

LD6794813

HOUSE BILL NO. 2322

Offered January 23, 1995

A BILL to amend and reenact §§ 20-78.2, 46.2-320, 63.1-250.1 and 63.1-267 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 46.2-600.1, relating to child support enforcement; denial of driver's licenses and vehicle registrations; issuance of subpoenas; interest on arrearages.

Patrons—Rollison, Albo, Callahan, Cox, Crouch, Dudley, Fisher, Forbes, Harris, Howell, Ingram, Kilgore, Marshall, May, McClure, Morgan, Nelms, Nixon, O'Brien, Orrock, Purkey, Ruff, Sherwood, Wagner, Way and Wilkins; Senator: Benedetti

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 20-78.2, 46.2-320, 63.1-250.1 and 63.1-267 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 46.2-600.1 as follows:

§ 20-78.2. Interest on support arrearage.

The entry of an order or decree of support for a spouse or for support and maintenance of a child under the provisions of this chapter or §§ 20-107.1 through 20-109 shall constitute a final judgment for any sum or sums in arrears. This order shall also include an amount for interest on the arrearage at the judgment interest rate if the person to whom such arrearage is payable requests that interest be charged. ~~However, the burden shall be on the person to whom such arrearage is payable, upon instruction of the court, to compute all interest due at the judgment interest rate as established by § 6.1-330.54 and furnish this information to the court unless the obligee, in a writing submitted to the court, waives the collection of interest.~~

Interest shall accrue at the close of the last day of each calendar month, regardless of the frequency of the installments required by the order, and shall be calculated by multiplying the total arrearage existing at the end of that day, excluding any accrued interest, by the applicable rate of interest. If the order does not specify the date on which payments are to begin, the first installment shall be deemed to be due on the date the order was entered and subsequent installments will fall due on the same day of the week, or date of the month, as appropriate. Payments made by the obligor shall not be applied to reduce any accrued interest balance until the full arrearage balance has been satisfied. Interest shall be considered support for purposes of exemptions, restrictions on amounts that may be withheld by garnishment, and nondischargeability in bankruptcy.

§ 46.2-320. Other grounds for refusal or suspension.

The Department may refuse to grant an application for a driver's license in any of the circumstances set forth in 46.2-608 as circumstances justifying the refusal of an application for the registration of a motor vehicle. The Department may refuse to issue or reissue a driver's license for the willful failure or refusal to pay any taxes or fees required to be collected or authorized to be collected by the Department.

The Commissioner may enter into an agreement with the Department of Social Services whereby the Department may suspend or refuse to issue or renew the driver's license of any person upon receipt of notice from the Department of Social Services that the person is delinquent in the payment of child support by ninety days or more or in an amount of \$5,000 or more. A suspension authorized pursuant to this section shall not be effective until thirty days after receipt by the delinquent obligor of notice of intent to suspend. The notice of intent shall be sent by certified mail by the Department of Social Services, with proof of actual receipt, to the obligor at the last known address as shown in the records of the Department or the Department of Social Services. The obligor shall be entitled to an administrative hearing pursuant to § 63.1-267.1 if a request for hearing is made, in writing, to the Department of Social Services within ten days of receipt of the notice of intent to suspend.

At any time after receipt of a notice of intent to suspend, the person may petition the general district court in the jurisdiction where he resides for the issuance of a restricted license to be used if the suspension becomes effective. Upon such petition the court may issue the restricted permit to operate a motor vehicle for travel to and from his place of employment and for travel during the hours of such person's employment if the operation of a motor vehicle is a necessary incident of such employment provided the court finds good cause for the issuance of the restricted permit.

The Department shall not issue to or renew a driver's license or terminate a license suspension of a person who has been found to be so delinquent in the payment of child support until it has received

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60 *from the Department of Social Services a certification that the person has (i) paid the delinquency in*
61 *full or (ii) reached an agreement with the obligee or the Department of Social Services to satisfy the*
62 *delinquency and at least one payment has been made pursuant to the agreement.*

63 *§ 46.2-600.1. Nonissuance and suspension for failure to pay child support.*

64 *The Commissioner may enter into an agreement with the Department of Social Services whereby the*
65 *Commissioner will suspend or refuse to issue or renew any vehicle registration of an applicant who is*
66 *delinquent in the payment of child support by ninety days or more or in an amount of \$5,000 or more.*

