

VIRGINIA ACTS OF ASSEMBLY -- 1995 SESSION

CHAPTER 714

An Act to amend and reenact §§ 20-79.2, 63.1-250.2, 63.1-250.3 and 63.1-258.1 of the Code of Virginia, relating to support enforcement; wage withholding.

[H 1301]

Approved April 6, 1995

Be it enacted by the General Assembly of Virginia:

1. That §§ 20-79.2, 63.1-250.2, 63.1-250.3 and 63.1-258.1 of the Code of Virginia are amended and reenacted as follows:

§ 20-79.2. Immediate payroll deduction; income withholding.

In any case in which the Department of Social Services is required to provide child support enforcement services, every initial order directing a person to pay child support or order modifying any such order pursuant to this chapter or §§ ~~16.1-278.15 through 16.1-278.18, 20-103, 20-107.2 or 20-109.1~~, shall include a provision for immediate withholding from the earnings of the obligor for the amount of the support ordered plus an amount for the liquidation of arrearages, if any, unless the obligor and the Department, on behalf of the obligee, agree to an alternative arrangement, or good cause is shown. In all other cases, the initial order directing a person to pay child support or an order modifying any such order pursuant to this chapter or §§ ~~16.1-278.15 through 16.1-278.18, 20-103, 20-107.2, or 20-109.1~~ may include such provision. In determining whether good cause is shown, the court shall consider the obligor's past financial responsibility, history of prior payments under any support order, and any other matter which the court considers relevant in determining the likelihood of payment in accordance with the support order. The total amount withheld shall not exceed the maximum amount permitted under § 34-29.

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 § 63.1-272.

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 ~~payroll deduction~~ 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 § 63.1-250.2 or § 63.1-251.*

§ 63.1-250.2. Administrative support remedies available for individuals not receiving public assistance; fees.

The Department of Social Services shall make available to those individuals not receiving public assistance, upon receipt of an authorization to seek or enforce a support obligation the same support services provided to recipients of public assistance. These services may include, but are not limited to:

1. Locating absent parents to obtain child support;
2. Obtaining voluntary acknowledgments of paternity;
3. Establishing or modifying child support obligations, which may include a provision for health care coverage for dependent children of the obligor; and
4. Enforcing and collecting child support obligations; however, the only support in arrears which may be enforced by administrative action are: (i) arrearages accrued or accruing under a court order or decree; or (ii) arrearages on an administrative order accruing from the entry of such administrative order.

No individual shall be required to obtain support services from the Department prior to commencing a judicial proceeding to establish, modify, enforce or collect a child support obligation.

The State Board of Social Services shall charge a fee of one dollar upon application for services pursuant to this section. At the option of the Department, the fee may be paid by the Department on behalf of all applicants.

The Department is further designated as the public entity responsible for implementing immediate

income withholding pursuant to § 466 of the Social Security Act.

§ 63.1-250.3. Withholding from earnings; notices required; priorities; orders from other states.

A. As part of every administrative support order directing a responsible person to pay child or child and spousal support or by separate order at any time thereafter, provision shall be made for withholding from the earnings of the responsible person the amount of the withholding order plus an amount to be applied toward liquidation of arrearages if the responsible person fails to make payments in an amount equal to the support payable for one month. The total amount withheld shall not exceed the maximum amount permitted under § 34-29.

B. Upon default of an administrative or judicial support order, the Department of Social Services shall serve notice on the responsible person of the delinquency in accordance with the provisions of §§ 8.01-296, 8.01-327, or § 8.01-329 or by certified mail, return receipt requested, or service may be waived. The obligee shall also be sent a copy of such notice. The notice shall inform the responsible person (i) of the amount that will be withheld, (ii) that the withholding applies to any current or subsequent period of employment, (iii) of the right to contest the withholding but that the only basis for contesting the withholding is a mistake of fact, (iv) that a written request to contest the withholding must be made to the Department of Social Services within ten days of receipt of the notice, (v) of the actions that will be taken by the Department if a request to contest is noted, which shall include the opportunity to present his objections, which shall be limited to a mistake of fact, to the administrative hearing officer at a hearing held pursuant to § 63.1-267.1, (vi) that a determination on the contest will be made no later than forty-five days from the date of service of such notice, *and* (vii) that payment of overdue support upon receipt of the required notice shall not be a bar to the implementation of withholding ~~and (viii) that moneys will be withheld during the pendency of any contest.~~ Upon service of the notice on the obligor, a copy shall be sent by first-class mail to the obligee.

