

VIRGINIA ACTS OF ASSEMBLY -- 2009 SESSION

CHAPTER 125

An Act to amend and reenact §§ 63.2-1903 and 63.2-1931 of the Code of Virginia, relating to child support enforcement orders.

[S 1015]

Approved February 25, 2009

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.2-1903 and 63.2-1931 of the Code of Virginia are amended and reenacted as follows:

§ 63.2-1903. Authority to issue certain orders; civil penalty.

A. In the absence of a court order, the Department shall have the authority to issue orders directing the payment of child, and child and spousal support and, if available at reasonable cost as defined in § 63.2-1900, to require a provision for health care coverage for dependent children of the parents, which shall include the requirements specified for employers pursuant to subdivision A 5 of § 20-79.3. If health care coverage is unavailable at a reasonable cost through employment of either parent, the Department shall refer the dependent children to the Family Access to Medical Insurance Security plan pursuant to § 32.1-351. However, prior to referring the dependent children to the Family Access to Medical Insurance Security plan, the Department shall confirm that neither parent has access to health care coverage for the dependent children through the parents' employment. Liability for child support shall be determined retroactively for the period measured from the date the order directing payment is delivered to the sheriff or process server for service upon the obligor.

In ordering the payment of child support, the Department shall set such support at the amount resulting from computation pursuant to the guideline set out in § 20-108.2, subject to the provisions of § 63.2-1918.

B. When a payee, as defined in § 63.2-1900, no longer has physical custody of a child, the Department shall have the authority to redirect child support payments to a custodial parent who has physical custody of the child when an assignment of rights has been made to the Department or an application for services has been made by such custodial parent with the Division of Child Support Enforcement.

C. The Department shall have the authority, upon notice from the Department of Medical Assistance Services, to use any existing enforcement mechanisms provided by this chapter to collect the wages, salary, or other employment income or to withhold amounts from state tax refunds of any obligor who has not used payments received from a third party to reimburse, as appropriate, either the other parent of such child or the provider of such services, to the extent necessary to reimburse the Department of Medical Assistance Services.

D. The Department may order the obligor and payee to notify each other or the Department upon request of current gross income as defined in § 20-108.2 and any other pertinent information which may affect child support amounts. For good cause shown, the Department may order that such information be provided to the Department and made available to the parties for inspection in lieu of the parties' providing such information directly to each other. The Department shall record the social security number of each party or control number issued to a party by the Department of Motor Vehicles pursuant to § 46.2-342 in the Department's file of the case.

E. The Department shall develop procedures governing the method and timing of periodic review and adjustment of child support orders established or enforced or both pursuant to Title IV-D of the Social Security Act, as amended. At the request of either parent subject to the order or of a state child support enforcement agency, the Department shall initiate a review of such order every three years without requiring proof or showing of a change in circumstances, and shall initiate appropriate action to adjust such order in accordance with the provisions of § 20-108.2 and subject to the provisions of § 63.2-1918.

F. In order to provide essential information for whatever establishment or enforcement actions are necessary for the collection of child support, the Commissioner, the Director of the Division of Child Support Enforcement and district managers of Division of Child Support Enforcement offices shall have the right to (i) subpoena financial records of, or other information relating to, the noncustodial parent and obligee from any person, firm, corporation, association, or political subdivision or department of the Commonwealth and (ii) summons the noncustodial parent and obligee to appear in the Division's offices. The Commissioner, Director and district managers may also subpoena copies of state and federal income tax returns. The district managers shall be trained in the correct use of the subpoena process prior to exercising subpoena authority. A civil penalty not to exceed \$1,000 may be assessed by the Commissioner for a failure to respond to a subpoena issued pursuant to this subsection.

G. In the absence of a court order, the Department may establish an administrative support order on an out-of-state obligor if the obligor and the obligee maintained a matrimonial domicile within the

~~Commonwealth~~ pursuant to subdivision A 8 or A 9 of § 8.01-328.1 or 20-88.35. The Department may also take action to enforce an administrative or court order on an out-of-state obligor. Service of such actions shall be in accordance with the provisions of §§ 8.01-296, 8.01-327 or § 8.01-329, or by certified mail, return receipt requested, in accordance with § 63.2-1917.

H. If a support order has been issued in another state but the obligor, the obligee, and the child now live in the Commonwealth, the Department may (i) enforce the order without registration, using all enforcement remedies available under this chapter and (ii) register the order in the appropriate tribunal of the Commonwealth for enforcement or modification.

§ 63.2-1931. Effect of service on banks, savings institutions, etc.

Service of a lien or orders to withhold and deliver or any other notice or document authorized by this chapter on the main office or headquarters or registered agent of any bank, savings institution or other financial institution or broker-dealer as defined in § 13.1-501 or any other place designated by such financial institution or broker-dealer shall be effective as to any accounts, credits or other personal property (excluding property held in a safe-deposit box) of the noncustodial parent held by that institution or broker-dealer. The bank, savings institution, financial institution or broker-dealer may accept service or treat service as valid even though made at a point other than those specified above.

Within ~~twenty-one~~ 45 days of receipt of an answer from any bank, savings institution or other financial institution or broker-dealer indicating that a support debtor may have an interest in funds in a joint account, the Department shall serve notice of the order to withhold on all joint account holders at the address for each account holder as provided by the bank, savings institution or other financial institution or broker-dealer in the same manner as service upon the support debtor. A copy of the notice shall be served on the financial institution or broker-dealer by certified mail, return receipt requested. Each account holder may appeal the action to a hearing officer as provided in § 63.2-1929. However, the issue to be determined by the hearing officer is limited to whether the support debtor has any interest in the joint account which is being held based on the support debtor's contribution to the account. Upon satisfactory proof that the support debtor has no interest in the joint account, the Department shall release the order to withhold. Upon receipt of the copy of the notice to the joint account holders, the financial institution or broker-dealer shall treat the initial order to withhold as continuing in effect over the entire property being withheld until a release or order to deliver is served by the Department or until the ninety-day period set forth in the following paragraph expires. If the financial institution or broker-dealer does not receive a copy of the notice to the joint account holders within ~~twenty-one~~ 45 days from delivery of its answer, it may treat the order to withhold as released.

Upon the determination that the support debtor has some interest in the joint account, the Department shall initiate a petition in the general district court or in the circuit court, if the joint account and the amount claimed against the support debtor each exceed \$10,000, for the jurisdiction in which the support debtor or any joint account owner resides in order that the court may make a determination of the extent of the interest of the support debtor in the joint account, based on the amount the support debtor contributed to the account. If the support debtor and all account owners are nonresidents, venue shall be where the support obligee resides or where the property is located. In cases where the joint account is owned by persons married to each other, the funds in the account shall belong to them equally unless there is clear and convincing evidence otherwise. The Department shall serve a copy of the petition on the financial institution or broker-dealer by certified mail, return receipt requested. If the financial institution or broker-dealer does not receive a copy of the petition within ninety days of receipt of the notice to the joint account holders, it may treat the order to withhold as released.

Notwithstanding service or receipt of such order of support, the financial institution may pay any check deposited with it or another financial institution on or before the date of service or receipt of the order of support on it.