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HOUSE BILL NO. 2240

Offered January 17, 1997

A BILL to amend and reenact §§ 63.1-251 and 63.1-251.2 of the Code of Virginia, relating to child support enforcement; satisfaction of arrearages.

Patrons—Griffith, Albo, Drake and Ruff

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 63.1-251 and 63.1-251.2 of the Code of Virginia are amended and reenacted as follows:

§ 63.1-251. Payment of public assistance for child or caretaker constitutes debt to Department by responsible persons; limitations; Department subrogated to rights.

Any payment of public assistance money made to or for the benefit of any dependent child or children or their caretaker creates a debt due and owing to the Department by the person or persons who are responsible for support of such children or caretaker in an amount equal to the amount of public assistance money so paid. However, if a caretaker receives AFDC payments for some of the caretaker's dependent children but not for other children pursuant to § 63.1-105.7, the caretaker shall receive the total amount of support collected for the children for whom no AFDC benefits are received. Such support payments shall not create a debt due and owing to the Department and the value of such payments shall not be counted as income for purposes of AFDC eligibility and grant determination. Where there has been a court order for support, final decree of divorce ordering support, or administrative order under the provisions of this chapter for support, the debt shall be limited to the amount of such order or decree. The Commissioner, pursuant to § 63.1-264, shall establish the debt in an amount determined to be consistent with a responsible person's ability to pay. The Department shall have the right to petition the appropriate court for modification of a court order on the same grounds as either party to such cause.

The Department shall be subrogated to the right of such child or children or caretaker to prosecute or maintain any support action or execute any administrative remedy existing under the laws of the Commonwealth of Virginia to obtain reimbursement of moneys thus expended and may collect on behalf of any such child, children or caretaker any amount contained in any court order of support or any administrative order of support regardless of whether or not the amount of such orders exceeds the amount of public assistance paid. ~~Any~~ Upon payment of amounts due a child or caretaker to satisfy an arrearage, any support paid in excess of the total amount of public assistance paid shall be returned to the caretaker by the Department. If a court order for support or final decree of divorce ordering support enters judgment for an amount of support to be paid by such responsible person, the Department shall be subrogated to the debt created by such order, and said money judgment shall be deemed to be in favor of the Department. In any judicial proceeding brought by an attorney on behalf of the Department pursuant to this section to enforce a support obligation in which the Department prevails, attorney's fees shall be assessed pursuant to § 63.1-274.10.

In no event shall the Department use amounts received from an obligor in satisfaction of a debt owed the Department or to which the Department has been subrogated if an arrearage exists in amounts owed the obligee.

The Department shall have the authority to pursue establishment and enforcement actions against the person responsible for support after the closure of the public assistance case unless the caretaker notifies the Department in writing that child support enforcement services are no longer desired.

Debt created by an administrative support order under this section shall not be incurred by nor at any time be collected from a responsible person who is the recipient of public assistance moneys for the benefit of minor dependent children for the period such person or persons are in such status. Recipients of federal supplemental security income shall not be subject to the establishment of an administrative support order while they receive benefits from that source.

§ 63.1-251.2. Distribution of collection.

Support payments received by the Department of Social Services or the Department's designee shall be prorated among the obligees based upon the current amounts due pursuant to more than one judicial or administrative order, or a combination thereof, with any remaining amounts prorated among the obligees with orders for accrued arrearages in the same proration as the current support payments. *Payments received in satisfaction of an arrearage shall be paid first to satisfy any arrearage owing to an obligee or obligees, with any amounts remaining after satisfaction of all arrearages owed to individuals being used to satisfy any amounts owed to the Department.*

INTRODUCED

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