67 *The Department of Social Services shall provide the Commissioner with the information necessary to*
68 *identify any support obligor whose registration or renewal is to be suspended or denied and with*
69 *evidence that notice of an intended suspension or refusal was mailed to the obligor at least thirty days*
70 *prior to (i) the effective date of the suspension, (ii) the expiration date of any current registration or*
71 *(iii) the date on which the initial application is made. The notice shall be sent by certified mail, with*
72 *proof of actual receipt to the last known address of the obligor as indicated in the records of the*
73 *Department of Social Services or the Department of Motor Vehicles.*

74 *If the Commissioner has received information from the Department of Social Services indicating that*
75 *a current registration holder or applicant for issuance or renewal is delinquent in an amount or for the*
76 *time specified, the suspension once imposed may not be lifted and a registration may not be issued or*
77 *renewed until the Department of Social Services certifies to the Commissioner that (i) the delinquency*
78 *has been paid in full or (ii) that an agreement has been reached with the obligee or the Department of*
79 *Social Services to satisfy the delinquency and at least one payment has been made pursuant to that*
80 *agreement.*

81 *The Commissioner may charge a reasonable fee to cover the costs incurred by the Department in*
82 *suspending or refusing to issue or renew registrations pursuant to this section in compliance with an*
83 *agreement with the Department of Social Services*

84 *§ 63.1-250.1. Authority to issue certain orders.*

85 *A. In the absence of a court order, the Department of Social Services shall have the authority to*
86 *issue orders directing the payment of child, and child and spousal support and, if available at reasonable*
87 *cost as defined in § 63.1-250, to require a provision for health care coverage for dependent children of*
88 *the obligor, which shall include the requirements specified for employers pursuant to subdivision A 5 of*
89 *§ 20-79.3. In ordering the payment of child support, the Department shall set such support at the amount*
90 *resulting from computation pursuant to the guideline set out in § 20-108.2, subject to the provisions of*
91 *§ 63.1-264.2.*

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

98 *C. The Department may order the obligor and payee to notify each other or the Department upon*
99 *request of current gross income as defined in § 20-108.2 of the Code and any other pertinent*
100 *information which may affect child support amounts. For good cause shown, the Department may order*
101 *that such information be provided to the Department and made available to the parties for inspection in*
102 *lieu of the parties' providing such information directly to each other.*

103 *D. The Department shall develop procedures governing the method and timing of periodic review*
104 *and adjustment of child support orders established or enforced or both pursuant to Title IV-D of the*
105 *Social Security Act. The Department shall, at the request of either parent subject to the order or of a*
106 *state child support enforcement agency, initiate a review of such order, and initiate appropriate action to*
107 *adjust such order in accordance with the provisions of § 20-108.2 and subject to the provisions of*
108 *§ 63.1-264.2.*

109 *E. The Commissioner, the Director of the Division of Child Support Enforcement and district*
110 *managers of Division of Child Support Enforcement offices shall have the right to subpoena financial*
111 *records of the responsible person and obligee from any person, firm, corporation, association, or political*
112 *subdivision or department of the Commonwealth and to summons the responsible parent and obligee to*
113 *appear in the Division's offices to provide essential information for whatever establishment or*
114 *enforcement actions are necessary for the collection of child support. The Commissioner, Director and*
115 *district managers may also subpoena copies of state and federal income tax returns. The district*
116 *managers shall be trained in the correct use of the subpoena process prior to exercising subpoena*
117 *authority.*

118 *F. In the absence of a court order, the Department may establish an administrative support order on*
119 *an out-of-state obligor if the obligor and the obligee maintained a matrimonial domicile within the*
120 *Commonwealth. The Department may also take action to enforce an administrative or court order on an*
121 *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.

§ 63.1-267. Interest on debts due.

Interest of six per centum per annum at the judgment interest rate as established by § 6.1-330.54 on any support debt due and owing to the Department under § 63.1-251 may order being enforced by the Department pursuant to this chapter shall be collected by the Commissioner for the benefit of the support obligee. No provision of this chapter shall be construed to require the Commissioner to shall maintain interest balance due accounts and such interest may be waived by the Commissioner, if such waiver would facilitate the collection of the debt. The collection of interest may be waived by the Commissioner upon written request of the obligee. Interest shall accrue at the close of the last day of each calendar month regardless of the frequency of the installments required by the order, and shall be calculated by multiplying the total arrearage existing at the end of that day, excluding any accrued interest, by the applicable rate of interest. If the order does not specify the date on which payments are to begin, The first installment shall be deemed to be due on the date the order was entered, and subsequent installments will fall due on the same day of the week, or date of the month, as appropriate. Payments made by the obligor shall not be applied to reduce any accrued interest balance until the full arrearage balance has been satisfied. Interest shall be considered support for purposes of exemptions, restrictions on amounts that may be withheld by garnishment, and nondischargeability in bankruptcy.

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