

VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

CHAPTER 673

An Act to amend and reenact § 16.1-296 of the Code of Virginia as it is currently effective; to amend the Code of Virginia by adding in Title 20 a chapter numbered 5.3, consisting of sections numbered 20-88.32 through 20-88.82; and to repeal Chapter 5.2 (§§ 20-88.12 through 20-88.31) of Title 20 of the Code of Virginia, relating to interstate support enforcement.

[H 1328]

Approved April 10, 1994

Be it enacted by the General Assembly of Virginia:

1. That § 16.1-296 of the Code of Virginia as it is currently effective is amended and reenacted and that the Code of Virginia is amended by adding in Title 20 a chapter numbered 5.3, consisting of sections numbered 20-88.32 through 20-88.82, as follows:

§ 16.1-296. (Effective until December 31, 1994) Jurisdiction of appeals; procedure.

A. From any final order or judgment of the juvenile court affecting the rights or interests of any person coming within its jurisdiction, an appeal may be taken within ten days from the entry of a final judgment, order or conviction. However, in a case arising under the ~~Revised Uniform Reciprocal Enforcement of Interstate Family Support Act~~ (§ ~~20-88.12~~ 20-88.32 et seq.), a party may take an appeal pursuant to this section within thirty days from entry of a final order or judgment. An order of protection issued pursuant to § 16.1-279.1 in a case of spouse abuse is a final order from which an appeal may be taken.

B. Upon receipt of notice of such appeal the juvenile court shall forthwith transmit to the attorney for the Commonwealth a report incorporating the results of any investigation conducted pursuant to § 16.1-273, which shall be confidential in nature and made available only to the court and the attorney for the defendant (i) after the guilt or innocence of the accused has been determined or (ii) after the court has made its findings on the issues subject to appeal. After final determination of the case, the report and all copies thereof shall be forthwith returned to such juvenile court.

C. Where an appeal is taken by a child on a finding that he or she is delinquent and on a disposition pursuant to § 16.1-278.8, trial by jury on the issue of guilt or innocence of the alleged delinquent act may be had on motion of the child, the attorney for the Commonwealth or the circuit court judge. If the alleged delinquent act is one which, if committed by an adult, would constitute a felony, the child shall be entitled to a jury of twelve persons. In all other cases, the jury shall consist of seven persons. If the jury in such a trial finds the child guilty, disposition shall be by the judge pursuant to the provisions of § 16.1-278.8 after taking into consideration the report of any investigation made pursuant to § 16.1-237 or § 16.1-273.

D. When an appeal is taken in a case involving termination of parental rights brought under § 16.1-283, the circuit court shall hold a hearing on the merits of the case within ninety days of the perfecting of the appeal.

E. Where an appeal is taken by an adult on a finding of guilty of an offense within the jurisdiction of the juvenile and domestic relations district court, the appeal shall be dealt with in all respects as is an appeal from a general district court pursuant to §§ 16.1-132 through 16.1-137; however, where an appeal is taken by any person on a charge of nonsupport, the procedure shall be as is provided for appeals in prosecutions under Chapter 5 (§ 20-61 et seq.) of Title 20.

F. In all other cases on appeal, proceedings in the circuit court shall conform to the equity practice where evidence is heard ore tenus; however, an issue out of chancery may be allowed, in the discretion of the judge, upon the motion of any party. An appeal from an order of protection issued pursuant to § 16.1-279.1 shall be given precedence on the docket of the court over other civil appeals taken to the circuit court from the district courts, but shall otherwise be docketed and processed as other civil cases.

G. Costs, taxes and fees on appealed cases shall be assessed only in those cases in which a trial fee could have been assessed in the juvenile and domestic relations court and shall be collected in the circuit court.

H. No appeal bond shall be required of a party appealing from an order of a juvenile and domestic relations district court except for that portion of any order or judgment establishing a support arrearage or suspending payment of support during pendency of an appeal. In cases involving support, no appeal shall be allowed unless and until the party applying for the same or someone for him shall give bond, in an amount and with sufficient surety approved by the judge or by his clerk if there is one, to abide by such judgment as may be rendered on appeal if the appeal is perfected or, if not perfected, then to satisfy the judgment of the court in which it was rendered. However, no appeal bond shall be required of the Commonwealth or when an appeal is proper to protect the estate of a decedent, an infant, a convict or an insane person, or the interest of a county, city or town.

