



WEST VIRGINIA  
SECRETARY OF STATE

KEN HECHLER  
ADMINISTRATIVE LAW DIVISION

Form #7

Do not mark in this box  
Filing Date

FILED

JUL 25 11 26 AM '96

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

Effective Date

NOTICE OF AN EMERGENCY RULE

AGENCY: Child Support Enforcement TITLE NUMBER: ~~97~~ 97  
Division

CITE AUTHORITY: W.Va. Code 48A-3-11, 48A-5-3, 56-6-31 and 48-2-37

EMERGENCY AMENDMENT TO AN EXISTING RULE: YES ☐ NO ☒

IF YES, SERIES NUMBER OF RULE BEING AMENDED: \_\_\_\_\_

TITLE OF RULE BEING AMENDED: \_\_\_\_\_

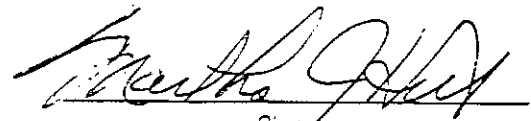
IF NO, SERIES NUMBER OF RULE BEING FILED AS AN EMERGENCY: 11 97-2

TITLE OF RULE BEING FILED AS AN EMERGENCY: Application of Statutory  
Interest Provisions

THE ABOVE RULE IS BEING FILED AS AN EMERGENCY RULE TO BECOME EFFECTIVE AFTER  
APPROVAL BY SECRETARY OF STATE OR 35TH DAY AFTER FILING, WHICHEVER OCCURS FIRST.

THE FACTS AND CIRCUMSTANCES CONSTITUTING THE EMERGENCY ARE AS FOLLOWS:

Use additional sheets if necessary

  
Signature

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

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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: July 1, 1996

TO: LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

FROM: Gretchen O. Lewis, Secretary DHHR

EMERGENCY RULE TITLE: Application of Statutory Interest Provisions

1. Date of Filing 7/1/96

2. Statutory authority for promulgating emergency rule:

W.Va. Code 48A-3-11, 48A-5-3, 48-2-31 and 56-6-31

3. Date of filing of proposed legislative rule: 7/ /96

4. Does the emergency rule adopt new language or does it amend or appeal a current legislative rule?

Repeals current rule which is obsolete.

5. Has the same or similar emergency rule previously been filed and expired?

No

6. State, with particularity, those facts and circumstances which make the emergency rule necessary for the immediate preservation of public peace, health, safety or welfare.

State Code does not require employers to alter their

pay cycle to honor a withholding notice for support.

The Code also requires that interest be collected on any support obligation which is not met monthly. These

Statutes are inconsistent. This rule would reconcile these inconsistencies.

7. If the emergency rule was promulgated in order to comply with a time limit established by the Code or federal statute or regulation, cite the Code provision, federal statute or regulation and time limit established therein.

N/A

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8. State, with particularity, those facts and circumstances which make the emergency rule necessary to prevent substantial harm to the public interest.

See #6 above.

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## APPENDIX B

### FISCAL NOTE FOR PROPOSED RULES

Rule Title: Application of Statutory Interest Provisions

Type of Rule: X Legislative        Interpretive        Procedural

Agency Department of Health & Human Resources; Child  
Support Enforcement Division

Address Building 6, Room 817 State Capitol Complex  
Charleston, WV 25305

#### 1. Effect of Proposed Rule

|                             | ANNUAL FISCAL YEAR |          |         |      |           |
|-----------------------------|--------------------|----------|---------|------|-----------|
|                             | INCREASE           | DECREASE | CURRENT | NEXT | HEREAFTER |
| <u>ESTIMATED TOTAL COST</u> | \$                 | \$       | \$      | \$   | \$        |
| PERSONAL SERVICES           |                    |          |         |      |           |
| CURRENT EXPENSE             |                    |          |         |      |           |
| REPAIRS & ALTERNATIONS      |                    |          |         |      |           |
| EQUIPMENT                   |                    |          |         |      |           |
| OTHER                       |                    |          |         |      |           |

#### 2. Explanation of above estimates:

There is no fiscal impact of the proposed rule on the agency.

#### 3. Objectives of these rules:

To provide that interest shall not accrue on a support obligation during the months that an employer subject to a withholding notice is unable to meet the total monthly support obligation without modifying the normal pay cycle of the employer.

Rule Title: Application of Statutory Interest Provisions

4. Explanation of Overall Economic Impact of Proposed Rule.

A. Economic Impact on State Government.

None

B. Economic Impact on Political Subdivisions; Specific Industries; Specific groups of Citizens.

will allow employer to withhold pursuant to their normal pay cycle without placing their employee in arrears.

C. Economic Impact on Citizens/Public at Large.

Ultimately none. The rule provides that if during a 12 month period the full support obligation is met there will be no interest. If the full obligation is not met, the interest will accrue.

Date: \_\_\_\_\_

Signature of Agency Head or Authorized Representative

Martha J. Lee

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.

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

STEPHEN N. REED  
Deputy Secretary of State

CATHERINE FREROTTE  
Executive Assistant

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Supervisor, Corporations

## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

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1900 Kanawha Blvd., East  
Charleston, WV 25305-0770

(Plus all the volunteer  
help we can get)

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

SEP 5 4 01 PM '96

FILED

September 5, 1996

### NOTICE OF EMERGENCY RULE DECISION BY THE SECRETARY OF STATE

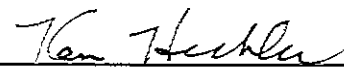
AGENCY: Child Support Enforcement Division

RULE: New Rule, Series 2, Application of Statutory Interest Provisions

DATE FILED AS AN EMERGENCY RULE: July 25, 1996

### DECISION NO. 16-96

Following review under WV Code 29A-3-15a, it is the decision of the Secretary of State that the above emergency rule is **disapproved**. A copy of the complete decision with required findings is available from this office.

