

VIRGINIA ACTS OF ASSEMBLY -- 1997 RECONVENED SESSION

CHAPTER 898

An Act to amend and reenact §§ 20-91, 32.1-263, 32.1-267, 32.1-268, 46.2-320, 63.1-250.1 and 63.1-263.1 of the Code of Virginia and to amend the Code of Virginia by adding in Chapter 1 of Title 54.1 a section numbered 54.1-116, relating to child support enforcement; provision of social security numbers; suspension of licenses.

[H 2680]

Approved April 2, 1997

Be it enacted by the General Assembly of Virginia:

1. That §§ 20-91, 32.1-263, 32.1-267, 32.1-268, 46.2-320, 63.1-250.1 and 63.1-263.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Chapter 1 of Title 54.1 a section numbered 54.1-116 as follows:

§ 20-91. Grounds for divorce from bond of matrimony; contents of decree.

A. A divorce from the bond of matrimony may be decreed:

(1) For adultery; or for sodomy or buggery committed outside the marriage;

(2) [Repealed.]

(3) Where either of the parties subsequent to the marriage has been convicted of a felony, sentenced to confinement for more than one year and confined for such felony subsequent to such conviction, and cohabitation has not been resumed after knowledge of such confinement (in which case no pardon granted to the party so sentenced shall restore such party to his or her conjugal rights); or

(4), (5) [Repealed.]

(6) Where either party has been guilty of cruelty, caused reasonable apprehension of bodily hurt, or willfully deserted or abandoned the other, such divorce may be decreed to the innocent party after a period of one year from the date of such act;

(7), (8) [Repealed.]

(9) (a) On the application of either party if and when the husband and wife have lived separate and apart without any cohabitation and without interruption for one year. In any case where the parties have entered into a separation agreement and there are no minor children either born of the parties, born of either party and adopted by the other or adopted by both parties, a divorce may be decreed on application if and when the husband and wife have lived separately and apart without cohabitation and without interruption for six months. A plea of res adjudicata or of recrimination with respect to any other provision of this section shall not be a bar to either party obtaining a divorce on this ground; nor shall it be a bar that either party has been adjudged insane, either before or after such separation has commenced, but at the expiration of one year or six months, whichever is applicable, from the commencement of such separation, the grounds for divorce shall be deemed to be complete, and the committee of the insane defendant, if there be one, shall be made a party to the cause, or if there be no committee, then the court shall appoint a guardian ad litem to represent the insane defendant.

(b) This subdivision (9) shall apply whether the separation commenced prior to its enactment or shall commence thereafter. Where otherwise valid, any decree of divorce hereinbefore entered by any court having equity jurisdiction pursuant to this subdivision (9), not appealed to the Supreme Court of Virginia, is hereby declared valid according to the terms of said decree notwithstanding the insanity of a party thereto.

(c) A decree of divorce granted pursuant to this subdivision (9) shall in no way lessen any obligation any party may otherwise have to support the spouse unless such party shall prove that there exists in the favor of such party some other ground of divorce under this section or § 20-95.

B. A decree of divorce shall include each party's social security number, or other control number issued by the Department of Motor Vehicles pursuant to § 46.2-342.

§ 32.1-263. Filing death certificates; medical certification; investigation by medical examiner.

A. A death certificate, including, if known, the social security number or control number issued by the Department of Motor Vehicles pursuant to § 46.2-342 of the deceased, shall be filed for each death which occurs in this Commonwealth ~~shall be filed~~ with the registrar of the district in which the death occurred within three days after such death and prior to final disposition or removal of the body from the Commonwealth, and shall be registered by such registrar if it has been completed and filed in accordance with the following requirements:

1. If the place of death is unknown, but the dead body is found in this Commonwealth, a death certificate shall be filed in the registration district in which the dead body is found in accordance with this section. The place where the dead body is found shall be shown as the place of death. If the date of death is unknown, it shall be determined by approximation; and

2. When death occurs in a moving conveyance, in the United States of America and the body is first

removed from the conveyance in this Commonwealth, the death shall be registered in this Commonwealth and the place where it is first removed shall be considered the place of death. When a death occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the body is first removed from the conveyance in this Commonwealth, the death shall be registered in this Commonwealth but the certificate shall show the actual place of death insofar as can be determined.

