

# VIRGINIA ACTS OF ASSEMBLY -- 2016 SESSION

## CHAPTER 29

*An Act to amend and reenact §§ 20-60.5, 46.2-320.1, 63.2-527, 63.2-1900, 63.2-1903, 63.2-1916, 63.2-1917, 63.2-1921, 63.2-1923, 63.2-1924, 63.2-1925, 63.2-1929, 63.2-1930, 63.2-1933, 63.2-1937, and 63.2-1942 of the Code of Virginia, relating to the Department of Social Services; electronic notices.*

[H 1026]

Approved February 25, 2016

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

**1. That §§ 20-60.5, 46.2-320.1, 63.2-527, 63.2-1900, 63.2-1903, 63.2-1916, 63.2-1917, 63.2-1921, 63.2-1923, 63.2-1924, 63.2-1925, 63.2-1929, 63.2-1930, 63.2-1933, 63.2-1937, and 63.2-1942 of the Code of Virginia are amended and reenacted as follows:**

**§ 20-60.5. Support payment provisions; how paid.**

A. 1. Unless otherwise directed by the Committee on District Courts, in all cases in which payment of a support obligation arising under an order or decree entered prior to October 1, 1985, is made by the obligor through the office of a clerk of court, the clerk shall notify the payee and the obligor that the obligor will be directed to pay future support payments to the Department of Social Services as of the date provided in the notice.

In cases transferred from the courts to the Department of Social Services on or after October 1, 1985, the payee shall be deemed as having executed an authorization to seek or enforce a support obligation with the Department's Division of Child Support Enforcement unless the payee specifically indicates that the Division's services are not desired.

2. Unless otherwise directed by the Department of Social Services, the notice of change in payment shall be served or sent by certified mail, return receipt requested, and shall contain (i) the name of the payee and, if different in whole or in part, the names of the persons to whom an obligation of support is owed by the obligor, (ii) the name of the obligor, (iii) the amount of the periodic support payment, the due dates of such payments and any arrearages, (iv) the beginning date for sending payments to the Department of Social Services, and (v) the date by which the payee and obligor shall notify the Department of Social Services of the election to (a) have the Department of Social Services collect and disburse support payments together with forms and instructions for applying for such services or (b) have support payment made by the obligor directly to the payee. A copy of the notice also shall be transmitted to the Department of Social Services.

3. Unless otherwise directed by the Committee on District Courts, if both the obligor and the payee request in writing to the Department of Social Services that all support payments be made by the obligor directly to the payee, then the Department of Social Services shall so notify the court and the court shall enter an order to such effect. In the event an election is taken pursuant to subdivision 2 (v) (a), the notice of election shall have the same force and effect as an order of the court.

4. The above provisions shall also apply to payroll deductions made pursuant to § 20-79.1, except that only the payee and the employer shall receive such notice.

5. The change in payment provision required by subsection A shall be initiated by October 1, 1985, unless a different date is mutually agreed to by the Department of Social Services and the Committee on District Courts as to individual courts.

B. Unless a different date is mutually agreed to by the Department of Social Services and the Committee on District Courts, all orders or decrees for support entered on or after October 1, 1985, shall direct that payment be made only to the payee unless one of the parties objects, in which case the order or decree shall direct that payment be made to or through the Department of Social Services.

C. The Department of Social Services shall promptly pay to the payee all support payments collected by it which have been ordered by a court to be paid to or through the Department. The Department shall pay interest to the payee when such interest amount exceeds ~~five dollars~~ \$5 on a support payment as provided in § 63.2-1951.

D. If the Department of Social Services enters into a contract with a public or private entity for the processing of support payments, then, except as provided in subsection E, and notwithstanding any other provision of this section:

1. The Department shall notify the affected court of the existence of such contract and how payments are contractually required to be made to such contractors; and

2. The affected court shall include in all support orders (i) how payments are required to be made to such contractors and (ii) that payments are to be made in such manner until different payment instructions are mailed to the person making payments by the court or by the Department.

E. An employer of 10,000 persons or more shall not be required to make payments other than by

combined single payment to the Department's central office in Richmond without the express written consent of the employer, unless the order is from a support enforcement agency outside the Commonwealth.

