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SENATE BILL NO. 803

Offered January 9, 1997

A BILL to amend and reenact § 63.1-252.1 of the Code of Virginia, as it is currently effective and as it may become effective, and § 63.1-252.2 of the Code of Virginia, relating to notice of administrative support order; service.

Patron—Quayle

Referred to the Committee on Rehabilitation and Social Services

Be it enacted by the General Assembly of Virginia:

1. That § 63.1-252.1 of the Code of Virginia, as it is currently effective and as it may become effective, and § 63.1-252.2 of the Code of Virginia are amended and reenacted as follows:

§ 63.1-252.1. Notice of administrative support order; contents; hearing; modification.

The Commissioner may proceed against a responsible person whose support debt has accrued or is accruing based upon subrogation to, assignment of, or authorization to enforce a support obligation. Such obligation may be created by a court order for support of a child or child and spouse or decree of divorce ordering support of a child or child and spouse. In the absence of such a court order or decree of divorce, the Commissioner may, pursuant to this chapter, proceed against a person whose support debt has accrued or is accruing based upon payment of public assistance or who has a responsibility for the support of any dependent child or children and their caretaker. The administrative support order shall also provide that support shall continue to be paid for any child over the age of eighteen who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the parent seeking or receiving child support, until such child reaches the age of nineteen or graduates from high school, whichever comes first. The Commissioner shall initiate proceedings by issuing notice containing the administrative support order which shall become effective unless timely contested. The notice shall be served upon the debtor (i) in accordance with the provisions of §§ 8.01-296, 8.01-327 or § 8.01-329 or (ii) by certified mail, return receipt requested, or service may be waived. A copy of the notice shall be sent to the obligee by first-class mail upon service of the notice. The notice shall include the following:

1. A statement of the support debt or obligation accrued or accruing and the basis and authority under which the assessment of the debt or obligation was made;

2. A statement of the name of the child or children and caretaker for whom support is being sought;

3. A statement that support shall continue to be paid for any child over the age of eighteen who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the parent seeking or receiving child support, until such child reaches the age of nineteen or graduates from high school, whichever comes first;

4. A demand for immediate payment of the support debt or obligation or, in the alternative, a demand that the debtor file an answer with the Commissioner within ten days of the date of service of the notice stating his defenses to liability;

5. A statement of the name and address of the person to whom the answer is to be filed;

6. A statement that if no answer is made on or before ten days from the date of service of the notice, the administrative support order shall be final and enforceable, and the support debt shall be assessed and determined subject to computation, and is subject to collection action;

7. A statement that the property of the debtor will be subject to lien and foreclosure, distraint, seizure and sale or an order to withhold and deliver or mandatory withholding of earnings;

8. A statement that the obligor shall keep the Department informed regarding access to health insurance coverage and health insurance policy information and a statement that health care coverage may be required for the debtor's dependent children if available at reasonable cost as defined in § 63.1-250;

9. A statement of each party's right to appeal and the procedures applicable to appeals from the decision of the Commissioner;

10. A statement that the obligor's income shall be immediately withheld to comply with this order unless the obligee, or the Department of Social Services, if the obligee is receiving public assistance, and obligor agree to an alternative arrangement;

11. A statement that any determination of a support obligation under this section creates a judgment by operation of law and as such is entitled to full faith and credit in any other state or jurisdiction;

12. A statement that the obligor shall give the Department written notice of any change in the obligor's address within thirty days of the change of address; and

13. A statement that the obligor shall keep the Department informed of the name and address of the

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obligor's current employer.

If no answer is received by the Commissioner within ten days of the date of service or acceptance, the administrative support order shall be as provided in the notice. The Commissioner may initiate collection procedures pursuant to this chapter, Chapter 11 (§ 16.1-226 et seq.) of Title 16.1 or Title 20. If the debtor, within ten days of the date of service of the notice, files an answer, with the Commissioner alleging defenses to the liability imposed pursuant to § 63.1-251, the debtor shall have the right to an administrative hearing.

Any changes in the amount of the administrative order must be made pursuant to this section. In no event shall an administrative hearing alter or amend the amount or terms of any court order for support or decree of divorce ordering support. No support order may be retroactively modified, but may be modified with respect to any period during which there is a pending petition for modification, but only from the date that notice pursuant to ~~§ 8.01-296~~ of the review has been ~~given to~~ served on the nonrequesting party. *Notice of the review shall be served (i) in accordance with the provisions of §§ 8.01-296, 8.01-327 or § 8.01-329 or (ii) by certified mail, return receipt requested, or service may be waived.* The existence of an administrative order shall not preclude either an obligor or obligee from commencing appropriate proceedings in a juvenile and domestic relations district court or a circuit court.

§ 63.1-252.1. (Delayed effective date) Notice of administrative support order; contents; hearing; modification.

