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SENATE BILL NO. 1059

Offered January 14, 2009

Prefiled January 13, 2009

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

Patron—Quayle

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 name, date of birth, and last four digits of the social security number of each child to whom a duty of support is then owed by the person responsible for support parent;

4. If known, the name, date of birth, and last four digits of the 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 parent'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. Notice that, pursuant to § 20-124.2, support will continue to be paid for any child over the age of 18 who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the party seeking or receiving child support until such child reaches the age of 19 or graduates from high school, whichever occurs first, and that the court may also order the continuation of support for any child over the age of 18 who is (a) severely and permanently mentally or physically disabled, (b) unable to live independently and support himself, and (c) residing in the home of the parent seeking or receiving child support.

6. 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, or recreational activity issued by the Commonwealth to a person responsible for support parent 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;

6-7. The monthly amount of support and the effective date of the order. In proceedings on initial petitions, the effective date shall be the date of filing of the petition; in modification proceedings, the effective date may be the date of notice to the responding party. The first monthly payment shall be due on the first day of the month following the hearing date and on the first day of each month thereafter. In addition, an amount shall be assessed for any full and partial months between the effective date of the order and the date that the first monthly payment is due. The assessment for the initial partial month shall be prorated from the effective date through the end of that month, based on the current monthly obligation;

7-8. 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

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59 § 63.2-1900, or a written statement that health care coverage is not available at a reasonable cost as
60 defined in such section, and a statement as to whether there is an order for health care coverage for a
61 spouse or former spouse; and

62 b. A statement as to whether any unreimbursed medical expenses are to be paid by or reimbursed to
63 a party pursuant to subsections D and G of § 20-108.2, and if such expenses are ordered, then the
64 provisions governing how such payment is to be made;

65 8-9. If support arrearages exist, (i) to whom an arrearage is owed and the amount of the arrearage,
66 (ii) the period of time for which such arrearage is calculated, and (iii) a direction that all payments are
67 to be credited to current support obligations first, with any payment in excess of the current obligation
68 applied to arrearages;

69 9-10. If child support payments are ordered to be paid through the Department of Social Services or
70 directly to the obligee, and unless the court for good cause shown orders otherwise, the parties shall
71 give each other and the court and, when payments are to be made through the Department, the
72 Department of Social Services at least 30 days' written notice, in advance, of any change of address and
73 any change of telephone number within 30 days after the change;

74 10-11. If child support payments are ordered to be paid through the Department of Social Services, a
75 provision requiring an obligor to keep the Department of Social Services informed of the name, address
76 and telephone number of his current employer, or if payments are ordered to be paid directly to the
77 obligee, a provision requiring an obligor to keep the court informed of the name, address and telephone
78 number of his current employer;

79 12. If child support payments are ordered to be paid through the Department of Social Services, a
80 provision requiring the party obligated to provide health care coverage to keep the Department of
81 Social Services informed of any changes in the availability of the health care coverage for the minor
82 child or children, or if payments are ordered to be paid directly to the obligee, a provision requiring
83 the party obligated to provide health care coverage to keep the other party informed of any changes in
84 the availability of the health care coverage for the minor child or children;

85 11-13. The separate amounts due to each person under the order, unless the court specifically orders
86 a unitary award of child and spousal support due or the order affirms a separation agreement containing
87 provision for such unitary award;

88 12-14. Notice that in determination of a support obligation, the support obligation as it becomes due
89 and unpaid creates a judgment by operation of law. *The order shall also provide, pursuant to § 20-78.2,*
90 *for interest on the arrearage at the judgment rate as established by § 6.1-330.54 unless the obligee, in a*
91 *writing submitted to the court, waives the collection of interest;*

92 13-15. Notice that on and after July 1, 1994, the Department of Social Services may, pursuant to
93 Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2 and in accordance with §§ 20-108.2 and 63.2-1921,
94 initiate a review of the amount of support ordered by any court; ~~and~~

95 14-16. A statement that if any arrearages for child support, including interest or fees, exist at the time
96 the youngest child included in the order emancipates, payments shall continue in the total amount due
97 (current support plus amount applied toward arrearages) at the time of emancipation until all arrearages
98 are paid; *and*

99 17. *Notice that, in cases enforced by the Department of Social Services, the Department of Motor*
100 *Vehicles may suspend or refuse to renew the driver's license of any person upon receipt of notice from*
101 *the Department of Social Services that the person (i) is delinquent in the payment of child support by 90*
102 *days or in an amount of \$5,000 or more or (ii) has failed to comply with a subpoena, summons, or*
103 *warrant relating to paternity or child support proceedings.*

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

106 § 63.2-1916. Notice of administrative support order; contents; hearing; modification.

