

1 **H. B. 3134**

2
3 (By Delegates Brown, Frazier, Moore, Miley,
4 Poore and Fleischauer)

5
6 [Introduced February 15, 2011; referred to the
7 Committee on the Judiciary.]

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10 A BILL to amend and reenact §48-1-204, §48-1-244 and §48-1-302 of
11 the Code of West Virginia, 1931, as amended; to amend and
12 reenact §48-14-408 and §48-14-410 of said code; and to amend
13 and reenact §48-24-106 of said code, all relating to child
14 support enforcement; lowering the accrued interest rate;
15 requiring employers provide information to the Bureau for
16 Child Support Enforcement; and making various technical
17 corrections.

18 *Be it enacted by the Legislature of West Virginia:*

19 That §48-1-204, §48-1-244 and §48-1-302 of the Code of West
20 Virginia, 1931, as amended, be amended and reenacted; that §48-14-
21 408 and §48-14-410 of said code be amended and reenacted; and that
22 §48-24-106 of said code be amended and reenacted, all to read as
23 follows:

24 **ARTICLE 1. GENERAL PROVISIONS; DEFINITIONS.**

25 **§48-1-204. Arrearages or past due support defined.**

26 "Arrearages" or "past due support" means the total of any

1 matured, unpaid installments of child support required to be paid
2 by an order entered or modified by a court of competent
3 jurisdiction, or by the order of a magistrate court of this state,
4 and shall stand, by operation of law, as a decretal judgment
5 against the obligor owing such support. The amount of unpaid
6 support shall bear interest from the date it accrued, at a rate of
7 ~~ten dollars upon one hundred dollars~~ five percent per annum, and
8 proportionately for a greater or lesser sum, or for a longer or
9 shorter time. Except as provided in rule 23 of rules of practice
10 and procedure for family law and as provided in section 1-302, a
11 child support order may not be retroactively modified so as to
12 cancel or alter accrued installments of support.

13 **§48-1-244. Support defined.**

14 "Support" means the payment of money, including interest:

15 (1) For a child or spouse, ordered by a court of competent
16 jurisdiction, whether the payment is ordered in an emergency,
17 temporary, permanent or modified order, the amount of unpaid
18 support shall bear simple interest from the date it accrued, at a
19 rate of ~~ten dollars upon one hundred dollars~~ five percent per
20 annum, and proportionately for a greater or lesser sum, or for a
21 longer or shorter time;

22 (2) To third parties on behalf of a child or spouse,
23 including, but not limited to, payments to medical, dental or
24 educational providers, payments to insurers for health and

1 hospitalization insurance, payments of residential rent or mortgage
2 payments, payments on an automobile or payments for day care; or

3 (3) For a mother, ordered by a court of competent
4 jurisdiction, for the necessary expenses incurred by or for the
5 mother in connection with her confinement or of other expenses in
6 connection with the pregnancy of the mother.

7 **§48-1-302. Calculation of interest.**

8 (a) Notwithstanding any other provisions of the code, if an
9 obligation to pay interest arises under this chapter, the rate of
10 interest is five percent per annum and proportionate thereto for a
11 greater or lesser sum, or for a longer or shorter time. Interest
12 awarded shall only be simple interest and nothing in this section
13 may be construed to permit awarding of compound interest. Interest
14 accrues only upon the outstanding principal of such obligation.

15 (b) Notwithstanding any other provision of law, no court may
16 award or approve prejudgment interest in a domestic relations
17 action against a party unless the court finds, in writing, that the
18 party engaged in conduct that would violate subsection (b), Rule 11
19 of the West Virginia Rules of Civil Procedure. If prejudgment
20 interest is awarded, the court shall calculate prejudgment interest
21 from the date the offending representation was presented to the
22 court pursuant to subsection (a) of this section.

23 (c) Upon written agreement by both parties, an obligor may
24 petition the court to enter an order conditionally suspending the

1 collection of all or part of the interest that has accrued on past-
2 due child support prior to the date of the agreement: *Provided,*
3 That said agreement shall also establish a reasonable payment plan
4 which is calculated to fully discharge all arrearages within
5 twenty-four months but not to exceed sixty months. Upon successful
6 completion of the payment plan, the court shall enter an order
7 which permanently relieves the obligor of the obligation to pay the
8 accrued interest. If the obligor fails to comply with the terms of
9 the written agreement, then the court shall enter an order which
10 reinstates the accrued interest.

11 (d) Amendments to this section enacted by the Legislature
12 during the 2006 regular session shall become effective January 1,
13 2007.

14 **ARTICLE 14. REMEDIES FOR THE ENFORCEMENT OF SUPPORT OBLIGATIONS.**

15 **§48-14-408. Determination of amounts to be withheld.**

16 Notwithstanding any other provision of this code to the
17 contrary which provides for a limitation upon the amount which may
18 be withheld from earnings through legal process, the amount of an
19 obligor's aggregate disposable earnings for any given workweek
20 which may be withheld as support payments is to be determined in
21 accordance with the provisions of this subsection, as follows:

22 (1) After ascertaining the status of the payment record of the
23 obligor under the terms of the support order, the payment record
24 shall be examined to determine whether any arrearage is due for

1 amounts which should have been paid prior to a twelve-week period
2 which ends with the workweek for which withholding is sought to be
3 enforced.