F. Upon any obligee's application for public assistance benefits or child support services, the Department of Social Services may change the payee to the Department so that payment is sent to the Department at its address as contained in the notice of change as described in this subsection. Upon the obligee's request that support services no longer be provided, the Department may change the payee to the obligee so that payment is sent to the obligee at the address provided by the obligee as contained in the notice of change as described in this subsection. Notice of such change shall be served on the obligor by certified mail, return receipt requested, *by electronic means*, or in accordance with Chapter 8 (§ 8.01-285 et seq.) or Chapter 9 (§ 8.01-328 et seq.) of Title 8.01. The change described in the notice shall be effective as to all payments paid on or after the date that notice was served regardless of when such payments were due. Return of service shall be made to the Department of Social Services at the location described in the notice. Upon obtaining service of the notice on the obligor, the Department of Social Services shall transmit a copy of such notice together with a copy of the proof of service to the court having jurisdiction for enforcement of the order and to the custodial parent.

**§ 46.2-320.1. Other grounds for suspension; nonpayment of child support.**

A. The Commissioner may enter into an agreement with the Department of Social Services whereby the Department may suspend or refuse to renew the driver's license of any person upon receipt of notice from the Department of Social Services that the person (i) is delinquent in the payment of child support by 90 days or more or in an amount of \$5,000 or more or (ii) has failed to comply with a subpoena, summons, or warrant relating to paternity or child support proceedings. A suspension or refusal to renew authorized pursuant to this section shall not be effective until 30 days after service on the delinquent obligor of notice of intent to suspend or refusal to renew. The notice of intent shall be served on the obligor by the Department of Social Services (a) by certified mail, return receipt requested, *or by electronic means*, sent to the obligor's last known addresses as shown in the records of the Department or the Department of Social Services; or (b) pursuant to § 8.01-296, or service may be waived by the obligor in accordance with procedures established by the Department of Social Services. The obligor shall be entitled to a judicial hearing if a request for a hearing is made, in writing, to the Department of Social Services within 10 days from service of the notice of intent. Upon receipt of the request for a hearing, the Department of Social Services shall petition the court that entered or is enforcing the order, requesting a hearing on the proposed suspension or refusal to renew. The court shall authorize the suspension or refusal to renew only if it finds that the obligor's noncompliance with the child support order was willful. Upon a showing by the Department of Social Services that the obligor is delinquent in the payment of child support by 90 days or more or in an amount of \$5,000 or more, the burden of proving that the delinquency was not willful shall rest upon the obligor. The Department shall not suspend or refuse to renew the driver's license until a final determination is made by the court.

B. At any time after service of a notice of intent, the person may petition the juvenile and domestic relations district court in the jurisdiction where he resides for the issuance of a restricted license to be used if the suspension or refusal to renew becomes effective. Upon such petition and a finding of good cause, the court may provide that such person be issued a restricted permit to operate a motor vehicle for any of the purposes set forth in subsection E of § 18.2-271.1. A restricted license issued pursuant to this subsection shall not permit any person to operate a commercial motor vehicle as defined in § 46.2-341.4. The court shall order the surrender of the person's license to operate a motor vehicle, to be disposed of in accordance with the provisions of § 46.2-398, and shall forward to the Commissioner a copy of its order entered pursuant to this subsection. The order shall specifically enumerate the restrictions imposed and contain such information regarding the person to whom such a permit is issued as is reasonably necessary to identify him.

C. The Department shall not renew a driver's license or terminate a license suspension imposed pursuant to this section until it has received from the Department of Social Services a certification that the person has (i) paid the delinquency in full; (ii) reached an agreement with the Department of Social Services to satisfy the delinquency within a period not to exceed 10 years, and at least one payment representing at least five percent of the total delinquency or \$600, whichever is greater, has been made pursuant to the agreement; (iii) complied with a subpoena, summons, or warrant relating to a paternity or child support proceeding; or (iv) completed or is successfully participating in an intensive case monitoring program for child support as ordered by a juvenile and domestic relations district court or as administered by the Department of Social Services. Certification by the Department of Social Services shall be made by electronic or telephonic communication and shall be made on the same work day that payment required by clause (i) or (ii) is made.

