

FILED

2005 MAY -4 A 11: 08

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005



ENROLLED

House Bill No. 3094

(By Delegates Staton, Mahan,
Brown, Webster and Amores)



Passed April 9, 2005

In Effect Ninety Days from Passage

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E N R O L L E D

H. B. 3094

(BY DELEGATES STATON, MAHAN,
BROWN, WEBSTER AND AMORES)

[Passed April 9, 2005; in effect ninety days from passage.]

AN ACT to repeal §48-14-419 of the code of West Virginia, 1931, as amended; to repeal §48-16-308 of said code; to repeal §48-18-109 and §48-18-127 of said code; to amend and reenact §48-17-101 of said code; to amend and reenact §48-18-103, §48-18-108, §48-18-112, §48-18-113, §48-18-117, §48-18-118, §48-18-119, §48-18-121 of said code; and to amend and reenact §48-19-102 said code, all relating to child support enforcement; repealing authority of the West Virginia Support Enforcement Commission to promulgate rules; repealing certain duties of the commission; repealing authority of Bureau of Child Support Enforcement to contract for certain services; repealing authority of commission to adopt form to identify support payments; increasing the number of members on the Commission; altering the organization of certain Bureau employees; removing commission authority to promulgate fee rules; authorizing the Commissioner of the Bureau of Child Support Enforcement to cooperate with other states in the enforcement of child support; moving certain rulemaking authority from the Commission to the Commissioner; removing commission authority to require certain bonding requirements of

Bureau employees; moving authority from Commission to the Commissioner relating to collecting child support from state and federal taxes; revising requirements relating to withholding child support payments from the Bureau of Employment Programs; and removing geographic delineations for certain Bureau attorneys.

Be it enacted by the Legislature of West Virginia:

That §48-14-419 of the Code of West Virginia, 1931, as amended; to repeal §48-16-308 of said code; to repeal §48-18-109 and §48-18-127 of said code; to amend and reenact §48-17-101 of said code; to amend and reenact §48-18-103, §48-18-108, §48-18-112, §48-18-113, §48-18-117, §48-18-118, §48-18-119, §48-18-121 of said code; and to amend and reenact §48-19-102 said code, all to read as follows:

ARTICLE 17: WEST VIRGINIA SUPPORT ENFORCEMENT COMMISSION

§48-17-101. Creation of Support Enforcement Commission; number of members.

1 The West Virginia Support Enforcement Commission,
2 consisting of eight members, is hereby created in the Depart-
3 ment of Health and Human Resources and may use the adminis-
4 trative support and services of that department. The Commis-
5 sion is not subject to control, supervision or direction by the
6 Department of Health and Human Resources, but is an inde-
7 pendent, self-sustaining commission that shall have the powers
8 and duties specified in this chapter.

9 The Commission is a part-time commission whose mem-
10 bers perform such duties as specified in this chapter. The
11 ministerial duties of the Commission shall be administered and
12 carried out by the Commissioner of the Bureau for Child
13 Support Enforcement, with the assistance of such staff of the
14 Department of Health and Human Resources as the Secretary
15 may assign.

16 Each member of the Commission shall devote the time
17 necessary to carry out the duties and obligations of the office
18 and the seven members appointed by the Governor may pursue
19 and engage in another business, occupation or gainful employ-
20 ment that is not in conflict with the duties of the Commission.

21 While the Commission is self-sustaining and independent,
22 it, its members, its employees and the Commissioner are subject
23 to article nine-a of chapter six, chapter six-b, chapter twenty-
24 nine-a and chapter twenty-nine-b of this code.

ARTICLE 18. BUREAU FOR CHILD SUPPORT ENFORCEMENT

§48-18-103. Organization and employees.

1 (a) The Commissioner shall organize the work of the
2 Bureau in such offices or other organizational units as he or she
3 may determine to be necessary for effective and efficient
4 operation.

5 (b) The Commissioner shall employ a sufficient number of
6 employees in the position of Bureau for Child Support Enforce-
7 ment attorney so as to provide for the effective and efficient
8 operation of the Bureau for Child Support Enforcement. The
9 Bureau for Child Support Enforcement attorneys shall be
10 distributed geographically as determined by the Commissioner.