If bond is furnished by or on behalf of any party against whom judgment has been rendered for

money, the bond shall be conditioned for the performance and satisfaction of such judgment or order as may be entered against the party on appeal, and for the payment of all damages which may be awarded against him in the appellate court. If the appeal is by a party against whom there is no recovery, the bond shall be conditioned for the payment of any damages as may be awarded against him on the appeal.

This subsection shall not apply to release on bail pursuant to other subsections of this section or § 16.1-298.

I. In all cases on appeal, the circuit court in the disposition of such cases shall have all the powers and authority granted by the chapter to the juvenile and domestic relations district court. Unless otherwise specifically provided by this Code, the circuit court judge shall have the authority to appoint counsel for the parties and compensate such counsel in accordance with the provisions of Article 6 (§ 16.1-266 et seq.) of this chapter.

J. In any case which has been referred or transferred from a circuit court to a juvenile court and an appeal is taken from an order or judgment of the juvenile court, the appeal shall be taken to the circuit court in the same locality as the juvenile court to which the case had been referred or transferred original jurisdiction of the case .

CHAPTER 5.3. UNIFORM INTERSTATE FAMILY SUPPORT ACT.

Article 1.

General Provisions.

§ 20-88.32. Definitions.

In this chapter:

"Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

"Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

"Duty of support" means an obligation imposed or imposed by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

"Home state" means the state in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

"Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this Commonwealth.

"Income-withholding order" means an order or other legal process directed to an obligor's employer or other debtor, to withhold amounts for child or spousal support from the obligor's earnings as defined in § 63.1-250.

"Initiating state" means a state in which a proceeding under this chapter or law substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act is filed for forwarding to a responding state.

"Initiating tribunal" means the authorized tribunal in an initiating state.

"Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage.

"Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining parentage.

"Law" includes decisional and statutory law and rules and regulations having the force of law.

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

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

"Register" means to file a support order or judgment determining parentage in the circuit court.

"Registering tribunal" means a tribunal in which a support order is registered.

"Responding state" means a state to which a proceeding is forwarded under this chapter or a law substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

"Responding tribunal" means the authorized tribunal in a responding state.

"Spousal-support order" means a support order for a spouse or former spouse of the obligor.

"State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto

Rico, or any territory or insular possession subject to the jurisdiction of the United States. The term "state" includes a Native American tribe and includes a foreign jurisdiction that has established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this chapter.

"Support enforcement agency" means a public official or agency authorized to seek enforcement of support orders or laws relating to the duty of support, establishment or modification of child support, determination of parentage, or locating obligors or their assets.

"Support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney's fees, and other relief.

"Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage.

§ 20-88.33. Tribunals of this Commonwealth.

The juvenile and domestic relations district courts, or family courts upon their creation, circuit courts and the Department of Social Services are the tribunals of this Commonwealth.

§ 20-88.34. Remedies cumulative.

Remedies provided by this chapter are cumulative and do not affect the availability of remedies under other law.

Article 2.

Extended Personal Jurisdiction.

§ 20-88.35. Bases for jurisdiction over nonresident.

In a proceeding to establish, enforce, or modify a support order or to determine parentage, a tribunal of this Commonwealth may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if:

- 1. The individual is personally served with process within this Commonwealth;*
- 2. The individual submits to the jurisdiction of this Commonwealth by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;*
- 3. The individual resided with the child in this Commonwealth;*
- 4. The individual resided in this Commonwealth and paid prenatal expenses or provided support for the child;*
- 5. The child resides in this Commonwealth as a result of the acts or directives of the individual;*
- 6. The exercise of personal jurisdiction is authorized under subdivision A 8 of § 8.01-328.1; or*
- 7. There is any other basis consistent with the constitutions of this Commonwealth and the United States for the exercise of personal jurisdiction.*

§ 20-88.36. Procedure when exercising jurisdiction over nonresident.