D. If a person who has entered into an agreement with the Department of Social Services pursuant to clause (ii) of subsection C fails to comply with the requirements of the agreement, the Department of Social Services shall notify the Department of the person's noncompliance and the Department shall suspend or refuse to renew the driver's license of the person until it has received from the Department of Social Services a certification that the person has paid the delinquency in full or has entered into a

subsequent agreement with the Department of Social Services to satisfy the delinquency within a period not to exceed seven years and has made at least one payment of \$1,200 or five percent of the total delinquency, whichever is greater, pursuant to the agreement. If the person fails to comply with the terms of a subsequent agreement reached with the Department of Social Services pursuant to this section, without further notice to the person as provided in the subsequent agreement, the Department of Social Services shall notify the Department of the person's noncompliance, and the Department shall suspend or refuse to renew the driver's license of the person. A person who has failed to comply with the terms of a second or subsequent agreement pursuant to this subsection may be granted a new agreement with the Department of Social Services if the person has made at least one payment of \$1,800 or five percent of the total delinquency, whichever is greater, and agrees to a repayment schedule of not more than seven years. Upon receipt of certification from the Department of Social Services of the person's satisfaction of these conditions, the Department shall issue a driver's license to the person or reinstate the person's driver's license. Certification by the Department of Social Services shall be made by electronic or telephonic communication and shall be made on the same work day that payment required by this subsection is made.

**§ 63.2-527. Notice of earned income tax credit.**

The Department shall provide notice regarding the availability of the federal earned income tax credit authorized in § 32 of the Internal Revenue Code and the state earned income tax credit authorized in subdivision B 2 of § 58.1-339.8 to all recipients of Temporary Assistance for Needy Families pursuant to Chapter 6 (§ 63.2-600 et seq.), food stamps pursuant to § 63.2-801, or medical assistance pursuant to § 32.1-325 who had earned income in the prior tax year based on information available through the Virginia Employment Commission and, according to information made available by the Virginia Department of Taxation, either did not file federal or state income taxes or filed taxes and did not claim the federal or state earned income tax credit. Notice shall be ~~mailed~~ *distributed* to recipients annually and shall include information on the qualifying income levels, the amount of credit available, the process for applying for the credit, and the availability of assistance in applying for the credit.

**§ 63.2-1900. Definitions.**

As used in this chapter, unless the context requires a different meaning:

"Administrative order" or "administrative support 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.

"Cash medical support" means the proportional amount the court or the Department shall order both parents to pay toward reasonable and necessary unreimbursed medical or dental expenses pursuant to subsection D of § 20-108.2.

"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.

"Custodial parent" means the natural or adoptive parent with whom the child resides; a stepparent or other person who has physical custody of the child and with whom the child resides; or a local board that has legal custody of a child in foster care.

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

"Department-sponsored health care coverage" means any health care coverage that the Department may make available through a private contractor for children receiving child support services from the Department.

"Dependent child" means any person who meets the eligibility criteria set forth in § 63.2-602, 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.

*"Electronic means" means service of a required notice by the Department through its secure online child support portal to any person who has agreed to accept service through the portal and has created a user account. The portal shall record and maintain the date and time service is accepted by the user.*

"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 income, 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.

"Foreign support order" means any order issued outside of the Commonwealth by a court or tribunal as defined in § 20-88.32.

"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 parent, parents, or a parent's spouse 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.

"Noncustodial parent" means a responsible person who is or may be obligated under Virginia law for support of a dependent child or child's caretaker.

"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 that 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.

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

"Reasonable cost" pertaining to health care coverage for dependent children means available, in an amount not to exceed five percent of the parents' combined gross income, and accessible through employers, unions or other groups, or Department-sponsored health care coverage, without regard to service delivery mechanism; unless the court deems otherwise in the best interests of the child or by agreement of the parties.

### **§ 63.2-1903. Authority to issue certain orders; civil penalty.**

A. In the absence of a court order, the Department shall have the authority to issue orders directing the payment of child, and child and spousal support and, if available at reasonable cost as defined in § 63.2-1900, to require a provision for health care coverage, including Department-sponsored health care coverage, or cash medical support, or both, for dependent children of the parents, which shall include the requirements specified for employers pursuant to subdivision A 5 of § 20-79.3. The Department shall have the authority to make available Department-sponsored health care coverage for children receiving child support services from the Department. If health care coverage is unavailable at a reasonable cost, as defined in § 63.2-1900, or inaccessible to either parent, the Department shall refer the dependent children to the Family Access to Medical Insurance Security plan pursuant to § 32.1-351. However, prior to referring the dependent children to the Family Access to Medical Insurance Security plan, the Department shall confirm that neither parent has access to health care coverage at a reasonable cost for the dependent children. If a child is enrolled in Department-sponsored health care coverage, the Department shall collect the cost of the coverage pursuant to subsection E of § 20-108.2. ~~Liability for child support shall be determined retroactively for the period measured from the date the order directing payment is delivered to the sheriff or process server for service upon the obligor.~~

In ordering the payment of child support, the Department shall set such support at the amount resulting from computation pursuant to the guideline set out in § 20-108.2, subject to the provisions of § 63.2-1918.