11 (c) The Secretary may transfer employees and resources of
12 the Department to the Bureau for Child Support Enforcement
13 as may be necessary to fulfill the duties and responsibilities of
14 the Bureau under this chapter: *Provided*, That the Secretary
15 may not transfer employees of other divisions and agencies
16 within the Department to the Bureau for Child Support Enforce-
17 ment without a prior finding that the office or position held by
18 the employee may be eliminated and until the office or position
19 is, in fact, eliminated.

20 (d) The Commissioner, if he or she deems such action
21 necessary, may hire legal counsel for the Division, notwith-
22 standing the provisions of section two, article three, chapter five
23 of this code or any other code provision to the contrary, or may
24 request the Attorney General to appoint counsel who shall
25 perform such duties as may be required by the Bureau. The
26 Attorney General, in pursuance of such request, may select and
27 appoint counsel to serve during the will and pleasure of the
28 Attorney General, and shall be paid out of any funds allocated
29 and appropriated to the Child Support Enforcement Fund.

30 (e) The Commissioner may employ such staff or employees
31 as may be necessary to administer and enforce this chapter.

§48-18-108. Fees.

1 (a) When the Bureau for Child Support Enforcement
2 provides child support collection services either to a public
3 assistance recipient or to a party who does not receive public
4 assistance, the Bureau for Child Support Enforcement shall,
5 upon written notice to the obligor, charge a monthly collection
6 fee equivalent to the full monthly cost of the services, in
7 addition to the amount of child support which was ordered by
8 the court. The fee shall be deposited in the Child Support
9 Enforcement Fund. The service fee assessed may not exceed ten
10 percent of the monthly court-ordered child support and may not
11 be assessed against any obligor who is current in payment of
12 the monthly court-ordered child support payments: *Provided*,
13 That this fee may not be assessed when the obligor is also a
14 recipient of public assistance.

15 (b) Except for those persons applying for services provided
16 by the Bureau for Child Support Enforcement who are applying
17 for or receiving public assistance from the Division of Human
18 Services or persons for whom fees are waived pursuant to a

19 legislative rule promulgated pursuant to this section, all
20 applicants shall pay an application fee of twenty-five dollars.

21 (c) Fees imposed by state and federal tax agencies for
22 collection of overdue support shall be imposed on the person
23 for whom these services are provided. Upon written notice to
24 the obligee, the Bureau for Child Support Enforcement shall
25 assess a fee of twenty-five dollars to any person not receiving
26 public assistance for each successful federal tax interception.
27 The fee shall be withheld prior to the assistance for each
28 successful federal tax interception. The fee shall be withheld
29 prior to the release of the funds received from each interception
30 and deposited in the Child Support Enforcement Fund estab-
31 lished pursuant to section 18-107.

32 (d) In any action brought by the Bureau for Child Support
33 Enforcement, the court shall order that the obligor shall pay
34 attorney fees for the services of the attorney representing the
35 Bureau for Child Support Enforcement in an amount calculated
36 at a rate similar to the rate paid to court-appointed attorneys
37 paid pursuant to section thirteen-a, article twenty-one, chapter
38 twenty-nine of this code and all court costs associated with the
39 action: *Provided*, That no such award shall be made when the
40 court finds that the award of attorney's fees would create a
41 substantial financial hardship on the obligor or when the obligor
42 is a recipient of public assistance. Further, the Bureau for Child
43 Support Enforcement may not collect such fees until the obligor
44 is current in the payment of child support. No court may order
45 the Bureau for Child Support Enforcement to pay attorney's
46 fees to any party in any action brought pursuant to this chapter.

47 (e) This section shall not apply to the extent it is inconsis-
48 tent with the requirements of federal law for receiving funds for
49 the program under Title IV-A and Title IV-D of the Social
50 Security Act, United States Code, article three, Title 42,
51 Sections 601 to 613 and United States Code, Title 42, Sections
52 651 to 662.

§48-18-112. Cooperation with other states in the enforcement of child support.

1 (a) The Bureau for Child Support Enforcement shall
2 cooperate with any other state in the following:

3 (1) In establishing paternity;

4 (2) In locating an obligor residing temporarily or perma-
5 nently in this state, against whom any action is being taken for
6 the establishment of paternity or the enforcement of child and
7 spousal support;

8 (3) In securing compliance by an obligor residing tempo-
9 rarily or permanently in this state, with an order issued by a
10 court of competent jurisdiction against such obligor for the
11 support and maintenance of a child or children or the parent of
12 such child or children; and

13 (4) In carrying out other functions necessary to a program
14 of child and spousal support enforcement.

