

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact §§ 16.1-278.18, 20-74, 20-108, 20-108.1, 20-112 and 63.2-1916 of the*
 3 *Code of Virginia, relating to child support petitions.*

4 [S 497]
 5 Approved

6 **Be it enacted by the General Assembly of Virginia:**
 7 **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**
 8 **amended and reenacted as follows:**

9 § 16.1-278.18. Money judgments.
 10 A. Each juvenile and domestic relations district court may enter judgment for money in any amount
 11 for arrears of support and maintenance of any person in cases in which (i) the court has previously
 12 acquired personal jurisdiction over all necessary parties or a proceeding in which such jurisdiction has
 13 been obtained has been referred or transferred to the court by a circuit court or another juvenile and
 14 domestic relations district court and (ii) payment of such money has been previously ordered by the
 15 court, a circuit court, or another juvenile and domestic relations district court. However, no judgment
 16 shall be entered unless the motion of a party, a probation officer, a local director of social services, or
 17 the court's own motion is duly served on the person against whom judgment is sought, in accordance
 18 with the applicable provisions of law relating to notice when proceedings are reopened. The motion shall
 19 contain a caption stating the name of the court, the title of the action, the names of all parties and the
 20 address of the party against whom judgment is sought, the amount of arrearage for which judgment is
 21 sought, and the date and time when such judgment will be sought. No support order may be
 22 retroactively modified. It may, however, be modified with respect to any period during which there is a
 23 pending petition for modification *in any court*, but only from the date that notice of such petition has
 24 been given to the responding party.

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

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

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

36 § 20-74. Support orders to remain in effect until annulled; modification.
 37 Any order of support or amendment thereof entered under the provisions of this chapter shall remain
 38 in full force and effect until annulled by the court of original jurisdiction, or the court to which an
 39 appeal may be taken; however, such order of support or terms of probation shall be subject to change or
 40 modification by the court from time to time, as circumstances may require, but no such change or
 41 modification shall affect or relieve the surety of his or her obligation under such recognizance, provided
 42 notice thereof be forthwith given to such surety. No support order may be retroactively modified, but
 43 may be modified with respect to any period during which there is a pending petition for modification *in*
 44 *any court*, but only from the date that notice of such petition has been given to the responding party.

45 § 20-108. Revision and alteration of such decrees.
 46 The court may, from time to time after decreeing as provided in § 20-107.2, on petition of either of
 47 the parents, or on its own motion or upon petition of any probation officer or the Department of Social
 48 Services, which petition shall set forth the reasons for the relief sought, revise and alter such decree
 49 concerning the care, custody, and maintenance of the children and make a new decree concerning the
 50 same, as the circumstances of the parents and the benefit of the children may require. The intentional
 51 withholding of visitation of a child from the other parent without just cause may constitute a material
 52 change of circumstances justifying a change of custody in the discretion of the court.

53 No support order may be retroactively modified, but may be modified with respect to any period
 54 during which there is a pending petition for modification *in any court*, but only from the date that notice
 55 of such petition has been given to the responding party.

56 § 20-108.1. Determination of child or spousal support.

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

60 B. In any proceeding on the issue of determining child support under this title or Title 16.1 or Title
61 63.2, the court shall consider all evidence presented relevant to any issues joined in that proceeding. The
62 court's decision in any such proceeding shall be rendered upon the evidence relevant to each individual
63 case. However, there shall be a rebuttable presumption in any judicial or administrative proceeding for
64 child support, including cases involving split custody or shared custody, that the amount of the award
65 which would result from the application of the guidelines set out in § 20-108.2 is the correct amount of
66 child support to be awarded. Liability for support shall be determined retroactively for the period
67 measured from the date that the proceeding was commenced by the filing of an action with ~~the~~ any
68 court provided the complainant exercised due diligence in the service of the respondent or, if earlier, the
69 date an order of the Department of Social Services entered pursuant to Title 63.2 and directing payment
70 of support was delivered to the sheriff or process server for service on the obligor.

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

- 78 1. Actual monetary support for other family members or former family members;
- 79 2. Arrangements regarding custody of the children;
- 80 3. Imputed income to a party who is voluntarily unemployed or voluntarily under-employed;
81 provided that income may not be imputed to the custodial parent when a child is not in school, child
82 care services are not available and the cost of such child care services are not included in the
83 computation;
- 84 4. Debts of either party arising during the marriage for the benefit of the child;
- 85 5. Debts incurred for production of income;
- 86 6. Direct payments ordered by the court for health care coverage, maintaining life insurance coverage
87 pursuant to subsection D, education expenses, or other court-ordered direct payments for the benefit of
88 the child and costs related to the provision of health care coverage pursuant to subdivision 7 of
89 § 20-60.3;
- 90 7. Extraordinary capital gains such as capital gains resulting from the sale of the marital abode;
- 91 8. Age, physical and mental condition of the child or children, including extraordinary medical or
92 dental expenses, and child-care expenses;
- 93 9. Independent financial resources, if any, of the child or children;
- 94 10. Standard of living for the family established during the marriage;
- 95 11. Earning capacity, obligations and needs, and financial resources of each parent;
- 96 12. Education and training of the parties and the ability and opportunity of the parties to secure such
97 education and training;
- 98 13. Contributions, monetary and nonmonetary, of each party to the well-being of the family;
- 99 14. Provisions made with regard to the marital property under § 20-107.3;
- 100 15. Tax consequences to the parties regarding claims for dependent children and child care expenses;
- 101 16. A written agreement between the parties which includes the amount of child support;
- 102 17. A pendente lite decree, which includes the amount of child support, agreed to by both parties or
103 by counsel for the parties; and
- 104 18. Such other factors, including tax consequences to each party, as are necessary to consider the
105 equities for the parents and children.