B. When a payee, as defined in § 63.2-1900, no longer has physical custody of a child, the Department shall have the authority to redirect child support payments to a custodial parent who has physical custody of the child when an assignment of rights has been made to the Department or an application for services has been made by such custodial parent with the Division of Child Support Enforcement.

C. The Department shall have the authority, upon notice from the Department of Medical Assistance Services, to use any existing enforcement mechanisms provided by this chapter to collect the wages, salary, or other employment income or to withhold amounts from state tax refunds of any obligor who has not used payments received from a third party to reimburse, as appropriate, either the other parent of such child or the provider of such services, to the extent necessary to reimburse the Department of

#### Medical Assistance Services.

D. The Department may order the obligor and payee to notify each other or the Department upon request of current gross income as defined in § 20-108.2 and any other pertinent information which may affect child support amounts. For good cause shown, the Department may order that such information be provided to the Department and made available to the parties for inspection in lieu of the parties' providing such information directly to each other. The Department shall record the social security number of each party or control number issued to a party by the Department of Motor Vehicles pursuant to § 46.2-342 in the Department's file of the case.

E. The Department shall develop procedures governing the method and timing of periodic review and adjustment of child support orders established or enforced or both pursuant to Title IV-D of the Social Security Act, as amended. If there is an assignment under Title IV-A of the Social Security Act or at the request of either parent subject to the order, the Department shall initiate a review of such order every three years without requiring proof or showing of a change in circumstances, and shall initiate appropriate action to adjust such order in accordance with the provisions of § 20-108.2 and subject to the provisions of § 63.2-1918.

F. In order to provide essential information for whatever establishment or enforcement actions are necessary for the collection of child support, the Commissioner, the Director of the Division of Child Support Enforcement and district managers of Division of Child Support Enforcement offices shall have the right to (i) subpoena financial records of, or other information relating to, the noncustodial parent and obligee from any person, firm, corporation, association, or political subdivision or department of the Commonwealth and (ii) summons the noncustodial parent and obligee to appear in the Division's offices. The Commissioner, Director and district managers may also subpoena copies of state and federal income tax returns. The district managers shall be trained in the correct use of the subpoena process prior to exercising subpoena authority. A civil penalty not to exceed \$1,000 may be assessed by the Commissioner for a failure to respond to a subpoena issued pursuant to this subsection.

G. In the absence of a court order, the Department may establish an administrative support order on an out-of-state obligor pursuant to subdivision A 8 or A 9 of § 8.01-328.1 or 20-88.35. The Department may also take action to enforce an administrative or court order on an out-of-state obligor. Service of such actions shall be in accordance with the provisions of §§ 8.01-296, 8.01-327 or § 8.01-329; or by certified mail, return receipt requested, *or electronic means* in accordance with § 63.2-1917.

H. If a support order has been issued in another state but the obligor, the obligee, and the child now live in the Commonwealth, the Department may (i) enforce the order without registration, using all enforcement remedies available under this chapter and (ii) register the order in the appropriate tribunal of the Commonwealth for enforcement or modification.

#### **§ 63.2-1916. Notice of administrative support order; contents; hearing; modification.**

The Commissioner may proceed against a noncustodial parent 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 custodial parent. The administrative support order shall also provide that support shall continue to be paid for any child over the age of 18 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 19 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 (a) in accordance with the provisions of §§ 8.01-296, 8.01-327 or § 8.01-329 or (b) by certified mail, return receipt requested, *or by electronic means*, or the debtor may accept service by signing a formal waiver. A copy of the notice shall be ~~sent~~ *provided* to the obligee ~~by first-class mail~~. 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. The initial administrative support order shall be effective on the date of service and the first monthly payment shall be due on the first of the month following the date of service and the first of each month thereafter. A modified administrative support order shall be effective the date that notice of the review is served on the nonrequesting party, and the first monthly payment shall be due on the first day of the month following the date of such service and on the first day of each month thereafter. In addition, an amount shall be assessed for the partial month between the effective date of the order and the date that the first monthly payment is due. The assessment for the initial partial month shall be prorated from the effective date through the end of that month, based on the current monthly obligation. All payments are to be credited to current support obligations first, with any payment in excess of the current obligation applied to arrearages, if any;

