

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

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Governor

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Secretary

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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: January 31, 1997

SUBJECT: Proposed Rules
Child Support Enforcement Division

OFFICE OF THE
SECRETARY OF STATE

FEB 4 9 38 AM '97

FILED

Please be advised that the Child Support Enforcement Division is hereby withdrawing the following:

1. Proposed Legislative Rules 97-1 Incorporation by Reference as a Legislative Rule of the Child Support Enforcement Division Policy. I would ask that this rule be a Procedural Rule and that the comment period that had previously been made available for the Proposed Legislative Rule be allowed to stand as the comment for the Procedural Rule.

2. Proposed Legislative Rule 97-2 Application of Statutory Interest. This rule will be withdrawn in its entirety.

3. Proposed Legislative Rule 97-5 Providing Information to Credit Reporting Agencies. I would ask that this rule be a Procedural Rule and that the comment period that had previously been made available for the Proposed Legislative Rule be allowed to stand as the comment for the Procedural Rule.

The remaining rules submitted by the Child Support Enforcement Division should be considered as Legislative Rules. I have made some minor changes to the rules following a discussion with Joe Altizer in Legislative Rule Making and Review. New copies of the rules are enclosed for your review. Should you have any questions, please feel free to contact me at 558-0908.

RJJ/rab

cc: Legislative Rule Making

ANALYSIS OF PROPOSED LEGISLATIVE RULE

Agency: Child Support Enforcement Division
Subject: Application of Statutory Interest Provisions
CSR Cite: 97CSR11 (new cite, old cite not provided)
Counsel: JAA

PERTINENT DATES

Filed for public comment: July 25, 1996
Public comment period ended: August 26, 1996
Filed following public comment period: August 30, 1996
Filed LRMRC: August 30, 1996
Filed as emergency: n/a

Fiscal Impact: No fiscal note provided.

ABSTRACT

Brief Summary

The rule provides methods for determining when a parent paying child support is in arrears and the method for assessing interest on that arrearage. All Child Support Enforcement Division rules were filed improperly, listing the new CSR cite without listing the old CSR cite. No statement of circumstances, no fiscal note and no federal cites referred to in the rule were provided. There appears to be statutory authority for the agency to propose this rule. There is no provision in §48A to authorize the Child Advocate Office to charge interest. §48A-5-5 authorizes the court to assess interest on past due child support.

Section Summary

Section 2 provides that all support orders entered by circuit courts are subject to withholding and interest for late support payments. Section 2.2 authorizes circuit and magistrate

courts to charge interest on arrearages unless otherwise provided in this rule. Section 2.3 allows for late payment of child support when the paying parent's pay cycle does not accommodate the collection pay cycle. Section 2.4 gives specific circumstances when interest does not accrue. These includes non-tradition pay cycles, and exceptions deemed appropriate by the Division. Section 2.6 appears to preclude this rule from applying to late payments which occur as a result of the Federal Consumer Credit Protection Act.

AUTHORITY

Statutory authority: W.Va. Code, §48-2-37, §48A-3-11, and §56-6-31 are authority cited by the agency: None apply to this rule. The Division does not appear to have any statutory authority to propose this rule. The code cites cited by the Division:

§48-2-37. Calculation of interest.

If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in section thirty-one, article six, chapter fifty-six 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.

§48A-3-11. Repeal of article.

All procedures and requirements established in the previous enactment of sections one, two, three, seven and eight of this article 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 section fifteen, article three, chapter twenty-nine-a of this code, this article and any rule promulgated pursuant to those sections of this article shall be repealed.

§56-6-31. Interest on judgment or decree.

Except where it is otherwise provided by law, every judgment or decree for the payment of money entered by any court of this state shall bear interest from the date thereof, whether it be so stated in the judgment or decree or not: **Provided**, That if the judgment or decree, or any part thereof, is for special damages, as defined below, or for liquidated damages, the amount of such special or liquidated damages shall bear interest from the date the right to bring the same shall have accrued, as determined by the court. Special damages includes lost wages and income, medical expenses, damages to tangible personal property, and similar out- of-pocket expenditures, as determined by the court. The rate of interest shall be ten dollars upon one hundred dollars per annum, and proportionately for a greater or lesser sum, or for a longer or shorter time, notwithstanding any other provisions of law.

ANALYSIS

I. HAS THE AGENCY EXCEEDED THE SCOPE OF ITS STATUTORY AUTHORITY IN APPROVING THE PROPOSED LEGISLATIVE RULE?

Yes. Counsel could not find authority in statute to authorize this rule.

II. IS THE PROPOSED LEGISLATIVE RULE IN CONFORMITY WITH THE INTENT OF THE STATUTE WHICH THE RULE IS INTENDED TO IMPLEMENT, EXTEND, APPLY, INTERPRET OR MAKE SPECIFIC?

No statute.

III. DOES THE PROPOSED LEGISLATIVE RULE CONFLICT WITH OTHER CODE PROVISIONS OR WITH ANY OTHER RULE ADOPTED BY THE SAME OR A DIFFERENT AGENCY?

No.

IV. IS THE PROPOSED LEGISLATIVE RULE NECESSARY TO FULLY ACCOMPLISH THE OBJECTIVES OF THE STATUTE UNDER WHICH THE PROPOSED RULE WAS PROMULGATED?

No.

V. IS THE PROPOSED LEGISLATIVE RULE REASONABLE, ESPECIALLY AS IT AFFECTS THE CONVENIENCE OF THE GENERAL PUBLIC OR OF

PERSONS AFFECTED BY IT?

Yes.

**VI. CAN THE PROPOSED LEGISLATIVE RULE BE MADE LESS COMPLEX
OR MORE READILY UNDERSTANDABLE BY THE GENERAL PUBLIC?**

Yes.

VII. WAS THE PROPOSED LEGISLATIVE RULE PROMULGATED IN COMPLIANCE WITH THE REQUIREMENTS OF CHAPTER 29A, ARTICLE 3 AND WITH ANY REQUIREMENTS IMPOSED BY ANY OTHER PROVISION OF THE CODE?

No. §29A-3-11 requires the agency file relevant federal regulations with the rule. None were filed. This section also requires that a statement of circumstances be filed with the rule. None were filed.

VIII. OTHER.

Several modifications need to be made to the rule if it is authorized.