B. The funeral director or person who first assumes custody of a dead body shall file the certificate of death with the registrar. He shall obtain the personal data, *including the social security number of the deceased or control number issued to the deceased by the Department of Motor Vehicles pursuant to § 46.2-342*, from the next of kin or the best qualified person or source available and obtain the medical certification from the person responsible therefor.

C. The medical certification shall be completed, signed and returned to the funeral director within twenty-four hours after death by the physician in charge of the patient's care for the illness or condition which resulted in death except when inquiry or investigation by a medical examiner is required by § 32.1-283 or § 32.1-285.1.

In the absence of the physician or with his approval, the certificate may be completed and signed by an associate physician, the chief medical officer of the institution in which death occurred, or the physician who performed an autopsy upon the decedent, if such individual has access to the medical history of the case and death is due to natural causes.

D. When inquiry or investigation by a medical examiner is required by § 32.1-283 or § 32.1-285.1, the medical examiner shall investigate the cause of death and shall complete and sign the medical certification portion of the death certificate within twenty-four hours after being notified of the death. If the medical examiner refuses jurisdiction, the physician last furnishing medical care to the deceased shall prepare and sign the medical certification portion of the death certificate.

E. If the cause of death cannot be determined within twenty-four hours after death, the medical certification shall be completed as provided by regulations of the Board. The attending physician or medical examiner shall give the funeral director or person acting as such notice of the reason for the delay, and final disposition of the body shall not be made until authorized by the attending physician or medical examiner.

§ 32.1-267. Records of marriages; duties of officer issuing marriage license and person officiating at ceremony.

A. For each marriage performed in this Commonwealth, a record showing personal data for the married parties, the marriage license, and the certifying statement of the facts of marriage shall be filed with the State Registrar as provided in this section.

B. The officer issuing a marriage license shall prepare the record based on the information obtained under oath or by affidavit from the parties to be married. The parties shall also *include their social security numbers or other control numbers issued by the Department of Motor Vehicles pursuant to § 46.2-342* and affix their signatures to the application for such license.

C. Every person who officiates at a marriage ceremony shall certify to the facts of marriage and file the record in duplicate with the officer who issued the marriage license within five days after the ceremony. In the event such officiant dies or becomes incapacitated before completing the certificate of marriage, the official who issued the marriage license shall complete the certificate of marriage upon the order of the court to which is submitted proof that the marriage was performed.

D. Every officer issuing marriage licenses shall on or before the tenth day of each calendar month forward to the State Registrar a record of each marriage filed with him during the preceding calendar month.

E. The State Registrar shall furnish forms for the marriage license, marriage certificate, and application for marriage license used in this Commonwealth.

§ 32.1-268. Reports of divorces and annulments.

A. For each final decree of divorce or annulment of marriage granted by a court in this Commonwealth, a report shall be certified and filed by the clerk of court with the State Registrar. The information necessary to prepare the report, *including the social security number of each party or the control number issued a party by the Department of Motor Vehicles pursuant to § 46.2-342*, shall be furnished, with the petition or when filing the decree, to the clerk of court by the petitioner or his attorney on forms prescribed by the Board and furnished by the State Registrar.

B. On or before the tenth day of each month the clerk of court shall forward to the State Registrar the report of each final decree of divorce and annulment granted during the preceding calendar month and such related reports as the State Registrar may require.

§ 46.2-320. Other grounds for refusal or suspension.

A. The Department may refuse to grant an application for a driver's license in any of the circumstances set forth in § 46.2-608 as circumstances justifying the refusal of an application for the registration of a motor vehicle. The Department may refuse to issue or reissue a driver's license for the willful failure or refusal to pay any taxes or fees required to be collected or authorized to be collected by the Department.

