

# VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

## CHAPTER 764

*An Act to amend and reenact §§ 20-60.3, 20-108.1 and 63.1-252.1 of the Code of Virginia, as it is currently in effect and as it may become effective, and to amend the Code of Virginia by adding a section numbered 63.1-263.1, relating to child support enforcement.*

[H 1133]

Approved April 11, 1994

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

**1. That §§ 20-60.3, 20-108.1 and 63.1-252.1 of the Code of Virginia, as it is currently in effect and as it may become effective, are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 63.1-263.1 as follows:**

§ 20-60.3. Contents of support orders.

All orders directing the payment of child or spousal support, including those orders confirming separation agreements, entered on or after October 1, 1985, whether they are original orders or modifications of existing orders, shall contain the following:

1. Notice that support payments may be withheld as they become due pursuant to § 20-79.1 or § 20-79.2, from earnings as defined in § 63.1-250, without further amendments of this order or having to file an application for services with the Department of Social Services; however, absence of such notice in an order entered prior to July 1, 1988, shall not bar withholding of support payments pursuant to § 20-79.1;

2. Notice that support payments may be withheld pursuant to Chapter 13 (§ 63.1-249 et seq.) of Title 63.1 without further amendments to the order upon application for services with the Department of Social Services; however, absence of such notice in an order entered prior to July 1, 1988, shall not bar withholding of support payments pursuant to Chapter 13 of Title 63.1;

3. The names and dates of birth of each child to whom a duty of support is then owed by the person responsible for support;

4. If known, the name, date of birth and social security number of each parent of the child and, if different and if known, the name, date of birth and social security number of the person responsible for support and, unless otherwise ordered, the current address and place of employment of each such parent or responsible person;

5. *On and after July 1, 1994, notice that a petition may be filed for suspension of any license, certificate, registration or other authorization to engage in a profession, trade, business or occupation issued by the Commonwealth to a person responsible for support as provided in § 63.1-263.1 upon a delinquency for a period of ninety days or more or in an amount of \$5,000 or more. The order shall indicate whether either or both parents currently hold such an authorization and, if so, the type of authorization held;*

6. The amount of periodic support expressed in fixed sums, together with the payment interval, the date payments are due, and the date the first payment is due;

~~6.~~ 7. An order for health care coverage, *including the health insurance policy information*, for dependent children pursuant to §§ 20-108.1 and 20-108.2 if available at reasonable cost as defined in § 63.1-250 and a statement as to whether there is an order for health care coverage for a spouse or former spouse;

~~7.~~ 8. If support arrearages exist, (i) to whom an arrearage is owed and the amount of the arrearage, (ii) the period of time for which such arrearage is calculated, and (iii) a direction that all payments are to be credited to current support obligations first, with any payment in excess of the current obligation applied to arrearages;

~~8.~~ 9. If child support payments are ordered to be paid through the Department of Social Services, and unless the court for good cause shown orders otherwise, the parties shall give each other and the Department of Social Services at least thirty days' written notice, in advance, of any change of address;

~~9.~~ 10. *If child support payments are ordered to be paid through the Department of Social Services, a provision requiring a delinquent obligor to keep the Department of Social Services informed of the name and address of his current employer;*

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

~~10.~~ 12. Notice that in determination of a support obligation, the support obligation as it becomes due and unpaid creates a judgment by operation of law.

§ 20-108.1. Determination of child or spousal support.

A. In any proceeding on the issue of determining spousal support, the court shall consider all evidence presented relevant to any issues joined in that proceeding. The court's decision shall be

rendered based upon the evidence relevant to each individual case.

