

# VIRGINIA ACTS OF ASSEMBLY -- 1996 SESSION

## CHAPTER 416

*An Act to amend and reenact §§ 20-60.5 and 20-79.3 of the Code of Virginia, relating to income withholding orders issued by other states' child support enforcement agencies.*

[H 793]

Approved March 31, 1996

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

**1. That §§ 20-60.5 and 20-79.3 of the Code of Virginia are amended and reenacted as follows:**

§ 20-60.5. Support payment provisions; how paid.

A. 1. Unless otherwise directed by the Committee on District Courts, in all cases in which payment of a support obligation arising under an order or decree entered prior to October 1, 1985, is made by the obligor through the office of a clerk of court, the clerk shall notify the payee and the obligor that the obligor will be directed to pay future support payments to the Department of Social Services as of the date provided in the notice.

In cases transferred from the courts to the Department of Social Services on or after October 1, 1985, the payee shall be deemed as having executed an authorization to seek or enforce a support obligation with the Department's Division of Child Support Enforcement unless the payee specifically indicates that the Division's services are not desired.

2. Unless otherwise directed by the Department of Social Services, the notice of change in payment shall be served or sent by certified mail, return receipt requested, and shall contain (i) the name of the payee and, if different in whole or in part, the names of the persons to whom an obligation of support is owed by the obligor, (ii) the name of the obligor, (iii) the amount of the periodic support payment, the due dates of such payments and any arrearages, (iv) the beginning date for sending payments to the Department of Social Services, and (v) the date by which the payee and obligor shall notify the Department of Social Services of the election to (a) have the Department of Social Services collect and disburse support payments together with forms and instructions for applying for such services or (b) have support payment made by the obligor directly to the payee. A copy of the notice also shall be transmitted to the Department of Social Services.

3. Unless otherwise directed by the Committee on District Courts, if both the obligor and the payee request in writing to the Department of Social Services that all support payments be made by the obligor directly to the payee, then the Department of Social Services shall so notify the court and the court shall enter an order to such effect. In the event an election is taken pursuant to subdivision 2 (v) (a), the notice of election shall have the same force and effect as an order of the court.

4. The above provisions shall also apply to payroll deductions made pursuant to § 20-79.1, except that only the payee and the employer shall receive such notice.

5. The change in payment provision required by subsection A shall be initiated by October 1, 1985, unless a different date is mutually agreed to by the Department of Social Services and the Committee on District Courts as to individual courts.

B. Unless a different date is mutually agreed to by the Department of Social Services and the Committee on District Courts, all orders or decrees for support entered on or after October 1, 1985, shall direct that payment be made only to the payee unless one of the parties objects, in which case the order or decree shall direct that payment be made to or through the Department of Social Services.

C. The Department of Social Services shall promptly pay to the payee all support payments collected by it which have been ordered by a court to be paid to or through the Department. The Department shall pay interest to the payee when such interest amount exceeds five dollars on a support payment as provided in § 63.1-250.1:1.

D. If the Department of Social Services enters into a contract with a public or private entity for the processing of support payments, then, except as provided in subsection E, and notwithstanding any other provision of this section:

1. The Department shall notify the affected court of the existence of such contract and how payments are contractually required to be made to such contractors; and

2. The affected court shall include in all support orders (i) how payments are required to be made to such contractors and (ii) that payments are to be made in such manner until different payment instructions are mailed to the person making payments by the court or by the Department.

E. An employer of 10,000 persons or more shall not be required to make payments other than by combined single payment to the Department's central office in Richmond without the express written consent of the employer, *unless the order is from a support enforcement agency outside the Commonwealth.*

F. Upon any obligee's application for public assistance benefits or child support services, the

Department of Social Services may change the payee to the Department so that payment is sent to the Department at its address as contained in the notice of change as described in this subsection. Upon the obligee's request that support services no longer be provided, the Department may change the payee to the obligee so that payment is sent to the obligee at the address provided by the obligee as contained in the notice of change as described in this subsection. Notice of such change shall be served on the obligor by certified mail, return receipt requested, or in accordance with Chapter 8 (§ 8.01-285 et seq.) or Chapter 9 (§ 8.01-328 et seq.) of Title 8.01. The change described in the notice shall be effective as to all payments paid on or after the date that notice was served regardless of when such payments were due. Return of service shall be made to the Department of Social Services at the location described in the notice. Upon obtaining service of the notice on the obligor, the Department of Social Services shall transmit a copy of such notice together with a copy of the proof of service to the court having jurisdiction for enforcement of the order and to the custodial parent.

§ 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, *unless the order is from a support enforcement agency outside the Commonwealth*;

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, *unless the order is from a support enforcement agency outside the Commonwealth*.