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HOUSE BILL NO. 1058

Offered January 12, 2022

Prefiled January 12, 2022

A BILL to amend and reenact §§ 16.1-278.18, 20-60.3, 20-78.2, 63.2-1916, and 63.2-1952 of the Code of Virginia, relating to interest on child support arrearages.

Patron—Cordoza

Committee Referral Pending

Be it enacted by the General Assembly of Virginia:

1. That §§ 16.1-278.18, 20-60.3, 20-78.2, 63.2-1916, and 63.2-1952 of the Code of Virginia are amended and reenacted as follows:

§ 16.1-278.18. Money judgments.

A. Each juvenile and domestic relations district court may enter judgment for money in any amount for arrears of support and maintenance of any person in cases in which (i) the court has previously acquired personal jurisdiction over all necessary parties or a proceeding in which such jurisdiction has been obtained has been referred or transferred to the court by a circuit court or another juvenile and domestic relations district court and (ii) payment of such money has been previously ordered by the court, a circuit court, or another juvenile and domestic relations district court. *No judgment for support and maintenance of a child entered on or after July 1, 2022, shall include an amount for interest on the arrearage.* Such judgment shall include reasonable attorneys' fees in cases where the total arrearage for support and maintenance, excluding interest, is equal to or greater than three months of support and maintenance. However, no judgment shall be entered unless the motion of a party, a probation officer, a local director of social services, or the court's own motion is duly served on the person against whom judgment is sought, in accordance with the applicable provisions of law relating to notice when proceedings are reopened. The motion shall contain a caption stating the name of the court, the title of the action, the names of all parties and the address of the party against whom judgment is sought, the amount of arrearage for which judgment is sought, and the date and time when such judgment will be sought. No support order may be retroactively modified. It may, however, 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 such petition has been given to the responding party.

B. The judge or clerk of the court shall, upon written request of the obligee under a judgment entered pursuant to this section, certify and deliver an abstract of that judgment to the obligee or Department of Social Services, who may deliver the abstract to the clerk of the circuit court having jurisdiction over appeals from juvenile and domestic relations district court. The clerk shall issue executions of the judgment.

C. If the judgment amount does not exceed the jurisdictional limits of subdivision (1) of § 16.1-77, exclusive of interest and any attorneys' fees, an abstract of any such judgment entered pursuant to this section may be delivered to the clerk of the general district court of the same judicial district. The clerk shall issue executions upon the judgment.

D. Arrearages accumulated prior to July 1, 1976, shall also be subject to the provisions of this section.

§ 20-60.3. Contents of support orders.

All orders directing the payment of spousal support where there are minor children whom the parties have a mutual duty to support and all orders directing the payment of child support, including those orders confirming separation agreements, entered on or after October 1, 1985, whether they are original orders or modifications of existing orders, shall contain the following:

1. Notice that support payments may be withheld as they become due pursuant to § 20-79.1 or § 20-79.2, from income as defined in § 63.2-1900, without further amendments of this order or having to file an application for services with the Department of Social Services; however, absence of such notice in an order entered prior to July 1, 1988, shall not bar withholding of support payments pursuant to § 20-79.1;

2. Notice that support payments may be withheld pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2 without further amendments to the order upon application for services with the Department of Social Services; however, absence of such notice in an order entered prior to July 1, 1988, shall not bar withholding of support payments pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2;

3. The name, date of birth, and last four digits of the social security number of each child to whom a duty of support is then owed by the parent;

59 4. If known, the name, date of birth, and last four digits of the social security number of each parent
60 of the child and, unless otherwise ordered, each parent's residential and, if different, mailing address,
61 residential and employer telephone number, and number appearing on a driver's license or other
62 document issued under Chapter 3 (§ 46.2-300 et seq.) of Title 46.2 or the comparable law of another
63 jurisdiction, and the name and address of each parent's employer; however, when a protective order has
64 been issued or the court otherwise finds reason to believe that a party is at risk of physical or emotional
65 harm from the other party, information other than the name of the party at risk shall not be included in
66 the order;

67 5. Notice that, pursuant to § 20-124.2, support will continue to be paid for any child over the age of
68 18 who is (i) a full-time high school student, (ii) not self-supporting, and (iii) living in the home of the
69 party seeking or receiving child support until such child reaches the age of 19 or graduates from high
70 school, whichever occurs first, and that the court may also order that support be paid or continue to be
71 paid for any child over the age of 18 who is (a) severely and permanently mentally or physically
72 disabled, and such disability existed prior to the child reaching the age of 18 or the age of 19 if the
73 child met the requirements of clauses (i), (ii), and (iii); (b) unable to live independently and support
74 himself; and (c) residing in the home of the parent seeking or receiving child support;

