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HOUSE BILL NO. 1564

Offered January 20, 2006

A BILL to amend and reenact §§ 20-60.3, 20-79.1, 20-79.3, and 63.2-1929 of the Code of Virginia, and to repeal § 20-79.2 of the Code of Virginia, relating to immediate income deduction.

Patron—Jones, D.C.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 20-60.3, 20-79.1, 20-79.3, and 63.2-1929 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 unreimbursed medical expenses are to be paid by or reimbursed to a party pursuant to subsections D and G of § 20-108.2, and if such expenses are ordered, then the provisions governing 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.

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

74 § 20-79.1. Enforcement of support orders; income deduction; penalty for wrongful discharge.

75 A. As part of any order directing a person to pay child support, except for ~~initial orders entered~~
76 ~~pursuant to § 20-79.2~~ or spousal support pursuant to this chapter or §§ 16.1-278.15 through 16.1-278.18,
77 20-103, 20-107.2 or § 20-109.1, or by separate order at any time thereafter, a court of competent
78 jurisdiction may order a person's employer to deduct from the amounts due or payable to such person,
79 the entitlement to which is based upon income as defined in § 63.2-1900, the amount of current support
80 due and an amount to be applied to arrearages, if any. The terms "employer" and "income" shall have
81 the meanings prescribed in § 63.2-1900. The court shall order such income deductions (i) if so provided
82 in a stipulation or contract signed by the party ordered to pay such support and filed with the pleadings
83 or depositions, (ii) upon receipt of a notice of arrearages in a case in which an order has been entered
84 pursuant to § 20-60.3, or (iii) upon a finding that the respondent is in arrears for an amount equal to one
85 month's support obligation. The court may, in its discretion, order such payroll deduction (i) based upon
86 the obligor's past financial responsibility, history of prior payments pursuant to any such support order,
87 and any other matter which the court considers relevant in determining the likelihood of payment in
88 accordance with the support order, or (ii) at the request of the obligor.

89 B. Any income deduction order shall be entered upon motion and concurrent proper notice sent by
90 the clerk or counsel. The notice shall cite this section. If the notice is sent by the clerk, it shall be
91 served in accordance with the provisions of § 8.01-296 or § 8.01-329, or sent by certified mail or by
92 electronic means, including facsimile transmission, to the employer. An employer paying wages subject
93 to deduction shall deliver the notice to the person ordered to pay such support.

94 The notice shall advise the obligor (i) of the amount proposed to be withheld, (ii) that the order of
95 the court will apply to current and future income, (iii) of the right to contest the order, (iv) that the
96 obligor must file a written notice of contest of such deduction with the court within ten days of the date
97 of issuance of the notice, (v) that if the notice is contested, a hearing will be held and a decision
98 rendered within ten days from the receipt of the notice of contest by the court, unless good cause is
99 shown for additional time, which shall in no event exceed forty-five days from receipt of the notice by
100 the obligor, (vi) that only disputes as to mistakes of fact as defined in § 63.2-1900 will be heard, (vii)
101 that any order for income deduction entered will state when the deductions will start and the information
102 that will be provided to the person's employer, and (viii) that payment of overdue support upon receipt
103 of the notice shall not be a bar to the implementation of withholding.

104 Whenever the obligor and the obligee agree to income deductions in a contract or stipulation, the
105 obligor shall be deemed to have waived notice as required in this subsection and the deduction shall be
106 ordered only upon the stipulation or contract being approved by the court.

107 C. The income deduction order of the court shall by its terms direct the clerk to issue an order in
108 accordance with § 20-79.3 to any employer and, if required, to each future employer, as necessary to
109 implement the order. The order shall cite this section as authority for the entry of the order.

110 D. The rights and responsibilities of employers with respect to income deduction orders are set out in
111 § 20-79.3.

112 E. The order to the employer pursuant to this section shall be effective when a certified copy thereof
113 has been served upon or sent to the employer by electronic means, including facsimile transmission. A
114 copy shall be provided to the employee by the employer. If the employer is a corporation, such service
115 shall be accomplished as is provided in § 8.01-513.

116 F. Any order issued pursuant to this section shall be promptly terminated or modified, as appropriate,
117 after notice and an opportunity for a hearing for the parties when (i) the whereabouts of the children
118 entitled to support and their custodian become unknown, or (ii) the support obligation to an obligee
119 ceases. Any such order shall be promptly modified, as appropriate, when arrearages have been paid in
120 full.