15 (b) The Commissioner shall, establish procedures necessary
16 to extend the Bureau for Child Support Enforcements' system
17 of withholding under article fourteen of this chapter, so that
18 such system may include withholding from income derived
19 within this state in cases where the applicable support orders
20 were issued in other states, in order to assure that child support
21 owed by obligors in this state or any other state will be col-
22 lected without regard to the residence of the child for whom the
23 support is payable or the residence of such child's custodial
24 parent.

§48-18-113. Disbursements of amounts collected as support.

1 (a) Amounts collected as child or spousal support by the
2 Bureau for Child Support Enforcement shall be distributed

3 within two business days after receipt from the employer or
4 other source of periodic income. The amounts collected as child
5 support shall be distributed by the Bureau for Child Support
6 Enforcement in accordance with the provisions for distribution
7 set forth in 42 U.S.C. §657. The Commissioner shall promul-
8 gate a legislative rule to establish the appropriate distribution as
9 may be required by the federal law.

10 (b) Any payment required to be made under the provisions
11 of this section to a family shall be made to the resident parent,
12 legal guardian or caretaker relative having custody of or
13 responsibility for the child or children.

14 (c) The Commissioner shall maintain methods of adminis-
15 tration which are designed to assure that employees of the
16 Bureau for Child Support Enforcement or any persons em-
17 ployed pursuant to a contract who are responsible for handling
18 cash receipts do not participate in accounting or operating
19 functions which would permit them to conceal in the account-
20 ing records the misuse of cash receipts: *Provided*, That the
21 Commissioner may provide for exceptions to this requirement
22 in the case of sparsely populated areas in this state where the
23 hiring of unreasonable additional staff in the local office would
24 otherwise be necessary.

25 (d) No penalty or fee may be collected by or distributed to
26 a recipient of Bureau for Child Support Enforcement services
27 from the State Treasury or from the Child Support Enforcement
28 Fund when child support is not distributed to the recipient in
29 accordance with the time frames established herein.

30 (e) For purposes of this section, "business day" means a day
31 on which state offices are open for regular business.

§48-18-117. Obtaining support from federal tax refunds.

1 The Commissioner shall, by legislative rule promulgated
2 pursuant to chapter twenty-nine-a of this code, place in effect

3 procedures necessary for the Bureau for Child Support Enforce-
4 ment to obtain payment of past due support from federal tax
5 refunds from overpayments made to the Secretary of the
6 Treasury of the United States. The Bureau for Child Support
7 Enforcement shall take all steps necessary to implement and
8 utilize such procedures.

§48-18-118. Obtaining support from state income tax refunds.

1 (a) The Tax Commissioner shall establish procedures
2 necessary for the Bureau for Child Support Enforcement to
3 obtain payment of past due support from state income tax
4 refunds from overpayment made to the Tax Commissioner
5 pursuant to the provisions of article twenty-one, chapter eleven
6 of this code.

7 (b) The Commissioner shall, establish procedures necessary
8 for the Bureau for Child Support Enforcement to enforce a
9 support order through a notice to the Tax Commissioner which
10 will cause any refund of state income tax which would other-
11 wise be payable to an obligor to be reduced by the amount of
12 overdue support owed by such obligor.

13 (1) Such legislative rule shall, at a minimum, prescribe:

14 (A) The time or times at which the Bureau for Child
15 Support Enforcement shall serve on the obligor or submit to the
16 Tax Commissioner notices of past due support;

17 (B) The manner in which such notices shall be served on
18 the obligor or submitted to the Tax Commissioner;

19 (C) The necessary information which shall be contained in
20 or accompany the notices;

21 (D) The amount of the fee to be paid to the Tax Commis-
22 sioner for the full cost of applying the procedure whereby past
23 due support is obtained from state income tax refunds; and

24 (E) Circumstances when the Bureau for Child Support
25 Enforcement may deduct a twenty-five dollar fee from the
26 obligor's state income tax refund. This procedure may not
27 require a deduction from the state income tax refund of an
28 applicant who is a recipient of assistance from the Bureau for
29 Children and Families in the form of temporary assistance for
30 needy families.