2. A statement of the name, date of birth, and last four digits of the social security number of the child or children for whom support is being sought;

3. A statement that support shall continue to be paid for any child over the age of 18 who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the party seeking or receiving child support, until such child reaches the age of 19 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 10 days of the date of service of the notice stating his defenses to liability;

5. If known, the full name, date of birth, and last four digits of the social security number of each parent of the child; 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, only the name of the party at risk shall be included in the order;

6. A statement that if no answer is made on or before 10 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 debtor may be subject to mandatory withholding of income, the interception of state or federal tax refunds, interception of payments due to the debtor from the Commonwealth, notification of arrearage information to consumer reporting agencies, passport denial or suspension, or incarceration and that the debtor's property will be subject to lien and foreclosure, distraint, seizure and sale, an order to withhold and deliver, or withholding of income;

8. A statement that the parents shall keep the Department informed regarding access to health insurance coverage and health insurance policy information and a statement that health care coverage shall be required for the parents' dependent children if available at reasonable cost as defined in § 63.2-1900, or pursuant to subsection A of § 63.2-1903. If a child is enrolled in Department-sponsored health care coverage, the Department shall collect the cost of the coverage pursuant to subsection E of § 20-108.2;

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, 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, *including email address*, or phone number, *including cell phone number*, within 30 days;

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

14. A statement that if any arrearages for child support, including interest or fees, exist at the time the youngest child included in the order emancipates, payments shall continue in the total amount due (current support plus amount applied toward arrearages) at the time of emancipation until all arrearages are paid;

15. A statement that a petition may be filed for suspension of any license, certificate, registration, or other authorization to engage in a profession, trade, business, occupation, or recreational activity issued by the Commonwealth to a parent as provided in § 63.2-1937 upon a delinquency for a period of 90 days or more or in 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;

16. A statement that the Department of Motor Vehicles may suspend or refuse to renew the driver's license of any person upon receipt of notice from the Department of Social Services that the person (i) is delinquent in the payment of child support by 90 days or in an amount of \$5,000 or more or (ii) has failed to comply with a subpoena, summons, or warrant relating to paternity or child support proceedings; and

17. A statement that on and after July 1, 1994, the Department of Social Services, as provided in § 63.2-1921 and in accordance with § 20-108.2, may initiate a review of the amount of support ordered by any court.

If no answer is received by the Commissioner within 10 days of the date of service or acceptance, the administrative support order shall be effective 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. The debtor and the obligee have 10 days from the date of receipt of the notice to file an answer with the Commissioner 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 *administrative* support order may be retroactively modified, but may be modified with respect to any period during which there is a pending petition for modification in any court, but only from the date that notice of the review has been served on the nonrequesting party. Notice of ~~the~~ *each* review shall be served ~~for each review~~ *on the nonrequesting*

party (1) in accordance with the provisions of § 8.01-296, 8.01-327, or 8.01-329, ~~or~~ (2) by certified mail, ~~with proof of actual receipt by the addressee return receipt requested, or~~ (3) by electronic means, or (4) by the nonrequesting party executing a waiver. The existence of an administrative order shall not preclude either an obligor or obligee from commencing appropriate proceedings in a juvenile and domestic relations district court or a circuit court.

**§ 63.2-1917. When delivery of notice to party at last known address may be deemed sufficient.**

In any subsequent child support enforcement proceeding between the parties, upon sufficient showing that diligent effort was made to ascertain the location of a party, that party may be served with any required notice by delivery of the written notice to that party's residential or business address as filed with the court pursuant to § 20-60.3 or the Department, or if changed, as shown in the records of the Department or the court ~~or by electronic means as defined in § 63.2-1900~~. However, any person served with notice as provided in this section may challenge, in a subsequent judicial proceeding, an order entered based upon such service on the grounds that he did not receive the notice and enforcement of the order would constitute manifest injustice.