B. In any proceeding on the issue of determining child support under this title or Title 16.1 or 63.1, the court shall consider all evidence presented relevant to any issues joined in that proceeding. The court's decision in any such proceeding shall be rendered upon the evidence relevant to each individual case. However, there shall be a rebuttable presumption in any judicial or administrative proceeding for child support, including cases involving split custody or shared custody, that the amount of the award which would result from the application of the guidelines set out in § 20-108.2 is the correct amount of child support to be awarded. In order to rebut the presumption, the court shall make written findings in the order, which findings may be incorporated by reference, that the application of such guidelines would be unjust or inappropriate in a particular case. The finding that rebuts the guidelines shall state the amount of support that would have been required under the guidelines, shall give a justification of why the order varies from the guidelines, and shall be determined by relevant evidence pertaining to the following factors affecting the obligation, the ability of each party to provide child support, and the best interests of the child:

1. Actual monetary support for other children, other family members or former family members;
2. Arrangements regarding custody of the children;
3. Imputed income to a party who is voluntarily unemployed or voluntarily under employed; provided that income may not be imputed to the custodial parent when a child is not in school, child care services are not available and the cost of such child care services are not included in the computation;
4. Debts of either party arising during the marriage for the benefit of the child;
5. Debts incurred for production of income;
6. Direct payments ordered by the court for health care coverage, maintaining life insurance coverage pursuant to subsection D, education expenses, or other court-ordered direct payments for the benefit of the child and costs related to the provision of health care coverage pursuant to subdivision 6 7 of § 20-60.3;
7. Extraordinary capital gains such as capital gains resulting from the sale of the marital abode;
8. Age, physical and mental condition of the child or children, including extraordinary medical or dental expenses, and child-care expenses;
9. Independent financial resources, if any, of the child or children;
10. Standard of living for the family established during the marriage;
11. Earning capacity, obligations and needs, and financial resources of each parent;
12. Education and training of the parties and the ability and opportunity of the parties to secure such education and training;
13. Contributions, monetary and nonmonetary, of each party to the well-being of the family;
14. Provisions made with regard to the marital property under § 20-107.3;
15. Tax consequences to the parties regarding claims for dependent children and child care expenses;
16. A written agreement between the parties which includes the amount of child support; and
17. Such other factors, including tax consequences to each party, as are necessary to consider the equities for the parents and children.

C. In any proceeding under this title or Title 16.1 or 63.1 on the issue of determining child support, the court shall have the authority to order a party to provide health care coverage, as defined in § 63.1-250, for dependent children if reasonable under all the circumstances and health care coverage for a spouse or former spouse.

D. In any proceeding under this title, Title 16.1 or Title 63.1 on the issue of determining child support, the court shall have the authority to order a party to (i) maintain any existing life insurance policy on the life of either party provided the party so ordered has the right to designate a beneficiary and (ii) designate a child or children of the parties as the beneficiary of all or a portion of such life insurance for so long as the party so ordered has a statutory obligation to pay child support for the child or children.

§ 63.1-252.1. Notice of administrative support order; contents; hearing; modification.

The Commissioner may proceed against a responsible person whose support debt has accrued or is accruing based upon subrogation to, assignment of, or authorization to enforce a support obligation. Such obligation may be created by a court order for support of a child or child and spouse or decree of divorce ordering support of a child or child and spouse. In the absence of such a court order or decree of divorce, the Commissioner may, pursuant to this chapter, proceed against a person whose support debt has accrued or is accruing based upon payment of public assistance or who has a responsibility for the support of any dependent child or children and their caretaker. The Commissioner shall initiate proceedings by issuing notice containing the administrative support order which shall become effective unless timely contested. The notice shall be served upon the debtor (i) in accordance with the provisions of § 8.01-296, § 8.01-327 or § 8.01-329 or (ii) by certified mail, return receipt requested, or service may be waived. A copy of the notice shall be sent to the obligee by first-class mail upon service of the notice. The notice shall include the following:

1. A statement of the support debt or obligation accrued or accruing and the basis and authority

under which the assessment of the debt or obligation was made;