G. The Department of Social Services may charge an obligee an appropriate fee when complying with an order entered under this section sufficient to cover the Department's cost.

H. If a court of competent jurisdiction in any state or territory of the United States or the District of Columbia has ordered a person to pay child support, a court of competent jurisdiction in this Commonwealth, upon motion, notice and opportunity for a hearing as provided in this section, shall enter an income deduction order, conforming with § 20-79.3 as provided in this section. The rights and responsibilities of the employer with respect to the order are set out in § 20-79.3. Similar orders of the courts of this Commonwealth may be enforced in a similar manner in such other state, territory or district.

I. The court or clerk shall attempt to ascertain the obligor's pay period interval prior to service of the clerk's order. If, after the order is served, the employer replies to the court that the pay period interval in the income deduction order differs from the obligor's pay period interval, the clerk shall convert the single monetary amount in the income deduction order to an equivalent single monetary amount for the obligor's pay period interval pursuant to a formula approved by the Committee on District Courts. The equivalent single monetary amount shall be contained in a new order issued by the clerk and served on the employer and which conforms to § 20-79.3.

J. If the Department of Social Services or the Department's designee receives payments deducted from income of the obligor pursuant to more than one judicial order or a combination of judicial and administrative orders, the Department or the Department's designee shall first allocate such payments among the obligees under such orders with priority given to payment of the order for current support. Where payments are received pursuant to two or more orders for current support, the Department or the Department's designee shall prorate the payments received on the basis of the amounts due under each such order. Upon satisfaction of any amounts due for current support the Department or the Department's designee shall prorate the remainder of the payments received on the basis of amounts due under any orders for accrued arrearages.

§ 20-79.3. Information required in income deduction order.

A. Orders for withholding from the income of an employee shall state and include the following:

1. The name and correct social security number of the obligor and the name and correct address of the payee;

2. That the employer shall withhold and pay out of the disposable income as defined in § 63.2-1900, a single monetary amount or the maximum amount permitted under § 34-29, whichever is less, for each regular pay period of the obligor and payment may be by check. The terms "employer" and "income" shall have the meanings prescribed in § 63.2-1900;

3. That the income deduction shall begin with the next regular pay period of the obligor following service of the order on the employer, and payment shall be made at regular intervals consistent with the pay periods of the obligor;

4. A statement of the maximum percentage under § 34-29 which may be withheld from the obligor's disposable income;

5. That, to the extent required by the provisions for health care coverage contained in the order, the employer shall (i) enroll the employee, the employee's spouse or former spouse and the employee's dependent children listed in the order as covered persons in a group health insurance plan or other similar plan providing health care services or coverage offered by the employer, without regard to enrollment season restrictions, if the subject spouse, former spouse or children are eligible for such coverage under the employer's enrollment provisions, and (ii) deduct any required premiums from the employee's income to pay for the insurance. If more than one plan is offered by the employer, the spouse, former spouse or children shall be enrolled prospectively in the insurance plan in which the employee is enrolled or, if the employee is not enrolled, in the least costly plan otherwise available. The employer shall also enroll the children of an employee in the appropriate health coverage plan upon application by the children's other parent or legal guardian or upon application by the Department of Medical Assistance Services. In each case which is being enforced by the Department of Social Services, the employer shall respond to such orders by advising the Department in which plan the children are enrolled or if the children are ineligible for any plan through the employer. The order to the employer shall specify either support withholdings or insurance premium deductions as having priority for the duration of the order in the event the maximum total deduction permitted at any time by § 34-29 is insufficient to fully cover both; the employer shall consider and direct insurance premium deductions and support withholdings the same for purposes of § 34-29. The employer shall not be held liable for any medical expenses incurred on behalf of the spouse, former spouse or dependent children because of the employer's failure to enroll the spouse, former spouse or dependent children in a health care plan after being directed to do so by a court or the Department. The employer shall not be obligated to subsequently make or change such enrollment if the group health insurance plan or other factors change after the spouse's, former spouse's or child's eligibility or ineligibility for coverage is initially determined

182 in response to the order for withholding. However, the employer shall not disenroll such children unless
183 the employer (i) is provided satisfactory written evidence that such court or administrative order is no
184 longer in effect, (ii) is provided satisfactory written evidence that the children are or will be enrolled in
185 a comparable health coverage plan which will take effect not later than the effective date of such
186 disenrollment, or (iii) has eliminated family health coverage for all of its employees. A one-time fee of
187 no more than five dollars may be charged by the employer to the employee for the administration of
188 this requirement;

