

# VIRGINIA ACTS OF ASSEMBLY -- 1998 SESSION

## CHAPTER 727

*An Act to amend and reenact §§ 20-60.3, 20-79.1, 20-79.2, 20-79.3, 20-88.32, 20-88.64, 63.1-249 as it is currently effective and as it may become effective, 63.1-250, 63.1-250.3, 63.1-256 as it is currently effective and as it may become effective, 63.1-257 and 63.1-258.1 of the Code of Virginia, relating to child support enforcement; income withholding.*

[H 1375]

Approved April 16, 1998

### **Be it enacted by the General Assembly of Virginia:**

**1. That §§ 20-60.3, 20-79.1, 20-79.2, 20-79.3, 20-88.32, 20-88.64, 63.1-249 as it is currently effective and as it may become effective, 63.1-250, 63.1-250.3, 63.1-256 as it is currently effective and as it may become effective, 63.1-257 and 63.1-258.1 of the Code of Virginia are amended and reenacted as follows:**

§ 20-60.3. Contents of support orders.

All orders directing the payment of child or spousal support, including those orders confirming separation agreements, entered on or after October 1, 1985, whether they are original orders or modifications of existing orders, shall contain the following:

1. Notice that support payments may be withheld as they become due pursuant to § 20-79.1 or § 20-79.2, from ~~earnings~~ *income* as defined in § 63.1-250, without further amendments of this order or having to file an application for services with the Department of Social Services; however, absence of such notice in an order entered prior to July 1, 1988, shall not bar withholding of support payments pursuant to § 20-79.1;

2. Notice that support payments may be withheld pursuant to Chapter 13 (§ 63.1-249 et seq.) of Title 63.1 without further amendments to the order upon application for services with the Department of Social Services; however, absence of such notice in an order entered prior to July 1, 1988, shall not bar withholding of support payments pursuant to Chapter 13 of Title 63.1;

3. The names and dates of birth of each child to whom a duty of support is then owed by the person responsible for support;

4. If known, the name, date of birth and social security number of each parent of the child and, if different and if known, the name, date of birth and social security number of the person responsible for support and, unless otherwise ordered, each parent or responsible person's residential and, if different, mailing address, residential and employer telephone number, driver's license number, and the name and address of his or her employer; however, when a protective order has been issued or the court otherwise finds reason to believe that a party is at risk of physical or emotional harm from the other party, information other than the name of the party at risk shall not be included in the order;

5. On and after July 1, 1994, notice that a petition may be filed for suspension of any license, certificate, registration or other authorization to engage in a profession, trade, business or occupation issued by the Commonwealth to a person responsible for support as provided in § 63.1-263.1 upon a delinquency for a period of ninety days or more or in an amount of \$5,000 or more. The order shall indicate whether either or both parents currently hold such an authorization and, if so, the type of authorization held;

6. The amount of periodic support expressed in fixed sums, together with the payment interval, the date payments are due, and the date the first payment is due;

7. An order for health care coverage, including the health insurance policy information, for dependent children pursuant to §§ 20-108.1 and 20-108.2 if available at reasonable cost as defined in § 63.1-250 and a statement as to whether there is an order for health care coverage for a spouse or former spouse;

8. If support arrearages exist, (i) to whom an arrearage is owed and the amount of the arrearage, (ii) the period of time for which such arrearage is calculated, and (iii) a direction that all payments are to be credited to current support obligations first, with any payment in excess of the current obligation applied to arrearages;

9. If child support payments are ordered to be paid through the Department of Social Services, and unless the court for good cause shown orders otherwise, the parties shall give each other and the Department of Social Services at least thirty days' written notice, in advance, of any change of address and any change of telephone number within thirty days after the change;

10. If child support payments are ordered to be paid through the Department of Social Services, a provision requiring a delinquent obligor to keep the Department of Social Services informed of the name, address and telephone number of his current employer;

11. The separate amounts due to each person under the order, unless the court specifically orders a unitary award of child and spousal support due or the order affirms a separation agreement containing

provision for such unitary award;

12. Notice that in determination of a support obligation, the support obligation as it becomes due and unpaid creates a judgment by operation of law; and

13. Notice that on and after July 1, 1994, the Department of Social Services may, pursuant to Chapter 13 of Title 63.1 and in accordance with §§ 20-108.2 and 63.1-252.2, initiate a review of the amount of support ordered by any court.