B. The Commissioner may enter into an agreement with the Department of Social Services whereby the Department may suspend or refuse to renew the driver's license of any person upon receipt of notice from the Department of Social Services that the person (i) is delinquent in the payment of child support by ninety days or more or in an amount of \$5,000 or more or (ii) *has failed to comply with a subpoena, summons or warrant relating to paternity or child support proceedings.* A suspension or refusal to renew authorized pursuant to this section shall not be effective until thirty days after receipt by the delinquent obligor of notice of intent to suspend or refuse to renew. The notice of intent shall be ~~sent by certified mail served on the obligor~~ by the Department of Social Services, *by certified mail*, with proof of actual receipt, ~~to the obligor at the~~ *sent to the obligor's* last known address as shown in the records of the Department or the Department of Social Services *or by personal delivery to the obligor pursuant to subdivision 1 of § 8.01-296, or service may be waived by the obligor in accordance with procedures established by the Department of Social Services.* The obligor shall be entitled to a judicial hearing if a request for a hearing is made, in writing, to the Department of Social Services within ten days of receipt of the notice of intent. Upon receipt of the request for a hearing the Department of Social Services shall petition the court that entered or is enforcing the order, requesting a hearing on the proposed suspension or refusal to renew. The court shall authorize the suspension or refusal to renew only if it finds that the obligor's noncompliance with the child support order was willful. Upon a showing by the Department of Social Services that the obligor is delinquent in the payment of child support by ninety days or more or in an amount of \$5,000 or more the burden of proving that the delinquency was not willful shall rest upon the obligor. The Department shall not suspend or refuse to renew the driver's license until a final determination is made by the court.

C. At any time after receipt of a notice of intent, the person may petition the juvenile and domestic relations district court in the jurisdiction where he resides for the issuance of a restricted license to be used if the suspension or refusal to renew becomes effective. Upon such petition and a finding of good cause, the court may issue the restricted permit to operate a motor vehicle for any or all of the following purposes: (i) travel to and from his place of employment and for travel during the hours of such person's employment if the operation of a motor vehicle is a necessary incident of such employment; (ii) travel to and from school if such person is a student, upon proper written verification to the court that such person is enrolled in a continuing program of education; (iii) travel to and from visitation with a child of such person; or (iv) such other medically necessary travel as the court deems necessary and proper upon written verification of need by a licensed health professional. *A restricted license issued pursuant to this subsection shall not permit any person to operate a commercial motor vehicle as defined in § 46.2-341.4. The court shall order the surrender of the person's license to operate a motor vehicle, to be disposed of in accordance with the provisions of § 46.2-398, and shall forward to the Commissioner a copy of its order entered pursuant to this subsection. The order shall specifically enumerate the restrictions imposed and contain such information regarding the person to whom such a permit is issued as is reasonably necessary to identify him.*

D. The Department shall not renew a driver's license or terminate a license suspension ~~of a person who has been found to be so delinquent in the payment of child support~~ *imposed pursuant to this section* until it has received from the Department of Social Services a certification that the person has (i) paid the delinquency in full ~~or~~, (ii) reached an agreement with the Department of Social Services to satisfy the delinquency and at least one payment has been made pursuant to the agreement, *or (iii) complied with a subpoena, summons or warrant relating to a paternity or child support proceeding.* Certification by the Department of Social Services shall be made by electronic or telephonic communication *and shall be made* on the same work day that payment required by clause (i) or (ii) is made.

§ 54.1-116. Applicants to include social security numbers, or other identifying number.

Every applicant for a license, certificate, registration or other authorization to engage in a business, trade, profession or occupation issued by the Commonwealth pursuant to this title, and every applicant for renewal thereof, shall provide on the application either his social security number or control number issued by the Department of Motor Vehicles pursuant to § 46.2-342. An initial application or renewal application which does not include either identifying number shall not be considered or acted upon by the issuing entity, and no refund of any fees paid with the application shall be granted.

