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SENATE BILL NO. 524

Offered January 14, 2004

Prefiled January 14, 2004

A BILL to amend and reenact §§ 20-60.3 and 63.2-1916 of the Code of Virginia, relating to contents of child support orders; paternity establishment.

Patron—Hanger

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 20-60.3 and 63.2-1916 of the Code of Virginia are amended and reenacted as follows:**

§ 20-60.3. Contents of support orders.

All orders directing the payment of spousal support where there are minor children whom the parties have a mutual duty to support and all orders directing the payment of child support, including those orders confirming separation agreements, entered on or after October 1, 1985, whether they are original orders or modifications of existing orders, shall contain the following:

1. Notice that support payments may be withheld as they become due pursuant to § 20-79.1 or § 20-79.2, from income as defined in § 63.2-1900, without further amendments of this order or having to file an application for services with the Department of Social Services; however, absence of such notice in an order entered prior to July 1, 1988, shall not bar withholding of support payments pursuant to § 20-79.1;

2. Notice that support payments may be withheld pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2 without further amendments to the order upon application for services with the Department of Social Services; however, absence of such notice in an order entered prior to July 1, 1988, shall not bar withholding of support payments pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2;

3. The names and dates of birth of each child to whom a duty of support is then owed by the person responsible for support;

4. If known, the name, date of birth and social security number of each parent of the child and, if different and if known, the name, date of birth and social security number of the person responsible for support and, unless otherwise ordered, each parent or responsible person's residential and, if different, mailing address, residential and employer telephone number, driver's license number, and the name and address of his or her employer; however, when a protective order has been issued or the court 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 order;

5. On and after July 1, 1994, notice that a petition may be filed for suspension of any license, certificate, registration or other authorization to engage in a profession, trade, business or occupation issued by the Commonwealth to a person responsible for support as provided in § 63.2-1937 upon a delinquency for a period of 90 days or more or in an amount of \$5,000 or more. The order shall indicate whether either or both parents currently hold such an authorization and, if so, the type of authorization held;

6. The amount of periodic support expressed in fixed sums, together with the payment interval, the date payments are due, and the date the first payment is due;

7. a. An order for health care coverage, including the health insurance policy information, for dependent children pursuant to §§ 20-108.1 and 20-108.2 if available at reasonable cost as defined in § 63.2-1900 and a statement as to whether there is an order for health care coverage for a spouse or former spouse; and

b. A statement as to whether any extraordinary medical expenses are to be paid by or reimbursed to a party pursuant to subsection D and subdivision G 3 of § 20-108.2, and if such expenses are ordered, then the provisions as how such payment is to be made;

8. If support arrearages exist, (i) to whom an arrearage is owed and the amount of the arrearage, (ii) the period of time for which such arrearage is calculated, and (iii) a direction that all payments are to be credited to current support obligations first, with any payment in excess of the current obligation applied to arrearages;

9. If child support payments are ordered to be paid through the Department of Social Services or directly to the obligee, and unless the court for good cause shown orders otherwise, the parties shall give each other and the court and, when payments are to be made through the Department, the Department of Social Services at least 30 days' written notice, in advance, of any change of address and any change of telephone number within 30 days after the change;

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59 10. If child support payments are ordered to be paid through the Department of Social Services, a
60 provision requiring an obligor to keep the Department of Social Services informed of the name, address
61 and telephone number of his current employer, or if payments are ordered to be paid directly to the
62 obligee, a provision requiring an obligor to keep the court informed of the name, address and telephone
63 number of his current employer;

64 11. The separate amounts due to each person under the order, unless the court specifically orders a
65 unitary award of child and spousal support due or the order affirms a separation agreement containing
66 provision for such unitary award;

67 12. Notice that in determination of a support obligation, the support obligation as it becomes due and
68 unpaid creates a judgment by operation of law; and

69 13. Notice that on and after July 1, 1994, the Department of Social Services may, pursuant to
70 Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2 and in accordance with §§ 20-108.2 and 63.2-1921,
71 initiate a review of the amount of support ordered by any court; and

72 14. *In cases where the mother of a child is not married to the natural father of the child at the time*
73 *of birth or was not married to the natural father at any time during the 10 months next preceding such*
74 *birth, a statement that paternity has been established through scientifically reliable genetic tests,*
75 *including blood tests, which affirm at least a 98 percent probability of paternity. This provision shall not*
76 *apply where the alleged father has adopted the child, knew that the child was conceived through*
77 *artificial insemination, is deceased or the court determines that such testing is impractical or*
78 *inappropriate for the circumstances of a particular case.*

79 The provisions of this section shall not apply to divorce decrees where there are no minor children
80 whom the parties have a mutual duty to support.

81 § 63.2-1916. Notice of administrative support order; contents; hearing; modification.

82 The Commissioner may proceed against a noncustodial parent whose support debt has accrued or is
83 accruing based upon subrogation to, assignment of, or authorization to enforce a support obligation.
84 Such obligation may be created by a court order for support of a child or child and spouse or decree of
85 divorce ordering support of a child or child and spouse. In the absence of such a court order or decree
86 of divorce, the Commissioner may, pursuant to this chapter, proceed against a person whose support
87 debt has accrued or is accruing based upon payment of public assistance or who has a responsibility for
88 the support of any dependent child or children and their custodial parent. The administrative support
89 order shall also provide that support shall continue to be paid for any child over the age of eighteen
90 who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the
91 parent seeking or receiving child support, until such child reaches the age of nineteen or graduates from
92 high school, whichever comes first. The Commissioner shall initiate proceedings by issuing notice
93 containing the administrative support order which shall become effective unless timely contested. The
94 notice shall be served upon the debtor (a) in accordance with the provisions of §§ 8.01-296, 8.01-327 or
95 § 8.01-329 or (b) by certified mail, return receipt requested, or the debtor may accept service by signing
96 a formal waiver. A copy of the notice shall be sent to the obligee by first-class mail. The notice shall
97 include the following:

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

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

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

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

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

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

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

119 8. A statement that the obligor shall keep the Department informed regarding access to health
120 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;

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

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

14. In cases where the mother of a child is not married to the natural father of the child at the time of birth or was not married to the natural father at any time during the 10 months next preceding such birth, a statement that paternity has been established through scientifically reliable genetic tests, including blood tests, which affirm at least a 98 percent probability of paternity. This provision shall not apply where the alleged father has adopted the child, knew that the child was conceived through artificial insemination, is deceased or the Commissioner determines that such testing is impractical or inappropriate for the circumstances of a particular case.

If no answer is received by the Commissioner within ~~ten~~ 10 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~~ 10 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 (4i) in accordance with the provisions of §§ 8.01-296, 8.01-327 or § 8.01-329, or (2ii) by certified mail, with proof of actual receipt by the addressee, or (3iii) 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.