§ 20-79.1. Enforcement of support orders; income 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 income* as defined in § 63.1-250, the amount of current support due and an amount to be applied to arrearages, if any. *The terms "employer" and "income" shall have the meanings prescribed in § 63.1-250.* The court shall order such ~~payroll~~ *income* 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) (ii) 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, or~~ (iii) upon 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 income~~ deduction order shall ~~only~~ be entered upon motion ~~after~~ *and concurrent* proper notice sent by the clerk or counsel. The notice shall cite this section, ~~and, If the notice is sent by the clerk, it shall be served in accordance with the provisions of § 8.01-296 or § 8.01-329, or sent by certified mail, return receipt requested, or by electronic means, including facsimile transmission, to the employer. An employer paying wages subject to deduction shall deliver the notice 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 income~~, (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 income~~ deduction entered will state when the deductions will start and the information that will be provided to the person's employer, *and* (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 income~~ 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 income~~ 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~~ any 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 income~~ 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~~ *when* a certified copy thereof has been served upon ~~the employer~~ or sent to the employer by electronic means, *including facsimile transmission*. A copy shall be ~~mailed~~ *provided* 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 the employer.~~ 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, *or* (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~~ *an income* 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~~ *income* deduction order differs from the obligor's pay period interval, the clerk shall convert the single monetary amount in the ~~payroll~~ *income* 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~~ *income* 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.

§ 20-79.2. Immediate income deduction; income withholding.

Every initial order entered on or after July 1, 1995, directing a person to pay child support shall include a provision for immediate withholding from the income of the obligor for the amount of the support order, plus an amount for the liquidation of arrearages, if any, unless the obligor and either the obligee or the Department on behalf of the obligee, agree in writing to an alternative payment arrangement or one of the parties demonstrates and the court finds good cause for not imposing immediate withholding. In determining whether good cause is shown, the court shall consider the obligor's past financial responsibility, history of prior payment under any support order, and any other matter that the court considers relevant to the likelihood of payment in accordance with the support order. An alternative payment arrangement may include but is not limited to, a voluntary income assignment pursuant to § 20-79.1 or § 63.1-272.

An order which modifies an initial order may include a provision for immediate income withholding.

The total amount withheld shall not exceed the maximum amount permitted under § 34-29.

A withholding order issued to an obligor's employer pursuant to this section shall conform to § 20-79.3. The rights and obligations of the employer with respect to the order are set out in § 20-79.3. The order shall direct the employer to forward payments to the Department for recording and disbursement to the obligee, or as otherwise required by law. The Department shall not charge a fee for recording and disbursing payments when it is providing support enforcement services to the obligee pursuant to § 63.1-250.2 or § 63.1-251.

§ 20-79.3. Information required in income deduction order.

A. Orders for withholding from the ~~earnings~~ *income* of an employee shall state and include the following:

1. The name and correct social security number of the obligor and the name and correct address of the payee;

2. That the employer shall withhold and pay out of the disposable ~~earnings~~ *income* as defined in § 63.1-250, a single monetary amount or the maximum amount permitted under § 34-29, whichever is less, for each regular pay period of the obligor and payment may be by check. *The terms "employer" and "income" shall have the meanings prescribed in § 63.1-250;*

3. That the ~~payroll~~ *income* deduction shall begin with the next regular pay period of the obligor following service of the order on the employer, and payment shall be made at regular intervals consistent with the pay periods of the obligor;

4. A statement of the maximum percentage under § 34-29 which may be withheld from the obligor's disposable ~~earnings~~ *income*;

5. That, to the extent required by the provisions for health care coverage contained in the order, the employer shall (i) enroll the employee, the employee's spouse or former spouse and the employee's dependent children listed in the order as covered persons in a group health insurance plan or other similar plan providing health care services or coverage offered by the employer, without regard to enrollment season restrictions, if the subject spouse, former spouse or children are eligible for such coverage under the employer's enrollment provisions, and (ii) deduct any required premiums from the employee's ~~earnings~~ *income* to pay for the insurance. If more than one plan is offered by the employer, the spouse, former spouse or children shall be enrolled prospectively in the insurance plan in which the employee is enrolled or, if the employee is not enrolled, in the least costly plan otherwise available. The employer shall also enroll the children of an employee in the appropriate health coverage plan upon application by the children's other parent or legal guardian or upon application by the Department of Medical Assistance Services. In each case which is being enforced by the Department of Social