A tribunal of this Commonwealth exercising personal jurisdiction over a nonresident under § 20-88.35 may apply § 20-88.59 to receive evidence from another state, and § 20-88.61 to obtain discovery through a tribunal of another state. In all other respects, Articles 3 through 7 do not apply, and the tribunal shall apply the procedural and substantive laws of this Commonwealth, including the rules on choice of law other than those established by this chapter.

Article 3.

Jurisdiction in Proceedings Involving Two or More States.

§ 20-88.37. Initiating and responding tribunal of this Commonwealth.

Under this chapter, a tribunal of this Commonwealth may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state.

§ 20-88.38. Simultaneous proceedings in another state.

A. A tribunal of this Commonwealth may exercise jurisdiction to establish a support order if the petition or comparable pleading is filed after a pleading is filed in another state only if:

- 1. The petition or comparable pleading in this Commonwealth is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state;*
- 2. The contesting party timely challenges the exercise of jurisdiction in the other state; and*
- 3. If relevant, this Commonwealth is the home state of the child.*

B. A tribunal of this Commonwealth may not exercise jurisdiction to establish a support order if the petition or comparable pleading is filed before a petition or comparable pleading is filed in another state if:

- 1. The petition or comparable pleading in the other state is filed before the expiration of the time allowed in this Commonwealth for filing a responsive pleading challenging the exercise of jurisdiction by this Commonwealth;*
- 2. The contesting party timely challenges the exercise of jurisdiction in this Commonwealth; and*
- 3. If relevant, the other state is the home state of the child.*

§ 20-88.39. Continuing, exclusive jurisdiction.

A. A tribunal of this Commonwealth issuing a support order consistent with the law of this Commonwealth has continuing, exclusive jurisdiction over a child support order:

1. As long as this Commonwealth remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

2. Until each individual party has filed written consent with a tribunal of this Commonwealth for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

B. A tribunal of this Commonwealth issuing a child support order consistent with the law of this Commonwealth may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state pursuant to a law substantially similar to this chapter.

C. If a child support order of this Commonwealth is modified by a tribunal of another state pursuant to a law substantially similar to this chapter, a tribunal of this Commonwealth loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this Commonwealth, and may only:

1. Enforce the order that was modified as to amounts accruing before the modification;

2. Enforce nonmodifiable aspects of that order; and

3. Provide other appropriate relief for violations of that order which occurred before the effective date of the modification.

D. A tribunal of this Commonwealth shall recognize the continuing, exclusive jurisdiction of a tribunal of another state which has issued a child support order pursuant to a law substantially similar to this chapter.

E. A temporary support order issued *ex parte* or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

F. A tribunal of this Commonwealth issuing a support order consistent with the law of this Commonwealth has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this Commonwealth may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state.

§ 20-88.40. Enforcement and modification of support order by tribunal having continuing jurisdiction.

A. A tribunal of this Commonwealth may serve as an initiating tribunal to request a tribunal of another state to enforce or modify a support order issued in that state.

B. A tribunal of this Commonwealth having continuing, exclusive jurisdiction over a support order may act as a responding tribunal to enforce or modify the order. If a party subject to the continuing, exclusive jurisdiction of the tribunal no longer resides in the issuing state, in subsequent proceedings the tribunal may apply § 20-88.59 to receive evidence from another state and § 20-88.61 to obtain discovery through a tribunal of another state.

C. A tribunal of this Commonwealth which lacks continuing, exclusive jurisdiction over a spousal support order may not serve as a responding tribunal to modify a spousal support order of another state.

Article 4.

Reconciliation With Orders of Other States.

§ 20-88.41. Recognition of child support orders.

A. If a proceeding is brought under this chapter, and one or more child support orders have been issued in this or another state with regard to an obligor and a child, a tribunal of this Commonwealth shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:

1. If only one tribunal has issued a child support order, the order of that tribunal must be recognized.

2. If two or more tribunals have issued child support orders for the same obligor and child, and only one of the tribunals would have continuing, exclusive jurisdiction under this chapter, the order of that tribunal must be recognized.

3. If two or more tribunals have issued child support orders for the same obligor and child, and more than one of the tribunals would have continuing, exclusive jurisdiction under this chapter, an order issued by a tribunal in the current home state of the child must be recognized, but if an order has not been issued in the current home state of the child, the order most recently issued must be recognized.

