

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #2

FILED

JUL 25 11 25 AM '96

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF A COMMENT PERIOD ON A PROPOSED RULE

AGENCY: Child Support Enforcement Division TITLE NUMBER: 97
RULE TYPE: Legislative; CITE AUTHORITY W.Va. Code 48A-3-11, 48A-5-3
AMENDMENT TO AN EXISTING RULE: YES NO X

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 11 97-2

TITLE OF RULE BEING AMENDED: Application of Statutory Interest
Provisions

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

TITLE OF RULE BEING PROPOSED: _____

IN LIEU OF A PUBLIC HEARING, A COMMENT PERIOD HAS BEEN ESTABLISHED DURING WHICH ANY INTERESTED PERSON MAY SEND COMMENTS CONCERNING THESE PROPOSED RULES. THIS COMMENT PERIOD WILL END ON Aug. 26, 1996 AT 12:00 NOON. ONLY WRITTEN COMMENTS WILL BE ACCEPTED AND ARE TO BE MAILED TO THE FOLLOWING ADDRESS.

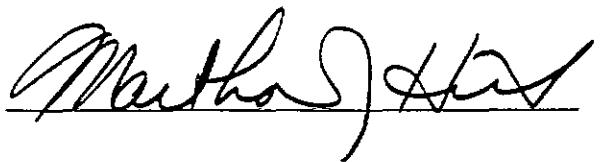
R. Jeffrey Johnson

Building 6, Room 817

State Capitol Complex

Charleston WV 25305

THE ISSUES TO BE HEARD SHALL BE
LIMITED TO THIS PROPOSED RULE.



ATTACH A **BRIEF** SUMMARY OF YOUR PROPOSAL

STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES
BUREAU FOR CHILDREN AND FAMILIES
-CHILD SUPPORT ENFORCEMENT DIVISION-

Gaston Caperton
Governor

Gretchen O. Lewis
Secretary

Jeffrey Johnson
8-0908

Sue H. Sergi
Commissioner

Martha J. Hill
Director

M E M O R A N D U M

TO: Judy Cooper, Director
Administrative Law Division
Secretary of State

FROM: Jeff Johnson, In-House Counsel
Child Support Enforcement Division

DATE: July 19, 1996

SUBJECT: Attached Rules

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

JUL 25 12 13 PM '96

FILED

Enclosed you will find four (4) proposed or amended legislative rules and one (1) emergency rule for filing. The rules are as follows:

1. Title 78, Series 6. Incorporation by Reference as a Legislative Rule of the Child Support Enforcement Division Policy and Procedural Manual.

This is an amendment to an existing rule. The amendment is technical in nature and provides for an update of the rule to meet current statutory language. More particularly, it provides for a change in the name of the agency which was done by statute in the 1995 session of the legislature.

2. Title 78, Series 11. Application of Statutory Interest Provisions.

This is being offered as an emergency rule pursuant to the emergency rule making authority of the West Virginia Support Enforcement Commission under West Virginia Code §48A-3-11 and §48A-5-3. This rule would repeal the former rule which pertained to Income Withholding. That rule is obsolete as all of its provisions have now been made a part of state code.

The rule provides that interest shall not accrue during the months when despite the legal compliance of an employer, the non-custodial parent's monthly support obligation is not met.

Judy Cooper, Director, Administrative Law Division
Secretary of State
July 19, 1996
Page 2

I have also enclosed the necessary paperwork to see that this rule becomes a legislative rule.

3. Title 78, Series 12. Obtaining Support From Federal and State Income Tax Refunds.

This rule is an amendment to the existing rule. However, the changes are so extensive that pursuant to Legislative Rule \$153-6-5 I am asking that the former rule be repealed and this be offered as a new rule.

The changes to the rule are to meet current statutory requirements.

4. Title 78, Series 13. Interstate Income Withholding.

This is an amendment to an existing rule. The changes are to bring the rule into statutory compliance. More particularly, it provides for a change in the name of the agency which was done by statute in the 1995 session of the legislature.