31 (2) Withholding from state income tax refunds may not be
32 pursued unless the Bureau for Child Support Enforcement has
33 examined the obligor's pattern of payment of support and the
34 obligee's likelihood of successfully pursuing other enforcement
35 actions, and has determined that the amount of past due support
36 which will be owed, at the time the withholding is to be made,
37 will be one hundred dollars or more. In determining whether the
38 amount of past due support will be one hundred dollars or more,
39 the Bureau for Child Support Enforcement shall consider the
40 amount of all unpaid past due support, including that which
41 may have accrued prior to the time that the Bureau for Child
42 Support Enforcement first agreed to enforce the support order.

43 (c) The Commissioner of the Bureau for Child Support
44 Enforcement shall enter into agreements with the Secretary of
45 the Treasury and the Tax Commissioner, and other appropriate
46 governmental agencies, to secure information relating to the
47 social security number or numbers and the address or addresses
48 of any obligor, in order to provide notice between such agencies
49 to aid the Bureau for Child Support Enforcement in requesting
50 state income tax deductions and to aid the Tax Commissioner
51 in enforcing such deductions. In each such case, the Tax
52 Commissioner, in processing the state income tax deduction,
53 shall notify the Bureau for Child Support Enforcement of the
54 obligor's home address and social security number or numbers.
55 The Bureau for Child Support Enforcement shall provide this
56 information to any other state involved in processing the
57 support order.

58 (d) For the purposes of this section, "past due support"
59 means the amount of unpaid past due support owed under the
60 terms of a support order to or on behalf of a child, or to or on
61 behalf of a minor child and the parent with whom the child is
62 living, regardless of whether the amount has been reduced to a
63 judgment or not.

64 (e) The Bureau for Child Support Enforcement may, under
65 the provisions of this section, enforce the collection of past due
66 support on behalf of a child who has reached the age of
67 majority.

68 (f) The procedure shall, at a minimum, provide that prior to
69 notifying the Tax Commissioner of past due support, a notice
70 to the obligor as prescribed under subsection (a) of this section
71 shall:

72 (1) Notify the obligor that a withholding will be made from
73 any refund otherwise payable to such obligor;

74 (2) Instruct the obligor of the steps which may be taken to
75 contest the determination of the Bureau for Child Support
76 Enforcement that past due support is owed or the amount of the
77 past due support; and

78 (3) Provide information with respect to the procedures to be
79 followed, in the case of a joint return, to protect the share of the
80 refund which may be payable to another person.

81 (g) If the Bureau for Child Support Enforcement is notified
82 by the Tax Commissioner that the refund from which withhold-
83 ing is proposed to be made is based upon a joint return, and if
84 the past due support which is involved has not been assigned to
85 the Department of Health and Human Resources, the Bureau for
86 Child Support Enforcement may delay distribution of the
87 amount withheld until such time as the Tax Commissioner
88 notifies the Bureau for Child Support Enforcement that the

89 other person filing the joint return has received his or her proper
90 share of the refund, but such delay shall not exceed six months.

91 (h) In any case in which an amount is withheld by the Tax
92 Commissioner under the provisions of this section and paid to
93 the Bureau for Child Support Enforcement, if the Bureau for
94 Child Support Enforcement subsequently determines that the
95 amount certified as past due was in excess of the amount
96 actually owed at the time the amount withheld is to be distrib-
97 uted, the agency shall pay the excess amount withheld to the
98 obligor thought to have owed the past due support or, in the
99 case of amounts withheld on the basis of a joint return, jointly
100 to the parties filing the return.

101 (i) The amounts received by the Bureau for Child Support
102 Enforcement shall be distributed in accordance with the
103 provisions for distribution set forth in 42 U.S.C. §657.

**§48-18-119. Obtaining support from unemployment compensa-
tion benefits.**

1 (a) The Commissioner shall enter into a written agreement
2 with the Bureau of Employment Programs for the purpose of
3 withholding unemployment compensation from individuals
4 with unmet support obligations being enforced by the Bureau
5 for Child Support Enforcement. The Commissioner shall,
6 through direct contact with the Bureau of Employment Pro-
7 grams, process cases through the Bureau of Employment
8 Programs in this state, and shall process cases through support
9 enforcement agencies in other states. The Commissioner shall
10 receive all amounts withheld by the Bureau of Employment
11 Programs in this state, forwarding any amounts withheld on
12 behalf of support enforcement agencies in other states to those
13 agencies.

14 (b) For the purposes of this section:

15 (1) "Legal process" means a writ, order, summons or other
16 similar process in the nature of garnishment which is issued by
17 a court of competent jurisdiction or by an authorized official
18 pursuant to an order to such court or pursuant to state or local
19 law.