4. If two or more tribunals have issued child support orders for the same obligor and child, and none of the tribunals would have continuing, exclusive jurisdiction under this chapter, a tribunal of this Commonwealth may issue a child support order, which must be recognized.

B. The tribunal that has issued an order recognized under subsection A is the tribunal having continuing, exclusive jurisdiction.

§ 20-88.42. Multiple child support orders for two or more obligees.

In responding to multiple registrations or petitions for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, at

least one of which was issued by a tribunal of another state, a tribunal of this Commonwealth shall enforce those orders in the same manner as if the multiple orders had been issued by a tribunal of this Commonwealth.

§ 20-88.43. Credit for payments.

Amounts collected and credited for a particular period pursuant to a support order issued by a tribunal of another state must be credited against the amounts accruing or accrued for the same period under a support order issued by the tribunal of this Commonwealth.

Article 5.

Civil Provisions of General Application.

§ 20-88.44. Proceedings under this chapter.

A. Except as otherwise provided in this chapter, this article applies to all proceedings under this chapter.

B. This chapter provides for the following proceedings:

1. Establishment of an order for spousal support or child support pursuant to Article 6 (§ 20-88.63 et seq.);
2. Enforcement of a support order and income-withholding order of another state without registration pursuant to Article 7 (§ 20-88.64 et seq.);
3. Registration of an order for spousal support or child support of another state for enforcement pursuant to Article 8 (§ 20-88.66 et seq.);
4. Modification of an order for child support or spousal support issued by a tribunal of this Commonwealth pursuant to Article 3 (§ 20-88.37 et seq.);
5. Registration of an order for child support of another state for modification pursuant to Article 9 (§ 20-88.74 et seq.);
6. Determination of parentage pursuant to Article 10 (§ 20-88.78 et seq.); and
7. Assertion of jurisdiction over nonresidents pursuant to Article 2 (§ 20-88.35 et seq.).

C. An individual or a support enforcement agency may commence a proceeding authorized under this chapter by filing a petition in an initiating tribunal for forwarding to a responding tribunal or by filing a petition or a comparable pleading directly in a tribunal of another state which has or can obtain personal jurisdiction over the respondent.

§ 20-88.45. Action by minor parent.

A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child.

§ 20-88.46. Application of law of this Commonwealth.

Except as otherwise provided by this chapter, a responding tribunal of this Commonwealth shall apply the procedural and substantive law, including the rules on choice of law, generally applicable to similar proceedings originating in this Commonwealth and may exercise all powers and provide all remedies available in those proceedings.

A responding tribunal of this Commonwealth shall determine the duty of support and the amount payable in accordance with the law and support guidelines of this Commonwealth.

§ 20-88.47. Duties of initiating tribunal.

Upon the filing of a petition authorized by this chapter, an initiating tribunal of this Commonwealth shall forward three copies of the petition and its accompanying documents to the responding tribunal or appropriate support enforcement agency in the responding state or, if the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

§ 20-88.48. Duties and powers of responding tribunal.

A. When a responding tribunal of this Commonwealth receives a petition or comparable pleading from an initiating tribunal or directly pursuant to subsection C of § 20-88.44, it shall cause the petition or pleading to be filed and notify the petitioner by first class mail where and when it was filed.

B. A responding tribunal of this Commonwealth, to the extent otherwise authorized by law, may do one or more of the following:

1. Issue or enforce a support order, modify a child support order, or render a judgment to determine parentage;
2. Order an obligor to comply with a support order, specifying the amount and the manner of compliance;
3. Order income withholding;
4. Determine the amount of any arrearages, and specify a method of payment;
5. Enforce orders by civil or criminal contempt, or both;
6. Set aside property for satisfaction of the support order;
7. Place liens and order execution on the obligor's property;
8. Order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment;
9. Issue a *capias* for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the *capias* in any local and state computer systems for criminal warrants;

10. Order the obligor to seek appropriate employment by specified methods;
11. Award reasonable attorney's fees and other fees and costs; and
12. Grant any other available remedy.

C. A responding tribunal of this Commonwealth shall include in a support order issued under this chapter or in the documents accompanying the order, the calculations on which the support order is based.

