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HOUSE BILL NO. 1988

Offered January 12, 2005

Prefiled January 10, 2005

A BILL to amend and reenact §§ 16.1-278.18, 20-78.2 and 63.2-1960 of the Code of Virginia, relating to child support arrearages; attorneys' fees; retention by Department of Social Services.

Patron—Griffith

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-278.18, 20-78.2 and 63.2-1960 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. *Such judgment shall include reasonable attorneys' fees in cases where the total arrearage for support and maintenance, excluding interest, is equal to or greater than three months of support and maintenance.* 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.

§ 20-78.2. Attorneys' fees and interest on support arrearage.

The entry of an order or decree of support for a spouse or for support and maintenance of a child under the provisions of this chapter or §§ 20-107.1 through 20-109 shall constitute a final judgment for any sum or sums in arrears. This order shall also include an amount for (i) interest on the arrearage at the judgment interest rate as established by § 6.1-330.54 unless the obligee, in a writing submitted to the court, waives the collection of interest; and (ii) *reasonable attorneys' fees in cases where the total arrearage for support and maintenance, excluding interest, is equal to or greater than three months of support and maintenance.*

§ 63.2-1960. Recovery of certain fees and costs.

The Department shall have the authority to assess and recover from the noncustodial parent in proceedings to enforce child support obligations against the noncustodial parent, reasonable ~~attorney's~~ attorneys' fees. *All such fees recovered in proceedings to collect child support arrearages shall be retained by the Department in a special fund for the support of the Division of Support Enforcement.* The Department shall also have the authority to assess and recover costs in such cases. However, the Department shall not be entitled to recover ~~attorney's~~ attorneys' fees or costs in any case in which the noncustodial parent prevails.

The Department shall have the authority to assess and recover the actual costs of genetic testing

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59 against the noncustodial parent if paternity is established. Where an original test is contested and
60 additional testing is requested, the Department may require advance payment by the contestant. The
61 genetic testing costs shall be set at the rate charged the Department by the provider of genetic testing
62 services.

63 The Department shall have the authority to assess and recover the actual costs of intercept programs
64 from the noncustodial parent. The intercept programs' costs shall be set at the rate actually charged the
65 Department.

66 The Department shall have the authority to assess and recover the actual costs of fees for service of
67 process, and seizure and sale pursuant to a levy on a judgment in enforcement actions from the
68 noncustodial parent.

69 The fees and costs that may be recovered pursuant to this section may be collected using any
70 mechanism provided by this chapter.