Services, the employer shall respond to such orders by advising the Department in which plan the children are enrolled or if the children are ineligible for any plan through the employer. The order to the employer shall specify either support withholdings or insurance premium deductions as having priority for the duration of the order in the event the maximum total deduction permitted at any time by § 34-29 is insufficient to fully cover both; the employer shall consider and direct insurance premium deductions and support withholdings the same for purposes of § 34-29. The employer shall not be held liable for any medical expenses incurred on behalf of the spouse, former spouse or dependent children because of the employer's failure to enroll the spouse, former spouse or dependent children in a health care plan after being directed to do so by a court or the Department. The employer shall not be obligated to subsequently make or change such enrollment if the group health insurance plan or other factors change after the spouse's, former spouse's or child's eligibility or ineligibility for coverage is initially determined in response to the order for withholding. However, the employer shall not disenroll such children unless the employer (i) is provided satisfactory written evidence that such court or administrative order is no longer in effect, (ii) is provided satisfactory written evidence that the children are or will be enrolled in a comparable health coverage plan which will take effect not later than the effective date of such disenrollment, or (iii) has eliminated family health coverage for all of its employees. A one-time fee of no more than five dollars may be charged by the employer to the employee for the administration of this requirement;

6. That a fee of five dollars for each reply or remittance on account of the obligor may be charged by the employer and withheld from the obligor's ~~earnings income~~ in addition to the support amount to be withheld;

7. That the order is binding upon the employer and obligor and withholding is to continue until further notice by order of the court or the Department is served, or the obligor is no longer employed, whichever occurs first;

8. That the order shall have priority over any other types of liens created by state law against such ~~earnings income~~, except that if there is more than one court or administrative order for withholding for support against an obligor, the employer ~~must~~ shall honor the terms of the earliest received order, and subsequent orders shall be honored in the order of receipt to the extent that the amounts withheld, when combined, do not exceed the maximum limits imposed under § 34-29 as specified in the order being honored;

9. That the obligor's rights are protected pursuant to § 63.1-271 and that no employer shall discharge any employee, take disciplinary action against an employee, or refuse to employ a person by reason of the fact that his ~~earnings income~~ ~~have~~ has been made subject to a deduction pursuant to Chapter 13 (§ 63.1-249 et seq.) of Title 63.1 or § 20-79.1 or § 20-79.2 and an employer who discharges or takes disciplinary action against an employee, or refuses to employ any person because of an order for withholding under these sections shall be liable for a civil fine of not more than \$1,000;

10. The address to which the withholding is to be sent ~~and if payment is directed to~~ the Department of Social Services; ~~and~~ the case number, if available;

11. That the employer shall be liable for payments which he fails to withhold or mail as specified in the order;

12. That, ~~except as provided in subdivision 16,~~ employers shall remit payments on each regular pay date of the obligor ~~or, if electronic funds transfer is used, within four days of the pay date,~~ directly to the payee if requested in writing by the payee, ~~provided the employer has not received notice that the payee is receiving child support services as defined in § 63.1-250 through the Division of Child Support Enforcement for disbursement;~~

13. That the employer shall be deemed to have complied with the order by (i) mailing on each regular pay date of the obligor to the Department ~~or other payee~~, by first-class mail, any amount required to be deducted ~~or (ii) by submitting such amounts by electronic funds transfer transmitted within four days of the obligor's regular pay date;~~

14. That if ~~payment to the Department of Social Services is ordered,~~ the employer and obligor ~~must~~ shall notify the Department promptly when the obligor terminates employment and ~~must~~ shall provide the last known address of the obligor and name and address of the new employer, if known;

15. That amounts withheld from multiple employees identified as such by (i) amount, (ii) name, (iii) social security number, (iv) case number if provided in the order, and (v) date payment was withheld from obligor's ~~earnings income~~, may be combined into a single payment when payable to the same payee;

16. That the employer is to remit individual payments to the Department of Social Services for disbursement to the payee when directed to do so by the Department of Social Services ~~or any court having competent jurisdiction. However,~~ No order or directive shall require employers of 10,000 or more employees to make payments other than by combined single payment to the Department's central office in Richmond, without the employer's express written consent, unless the order is from a support enforcement agency outside the Commonwealth;

17. Payment pursuant to an order issued under this section shall serve as full acquittance of the employer under any contract of employment;

18. Notice that any employer who fails to timely withhold payments pursuant to this section shall be liable for any amount not timely withheld;

19. *That the employer shall provide to the employee a copy of the withholding order and the notice to the employee sent by the court.*