5. Title 78, Series 14. Providing Information to Credit Reporting Agencies.

This is an amendment to an existing rule. The changes are to bring the rule into statutory compliance. More particularly, it provides for a change in the name of the agency which was done by statute in the 1995 session of the legislature.

I have provided the necessary cover forms for all rules. In addition, I have included a fiscal note on all of the rules. For the amendments to existing rules, I have provided three (3) copies to The Rule-Making Review Committee and one (1) to the Administrative Law Division of the Secretary of State. For the emergency rule, I have provided fourteen (14) copies to the Administrative Law Division of the Secretary of State and one (1) to Legislative Rule-Making Review Committee. For the rules that are to be repealed, I have included a copy of the current rule.

Please advise if you need anything additional. I look forward to hearing from you.

RJJ/rab

Attachments

DATE:

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Gretchen O. Lewis, Secretary, DHHR

LEGISLATIVE RULE TITLE: Application of Statutory Interest Provisions

1. Authorizing statute(s) citation W.Va. Code 48A-3-11, 48A-5-3,
48-2-3 and 56-6-31

2. a. Date filed in State Register with Notice of Hearing

b. What other notice, including advertising, did you give
of the hearing?

c. Date of Hearing(s)

d. Attach list of persons who appeared at hearing,
comments received, amendments, reasons for amendments.

Attached _____ No comments received _____

e. Date you filed in State Register the agency approved
proposed Legislative Rule following public hearing:
(be exact)

f. Name and phone number(s) of agency person(s) to
contact for additional information:

3. If the statute under which you promulgated the submitted rules requires certain findings and determinations to be made as a condition precedent to their promulgation:

a. Give the date upon which you filed in the State Register a notice of the time and place of a hearing for the taking of evidence and a general description of the issues to be decided.

N/A

b. Date of hearing: _____

c. On what date did you file in the State Register the findings and determinations required together with the reasons therefor?

d. Attach findings and determinations and reasons:

Attached _____

TITLE 78
LEGISLATIVE RULES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

SERIES 11
APPLICATION OF STATUTORY INTEREST PROVISIONS

§78-11-1. General.

1.1 Scope - This legislative rule establishes procedures for the Department of Health and Human Resources, Child Support Enforcement Division, not to calculate and collect interest on support arrearages in specific instances.

1.2 Authority - W. Va. Code §48-2-37, W. Va. Code §48A-5-3(n) 48A-3-11, W. Va. Code §56-6-31, 42 U.S.C. §666(b)(9), and 45 C.F.R. §303.100 (f).

1.3 Filing Date -

1.4 Effective Date -

1.5 Repeal of Former Rule
This Legislative Rule repeals the following West Virginia Legislative Rule: Department of Human Services, series II, Termination of Income Withholding filed June 6, 1989.

§78-11-2. Interest Payments on Support Arrears.

2.1. Every support order entered by a circuit court of this state shall provide that the wages of an obligor be subject to withholding.

2.2. The total of any matured, unpaid installments of child support required to be paid by an order entered or modified by a court of

competent jurisdiction, or by the order of a magistrate court of this state under the prior enactments of the West Virginia Code, stand as a decretal judgment against the obligor owing the support obligation. Every judgment or decree for the payment of money, shall bear interest from the date of entry unless otherwise provided.

2.3. Sources of income which are subject to withholding are not required to vary the normal pay cycle to accommodate the provisions of the wage withholding. Therefore, in certain instances the full monthly support obligation may not be met each and every month. This places the obligor in arrears despite the compliance with the source of income with legal withholding requirements.

2.4. In those months despite compliance with legal withholding requirements the full monthly support amount is not met prior to the end of the month, interest shall not accrue. These situations include:

2.4.a. The pay cycle of a source of income which is not bi-monthly or

monthly;

2.4.2. Benefit payments which are awarded for a month, but distributed in the subsequent month;

2.4.3. Other occurrences deemed appropriate by the Child Support Enforcement Division.

2.5. If during the period from January 1 to December 31 of any year the frequency with which the obligor receives income changes, the obligation to pay the interest which otherwise would have accrued may be reinstated.

2.6. Nothing in this rule should be construed to apply in instances when the full monthly support amount is not collected as a result of application of the Federal Consumer Credit Protection Act.