payments for the benefit of
92 the child and costs related to the provision of health care coverage pursuant to subdivision 7 of
93 § 20-60.3;

94 7. Extraordinary capital gains such as capital gains resulting from the sale of the marital abode;

95 8. Age, physical and mental condition of the child or children, including extraordinary medical or
96 dental expenses, and child-care expenses;

97 9. Independent financial resources, if any, of the child or children;

98 10. Standard of living for the family established during the marriage;

99 11. Earning capacity, obligations and needs, and financial resources of each parent;

100 12. Education and training of the parties and the ability and opportunity of the parties to secure such
101 education and training;

102 13. Contributions, monetary and nonmonetary, of each party to the well-being of the family;

103 14. Provisions made with regard to the marital property under § 20-107.3;

104 15. Tax consequences to the parties regarding claims for dependent children and child care expenses;

105 16. A written agreement between the parties which includes the amount of child support;

106 17. A pendente lite decree, which includes the amount of child support, agreed to by both parties or
107 by counsel for the parties; and

108 18. Such other factors, including tax consequences to each party, as are necessary to consider the
109 equities for the parents and children.

110 C. In any proceeding under this title or Title 16.1 or Title 63.2 on the issue of determining child
111 support, the court shall have the authority to order a party to provide health care coverage, as defined in
112 § 63.2-1900, for dependent children if reasonable under all the circumstances and health care coverage
113 for a spouse or former spouse.

114 D. In any proceeding under this title, Title 16.1 or Title 63.2 on the issue of determining child
115 support, the court shall have the authority to order a party to (i) maintain any existing life insurance
116 policy on the life of either party provided the party so ordered has the right to designate a beneficiary
117 and (ii) designate a child or children of the parties as the beneficiary of all or a portion of such life
118 insurance for so long as the party so ordered has a statutory obligation to pay child support for the child
119 or children.

120 E. Except when the parties have otherwise agreed, in any proceeding under this title, Title 16.1 or

Title 63.2 on the issue of determining child support, the court shall have the authority to and may, in its discretion, order one party to execute all appropriate tax forms or waivers to grant to the other party the right to take the income tax dependency exemption for any tax year or future years, for any child or children of the parties for federal and state income tax purposes.

§ 20-112. Notice when proceedings reopened.

When the proceedings are reopened to increase, decrease or terminate maintenance and support for a spouse or for a child, or to request additional orders to effectuate previous orders entered pursuant to § 20-107.3, the petitioning party shall give such notice to the other party by service of process or by order of publication as is required by law. Except as provided by § 20-110, 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 *in any court*, but only from the date that notice of such petition has been given to the responding party.

§ 63.2-1916. Notice of administrative support order; contents; hearing; modification.

The Commissioner may proceed against a noncustodial parent 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 custodial parent. 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 (a) in accordance with the provisions of §§ 8.01-296, 8.01-327 or § 8.01-329 or (b) 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 custodial parent 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 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 shall be required for the debtor's dependent children if available at reasonable cost as defined in § 63.2-1900, or pursuant to subsection A of § 63.2-1903;

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, 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;

182 12. A statement that each party shall give the Department written notice of any change in his address
183 or phone number within ~~thirty~~ 30 days; and

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

186 If no answer is received by the Commissioner within ~~ten~~ 10 days of the date of service or
187 acceptance, the administrative support order shall be effective as provided in the notice. The
188 Commissioner may initiate collection procedures pursuant to this chapter, Chapter 11 (§ 16.1-226 et
189 seq.) of Title 16.1 or Title 20. The debtor and the obligee have ~~ten~~ 10 days from the date of receipt of
190 the notice to file an answer with the Commissioner to exercise the right to an administrative hearing.

191 Any changes in the amount of the administrative order must be made pursuant to this section. In no
192 event shall an administrative hearing alter or amend the amount or terms of any court order for support
193 or decree of divorce ordering support. No support order may be retroactively modified, but may be
194 modified with respect to any period during which there is a pending petition for modification *in any*
195 *court*, but only from the date that notice of the review has been served on the nonrequesting party.
196 Notice of the review shall be served for each review (1) in accordance with the provisions of
197 §§ 8.01-296, 8.01-327 or § 8.01-329, or (2) by certified mail, with proof of actual receipt by the
198 addressee, or (3) by the nonrequesting party executing a waiver. The existence of an administrative order
199 shall not preclude either an obligor or obligee from commencing appropriate proceedings in a juvenile
200 and domestic relations district court or a circuit court.