B. If the employer receives an order that (i) does not contain the obligor's correct social security number, (ii) does not specify a single monetary amount to be withheld per regular pay period interval of the obligor, (iii) does not state the maximum percentage which may be withheld pursuant to § 34-29, (iv) contains information which is in conflict with the employer's current payroll records, or (v) orders payment to an entity other than to the Department of Social Services, *or* the Department's designee, ~~or to the payee~~, the employer may deposit in the mail or otherwise file a reply to that effect within five business days from service of such order. The order shall be void from transmission or filing of such reply unless the court or the Department, as applicable, finds that the reply is materially false. In addition, an employer of 10,000 or more persons may also file a reply, with like effect, if payment is ordered other than by combined single payment in the case of withholdings from multiple employees to the Department's central office in Richmond, without the employer's express written consent, unless the order is from a support enforcement agency outside the Commonwealth.

§ 20-88.32. Definitions.

In this chapter:

"Child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent.

"Child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state.

"Duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support.

*"Employer" means the source of any income as defined in § 63.1-250.*

"Home state" means the state in which a child lived with a parent or a person acting as parent for at least six consecutive months immediately preceding the time of filing of a petition or comparable pleading for support and, if a child is less than six months old, the state in which the child lived from birth with any of them. A period of temporary absence of any of them is counted as part of the six-month or other period.

"Income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this Commonwealth.

"Income-withholding order" means an order or other legal process directed to an obligor's employer or other debtor, to withhold amounts for child or spousal support from the obligor's ~~earnings~~ income as defined in § 63.1-250.

"Initiating state" means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under this chapter or law or procedure substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

"Initiating tribunal" means the authorized tribunal in an initiating state.

"Issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage.

"Issuing tribunal" means the tribunal that issues a support order or renders a judgment determining parentage.

"Law" includes decisional and statutory law and rules and regulations having the force of law.

"Obligee" means (i) an individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered, (ii) a state or political subdivision to which the rights under a duty of support or support order have been assigned or which has independent claims based on financial assistance provided to an individual obligee, or (iii) an individual seeking a judgment determining parentage of the individual's child.

"Obligor" means an individual, or the estate of a decedent, who (i) owes or is alleged to owe a duty of support, (ii) is alleged but has not been adjudicated to be a parent of a child, or (iii) is liable under a support order.

"Register" means to file a support order or judgment determining parentage in the juvenile and domestic relations district court or with the Division of Child Support Enforcement of the Department of Social Services.

"Registering tribunal" means a tribunal in which a support order is registered.

"Responding state" means a state in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under this chapter or a law or procedure substantially similar to this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

"Responding tribunal" means the authorized tribunal in a responding state.

"Spousal-support order" means a support order for a spouse or former spouse of the obligor.

"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. The term "state" includes a Native American tribe and includes a foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders which are substantially similar to the procedures under this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act.

"Support enforcement agency" means a public official or agency authorized to seek enforcement of support orders or laws relating to the duty of support, establishment or modification of child support, determination of parentage, or locating obligors or their assets. A support enforcement agency of this Commonwealth is not authorized to establish or enforce a support order for spousal support only.

"Support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, for the benefit of a child, a spouse, or a former spouse, which provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney's fees, and other relief.

"Tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage; however, the support enforcement agency of this Commonwealth has no authority to establish or enforce a support order for spousal support only.

§ 20-88.64. Employer's receipt of income-withholding order of another state.

An income-withholding order issued in another state may be sent to the person or entity defined as the obligor's employer *as defined in § 63.1-250* under the income-withholding law of this Commonwealth without first filing a petition or comparable pleading or registering the order with a tribunal of this Commonwealth.

§ 63.1-249. Purpose of chapter; powers and duties of the Department and the Committee on District Courts.

It is the purpose of this chapter to promote the efficient and accurate collection, accounting and receipt of support for financially dependent children and their custodians, and to further the effective and timely enforcement of such support. ~~The centralization of these functions being largely accomplished by Chapter 488 of the Acts of Assembly, 1985, and thereby resulting in consequences inconsistent with such purposes; it is the further purpose of this chapter to correct the inefficiencies of such centralization by reestablishing a localized system of collection and disbursement of such support, with appropriate local accounting, while maintaining centralized accounting, enforcement and other~~ *while ensuring that all functions in the Department of Social Services as are appropriate or necessary to comply with applicable federal law; recognizing that reestablishment of such localized system requires careful planning and flexibility in its implementation.*

