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## SENATE BILL NO. 938

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice  
on January 29, 2018)

(Patron Prior to Substitute—Senator Surovell)

A *BILL to amend and reenact §§ 16.1-278.16, 20-79.1, 20-79.2, 20-79.3, 63.2-1900, 63.2-1903, 63.2-1929, 63.2-1944, and 63.2-1946 of the Code of Virginia, relating to withholding of income for child support; independent contractors.*

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 16.1-278.16, 20-79.1, 20-79.2, 20-79.3, 63.2-1900, 63.2-1903, 63.2-1929, 63.2-1944, and 63.2-1946 of the Code of Virginia are amended and reenacted as follows:**

**§ 16.1-278.16. Failure to comply with support obligation; payroll deduction; commitment.**

In cases involving (i) the custody, visitation or support of a child arising under subdivision A 3 of § 16.1-241, (ii) spousal support arising under subsection L of § 16.1-241, (iii) support, maintenance, care, and custody of a child or support and maintenance of a spouse transferred to the juvenile and domestic relations district court pursuant to § 20-79, or (iv) motions to enforce administrative support orders entered pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2, when the court finds that the respondent (i) has failed to perform or comply with a court order concerning the custody and visitation of a child or a court or administrative order concerning the support and maintenance of a child or a court order concerning the support and maintenance of a spouse or (ii) under existing circumstances, is under a duty to render support or additional support to a child or pay the support and maintenance of a spouse, the court may order a payroll deduction as provided in § 20-79.1, or the giving of a recognizance as provided in § 20-114. If the court finds that the respondent has failed to perform or comply with such order, and personal or substitute service has been obtained, the court may issue a civil show cause summons or a capias pursuant to this section. The court also may order the commitment of the person as provided in § 20-115 or the court may, in its discretion, impose a sentence of up to 12 months in jail, notwithstanding the provisions of §§ 16.1-69.24 and 18.2-458, relating to punishment for contempt. If the court finds that an employer, who is under a payroll deduction order pursuant to § 20-79.1, has failed to comply with such order after being given a reasonable opportunity to show cause why he failed to comply with such order, then the court may proceed to impose sanctions on the employer pursuant to subdivision A B 9 of § 20-79.3.

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

*A. For the purposes of this section:*

*"Employee" includes an independent contractor as defined in § 63.2-1900.*

*"Employer" shall have the meaning prescribed in § 63.2-1900.*

*"Income" shall have the meaning prescribed in § 63.2-1900.*

*B. 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) 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) at the request of the obligor.*

*B. C. 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 or other income 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~~ 45 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. D. 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. E. The rights and responsibilities of employers with respect to income deduction orders are set out in § 20-79.3.

E. F. 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. G. 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.

G. H. 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. I. 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. J. 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. K. 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.

#### **§ 20-79.2. Immediate income deduction; income withholding.**

A. For the purposes of this section:

"Employer" shall have the meaning prescribed in § 63.2-1900.

"Income" shall have the meaning prescribed in § 63.2-1900.

B. Every initial order entered on or after July 1, 1995, directing a person to pay child support shall include a provision for immediate withholding from the income of the obligor for the amount of the support order, plus an amount for the liquidation of arrearages, if any, unless the obligor and either the obligee or the Department on behalf of the obligee, agree in writing to an alternative payment arrangement or one of the parties demonstrates and the court finds good cause for not imposing immediate withholding. In determining whether good cause is shown, the court shall consider the obligor's past financial responsibility, history of prior payment under any support order, and any other matter that the court considers relevant to the likelihood of payment in accordance with the support order. An alternative payment arrangement may include but is not limited to, a voluntary income assignment pursuant to § 20-79.1 or § 63.2-1945.

An order which modifies an initial order may include a provision for immediate income withholding. The total amount withheld shall not exceed the maximum amount permitted under § 34-29.