2. A statement of the name of the child or children and caretaker for whom support is being sought;
3. A demand for immediate payment of the support debt or obligation or, in the alternative, a demand that the debtor file an answer with the Commissioner within ten days of the date of service of the notice stating his defenses to liability;
4. A statement of the name and address of the person to whom the answer is to be filed;
5. A statement that if no answer is made on or before ten days from the date of service of the notice, the administrative support order shall be final and enforceable, and the support debt shall be assessed and determined subject to computation, and is subject to collection action;
6. A statement that the property of the debtor will be subject to lien and foreclosure, distraint, seizure and sale or an order to withhold and deliver or mandatory withholding of earnings;
7. A statement that *the obligor shall keep the Department informed regarding access to health insurance coverage and health insurance policy information and a statement that health care coverage may be required for the debtor's dependent children if available at reasonable cost as defined in § 63.1-250;*
8. A statement of each party's right to appeal and the procedures applicable to appeals from the decision of the Commissioner;
9. A statement that the obligor's income shall be immediately withheld to comply with this order unless the obligee, or the Department of Social Services, if the obligee is receiving public assistance, and obligor agree to an alternative arrangement;
10. A statement that any determination of a support obligation under this section creates a judgment by operation of law and as such is entitled to full faith and credit in any other state or jurisdiction; ~~and~~
11. A statement that the obligor shall give the Department written notice of any change in the obligor's address within thirty days of the change of address; ~~and~~
12. *A statement that the obligor shall keep the Department informed of the name and address of the obligor's current employer.*

If no answer is received by the Commissioner within ten days of the date of service or acceptance, the administrative support order shall be as provided in the notice. The Commissioner may initiate collection procedures pursuant to this chapter, Chapter 11 (§ 16.1-226 et seq.) of Title 16.1 or Title 20. If the debtor, within ten days of the date of service of the notice, files an answer, with the Commissioner alleging defenses to the liability imposed pursuant to § 63.1-251, the debtor shall have the right to an administrative hearing.

Any changes in the amount of the administrative order must be made pursuant to this section. In no event shall an administrative hearing alter or amend the amount or terms of any court order for support or decree of divorce ordering support. No support order may be retroactively modified, but may be modified with respect to any period during which there is a pending petition for modification, but only from the date that notice of such petition has been given to the responding party. The existence of an administrative order shall not preclude either an obligor or obligee from commencing appropriate proceedings in a juvenile and domestic relations district court or a circuit court.

§ 63.1-252.1. (Delayed effective date) Notice of administrative support order; contents; hearing; modification.

The Commissioner may proceed against a responsible person whose support debt has accrued or is accruing based upon subrogation to, assignment of, or authorization to enforce a support obligation. Such obligation may be created by a court order for support of a child or child and spouse or decree of divorce ordering support of a child or child and spouse. In the absence of such a court order or decree of divorce, the Commissioner may, pursuant to this chapter, proceed against a person whose support debt has accrued or is accruing based upon payment of public assistance or who has a responsibility for the support of any dependent child or children and their caretaker. The Commissioner shall initiate proceedings by issuing notice containing the administrative support order which shall become effective unless timely contested. The notice shall be served upon the debtor (i) in accordance with the provisions of §§ 8.01-296, 8.01-327 or § 8.01-329 or (ii) by certified mail, return receipt requested, or service may be waived. A copy of the notice shall be sent to the obligee by first-class mail upon service of the notice. The notice shall include the following:

1. A statement of the support debt or obligation accrued or accruing and the basis and authority under which the assessment of the debt or obligation was made;
2. A statement of the name of the child or children and caretaker for whom support is being sought;
3. A demand for immediate payment of the support debt or obligation or in the alternative, a demand that the debtor file an answer with the Commissioner within ten days of the date of service of the notice stating his defenses to liability;
4. A statement of the name and address of the person to whom the answer is to be filed;
5. A statement that if no answer is made on or before ten days from the date of service of the notice, the administrative support order shall be final and enforceable, and the support debt shall be assessed and determined subject to computation, and is subject to collection action;
6. A statement that the property of the debtor will be subject to lien and foreclosure, distraint, seizure

and sale or an order to withhold and deliver or mandatory withholding of earnings;