20 (2) "Unemployment compensation" means any compensa-
21 tion under state unemployment compensation law (including
22 amounts payable in accordance with agreements under any
23 federal unemployment compensation law). It includes extended
24 benefits, unemployment compensation for federal employees,
25 unemployment compensation for ex-servicemen, trade readjust-
26 ment allowances, disaster unemployment assistance, and
27 payments under the Federal Redwood National Park Expansion
28 Act.

**§48-18-121. Providing information to consumer reporting agen-
cies; requesting consumer credit reports for child
support purposes.**

1 (a) For purposes of this section, the term "consumer
2 reporting agency" means any person who, for monetary fees,
3 dues, or on a cooperative nonprofit basis, regularly engages, in
4 whole or in part, in the practice of assembling or evaluating
5 consumer credit information or other information on consumers
6 for the purpose of furnishing consumer reports to third parties.

7 (b) The Commissioner shall establish procedures whereby
8 information regarding the amount of overdue support owed by
9 an obligor will be reported periodically by the Bureau for Child
10 Support Enforcement to any consumer reporting agency, after
11 a request by the consumer reporting agency that it be provided
12 with the periodic reports.

13 (1) The procedures shall provide that any information with
14 respect to an obligor shall be made available only after notice
15 has been sent to the obligor of the proposed action, and such

16 obligor has been given a reasonable opportunity to contest the
17 accuracy of the information.

18 (2) The procedures shall afford the obligor with procedural
19 due process prior to making information available with respect
20 to the obligor.

21 (c) The information made available to a consumer reporting
22 agency regarding overdue support may only be made available
23 to an entity that has furnished evidence satisfactory to the
24 Bureau that the entity is a consumer reporting agency as defined
25 in subsection (a) of this section.

26 (d) The Bureau for Child Support Enforcement may impose
27 a fee for furnishing such information, not to exceed the actual
28 cost thereof.

29 (e) The Commissioner of the Bureau for Child Support
30 Enforcement, or her or his designee, may request a consumer
31 reporting agency to prepare and furnish to the Bureau for Child
32 Support Enforcement a consumer report for purposes relating
33 to child support, by certifying to the consumer reporting agency
34 that:

35 (1) The consumer report is needed for the purpose of
36 establishing an individual's capacity to make child support
37 payments or determining the appropriate level of payments in
38 order to set an initial or modified child support award;

39 (2) The paternity of the child of the individual has been
40 established or acknowledged by the individual in accordance
41 with state law;

42 (3) The individual whose report is being requested has been
43 given at least ten days' prior notice of the request by certified
44 mail to his or her last known address that such report is being
45 requested; and

46 (4) The consumer report will be kept confidential, will be
47 used solely for a purpose described in subdivision (1) of this
48 subsection and will not be used in connection with any other
49 civil, administrative or criminal proceeding or for any other
50 purpose.

**ARTICLE 19. BUREAU FOR CHILD SUPPORT ENFORCEMENT ATTOR-
NEY**

**§48-19-102. Appointment of Bureau for Child Support Enforce-
ment attorneys**

1 (a) Each Bureau for Child Support Enforcement attorney
2 shall be appointed by the Commissioner of the Bureau for Child
3 Support Enforcement. The Bureau for Child Support Enforce-
4 ment attorneys shall be duly qualified attorneys licensed to
5 practice in the courts of this state. Bureau for Child Support
6 Enforcement attorneys shall be exempted from the appoint-
7 ments in the indigent cases which would otherwise be required
8 pursuant to article twenty-one, chapter twenty-nine of this code.

9 (b) Nothing contained herein shall prohibit the Commis-
10 sioner from temporarily assigning, from time to time as
11 caseload may dictate, a Bureau for Child Support Enforcement
12 attorney from one geographical area to another geographical
13 area.

14 (c) The Bureau for Child Support Enforcement attorney is
15 an employee of the Bureau for Child Support Enforcement.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Randy White
Chairman Senate Committee

W. Richard Berry
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Barrel E. Holmes
Clerk of the Senate

Gregg A. Day
Clerk of the House of Delegates

Carl Ray Tomblin
President of the Senate

[Signature]
Speaker of the House of Delegates

The within is approved this the 4th
day of May, 2005.

[Signature]
Governor

PRESENTED TO THE
GOVERNOR

MAY 2 2005

Time 4:10 pm