D. A responding tribunal of this Commonwealth may not condition the payment of a support order issued under this chapter upon compliance by a party with provisions for visitation.

E. If a responding tribunal of this Commonwealth issues an order under this chapter, the tribunal shall promptly send a copy of the order by first class mail to the petitioner and the respondent and to the initiating tribunal, if any.

§ 20-88.49. Inappropriate tribunal.

If a petition or comparable pleading is received by an inappropriate tribunal of this Commonwealth, it shall forward the pleading and accompanying documents to an appropriate tribunal in this Commonwealth or another state, and notify the petitioner by first class mail where and when the pleading was sent.

§ 20-88.50. Duties of support enforcement agency.

A. A support enforcement agency of this Commonwealth, upon request, shall provide services to a petitioner in a proceeding under this chapter. A support enforcement agency that is providing services to the petitioner as appropriate shall:

1. Take all steps necessary to enable an appropriate tribunal in this Commonwealth or another state to obtain jurisdiction over the respondent;
2. Request an appropriate tribunal to set a date, time, and place for a hearing;
3. Make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;
4. Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written notice from an initiating, responding, or registering tribunal, send a copy of the notice by first class mail to the petitioner;
5. Within two days, exclusive of Saturdays, Sundays, and legal holidays, after receipt of a written communication from the respondent or the respondent's attorney, send a copy of the communication by first class mail to the petitioner; and
6. Notify the petitioner if jurisdiction over the respondent cannot be obtained.

B. This chapter does not create or negate a relationship of attorney and client or other fiduciary relationship between a support enforcement agency or the attorney for the agency and the individual being assisted by the agency.

§ 20-88.51. Duty of attorney for the Commonwealth.

If the attorney for the Commonwealth determines that the support enforcement agency is neglecting or refusing to provide services to an individual, he may order the agency to perform its duties under this chapter or may provide those services directly to the individual.

§ 20-88.52. Private counsel.

An individual may employ private counsel to represent the individual in proceedings authorized by this chapter.

§ 20-88.53. Duties of state information agency.

A. The Department of Social Services is the state information agency under this chapter.

B. The state information agency shall:

1. Compile and maintain a current list, including addresses, of the tribunals in this Commonwealth which have jurisdiction under this chapter and any support enforcement agencies in this Commonwealth and transmit a copy to the state information agency of every other state;
2. Maintain a register of tribunals and support enforcement agencies received from other states;
3. Forward to the appropriate tribunal in the place in this Commonwealth in which the individual obligee or the obligor resides, or in which the obligor's property is believed to be located, all documents concerning a proceeding under this chapter received from an initiating tribunal or the state information agency of the initiating state; and
4. Obtain information concerning the location of the obligor and the obligor's property within this Commonwealth not exempt from execution, by such means as postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and social security.

§ 20-88.54. Pleadings and accompanying documents.

A. A petitioner seeking to establish or modify a support order or to determine parentage in a proceeding under this chapter must verify the petition. Unless otherwise ordered under § 20-88.55, the petition or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee, and the name, sex, residential address, social

security number, and date of birth of each child for whom support is sought. The petition must be accompanied by a certified copy of any support order in effect. The petition may include any other information that may assist in locating or identifying the respondent.

B. The petition must specify the relief sought. The petition and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency.

§ 20-88.55. Nondisclosure of information in exceptional circumstances.

Upon a finding, which may be made *ex parte*, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, a tribunal shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this chapter.

§ 20-88.56. Costs and fees.

A. The petitioner may not be required to pay a filing fee or other costs.

B. If an obligee prevails, a responding tribunal may assess against an obligor filing fees, reasonable attorney's fees, other costs, and necessary travel and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state, except as provided by other law. Attorney's fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs and expenses.

C. The tribunal shall order the payment of costs and reasonable attorney's fees if it determines that a hearing was requested primarily for delay. In a proceeding under Article 6 (§ 20-88.63 *et seq.*), a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change.

§ 20-88.57. Limited immunity of petitioner.

A. Participation by a petitioner in a proceeding before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.

B. A petitioner is not amenable to service of civil process while physically present in this Commonwealth to participate in a proceeding under this chapter.

C. The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this chapter committed by a party while present in this Commonwealth to participate in the proceeding.

