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SENATE BILL NO. 75

Offered January 10, 2018

Prefiled December 4, 2017

A BILL to amend and reenact §§ 16.1-278.18, 20-60.3, 20-78.2, and 63.2-1951 of the Code of Virginia, relating to interest on child support arrearages.

Patrons—Favola and Locke; Delegate: Kory

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-278.18, 20-60.3, 20-78.2, and 63.2-1951 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. *No judgment for support and maintenance of a child entered on or after July 1, 2018, shall include an amount for interest on the arrearage.* 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.

§ 20-60.3. 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 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 parent;

59 4. If known, the name, date of birth, and last four digits of the social security number of each parent
60 of the child and, unless otherwise ordered, each parent's residential and, if different, mailing address,
61 residential and employer telephone number, driver's license number, and the name and address of his or
62 her employer; however, when a protective order has been issued or the court otherwise finds reason to
63 believe that a party is at risk of physical or emotional harm from the other party, information other than
64 the name of the party at risk shall not be included in the order;

65 5. Notice that, pursuant to § 20-124.2, support will continue to be paid for any child over the age of
66 18 who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the
67 party seeking or receiving child support until such child reaches the age of 19 or graduates from high
68 school, whichever occurs first, and that the court may also order that support be paid or continue to be
69 paid for any child over the age of 18 who is (a) severely and permanently mentally or physically
70 disabled, and such disability existed prior to the child reaching the age of 18 or the age of 19 if the
71 child met the requirements of clauses (i), (ii), and (iii); (b) unable to live independently and support
72 himself; and (c) residing in the home of the parent seeking or receiving child support;

73 6. On and after July 1, 1994, notice that a petition may be filed for suspension of any license,
74 certificate, registration or other authorization to engage in a profession, trade, business, occupation, or
75 recreational activity issued by the Commonwealth to a parent as provided in § 63.2-1937 upon a
76 delinquency for a period of 90 days or more or in an amount of \$5,000 or more. The order shall
77 indicate whether either or both parents currently hold such an authorization and, if so, the type of
78 authorization held;

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

87 8. a. An order for health care coverage, including the health insurance policy information, for
88 dependent children pursuant to §§ 20-108.1 and 20-108.2 if available at reasonable cost as defined in
89 § 63.2-1900, or a written statement that health care coverage is not available at a reasonable cost as
90 defined in such section, and a statement as to whether there is an order for health care coverage for a
91 spouse or former spouse; and

92 b. A statement as to whether cash medical support, as defined in § 63.2-1900, is to be paid by or
93 reimbursed to a party pursuant to subsections D and G of § 20-108.2, and if such expenses are ordered,
94 then the provisions governing how such payment is to be made;

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

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

104 11. If child support payments are ordered to be paid through the Department of Social Services, a
105 provision requiring an obligor to keep the Department of Social Services informed of the name, address
106 and telephone number of his current employer, or if payments are ordered to be paid directly to the
107 obligee, a provision requiring an obligor to keep the court informed of the name, address and telephone
108 number of his current employer;

109 12. If child support payments are ordered to be paid through the Department of Social Services, a
110 provision requiring the party obligated to provide health care coverage to keep the Department of Social
111 Services informed of any changes in the availability of the health care coverage for the minor child or
112 children, or if payments are ordered to be paid directly to the obligee, a provision requiring the party
113 obligated to provide health care coverage to keep the other party informed of any changes in the
114 availability of the health care coverage for the minor child or children;

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

118 14. Notice that in determination of a support obligation, the support obligation as it becomes due and
119 unpaid creates a judgment by operation of law. The order shall also provide, pursuant to § 20-78.2, for
120 interest on the arrearage at the judgment rate as established by § 6.2-302 unless the obligee, in a writing

submitted to the court, waives the collection of interest; *however, no order entered on or after July 1, 2018, shall provide for interest on the arrearage;*

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

16. 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; and

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

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

§ 20-78.2. Attorney 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 interest on the arrearage at the judgment interest rate as established by § 6.2-302 unless the obligee, in a writing submitted to the court, waives the collection of interest; and may include reasonable ~~attorneys'~~ attorney fees if the total arrearage for support and maintenance, excluding interest, is equal to or greater than three months of support and maintenance. *No order or decree for support and maintenance of a child entered on or after July 1, 2018, shall include an amount for interest on the arrearage.*

§ 63.2-1951. Interest on support payments collected.

The Department shall pay interest to the payee as provided in this section on certain spousal or child support payments it collects which have been ordered by a court or established by administrative order to be paid to or through the Department to the payee and for which the Department has an assignment of rights or has been given an authorization to seek or enforce a support obligation as those terms are defined in §§ 63.2-100 and 63.2-1900. Such interest shall accrue, at the legal rate as established by § 6.2-301, on all support payments collected by the Department and paid to the payee more than thirty days following the end of the month in which the payment was received by the Department in nonpublic assistance cases. Interest shall be charged to the Department on such payments if the Department has an established case and if the obligor or payor provides identifying information including the Department case number or the noncustodial parent's name and correct social security number. *No interest shall accrue on child support payments required to be paid by a court order or decree entered on or after July 1, 2018.*