§ 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. Liability for child support shall be determined retroactively for the period measured from the date the order directing payment is delivered to the sheriff or process server for service upon the obligor.

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. When a payee, as defined in § 63.1-250, no longer has physical custody of a child, the Department of Social Services shall have the authority to redirect child support payments to a caretaker, relative or individual who has physical custody of the child when an assignment of rights has been made to the Department or an application for services has been made by such caretaker, relative, or individual with the Division of Child Support Enforcement.

C. 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.

D. 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. *The Department shall record the social security number of each party or control number issued to a party by the Department of Motor Vehicles pursuant to § 46.2-342 in the Department's file of the case.*

E. 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.

F. 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.

G. 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.

H. If a support order has been issued in another state but the obligor, the obligee, and the child now live in the Commonwealth, the Department may (i) enforce the order without registration, using all enforcement remedies available under Chapter 13 (§ 63.1-249 et seq.) of Title 63.1 and (ii) register the order in the appropriate tribunal of the Commonwealth for enforcement or modification.

§ 63.1-263.1. Applications for occupational or other license to include social security number; suspension upon delinquency; procedure.

Every initial application for or application for renewal of a license, certificate, registration or other authorization to engage in a business, trade, profession or occupation issued by the Commonwealth pursuant to Title 22.1, Title 38.2, Title 46.2 or Title 54.1 or any other provision of law shall require that the applicant provide his social security number or a control number issued by the Department of Motor Vehicles pursuant to § 46.2-342.

Upon thirty days' notice to an obligor who (i) *has failed to comply with a subpoena, summons or warrant relating to paternity or child support proceedings* or (ii) is alleged to be delinquent in the payment of child support by a period of ninety days or more or for \$5,000 or more, an obligee or the Department on behalf of an obligee, may petition either the court that entered or the court that is enforcing the order for child support for an order suspending any license, certificate, registration or other authorization to engage in a business, trade, profession or occupation, *or recreational activity* issued to the obligor by the Commonwealth pursuant to Title 22.1, Title 29.1, Title 38.2, Title 46.2 or Title 54.1 or any other provision of law. The notice shall be sent by certified mail, with proof of actual receipt. The notice shall specify that (i) the obligor has thirty days from the date of receipt to *comply with the subpoena, summons or warrant* or pay the delinquency or to reach an agreement with the obligee or the Department to pay the delinquency and (ii) if *compliance is not forthcoming* or payment is not made or an agreement cannot be reached within that time, a petition will be filed seeking suspension of any license, certificate, registration or other authorization to engage in a business, trade, profession or occupation, *or recreational license* issued by the Commonwealth to the obligor.

The court shall not suspend a license, certificate, registration or authorization upon finding that an alternate remedy is available to the obligee or the Department which is likely to result in collection of

the delinquency. Further, the court may refuse to order the suspension upon finding that (i) suspension would result in irreparable harm to the obligor or employees of the obligor or would not result in collection of the delinquency or (ii) the obligor has made a demonstrated, good faith effort to reach an agreement with the obligee or the Department.

If the court finds that the obligor (i) is delinquent in the payment of child support by ninety days or more or in an amount of \$5,000 or more and (ii) holds a license, certificate, registration or other authority to engage in a business, trade, profession or occupation *or recreational activity* issued by the Commonwealth, it shall order suspension. The order shall require the obligor to surrender any license, certificate, registration or other such authorization to the issuing entity within ninety days of the date on which the order is entered. If at any time after entry of the order the obligor (i) pays the delinquency ~~or~~, (ii) reaches an agreement with the obligee or the Department *with respect to the delinquency* and makes at least one payment pursuant to the agreement, *or (iii) complies with the subpoena, summons or warrant or reaches an agreement with the Department with respect to the subpoena, summons or warrant*, upon proof of payment *or certification of the compliance or agreement*, the court shall order reinstatement. Payment shall be proved by certified copy of the payment record issued by the Department or notarized statement of payment signed by the obligee. No fee shall be charged to a person who obtains reinstatement of a license, certificate, registration or authorization pursuant to this section.