~~To that end the Department shall, as soon as practicable, proceed with the necessary planning and implementation to establish at least in each judicial district a location at which Support for financially dependent children and their custodians may be paid by obligors and from which payees may receive such payments, unless the payments are in cases in which public assistance is being paid. Such implementation shall be accomplished by July 1, 1988, unless such date be extended by mutual agreement of the Department, the Secretary of Health and Human Resources and the Committee on District Courts in district offices located within the Commonwealth. The Department shall have the authority to establish such additional locations within judicial districts as its resources may permit. In the implementation hereof the Department shall have authority to enter into contracts with clerks of juvenile and domestic relations district courts with the approval of the Committee on District Courts, the Department of Juvenile Justice, local departments of social services and any other appropriate public or private entities to enforce, collect, account for and disburse payments for child or spousal support.~~

The Division of Child Support Enforcement within the Department of Social Services shall be authorized to issue checks to implement the disbursement of funds pursuant to the provisions of this section.

~~The Department shall submit a report to the Committee on District Courts by August 1, 1987, advising of its plans to implement the requirements hereof. The Committee on District Courts shall have authority to disapprove any portion of such plans with the concurrence of the Secretary of Health and Human Resources, and with such concurrence direct a modification thereof.~~

~~The Committee on District Courts is directed to cooperate with the Department in fulfilling its responsibilities to establish a localized system of the functions described herein.~~

§ 63.1-249. (Delayed effective date) Purpose of chapter; powers and duties of the Department and the Committee on District Courts.

It is the purpose of this chapter to promote the efficient and accurate collection, accounting and receipt of support for financially dependent children and their custodians, and to further the effective and timely enforcement of such support. ~~The centralization of these functions being largely accomplished by Chapter 488 of the Acts of Assembly, 1985, and thereby resulting in consequences inconsistent with such purposes; it is the further purpose of this chapter to correct the inefficiencies of such centralization by reestablishing a localized system of collection and disbursement of such support, with appropriate local accounting, while maintaining centralized accounting, enforcement and other~~ *while ensuring that*

*all functions in the Department of Social Services as are appropriate or necessary to comply with applicable federal law; recognizing that reestablishment of such localized system requires careful planning and flexibility in its implementation.*

To that end the Department shall, as soon as practicable, proceed with the necessary planning and implementation to establish at least in each judicial district a location at which Support for financially dependent children and their custodians may be paid by obligors and from which payees may receive such payments, unless the payments are in cases in which public assistance is being paid. Such implementation shall be accomplished by July 1, 1988, unless such date be extended by mutual agreement of the Department, the Secretary of Health and Human Resources and the Committee on District Courts in district offices located within the Commonwealth. The Department shall have the authority to establish such additional locations within judicial districts as its resources may permit. In the implementation hereof the Department shall have authority to enter into contracts with clerks of family courts with the approval of the Committee on District Courts, the Department of Juvenile Justice, local departments of social services and any other appropriate public or private entities to enforce, collect, account for and disburse payments for child or spousal support.

The Division of Child Support Enforcement within the Department of Social Services shall be authorized to issue checks to implement the disbursement of funds pursuant to the provisions of this section.

The Department shall submit a report to the Committee on District Courts by August 1, 1987, advising of its plans to implement the requirements hereof. The Committee on District Courts shall have authority to disapprove any portion of such plans with the concurrence of the Secretary of Health and Human Resources, and with such concurrence direct a modification thereof.

The Committee on District Courts is directed to cooperate with the Department in fulfilling its responsibilities to establish a localized system of the functions described herein.

#### § 63.1-250. Definitions.

Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

"Administrative order" means a noncourt-ordered legally enforceable support obligation having the force and effect of a support order established by the court.

"Assignment of rights" means the legal procedure whereby an individual assigns support rights to the Commonwealth on behalf of a dependent child or spouse and dependent child.

"Authorization to seek or enforce a support obligation" means a signed authorization to the Commonwealth to seek or enforce support on behalf of a dependent child or a spouse and dependent child or on behalf of a person deemed to have submitted an application by operation of law.

"Caretaker" means a parent, relative, guardian or other person whose needs are included in a public assistance payment under the aid to families with dependent children program.

"Child support services" includes any civil, criminal or administrative action taken by the Division of Child Support Enforcement to establish, modify, enforce, or collect child support, or child and spousal support.

"Commissioner" means the Commissioner of the State Department of Social Services, his designee or authorized representative.

"Court order" means any judgment or order of any court having jurisdiction to order payment of support or an order of a court of comparable jurisdiction of another state ordering payment of a set or determinable amount of support moneys.

