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HOUSE BILL NO. 527

Offered January 20, 1998

A BILL to amend and reenact §§ 16.1-278.16 as it is currently effective and as it may become effective, 20-79.3, 20-80 and 63.1-258 of the Code of Virginia, relating to support enforcement; failure to comply with wage withholding order; penalty.

Patrons—Armstrong and Day; Senator: Reynolds

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-278.16 as it is currently effective and as it may become effective, 20-79.3, 20-80 and 63.1-258 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-278.16. Failure to comply with support obligation; payroll deduction; commitment.

In cases involving (i) the custody, visitation or support of a child arising under subdivision A 3 of § 16.1-241, (ii) spousal support arising under subsection L of § 16.1-241, (iii) support, maintenance, care, and custody of a child or support and maintenance of a spouse transferred to the juvenile and domestic relations district court pursuant to § 20-79, or (iv) motions to enforce administrative support orders entered pursuant to Chapter 13 (§ 63.1-249 et seq.) of Title 63.1, when the court finds that the respondent (i) has failed to perform or comply with a court order concerning the custody and visitation of a child or a court or administrative order concerning the support and maintenance of a child or a court order concerning the support and maintenance of a spouse or (ii) under existing circumstances, is under a duty to render support or additional support to a child or pay the support and maintenance of a spouse, the court may order a payroll deduction as provided in § 20-79.1, or the giving of a recognizance as provided in § 20-114. If the court finds that the respondent has failed to perform or comply with such order, the court also may order the commitment of the person as provided in § 20-115 or the court may, in its discretion, impose a sentence of up to twelve months in jail, notwithstanding the provisions of §§ 16.1-69.24 and 18.2-458, relating to punishment for contempt. If the court finds that an employer, who is under a payroll deduction order pursuant to § 20-79.1, has failed to comply with such order after being given a reasonable opportunity to show cause why he failed to comply with such order, then the court may ~~proceed to impose sanctions on the employer pursuant to subdivision A 9 of § 20-79.3~~ impose a civil fine of not more than \$1,000. An employer who in an individual capacity has been ordered to withhold, and who then willfully fails to withhold and pay as ordered by the court, shall be guilty of a Class 1 misdemeanor.

§ 16.1-278.16. (Delayed effective date) Failure to comply with support obligation; payroll deduction; commitment.

In cases involving (i) the custody, visitation or support of a child arising under subdivision A 3 of § 16.1-241, (ii) spousal support arising under subsection L of § 16.1-241, (iii) support, maintenance, care, and custody of a child or support and maintenance of a spouse transferred to the family court pursuant to § 20-79, or (iv) motions to enforce administrative support orders entered pursuant to Chapter 13 (§ 63.1-249 et seq.) of Title 63.1, when the court finds that the respondent (i) has failed to perform or comply with a court order concerning the custody and visitation of a child or a court or administrative order concerning the support and maintenance of a child or a court order concerning the support and maintenance of a spouse or (ii) under existing circumstances, is under a duty to render support or additional support to a child or pay the support and maintenance of a spouse, the court may order a payroll deduction as provided in § 20-79.1, or the giving of a recognizance as provided in § 20-114. If the court finds that the respondent has failed to perform or comply with such order, the court also may order the commitment of the person as provided in § 20-115 or the court may, in its discretion, impose a sentence of up to twelve months in jail, notwithstanding the provisions of §§ 16.1-69.24 and 18.2-458, relating to punishment for contempt. If the court finds that an employer, who is under a payroll deduction order pursuant to § 20-79.1, has failed to comply with such order after being given a reasonable opportunity to show cause why he failed to comply with such order, then the court may ~~proceed to impose sanctions on the employer pursuant to subdivision A 9 of § 20-79.3~~ impose a civil fine of not more than \$1,000. An employer who in an individual capacity has been ordered to withhold, and who then willfully fails to withhold and pay as ordered by the court, shall be guilty of a Class 1 misdemeanor.