189 6. That a fee of five dollars for each reply or remittance on account of the obligor may be charged
190 by the employer and withheld from the obligor's income in addition to the support amount to be
191 withheld; however, child support withholding amounts collected from unemployment insurance benefits
192 shall not be subject to this fee;

193 7. That the order is binding upon the employer and obligor and withholding is to continue until
194 further notice by order of the court or the Department is served, or the obligor is no longer employed,
195 whichever occurs first;

196 8. That the order shall have priority over any other types of liens created by state law against such
197 income, except that if there is more than one court or administrative order for withholding for support
198 against an obligor, the employer shall honor the terms of the earliest received order, and subsequent
199 orders shall be honored in the order of receipt to the extent that the amounts withheld, when combined,
200 do not exceed the maximum limits imposed under § 34-29 as specified in the order being honored;

201 9. That the obligor's rights are protected pursuant to § 63.2-1944 and that no employer shall
202 discharge any employee, take disciplinary action against an employee, or refuse to employ a person by
203 reason of the fact that his income has been made subject to a deduction pursuant to Chapter 19
204 (§ 63.2-1900 et seq.) of Title 63.2 or § 20-79.1 ~~or § 20-79.2~~ and an employer who discharges or takes
205 disciplinary action against an employee, or refuses to employ any person because of an order for
206 withholding under these sections shall be liable for a civil fine of not more than \$1,000;

207 10. The address to which the withholding is to be sent at the Department of Social Services and the
208 case number, if available;

209 11. That the employer shall be liable for payments which he fails to withhold or mail as specified in
210 the order;

211 12. That employers shall remit payments on each regular pay date of the obligor or, if electronic
212 funds transfer is used, within four days of the pay date, directly to the Division of Child Support
213 Enforcement for disbursement;

214 13. That the employer shall be deemed to have complied with the order by (i) mailing on each
215 regular pay date of the obligor to the Department, by first-class mail, any amount required to be
216 deducted or (ii) by submitting such amounts by electronic funds transfer transmitted within four days of
217 the obligor's regular pay date;

218 14. That the employer and obligor shall notify the Department promptly when the obligor terminates
219 employment and shall provide the last known address of the obligor and name and address of the new
220 employer, if known;

221 15. That amounts withheld from multiple employees identified as such by (i) amount, (ii) name, (iii)
222 social security number, (iv) case number if provided in the order, and (v) date payment was withheld
223 from obligor's income, may be combined into a single payment when payable to the same payee;

224 16. No order or directive shall require employers of 10,000 or more employees to make payments
225 other than by combined single payment to the Department's central office in Richmond, without the
226 employer's express written consent, unless the order is from a support enforcement agency outside the
227 Commonwealth;

228 17. Payment pursuant to an order issued under this section shall serve as full acquittance of the
229 employer under any contract of employment;

230 18. Notice that any employer who fails to timely withhold payments pursuant to this section shall be
231 liable for any amount not timely withheld;

232 19. That the employer shall provide to the employee a copy of the withholding order and the notice
233 to the employee sent by the court.

234 B. If the employer receives an order that (i) does not contain the obligor's correct social security
235 number, (ii) does not specify a single monetary amount to be withheld per regular pay period interval of
236 the obligor, (iii) does not state the maximum percentage which may be withheld pursuant to § 34-29,
237 (iv) contains information which is in conflict with the employer's current payroll records, or (v) orders
238 payment to an entity other than to the Department of Social Services or the Department's designee, the
239 employer may deposit in the mail or otherwise file a reply to that effect within five business days from
240 service of such order. The order shall be void from transmission or filing of such reply unless the court
241 or the Department, as applicable, finds that the reply is materially false. In addition, an employer of
242 10,000 or more persons may also file a reply, with like effect, if payment is ordered other than by
243 combined single payment in the case of withholdings from multiple employees to the Department's

central office in Richmond, without the employer's express written consent, unless the order is from a support enforcement agency outside the Commonwealth.

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

A. After notice containing an administrative support order has been served or service has been waived or accepted, an opportunity for a hearing has been exhausted and a copy of the order furnished as provided for in § 63.2-1916, or whenever a court order for child or child and spousal support has been entered, the Commissioner is authorized to issue to any person, firm, corporation, association, political subdivision or department of the Commonwealth, orders to withhold and to deliver property of 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 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 10 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 10 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 \$5 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

305 to the Commissioner pursuant to this chapter.

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

309 **2. That § 20-79.2 of the Code of Virginia is repealed.**