106 C. In any proceeding under this title or Title 16.1 or Title 63.2 on the issue of determining child
107 support, the court shall have the authority to order a party to provide health care coverage, as defined in
108 § 63.2-1900, for dependent children if reasonable under all the circumstances and health care coverage
109 for a spouse or former spouse.

110 D. In any proceeding under this title, 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 (i) maintain any existing life insurance
112 policy on the life of either party provided the party so ordered has the right to designate a beneficiary
113 and (ii) designate a child or children of the parties as the beneficiary of all or a portion of such life
114 insurance for so long as the party so ordered has a statutory obligation to pay child support for the child
115 or children.

116 E. Except when the parties have otherwise agreed, in any proceeding under this title, Title 16.1 or
117 Title 63.2 on the issue of determining child support, the court shall have the authority to and may, in its

118 discretion, order one party to execute all appropriate tax forms or waivers to grant to the other party the
119 right to take the income tax dependency exemption for any tax year or future years, for any child or
120 children of the parties for federal and state income tax purposes.

121 § 20-112. Notice when proceedings reopened.

122 When the proceedings are reopened to increase, decrease or terminate maintenance and support for a
123 spouse or for a child, or to request additional orders to effectuate previous orders entered pursuant to
124 § 20-107.3, the petitioning party shall give such notice to the other party by service of process or by
125 order of publication as is required by law. Except as provided by § 20-110, no support order may be
126 retroactively modified, but may be modified with respect to any period during which there is a pending
127 petition for modification *in any court*, but only from the date that notice of such petition has been given
128 to the responding party.

129 § 63.2-1916. Notice of administrative support order; contents; hearing; modification.

130 The Commissioner may proceed against a noncustodial parent whose support debt has accrued or is
131 accruing based upon subrogation to, assignment of, or authorization to enforce a support obligation.
132 Such obligation may be created by a court order for support of a child or child and spouse or decree of
133 divorce ordering support of a child or child and spouse. In the absence of such a court order or decree
134 of divorce, the Commissioner may, pursuant to this chapter, proceed against a person whose support
135 debt has accrued or is accruing based upon payment of public assistance or who has a responsibility for
136 the support of any dependent child or children and their custodial parent. The administrative support
137 order shall also provide that support shall continue to be paid for any child over the age of ~~eighteen~~ 18
138 who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the
139 parent seeking or receiving child support, until such child reaches the age of ~~nineteen~~ 19 or graduates
140 from high school, whichever comes first. The Commissioner shall initiate proceedings by issuing notice
141 containing the administrative support order which shall become effective unless timely contested. The
142 notice shall be served upon the debtor (a) in accordance with the provisions of §§ 8.01-296, 8.01-327 or
143 § 8.01-329 or (b) by certified mail, return receipt requested, or the debtor may accept service by signing
144 a formal waiver. A copy of the notice shall be sent to the obligee by first-class mail. The notice shall
145 include the following:

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

148 2. A statement of the name of the child or children and custodial parent for whom support is being
149 sought;

150 3. A statement that support shall continue to be paid for any child over the age of ~~eighteen~~ 18 who
151 is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the parent
152 seeking or receiving child support, until such child reaches the age of ~~nineteen~~ 19 or graduates from
153 high school, whichever comes first;

154 4. A demand for immediate payment of the support debt or obligation or, in the alternative, a
155 demand that the debtor file an answer with the Commissioner within ~~ten~~ 10 days of the date of service
156 of the notice stating his defenses to liability;

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

162 6. A statement that if no answer is made on or before ~~ten~~ 10 days from the date of service of the
163 notice, the administrative support order shall be final and enforceable, and the support debt shall be
164 assessed and determined subject to computation, and is subject to collection action;

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

167 8. A statement that the obligor shall keep the Department informed regarding access to health
168 insurance coverage and health insurance policy information and a statement that health care coverage
169 shall be required for the debtor's dependent children if available at reasonable cost as defined in
170 § 63.2-1900, or pursuant to subsection A of § 63.2-1903;

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

173 10. A statement that the obligor's income shall be immediately withheld to comply with this order
174 unless the obligee, or the Department, if the obligee is receiving public assistance, and obligor agree to
175 an alternative arrangement;

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

178 12. A statement that each party shall give the Department written notice of any change in his address

179 or phone number within ~~thirty~~ 30 days; and

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

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

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