4 (2) Prior to January 1, 2001, when none of the withholding is
5 for amounts which came due prior to such twelve-week period, then:

6 (A) When the obligor is supporting another spouse or dependent
7 child other than the spouse or child for whom the proposed
8 withholding is being sought, the amount withheld may not exceed
9 fifty percent of the obligor's disposable earnings for that week;
10 and

11 (B) When the obligor is not supporting another spouse or
12 dependent child as described in paragraph (A) of this subdivision,
13 the amount withheld may not exceed sixty percent of the obligor's
14 disposable earnings for that week.

15 (3) Prior to January 1, 2001, when a part of the withholding
16 is for amounts which came due prior to such twelve-week period,
17 then:

18 (A) Where the obligor is supporting another spouse or
19 dependent child other than the spouse or child for whom the
20 proposed withholding is being sought, the amount withheld may not
21 exceed fifty-five percent of the obligor's disposable earnings for
22 that week; and

23 (B) Where the obligor is not supporting another spouse or
24 dependent child as described in paragraph (A) of this subdivision,

1 the amount withheld may not exceed sixty-five percent of the
2 obligor's disposable earnings for that week.

3 (4) Beginning January 1, 2001, when none of the withholding is
4 for amounts which came due prior to such twelve-week period, then:

5 (A) When the obligor is supporting another spouse or dependent
6 child other than the spouse or child for whom the proposed
7 withholding is being sought, the amount withheld may not exceed
8 forty percent of the obligor's disposable earnings for that week;
9 and

10 (B) When the obligor is not supporting another spouse or
11 dependent child as described in paragraph (A) of this subdivision,
12 the amount withheld may not exceed fifty percent of the obligor's
13 disposable earnings for that week.

14 (5) Beginning January 1, 2001, when a part of the withholding
15 is for amounts which came due prior to such twelve-week period,
16 then:

17 (A) When the obligor is supporting another spouse or dependent
18 child other than the spouse or child for whom the proposed
19 withholding is being sought, the amount withheld may not exceed
20 forty-five percent of the obligor's disposable earnings for that
21 week; and

22 (B) Where the obligor is not supporting another spouse or
23 dependent child as described in paragraph (A) of this subdivision,
24 the amount withheld may not exceed fifty-five percent of the

1 obligor's disposable earnings for that week.

2 (6) In addition to the percentage limitations set forth in
3 subdivisions (2) and (3) of this section, it shall be a further
4 limitation that when the current month's obligation plus arrearages
5 are being withheld from salaries or wages in no case shall the
6 total amounts withheld for the current month's obligation plus
7 arrearage exceed the amounts withheld for the current obligation by
8 an amount greater than twenty-five percent of the current monthly
9 support obligation.

10 (7) The provisions of this section shall apply directly to the
11 withholding of disposable earnings of an obligor regardless of
12 whether the obligor is paid on a weekly, biweekly, monthly or other
13 basis.

14 (8) The Bureau for Child Support Enforcement has the authority
15 to prorate the current support obligation in accordance with the
16 pay cycle of the source of income. This prorated current support
17 obligation shall be known as the "adjusted support obligation".
18 The current support obligation or the adjusted support obligation
19 is the amount, if unpaid, on which interest will be charged.

20 (9) When an obligor acts so as to purposefully minimize his or
21 her income and to thereby circumvent the provisions of part 4 of
22 this article which provide for withholding from income of amounts
23 payable as support, the amount to be withheld as support payments
24 may be based upon the obligor's potential earnings rather than his

1 or her actual earnings, and such obligor may not rely upon the
2 percentage limitations set forth in this subsection which limit the
3 amount to be withheld from disposable earnings.

4 (10) Notwithstanding any other provision of this section, the
5 Bureau for Child Support Enforcement may withhold not more than
6 fifty percent of any earnings denominated as an employment-related
7 bonus to satisfy an outstanding child support arrearage.

8 (A) Two weeks prior to issuing any bonus equal to or in excess
9 of \$100 to an employee or employees, an employer shall notify the
10 Bureau for Child Support Enforcement, in a manner prescribed by the
11 bureau, of the employee or employees' name, address, social
12 security number, date of birth and amount of the bonus.

13 (B) If it is determined that an employee owes an arrearage, an
14 income withholding notice shall be issued pursuant to chapter
15 forty-eight, article fourteen, to the employer.

16 **§48-14-410. Sending amounts withheld to bureau; notice.**

17 After implementation in accordance with the provisions of
18 section 14-409, a source of income shall send the amount to be
19 withheld from the obligor's income to the Bureau for Child Support
20 enforcement and shall notify the Bureau for Child Support
21 enforcement of the date of withholding, the same date that the
22 obligor is paid. If the source of income has more than fifty
23 employees, the source of income shall submit the support withheld
24 via electronic means in a manner prescribed by the Bureau for Child

1 Support enforcement.

2 **ARTICLE 24. ESTABLISHMENT OF PATERNITY.**

3 **§48-24-106. Establishing paternity by acknowledgment of natural**
4 **father.**

5 A written, notarized acknowledgment executed pursuant to the
6 provisions of section ~~twelve~~ ten, article five, chapter sixteen of
7 this code legally establishes the man as the father of the child
8 for all purposes and child support may be established in accordance
9 with the support guidelines set forth in article 13-101, et seq.

NOTE: The purpose of this bill is to make technical corrections to the code, allow amnesty payment agreements to extend past two years, require employers to notify the Bureau for Child Support Enforcement prior to issuing a bonus to its employees and require a source of income electronically remit support payments via electronic means.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.