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HOUSE BILL NO. 1106

Offered January 22, 1996

A BILL to amend the Code of Virginia by adding in Title 20 a chapter numbered 4.2, consisting of sections numbered 20-60.6 through 20-60.11, relating to child support enforcement; security deposits.

Patrons—Keating, Christian, Connally, Cooper, Crittenden, Cunningham, Darner, Hull, Plum, Puller, Van Ledingham and Watts; Senators: Couric and Miller, Y.B.

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Title 20 a chapter numbered 4.2, consisting of sections numbered 20-60.6 through 20-60.11, as follows:

CHAPTER 4.2.

CHILD SUPPORT SECURITY DEPOSIT ACT.

§ 20-60.6. Order for deposit of assets to secure future support payments.

A. Subject to subsections B and C, in any proceeding where the court has ordered either or both parents to pay any amount for the support of a minor child, upon an order to show cause or notice of motion, application and declaration signed under penalty of perjury by the person to whom support has been ordered to have been paid, stating that the parent or parents so ordered are in arrears for a period of sixty days or more, the court shall issue to the parent or parents, following notice and opportunity for a hearing, an order requiring that the parent or parents deposit assets to secure future support payments with the Department of Social Services or any other trustee designated by the court. Upon request of any party, the court may also issue an ex parte restraining order as specified in subsection D. Upon deposit of any asset which is not readily convertible into money, the court may, not less than twenty days after serving the obligor-parent or parents with written notice and a hearing, order the sale of that asset or assets and the deposit of the proceeds with the person designated under this subsection. The date of the issuance of the order to deposit assets shall be construed as the date notice of levy on an interest in real property was served on the judgment debtor. When the asset ordered to be deposited is real property, the order shall be certified as an abstract of judgment. A deposit of real property is made effective by recordation of the certified abstract with the clerk of the circuit court. The deposited real property and the rights, benefits and liabilities attached to that property shall continue in the possession of the legal owner.

B. Upon an obligor-parent's failure, within the time specified by the court, to make reasonable efforts to cure the default in child support payments or to comply with a court-approved payment plan, if payments continue in the arrears, the Department or trustee designated by the court shall, not less than twenty-five days after providing the obligor-parent or parents with a written notice served personally or by first class mail, return receipt requested, unless a motion or order to show cause has been filed to stop the use or sale, use the money or sell or otherwise process the deposited assets for an amount sufficient to pay the arrearage and the amount ordered by the court for the child support currently due.

An obligor-parent may file a motion to stop the use of the money or the sale of the asset within fifteen days after service of notice. The clerk of the court shall set the motion for hearing not less than twenty-one days after service on the person or county officer to whom support has been ordered to have been paid.

Assets which have been deposited pursuant to an order issued in accordance with this section shall be construed as being assets subject to levy and sale.

C. The Department or trustee designated by the court may deduct from the deposited money the sum of one dollar for each payment made pursuant to subsection B.

§ 20-60.7. Defenses to order.

An obligor-parent alleged to be in arrears and subject to this chapter may employ any of the following grounds as a defense to the motion filed pursuant to § 20-60.6 or as a basis for filing a motion to stop a sale or use of assets under subsection B of that section:

1. No arrearage in child support payments;
2. Laches;
3. A change in the custody of the children;
4. The existence of a pending motion for reduction in support because of a reduction in income;
5. Illness or disability;
6. Unemployment;

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60 7. Serious adverse impact on the immediate family of the obligor-parent residing with the
61 obligor-parent, outweighs the impact of denial of the motion or stopping the sale on obligee;

62 8. Serious impairment of the ability of the obligor-parent to generate income;

63 9. Other emergency conditions.

64 However, it shall be rebuttably presumed that nonpayment of child support was willful and without
65 good faith and that the obligor had the ability to pay the support.

66 § 20-60.8. Conditions for order to deposit assets; wage withholding not available.