7. A statement that *the obligor shall keep the Department informed regarding access to health insurance coverage and health insurance policy information and a statement that health care coverage may be required for the debtor's dependent children if available at reasonable cost as defined in § 63.1-250;*

8. A statement of each party's right to appeal and the procedures applicable to appeals from the decision of the Commissioner;

9. A statement that the obligor's income shall be immediately withheld to comply with this order unless the obligee, or the Department of Social Services, if the obligee is receiving public assistance, and obligor agree to an alternative arrangement;

10. A statement that any determination of a support obligation under this section creates a judgment by operation of law and as such is entitled to full faith and credit in any other state or jurisdiction; ~~and~~

11. A statement that the obligor shall give the Department written notice of any change in the obligor's address within thirty days of the change of address; *and*

12. A statement that *the obligor shall keep the Department informed of the name and address of the obligor's current employer.*

If no answer is received by the Commissioner within ten days of the date of service or acceptance, the administrative support order shall be as provided in the notice. The Commissioner may initiate collection procedures pursuant to this chapter, Chapter 11 (§ 16.1-226 et seq.) of Title 16.1 or Title 20. If the debtor, within ten days of the date of service of the notice, files an answer, with the Commissioner alleging defenses to the liability imposed pursuant to § 63.1-251, the debtor shall have the right to an administrative hearing.

Any changes in the amount of the administrative order must be made pursuant to this section. In no event shall an administrative hearing alter or amend the amount or terms of any court order for support or decree of divorce ordering support. No support order may be retroactively modified, but may be modified with respect to any period during which there is a pending petition for modification, but only from the date that notice of such petition has been given to the responding party. The existence of an administrative order shall not preclude either an obligor or obligee from commencing appropriate proceedings in a family court.

*§ 63.1-263.1. Suspension of occupational license upon delinquency; procedure.*

*Upon thirty days' notice to an obligor who is alleged to be delinquent in the payment of child support by a period of ninety days or more or for \$5,000 or more, an obligee or the Department on behalf of an obligee may petition either the court that entered or the court that is enforcing the order for child support for an order suspending any license, certificate, registration or other authorization to engage in a business, trade, profession or occupation issued to the obligor by the Commonwealth pursuant to Title 22.1, Title 38.2, Title 46.2 or Title 54.1 of the Code or any other provision of law. The notice shall be sent by certified mail, with proof of actual receipt. The notice shall specify that (i) the obligor has thirty days from the date of receipt to pay the delinquency or to reach an agreement with the obligee or the Department to pay the delinquency and (ii) if payment is not made or an agreement cannot be reached within that time, a petition will be filed seeking suspension of any license, certificate, registration or other authorization to engage in a business, trade, profession or occupation issued by the Commonwealth to the obligor.*

*The court shall not suspend a license, certificate, registration or authorization upon finding that an alternate remedy is available to the obligee or the Department which is likely to result in collection of the delinquency. Further, the court may refuse to order the suspension upon finding that (i) suspension would result in irreparable harm to the obligor or employees of the obligor or would not result in collection of the delinquency or (ii) the obligor has made a demonstrated, good faith effort to reach an agreement with the obligee or the Department.*

*If the court finds that the obligor (i) is delinquent in the payment of child support by ninety days or more or in an amount of \$5,000 or more and (ii) holds a license, certificate, registration or other authority to engage in a business, trade, profession or occupation issued by the Commonwealth, it shall order suspension. The order shall require the obligor to surrender any license, certificate, registration or other such authorization to the issuing entity within ninety days of the date on which the order is entered. If at any time after entry of the order the obligor (i) pays the delinquency or (ii) reaches an agreement with the obligee or the Department and makes at least one payment pursuant to the agreement, upon proof of payment, the court shall order reinstatement. Payment shall be proved by certified copy of the payment record issued by the Department or notarized statement of payment signed by the obligee. No fee shall be charged to a person who obtains reinstatement of a license, certificate, registration or authorization pursuant to this section.*