§ 20-88.58. Nonparentage as defense.

A party whose parentage of a child has been previously determined by or pursuant to law may not plead nonparentage as a defense to a proceeding under this chapter.

§ 20-88.59. Special rules of evidence and procedure.

A. The physical presence of the petitioner in a responding tribunal of this Commonwealth is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage.

B. A verified petition, affidavit, document substantially complying with federally mandated forms, and a document incorporated by reference in any of them, not excluded under the hearsay rule if given in person, are admissible in evidence if given under oath by a party or witness residing in another state.

C. A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it and is admissible to show whether payments were made.

D. Copies of bills for testing for parentage, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least ten days before trial, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

E. Documentary evidence transmitted from another state to a tribunal of this Commonwealth by telephone, telecopier, or other means that do not provide an original writing may not be excluded from evidence of an objection based on the means of transmission.

F. In a proceeding under this chapter, a tribunal of this Commonwealth may permit a party or witness residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means at a designated tribunal or other location in that state. A tribunal of this Commonwealth shall cooperate with tribunals of other states in designating an appropriate location for the deposition or testimony.

G. If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

H. A privilege against disclosure of communication between spouses does not apply in a proceeding under this chapter.

I. The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this chapter.

§ 20-88.60. Communications between tribunals.

A tribunal of this Commonwealth may communicate with a tribunal of another state in writing, or by telephone or other means, to obtain information concerning the laws of that state; the legal effect of a judgment, decree, or order of that tribunal; and the status of a proceeding in the other state. A tribunal of this Commonwealth may furnish similar information by similar means to a tribunal of another state.

§ 20-88.61. Assistance with discovery.

A tribunal of this Commonwealth may (i) request a tribunal of another state to assist in obtaining discovery and (ii) upon request, compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal of another state.

§ 20-88.62. Receipt and disbursement of payments.

A support enforcement agency or tribunal of this Commonwealth shall disburse promptly any amounts received pursuant to a support order, as directed by the order. The agency or tribunal shall furnish to a requesting party or tribunal of another state a certified statement by the custodian of the record of the amounts and dates of all payments received.

Article 6.

Establishment of Support Order.

§ 20-88.63. Petition to establish support order.

A. If a support order entitled to recognition under this chapter has not been issued, a responding tribunal of this Commonwealth may issue a support order if (i) the individual seeking the order resides in another state or (ii) the support enforcement agency seeking the order is located in another state.

B. The tribunal may issue a temporary child support order if (i) the respondent has signed a verified statement acknowledging parentage, (ii) the respondent has been determined by or pursuant to law to be the parent, or (iii) there is other clear and convincing evidence that the respondent is the child's parent.

C. Upon finding, after notice and opportunity to be heard, that an obligor owes a duty or support, the tribunal shall issue a support order directed to the obligor and may issue other orders pursuant to § 20-88.48.

Article 7.

Direct Enforcement of Order of Another State Without Registration.

§ 20-88.64. Recognition of income-withholding order of another state.

A. An income-withholding order issued in another state may be sent by first class mail to the person or entity defined as the obligor's employer under the income-withholding law of this Commonwealth without first filing a petition or comparable pleading or registering the order with a tribunal of this Commonwealth. Upon receipt of the order, the employer shall:

1. Treat an income-withholding order issued in another state which appears regular on its face as if it had been issued by a tribunal of this Commonwealth;

2. Immediately provide a copy of the order to the obligor; and

3. Distribute the funds as directed in the withholding order.

B. An obligor may contest the validity or enforcement of an income-withholding order issued in another state in the same manner as if the order had been issued by a tribunal of this Commonwealth. Section 20-88.68 applies to the contest. The obligor shall give notice of the contest to any support enforcement agency providing services to the obligee and to (i) the person or agency designated to receive payments in the income-withholding order or (ii) if no person or agency is designated, the obligee.

§ 20-88.65. Administrative enforcement of orders.

A. A party seeking to enforce a support order or an income-withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to a support enforcement agency of this Commonwealth.

B. Upon receipt of the documents, the support enforcement agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this Commonwealth to enforce a support order or an income-withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the support enforcement agency shall register the order pursuant to this chapter.

