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SENATE BILL NO. 615

Offered January 10, 2018

Prefiled January 10, 2018

A BILL to amend and reenact § 20-79.1 of the Code of Virginia, relating to spousal support payments; employer withholding.

Patron—Surovell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 20-79.1 of the Code of Virginia is amended and reenacted as follows:

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

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

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

The notice shall advise the obligor (i) of the amount proposed to be withheld, (ii) that the order of the court will apply to current and future income, (iii) of the right to contest the order, (iv) that the obligor must file a written notice of contest of such deduction with the court within ~~ten~~ *10* days of the date of issuance of the notice, (v) that if the notice is contested, a hearing will be held and a decision rendered within ~~ten~~ *10* days from the receipt of the notice of contest by the court, unless good cause is shown for additional time, which shall in no event exceed forty-five days from receipt of the notice by the obligor, (vi) that only disputes as to mistakes of fact as defined in § 63.2-1900 will be heard, (vii) that any order for income deduction entered will state when the deductions will start and the information that will be provided to the person's employer, and (viii) that payment of overdue support upon receipt of the notice shall not be a bar to the implementation of withholding.

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

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

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

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

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

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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.