

VIRGINIA ACTS OF ASSEMBLY -- 1994 SESSION

CHAPTER 767

An Act to amend and reenact §§ 20-79.3 and 63.1-250.1 of the Code of Virginia, relating to child support orders.

[H 1305]

Approved April 11, 1994

Be it enacted by the General Assembly of Virginia:

1. That §§ 20-79.3 and 63.1-250.1 of the Code of Virginia are amended and reenacted as follows:

§ 20-79.3. Information required in payroll deduction order.

A. Orders for withholding from the earnings 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 earnings as defined in § 63.1-250, 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;

3. That the payroll deduction shall begin with the next regular pay period of the obligor following service of the order on the employer, and payment shall be made at regular intervals consistent with the pay periods of the obligor;

4. A statement of the maximum percentage under § 34-29 which may be withheld from the obligor's disposable earnings;

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 earnings 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 by the employer and withheld from the obligor's earnings in addition to the support amount to be withheld;

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

8. That the order shall have priority over any other types of liens created by state law against such earnings, except that if there is more than one court or administrative order for withholding for support against an obligor, the employer must honor the terms of the earliest received order, and subsequent orders shall be honored in the order of receipt to the extent that the amounts withheld, when combined,

do not exceed the maximum limits imposed under § 34-29 as specified in the order being honored;

9. That the obligor's rights are protected pursuant to § 63.1-271 and that no employer shall discharge any employee, take disciplinary action against an employee, or refuse to employ a person by reason of the fact that his earnings have been made subject to a deduction pursuant to Chapter 13 (§ 63.1-249 et seq.) of Title 63.1 or § 20-79.1 or § 20-79.2 and an employer who discharges or takes disciplinary action against an employee, or refuses to employ any person because of an order for withholding under these sections shall be liable for a civil fine of not more than \$1,000;

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

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

12. That, except as provided in subdivision 16, employers shall remit payments on each regular pay date of the obligor directly to the payee if requested in writing by the payee, provided the employer has not received notice that the payee is receiving child support services as defined in § 63.1-250 through the Division of Child Support Enforcement;

13. That the employer shall be deemed to have complied with the order by mailing on each regular pay date of the obligor to the Department or other payee, by first class mail, any amount required to be deducted;

14. That if payment to the Department of Social Services is ordered, the employer and obligor must notify the Department promptly when the obligor terminates employment and must provide the last known address of the obligor and name and address of the new employer, if known;

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

16. That the employer is to remit individual payments to the Department of Social Services for disbursement to the payee when directed to do so by the Department of Social Services or any court having competent jurisdiction. However, no order or directive shall require employers of 10,000 or more employees to make payments other than by combined single payment to the Department's central office in Richmond, without the employer's express written consent;

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

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

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

§ 63.1-250.1. Authority to issue certain orders.

A. In the absence of a court order, the Department of Social Services shall have the authority to issue orders directing the payment of child, and child and spousal support and, if available at reasonable cost as defined in § 63.1-250, to require a provision for health care coverage for dependent children of the obligor, *which shall include the requirements specified for employers pursuant to subdivision A 5 of § 20-79.3*. In ordering the payment of child support, the Department shall set such support at the amount resulting from computation pursuant to the guideline set out in § 20-108.2, subject to the provisions of § 63.1-264.2.

B. The Department may order the obligor and payee to notify each other or the Department upon request of current gross income as defined in § 20-108.2 of the Code and any other pertinent information which may affect child support amounts. For good cause shown, the Department may order that such information be provided to the Department and made available to the parties for inspection in lieu of the parties' providing such information directly to each other.

C. The Department shall develop procedures governing the method and timing of periodic review and adjustment of child support orders established or enforced or both pursuant to Title IV-D of the Social Security Act. The Department shall, at the request of either parent subject to the order or of a state child support enforcement agency, initiate a review of such order, and initiate appropriate action to adjust such order in accordance with the provisions of § 20-108.2 and subject to the provisions of § 63.1-264.2.

D. 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 subpoena financial

records of the responsible person and obligee from any person, firm, corporation, association, or political subdivision or department of the Commonwealth and to summons the responsible parent and obligee to appear in the Division's offices to provide essential information for whatever establishment or enforcement actions are necessary for the collection of child support. The district managers shall be trained in the correct use of the subpoena process prior to exercising subpoena authority.

E. In the absence of a court order, the Department may establish an administrative support order on an out-of-state obligor if the obligor and the obligee maintained a matrimonial domicile within the Commonwealth. 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.