**§ 63.2-1921. Authority to initiate reviews of certain orders.**

A. The Department may, pursuant to this chapter and in accordance with § 20-108.2, initiate a review of the amount of support ordered by any court. If a material change in circumstances has occurred, the Department shall report its findings and a proposed modified order to the court which entered the order or the court having current jurisdiction. Notice of ~~the each~~ review shall be served ~~for each review on both parties the nonrequesting party~~ (i) in accordance with the provisions of §§ 8.01-296, 8.01-327, or § 8.01-329, ~~or~~ (ii) by certified mail, ~~with proof of actual receipt by the addressee return receipt requested, or~~ (iii) by electronic means, or (iv) by the nonrequesting party executing a waiver. Either party may request a hearing on the proposed modified order by filing a request with such court within ~~thirty~~ 30 days of receipt of notice by the requesting party. Unless a hearing is requested within the time limits, no hearing shall be required and the court shall enter the modified order, which shall be effective from the date that notice of such review was served on the nonrequesting party. The court shall modify any prior court order, or schedule a hearing on its motion and so notify the parties and the Department. If a hearing is held, the Department shall have the burden of proof.

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

C. A material change in circumstances shall be deemed to have occurred if the difference between the existing child support award and the amount which would result from application of the guidelines is at least ~~ten~~ 10 percent of the existing child support award but not less than ~~twenty-five dollars~~ \$25 per month.

**§ 63.2-1923. Immediate withholding from income; exception; notices required.**

A. Every administrative support order directing a noncustodial parent to pay child or child and spousal support shall provide for immediate income withholding from the noncustodial parent's income as defined in § 63.2-1900 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 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 within 10 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 § 63.2-1942. Upon service of the order on the employer by first-class or certified mail, ~~by electronic means, or by service in accordance with the provisions of §§ 8.01-296, 8.01-327 or § 8.01-329, the employer shall deliver the order to the noncustodial parent. A copy shall be sent by first-class mail to the obligee.~~

C. The noncustodial parent's employer shall be issued by first-class or certified mail or by electronic means, including facsimile transmission, an administrative order for withholding of 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. Administrative orders for withholding from 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 custodial parent become unknown, or (iii) modification is appropriate because of a change in the amount of the obligation.

**§ 63.2-1924. Withholding from income; default of administrative or judicial support order; notices required; priorities; orders from other states.**

A. As part of every administrative support order directing a noncustodial parent to pay child or child and spousal support or by separate order at any time thereafter, provision shall be made for withholding from the income of the noncustodial parent the amount of the withholding order plus an amount to be applied toward liquidation of arrearages if the noncustodial parent 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 shall serve notice on the noncustodial ~~parent~~ *parent's employer* of the delinquency in accordance with the provisions of §§ 8.01-296, 8.01-327 or § 8.01-329 or by certified mail or electronic means, including facsimile transmission, for delivery to the noncustodial parent. ~~The obligee shall also be sent a copy of such notice.~~ The notice shall inform the noncustodial parent (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 within 10 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 § 63.2-1942, (vi) that a determination on the contest will be made no later than 45 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 noncustodial parent's employer shall be issued by first-class or certified mail or by electronic means, including facsimile transmission, an administrative order for withholding of income that 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. The Department 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 shall utilize the conversion formula established by the Committee on District Courts.

E. Administrative orders for withholding from 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 custodial parent become unknown, or (iii) modification is appropriate because of a change in the amount of the obligation.

F. 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, as amended, 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 noncustodial parent's employer in this Commonwealth to withhold from the income of the noncustodial parent pursuant to a foreign support order 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.

**§ 63.2-1925. Certain amount of income that may be withheld by lien or order.**

Whenever a support lien, order to withhold and deliver property or order for withholding of income is served upon any person, firm, corporation, association, political subdivision or department of this Commonwealth asserting a support debt against income and there is any such income in the possession of such person, then that person shall withhold from the disposable income as defined in § 63.2-100 (i) the amount stated in the lien, the order to withhold and deliver property, or the order for withholding of income; or (ii) the maximum amount permitted under § 34-29, whichever is less. The order shall show the maximum percentage of disposable 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 income at each succeeding income disbursement interval until the entire amount of the support debt stated in the lien has been withheld. The order for withholding of income continues until further notice by first-class or certified mail, return receipt requested, *or by electronic means* from the Department is received by the employer.