"Debt" means the total unpaid support obligation established by court order, administrative process or by the payment of public assistance and owed by a responsible person to either the Commonwealth or to his dependent(s).

"Department" means the State Department of Social Services.

"Dependent child" means any person who meets the eligibility criteria set forth in § 63.1-105, whose support rights have been assigned or whose authorization to seek or enforce a support obligation has been given to the Commonwealth and whose support is required by Titles 16.1 and 20.

"Director" means the Commissioner of the State Department of Social Services, his designee or authorized representative.

"Disposable earnings income" means that part of the earnings income due and payable of any individual remaining after the deduction from those earnings of any amount required by law to be withheld.

"Earnings" means current or future income due from the responsible person's employer and compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and specifically includes periodic payments currently being made by the responsible person pursuant to pension or retirement programs, unemployment compensation benefits, workers' compensation benefits, debts owed the responsible person and any income or profits due the responsible person from any source, including gambling, lotteries, prizes or any other windfall or other payment of any type, except where excluded by state or federal law.

"Employee" means any individual receiving income.

*"Employer" means the source of any income.*

"Financial institution" means a depository institution, an institution-affiliated party, any federal credit union or state credit union including an institution-affiliated party of such a credit union, and any benefit association, insurance company, safe deposit company, money market mutual fund, or similar entity authorized to do business in this Commonwealth.

"Financial records" includes, but is not limited to, records held by employers showing earnings, profit sharing contributions and benefits paid or payable and records held by financial institutions, broker-dealers and other institutions and entities showing bank accounts, IRA and separate contributions, gross winnings, dividends, interest, distributive share, stocks, bonds, agricultural subsidies, royalties, prizes and awards held for or due and payable to a responsible person.

"Health care coverage" means any plan providing hospital, medical or surgical care coverage for dependent children provided such coverage is available and can be obtained by a responsible person, as that term is defined in this section, at a reasonable cost.

*"Income" means any periodic form of payment due an individual from any source and shall include, but not be limited to, income from salaries, wages, commissions, royalties, bonuses, dividends, severance pay, payments pursuant to a pension or retirement program, interest, trust income, annuities, capital gains, social security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, veterans' benefits, spousal support, net rental income, gifts, prizes or awards.*

"Mistake of fact" means an error in the identity of the payor or the amount of current support or arrearage.

"Net income" means that income remaining after the following deductions have been taken from gross income: federal income tax, state income tax, federal income compensation act benefits, any union dues where collection thereof is required under federal law, and any other amounts required by law.

"Payee" means any person to whom spousal or child support is to be paid.

"Reasonable cost" pertaining to health care coverage means available through employers, unions or other groups without regard to service delivery mechanism.

"Responsible person" means any obligor or person obligated under Virginia law for support of a dependent child or the child's caretaker.

§ 63.1-250.3. Withholding from income; 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~~ income 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~~ *electronic means, including facsimile transmission, for delivery to the responsible person.* 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 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 employer for delivery to 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~~ income 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 income* 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 income* 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.

§ 63.1-256. Orders to withhold and to deliver property of debtor; issuance and service; contents; right to appeal; answer; effect; delivery of property; bond to release; fee; exemptions.

A. After notice containing an administrative support order has been served or service has been waived or accepted, an opportunity for a hearing has been exhausted and a copy of the order furnished as provided for in § 63.1-252.1, or whenever a court order for child or child and spousal support has been entered, the Commissioner is authorized to issue to any person, firm, corporation, association, political subdivision or department of the Commonwealth, orders to withhold and to deliver property of any kind including, but not restricted to, *earnings income* of the debtor, when the Commissioner has reason to believe that there is in the possession of such person, firm, corporation, association, political subdivision or department of the Commonwealth, property which is due, owing, or belonging to such debtor. The orders to withhold and to deliver shall take priority over all other debts and creditors under state law of such debtor except with respect to a prior payroll deduction ordered pursuant to §§ 20-79.1, 20-79.2, 63.1-250.3 or § 63.1-258.1.

B. The order to withhold shall also be served upon the debtor within a reasonable time thereafter, and shall state the amount of the support debt accrued. The order shall state in summary the terms of §§ 63.1-257 and 63.1-258 and shall be served in the manner prescribed for the service of a warrant in a civil action or by certified mail, return receipt requested. The order to withhold shall advise the debtor that this order has been issued to cause the property of the debtor to be taken to satisfy the debt and advise of property that may be exempted from this order. The order shall also advise the debtor of a right to appeal such order based upon a mistake of fact and that if no appeal is made within ten days of being served, his property is subject to be taken.