A withholding order issued to an obligor's employer pursuant to this section shall conform to § 20-79.3. The rights and obligations of the employer with respect to the order are set out in § 20-79.3. The order shall direct the employer to forward payments to the Department for recording and disbursement to the obligee, or as otherwise required by law. The Department shall not charge a fee for recording and disbursing payments when it is providing support enforcement services to the obligee pursuant to § 63.2-1904 or § 63.2-1908.

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

A. For the purposes of this section:

"Employee" includes an independent contractor as defined in § 63.2-1900.

"Employer" shall have the meaning prescribed in § 63.2-1900.

"Income" shall have the meaning prescribed in § 63.2-1900.

B. 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~~ *If the employee is an independent contractor, then the order shall state that the person who contracts with an independent contractor shall withhold and pay out of the disposable income a single monetary amount or the maximum amount permitted under § 34-29, whichever is less, for each instance of compensation of the obligor and that payment may be by check;*

3. That the income deduction shall begin with the next regular pay period of the obligor, *or the next instance of compensation if the obligor is an independent contractor*, following service of the order on the employer, and payment shall be made at regular intervals consistent with the pay periods of the obligor, *or upon each instance of compensation if the obligor is an independent contractor*;

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

6. That a fee of five dollars for each reply or remittance on account of the obligor may be charged

183 by the employer and withheld from the obligor's income in addition to the support amount to be  
184 withheld; however, child support withholding amounts collected from unemployment insurance benefits  
185 shall not be subject to this fee;

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

189 8. That the order shall have priority over any other types of liens created by state law against such  
190 income, except that if there is more than one court or administrative order for withholding for support  
191 against an obligor, the employer shall prorate among the orders based upon the current amounts due  
192 pursuant to more than one judicial or administrative order or a combination thereof, with any remaining  
193 amounts prorated among the accrued arrearages, if any, to the extent that the amounts withheld, when  
194 combined, do not exceed the maximum limits imposed under § 34-29 as specified in the order being  
195 honored;

196 9. That the obligor's rights are protected pursuant to § 63.2-1944 and that no employer shall  
197 discharge any employee, take disciplinary action against an employee, or refuse to employ a person by  
198 reason of the fact that his income has been made subject to a deduction pursuant to Chapter 19  
199 (§ 63.2-1900 et seq.) of Title 63.2 or § 20-79.1 or 20-79.2 and an employer who discharges or takes  
200 disciplinary action against an employee, or refuses to employ any person because of an order for  
201 withholding under these sections shall be liable for a civil fine of not more than \$1,000;

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

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

206 12. That employers shall remit payments on each regular pay date of the obligor, *or instance of pay*  
207 *if the obligor is an independent contractor*, or, if electronic funds transfer is used, within four days of  
208 the pay date, directly to the Division of Child Support Enforcement for disbursement. All employers  
209 with at least 100 employees and all payroll processing firms with at least 50 clients shall remit payments  
210 by electronic funds transfer;

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

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

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

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

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

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

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

232 B. C. If the employer receives an order that (i) does not contain the obligor's correct social security  
233 number, (ii) does not specify a single monetary amount to be withheld per regular pay period interval of  
234 the obligor, *or instance of compensation of the obligor if the obligor is an independent contractor*, (iii)  
235 does not state the maximum percentage which may be withheld pursuant to § 34-29, (iv) contains  
236 information which is in conflict with the employer's current payroll records, or (v) orders payment to an  
237 entity other than to the Department of Social Services or the Department's designee, the employer may  
238 deposit in the mail or otherwise file a reply to that effect within five business days from service of such  
239 order. The order shall be void from transmission or filing of such reply unless the court or the  
240 Department, as applicable, finds that the reply is materially false. In addition, an employer of 10,000 or  
241 more persons may also file a reply, with like effect, if payment is ordered other than by combined  
242 single payment in the case of withholdings from multiple employees to the Department's central office  
243 in Richmond, without the employer's express written consent, unless the order is from a support  
244 enforcement agency outside the Commonwealth.