75 6. On and after July 1, 1994, notice that a petition may be filed for suspension of any license,
76 certificate, registration or other authorization to engage in a profession, trade, business, occupation, or
77 recreational activity issued by the Commonwealth to a parent as provided in § 63.2-1937 upon a
78 delinquency for a period of 90 days or more or in an amount of \$5,000 or more. The order shall
79 indicate whether either or both parents currently hold such an authorization and, if so, the type of
80 authorization held;

81 7. The monthly amount of support and the effective date of the order. In proceedings on initial
82 petitions, the effective date shall be the date of filing of the petition; in modification proceedings, the
83 effective date may be the date of notice to the responding party. The first monthly payment shall be due
84 on the first day of the month following the hearing date and on the first day of each month thereafter.
85 In addition, an amount shall be assessed for any full and partial months between the effective date of
86 the order and the date that the first monthly payment is due. The assessment for the initial partial month
87 shall be prorated from the effective date through the end of that month, based on the current monthly
88 obligation;

89 8. a. An order for health care coverage, including the health insurance policy information, for
90 dependent children pursuant to §§ 20-108.1 and 20-108.2 if available at reasonable cost as defined in
91 § 63.2-1900, or a written statement that health care coverage is not available at a reasonable cost as
92 defined in such section, and a statement as to whether there is an order for health care coverage for a
93 spouse or former spouse; and

94 b. A statement as to whether cash medical support, as defined in § 63.2-1900, is to be paid by or
95 reimbursed to a party pursuant to subsections D and G of § 20-108.2, and if such expenses are ordered,
96 then the provisions governing how such payment is to be made;

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

101 10. If child support payments are ordered to be paid through the Department of Social Services or
102 directly to the obligee, and unless the court for good cause shown orders otherwise, the parties shall
103 give each other and the court and, when payments are to be made through the Department, the
104 Department of Social Services at least 30 days' written notice, in advance, of any change of address and
105 any change of telephone number within 30 days after the change;

106 11. If child support payments are ordered to be paid through the Department of Social Services, a
107 provision requiring an obligor to keep the Department of Social Services informed, or if payments are
108 ordered to be paid directly to the obligee, a provision requiring an obligor to keep the court informed, of
109 (i) the name, address, and telephone number of his current employer; (ii) any change to his employment
110 status; and (iii) if he has filed a claim for or is receiving benefits under the provisions of Title 60.2. The
111 provision shall further specify that any such change in employment status or filing of a claim shall be
112 communicated to the Department of Social Services or the court in writing within 30 days of such
113 change or filing;

114 12. If child support payments are ordered to be paid through the Department of Social Services, a
115 provision requiring the party obligated to provide health care coverage to keep the Department of Social
116 Services informed of any changes in the availability of the health care coverage for the minor child or
117 children, or if payments are ordered to be paid directly to the obligee, a provision requiring the party
118 obligated to provide health care coverage to keep the other party informed of any changes in the
119 availability of the health care coverage for the minor child or children;

120 13. The separate amounts due to each person under the order, unless the court specifically orders a

unitary award of child and spousal support due or the order affirms a separation agreement containing provision for such unitary award;

14. Notice that in determination of a support obligation, the support obligation as it becomes due and unpaid creates a judgment by operation of law. The order shall also provide, pursuant to § 20-78.2, for interest on the arrearage at the judgment rate as established by § 6.2-302 unless the obligee, in a writing submitted to the court, waives the collection of interest; *however, no order entered on or after July 1, 2022, shall provide for interest on the arrearage;*

15. Notice that on and after July 1, 1994, the Department of Social Services may, pursuant to Chapter 19 (§ 63.2-1900 et seq.) of Title 63.2 and in accordance with §§ 20-108.2 and 63.2-1921, initiate a review of the amount of support ordered by any court;

16. 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; and

17. Notice that, in cases enforced by the Department of Social Services, the Department of Motor Vehicles may suspend or refuse to renew the driver's license, or other document issued under Chapter 3 (§ 46.2-300 et seq.) of Title 46.2 authorizing the operation of a motor vehicle upon the highways, 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.

The provisions of this section shall not apply to divorce decrees where there are no minor children whom the parties have a mutual duty to support.