**§ 63.2-1929. 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 § 63.2-1916, 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, 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 that 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 including the proceeds or anticipated proceeds of a personal injury or wrongful death award or settlement except that the Department's lien shall be inferior to those liens created under § 8.01-66.2 or § 8.01-66.9, any statutory right of subrogation accruing to a health insurance provider, and the lien of the attorney representing the injured person in the personal injury or wrongful death action. However, orders to withhold and to deliver shall not take priority with respect to a prior payroll deduction or income withholding order pursuant to §§ 20-79.1, 20-79.2, 63.2-1923 or § 63.2-1924. The Department shall have the sole authority to negotiate settlement of its liens. Settlement of the Department's support liens does not affect the remaining support arrearages.

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 §§ 63.2-1925 and 63.2-1930 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, *or by electronic means*. 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~~ 10 days of being served, his property is subject to be taken.

C. If the debtor believes such property is exempt from this debt, within 10 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. Action by the Commissioner under the provisions of this chapter to collect such support debt shall be valid and enforceable during the pendency of any 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 § 63.2-1943. 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 provided by electronic means* or service may be waived. A copy of such decision shall also be ~~mailed~~ *provided* 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 10 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 that may be subject to the claim of the Department, 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; however, distribution of the property shall not be made during pendency of all appeals. 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 \$5 for each answer or remittance on account of such debtor. The foregoing is subject to the exemptions contained in §§ 63.2-1925 and 63.2-1933.

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.

#### **§ 63.2-1930. Civil liability upon failure to comply with lien, order, etc.**

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 § 63.2-1933 or fail or refuse to honor a voluntary assignment of wages under § 63.2-1945

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 an income withholding order or voluntary assignment of wages. A noncustodial parent's employer issued an income withholding order by first-class mail *or electronic means* pursuant to § 63.2-1923 or § 63.2-1924 shall not be liable to the Department unless the Department shows that such employer had actual notice of the withholding order.

**§ 63.2-1933. Distraint, seizure and sale of property subject to liens.**

Whenever a support lien has been filed pursuant to § 63.2-1927, the Commissioner may collect the support debt stated in such lien by distraint, seizure and sale of the property subject to such lien. The Commissioner shall give notice *by certified mail, return receipt requested, or electronic means* to the debtor and *by certified mail, return receipt requested, to* any person known to have or claim an interest therein of the general description of the property to be sold and the time and place of sale of such property. ~~Such notice shall be given to such persons by certified mail, return receipt requested.~~ A notice specifying the property to be sold shall be posted in at least two public places in the jurisdiction wherein the distraint has been made. The time of sale shall not be less than ~~ten~~ 10 nor more than ~~twenty~~ 20 days from the date of posting of such notices. Such sale shall be conducted by the Commissioner, who shall proceed to sell such property by parcel or by lot at a public auction, and who may set a minimum reasonable price to include the expenses of making a levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the price so fixed, the Commissioner may declare such property to be purchased by the Department for such price, or may conduct another sale of such property pursuant to the provisions of this section. In the event of sale, the debtor's account shall be credited with the amount for which the property has been sold. Property acquired by the Department as herein prescribed may be sold by the Commissioner at public or private sale, and the amount realized shall be placed in the state general fund to the credit of the Department. In all cases of sale, as aforesaid, the Commissioner shall issue a bill of sale or a deed to the purchaser and such bill of sale or deed shall be prima facie evidence of the right of the Commissioner to make such sale and conclusive evidence of the regularity of his proceeding in making the sale and shall transfer to the purchaser all right, title, and interest of the debtor in such property. The proceeds of any such sale, except in those cases wherein the property has been acquired by the Department, shall be first applied by the Commissioner to reimbursement of the costs of distraint and the sale, and thereafter in satisfaction of the delinquent account. Any excess which shall thereafter remain in the hands of the Commissioner shall be refunded to the debtor. Sums so refundable to a debtor may be subject to seizure or distraint by any taxing authority of the Commonwealth or its political subdivisions or by the Commissioner for new sums due and owing subsequent to the subject proceeding. Except as specifically provided in this chapter, there shall be exempt from attachment, distraint, seizure, execution and sale under this chapter such property as is exempt therefrom under the laws of this Commonwealth.

**§ 63.2-1937. Applications for occupational or other license to include social security or control number; suspension upon delinquency; procedure.**

Every initial application for or application for renewal of a license, certificate, registration or other authorization to engage in a business, trade, profession or occupation issued by the Commonwealth pursuant to Titles 22.1, 38.2, 46.2 or 54.1 or any other provision of law shall require that the applicant provide his social security number or a control number issued by the Department of Motor Vehicles pursuant to § 46.2-342.