67 The court shall issue an order pursuant to § 20-60.6 upon a determination that one or more of the
68 following conditions exist:

69 1. The obligor-parent is not receiving salary or wages subject to an assignment and there is reason
70 to believe that he has earned income from some source of employment;

71 2. An assignment of a portion of salary or wages would not be sufficient to meet the amount of the
72 support obligation, for reasons other than a change of circumstances which would qualify for a
73 reduction in the amount of child support ordered;

74 3. The job history of the obligor-parent shows that an assignment of a portion of salary or wages
75 would be difficult to enforce or would not be a practical means for securing the payment of the support
76 obligation, due to circumstances including, but not limited to, multiple concurrent or consecutive
77 employers.

78 The designation of assets subject to an order pursuant to § 20-60.6 shall be based upon concern for
79 maximizing the liquidity and ready conversion into cash of the deposited asset. In all instances, the
80 assets shall include a sum of money at least equal in value to one year of support payments or \$6,000,
81 whichever is less, or any other assets, personal or real, designated by the court which equal in value up
82 to one year of payments for support of the minor child, or \$6,000, whichever is less. In lieu of
83 depositing cash or other assets as provided above, the obligor-parent may, if approved by the court,
84 provide a performance bond secured by any real property or other assets of the parent and equal in
85 value to one year of payments.

86 § 20-60.9. Restraining orders.

87 During the pendency of any proceeding pursuant to this chapter and upon the application of either
88 party, the court may, without a hearing, issue ex parte orders restraining any person from transferring,
89 encumbering, hypothecating, concealing, or in any way disposing of any property, real or personal,
90 without regard to the manner by which title is held, except in the usual course of business or for the
91 necessities of life. If the order is directed against a party, the court may require him to notify the other
92 party of any proposed extraordinary expenditures and to account to the court for all such extraordinary
93 expenditures. The matter shall be made returnable not later than twenty-one days, or, if good cause
94 appears to the court, twenty-five days from the date of the order at which time the ex parte order shall
95 expire. Any order issued pursuant to this chapter shall state on its face the date of expiration of the
96 order, which shall expire in one year or upon deposit of assets or money pursuant to subsection A of
97 § 20-60.6, whichever first occurs. The court, at the hearing, shall determine for which property the
98 obligor-parent shall be required to report extraordinary expenditures and shall specify what is deemed
99 an extraordinary expenditure for purposes of this subsection.

100 § 20-60.10. Duties of Department; trustee.

101 A. The Department of Social Services, or any trustee designated by the court pursuant to subsection
102 A of § 20-60.6 who is responsible for any money or property and for any disbursements under this
103 chapter, shall not be held liable for any action undertaken in good faith and in conformance with this
104 chapter.

105 B. The Department or trustee designated by the court shall return all assets subject to court order to
106 the obligor-parent or parents when both of the following occur:

107 1. One year has elapsed since the court issued the order described under subsection A of § 20-60.6;
108 and

109 2. The obligor-parent or parents have made all support payments on time during that one-year
110 period.

111 When the above criteria have been satisfied and the deposited asset was real property, the
112 Department or trustee designated by the court shall prepare a release and shall request the clerk of the
113 court where the order to deposit assets was entered to certify the release and record it in the office of
114 the clerk of the circuit court.

115 C. The Department or trustee shall, if requested by an obligor-parent, prepare a statement setting
116 forth disbursements and receipts made under this chapter.

117 If the Department, trustee or person designated under subsection A of § 20-60.6 incurs fees or costs
118 under this act which are not compensated by the deduction under subsection C of § 20-60.6, including,
119 but not limited to, fees or costs incurred in any sale of assets and in the preparation of a statement
120 pursuant to subsection A, the court shall hear not less than twenty-one days after service upon the
121 obligor-parent of the notice of motion or order to show cause by the Department, trustee or person

122 *designated under subsection A of § 20-60.6 incurring the fees or costs, and order the obligor-parent or*
123 *parents to pay reasonable fees and costs. Fees and costs ordered to be paid by the court under this*
124 *subsection shall be in addition to any deposit made under subsection A of § 20-60.6, but shall not*
125 *exceed five percent of one year's child support obligation or the total amount ordered deposited*
126 *§ 20-60.6, whichever is less.*
127 *§ 20-60.11. Purpose.*
128 *The purpose of this chapter is to provide an extraordinary remedy for cases of bad faith failure to*
129 *pay child support obligations.*