The Commissioner may proceed against a responsible person whose support debt has accrued or is accruing based upon subrogation to, assignment of, or authorization to enforce a support obligation. Such obligation may be created by a court order for support of a child or child and spouse or decree of divorce ordering support of a child or child and spouse. In the absence of such a court order or decree of divorce, the Commissioner may, pursuant to this chapter, proceed against a person whose support debt has accrued or is accruing based upon payment of public assistance or who has a responsibility for the support of any dependent child or children and their caretaker. The administrative support order shall also provide that support shall continue to be paid for any child over the age of eighteen who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the parent seeking or receiving child support, until such child reaches the age of nineteen or graduates from high school, whichever comes first. The Commissioner shall initiate proceedings by issuing notice containing the administrative support order which shall become effective unless timely contested. The notice shall be served upon the debtor (i) in accordance with the provisions of §§ 8.01-296, 8.01-327 or § 8.01-329 or (ii) by certified mail, return receipt requested, or service may be waived. A copy of the notice shall be sent to the obligee by first-class mail upon service of the notice. The notice shall include the following:

1. A statement of the support debt or obligation accrued or accruing and the basis and authority under which the assessment of the debt or obligation was made;

2. A statement of the name of the child or children and caretaker for whom support is being sought;

3. A statement that support shall continue to be paid for any child over the age of eighteen who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the parent seeking or receiving child support, until such child reaches the age of nineteen or graduates from high school, whichever comes first;

4. A demand for immediate payment of the support debt or obligation or in the alternative, a demand that the debtor file an answer with the Commissioner within ten days of the date of service of the notice stating his defenses to liability;

5. A statement of the name and address of the person to whom the answer is to be filed;

6. A statement that if no answer is made on or before ten days from the date of service of the notice, the administrative support order shall be final and enforceable, and the support debt shall be assessed and determined subject to computation, and is subject to collection action;

7. A statement that the property of the debtor will be subject to lien and foreclosure, distraint, seizure and sale or an order to withhold and deliver or mandatory withholding of earnings;

8. A statement that the obligor shall keep the Department informed regarding access to health insurance coverage and health insurance policy information and a statement that health care coverage may be required for the debtor's dependent children if available at reasonable cost as defined in § 63.1-250;

9. A statement of each party's right to appeal and the procedures applicable to appeals from the decision of the Commissioner;

10. A statement that the obligor's income shall be immediately withheld to comply with this order unless the obligee, or the Department of Social Services, if the obligee is receiving public assistance, and obligor agree to an alternative arrangement;

11. A statement that any determination of a support obligation under this section creates a judgment by operation of law and as such is entitled to full faith and credit in any other state or jurisdiction;

12. A statement that the obligor shall give the Department written notice of any change in the obligor's address within thirty days of the change of address; and

122 13. A statement that the obligor shall keep the Department informed of the name and address of the
 123 obligor's current employer.

124 If no answer is received by the Commissioner within ten days of the date of service or acceptance,
 125 the administrative support order shall be as provided in the notice. The Commissioner may initiate
 126 collection procedures pursuant to this chapter, Chapter 11 (§ 16.1-226 et seq.) of Title 16.1 or Title 20.
 127 If the debtor, within ten days of the date of service of the notice, files an answer, with the
 128 Commissioner alleging defenses to the liability imposed pursuant to § 63.1-251, the debtor shall have the
 129 right to an administrative hearing.

130 Any changes in the amount of the administrative order must be made pursuant to this section. In no
 131 event shall an administrative hearing alter or amend the amount or terms of any court order for support
 132 or decree of divorce ordering support. No support order may be retroactively modified, but may be
 133 modified with respect to any period during which there is a pending petition for modification, but only
 134 from the date that notice pursuant to ~~§ 8.01-296~~ of the review has been ~~given to~~ served on the
 135 nonrequesting party: (i) in accordance with the provisions of §§ 8.01-296, 8.01-327 or § 8.01-329 or
 136 (ii) by certified mail, return receipt requested, or service may be waived. The existence of an
 137 administrative order shall not preclude either an obligor or obligee from commencing appropriate
 138 proceedings in a family court.

139 § 63.1-252.2. Authority to initiate reviews of certain orders.

140 A. The Department may, pursuant to this chapter and in accordance with § 20-108.2, initiate a review
 141 of the amount of support ordered by any court. If a material change in circumstances has occurred, the
 142 Department shall report its findings and a proposed modified order to the court which entered the order
 143 or the court having current jurisdiction. Notice pursuant to ~~§ 8.01-296~~ of the review shall be served on
 144 both parties (i) in accordance with the provisions of §§ 8.01-296, 8.01-327 or § 8.01-329 or (ii) by
 145 certified mail, return receipt requested, or service may be waived. Either party may request a hearing
 146 on the proposed modified order by filing a request with such court within thirty days of receipt of notice
 147 by the requesting party. Unless a hearing is requested within the time limits, no hearing shall be
 148 required and the court shall ~~(i)~~ enter the modified order, which shall be effective from the date that
 149 notice pursuant to ~~§ 8.01-296~~ of such review was ~~provided to~~ served on the nonrequesting party and .
 150 The court shall modify any prior court order, or ~~(ii)~~ schedule a hearing on its motion and so notify the
 151 parties and the Department. If a hearing is held, the Department shall have the burden of proof.

152 B. However, if the order being reviewed by the Department deviated from the guidelines, when
 153 entered, based on one or more of the deviating factors set out in § 20-108.1 and the Department
 154 determines that there has been a material change in circumstances, the procedure set forth in subsection
 155 A shall not apply and the Department shall schedule a hearing with the court which entered the order or
 156 the court having current jurisdiction.

157 C. A material change in circumstances shall be deemed to have occurred if the difference between
 158 the existing child support award and the amount which would result from application of the guidelines is
 159 at least ten percent of the existing child support award but not less than twenty-five dollars per month.