

VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

CHAPTER 663

An Act to amend and reenact §§ 20-79.1, 63.1-250.3 and 63.1-258.1 of the Code of Virginia, relating to child support enforcement; wage withholding.

[H 2681]

Approved March 21, 1997

Be it enacted by the General Assembly of Virginia:

1. That §§ 20-79.1, 63.1-250.3 and 63.1-258.1 of the Code of Virginia are amended and reenacted as follows:

§ 20-79.1. Enforcement of support orders; payroll deduction; penalty for wrongful discharge.

A. As part of any order directing a person to pay child support, except for initial orders entered pursuant to § 20-79.2 or spousal support pursuant to this chapter or §§ 16.1-278.15 through 16.1-278.18, 20-103, 20-107.2 or § 20-109.1, or by separate order at any time thereafter, a court of competent jurisdiction may order a person's employer to deduct from the amounts due or payable to such person, the entitlement to which is based upon earnings as defined in § 63.1-250, the amount of current support due and an amount to be applied to arrearages, if any. The court shall order such payroll deductions (i) for "good cause shown" as defined below, or (ii) if so provided in a stipulation or contract signed by the party ordered to pay such support and filed with the pleadings or depositions, or (iii) upon receipt of a notice of arrearages in a case in which an order has been entered pursuant to § 20-60.3. Good cause shall include a finding that the respondent is in arrears for an amount equal to one month's support obligation. The court may, in its discretion, order such payroll deduction (i) based upon the obligor's past financial responsibility, history of prior payments pursuant to any such support order, and any other matter which the court considers relevant in determining the likelihood of payment in accordance with the support order, or (ii) at the request of the obligor.

B. Any such payroll deduction order shall only be entered upon motion after proper notice sent by the clerk or counsel. The notice shall cite this section, and, if sent by the clerk, shall be served in accordance with the provisions of § 8.01-296 or § 8.01-329, or sent by certified mail, return receipt requested, to the person ordered to pay such support.

The notice shall advise the obligor (i) of the amount proposed to be withheld, (ii) that the order of the court will apply to current and future employment, (iii) of the right to contest the order, (iv) that the obligor must file a written notice of contest of such payroll deduction with the court within ten days of the date of issuance of the notice, (v) that if the notice is contested, a hearing will be held and a decision rendered within ten days from the receipt of the notice of contest by the court, unless good cause is shown for additional time, which shall in no event exceed forty-five days from receipt of the notice by the obligor, (vi) that only disputes as to mistakes of fact as defined in § 63.1-250 will be heard, (vii) that any order for payroll deduction entered will state when the deductions will start and the information that will be provided to the person's employer, (viii) that if no notice of contest is filed, an order will be entered directing payroll deductions, and (ix) that payment of overdue support upon receipt of the notice shall not be a bar to the implementation of withholding.

Whenever the obligor and the obligee agree to payroll deductions in a contract or stipulation, the obligor shall be deemed to have waived notice as required in this subsection and the payroll deduction shall be ordered only upon the stipulation or contract being approved by the court.

C. The payroll deduction order of the court shall by its terms direct the clerk to issue an order in accordance with § 20-79.3 to the obligor's current employer and, if required, to each future employer, as necessary to implement the payroll deduction order. The order shall cite this section as authority for the entry of the order.

D. The rights and responsibilities of employers with respect to payroll deduction orders are set out in § 20-79.3.

E. The clerk's order to the employer pursuant to this section shall not be effective until a certified copy thereof has been served upon the employer *or sent to the employer by electronic means*. A copy shall be mailed to the employee by first-class mail by the clerk on the day that a copy of the order is transmitted to the sheriff for service. If the employer is a corporation, such service shall be accomplished as is provided in § 8.01-513.

F. Any order issued pursuant to this section shall be promptly terminated or modified, as appropriate, after notice and an opportunity for a hearing for the parties when (i) the whereabouts of the children entitled to support and their custodian become unknown, (ii) the support obligation to an obligee ceases. Any such order shall be promptly modified, as appropriate, when arrearages have been paid in full.

G. The Department of Social Services may charge an obligee an appropriate fee when complying with an order entered under this section sufficient to cover the Department's cost.

H. If a court of competent jurisdiction in any state or territory of the United States or the District of Columbia has ordered a person to pay child support, a court of competent jurisdiction in this Commonwealth, upon motion, notice and opportunity for a hearing as provided in this section, shall enter a payroll deduction order, conforming with § 20-79.3 as provided in this section. The rights and responsibilities of the employer with respect to the order are set out in § 20-79.3. Similar orders of the courts of this Commonwealth may be enforced in a similar manner in such other state, territory or district.

I. The court or clerk shall attempt to ascertain the obligor's pay period interval prior to service of the clerk's order. If, after the order is served, the employer replies to the court that the pay period interval in the payroll deduction order differs from the obligor's pay period interval, the clerk shall convert the single monetary amount in the payroll deduction order to an equivalent single monetary amount for the obligor's pay period interval pursuant to a formula approved by the Committee on District Courts. The equivalent single monetary amount shall be contained in a new order issued by the clerk and served on the employer and which conforms to § 20-79.3.

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

§ 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. 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, *or by electronic means* 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 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, *or by electronic means* 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 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 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 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 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.