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OFFICE OF THE  
SECRETARY OF STATE

HB 3134

**WEST VIRGINIA LEGISLATURE**  
FIRST REGULAR SESSION, 2011



**ENROLLED**

**House Bill No. 3134**

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



Passed March 12, 2011

In Effect Ninety Days From Passage

FILED

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**E N R O L L E D**

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**H. B. 3134**

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(BY DELEGATES BROWN, FRAZIER, MOORE, MILEY,  
POORE AND FLEISCHAUER)

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[Passed March 12, 2011; in effect ninety days from passage.]

AN ACT to amend and reenact §48-1-204, §48-1-244 and §48-1-302 of the Code of West Virginia, 1931, as amended; to amend and reenact §48-14-408 and §48-14-410 of said code; and to amend and reenact §48-24-106 of said code, all relating to child support enforcement; lowering the accrued interest rate; requiring employers provide information as to the issuance of a bonus to the Bureau for Child Support Enforcement; extending the time parties may agree to for payment of arrearages under a payment plan from twenty-four to sixty months; requiring certain employers to submit support withheld electronically; and making various technical corrections.

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

That §48-1-204, §48-1-244 and §48-1-302 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §48-14-408 and §48-14-410 of said code be amended and reenacted; and

that §48-24-106 of said code be amended and reenacted, all to read as follows:

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

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

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

**§48-1-244. Support defined.**

1           “Support” means the payment of money, including  
2   interest:

3           (1) For a child or spouse, ordered by a court of competent  
4   jurisdiction, whether the payment is ordered in an emergency,  
5   temporary, permanent or modified order, the amount of  
6   unpaid support shall bear simple interest from the date it  
7   accrued, at a rate of five percent per annum, and  
8   proportionately for a greater or lesser sum, or for a longer or  
9   shorter time;

10          (2) To third parties on behalf of a child or spouse,  
11   including, but not limited to, payments to medical, dental or

12 educational providers, payments to insurers for health and  
13 hospitalization insurance, payments of residential rent or  
14 mortgage payments, payments on an automobile or payments  
15 for day care; or

16 (3) For a mother, ordered by a court of competent  
17 jurisdiction, for the necessary expenses incurred by or for the  
18 mother in connection with her confinement or of other  
19 expenses in connection with the pregnancy of the mother.

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

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

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

18 (c) Upon written agreement by both parties, an obligor  
19 may petition the court to enter an order conditionally  
20 suspending the collection of all or part of the interest that has  
21 accrued on past-due child support prior to the date of the  
22 agreement: *Provided*, That said agreement shall also establish

23 a reasonable payment plan which is calculated to fully  
24 discharge all arrearages within sixty months. Upon  
25 successful completion of the payment plan, the court shall  
26 enter an order which permanently relieves the obligor of the  
27 obligation to pay the accrued interest. If the obligor fails to  
28 comply with the terms of the written agreement, then the  
29 court shall enter an order which reinstates the accrued  
30 interest.

31 (d) Amendments to this section enacted by the  
32 Legislature during the 2006 regular session shall become  
33 effective January 1, 2007.

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

##### **1 §48-14-408. Determination of amounts to be withheld.**

2 Notwithstanding any other provision of this code to the  
3 contrary which provides for a limitation upon the amount  
4 which may be withheld from earnings through legal process,  
5 the amount of an obligor's aggregate disposable earnings for  
6 any given workweek which may be withheld as support  
7 payments is to be determined in accordance with the  
8 provisions of this subsection, as follows:

9 (1) After ascertaining the status of the payment record of  
10 the obligor under the terms of the support order, the payment  
11 record shall be examined to determine whether any arrearage  
12 is due for amounts which should have been paid prior to a  
13 twelve-week period which ends with the workweek for which  
14 withholding is sought to be enforced.

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

18       (A) When 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  
21 may not exceed fifty percent of the obligor's disposable  
22 earnings for that week; and

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

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

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

35       (B) Where the obligor is not supporting another spouse  
36 or dependent child as described in paragraph (A) of this  
37 subdivision, the amount withheld may not exceed sixty-five  
38 percent of the obligor's disposable earnings for that week.

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

42       (A) When the obligor is supporting another spouse or  
43 dependent child other than the spouse or child for whom the  
44 proposed withholding is being sought, the amount withheld  
45 may not exceed forty percent of the obligor's disposable  
46 earnings for that week; and

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

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

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

59           (B) Where the obligor is not supporting another spouse  
60 or dependent child as described in paragraph (A) of this  
61 subdivision, the amount withheld may not exceed fifty-five  
62 percent of the obligor's disposable earnings for that week.

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

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

75           (8) The Bureau for Child Support Enforcement has the  
76 authority to prorate the current support obligation in

77 accordance with the pay cycle of the source of income. This  
78 prorated current support obligation shall be known as the  
79 "adjusted support obligation". The current support obligation  
80 or the adjusted support obligation is the amount, if unpaid, on  
81 which interest will be charged.

82 (9) When an obligor acts so as to purposefully minimize  
83 his or her income and to thereby circumvent the provisions of  
84 part 4 of this article which provide for withholding from  
85 income of amounts payable as support, the amount to be  
86 withheld as support payments may be based upon the  
87 obligor's potential earnings rather than his or her actual  
88 earnings, and such obligor may not rely upon the percentage  
89 limitations set forth in this subsection which limit the amount  
90 to be withheld from disposable earnings.

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

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

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

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

1       After implementation in accordance with the provisions  
2       of section 14-409, a source of income shall send the amount  
3       to be withheld from the obligor's income to the Bureau for  
4       Child Support Enforcement and shall notify the Bureau for  
5       Child Support Enforcement of the date of withholding, the  
6       same date that the obligor is paid. If the source of income has  
7       more than fifty employees, the source of income shall submit  
8       the support withheld via electronic means in a manner  
9       prescribed by the Bureau for Child Support Enforcement.

#### **ARTICLE 24. ESTABLISHMENT OF PATERNITY.**

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

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

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

  
Chairman, House Committee

  
Chairman, Senate Committee

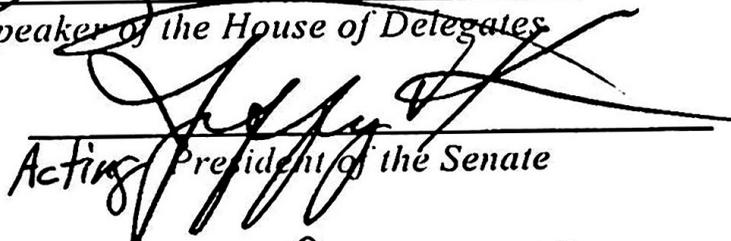
Originating in the House.

To take effect ninety days from passage.

  
Clerk of the House of Delegates

  
Clerk of the Senate

  
Speaker of the House of Delegates

  
Acting President of the Senate

The within is approved this the 16  
day of April, 2011.

  
Governor

OFFICE OF THE CLERK  
SECRETARY OF STATE

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FILED

PRESENTED TO THE GOVERNOR

MAR 31 2011

Time 11:30 am  
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