

WEST VIRGINIA
SECRETARY OF STATE
KEN HECHLER
ADMINISTRATIVE LAW DIVISION

Form #4

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OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

NOTICE OF RULE MODIFICATION OF A PROPOSED RULE

AGENCY: Child Support Enforcemnt Division TITLE NUMBER: 97

CITE AUTHORITY 48A-2-23

AMENDMENT TO AN EXISTING RULE: YES X NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 4

TITLE OF RULE BEING AMENDED: Interstate Income Withholding

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED:

TITLE OF RULE BEING PROPOSED:

THE ABOVE PROPOSED LEGISLATIVE RULE, FOLLOWING REVIEW BY THE LEGISLATIVE RULE MAKING REVIEW COMMITTEE IS HEREBY MODIFIED AS A RESULT OF REVIEW AND COMMENT BY THE LEGISLATIVE RULE-MAKING REVIEW COMMITTEE. THE ATTACHED MODIFICATIONS ARE FILED WITH THE SECRETARY OF STATE.



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TITLE 97
LEGISLATIVE RULES
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

OFFICE OF THE ATTORNEY GENERAL
SECRETARY OF STATE

SERIES 13
INTERSTATE INCOME WITHHOLDING

§97-13-1. General.

1.1 Scope - This legislative rule establishes procedures to extend the ~~Department of Human Services Child Advocate Office~~ Department of Health and Human Resources, Child Support Enforcement Division system of income withholding to income derived within this State where applicable support orders were issued in other states. The purpose is to assure that child support owed by obligors in this state, or any other state, will be collected regardless of the residence of the child or its custodial parent. This rule is proposed to bring the Child Support Enforcement Division in compliance with 42 U. S. C. §666(b)(9), 45 C. F. R. §303.100.

1.2 Authority - W. Va. Code §48A-2-23, §48A-2-10, §48A-2-9 and 48A-2-11.

1.3 Definitions.

Absent Parent (AP): Any individual who is absent from the home and is legally responsible for providing financial support for a dependent child. This term is used interchangeably with non-custodial parent.

Arrearage Trigger: An amount that may be required by court order prior to

institution of a wage withholding.

IV-D Agency: A single and separate organizational unit in a State that has the responsibility for administering the State Plan under Title IV-D of the Act. The Child Support Enforcement Division.

IV-D of the Social Security Act: This section of federal law states to have a Child Support Enforcement program if a state participates in the Aid to Families with Dependent Children Program. Child Support Enforcement programs are referred to as IV-D programs.

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UIFSA: Uniform Interstate Family Support Act. An interstate child support enforcement Act designed to replace the original URESA Act. Under UIFSA, only one order is in effect and enforceable at a time.

URES: Uniform Reciprocal Enforcement of Support Act. A law which was enacted at the State level and which provides a mechanism for establishing and enforcing support obligations when the non-custodial parent lives in one state and the custodial parent and child(ren) live in another. The URESA model was an early attempt to provide the states with a universal child support tool that worked across state lines. URESA was developed before the passage of Title IV-D of the Social Security Act and before IV-D Agencies existed.

1.4 Filing Date -

1.5 Effective Date -

§97-13-2. Interstate Income Withholding.

2.1 Interstate wage withholding is available to enforce an existing order for support cases without proceeding through the URESA or UIFSA process.

2.2 The Child Advocate Office Child Support Enforcement Division will be involved in interstate withholding in ~~two~~ (2) three (3) types of situations:

1. An obligee resides in the State of West Virginia and the obligor is in another state.

2. An obligor resides in West Virginia and the obligee resides in another state.

3. Both parties reside outside of West Virginia but the obligor's employment or source of income is located in West Virginia.

2.3 Procedures for interstate income withholding when the obligee resides in West Virginia.

If the obligee is not currently receiving IV-D NPA services, an application for IV-D NPA or income withholding only services and the twenty-five dollar (\$25.00) application fee ~~are~~ is required prior to processing the withholding. During the interview with the caretaker/obligee, the paralegal legal assistant must determine the following:

1. The obligor's name, address and social security number;

2. The name and address of the obligor's employer or source of income;

3. Where the support order originated;

4. The paralegal legal assistant will determine from the Interstate Withholding Directory the information that the other state requires to process the withholding;

5. The ~~paralegal~~ legal assistant will obtain and assemble the required documentation. This may involve obtaining certified copies of documents from other states if the support order was not issued in West Virginia, and complete the Interstate Transmittal form, from the automated system to send to the other state.

6. The ~~paralegal~~ legal assistant will send the original package to the state in which the obligor resides, a copy to the ~~Central Child Advocate Office~~ Child Support Enforcement Division Central Registry. The Legal Assistant will also place a copy in the ~~Child Advocate Office~~ Child Support Enforcement Division record.