C. If the debtor believes such property is exempt from this debt, within ten days of the date of service of the order to withhold, the debtor may file an appeal to the Commissioner stating any exemptions that may be applicable. If the Commissioner receives a timely appeal, a hearing shall be promptly scheduled before a hearing officer upon reasonable notice to the obligee. The Commissioner may delegate authority to conduct the hearing to a duly qualified hearing officer who shall consider the debtor's appeal.

The decision of the hearing officer shall be in writing and shall set forth the debtor's rights to appeal an adverse decision of the hearing officer pursuant to § 63.1-268.1. The decision shall be served upon the debtor in accordance with the provisions of §§ 8.01-296, § 8.01-327 or § 8.01-329 or mailed to the debtor at his last known address by certified mail, return receipt requested, or service may be waived. A copy of such decision shall also be mailed to the obligee. Such decision shall establish whether the debtor's property is exempt under state or federal laws and regulations.

D. Any person, firm, corporation, association, political subdivision or department of the Commonwealth upon whom service has been made is hereby required to answer such order to withhold within ten days, exclusive of the day of service, under oath and in writing, and shall file true answers to the matters inquired of therein. In the event there is in the possession of any such person, firm, corporation, association, political subdivision or department of the Commonwealth, any property which may be subject to the claim of the State Department of Social Services, such property shall be withheld immediately upon receipt of the order to withhold, together with any additional property received by such person, firm, corporation, association, political subdivision, or department of the Commonwealth valued up to the amount of the order until receipt of an order to deliver or release. The property shall be delivered to the Commissioner upon receipt of an order to deliver issued upon the expiration of the obligor's opportunity to appeal or the exhaustion of the obligor's appeal rights, and following the expiration of the appeal period. Otherwise, the property shall be delivered to the Commissioner upon receipt of an order to deliver based upon the decision of the hearing officer, or of the juvenile and domestic relations district court in cases in which the action was appealed pursuant to § 63.1-268.1, upholding the agency's action. Where money is due and owing under any contract of employment, express or implied, or is held by any person, firm, corporation, or association, political subdivision or

department of the Commonwealth subject to withdrawal by the debtor, such money shall be delivered by remittance payable to the order of the Treasurer of Virginia. The person, firm, corporation, political subdivision or department of the Commonwealth herein specified shall be entitled to receive from such debtor a fee of five dollars for each answer or remittance on account of such debtor. The foregoing is subject to the exemptions contained in §§ 63.1-257 and 63.1-261.

E. Delivery to the Commissioner shall serve as full acquittance and the Commonwealth warrants and represents that it shall defend and hold harmless for such actions persons delivering money or property to the Commissioner pursuant to this chapter.

F. An order issued to an employer for withholding from the earnings of an employee pursuant to this section shall conform to § 20-79.3. The rights and obligations of an employer with respect to the order are set out in § 20-79.3.

§ 63.1-256. (Delayed effective date) Orders to withhold and to deliver property of debtor; issuance and service; contents; right to appeal; answer; effect; delivery of property; bond to release; fee; exemptions.

A. After notice containing an administrative support order has been served or service has been waived or accepted, an opportunity for a hearing has been exhausted and a copy of the order furnished as provided for in § 63.1-252.1, or whenever a court order for child or child and spousal support has been entered, the Commissioner is authorized to issue to any person, firm, corporation, association, political subdivision or department of the Commonwealth, orders to withhold and to deliver property of any kind including, but not restricted to, ~~earnings~~ *income* of the debtor, when the Commissioner has reason to believe that there is in the possession of such person, firm, corporation, association, political subdivision or department of the Commonwealth, property which is due, owing, or belonging to such debtor. The orders to withhold and to deliver shall take priority over all other debts and creditors under state law of such debtor except with respect to a prior payroll deduction ordered pursuant to §§ 20-79.1, 20-79.2, 63.1-250.3 or § 63.1-258.1.

B. The order to withhold shall also be served upon the debtor within a reasonable time thereafter, and shall state the amount of the support debt accrued. The order shall state in summary the terms of §§ 63.1-257 and 63.1-258 and shall be served in the manner prescribed for the service of a warrant in a civil action or by certified mail, return receipt requested. The order to withhold shall advise the debtor that this order has been issued to cause the property of the debtor to be taken to satisfy the debt and advise of property that may be exempted from this order. The order shall also advise the debtor of a right to appeal such order based upon a mistake of fact and that if no appeal is made within ten days of being served, his property is subject to be taken.