107 The Commissioner may proceed against a noncustodial parent whose support debt has accrued or is
108 accruing based upon subrogation to, assignment of, or authorization to enforce a support obligation.
109 Such obligation may be created by a court order for support of a child or child and spouse or decree of
110 divorce ordering support of a child or child and spouse. In the absence of such a court order or decree
111 of divorce, the Commissioner may, pursuant to this chapter, proceed against a person whose support
112 debt has accrued or is accruing based upon payment of public assistance or who has a responsibility for
113 the support of any dependent child or children and their custodial parent. The administrative support
114 order shall also provide that support shall continue to be paid for any child over the age of 18 who is
115 (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the parent
116 seeking or receiving child support, until such child reaches the age of 19 or graduates from high school,
117 whichever comes first. The Commissioner shall initiate proceedings by issuing notice containing the
118 administrative support order which shall become effective unless timely contested. The notice shall be
119 served upon the debtor (a) in accordance with the provisions of §§ 8.01-296, 8.01-327 or § 8.01-329 or
120 (b) by certified mail, return receipt requested, or the debtor may accept service by signing a formal

waiver. A copy of the notice shall be sent to the obligee by first-class mail. The notice shall include the following:

1. A statement of the support debt or obligation accrued or accruing and the basis and authority under which the assessment of the debt or obligation was made. The initial administrative support order shall be effective on the date of service and the first monthly payment shall be due on the first of the month following the date of service and the first of each month thereafter. A modified administrative support order shall be effective the date that notice of the review is served on the nonrequesting party, and the first monthly payment shall be due on the first day of the month following the date of such service and on the first day of each month thereafter. In addition, an amount shall be assessed for the partial month between the effective date of the order and the date that the first monthly payment is due. The assessment for the initial partial month shall be prorated from the effective date through the end of that month, based on the current monthly obligation. *All payments are to be credited to current support obligations first, with any payment in excess of the current obligation applied to arrearages, if any;*

2. A statement of the name, date of birth, and last four digits of the social security number of the child or children and custodial parent for whom support is being sought;

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

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

5. A statement of each party's name, residential and, if different, mailing address, telephone number, driver's license number, and the name, address and telephone number of his employer; however, when a protective order has been issued or the Department 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 notice. *If known, the full name, date of birth, and last four digits of the social security number of each parent of the child; however, when a protective order has been issued or the Department otherwise finds reason to believe that a party is at risk of physical or emotional harm from the other party, only the name of the party at risk shall be included in the order;*

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

7. A statement that ~~the property of the debtor may be subject to mandatory withholding of income, the interception of state or federal tax refunds, interception of payments due to the debtor from the Commonwealth, notification of arrearage information to consumer reporting agencies, passport denial or suspension, or incarceration and that the debtor's property will be subject to lien and foreclosure, distraint, seizure and sale or, an order to withhold and deliver, or withholding of earnings income;~~

8. A statement that the parents shall keep the Department informed regarding access to health insurance coverage and health insurance policy information and a statement that health care coverage shall be required for the parents' 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 30 days;

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

14. A statement that if any arrearages for child support, including interest or fees, exist at the time the youngest child included in the order emancipates, payments shall continue in the total amount due (current support plus amount applied toward arrearages) at the time of emancipation until all arrearages are paid;

15. A statement that a petition may be filed for suspension of any license, certificate, registration, or other authorization to engage in a profession, trade, business, occupation, or recreational activity issued by the Commonwealth to a parent as provided in § 63.2-1937 upon a delinquency for a period of 90 days or more or in amount of \$5,000 or more. The order shall indicate whether either or both parents

182 *currently hold such an authorization and, if so, the type of authorization held;*

183 *16. A statement that the Department of Motor Vehicles may suspend or refuse to renew the driver's*
184 *license of any person upon receipt of notice from the Department of Social Services that the person (i)*
185 *is delinquent in the payment of child support by 90 days or in an amount of \$5,000 or more or (ii) has*
186 *failed to comply with a subpoena, summons, or warrant relating to paternity or child support*
187 *proceedings; and*

188 *17. A statement that on and after July 1, 1994, the Department of Social Services, as provided in*
189 *§ 63.2-1921 and in accordance with § 20-108.2, may initiate a review of the amount of support ordered*
190 *by any court.*

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

196 *Any changes in the amount of the administrative order must be made pursuant to this section. In no*
197 *event shall an administrative hearing alter or amend the amount or terms of any court order for support*
198 *or decree of divorce ordering support. No support order may be retroactively modified, but may be*
199 *modified with respect to any period during which there is a pending petition for modification in any*
200 *court, but only from the date that notice of the review has been served on the nonrequesting party.*
201 *Notice of the review shall be served for each review (1) in accordance with the provisions of*
202 *§ 8.01-296, 8.01-327 or 8.01-329, or (2) by certified mail, with proof of actual receipt by the addressee,*
203 *or (3) by the nonrequesting party executing a waiver. The existence of an administrative order shall not*
204 *preclude either an obligor or obligee from commencing appropriate proceedings in a juvenile and*
205 *domestic relations district court or a circuit court.*