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HOUSE BILL NO. 1373

Offered January 26, 1998

A BILL to amend and reenact §§ 58.1-525, 58.1-527, and 63.1-252.1, as it is currently effective and as it may become effective, of the Code of Virginia, relating to child support obligees.

Patrons—McDonnell, Cantor, Howell and Orrock

Referred to Committee on Health, Welfare and Institutions

Be it enacted by the General Assembly of Virginia:

1. That §§ 58.1-525, 58.1-527, and 63.1-252.1, as it is currently effective and as it may become effective, of the Code of Virginia are amended and reenacted as follows:

§ 58.1-525. Notification of intention to set off and right to hearing.

A. The claimant agency, upon receipt of notification from the Department that a debtor is entitled to a refund, within ten days shall mail a written notification to the debtor *and the child support obligee, if applicable*, at his or her last known address and shall send evidence of same in the manner required by rules promulgated by the Tax Commissioner to the Department of its assertion of rights to the refund or any part thereof. The notification shall inform the debtor *and the child support obligee, if applicable*, of the claimant agency's intention to direct the Department to apply the refund or any portion thereof against the debt certified as due and owing.

B. The contents of the written notification to the debtor and the Department's notification of the setoff claim shall clearly set forth the basis for the claim to the refund, the intention to apply the refund against the debt to the claimant agency, the debtor's opportunity to give written notice of intent to contest the validity of the claim before the claimant agency within thirty days of the date of the mailing of the notice, the mailing address to which the application for a hearing must be sent, and the fact that failure to apply for a hearing in writing within the thirty-day period will be deemed a waiver of the opportunity to contest the claim causing final setoff by default.

C. The written application by the debtor for a hearing shall be effective upon mailing the application postage prepaid and properly addressed to the claimant agency.

§ 58.1-527. Appeals from hearings.

A. Within thirty days after the decision of the claimant agency upon a hearing pursuant to § 58.1-526 has become final, the debtor ~~aggrieved thereby~~ *and the child support obligee, if applicable*, may secure judicial review thereof by commencing an action in the circuit court of the county or of the city, or if the city has no circuit court, then in the circuit court of the county in which such city is geographically located, in which the ~~debtor~~ *appellant* resides or in which the principal office of the claimant agency is geographically located. In such action against the claimant agency for review of its decision, the claimant agency shall be named a defendant in a petition for judicial review. This section shall not be construed to confer jurisdiction on the circuit court to review questions of federal income tax law when the claimant agency is the Internal Revenue Service.

B. Such petition shall also state the grounds upon which review is sought and shall be served upon the head of the claimant agency or upon such person as the claimant agency may designate. With its answer, the claimant agency shall certify and file with the court all documents and papers and a transcript of all testimony taken in the matter, together with its findings of fact and decision therein. In any judicial proceedings under this article, the findings of the claimant agency as to the facts shall be sustained if supported by the evidence. Such actions and the questions so certified shall be heard in a summary manner at the earliest possible date. An appeal may be taken from the decision of such court to the Supreme Court in conformity with the general law governing appeals in equity cases.

C. It shall not be necessary in any proceeding under this section to enter exceptions to the rulings of the claimant agency, and no bond shall be required upon an appeal to any court.

D. Notwithstanding the other provisions of this section, if the claimant agency is otherwise subject to the Administrative Process Act (§ 9-6.14:1 et seq.), appeals of such agency's decision as it relates to the debtor shall be held in accordance with Article 4 (§ 9-6.14:15 et seq.) of the Administrative Process Act.

§ 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

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60 the support of any dependent child or children and their caretaker. The administrative support order shall
61 also provide that support shall continue to be paid for any child over the age of eighteen who is (i) a
62 full-time high school student, (ii) not self-supporting, and (iii) living in the home of the parent seeking
63 or receiving child support, until such child reaches the age of nineteen or graduates from high school,
64 whichever comes first. The Commissioner shall initiate proceedings by issuing notice containing the
65 administrative support order which shall become effective unless timely contested. The notice shall be
66 served upon the debtor (i) in accordance with the provisions of §§ 8.01-296, 8.01-327 or § 8.01-329 or
67 (ii) by certified mail, return receipt requested, or ~~service may be waived~~ *the debtor may accept service by*
68 *signing a formal waiver.* A copy of the notice shall be sent to the obligee by first-class mail ~~upon~~
69 ~~service of the notice.~~ The notice shall include the following:

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

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

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

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

80 5. A statement of each party's name, residential and, if different, mailing address, telephone number,
81 driver's license number, and the name, address and telephone number of his employer; however, when a
82 protective order has been issued or the Department otherwise finds reason to believe that a party is at
83 risk of physical or emotional harm from the other party, information other than the name of the party at
84 risk shall not be included in the notice;

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

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

90 8. A statement that the obligor shall keep the Department informed regarding access to health
91 insurance coverage and health insurance policy information and a statement that health care coverage
92 may be required for the debtor's dependent children if available at reasonable cost as defined in
93 § 63.1-250;

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

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

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

101 12. A statement that each party shall give the Department written notice of any change in his address
102 within thirty days of the change of address and any change of telephone number within thirty days after
103 the change; and

104 13. A statement that each party shall keep the Department informed of the name, telephone number
105 and address of his current employer.

106 If no answer is received by the Commissioner within ten days of the date of service or acceptance,
107 the administrative support order shall be as provided in the notice. The Commissioner may initiate
108 collection procedures pursuant to this chapter, Chapter 11 (§ 16.1-226 et seq.) of Title 16.1 or Title 20.
109 ~~If the debtor, within and the obligee have ten days of from the date of service receipt of the notice;~~
110 ~~files to file an answer; with the Commissioner alleging defenses to the liability imposed pursuant to~~
111 ~~§ 63.1-251, the debtor shall have to exercise the right to an administrative hearing.~~

112 Any changes in the amount of the administrative order must be made pursuant to this section. In no
113 event shall an administrative hearing alter or amend the amount or terms of any court order for support
114 or decree of divorce ordering support. No support order may be retroactively modified, but may be
115 modified with respect to any period during which there is a pending petition for modification, but only
116 from the date that notice pursuant to § 8.01-296 of the review has been given to the nonrequesting party.
117 The existence of an administrative order shall not preclude either an obligor or obligee from
118 commencing appropriate proceedings in a juvenile and domestic relations district court or a circuit court.
119 § 63.1-252.1. (Delayed effective date) Notice of administrative support order; contents; hearing;
120 modification.

121 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~~ *the debtor may accept service by signing a formal waiver*. 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 each party's name, residential and, if different, mailing address, telephone number, driver's license number, and the name, address and telephone number of his employer; however, when a protective order has been issued or the Department 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 notice;

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 each party shall give the Department written notice of any change in his address within thirty days of the change of address and any change of telephone number within thirty days after the change; and

13. A statement that each party shall keep the Department informed of the name, address and telephone number of his 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 and the obligee have ten days of from the date of service receipt of the notice, files to file an answer, with the Commissioner alleging defenses to the liability imposed pursuant to § 63.1-251, the debtor shall have to exercise 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

183 from the date that notice pursuant to § 8.01-296 of the review has been given to the nonrequesting party.
184 The existence of an administrative order shall not preclude either an obligor or obligee from
185 commencing appropriate proceedings in a family court.