C. The responsible person's employer shall be issued by certified mail, return receipt requested, an administrative order conforming to § 20-79.3 for mandatory withholding of earnings. The rights and responsibilities of an employer with respect to the order are set out in § 20-79.3.

D. The Department of Social Services shall have the authority in the issuance of an administrative order under § 20-79.3, based on an existing court order, to convert the terms of payment to conform with the obligor's pay period interval. The Department of Social Services shall utilize the conversion formula established by the Committee on District Courts.

E. If the Department of Social Services or the Department's designee receives payments deducted from earnings of an obligor pursuant to more than one administrative order or a combination of judicial and administrative orders, the Department or the Department's designee shall allocate such payments among the obligees under such orders with priority given to payment of the order for current support. Where the Department or the Department's designee receives payments 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.

F. Administrative orders for withholding from earnings shall be promptly terminated or modified by the Department when (i) the obligation to support has been satisfied and arrearages have been paid, (ii) the whereabouts of the child or child and caretaker become unknown, or (iii) modification is appropriate because of a change in the amount of the obligation.

G. If a court of competent jurisdiction or the agency operating pursuant to an approved state plan under Sections 452 and 454 of the Social Security Act in any state, territory of the United States or the District of Columbia has ordered a person to pay child or child and spousal support, upon notice and hearing as provided in this section, the Department shall issue an order, conforming to § 20-79.3, to the responsible person's employer in this Commonwealth to withhold from the earnings of the responsible person in the same manner as provided in this section for administrative orders originating in this Commonwealth. Similar orders of the Department may be enforced in a similar manner in such other state, territory or district.

§ 63.1-258.1. Immediate withholding from earnings; exception; notices required.

A. Every administrative support order directing a responsible person to pay child or child and spousal support shall provide for immediate withholding from the earnings of the responsible person of an amount for current support plus an amount to be applied toward liquidation of arrearages, if any, unless the obligor and the Department, on behalf of the obligee, agree to ~~an~~ *a written* alternative payment arrangement, or good cause is shown. *Good cause shall be based upon a written determination that, and explanation by the Department of why, implementing immediate wage withholding would not be in the best interests of the child.* The total amount withheld shall not exceed the maximum amount permitted under § 34-29.

B. The order shall include, but not be limited to, notice (i) of the amount that will be withheld, (ii) that the withholding applies to any current or subsequent period of employment, (iii) of the right to contest whether a duty of support is owed and the information specified in the administrative order is correct, (iv) that a written request to appeal the withholding shall be made to the Department of Social

Services within ten days of receipt of the notice, and (v) of the actions that will be taken by the Department if an appeal is noted, which shall include the opportunity to present his objections to the administrative hearing officer at a hearing held pursuant to § 63.1-267.1. Upon service of the order by certified mail, return receipt requested, service in accordance with the provisions of § 8.01-296, § 8.01-327 or § 8.01-329 or waiver of service, a copy shall be sent by first-class mail to the obligee.

C. The responsible person's employer shall be issued by certified mail, return receipt requested, an administrative order for mandatory withholding of earnings which shall conform to § 20-79.3. The rights and responsibilities of an employer with respect to such orders are set out in § 20-79.3.

D. If the Department of Social Services *or its designee* receives payments deducted from earnings of an obligor pursuant to more than one administrative order or a combination of judicial and administrative orders, the Department shall ~~allocate~~ *ensure that* such payments *are allocated* among the obligees under such orders with priority given to payment of the order for current support. Where the Department *or its designee* receives payments pursuant to two or more orders for current support, the ~~Department shall prorate~~ payments received *shall be prorated* on the basis of the amounts due under each such order. Upon satisfaction of any amounts due for current support, ~~the Department shall prorate~~ the remainder of the payments received *shall be prorated* on the basis of amount due under each such order. Upon satisfaction of any amounts due for current support, ~~the Department shall prorate~~ the remainder of the payments received *shall be prorated* on the basis of amounts due under any orders for accrued arrearages.

E. Administrative orders for withholding from earnings shall be promptly terminated or modified by the Department when (i) the obligation to support has been satisfied and arrearages have been paid, (ii) the whereabouts of the child or child and caretaker become unknown or (iii) modification is appropriate because of a change in the amount of the obligation.