§ 20-78.2. Attorneys' fees and 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 as established by § 6.2-302 unless the obligee, in a writing submitted to the court, waives the collection of interest; and may include reasonable attorneys' fees if the total arrearage for support and maintenance, excluding interest, is equal to or greater than three months of support and maintenance. *No order or decree for support and maintenance of a child entered on or after July 1, 2022, shall include an amount for interest on the arrearage.*

§ 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 provided to the obligee. 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;

182 3. A statement that support shall continue to be paid for any child over the age of 18 who is (i) a
183 full-time high school student, (ii) not self-supporting, and (iii) living in the home of the party seeking or
184 receiving child support, until such child reaches the age of 19 or graduates from high school, whichever
185 comes first;

186 4. A demand for immediate payment of the support debt or obligation or, in the alternative, a
187 demand that the debtor file an answer with the Commissioner within 10 days of the date of service of
188 the notice stating his defenses to liability;

189 5. If known, the full name, date of birth, and last four digits of the social security number of each
190 parent of the child; however, when a protective order has been issued or the Department otherwise finds
191 reason to believe that a party is at risk of physical or emotional harm from the other party, only the
192 name of the party at risk shall be included in the order;

193 6. A statement that if no answer is made on or before 10 days from the date of service of the notice,
194 the administrative support order shall be final and enforceable, and the support debt shall be assessed
195 and determined subject to computation, and is subject to collection action;

196 7. A statement that the debtor may be subject to mandatory withholding of income, the interception
197 of state or federal tax refunds, interception of payments due to the debtor from the Commonwealth,
198 notification of arrearage information to consumer reporting agencies, passport denial or suspension, or
199 incarceration and that the debtor's property will be subject to lien and foreclosure, distraint, seizure and
200 sale, an order to withhold and deliver, or withholding of income;

201 8. A statement that the parents shall keep the Department informed regarding access to health
202 insurance coverage and health insurance policy information and a statement that health care coverage
203 shall be required for the parents' dependent children if available at reasonable cost as defined in
204 § 63.2-1900, or pursuant to subsection A of § 63.2-1903. If a child is enrolled in Department-sponsored
205 health care coverage, the Department shall collect the cost of the coverage pursuant to subsection E of
206 § 20-108.2;

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

209 10. A statement that the obligor's income shall be immediately withheld to comply with this order
210 unless the obligee, or the Department, if the obligee is receiving public assistance, and obligor agree to
211 an alternative arrangement;

212 11. A statement that any determination of a support obligation under this section creates a judgment
213 by operation of law and as such is entitled to full faith and credit in any other state or jurisdiction. *No*
214 *judgment for support and maintenance of a child entered on or after July 1, 2022, shall include an*
215 *amount for interest on any arrearage that accrues on or after July 1, 2022;*

216 12. A statement that each party shall give the Department written notice of any change in his
217 address, including email address, or phone number, including cell phone number, within 30 days;

218 13. A statement that each party shall keep the Department informed of (i) the name, telephone
219 number, and address of his current employer; (ii) any change to his employment status; and (iii) if he
220 has filed a claim for or is receiving benefits under the provisions of Title 60.2. The statement shall
221 further specify that any such change in employment status or filing of a claim shall be communicated to
222 the Department in writing within 30 days of such change or filing;

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

227 15. A statement that a petition may be filed for suspension of any license, certificate, registration, or
228 other authorization to engage in a profession, trade, business, occupation, or recreational activity issued
229 by the Commonwealth to a parent as provided in § 63.2-1937 upon a delinquency for a period of 90
230 days or more or in amount of \$5,000 or more. The order shall indicate whether either or both parents
231 currently hold such an authorization and, if so, the type of authorization held;

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

237 17. A statement that on and after July 1, 1994, the Department of Social Services, as provided in
238 § 63.2-1921 and in accordance with § 20-108.2, may initiate a review of the amount of support ordered
239 by any court.

240 If no answer is received by the Commissioner within 10 days of the date of service or acceptance,
241 the administrative support order shall be effective as provided in the notice. The Commissioner may
242 initiate collection procedures pursuant to this chapter, Chapter 11 (§ 16.1-226 et seq.) of Title 16.1 or
243 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 from the date that notice of the review has been served on the nonrequesting party. Notice of each review shall be served on the nonrequesting party (1) in accordance with the provisions of § 8.01-296, 8.01-327, or 8.01-329, (2) by certified mail, return receipt requested, (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.

§ 63.2-1952. Interest on debts due.

Interest at the judgment interest rate as established by § 6.2-302 on any arrearage pursuant to an order *entered prior to July 1, 2022, and* being enforced by the Department pursuant to this chapter shall be collected by the Commissioner except in the case of a minor obligor during the period of his minority. The Commissioner shall maintain interest balance due accounts. *No interest shall be collected by the Commissioner on any arrearage that accrues on or after July 1, 2022.* In accordance with § 63.2-1908.1, the Commissioner may compromise interest on debt owed to the Commonwealth for reimbursement of public assistance paid.