C. If the debtor believes such property is exempt from this debt, within ten days of the date of service of the order to withhold, the debtor may file an appeal to the Commissioner stating any exemptions that may be applicable. If the Commissioner receives a timely appeal, a hearing shall be promptly scheduled before a hearing officer upon reasonable notice to the obligee. The Commissioner may delegate authority to conduct the hearing to a duly qualified hearing officer who shall consider the debtor's appeal.

The decision of the hearing officer shall be in writing and shall set forth the debtor's rights to appeal an adverse decision of the hearing officer pursuant to § 63.1-268.1. The decision shall be served upon the debtor in accordance with the provisions of §§ 8.01-296, § 8.01-327 or § 8.01-329 or mailed to the debtor at his last known address by certified mail, return receipt requested, or service may be waived. A copy of such decision shall also be mailed to the obligee. Such decision shall establish whether the debtor's property is exempt under state or federal laws and regulations.

D. Any person, firm, corporation, association, political subdivision or department of the Commonwealth upon whom service has been made is hereby required to answer such order to withhold within ten days, exclusive of the day of service, under oath and in writing, and shall file true answers to the matters inquired of therein. In the event there is in the possession of any such person, firm, corporation, association, political subdivision or department of the Commonwealth, any property which may be subject to the claim of the State Department of Social Services, such property shall be withheld immediately upon receipt of the order to withhold, together with any additional property received by such person, firm, corporation, association, political subdivision, or department of the Commonwealth valued up to the amount of the order until receipt of an order to deliver or release. The property shall be delivered to the Commissioner upon receipt of an order to deliver issued upon the expiration of the obligor's opportunity to appeal or the exhaustion of the obligor's appeal rights, and following the expiration of the appeal period. Otherwise, the property shall be delivered to the Commissioner upon receipt of an order to deliver based upon the decision of the hearing officer, or of the family court in cases in which the action was appealed pursuant to § 63.1-268.1, upholding the agency's action. Where money is due and owing under any contract of employment, express or implied, or is held by any person, firm, corporation, or association, political subdivision or department of the Commonwealth subject to withdrawal by the debtor, such money shall be delivered by remittance payable to the order of the Treasurer of Virginia. The person, firm, corporation, political subdivision or department of the Commonwealth herein specified shall be entitled to receive from such debtor a fee of five dollars for

each answer or remittance on account of such debtor. The foregoing is subject to the exemptions contained in §§ 63.1-257 and 63.1-261.

E. Delivery to the Commissioner shall serve as full acquittance and the Commonwealth warrants and represents that it shall defend and hold harmless for such actions persons delivering money or property to the Commissioner pursuant to this chapter.

F. An order issued to an employer for withholding from the earnings of an employee pursuant to this section shall conform to § 20-79.3. The rights and obligations of an employer with respect to the order are set out in § 20-79.3.

§ 63.1-257. Certain amount of income which may be withheld by lien or order.

Whenever a support lien, order to withhold and deliver property or order for mandatory withholding of *earnings income* is served upon any person, firm, corporation, association, political subdivision or department of this Commonwealth asserting a support debt against *earnings income* and there are any such *earnings income* in the possession of such person, then that person shall withhold from the disposable *earnings income* as defined in § 63.1-250 (i) the amount stated in the lien, the order to withhold and deliver property, or the order for mandatory withholding of *earnings income*; or (ii) the maximum amount permitted under § 34-29, whichever is less. The order shall show the maximum percentage of disposable *earnings income* which may be withheld pursuant to § 34-29. The lien or order to withhold and deliver shall continue to operate and require such person, firm, corporation, association, political subdivision, or department of this Commonwealth to withhold the nonexempt portion of *earnings income* at each succeeding *earnings income* disbursement interval until the entire amount of the support debt stated in the lien has been withheld. The order for mandatory withholding of *earnings income* continues until further notice by certified mail, return receipt requested, from the Department of Social Services is received by the employer.

§ 63.1-258.1. Immediate withholding from income; 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~~ *responsible person's income as defined in § 63.1-250* 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 *on the employer* by certified mail, ~~return receipt requested~~, or service in accordance with the provisions of §§ 8.01-296, § 8.01-327 or § 8.01-329 ~~or waiver of service~~, *the employer shall deliver the order to the responsible person*. 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, *including facsimile transmission*, an administrative order for mandatory withholding of *earnings income* 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 income* 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 income* 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.