Upon ~~thirty~~ 30 days' notice to an obligor who (i) has failed to comply with a subpoena, summons or warrant relating to paternity or child support proceedings or (ii) is alleged to be delinquent in the payment of child support by a period of ~~ninety~~ 90 days or more or for \$5,000 or more, an obligee or the Department on behalf of an obligee, may petition either the court that entered or the court that is enforcing the order for child support for an order suspending any license, certificate, registration or other authorization to engage in a business, trade, profession or occupation, or recreational activity issued to the obligor by the Commonwealth pursuant to Titles 22.1, 29.1, 38.2, 46.2 or 54.1 or any other provision of law. The notice shall be sent *in accordance with the provisions of § 8.01-296, 8.01-327, or 8.01-329*, by certified mail, with proof of actual receipt, *or by electronic means*. The notice shall specify that (a) the obligor has ~~thirty~~ 30 days from the date of receipt to comply with the subpoena, summons or warrant or pay the delinquency or to reach an agreement with the obligee or the Department to pay the delinquency and (b) if compliance is not forthcoming or payment is not made or an agreement cannot be reached within that time, a petition will be filed seeking suspension of any license, certificate, registration or other authorization to engage in a business, trade, profession or occupation, or recreational license issued by the Commonwealth to the obligor.

The court shall not suspend a license, certificate, registration or authorization upon finding that an alternate remedy is available to the obligee or the Department that is likely to result in collection of the delinquency. Further, the court may refuse to order the suspension upon finding that (1) suspension would result in irreparable harm to the obligor or employees of the obligor or would not result in collection of the delinquency or (2) the obligor has made a demonstrated, good faith effort to reach an

agreement with the obligee or the Department.

If the court finds that the obligor is delinquent in the payment of child support by ~~ninety~~ 90 days or more or in an amount of \$5,000 or more and holds a license, certificate, registration or other authority to engage in a business, trade, profession or occupation or recreational activity issued by the Commonwealth, it shall order suspension. The order shall require the obligor to surrender any license, certificate, registration or other such authorization to the issuing entity within ~~ninety~~ 90 days of the date on which the order is entered. If at any time after entry of the order the obligor (A) pays the delinquency or (B) reaches an agreement with the obligee or the Department to satisfy the delinquency within a period not to exceed ~~ten~~ 10 years and makes at least one payment, representing at least five percent of the total delinquency or \$500, whichever is greater, pursuant to the agreement, or (C) complies with the subpoena, summons or warrant or reaches an agreement with the Department with respect to the subpoena, summons or warrant, upon proof of payment or certification of the compliance or agreement, the court shall order reinstatement. Payment shall be proved by certified copy of the payment record issued by the Department or notarized statement of payment signed by the obligee. No fee shall be charged to a person who obtains reinstatement of a license, certificate, registration or authorization pursuant to this section.

**§ 63.2-1942. Administrative hearing on notice of debt; withholdings; orders to withhold and deliver property to debtor; set-off debt collection.**

The Commissioner may delegate authority to conduct any administrative hearing pursuant to this chapter to a duly qualified hearing officer. The hearing shall be held upon reasonable notice to the obligee and the debtor. In no event shall such hearing officer be legally competent to render a decision as to the validity of a court order or a defense of nonpaternity. A decision of the hearing officer shall be in writing and shall set forth the debtor's and payee's rights to appeal the decision of the hearing officer to the appropriate circuit or juvenile and domestic relations district court. 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 provided by electronic means*, or the debtor may waive service of the decision at the time of the decision. A copy of such decision shall also be ~~mailed~~ *provided* to the obligee. Such decision shall establish the liability of the debtor, if any, and the validity of the administrative action taken.

Action by the Commissioner under the provisions of this chapter to collect such support debt shall be valid and enforceable during the pendency of any appeal. The Commissioner may file and serve liens pursuant to §§ 63.2-1927 and 63.2-1928 during the pendency of the hearing or thereafter, whether or not appealed. Further action under § 63.2-1929 may be taken prior to any hearing or appeal. If the decision is in favor of the debtor, all money collected during the pendency of the appeal shall be returned to the debtor in accordance with procedures adopted by the Board.