Article 8.

Enforcement and Modification of Support Order After Registration.

§ 20-88.66. Registration of order for enforcement.

A support order or an income-withholding order issued by a tribunal of another state may be registered in this Commonwealth for enforcement.

§ 20-88.67. Procedure to register order for enforcement.

A. A support order or income-withholding order of another state may be registered in this Commonwealth by sending the following documents and information to the appropriate court:

1. A letter of transmittal to the tribunal requesting registration and enforcement;

2. Two copies, including one certified copy, of all orders to be registered, including any modification of an order;

3. A sworn statement by the party seeking registration or a certified statement by the custodian of

the records showing the amount of any arrearage;

4. The name of the obligor and, if known, (i) the obligor's address and social security number, (ii) the name and address of the obligor's employer and any other source of income of the obligor, and (iii) a description and the location of property of the obligor in this Commonwealth not exempt from execution; and

5. The name and address of the obligee and, if applicable, the agency or person to whom support payments are to be remitted.

B. On receipt of a request for registration, the registering tribunal shall cause the order to be filed as a foreign judgment, together with one copy of the documents and information, regardless of their form.

C. A petition or comparable pleading seeking a remedy that must be affirmatively sought under other law of this Commonwealth may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought.

§ 20-88.68. Effect of registration for enforcement.

A. A support order or income-withholding order issued in another state is registered when the order is filed in the registering tribunal of this Commonwealth.

B. A registered order issued in another state is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this Commonwealth.

C. Except as otherwise provided in this article, a tribunal of this Commonwealth shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction.

§ 20-88.69. Choice of law; statute of limitations.

A. The law of the issuing state governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order.

B. In a proceeding for arrearages, the statute of limitations under the laws of this Commonwealth or of the issuing state, whichever is longer, applies.

§ 20-88.70. Contest of validity or enforcement; registration of order.

A. When a support order or income-withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. Notice must be given by first-class, certified, or registered mail or by any means of personal service authorized by the law of this Commonwealth. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

B. The notice must inform the nonregistering party:

1. That a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this Commonwealth;

2. That a hearing to contest the validity or enforcement of the registered order must be requested within twenty days after the date of mailing or personal service of the notice;

3. That failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; and

4. Of the amount of any alleged arrearages.

C. Upon registration of an income-withholding order for enforcement, the registering tribunal shall notify the obligor's employer pursuant to the income-withholding for support law of this Commonwealth.

§ 20-88.71. Procedure to contest validity or enforcement of registered order.

A. A nonregistering party seeking to contest the validity or enforcement of a registered order in this Commonwealth shall request a hearing within twenty days after the date of mailing or personal service of notice of the registration. The nonregistering party may seek to vacate the registration, to assert any defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of any alleged arrearages pursuant to § 20-88.72.

B. If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

C. If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties by first-class mail of the date, time, and place of the hearing.

§ 20-88.72. Contest of registration or enforcement.

A. A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

1. The issuing tribunal lacked personal jurisdiction over the contesting party;

2. The order was obtained by fraud;

3. The order has been vacated, suspended, or modified by a later order;

4. The issuing tribunal has stayed the order pending appeal;

5. There is a defense under the law of this Commonwealth to the remedy sought;

6. Full or partial payment has been made; or

7. The statute of limitations under § 20-88.69 precludes enforcement of some or all of the arrearages.

B. If a party presents evidence establishing a full or partial defense under subsection A, a tribunal may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the law of this Commonwealth.

C. If the contesting party does not establish a defense under subsection A to the validity or enforcement of the order, the registering tribunal shall issue an order confirming the order.

§ 20-88.73. Confirmed order.

Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to any matter that could have been asserted at the time of registration.

Article 9.

Registration and Modification of Child Support Order.

§ 20-88.74. Procedure to register child support order of another state for modification.

A party or support enforcement agency seeking to modify, or to modify and enforce, a child support order issued in another state shall register that order in this Commonwealth in the same manner as provided in Article 6 (§ 20-88.63 et seq.) if the order has not been registered. A petition for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification.

§ 20-88.75. Effect of registration for modification.