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

A. Orders for withholding from the earnings 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

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60 the payee;

61 2. That the employer shall withhold and pay out of the disposable earnings as defined in § 63.1-250,
62 a single monetary amount or the maximum amount permitted under § 34-29, whichever is less, for each
63 regular pay period of the obligor and payment may be by check;

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

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

69 5. That, to the extent required by the provisions for health care coverage contained in the order, the
70 employer shall (i) enroll the employee, the employee's spouse or former spouse and the employee's
71 dependent children listed in the order as covered persons in a group health insurance plan or other
72 similar plan providing health care services or coverage offered by the employer, without regard to
73 enrollment season restrictions, if the subject spouse, former spouse or children are eligible for such
74 coverage under the employer's enrollment provisions, and (ii) deduct any required premiums from the
75 employee's earnings to pay for the insurance. If more than one plan is offered by the employer, the
76 spouse, former spouse or children shall be enrolled prospectively in the insurance plan in which the
77 employee is enrolled or, if the employee is not enrolled, in the least costly plan otherwise available. The
78 employer shall also enroll the children of an employee in the appropriate health coverage plan upon
79 application by the children's other parent or legal guardian or upon application by the Department of
80 Medical Assistance Services. In each case which is being enforced by the Department of Social
81 Services, the employer shall respond to such orders by advising the Department in which plan the
82 children are enrolled or if the children are ineligible for any plan through the employer. The order to the
83 employer shall specify either support withholdings or insurance premium deductions as having priority
84 for the duration of the order in the event the maximum total deduction permitted at any time by § 34-29
85 is insufficient to fully cover both; the employer shall consider and direct insurance premium deductions
86 and support withholdings the same for purposes of § 34-29. The employer shall not be held liable for
87 any medical expenses incurred on behalf of the spouse, former spouse or dependent children because of
88 the employer's failure to enroll the spouse, former spouse or dependent children in a health care plan
89 after being directed to do so by a court or the Department. The employer shall not be obligated to
90 subsequently make or change such enrollment if the group health insurance plan or other factors change
91 after the spouse's, former spouse's or child's eligibility or ineligibility for coverage is initially determined
92 in response to the order for withholding. However, the employer shall not disenroll such children unless
93 the employer (i) is provided satisfactory written evidence that such court or administrative order is no
94 longer in effect, (ii) is provided satisfactory written evidence that the children are or will be enrolled in
95 a comparable health coverage plan which will take effect not later than the effective date of such
96 disenrollment, or (iii) has eliminated family health coverage for all of its employees. A one-time fee of
97 no more than five dollars may be charged by the employer to the employee for the administration of
98 this requirement;

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

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

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

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

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

118 11. That the employer shall be liable for payments which he fails to withhold or mail as specified in
119 the order *and may be subject to a civil fine of not more than \$1,000 or criminal sanctions as provided*
120 *in § 20-80;*

121 12. That, except as provided in subdivision 16, employers shall remit payments on each regular pay

date of the obligor 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;

13. That the employer shall be deemed to have complied with the order by 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;

14. That if payment to the Department of Social Services is ordered, the employer and obligor must notify the Department promptly when the obligor terminates employment and must 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, 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~~ That 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.

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, 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.

§ 20-80. Violation of orders; trial; forfeiture of recognizance.

If at any time the court may be satisfied by information and due proof that the defendant has violated the terms of such order, it may forthwith proceed with the trial of the defendant under the original charge, or sentence him or her, under the original conviction, or annul suspension of sentence, and enforce such sentence, or in its discretion may extend or renew the term of probation as the case may be. Upon due proof that the terms of such order have been violated, the court shall in any event have the power to declare the recognizance forfeited, the sum or sums thereon to be paid, in the discretion of the court, in whole or in part to the defendant's spouse, or to the guardian, curator, custodian or trustee of the minor child or children, or to an organization or individual designated by the court to receive the same. *An employer who in an individual capacity has been ordered to withhold, and who then willfully fails to withhold or pay as ordered by the court, shall be guilty of a Class 1 misdemeanor.*

§ 63.1-258. Civil liability upon failure to comply with lien, order, etc.; penalty.

Should any person, firm, corporation, association, political subdivision or department of this Commonwealth fail to answer an order to withhold and deliver within the time prescribed herein, or fail or refuse to deliver property pursuant to said order, or after actual notice of filing of a support lien, pay over, release, sell, transfer, or convey real or personal property subject to a support lien to or for the benefit of the debtor or any other person, or fail or refuse to surrender upon demand property distrained under § 63.1-261 or fail or refuse to honor a voluntary assignment of wages under § 63.1-272 presented by the Commissioner, such person, firm, corporation, association, political subdivision or department of this Commonwealth shall be liable to the Department in an amount equal to 100 percent of the value of the debt which is the basis of the lien, order to withhold and deliver, distraint, or a voluntary assignment of wages. *An employer who in an individual capacity has been ordered to withhold, and who then willfully fails to withhold and pay as ordered by the court, shall be guilty of a Class 1 misdemeanor.*