

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 4459

BY DELEGATES HICKS, RODIGHIERO, ROHRBACH,
PERDUE, J. NELSON, ROWE, AZINGER, DEEM, REYNOLDS,
ELDRIDGE AND WESTFALL

[Introduced February 9, 2016; Referred
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §48-11-105 and §48-11-106 of the Code of West Virginia, 1931, as
2 amended; all relating to requiring in the event the amount of child support to be paid is
3 modified by a later child support order, the amount to be paid is effective on the date the
4 petition for the modification was filed, not the date the subsequent order was entered.

Be it enacted by the Legislature of West Virginia:

1 That §48-11-105 and §48-11-106 of the Code of West Virginia, 1931, as amended, be
2 amended and reenacted, all to read as follows:

ARTICLE 11. SUPPORT OF CHILDREN.

§48-11-105. Modification of child support order.

1 (a) The court may modify a child support order, for the benefit of the child, when a motion
2 is made that alleges a change in the circumstances of a parent or another proper person or
3 persons. A motion for modification of a child support order may be brought by a custodial parent
4 or any other lawful custodian or guardian of the child, by a parent or other person obligated to pay
5 child support for the child or by the Bureau for Child Support Enforcement of the Department of
6 Health and Human Resources of this state. In the event the amount of child support to be paid is
7 modified by a later child support order, the amount of child support to be paid is effective on the
8 date the petition for the modification was filed, not the date the subsequent order was entered.

9 (b) The provisions of the order may be modified if there is a substantial change in
10 circumstances. If application of the guideline would result in a new order that is more than fifteen
11 percent different, then the circumstances are considered a substantial change.

12 (c) An order that modifies the amount of child support to be paid shall conform to the
13 support guidelines set forth in section one hundred one, article thirteen, *et seq.*, of this chapter
14 unless the court disregards the guidelines or adjusts the award as provided in section seven
15 hundred two of said article.

16 (d) The Supreme Court of Appeals shall make available to the courts a standard form for
17 a petition for modification of an order for support, which form will allege that the existing order

18 should be altered or revised because of a loss or change of employment or other substantial
19 change affecting income or that the amount of support required to be aid is not within fifteen
20 percent of the child support guidelines. The clerk of the circuit court and the secretary-clerk of the
21 family court shall make the forms available to persons desiring to represent themselves in filing a
22 motion for modification of the support award.

23 (e) Upon entry of an order modifying a child support amount the court shall, no later than
24 five days from entry of the order, provide a copy of the modified order to the Bureau for Child
25 Support Enforcement. If an overpayment to one of the parties occurs as a result of the modified
26 terms of the order, funds properly withheld by the Bureau for Child Support Enforcement pursuant
27 to the terms of the original order shall not be returned until such time as the Bureau for Child
28 Support Enforcement receives repayment from the party in possession of the overpayment.

§48-11-106. Expedited process for modification.

1 (a) An expedited process for modification of a child support order may be utilized if:

- 2 (1) Either parent experiences a substantial change of circumstances resulting in a
3 decrease in income due to loss of employment or other involuntary cause;
4 (2) An increase in income due to promotion, change in employment or reemployment;
5 (3) Other such change in employment status; or
6 (4) If a military parent is called to military service.

7 (b) The party seeking the recalculation of support and modification of the support order
8 shall file a description of the decrease or increase in income and an explanation of the cause of
9 the decrease or increase on a standardized form to be provided by the secretary-clerk or other
10 employee of the family court. The standardized form shall be verified by the filing party. Any
11 available documentary evidence shall be filed with the standardized form. Based upon the filing
12 and information available in the case record, the amount of support shall be tentatively
13 recalculated.

14 (c) The secretary-clerk shall serve a notice of the filing, a copy of the standardized form

15 and the support calculations upon the other party by certified mail, return receipt requested, with
16 delivery restricted to the addressee, in accordance with rule 4(d)(1)(D) of the West Virginia rules
17 of civil procedure. The secretary-clerk shall also mail a copy, by first-class mail, to the local office
18 of the Bureau for Child Support Enforcement for the county in which the family court is located in
19 the same manner as original process under rule 4(d) of the rules of civil procedure.

20 (d) The notice shall fix a date fourteen days from the date of mailing and inform the party
21 that unless the recalculation is contested and a hearing request is made on or before the date
22 fixed, the proposed modification will be made effective. If the filing is contested, the proposed
23 modification shall be set for hearing; otherwise, the court shall enter an order for a judgment by
24 default. Either party may move to set aside a judgment by default, pursuant to the provisions of
25 rule 55 or rule 60(b) of the rules of civil procedure.

26 (e) In the event the amount of child support to be paid is modified pursuant to this section,
27 the amount of child support to be paid is effective from the date the petition for the modification
28 was filed.

29 ~~(e)~~ (f) If an obligor uses the provisions of this section to expeditiously reduce his or her
30 child support obligation, the order that effected the reduction shall also require the obligor to notify
31 the obligee of reemployment, new employment or other such change in employment status that
32 results in an increase in income. If an obligee uses the provisions of this section to expeditiously
33 increase his or her child support obligation, the order that effected the increase shall also require
34 the obligee to notify the obligor of reemployment, new employment or other such change in
35 employment status that results in an increase in income of the obligee.

36 ~~(f)~~ (g) The Supreme Court of Appeals shall develop the standardized form required by this
37 section.

NOTE: The purpose of this bill is to require in the event the amount of child support to be paid is modified by a later child support order, the amount of child support to be paid is effective from the date the petition for the modification was filed, not the date the

subsequent order was entered.

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