A tribunal of this Commonwealth may enforce a child support order of another state, registered for purposes of modification, in the same manner as if the order had been issued by a tribunal of this Commonwealth, but the registered order may be modified only if the requirements of § 20-88.76 have been met.

§ 20-88.76. Modification of child support order of another state.

A. After a child support order issued in another state has been registered in this Commonwealth, the responding tribunal of this Commonwealth may modify that order only if, after notice and hearing, it finds that:

1. The following requirements are met:

- a. The child, the individual obligee, and the obligor do not reside in the issuing state;*
- b. A petitioner who is a nonresident of this Commonwealth seeks modification; and*
- c. The respondent is subject to the personal jurisdiction of the tribunal of this Commonwealth; or*

2. An individual party or the child is subject to the personal jurisdiction of the tribunal and all of the individual parties have filed a written consent in the issuing tribunal providing that a tribunal of this Commonwealth may modify the support order and assume continuing, exclusive jurisdiction over the order.

B. Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this Commonwealth and the order may be enforced and satisfied in the same manner.

C. A tribunal of this Commonwealth may not modify any aspect of a child support order that may not be modified under the law of the issuing state.

D. On issuance of an order modifying a child support order issued in another state, a tribunal of this Commonwealth becomes the tribunal of continuing, exclusive jurisdiction.

E. Within thirty days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal which had continuing, exclusive jurisdiction over the earlier order, and in each tribunal in which the party knows that the earlier order has been registered.

§ 20-88.77. Recognition of order modified in another state.

A tribunal of this Commonwealth shall recognize a modification of its earlier child support order by a tribunal of another state which assumed jurisdiction pursuant to a law substantially similar to this chapter and, upon request, except as otherwise provided in this chapter, shall:

- 1. Enforce the order that was modified only as to amounts accruing before the modification;*
- 2. Enforce only nonmodifiable aspects of that order;*
- 3. Provide other appropriate relief only for violations of that order which occurred before the effective date of the modification; and*
- 4. Recognize the modifying order of the other state, upon registration, for the purpose of enforcement.*

Article 10.

Determination of Parentage.

§ 20-88.78. Proceeding to determine parentage.

A. A tribunal of this Commonwealth may serve as an initiating or responding tribunal in a proceeding brought under this chapter or a law substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act to determine that the petitioner is a parent of a particular child or to determine that a respondent is a parent of that child.

B. In a proceeding to determine parentage, a responding tribunal of this Commonwealth shall apply the procedural and substantive law of this Commonwealth, and the rules of this Commonwealth on choice of law.

Article 11.

Interstate Rendition.

§ 20-88.79. Grounds for rendition.

A. For purposes of this article, "governor" includes an individual performing the functions of governor or the executive authority of a state covered by this chapter.

B. The Governor of this Commonwealth may:

1. Demand that the governor of another state surrender an individual found in the other state who is charged criminally in this Commonwealth with having failed to provide for the support of an obligee; or

2. On the demand by the governor of another state, surrender an individual found in this Commonwealth who is charged criminally in another state with having failed to provide for the support of an obligee.

C. A provision for extradition of individuals not inconsistent with this chapter applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and had not fled therefrom.

§ 20-88.80. Conditions of rendition.

A. Before making demand that the governor of another state surrender an individual charged criminally in this Commonwealth with having failed to provide for the support of an obligee, the Governor of this Commonwealth may require a prosecutor of this Commonwealth to demonstrate that at least sixty days previously the obligee had initiated proceedings for support pursuant to this chapter or that the proceeding would be of no avail.

B. If, under this chapter or a law substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act, the governor of another state makes a demand that the Governor of this Commonwealth surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the Governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the Governor may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

C. If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the Governor may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the Governor may decline to honor the demand if the individual is complying with the support order.

Article 12.

Miscellaneous Provisions.

§ 20-88.81. Uniformity of application and construction.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it.

§ 20-88.82. Short title.

This chapter may be cited as the Uniform Interstate Family Support Act.

- 2. That Chapter 5.2 (§§ 20-88.12 through 20-88.31) of Title 20 of the Code of Virginia is repealed.**
- 3. That the provisions of § 16.1-296 as amended by this act shall expire on the effective date of Chapter 929 of the 1993 Acts of Assembly.**