  
KEN HECHLER  
Secretary of State

KEN HECHLER  
Secretary of State

MARY P. RATLIFF  
Deputy Secretary of State

STEPHEN N. REED  
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## STATE OF WEST VIRGINIA

### SECRETARY OF STATE

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Charleston, WV 25305-0770

(Plus all the volunteer  
help we can get)

## EMERGENCY RULE DECISION (ERD 16-96)

AGENCY: Child Support Enforcement Division  
RULE: New Rule, Series 2, Application of Statutory Interest Provisions  
FILED AS AN EMERGENCY RULE: July 25, 1996

- par. 1 The Child Support Enforcement Division (Division) has filed the above new rule as an emergency rule.
- par. 2 West Virginia Code 29A-3-15a requires the Secretary of State to review all emergency rules filed after March 8, 1986. This review requires the Secretary of State to determine if the agency filing such emergency rule: 1) has complied with the procedures for adopting an emergency rule; 2) exceeded the scope of its statutory authority in promulgating the emergency rule; or 3) can show that an emergency exists justifying the promulgation of an emergency rule.
- par. 3 Following review, the Secretary of State shall issue a decision as to whether or not such an emergency rule should be disapproved [(29A-3-15a)].
- par. 4 (A) Procedural Compliance: WV Code 29A-3-15 permits an agency to adopt, amend or repeal, without hearing, any legislative rule by filing such rule, along with a statement of the circumstances constituting the emergency, with the Secretary of State and forthwith with the Legislative Rule-Making Review Committee (LRMRC).
- par. 5 If an agency has accomplished the above two required filings with the appropriate supporting documents by the time the emergency rule decision is issued or the expiration of the forty-two day review period, whichever is sooner, the Secretary of State shall rule in favor of procedural compliance.
- par. 6 The Division filed this emergency rule with supporting documents with the Secretary of State July 25, 1996 and with the LRMRC July 25, 1996.
- par. 7 It is the determination of the Secretary of State that the Division has complied with the procedural requirements of WV Code §29A-3-15 for adoption of an emergency rule.

par. 8 (B) Statutory Authority -- WV Code §48-2-37 reads:

*If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in §56-6-31 of this code. On or after the effective date of this section, interest shall accrue only upon the outstanding principal of such obligation. This section shall be construed to permit the accumulation of simple interest, and may not be construed to permit the compounding of interest. Interest which has accrued on unpaid installments accruing before the effective date of this section may not be modified by any court, irrespective of whether such installment accrued simple or compound interest: Provided, That unpaid installments upon which interest was compounded before the effective date of this section shall accrue only simple interest thereon on and after the effective date of this section.*

par. 9 The Division also cited W. Va. Code §§48A-3-11; 48A-5-3 and 56-6-31 as authority to promulgate this emergency rule. §48A-5-3 deals with withholding from income of amounts payable as support and §56-6-31 deals with Interest on judgment or decree. Neither cite is relevant to this emergency rule.

par. 10 W. Va. Code §48A-3-11 states:

*All procedures and requirements established in the previous enactment of §§48A-3-1, 48A-3-2, 48A-3-3, 48A-3-7 and 48A-3-8 shall continue in effect until the promulgation of an emergency rule by the commission regarding the duties of child support enforcement division, their salary and their location throughout the state. Upon promulgation of this rule and the filing of such rule with the secretary of state in accord with §29A-3-15, this article and any rule promulgated pursuant to those sections of this article shall be repealed.*

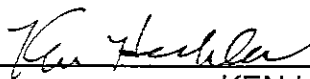
par. 11 Although the code cites specific need for emergency rules to be filed, this code section is not relevant to this proposed emergency rule.

par. 12 (C) Emergency -- WV Code 29A-3-15(f) defines "emergency" as follows:

*(f) For the purposes of this section, an emergency exists when the promulgation of a rule is necessary for the immediate preservation of the public peace, health, safety or welfare or is necessary to comply with a time limitation established by this code or by a federal statute or regulation or to prevent substantial harm to the public interest.*

par. 13 There are essentially three classes of emergency broadly presented with the above provision: 1) immediate preservation; 2) time limitation; and 3) substantial harm. An agency need only document to the satisfaction of the Secretary of State that there exists a nexus between the proposal and the circumstances creating at least one of the above three emergency categories.

- par. 14 The facts and circumstances as presented by the Division are as follows:
- State Code does not require employers to alter their pay cycle to honor a withholding notice for support. The Code also requires that interest be collected on any support obligation which is not met monthly. These Statutes are inconsistent. This rule would reconcile these inconsistencies.
- par. 15 The Division has exceeded their statutory authority by trying to reconcile differences in the West Virginia Code through Rule Making rather than by having the Code cites changed to be consistent.
- par. 16 The Division has failed to prove that an emergency exists which requires this rule to become effective immediately.
- par. 17 It is the determination of the Secretary of State that this proposal does not qualify as an emergency under the definition of an emergency as defined in §29A-3-15(f).
- par. 18 This decision shall be cited as Emergency Rule Decision 16-96 or ERD 16-96 and may be cited as precedent. This decision is available from the Secretary of State and has been filed with the Child Support Enforcement Division, the Attorney General and the Legislative Rule Making Review Commission.



KEN HECHLER  
Secretary of State

Entered \_\_\_\_\_

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

SEP 5 4 01 PM '96

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