§ 63.2-1900. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Administrative order" or "administrative support order" means a noncourt-ordered legally enforceable support obligation having the force and effect of a support order established by the court.

"Assignment of rights" means the legal procedure whereby an individual assigns support rights to the Commonwealth on behalf of a dependent child or spouse and dependent child.

"Authorization to seek or enforce a support obligation" means a signed authorization to the Commonwealth to seek or enforce support on behalf of a dependent child or a spouse and dependent child or on behalf of a person deemed to have submitted an application by operation of law.

"Cash medical support" means the proportional amount the court or the Department shall order both parents to pay toward reasonable and necessary unreimbursed medical or dental expenses pursuant to subsection D of § 20-108.2.

"Court order" means any judgment or order of any court having jurisdiction to order payment of support or an order of a court of comparable jurisdiction of another state ordering payment of a set or determinable amount of support moneys.

"Custodial parent" means the natural or adoptive parent with whom the child resides; a stepparent or other person who has physical custody of the child and with whom the child resides; or a local board that has legal custody of a child in foster care.

"Debt" means the total unpaid support obligation established by court order, administrative process or by the payment of public assistance and owed by a noncustodial parent to either the Commonwealth or to his dependent(s).

"Department-sponsored health care coverage" means any health care coverage that the Department may make available through a private contractor for children receiving child support services from the Department.

"Dependent child" means any person who meets the eligibility criteria set forth in § 63.2-602, whose support rights have been assigned or whose authorization to seek or enforce a support obligation has been given to the Commonwealth and whose support is required by Titles 16.1 and 20.

"Electronic means" means service of a required notice by the Department through its secure online child support portal to any person who has agreed to accept service through the portal and has created a user account. The portal shall record and maintain the date and time service is accepted by the user.

"Employee" means any individual receiving income.

"Employer" means the source of any income. *"Employer" includes a person who contracts with an independent contractor.*

"Financial institution" means a depository institution, an institution-affiliated party, any federal credit union or state credit union including an institution-affiliated party of such a credit union, and any benefit association, insurance company, safe deposit company, money market mutual fund, or similar entity authorized to do business in this Commonwealth.

"Financial records" includes, but is not limited to, records held by employers showing income, profit sharing contributions and benefits paid or payable and records held by financial institutions, broker-dealers and other institutions and entities showing bank accounts, IRA and separate contributions, gross winnings, dividends, interest, distributive share, stocks, bonds, agricultural subsidies, royalties, prizes and awards held for or due and payable to a responsible person.

"Foreign support order" means any order issued outside of the Commonwealth by a court or tribunal as defined in § 20-88.32.

"Health care coverage" means any plan providing hospital, medical or surgical care coverage for dependent children provided such coverage is available and can be obtained by a parent, parents, or a parent's spouse at a reasonable cost.

"Income" means any periodic form of payment due an individual from any source and shall include, but not be limited to, income from salaries, wages, commissions, royalties, bonuses, dividends, severance pay, payments pursuant to a pension or retirement program, interest, trust income, annuities, capital gains, social security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, veterans' benefits, spousal support, net rental income, gifts, prizes or awards.

*"Independent contractor" means a person compensated for services who is not otherwise an employee for the purposes of the Federal Insurance Contributions Act and the Federal Unemployment Tax Act, based upon an application of the 20 factors set forth in Internal Revenue Service Revenue Ruling 87-41, issued pursuant to 26 C.F.R. 31.3306(i)-1 and 26 C.F.R. 31.3121(d)-1.*

"Mistake of fact" means an error in the identity of the payor or the amount of current support or arrearage.

"Net income" means that income remaining after the following deductions have been taken from gross income: federal income tax, state income tax, federal income compensation act benefits, any union

306 dues where collection thereof is required under federal law, and any other amounts required by law.