2.4 Procedures to implement an income withholding request from another state;

The following documentation from the other state IV-D agency to initiate withholding for an obligor residing in this state is required:

1. A certified copy of the support order with all modifications;

2. A certified copy of an income withholding order/notice, if any, still in effect;

3. A copy of the portion of the income withholding statute of the jurisdiction which issued the support order which states the requirements for obtaining income

withholding under the law of that jurisdiction;

4. A sworn statement of the caretaker or certified statement of a court or governmental entity of the arrearages and the assignment of support rights, if any;

5. A statement of:

a. The name, address, and Social Security Number of the absent parent, if known;

b. The name and address of the absent parent's employer or of any other source of income of the absent parent earned in this state against which income withholding is sought;

c. The name and address of the agency or person to whom support payments collected by income withholding shall be transmitted.

2.5. The income withholding request will be sent by the other state to the ~~Central Child Advocate Office~~ Central Registry of the Child Support Enforcement Division and then forwarded to the appropriate regional ~~Child Advocate Office~~ Child Support Enforcement Division office.

2.6. The ~~Central Child Advocate Office~~ Child Support Enforcement Division Central Registry shall examine the documentation from the requesting state to determine whether or not it conforms to West Virginia requirements.

2.7. The ~~Central Child Advocate Office~~ Child Support

Enforcement Division Central Registry will remedy any defect it can without the assistance of the requesting state. If the Child Advocate Office Central Registry is unable to make such correction, the requesting state shall immediately be notified of the necessary additions or corrections. In neither case shall the documentation be returned. The Central Child Advocate Office Child Support Enforcement Division Central Registry will forward the documentation to the regional office Child Support Enforcement Division regional office if it appears that there is enough required information to proceed with the withholding, and the regional office is to proceed with any other action that may be necessary while awaiting the necessary information from the other state.

West Virginia immediate income withholding extends to out of state cases as well, therefore, once all of the information is obtained, within 15 calendar days of locating the absent parent's employer or source of income, the withholding is to begin using the same timeframes as are required for State cases.

If an arrearage trigger is required on the case, the meeting with the Child Support Enforcement Division and a hearing before the Family Law Master will be scheduled at the regional office of the Child Support Enforcement Division and before the Family Law Master in the county where the absent parent lives or where

the absent parent's source of income is located.

If an arrearage trigger is required on the case, within 15 calendar days of location of the obligor and his or her employer or source of income, the notice of withholding must be sent to the absent parent.

The same timeframes required in in-state cases for notice to the employer/source of income applies in these cases.

If the requesting state does not forward a certified copy of the support order with all modifications because the order is a West Virginia order, the Legal Assistant shall obtain a copy of the appropriate order and any modifications from the proper court clerk.

2.8. The regional Child Advocate Office Office of the Child Support Enforcement Division will:

1. If only an income support order or support order with a conditional order of withholding (i.e., the arrearage trigger must be met in the future) is received from another state, determine if the trigger amount for income withholding has been reached under the law of the state which entered the order, not the law of West Virginia. If the individual is behind in an amount to trigger income withholding under the other state's law, the paralegal legal assistant sends the notice to the obligor and proceed exactly as in

Section ~~7121~~, ~~Intrastate Withholding Procedures~~, is to send the notice to Withholding Request from Another State the absent parent and then proceed exactly as in the Child Support Enforcement Division Policy Manual section on withholding procedures for in-state cases,
or;

2. If an active income withholding order is received (i.e., the trigger was met in the other state and income withholding begun), the ~~paralegal~~ legal assistant will immediately send the notice to the obligor and then proceed exactly as in the Child Support Enforcement Division Policy Manual section on withholding procedures for in-state cases.



WEST VIRGINIA LEGISLATURE
Legislative Rule-Making Review Committee

State Capitol - Room MB-49
Charleston, West Virginia 25305
(304) 347-4840

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Senator: Mike Ross, Co-Chairman
Delegate: Mark Hunt, Co-Chairman
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February 10, 1997

NOTICE OF ACTION TAKEN BY LEGISLATIVE RULE-MAKING REVIEW COMMITTEE

TO: Ken Hechler, Secretary of State, State Register

TO: Mr. Jeffrey Johnson
Department of Health and Human Resources
Child Support Enforcement Division
West Virginia State Capitol Complex - Bldg. 3
Charleston, WV 25305

FROM: Legislative Rule-Making Review Committee

PROPOSED RULE: *Interstate Income Withholding*

97-4

The Legislative Rule-Making Review Committee recommends that the West Virginia Legislature:

1. Authorize the agency to promulgate the Legislative Rule
 - (a) as originally filed
 - (b) as modified by the agency
2. Authorize the agency to promulgate part of the Legislative rule; a statement of reasons for such recommendation is attached.
3. Authorize the agency to promulgate the Legislative rule with certain amendments; amendments and a statement of reasons for such recommendation is attached.
4. Authorize the agency to promulgate the Legislative rule as modified with certain amendments; amendments and a statement of reasons for such recommendation is attached.

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