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SENATE BILL NO. 302

Senate Amendments in [] — February 7, 1996

A BILL to amend and reenact §§20-88.32, 20-88.39, [20-88.48,] 20-88.51 and 63.1-250.1 of the Code of Virginia, relating to the Uniform Interstate Family Support Act.

Patron—Norment

Referred to the Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That §§20-88.32, 20-88.39, [20-88.48,] 20-88.51 and 63.1-250.1 of the Code of Virginia are amended and reenacted as follows:

§ 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 imposable 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 juvenile and domestic relations district court or with the Division of Child Support Enforcement of the Department of Social Services.

"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

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SB302E

60 "state" includes a Native American tribe and includes a foreign jurisdiction that has established
61 procedures for issuance and enforcement of support orders which are substantially similar to the
62 procedures under this chapter.

63 "Support enforcement agency" means a public official or agency authorized to seek enforcement of
64 support orders or laws relating to the duty of support, establishment or modification of child support,
65 determination of parentage, or locating obligors or their assets. *A support enforcement agency of this
66 Commonwealth is not authorized to establish or enforce a support order for spousal support only*

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

71 "Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish,
72 enforce, or modify support orders or to determine parentage; *however, the support enforcement agency
73 of this state has no authority to establish or enforce a support order for spousal support only.*

74 § 20-88.39. Continuing, exclusive jurisdiction.

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

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

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

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

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

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

89 2. Enforce nonmodifiable aspects of that order; and

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

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

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

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

102 *F. The support enforcement agency of this state is not authorized to establish or enforce a support
103 order for spousal support only.*

104 § 20-88.48. Duties and powers of responding tribunal.

105 A. When a responding tribunal of this Commonwealth receives a petition or comparable pleading
106 from an initiating tribunal or directly pursuant to subsection C of § 20-88.44, it shall cause the petition
107 or pleading to be filed and notify the petitioner by first class mail where and when it was filed. *An
108 order for spousal support only shall be forwarded to the appropriate juvenile and domestic relations or
109 family court .*

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

112 1. Issue or enforce a support order, modify a child support order, or render a judgment to determine
113 parentage;

114 2. Order an obligor to comply with a support order, specifying the amount and the manner of
115 compliance;

116 3. Order income withholding;

117 4. Determine the amount of any arrearages, and specify a method of payment;

118 5. Enforce orders by civil or criminal contempt, or both;

119 6. Set aside property for satisfaction of the support order;

120 7. Place liens and order execution on the obligor's property;

121 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.

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

If the [~~attorney for the Commonwealth~~ *Attorney General* 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.

§ 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 of Social Services shall have the authority, upon notice from the Department of Medical Assistance Services, to use any existing enforcement mechanisms provided by this chapter to collect the wages, salary, or other employment income or to withhold amounts from state tax refunds of any obligor who has not used payments received from a third party to reimburse, as appropriate, either the other parent of such child or the provider of such services, to the extent necessary to reimburse the Department of Medical Assistance Services.

C. 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 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.

D. 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.

E. 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 Commissioner, Director and district managers may also subpoena copies of state and federal income tax returns. The district managers shall be trained in the correct use of the subpoena process prior to exercising subpoena authority.

F. 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.

G. *If a support order has been issued in another state but both the obligor and the obligee now live in the Commonwealth, the Department may (i) enforce the order without registration, using all enforcement remedies available under Chapter 13 of Title 63.1 and (ii) register the order in the*

183 *appropriate tribunal of the Commonwealth for enforcement or modification.*