307 "Noncustodial parent" means a responsible person who is or may be obligated under Virginia law for  
308 support of a dependent child or child's caretaker.

309 "Obligee" means (i) an individual to whom a duty of support is or is alleged to be owed or in whose  
310 favor a support order has been issued or a judgment determining parentage has been rendered, (ii) a  
311 state or political subdivision to which the rights under a duty of support or support order have been  
312 assigned or that has independent claims based on financial assistance provided to an individual obligee,  
313 or (iii) an individual seeking a judgment determining parentage of the individual's child.

314 "Obligor" means an individual, or the estate of a decedent, who (i) owes or is alleged to owe a duty  
315 of support, (ii) is alleged but has not been adjudicated to be a parent of a child, or (iii) is liable under a  
316 support order.

317 "Payee" means any person to whom spousal or child support is to be paid.

318 "*Person who contracts with an independent contractor*" means any person engaged in a trade or  
319 business who makes a payment of \$600 or more in the course of such trade or business to an  
320 independent contractor and who is required to make a return to the Internal Revenue Service in  
321 accordance with § 6041 A(a) of the Internal Revenue Code.

322 "Reasonable cost" pertaining to health care coverage for dependent children means available, in an  
323 amount not to exceed five percent of the parents' combined gross income, and accessible through  
324 employers, unions or other groups, or Department-sponsored health care coverage, without regard to  
325 service delivery mechanism; unless the court deems otherwise in the best interests of the child or by  
326 agreement of the parties.

327 **§ 63.2-1903. Authority to issue certain orders; civil penalty.**

328 A. In the absence of a court order, the Department shall have the authority to issue orders directing  
329 the payment of child, and child and spousal support and, if available at reasonable cost as defined in  
330 § 63.2-1900, to require a provision for health care coverage, including Department-sponsored health care  
331 coverage, or cash medical support, or both, for dependent children of the parents, which shall include  
332 the requirements specified for employers pursuant to subdivision A B 5 of § 20-79.3. The Department  
333 shall have the authority to make available Department-sponsored health care coverage for children  
334 receiving child support services from the Department. If health care coverage is unavailable at a  
335 reasonable cost, as defined in § 63.2-1900, or inaccessible to either parent, the Department shall refer the  
336 dependent children to the Family Access to Medical Insurance Security plan pursuant to § 32.1-351.  
337 However, prior to referring the dependent children to the Family Access to Medical Insurance Security  
338 plan, the Department shall confirm that neither parent has access to health care coverage at a reasonable  
339 cost for the dependent children. If a child is enrolled in Department-sponsored health care coverage, the  
340 Department shall collect the cost of the coverage pursuant to subsection E of § 20-108.2.

341 In ordering the payment of child support, the Department shall set such support at the amount  
342 resulting from computation pursuant to the guideline set out in § 20-108.2, subject to the provisions of  
343 § 63.2-1918.

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

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

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

362 E. The Department shall develop procedures governing the method and timing of periodic review and  
363 adjustment of child support orders established or enforced or both pursuant to Title IV-D of the Social  
364 Security Act, as amended. If there is an assignment under Title IV-A of the Social Security Act or at  
365 the request of either parent subject to the order, the Department shall initiate a review of such order  
366 every three years without requiring proof or showing of a change in circumstances, and shall initiate  
367 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 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, or electronic means 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.

**§ 63.2-1929. 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, by certified mail, return receipt requested, or by electronic means. 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 10 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, mailed to the debtor at his last known address by certified mail, return receipt requested, or provided by electronic means or service may be waived. A copy of such decision shall also be provided 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 to the Commissioner pursuant to this chapter.

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

**§ 63.2-1944. Employee debtor rights protected; limitation.**

No employer shall discharge an employee *or terminate a contract with an independent contractor solely* for reason that a voluntary assignment of earnings under § 63.2-1945 has been presented in settlement of a support debt or that a support lien or order to withhold and deliver has been served against such employee's *or independent contractor's* earnings.

**§ 63.2-1946. Virginia New Hire Reporting Center; State Directory of New Hires; reporting by employers.**

A. *For the purposes of this section:*

"New independent contractor" means an independent contractor who (i) has not previously had an independent contracting agreement with the person who is required to make a return to the Internal Revenue Service in accordance with § 6041 A(a) of the Internal Revenue Code or (ii) had previously entered into an independent contracting agreement and has received a payment pursuant to the agreement after receiving no payments for at least 60 consecutive days.

"Newly hired employee" means an individual in employment, as defined in § 60.2-212, who (i) has not previously been in the employment of the employer or (ii) was previously in the employment of the employer but has been separated from such prior employment for at least 60 consecutive days.

B. The Virginia New Hire Reporting Center shall be operated under the authority of the Division of Child Support Enforcement. The Center shall operate and maintain the Virginia State Directory of New Hires. The Center is authorized to share information with the Virginia Employment Commission.

~~B.~~ C. Each employing unit shall submit information concerning each newly hired employee, as defined in subsection H, to the Center within 20 days of the employment, as defined in § 60.2-212, of the newly hired employee. The information shall include the items required by § 453A of the Social Security Act, 42 U.S.C. § 653a, as amended.

D. Any person who contracts with an independent contractor shall submit information concerning each new independent contractor to the Center within 20 days of the start of the independent contractor arrangement. The information shall include the items required by § 453A of the Social Security Act, 42 U.S.C. § 653a, as amended.

~~C.~~ E. Employers who transmit such reports magnetically or electronically shall, if necessary, report by two monthly transmissions not less than 12 days nor more than 16 days apart. Employers that have employees who are employed in *or independent contractors who are contracted to provide services in* two or more states and that transmit reports magnetically or electronically may comply by designating one state in which such employer has employees *or independent contractors* to which the employer will transmit the report and transmitting such report to such state. Such employers shall notify the federal Secretary of Health and Human Services in writing as to which state is designated for the purpose of sending reports and shall provide a copy of that notification to the Virginia New Hire Reporting Center.

~~D.~~ F. Employers shall not report an employee *or independent contractor* of a state agency performing intelligence or counterintelligence functions, if the head of such agency has determined that such reporting could endanger the safety of the employee *or independent contractor* or compromise an ongoing investigation or intelligence mission.

~~E.~~ G. Information to be provided shall include only that information that is required by federal law.



This information may be provided by mailing a copy of the employee's W-4 form *or the independent contractor's 1099 form*, transmitting information magnetically or electronically in the prescribed format or by any other means determined by the Virginia New Hire Reporting Center to result in timely reporting. Within three business days after the date information regarding a newly hired employee *or new independent contractor* is entered into the Virginia State Directory of New Hires, the Center shall furnish the information to the National Directory of New Hires established under § 453(i) of the Social Security Act, as amended.

**F. H.** The Division of Child Support Enforcement shall use information received pursuant to this section to locate individuals for purposes of establishing paternity and establishing, modifying, and enforcing child support obligations, and may disclose such information in accordance with existing law to carry out such purposes. The Division shall have access to information reported by employers pursuant to this section.

**G. I.** The Board shall have the authority to adopt regulations as necessary, consistent with the federal law and its implementing regulations, to administer this provision, including any exemptions and waivers which are needed to reduce unnecessary or burdensome reporting.

**H.** As used in this section, "newly hired employee" means an individual in employment, as defined in § ~~60.2-212~~, who (i) has not previously been in the employment of the employer or (ii) was previously in the employment of the employer but has been separated from such prior employment for at least 60 consecutive days.

**2.** That any person required to submit information concerning each new independent contractor, as defined in § 63.2-1946 of the Code of Virginia, as amended by this act, pursuant to the provisions of this act shall submit a report to the Virginia New Hire Reporting Center by September 1, 2018, that includes information for all current independent contractors.